

ACTS  
OF THE  
LEGISLATURE  
OF  
WEST VIRGINIA



**Second Extraordinary Session, 2003**

COMPILED AND PUBLISHED  
UNDER THE DIRECTION  
OF  
GREGORY M. GRAY  
*Clerk of the House*

\* \* \* \* \*

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## FOREWORD

This volume contains the Acts of the Second Extraordinary Session of the Seventy-sixth Legislature, 2003.

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., June 10, 2003, contained eighteen items for consideration.

Bills totaling 41 were introduced in the two houses during the session (25 House and 16 Senate). The Legislature passed, and the Governor approved, 27 bills: 15 House bills and 12 Senate bills.

There were 4 Concurrent Resolutions introduced during the session, 2 House and 2 Senate, all of which were adopted. The House introduced and adopted 1 House Resolution and the Senate introduced and adopted 4 Senate Resolutions.

The Senate failed to pass 1 House bill passed by the House.

The Legislature adjourned the Extraordinary Session *sine die* at 3:06 P.M., July 1, 2003.

\* \* \* \* \*

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

These acts may be purchased from the Office of the Clerk of the House, 212 Main Unit, State Capitol, Charleston, West Virginia, 25305.

GREGORY M. GRAY  
*Clerk of the House and  
Keeper of the Rolls.*

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**Second Extraordinary Session, 2003**

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# LEGISLATURE OF WEST VIRGINIA

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# ACTS

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SECOND EXTRAORDINARY SESSION, 2003

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## CHAPTER 1

**(H. B. 210 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation in the state fund, general revenue, to the governor's office, fund 0101, fiscal year 2004, organization 0100, to the department of agriculture, fund 0131, fiscal year 2004, organization 1400, to the department of agriculture - state conservation committee, fund 0132, fiscal year 2004, organization 1400, and to the department of tax and revenue - West Virginia office of tax appeals, fund 0593, fiscal year 2004, organization 0709, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand four.

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0101, fiscal year 2004, organization 0100, be supplemented and amended to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 5—Governor’s Office

5 (WV Code Chapter 5)

6 Fund 0101 FY 2004 Org 0100

7	1	Personal Services . . . . .	001	\$ 2,371,414
8	2	Salary of Governor . . . . .	002	90,000
9	3	Annual Increment . . . . .	004	19,500
10	4	Employee Benefits . . . . .	010	725,000
11	5	Unclassified (R) . . . . .	099	1,122,591
12	6	National Governors’ Association . . .	123	77,500
13	7	Southern Governors’ Association . . .	314	5,740
14	8	BRIM Premium . . . . .	913	<u>195,286</u>
15	9	Total . . . . .		\$ 4,607,031

16 Any unexpended balances remaining in the appropriations  
17 for Unclassified (fund 0101, activity 099), Publication of Papers  
18 and Transition Expenses (fund 0101, activity 465) and Publica-  
19 tion of Papers and Transition Expenses - Surplus (fund 0101,  
20 activity 359) at the close of the fiscal year 2003 are hereby  
21 reappropriated for expenditure during the fiscal year 2004.

22 And, that the total appropriation for the fiscal year ending  
23 the thirtieth day of June, two thousand four, to fund 0131, fiscal  
24 year 2004, organization 1400, be supplemented and amended to  
25 read as follows:



## 26 TITLE II—APPROPRIATIONS.

## 27 Section 1. Appropriations from general revenue.

## 28 EXECUTIVE

29 *11—Department of Agriculture*

30 (WV Code Chapter 19)

31 Fund 0131 FY 2004 Org 1400

32	1	Personal Services . . . . .	001	\$ 3,596,423
33	2	Salary of Commissioner . . . . .	002	70,000
34	3	Annual Increment . . . . .	004	77,138
35	4	Employee Benefits . . . . .	010	1,295,578
36	5	State Farm Museum . . . . .	055	110,000
37	6	Unclassified (R) . . . . .	099	788,483
38	7	Gypsy Moth Program (R) . . . . .	119	943,067
39	8	Huntington Farmers Market . . . . .	128	50,000
40	9	Black Fly Control (R) . . . . .	137	428,456
41	10	Tri-County Fair Association . . . . .	343	0
42	11	Donated Foods Program . . . . .	363	50,000
43	12	Predator Control . . . . .	470	140,000
44	13	Bee Research . . . . .	691	32,421
45	14	Microbiology Program (R) . . . . .	785	152,680
46	15	Moorefield Agriculture Center (R) . .	786	994,135
47	16	WV Food Banks . . . . .	969	50,000
48	17	Seniors' Farmers' Market Nutrition		
49	18	Coupon Program . . . . .	970	60,000
50	19	BRIM Premium . . . . .	913	<u>77,862</u>
51	20	Total . . . . .		\$ 8,916,243

52 Any unexpended balances remaining in the appropriations  
53 for Unclassified (fund 0131, activity 099), Gypsy Moth  
54 Program (fund 0131, activity 119), Black Fly Control (fund  
55 0131, activity 137), Mingo County Surface Mine Project (fund

56 0131, activity 296), Charleston Farmers Market (fund 0131,  
 57 activity 476), Capital Improvements - Total - Surplus (fund  
 58 0131, activity 672), Microbiology Program (fund 0131, activity  
 59 785), and Moorefield Agriculture Center (fund 0131, activity  
 60 786) at the close of the fiscal year 2003 are hereby  
 61 reappropriated for expenditure during the fiscal year 2004, with  
 62 the exception of fund 0131, fiscal year 2003, activity 099  
 63 (\$79,333), fund 0131, fiscal year 2003, activity 119 (\$12,930),  
 64 fund 0131, fiscal year 2003, activity 137 (\$65,000), fund 0131,  
 65 fiscal year 2003, activity 296 (\$62,000), and fund 0131, fiscal  
 66 year 2003, activity 785 (\$2,308) which shall expire on June 30,  
 67 2003.

68 A portion of the Unclassified appropriation may be trans-  
 69 ferred to a special revenue fund for the purpose of matching  
 70 federal funds for marketing and development activities.

71 And, that the total appropriation for the fiscal year ending  
 72 the thirtieth day of June, two thousand four, to fund 0132, fiscal  
 73 year 2004, organization 1400, be supplemented and amended to  
 74 read as follows:

75 TITLE II—APPROPRIATIONS.

76 Section 1. Appropriations from general revenue.

77 EXECUTIVE

78 12—Department of Agriculture—

79 State Conservation Committee

80 (WV Code Chapter 19)

81 Fund 0132 FY 2004 Org 1400

82	1	Personal Services . . . . .	001	\$	464,113
83	2	Annual Increment . . . . .	004		7,900



112 Any unexpended balance remaining in the appropriation for  
 113 Unclassified - Total (fund 0593, activity 096) at the close of the  
 114 fiscal year two thousand three is hereby reappropriated for  
 115 expenditure during the fiscal year 2004, with the exception of  
 116 fund 0593, fiscal year 2003, activity 096 (\$14,280) which shall  
 117 expire on June 30, 2003.

118 The purpose of this bill is to supplement these accounts in  
 119 the budget act for the fiscal year ending the thirtieth day of  
 120 June, two thousand four, by amending language with no  
 121 additional funds being appropriated.

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## CHAPTER 2

**(H. B. 211 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
 [By Request of the Executive]**

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

---

AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of military affairs and public safety - West Virginia state police, fund 0453, fiscal year 2004, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0453, fiscal year 2004, organization 0612, be supplemented and amended to read as follows:

## 1 TITLE II — APPROPRIATIONS.

## 2 Section 1. Appropriations from general revenue.

## 3 DEPARTMENT OF MILITARY AFFAIRS

## 4 AND PUBLIC SAFETY

5 57—West Virginia State Police

6 (WV Code Chapter 15)

7 Fund 0453 FY 2004 Org 0612

8			General
9		Act-	Revenue
10		ivity	Funds
11	1	Personal Services . . . . .	001 \$ 27,307,300
12	2	Annual Increment . . . . .	004 191,550
13	3	Employee Benefits . . . . .	010 5,594,693
14	4	Unclassified . . . . .	099 6,164,417
15	5	Vehicle Purchase . . . . .	451 1,000,000
16	6	Barracks Maintenance	
17	7	and Construction (R) . . . . .	494 1,719,388
18	8	Trooper Class . . . . .	521 3,625,433
19	9	Barracks Lease Payments . . . . .	556 318,768
20	10	Communications and	
21	11	Other Equipment (R) . . . . .	558 613,285
22	12	Trooper Retirement Fund . . . . .	605 24,875,529
23	13	Handgun Administration Expense ..	747 70,375
24	14	Automated Fingerprint	
25	15	Identification System . . . . .	898 495,293
26	16	BRIM Premium . . . . .	913 <u>4,635,358</u>
27	17	Total . . . . .	\$ 76,611,389

28 Any unexpended balances remaining in the appropriations  
29 for Barracks Maintenance and Construction (fund 0453, activity  
30 494), and Communications and Other Equipment (fund 0453,  
31 activity 558) at the close of the fiscal year 2003 are hereby  
32 reappropriated for expenditure during the fiscal year 2004.

33 The purpose of this bill is to supplement this account in the  
34 budget act for the fiscal year ending the thirtieth day of June,  
35 two thousand four, by decreasing and increasing items of  
36 appropriation with no additional funds being appropriated.



## CHAPTER 3

**(H. B. 213 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)**  
**[By Request of the Executive]**



[Passed June 30, 2003; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of education - state department of education, fund 0313, fiscal year 2004, organization 0402, to the department of education and the arts - office of the secretary, fund 0294, fiscal year 2004, organization 0431, bureau of commerce - West Virginia development office, fund 0256, fiscal year 2004, organization 0307, to the higher education policy commission - administration - control account, fund 0589, fiscal year 2004, organization 0441, higher education policy commission - system-control account, fund 0586, fiscal year 2004, organization 0442, and the higher education policy commission - legislative - funding priorities - control account, fund 0591, fiscal year 2004,

organization 0441, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the tenth day of June, two thousand three, setting forth therein the cash balance as of the first day of July, two thousand two; and further included the estimate of revenues for the fiscal year 2003, less net appropriation balances forwarded and regular appropriations for fiscal year 2003; and further included the estimate of revenue for the fiscal year 2004, less regular appropriations for fiscal year 2004; and

WHEREAS, The governor, by executive message dated the tenth day of June, two thousand three, has increased the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand four; and

WHEREAS, It appears from the governor's statement of the state fund - general revenue and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0313, fiscal year 2004, organization 0402, be supplemented and increased in the existing and new line items as follows:

- 1                   **TITLE II — APPROPRIATIONS.**
- 2                   **Section 1. Appropriations from general revenue.**
- 3                   **DEPARTMENT OF EDUCATION**

10 APPROPRIATIONS [Ch. 3

4 34—*State Department of Education*

5 (WV Code Chapters 18 and 18A)

6 Fund 0313 FY 2004 Org 0402

7			<b>General</b>
8		<b>Act-</b>	<b>Revenue</b>
9		<b>ivity</b>	<b>Funds</b>

10	4	Unclassified (R) . . . . .	099	\$	900,000
11	26a	Safe Schools . . . . .	143		1,000,000

12 And, that the total appropriation for the fiscal year ending  
13 the thirtieth day of June, two thousand four, to fund 0294, fiscal  
14 year 2004, organization 0431, be supplemented and increased  
15 in new line items as follow:

16 TITLE II — APPROPRIATIONS.

17 Section 1. Appropriations from general revenue.

18 DEPARTMENT OF EDUCATION AND THE ARTS

19 40—*Department of Education and the Arts—*

20 *Office of the Secretary*

21 (WV Code Chapter 5F)

22 Fund 0294 FY 2004 Org 0431

23				<b>General</b>
24			<b>Act-</b>	<b>Revenue</b>
25			<b>ivity</b>	<b>Funds</b>

26	7a	Governor’s Honors Academy			
27		And School for the Arts . . . . .	030	\$	410,000
28	7b	Teacher Education Partnerships . . . .	576		600,000



29 And, that the total appropriation for the fiscal year ending  
30 the thirtieth day of June, two thousand four, to fund 0256, fiscal  
31 year 2004, organization 0307, be supplemented and increased  
32 in the existing line item as follows:

33 TITLE II — APPROPRIATIONS.

34 Section 1. Appropriations from general revenue.

35 BUREAU OF COMMERCE

36 73—*West Virginia Development Office—*

37 (WV Code Chapter 5B)

38 Fund 0256 FY 2004 Org 0307.

39			<b>General</b>
40		<b>Act-</b>	<b>Revenue</b>
41		<b>ivity</b>	<b>Funds</b>

42	39	Local Economic		
43	40	Development Assistance . . . . .	819	\$ 900,000

44 And, that the total appropriation for the fiscal year ending  
45 the thirtieth day of June, two thousand four, to fund 0589, fiscal  
46 year 2004, organization 0441, be supplemented and increased  
47 in a new line item as follows:

48 TITLE II — APPROPRIATIONS.

49 Section 1. Appropriations from general revenue.

50 HIGHER EDUCATION POLICY COMMISSION

51 85—*Higher Education Policy Commission—*

52 *Administration—*

12 APPROPRIATIONS [Ch. 3

53 *Control Account*

54 (WV Code Chapter 18B)

55 Fund 0589 FY 2004 Org 0441

56			<b>General</b>
57		<b>Act-</b>	<b>Revenue</b>
58		<b>ivity</b>	<b>Funds</b>

59	10a	HEAPS Grant Program . . . . .	867	1,000,000
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60 And, that the total appropriation for the fiscal year ending  
61 the thirtieth day of June, two thousand four, to fund 0586, fiscal  
62 year 2004, organization 0442, be supplemented and increased  
63 in the existing and new line items as follow:

64 TITLE II — APPROPRIATIONS.

65 Section 1. Appropriations from general revenue.

66 HIGHER EDUCATION POLICY COMMISSION

67 86—Higher Education Policy Commission—

68 *System—*

69 *Control Account*

70 (WV Code Chapter 18B)

71 Fund 0586 FY 2004 Org 0442

72			<b>General</b>
73		<b>Act-</b>	<b>Revenue</b>
74		<b>ivity</b>	<b>Funds</b>

75	40	West Virginia University -		
76	41	Potomac State . . . . .	994	\$ 100,000

77	49a	Tuition offset for Freestanding		
78	49b	Community and Technical		
79	49c	Colleges . . . . .	032	300,000

80 And, that the total appropriation for the fiscal year ending  
 81 the thirtieth day of June, two thousand four, to fund 0591, fiscal  
 82 year 2004, organization 0441, be supplemented and increased  
 83 in new and existing line items as follow:

84 TITLE II — APPROPRIATIONS.

85 Section 1. Appropriations from general revenue.

86 HIGHER EDUCATION POLICY COMMISSION

87 88—*Higher Education Policy Commission*—

88 *Legislative*—

89 *Funding Priorities*

90 *Control Account*

91 (WV Code Chapter 18B)

92 Fund 0591 FY 2004 Org 0441

93				General
94			Act-	Revenue
95			ivity	Funds
96	2	Research Challenge . . . . .	502	1,000,000
97	2a	Higher Education -		
98		Special Projects . . . . .	488	\$ 865,000

99 The purpose of this supplementary appropriation bill is to  
 100 increase items of appropriations in the aforesaid accounts for  
 101 the designated spending units for expenditure during fiscal year  
 102 two thousand four.

---

## CHAPTER 4

**(H. B. 214 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

---

[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

---

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of two hundred thousand dollars from the division of banking-assessment and examination fund, fund 3041, fiscal year 2003, organization 0303 and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand three, to the department of tax and revenue—tax division, fund 0470, fiscal year 2003, organization 0702.

WHEREAS, The Legislature finds that the account balance in the division of banking—assessment and examination fund, fund 3041, fiscal year 2003, organization 0303, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, By the provisions of this legislation, there now remains an unappropriated surplus balance in the state fund, general revenue which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand three; therefore

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

That the balance of funds in the division of banking-assessment and examination fund, fund 3041, fiscal year 2003, organization 0303 be decreased by expiring the amount of two hundred thousand dollars

to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand three, to fund 0470, fiscal year 2003, organization 0702, be supplemented and amended by increasing the total appropriation by two hundred thousand dollars as follows:

1

TITLE II — APPROPRIATIONS.

2

Section 1. Appropriations from general revenue.

3

DEPARTMENT OF TAX AND REVENUE

4

*65—Tax Division*

5

(WV Code Chapter 11)

6

Fund 0470 FY 2003 Org 0702

7

**General**

8

**Act-**

**Revenue**

9

**ivity**

**Fund**

10

4 Unclassified—Surplus (R) . . . . . 097 \$ 200,000

11

The purpose of this supplementary appropriation bill is to

12

supplement and increase items of appropriations in the afore-

13

said account for the designated spending unit for expenditure

14

during the fiscal year two thousand three.



CHAPTER 5

(H. B. 215 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]



[Passed June 14, 2003; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the higher education policy commission - administration - control account, fund 0589, fiscal year 2004, organization 0441 and the higher education policy commission - system - control account, fund 0586, fiscal year 2004, organization 0442, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the tenth day of June, two thousand three, setting forth therein the cash balance as of the first day of July, two thousand two; and further included the estimate of revenues for the fiscal year 2003, less net appropriation balances forwarded and regular appropriations for fiscal year 2003; and further included the estimate of revenues for the fiscal year 2004, less regular appropriations for fiscal year 2004; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0589, fiscal year 2004, organization 0441, be supplemented and increased in the existing line items as follows:

- 1                   **TITLE II — APPROPRIATIONS.**
- 2           **Section 1. Appropriations from general revenue.**
- 3           **HIGHER EDUCATION POLICY COMMISSION**

4                   85—Higher Education Policy Commission—

5                                   Administration—

6                                   Control Account

7                                   (WV Code Chapter 18B)

8                                   Fund 0589 FY 2004 Org 0441

			<b>General</b>
		<b>Act-</b>	<b>Revenue</b>
		<b>ivity</b>	<b>Funds</b>
12	1	Unclassified . . . . .	\$ 1,305
13	2	WVNET . . . . .	3,920

14           And, that the total appropriation for the fiscal year ending  
15 the thirtieth day of June, two thousand four, to fund 0586, fiscal  
16 year 2004, organization 0442, be supplemented and increased  
17 in the existing and new line items as follows:

18                                   TITLE II — APPROPRIATIONS.

19                                   Section 1. Appropriations from general revenue.

20                                   **HIGHER EDUCATION POLICY COMMISSION**

21                   86—Higher Education Policy Commission—

22                                   System—

23                                   Control Account

24                                   (WV Code Chapter 18B)

25                                   Fund 0586 FY 2004 Org 0442

					<b>General</b>
					<b>Revenue</b>
					<b>Funds</b>
			<b>Act-</b>		
			<b>ivity</b>		
29	1	Bluefield State College .....	408	\$	5,030
30	4	Concord College .....	410		6,739
31	7	Fairmont State College .....	414		4,160
32	8	Fairmont State Community and			
33	9	Technical College .....	421		4,159
34	10	Glenville State College .....	428		7,477
35	13	Shepherd College .....	432		13,058
36	14	Shepherd Community and			
37	15	Technical College .....	434		300
38	16	West Liberty State College .....	439		8,711
39	17	West Virginia State College .....	441		9,840
40	18	West Virginia State Community and			
41	19	Technical College .....	445		926
42	20	Southern West Virginia Community and			
43	21	Technical College .....	446		4,378
44	22	West Virginia Northern Community and			
45	23	Technical College .....	447		4,221
46	24	Marshall University .....	448		28,312
47	25	Marshall Medical School .....	173		5,348
48	30	West Virginia University .....	459		140,672
49	31	WVU - School of Health Sciences .....	174		46,891
50	36	West Virginia University -			
51	37	Parkersburg .....	471		7,151
52	40	West Virginia University -			
53	41	Potomac State .....	994		6,177
54	42	West Virginia University Institute			
55	43	for Technology .....	479		12,715
56	44	West Virginia University Institute			
57	45	for Technology Community and			
58	46	Technical College .....	486		5,449
59	49a	School of Osteopathic Medicine .....	172		6,738



60       The purpose of this supplementary appropriation bill is to  
61    increase items of appropriations in the aforesaid accounts for  
62    the designated spending units for expenditure during fiscal year  
63    two thousand four.

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## CHAPTER 6

**(H. B. 216 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of military affairs and public safety—division of veterans' affairs—veterans' home, fund 8728, fiscal year 2004, organization 0618, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8728, fiscal year 2004, organization 0618, be supplemented and amended by increasing the total appropriation as follows:

1

TITLE II—APPROPRIATIONS.

2

Sec. 6. Appropriations of federal funds.

3

DEPARTMENT OF MILITARY  
AFFAIRS AND PUBLIC SAFETY

4

5

273—*Division of Veterans' Affairs—*

6

*Veterans' Home*

7

(WV Code Chapter 9A)

8

Fund 8728 FY 2004 Org 0618

9

Act- Federal

10

ivity Funds

11

1 Unclassified—Total . . . . . 096 \$ 1,300,000

12

The purpose of this supplementary appropriation bill is to  
13 supplement and increase items of appropriation in the aforesaid  
14 account for the designated spending unit for expenditure during  
15 fiscal year two thousand four.



CHAPTER 7

(H. B. 217 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]



[Passed June 14, 2003: in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of federal funds out  
of the treasury from the balance of federal moneys remaining

unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to a new item of appropriation designated to the board of pharmacy, fund 8857, fiscal year 2004, organization 0913, supplementing and amending chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:

1	<b>TITLE II—APPROPRIATIONS.</b>		
2	<b>Sec. 6. Appropriations of federal funds.</b>		
3	<b>MISCELLANEOUS BOARDS AND COMMISSIONS</b>		
4	<i>289a—Board of Pharmacy</i>		
5	(WV Code Chapter 30)		
6	Fund <u>8857</u> FY <u>2004</u> Org <u>0913</u>		
7		<b>Act-</b>	<b>Federal</b>
8		<b>ivity</b>	<b>Funds</b>
9	1	Unclassified - Total . . . . . 096	\$ 180,000

10 The purpose of this supplementary appropriation bill is to  
11 supplement this account in the budget act for fiscal year ending

12 the thirtieth day of June, two thousand four, by providing for a  
13 new item of appropriation to be established therein to appropri-  
14 ate federal funds for the designated spending unit for expendi-  
15 ture during the fiscal year two thousand four.

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## CHAPTER 8

**(H. B. 218 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to a new item of appropriation designated to the department of military affairs and public safety - division of veterans' affairs, fund 8858, fiscal year 2004, organization 0613, supplementing and amending chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY

4 AFFAIRS AND PUBLIC SAFETY

5 272a—*Division of Veterans' Affairs*

6 (WV Code Chapter 9A)

7 Fund 8858 FY 2004 Org 0613

8		<b>Act-</b>	<b>Federal</b>
9		<b>ivity</b>	<b>Funds</b>

10 1 Unclassified - Total . . . . . 096 \$ 10,000,000

11 The purpose of this supplementary appropriation bill is to  
12 supplement this account in the budget act for fiscal year ending  
13 the thirtieth day of June, two thousand four, by providing for a  
14 new item of appropriation to be established therein to appropri-  
15 ate federal funds for the designated spending unit for expendi-  
16 ture during the fiscal year two thousand four.



# CHAPTER 9

**(H. B. 219 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**



[Passed June 30, 2003; in effect from passage. Approved by the Governor.]



AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to a new item of appropriation designated to the governor's office - jobs and growth tax relief reconciliation act of 2003, fund 8859, fiscal year 2004, organization 0100, and transferring certain amounts from that fund to the workers' compensation fund, fund 3440, fiscal year 2004, organization 0322; to the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2004, organization 2300; and to the general revenue fund, all supplementing and amending chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for existing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:

- 1                           TITLE II — APPROPRIATIONS.
- 2                           **Sec. 6. Appropriations of federal funds.**
- 3   **EXECUTIVE**
- 4   *246a—Governor's Office—*
- 5   *Jobs and Growth Tax Relief*
- 6   *Reconciliation Act of 2003*

7 (WV Code Chapter 5)

8 Fund 8859 FY 2004 Org 0100

9			<b>Act-</b>	<b>Federal</b>
10			<b>ivity</b>	<b>Funds</b>

11 1 Unclassified - Total - Transfer . . . . . 402 \$ 61,493,122

12 From the above appropriation for unclassified - total -  
13 transfer a total of \$14,000,000 shall be transferred to the  
14 workers' compensation fund, fund 3440, organization 0322,  
15 \$19,418,122 shall be transferred to the tax reduction and federal  
16 funding increased compliance fund, fund 1732, organization  
17 2300, and a total of \$28,075,000 shall be transferred to the  
18 general revenue fund.

19 The purpose of this supplementary appropriation bill is to  
20 supplement this account in the budget act for the fiscal year  
21 ending the thirtieth day of June, two thousand four, by provid-  
22 ing for a new item of appropriation to be established therein to  
23 appropriate federal funds for the designated spending unit for  
24 expenditure during the fiscal year two thousand four.



## CHAPTER 10

**(H. B. 223 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**



[Passed June 14, 2003; in effect from passage. Approved by the Governor.]



AN ACT expiring funds to the balance of the workers' compensation fund, fund 3440, fiscal year 2003, organization 0322, for the fiscal year ending the thirtieth day of June, two thousand three, in

the amount of one million dollars from the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2003, organization 0708.

WHEREAS, The Legislature finds that the account balance in the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2003, organization 0708, exceeds that which is necessary for the purpose for which the account was established; therefore

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

That the balance of the workers' compensation fund, fund 3440, fiscal year 2003, organization 0322, be increased by expiring to that fund one million dollars from the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2003, organization 0708 to be available for expenditure during the fiscal year two thousand three.

The purpose of this bill is to expire one million dollars from the alcohol beverage control administration - general administrative fund, fund 7352, fiscal year 2003, organization 0708 to the balance of the workers' compensation fund, fund 3440, fiscal year 2003, organization 0322, for the fiscal year ending the thirtieth day of June, two thousand three, to be available for expenditure during the fiscal year two thousand three.

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## CHAPTER 11

**(H. B. 224 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

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AN ACT expiring funds to the unappropriated balance in the state excess lottery revenue fund, for the fiscal year ending the thirtieth day of June, two thousand three, in the amount of nineteen million dollars from the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307; and transferring funds not to exceed the amount of four million dollars to the balance of the workers' compensation fund, fund 3440, fiscal year 2003, organization 0322.

WHEREAS, The Legislature finds that the fund balance in the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307, exceeds that which is necessary for the purposes for which the account was established; therefore

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

That chapter five, acts of the Legislature, first extraordinary session, two thousand three, known as House Bill 105, be supplemented and amended to read as follows:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand three, in the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307, be decreased by expiring the amount of nineteen million dollars to the unappropriated balance in the state excess lottery revenue fund.

And, that from the unappropriated balance of the state excess lottery revenue fund, an amount not to exceed four million dollars as determined by the director of the lottery commission, be transferred to the balance of the workers' compensation fund, fund 3440, fiscal year 2003, organization 0322.

The purpose of this supplemental appropriation is to expire funds to the unappropriated balance in the state excess lottery revenue fund

from the economic development authority - economic development project fund, fund 3167, fiscal year 2003, organization 0307; and to transfer funds to the workers' compensation fund, fund 3440, fiscal year 2003, organization 0322 from the unappropriated balance in the state excess lottery revenue fund.

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## CHAPTER 12

**(S. B. 2016 — By Senators Helmick, Sharpe, Chafin, Plymale,  
Prezioso, Edgell, Love, Bowman, McCabe, Dempsey,  
Boley, Minear, Facemyer, Guills and Sprouse)**

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[Passed June 30, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend section nine, Title II, chapter twenty, acts of the Legislature, regular session, two thousand three, by making a new appropriation of public moneys out of the treasury in accordance with section fifty-one, article VI of the constitution making appropriations from surplus accrued certain amounts within the general revenue fund.

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

That section nine, Title II, chapter twenty, acts of the Legislature, regular session, two thousand three, be supplemented and amended by adding to Title II, section nine thereof the following:

- |   |                                |
|---|--------------------------------|
| 1 | TITLE II—APPROPRIATIONS.       |
| 2 | <i>310a—Governor's Office—</i> |
| 3 | <i>Civil Contingent Fund</i>   |
| 4 | (WV Code Chapter 5)            |

5 Fund 0105 FY 2004 Org 0100

6			<b>General</b>
7		<b>Act-</b>	<b>Revenue</b>
8		<b>ivity</b>	<b>Funds</b>

9	1	Civil Contingent Fund - Total		
10	2	Surplus .....	238	\$ 7,500,000

11 The purpose of this supplementary appropriation bill is to  
 12 amend and add to section nine, Title II, chapter twenty, acts of  
 13 the Legislature, regular session, two thousand three, relating to  
 14 making appropriations of public moneys out of the treasury in  
 15 accordance with section fifty-one, article VI of the constitution  
 16 making appropriations from surplus accrued certain amounts  
 17 within the general revenue fund.



## CHAPTER 13

**(S. B. 2003 — By Senators Tomblin, Mr. President, and Sprouse)  
 [By Request of the Executive]**



[Passed June 13, 2003; in effect from passage. Approved by the Governor.]



AN ACT to amend and reenact section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three hundred five, article three of said chapter; and to amend and reenact section four hundred six, article four of said chapter, all relating to updating fee structure provisions for certain broker-dealers and agents; providing for annual sales report and filing fee by certain issuers of securities; and providing for disposition of special revenue.

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

That section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three hundred five, article three of said chapter be amended and reenacted; and that section four hundred six, article four of said chapter be amended and reenacted, all to read as follows:

**Article**

2. **Registration of Broker-dealers and Agents; Registration and Notice Filing for Investment Advisers.**
3. **Registration of Securities.**
4. **General Provisions.**

**ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS;  
REGISTRATION AND NOTICE FILING FOR INVEST-  
MENT ADVISERS.**

**§32-2-202. Registration and notice filing procedure.**

1           (a) A broker-dealer, agent or investment adviser may obtain  
2 an initial or renewal registration by filing with the commis-  
3 sioner an application, together with a consent to service of  
4 process pursuant to subsection (g), section four hundred  
5 fourteen, article four of this chapter. The application shall  
6 contain whatever information the commissioner by rule requires  
7 concerning matters such as: (1) The applicant's firm and place  
8 of organization; (2) the applicant's proposed method of doing  
9 business; (3) the qualifications and business history of the  
10 applicant and in the case of a broker-dealer or investment  
11 adviser, the qualifications and business history of any partner,  
12 officer or director, any person occupying a similar status or  
13 performing similar functions or any person, directly or indi-  
14 rectly, controlling the broker-dealer or investment adviser and,  
15 in the case of an investment adviser, the qualifications and  
16 business history of any employee; (4) any injunction or  
17 administrative order or conviction of a misdemeanor involving  
18 a security or any aspect of the securities business and any  
19 conviction of a felony; and (5) subject to the limitations of

20 §15(h)(1) of the Securities Exchange Act of 1934, the appli-  
21 cant's financial condition and history. The commissioner may  
22 by rule or order require an applicant for initial registration to  
23 publish an announcement of the application as a Class I legal  
24 advertisement in compliance with the provisions of article  
25 three, chapter fifty-nine of this code and the publication area or  
26 areas for the publication shall be specified by the commis-  
27 sioner. If no denial order is in effect and no proceeding is  
28 pending under section two hundred four of this article, registra-  
29 tion becomes effective at noon of the thirtieth day after an  
30 application is filed. The commissioner may by rule or order  
31 specify an earlier effective date and he or she may by order  
32 defer the effective date until noon of the thirtieth day after the  
33 filing of any amendment to an application. Registration of a  
34 broker-dealer automatically constitutes registration of any agent  
35 who is a partner, officer or director, or a person occupying a  
36 similar status or performing similar functions, as designated by  
37 the broker-dealer in writing to the commissioner and approved  
38 in writing by the commissioner. Registration of an investment  
39 adviser automatically constitutes registration of any investment  
40 adviser representative who is a partner, officer or director or a  
41 person occupying a similar status or performing similar  
42 functions as designated by the investment adviser in writing to  
43 the commissioner and approved in writing by the commis-  
44 sioner.

45 (b) Except with respect to federal-covered advisers whose  
46 only clients are those described in paragraphs (A) and (B),  
47 subdivision (3), subsection (c), section two hundred one of this  
48 article, a federal-covered adviser shall file with the commis-  
49 sioner, prior to acting as a federal-covered adviser in this state,  
50 such documents as have been filed with the securities and  
51 exchange commissioner as the commissioner, by rule or order,  
52 may require along with notice filing fees under subsection (c)  
53 of this section.

54 (c) Every applicant for initial or renewal registration shall  
55 pay a filing fee of two hundred fifty dollars in the case of a

56 broker-dealer and the agent of an issuer, fifty-five dollars in the  
57 case of an agent, two hundred dollars in the case of an invest-  
58 ment adviser and seventy-five dollars for each investment  
59 advisor representative. When an application is denied or  
60 withdrawn, the commissioner shall retain all of the fee.

61 (d) A registered broker-dealer or investment adviser may  
62 file an application for registration of a successor, whether or not  
63 the successor is then in existence, for the unexpired portion of  
64 the year. A filing fee of twenty dollars shall be paid.

65 (e) The commissioner may, by rule or order, require a  
66 minimum capital for registered broker-dealers, subject to the  
67 limitations of Section fifteen of the Securities Exchange Act of  
68 1934 and establish minimum financial requirements for  
69 investment advisers, subject to the limitations of Section 222 of  
70 the Investment Advisers Act of 1940, which may include  
71 different requirements for those investment advisers who  
72 maintain custody of clients' funds or securities or who have  
73 discretionary authority over same and those investment advisers  
74 who do not.

75 (f) The commissioner may, by rule or order, require  
76 registered broker-dealers, agents and investment advisers who  
77 have custody of or discretionary authority over client funds or  
78 securities to post surety bonds in amounts as the commissioner  
79 may prescribe, by rule or order, subject to the limitations of  
80 Section fifteen of the Securities Exchange Act of 1934 (for  
81 broker-dealers) and Section 222 of the Investment Advisers Act  
82 of 1940 (for investment advisers), up to twenty-five thousand  
83 dollars and may determine their conditions. Any appropriate  
84 deposit of cash or securities shall be accepted in lieu of any  
85 bond so required. No bond may be required of any registrant  
86 whose net capital or, in the case of an investment adviser,  
87 whose minimum financial requirements, which may be defined  
88 by rule, exceeds the amounts required by the commissioner.

89 Every bond shall provide for suit thereon by any person who  
90 has a cause of action under section four hundred ten, article four  
91 of this chapter and, if the commissioner by rule or order  
92 requires, by any person who has a cause of action not arising  
93 under this chapter. Every bond shall provide that no suit may be  
94 maintained to enforce any liability on the bond unless brought  
95 within the time limitations set forth in subsection (e), section  
96 four hundred ten, article four of this chapter.

97 (g) Every applicant, whether registered under this chapter  
98 or not, shall pay a fifty-dollar fee for each name or address  
99 change.

100 (h) Every broker-dealer and investment advisor registered  
101 under this chapter shall pay an annual fifty-dollar fee for each  
102 branch office located in West Virginia.

103 (i) Each agent, representative and associated person of a  
104 broker-dealer or investment advisor when applying for an initial  
105 license under this section or changing employers shall pay a  
106 compliance assessment of twenty-five dollars. Each agent,  
107 representative and associated person, when applying for a  
108 renewal license under this section, shall pay a compliance  
109 assessment of ten dollars. The West Virginia state Legislature  
110 reserves the right to adjust the fees set forth in this section once  
111 every four years in an amount reflecting the percentage increase  
112 in the cost of administering this article from the amount of such  
113 costs on the effective date of this article.

### ARTICLE 3. REGISTRATION OF SECURITIES.

#### **§32-3-305. Provisions applicable to registration and notice filing generally.**

1 (a) A registration or notice filing statement may be filed by  
2 the issuer, any other person on whose behalf the offering is to  
3 be made or a registered broker-dealer. A registration or notice

4 filing statement filed under this chapter registering or noticing  
5 investment company shares shall cover only one class, series or  
6 portfolio of investment company shares.

7 (b) Every person filing a registration or notice filing  
8 statement shall pay a filing fee of one twentieth of one percent  
9 of the maximum aggregate offering price at which the regis-  
10 tered or noticed securities are to be offered in this state, but the  
11 fee shall in no case be less than fifty dollars or more than fifteen  
12 hundred dollars. When a registration or notice filing statement  
13 is withdrawn before the effective date or a preeffective stop  
14 order is entered under section three hundred six of this article,  
15 the commissioner shall retain all of the fee.

16 (c) Every registration statement and notice filing shall  
17 specify: (1) The amount of securities to be offered in this state;  
18 (2) the states in which a registration statement or similar  
19 document in connection with the offering has been or is to be  
20 filed; and (3) any adverse order, judgment or decree entered in  
21 connection with the offering by the regulatory authorities in  
22 each state or by any court or the securities and exchange  
23 commission.

24 (d) In any case where securities sold in this state are in  
25 excess of the aggregate amount of securities specified under  
26 subsection (c) of this section, the commissioner may require  
27 payment of an oversale assessment which shall be three times  
28 an amount which equals the difference between the filing fee  
29 that would have been payable under subsection (b) of this  
30 section based upon the total amount of securities sold in this  
31 state and the total filing fees previously paid to the commis-  
32 sioner with respect to such registration or notice filing, but in  
33 no case shall the oversale assessment be less than three hundred  
34 fifty dollars or be more than fifteen hundred dollars.



35 (e) Any document filed under this chapter or a predecessor  
36 act within five years preceding the filing of a registration  
37 statement may be incorporated by reference in the registration  
38 statement to the extent that the document is currently accurate.

39 (f) The commissioner may by rule or otherwise permit the  
40 omission of any item of information or document from any  
41 registration or notice filing statement.

42 (g) In the case of a nonissuer distribution, information may  
43 not be required under section three hundred four of this article  
44 or subsection (k) of this section unless it is known to the person  
45 filing the registration statement or to the persons on whose  
46 behalf the distribution is to be made, or can be furnished by  
47 them without unreasonable effort or expense.

48 (h) The commissioner may by rule or order require as a  
49 condition of registration by qualification or coordination: (1)  
50 That any security issued within the past three years or to be  
51 issued to a promoter for a consideration substantially different  
52 from the public offering price, or to any person for a consider-  
53 ation other than cash, be deposited in escrow; and (2) that the  
54 proceeds from the sale of the registered security in this state be  
55 impounded until the issuer receives a specified amount from the  
56 sale of the security either in this state or elsewhere. The  
57 commissioner may by rule or order determine the conditions of  
58 any escrow or impounding required under this subsection, but  
59 he or she may not reject a depository solely because of location  
60 in another state.

61 (i) The commissioner may by rule or order require as a  
62 condition of registration that any security registered by qualifi-  
63 cation or coordination be sold only on a specified form of  
64 subscription or sale contract and that a signed or conformed  
65 copy of each contract be filed with the commissioner or

66 preserved for any period up to three years specified in the rule  
67 or order.

68 (j) Every registration statement is effective for one year  
69 from its effective date or any longer period during which the  
70 security is being offered or distributed in a nonexempted  
71 transaction by or for the account of the issuer or other person on  
72 whose behalf the offering is being made or by any underwriter  
73 or broker-dealer who is still offering part of an unsold allotment  
74 or subscription taken by him or her as a participant in the  
75 distribution, except during the time a stop order is in effect  
76 under section three hundred six of this article. All outstanding  
77 securities of the same class as a registered security are consid-  
78 ered to be registered for the purpose of any nonissuer transac-  
79 tion: (1) So long as the registration statement is effective; and  
80 (2) between the thirtieth day after the entry of any stop order  
81 suspending or revoking the effectiveness of the registration  
82 statement under section three hundred six of this article (if the  
83 registration statement did not relate, in whole or in part, to a  
84 nonissuer distribution) and one year from the effective date of  
85 the registration statement. A registration statement may not be  
86 withdrawn for one year from its effective date if any securities  
87 of the same class are outstanding. A registration statement may  
88 be withdrawn otherwise only in the discretion of the commis-  
89 sioner.

90 (k) So long as a registration statement is effective, the  
91 commissioner may by rule or order require the person who filed  
92 the registration statement to file reports, not more often than  
93 quarterly, to keep reasonably current the information contained  
94 in the registration statement and to disclose the progress of the  
95 offering.

96 (l) A registration statement relating to a security issued by  
97 a face amount certificate company or a redeemable security  
98 issued by an open-end management company or unit investment

99 trust, as those terms are defined in the Investment Company Act  
100 of 1940, may be amended after its effective date so as to  
101 increase the securities specified as proposed to be offered. The  
102 amendment becomes effective when the commissioner so  
103 orders. Every person filing an amendment shall pay a filing fee,  
104 calculated in the manner specified in subsection (b) of this  
105 section, with respect to the additional securities proposed to be  
106 offered.

107 (m) Every person changing the name or address of a  
108 securities registration or notice filing shall pay a fifty-dollar fee  
109 for change.

110 (n) Every person amending a registration statement or  
111 notice filing or offering a document without increasing the  
112 dollar amount registered shall pay a fifty-dollar fee for each  
113 amended statement, notice filing or document.

114 (o) Every registered issuer or notice filing shall annually  
115 file a sales report and shall pay a filing fee for that report of one  
116 tenth of one percent of the maximum offering price at which the  
117 registered or noticed securities are offered in this state but the  
118 fee shall in no case be less than two hundred dollars nor more  
119 than fifteen hundred dollars.

#### ARTICLE 4. GENERAL PROVISIONS.

##### **§32-4-406. Administration of chapter; operating fund for securities department.**

1 (a) This chapter shall be administered by the auditor of this  
2 state and he or she is hereby designated, and shall be, the  
3 commissioner of securities of this state. He or she has the power  
4 and authority to appoint or employ such assistants as are  
5 necessary for the administration of this chapter.

6 (b) The auditor shall set up a special operating fund for the  
7 securities division in his or her office. The auditor shall pay into

8 the fund twenty percent of all fees collected as provided for in  
9 this chapter. If, at the end of any fiscal year, the balance in the  
10 operating fund exceeds half of the prior fiscal year's appropria-  
11 tion, the excess shall be transferred to the general revenue fund.

12 The special operating fund shall be used by the auditor to  
13 fund the operation of the securities division and the general  
14 operations of the auditor's office. The special operating fund  
15 shall be appropriated by line item by the Legislature.

16 (c) Moneys payable for assessments established by section  
17 four hundred seven-a of this article shall be collected by the  
18 commissioner and deposited into the general revenue fund.

19 (d) It is unlawful for the commissioner or any of his or her  
20 officers or employees to use for personal benefit any informa-  
21 tion which is filed with or obtained by the commissioner and  
22 which is not made public. No provision of this chapter autho-  
23 rizes the commissioner or any of his or her officers or employ-  
24 ees to disclose any information except among themselves or  
25 when necessary or appropriate in a proceeding or investigation  
26 under this chapter. No provision of the chapter either creates or  
27 derogates from any privilege which exists at common law or  
28 otherwise when documentary or other evidence is sought under  
29 a subpoena directed to the commissioner or any of his or her  
30 officers or employees.

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## CHAPTER 14

**(H. B. 203 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)**  
**[By Request of the Executive]**

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[Passed June 12, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eighty-six and eighty-seven; and to amend chapter sixteen of said code by adding thereto a new article, designated article thirteen-e, all relating to expanding funding methods for community improvement generally; authorizing the use of voluntary proffers through zoning ordinance; providing enforcement mechanism for proffers; authorizing the creation of and empowerment of community improvement districts; providing for the development, construction, acquisition, financing, extension and improvement of projects; providing for notice to owners of real property of assessments; authorizing the issuance of assessment bonds; and providing for assessments and liens related thereto.

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

That article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections eighty-six and eighty-seven; and that chapter sixteen of said code be amended by adding thereto a new article, designated article thirteen-e, all to read as follows:

**Chapter**

- 8. Municipal Corporations.**
- 16. Public Health.**

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 24. PLANNING AND ZONING.**

- §8-24-86. Conditions as part of final plat approval.
- §8-24-87. Enforcement and guarantees.

**PART XXI. VOLUNTARY PROFERRING.**

- §8-24-86. Conditions as part of final plat approval.**

1 (a) A zoning ordinance may provide for the voluntary  
2 proffering by a landowner as a requirement of final plat  
3 approval for a development project.

4 (b) For purposes of this article, a “voluntary proffer” is a  
5 written offer by a landowner to the planning commission  
6 whereby the landowner offers to satisfy certain reasonable  
7 conditions as a requirement of the final plat approval for a  
8 development project. A voluntary proffer made to a county  
9 shall be in lieu of payment of an impact fee as authorized by  
10 section four, article twenty, chapter seven of this code.

11 (c) For purposes of this section, a condition contained in a  
12 voluntary proffer is considered reasonable if: (1) The develop-  
13 ment project results in the need for the conditions; (2) the  
14 conditions have a reasonable relation to the development  
15 project; and (3) all conditions are in conformity with the  
16 comprehensive plan adopted pursuant to this article.

17 (d) No proffer may be accepted by a county or municipality  
18 unless it has approved a list detailing any proposed capital  
19 improvements from all areas within the county or municipality,  
20 to which the proffer is made, and containing descriptions of any  
21 proposed capital improvements, cost estimates, projected time  
22 frames for constructing the improvements and proposed or  
23 anticipated funding sources: *Provided*, That the approval of the  
24 list does not limit the county or municipality from accepting  
25 proffers relating to items not contained on the list. For purposes  
26 of this subsection, “capital improvement” has the same defini-  
27 tion as found in section three, article twenty, chapter seven of  
28 this code.

29 (e) If a voluntary proffer includes the dedication of real  
30 property or the payment of cash, the proffer shall provide for  
31 the alternate disposition of the property or cash payment in the

32 event the property or cash payment is not to be used for the  
33 purpose for which it was proffered.

34 (f) Notwithstanding any provision of this code to the  
35 contrary, a municipality may transfer the portion of the pro-  
36 ceeds of a voluntary proffer intended by the terms of the proffer  
37 to be used by the board of education of a county in which the  
38 municipality is located upon the condition that the portion so  
39 transferred may only be used by the board for capital improve-  
40 ments.

### **§8-24-87. Enforcement and guarantees.**

1 (a) The planning commission is vested with all the neces-  
2 sary authority to administer and enforce conditions attached to  
3 the final plat approved for a development project, including, but  
4 not limited to, the authority to: (1) Order in writing the remedy  
5 for any noncompliance with the conditions; (2) bring legal  
6 action to insure compliance with the conditions, including  
7 injunction, abatement, or other appropriate action or proceed-  
8 ing; and (3) require a guarantee satisfactory to the planning  
9 commission in an amount sufficient for and conditioned upon  
10 the construction of any physical improvements required by the  
11 conditions, or a contract for the construction of the improve-  
12 ments and the contractor's guarantee, in like amount and so  
13 conditioned, which guarantee shall be reduced or released by  
14 the planning commission upon the submission of satisfactory  
15 evidence that construction of the improvements has been  
16 completed in whole or in part.

17 (b) Failure to meet all conditions attached to the final plat  
18 approved for a development project shall constitute cause to  
19 deny the issuance of any of the required use, occupancy, or  
20 building permits, as may be appropriate.

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

**ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.**

- §16-13E-1. Short title.
- §16-13E-2. Definitions.
- §16-13E-3. Power and authority of counties and municipalities to create and establish community enhancement districts.
- §16-13E-4. Petition for creation or expansion of community enhancement district; petition requirements.
- §16-13E-5. Notice to property owners before creation or expansion of community enhancement district and construction or acquisition of project; form of notice; affidavit of publication.
- §16-13E-6. Creation of community enhancement district; community enhancement district to be a public corporation and political subdivision; powers thereof; community enhancement boards.
- §16-13E-7. Provisions for construction of a project.
- §16-13E-8. Notice to property owners of assessments; correcting and laying assessments; report on project completion; credits.
- §16-13E-9. Exemption of public property from assessments.
- §16-13E-10. Assessment bonds; sinking fund for assessment bonds; tax exemption.
- §16-13E-11. Indebtedness of assessment district.
- §16-13E-12. Payment of assessments to sheriff; report to community enhancement district; collection of delinquent assessments.
- §16-13E-13. Liens; recording notice of liens; priority; release of lien; notice to future property owners.
- §16-13E-14. Liberal construction.

**§16-13E-1. Short title.**

- 1 This article shall be known and may be cited as the “West
- 2 Virginia Community Enhancement Act”.

**§16-13E-2. Definitions.**

- 1 For purposes of this article:
- 2 (a) “Assessment bonds” means special obligation bonds or
- 3 notes issued by a community enhancement district which are
- 4 payable from the proceeds of assessments.
- 5 (b) “Assessment” means the fee, including interest, paid by
- 6 the owner of real property located within a community en-
- 7 hancement district to pay for the cost of a project or projects



8 constructed upon or benefitting or protecting such property and  
9 administrative expenses related thereto, which fee is in addition  
10 to all taxes and other fees levied on the property.

11 (c) "Board" means a community enhancement board  
12 created pursuant to this article.

13 (d) "Code" means the code of West Virginia, one thousand  
14 nine hundred thirty-one, as amended.

15 (e) "Community enhancement district" or "district" means  
16 a community enhancement district created pursuant to this  
17 article.

18 (f) "Cost" means the cost of: (1) Construction, reconstruc-  
19 tion, renovation and acquisition of all lands, structures, real or  
20 personal property, rights, rights-of-way, franchises, easements  
21 and interests acquired or to be acquired by the district; (2) all  
22 machinery and equipment, including machinery and equipment  
23 needed to expand or enhance county or city services to the  
24 district; (3) financing charges and interest prior to and during  
25 construction and, if deemed advisable by the district or govern-  
26 ing body, for a limited period after completion of the construc-  
27 tion; (4) interest and reserves for principal and interest, includ-  
28 ing costs of municipal bond insurance and any other type of  
29 financial guaranty; (5) costs of issuance in connection with the  
30 issuance of assessment bonds; (6) the design of extensions,  
31 enlargements, additions and improvements to the facilities of  
32 any district; (7) architectural, engineering, financial and legal  
33 services; (8) plans, specifications, studies, surveys and esti-  
34 mates of costs and revenues; (9) administrative expenses  
35 necessary or incident to determining to proceed with any  
36 project; and (10) other expenses as may be necessary or  
37 incident to the construction, acquisition and financing of a  
38 project.

39 (g) "County commission" means the governing body of a  
40 county as defined in section one, article one, chapter seven of  
41 this code.

42 (h) "Governing body" means, in the case of a county, the  
43 county commission and in the case of a municipality, the mayor  
44 and council together, the council or the board of directors, as  
45 charged with the responsibility of enacting ordinances and  
46 determining the public policy of such municipality.

47 (i) "Governmental agency" means the state government or  
48 any agency, department, division or unit thereof; counties;  
49 municipalities; any watershed enhancement districts, soil  
50 conservation districts, sanitary districts, public service districts,  
51 drainage districts, school districts, urban renewal authorities or  
52 regional governmental authorities established pursuant to this  
53 code.

54 (j) "Municipality" means a municipality as defined in  
55 section two, article one, chapter eight of this code.

56 (k) "Person" means an individual, firm, partnership,  
57 corporation, voluntary association or any other type of entity.

58 (l) "Project" means the design, construction, reconstruction,  
59 establishment, acquisition, improvement, renovation, extension,  
60 enlargement, equipping, maintenance, repair (including  
61 replacements) and start-up operation of water transmission and  
62 distribution facilities, sewage collection and transmission  
63 facilities, stormwater systems, police stations, fire stations,  
64 libraries, museums, schools, other public buildings, hospitals,  
65 piers, docks, terminals, drainage systems, culverts, streets,  
66 roads, bridges (including approaches, causeways, viaducts,  
67 underpasses and connecting roadways), motor vehicle parking  
68 facilities (including parking lots, buildings, ramps, curb-line  
69 parking, meters and other facilities deemed necessary, appropri-

70 ate, useful, convenient or incidental to the regulation, control  
71 and parking of motor vehicles), public transportation, public  
72 recreation centers, public recreation parks, swimming pools,  
73 tennis courts, golf courses, equine facilities, motor vehicle  
74 competition and recreational facilities, flood protection or relief  
75 projects, or the grading, regrading, paving, repaving, surfacing,  
76 resurfacing, curbing, recurbing, widening, lighting or otherwise  
77 improving any street, avenue, road, highway, alley or way, or  
78 the building or renewing of sidewalks and flood protection; and  
79 the terms shall mean and include any project as a whole, and all  
80 integral parts thereof, including all necessary, appropriate,  
81 useful, convenient or incidental appurtenances and equipment  
82 in connection with any one or more of the above.

**§16-13E-3. Power and authority of counties and municipalities to  
create and establish community enhancement  
districts.**

1 (a) Every county and municipality is hereby empowered  
2 and authorized, in addition to any other rights, powers and  
3 authority conferred upon it elsewhere in this code, to create,  
4 modify and expand community enhancement districts in the  
5 manner hereinafter set forth in such county or municipality and  
6 to assist in the development, construction, acquisition, exten-  
7 sion or improvement of a project or projects located in such  
8 county or municipality.

9 (b) Unless agreed to by a municipality, the power and  
10 authority hereby conferred on a county shall not extend into  
11 territory within the boundaries of any municipality: *Provided,*  
12 That notwithstanding any provision in this code to the contrary,  
13 the power and authority hereby conferred on counties may  
14 extend within the territory of a public service district created  
15 under section two, article thirteen-a of this chapter.

**§16-13E-4. Petition for creation or expansion of community  
enhancement district; petition requirements.**

1 (a) The owners of at least sixty-one percent of the real  
2 property, determined by acreage, located within the boundaries  
3 of the area described in the petition, by metes and bounds or  
4 otherwise in a manner sufficient to describe the area, may  
5 petition a governing body to create or expand a community  
6 enhancement district.

7 (b) The petition for the creation or expansion of a commu-  
8 nity enhancement district shall include, where applicable, the  
9 following:

10 (1) The proposed name and proposed boundaries of such  
11 district and a list of the names and addresses of all owners of  
12 real property within the proposed district;

13 (2) A detailed project description;

14 (3) A map showing the proposed project, including all  
15 proposed improvements;

16 (4) A list of estimated project costs and the preliminary  
17 plans and specifications for such improvements, if available;

18 (5) A list of nonproject costs and how they will be financed;

19 (6) A consultant study outlining the projected assessments,  
20 setting forth the methodology for determining the assessments  
21 and the methodology for allocating portions of an initial  
22 assessment against a parcel expected to be subdivided in the  
23 future to the various lots into which the parcel will be subdi-  
24 vided and demonstrating that such assessments will adequately  
25 cover any debt service on bonds issued to finance the project  
26 and ongoing administrative costs;

27 (7) A development schedule;

28 (8) A list of recommended members for the board;

29 (9) If the project includes water, wastewater or sewer  
30 improvements, written evidence from the utility or utilities that  
31 will provide service to the district that said utility or utilities:

32 (A) Currently has adequate capacity to provide service  
33 without significant upgrades or modifications to its treatment,  
34 storage or source of supply facilities;

35 (B) Will review and approve all plans and specifications for  
36 the improvements to determine that the improvements conform  
37 to the utility's reasonable requirements and, if the improvement  
38 consists of water transmission or distribution facilities, that the  
39 improvements provide for adequate fire protection for the  
40 district; and

41 (C) If built in conformance with said plans and specifica-  
42 tions, will accept the improvements following their completion,  
43 unless such projects are to be owned by the district;

44 (10) If the project includes improvements other than as  
45 set forth in subdivision (9) of this subsection that will be  
46 transferred to another governmental agency, written evidence  
47 that such agency will accept such transfer, unless such projects  
48 are to be owned by the district;

49 (11) The benefits that can be expected from the creation of  
50 the district and the project; and

51 (12) A certification from each owner of real property within  
52 the proposed district who joins in the petition that he or she is  
53 granting an assessment against his or her property in such an  
54 amount as to pay for the costs of the project and granting a lien  
55 for said amount upon said property enforceable in accordance  
56 with the provision of this article.

57 (c) After reviewing the petition presented pursuant to this  
58 section, the governing body may by order or ordinance deter-

59 mine the necessity and economic feasibility of creating a  
60 community enhancement district and developing, constructing,  
61 acquiring, improving or extending a project therein. If the  
62 governing body determines that the creation of a community  
63 enhancement district and construction of the project is neces-  
64 sary and economically feasible, it shall set a date for the public  
65 meeting required under section five of this article and shall  
66 cause the petition to be filed with the clerk of the county  
67 commission or the clerk or recorder of the municipality, as the  
68 case may be, and be made available for inspection by interested  
69 persons before the meeting.

70 (d) Notwithstanding any other provision of this article to  
71 the contrary, nothing in this article shall modify:

72 (1) The jurisdiction of the public service commission to  
73 determine the convenience and necessity of the construction of  
74 utility facilities, to resolve disputes between utilities relating to  
75 which utility should provide service to a district or otherwise to  
76 regulate the orderly development of utility infrastructure in the  
77 state; or

78 (2) The authority of the infrastructure and jobs development  
79 council as to the funding of utility facilities to the extent that  
80 loans, loan guarantees, grants or other funding assistance from  
81 a state infrastructure agency are involved.

**§16-13E-5. Notice to property owners before creation or expansion of community enhancement district and construction or acquisition of project; form of notice; affidavit of publication.**

1 (a) Before the adoption or enactment of an order or ordi-  
2 nance creating a community enhancement district, the govern-  
3 ing body shall cause notice to be given to the owners of real  
4 property located within the proposed community enhancement  
5 district that such ordinance or order will be considered for

6 adoption or enactment, as the case may be, at a public meeting  
 7 of the governing body at a date, time and place named in the  
 8 notice and that all persons at that meeting, or any adjournment  
 9 thereof, shall be given an opportunity to protest or be heard  
 10 concerning the adoption, enactment or rejection of the order or  
 11 ordinance. At or after the meeting the governing body may  
 12 amend, revise or otherwise modify the information in the  
 13 petition for the community enhancement district or project as  
 14 it may deem appropriate after taking into account any com-  
 15 ments received at such meeting.

16 (b) The notice required in this section shall be published at  
 17 least thirty days prior to the date of the meeting as a Class II-0  
 18 legal advertisement in compliance with the provisions of article  
 19 three, chapter fifty-nine of this code and the publication area for  
 20 such publication shall be the county or municipality in which  
 21 the proposed community enhancement district is located. The  
 22 notice shall be in the form of, or substantially in the form of, the  
 23 following notice:

24 "NOTICE TO ALL PERSONS OWNING PROPERTY  
 25 LOCATED WITHIN ..... (here describe the boundaries  
 26 of the proposed community enhancement district) IN THE  
 27 ..... (county or municipality) OF ..... (name of  
 28 county or municipality):

29 A petition has been presented to the .....  
 30 (county commission, city council or other governing body) of  
 31 the ..... (county or municipality) of ..... (name of  
 32 county or municipality) requesting establishment of a commu-  
 33 nity enhancement district under chapter sixteen, article thirteen-  
 34 b of the code of West Virginia to ..... (here describe the  
 35 project both within and outside of the proposed community  
 36 enhancement district to be financed, developed, constructed,  
 37 acquired, extended or improved, or the lots or parcels of land  
 38 which may be protected, in the case of a flood relief project) in

39 ..... (name of county or municipality) by ..... (here  
 40 provide general description of the project) as the .....  
 41 (county commission, city council or other governing body) may  
 42 deem proper and to assess the total cost (or, if the assessments  
 43 are only necessary to pay for part of the total cost, the approxi-  
 44 mate percentage of the total cost) of such improvement on the  
 45 property. A copy of the petition is available in the office of the  
 46 ..... (name of clerk or recorder) for review by the public  
 47 during regular office hours.

48       The petition to create a community enhancement district  
 49 and to make such improvements, and estimates therefor, will be  
 50 considered by the ..... (county commission, city council  
 51 or other governing body) at a public meeting to be held on the  
 52 ..... day of ....., ....., at .....m. at  
 53 ..... Any owner of property whose property may  
 54 be affected by the creation of the above-described community  
 55 enhancement district, and any person whose property is not  
 56 located within said community enhancement district but wishes  
 57 his or her property to be included, will be given an opportunity,  
 58 under oath, to protest or be heard at said meeting or any  
 59 adjournment thereof:

60       ..... (name of clerk or recorder)

61       ..... (official position).”

62       (c) An affidavit of publication of the notice made by the  
 63 newspaper publisher, or a person authorized to do so on behalf  
 64 of such publisher, and a copy of the notice shall be made part of  
 65 the minutes of the governing body and spread on its records of  
 66 the meeting described in the notice. The service of said notice  
 67 upon all persons owning any interest in any property located  
 68 within the proposed community enhancement district shall  
 69 conclusively be deemed to have been given upon the comple-  
 70 tion of such newspaper publication.



71 (d) The petitioners shall bear the expense of publication of  
72 the notice and the meeting, as requested by subsection (e) of  
73 this section.

74 (e) After the public meeting and before the governing body  
75 may adopt or enact an order or ordinance creating a community  
76 enhancement district, the governing body shall mail a true copy  
77 of the proposed order or ordinance creating the community  
78 enhancement district to the owners of real property in said  
79 district. Unless waived in writing, any petitioning owner of real  
80 property shall have thirty days from mailing of the proposed  
81 ordinance or order in which to withdraw his or her signature  
82 from the petition in writing prior to the vote of the governing  
83 body on such ordinance or order. If any signatures on the  
84 petition are so withdrawn, the governing body may pass the  
85 proposed ordinance or order only upon certification by the  
86 petitioners that the petition otherwise continues to meet the  
87 requirements of this article. If all petitioning owners of real  
88 property waive the right to withdraw their signatures from the  
89 petition, then the governing body may immediately adopt or  
90 enact the ordinance or order.

**§16-13E-6. Creation of community enhancement district; community enhancement district to be a public corporation and political subdivision; powers thereof; community enhancement boards.**

1 (a) Each community enhancement district shall be created  
2 by adoption or enactment of an order or ordinance.

3 (b) From and after the date of the adoption or enactment of  
4 the order or ordinance creating a community enhancement  
5 district, it shall thereafter be a public corporation and political  
6 subdivision of this state, but without any power to levy or  
7 collect ad valorem taxes. Each community enhancement district  
8 is hereby empowered and authorized, in addition to any other

9 rights, powers and authorities conferred upon it in this article or  
10 elsewhere in this code, to:

11 (1) Acquire, own and hold, in its corporate name, by  
12 purchase, lease, right of eminent domain, gift or otherwise, such  
13 property, both real and personal and other interests in real  
14 estate, or any other property, whether tangible or intangible, as  
15 may be necessary or incident to the planning, financing,  
16 development, construction, acquisition, extension, improvement  
17 and completion of a project;

18 (2) Design, plan, finance, develop, construct, acquire,  
19 extend, improve and complete one or more projects and assess  
20 the cost of all or any portion of a project on real property  
21 located within the community enhancement district;

22 (3) Sue or be sued;

23 (4) Establish a bank account or accounts in its name;

24 (5) Enter into agreements or other transactions with any  
25 person or governmental agency necessary or incident to the  
26 development, planning, construction, acquisition or improve-  
27 ment of a project or for the operation, maintenance or disposi-  
28 tion of a project or for any other services required by a project;

29 (6) Annually, on or before the seventh day of June, certify  
30 to the sheriff of the county in which the property is located the  
31 assessments granted against all property in the district for  
32 inclusion in the tax ticket;

33 (7) Expend funds to acquire, or construct part of a project  
34 on property located outside of a community enhancement  
35 district, and for any work undertaken thereon, as may be  
36 necessary or incident to the completion of a project;

37 (8) Enter into agreements with one or more counties,  
38 municipalities, public service districts or community enhance-  
39 ment districts to plan, develop, construct, acquire or improve a  
40 project jointly;

41 (9) Accept appropriations, gifts, grants, bequests and  
42 devises and use or dispose of the same to carry out its corporate  
43 purpose;

44 (10) Make and execute contracts, releases, assignments,  
45 compromises and other instruments necessary or convenient for  
46 the exercise of its powers, or to carry out its corporate purpose;

47 (11) Have a seal and alter the same;

48 (12) Raise funds by the issuance and sale of assessment  
49 bonds;

50 (13) Obtain options to acquire real property, or any interest  
51 therein, by purchase, lease or otherwise, which is found by the  
52 board to be suitable as a site, or part of a site, for the construc-  
53 tion of a project;

54 (14) Pledge funds generated by assessments in a district or  
55 proceeds from the sale of assessment bonds to payment of debt  
56 service on tax increment financing obligations issued under  
57 article eleven-b, chapter seven of this code, for the period of  
58 time determined by the community enhancement board; and

59 (15) Take any and all other actions consistent with the  
60 purpose of this article and not in violation of the constitution of  
61 this state as may be necessary or incident to the construction  
62 and completion of a project.

63 (c) Notwithstanding the powers granted to community  
64 enhancement districts in subsection (b) of this section or as  
65 otherwise provided in this code, no community enhancement

66 district may expend funds to assist any utility to upgrade,  
67 improve, modify, repair or replace the utility's existing storage,  
68 treatment or source of supply facilities, whether such existing  
69 facilities are located within or outside of the district.

70 (d) The powers of each community enhancement district  
71 shall be vested in and exercised by a community enhancement  
72 board which shall be composed of five members, four of whom  
73 shall be appointed by the governing body of the county or  
74 municipality in which the community enhancement district is  
75 located and one of whom shall be the sheriff or his or her  
76 designee of the county or the treasurer or his or her designee of  
77 the municipality (or such other person serving in an equivalent  
78 capacity if there is no treasurer), as the case may be, in which  
79 the community enhancement district is located. At least three  
80 members of the board shall be residents of the assessment  
81 district: *Provided*, That should less than three persons reside  
82 within the boundaries of the community enhancement district,  
83 then at least three members of the board shall be residents of  
84 the county or municipality, as the case may be: *Provided*,  
85 *however*, That if no persons reside within the boundaries of the  
86 community enhancement district then at least three members  
87 must be approved by the owner or owners of the land. No more  
88 than three initial members of the board may be from the same  
89 political party.

90 (e) The four members appointed by the governing body  
91 shall be appointed for overlapping terms of four years each and  
92 thereafter until their respective successors have been appointed  
93 and have qualified. For the purpose of initial appointments, one  
94 member shall be appointed for a term of four years; one  
95 member shall be appointed for a term of three years; one  
96 member shall be appointed for a term of two years; and one  
97 member shall be appointed for a term of one year. Members  
98 may be reappointed for any number of terms. Before entering  
99 upon the performance of his or her duties, each member shall

100 take and subscribe to the oath required by section five, article  
101 IV of the constitution of this state. Vacancies shall be filled by  
102 appointment by the governing body of the county or municipal-  
103 ity creating the assessment district for the unexpired term of the  
104 member whose office shall be vacant and such appointment  
105 shall be made within thirty days of the occurrence of such  
106 vacancy. Any such member may be removed by the governing  
107 body which appointed such member in case of incompetency,  
108 neglect of duty, gross immorality or malfeasance in office.  
109 Members shall be entitled to no more than fifty dollars per  
110 meeting and reasonable expenses associated with their services.

111 (f) The board shall organize within thirty days following the  
112 first appointments and annually thereafter at its first meeting  
113 after the first day of January of each year by selecting one of its  
114 members to serve as chairman, one to serve as treasurer and one  
115 to serve as secretary. The secretary, or his or her designee, shall  
116 keep a record of all proceedings of the board which shall be  
117 available for inspection as other public records, and the  
118 treasurer or his or her designee shall maintain records of all  
119 financial matters relating to the community enhancement  
120 district, which shall also be available for inspection as other  
121 public records. Duplicate records shall be filed with the clerk or  
122 recorder, as the case may be, of the county or municipality  
123 which created the community enhancement district and shall  
124 include the minutes of all board meetings. The secretary and  
125 treasurer shall perform such other duties pertaining to the  
126 affairs of the community enhancement district as shall be  
127 prescribed by the board.

128 (g) The members of the board, and the chairman, secretary  
129 and treasurer thereof, shall make available to the governing  
130 body responsible for appointing the board, at all times, all of its  
131 books and records pertaining to the community enhancement  
132 district's operation, finances and affairs for inspection and  
133 audit. The board shall meet at least semiannually.

134 (h) A majority of the members of the board constitutes a  
135 quorum and meetings shall be held at the call of the chairman.

136 (i) Staff, office facilities and costs of operation of the board  
137 may be provided by the county or municipality which created  
138 the community enhancement district or by contract and said  
139 costs of operations shall be funded from assessments collected  
140 within the district.

141 (j) The chairman shall preside at all meetings of the board  
142 and shall vote as any other members of the board, but if he or  
143 she should be absent from any meeting the remaining members  
144 may select a temporary chairman, and if the member selected  
145 as chairman resigns as such or ceases for any reason to be a  
146 member of the board, the board shall select one of its members  
147 as chairman to serve until the next annual organizational  
148 meeting.

149 (k) The board shall, by resolution, determine its own rules  
150 of procedure, fix the time and place of its meetings and the  
151 manner in which special meetings may be called. The members  
152 of the board shall not be personally liable or responsible for any  
153 obligations of the assessment district or the board but are  
154 answerable only for willful misconduct in the performance of  
155 their duties.

156 (l) The official name of a community enhancement district  
157 created under the provisions of this article may contain the  
158 name of the county or municipality, as the case may be, in  
159 which it is located.

160 (m) Notwithstanding any provision in this code to the  
161 contrary, the power and authority hereby conferred on commu-  
162 nity enhancement districts may extend within the territory of a  
163 public service district created under section two, article  
164 thirteen-a of this chapter.

**§16-13E-7. Provisions for construction of a project.**

1           (a) After the creation of a community enhancement district  
2 and the appointment of the board thereof, the board shall  
3 provide by resolution for the construction of the project and  
4 shall also provide in the same or subsequent resolutions for the  
5 supervision of such work by a professional engineer, govern-  
6 mental agency or any other person designated by the board. The  
7 board may provide for the construction of the project by one of  
8 the two following methods or any combination thereof:

9           (1) If there exists a governmental agency with the experi-  
10 ence, knowledge and authority to construct the project, the  
11 board may elect to enter into a contract with such agency for the  
12 construction of all or part of the project or for any other service  
13 necessary or incident to the construction of the project, in which  
14 case such governmental agency shall be responsible for entering  
15 into contracts, subject to the board's approval, with such other  
16 persons as may be necessary or incident to the construction of  
17 the project; or

18           (2) The board may elect to enter into one or more contracts  
19 with such contractors and other persons as may be necessary or  
20 incident to the construction of the project, in which case it shall  
21 solicit competitive bids. All contracts for work on any project,  
22 the expense of which will exceed fifty thousand dollars, shall be  
23 awarded to the lowest qualified responsible bidder who shall  
24 furnish a sufficient performance and payment bond. The board  
25 may reject any and all bids and if it rejects all bids, notices shall  
26 be published as originally required before any other bids may  
27 be received. The board may let portions of the work necessary  
28 to complete a project under different contracts.

29           (b) The resolution described in subsection (a) of this section  
30 shall also provide for payment of the cost of the project.

31 (c) Prior to the construction of the project, the board shall  
32 obtain such permits and licenses required by law for the  
33 construction and operation of the project.

34 (d) Prior to bidding a water, wastewater or storm water  
35 component of a project, the board shall submit the final plans  
36 and specifications to the utility or utilities who will provide the  
37 water, wastewater or storm water service for review and written  
38 approval.

**§16-13E-8. Notice to property owners of assessments; correcting  
and laying assessments; report on project comple-  
tion; credits.**

1 (a) Prior to the issuance of assessment bonds or pledging  
2 any amounts to payment of tax increment financing obligation  
3 debt service, the board shall cause a report to be prepared  
4 describing each lot or parcel of land located within the commu-  
5 nity enhancement district and setting forth the total cost of the  
6 project based on the contract with the governmental agency, the  
7 accepted bid or bids, or a cost estimate certified by a profes-  
8 sional engineer, and all other costs incurred prior to the  
9 commencement of construction and the future administrative  
10 costs, and the respective amounts chargeable upon each lot or  
11 parcel of land and the proper amount to be assessed against the  
12 respective lots or parcels of land with a description of the lots  
13 and parcels of land as to ownership and location. If two or more  
14 different kinds of projects are involved, the report shall set forth  
15 the portion of the assessment attributable to each respective  
16 project. The board shall thereupon give notice to the owners of  
17 real property to be assessed that on or after a date specified in  
18 the notice an assessment will be deemed granted against the  
19 property. The notice shall state that the owner of assessed  
20 property, or other interested party, may on said date appear  
21 before the board to move the revision or correction of the  
22 proposed assessment and shall show the total cost of the



23 project, whether the assessments will pay for all or part of the  
24 total cost of the project and the lots or parcels of property to be  
25 assessed and the respective amounts to be assessed against such  
26 lots or parcels, with a description of the respective lots and  
27 parcels of land as to ownership and location. The notice shall  
28 also be published as a Class II-0 legal advertisement in compli-  
29 ance with the provisions of article three, chapter fifty-nine of  
30 the code, and the publication area for such publication is the  
31 assessment district. On or after the date so advertised, the board  
32 may revise, amend, correct and verify the report and proceed by  
33 resolution to establish the assessments as corrected and verified  
34 and shall certify the same to the governing body which created  
35 the district.

36 (b) Upon completion of a project, the board shall prepare a  
37 final report certifying the completion of the project and  
38 showing the total cost of the project and whether the cost is  
39 greater or less than the cost originally estimated. If the total cost  
40 of the project is less or greater than the cost shown in the report  
41 prepared prior to construction, the board may revise the  
42 assessment charged on each lot or parcel of land pursuant to  
43 subsection (a) of this section to reflect the total cost of the  
44 project as completed, and in so doing shall, in the case of an  
45 assessment increase only, follow the same procedure with  
46 regard to notice and providing each owner of assessed property  
47 the right to appear before the board to move for the revision or  
48 correction of such proposed reassessment as required for the  
49 original assessment. If an assessment is decreased, the board  
50 shall, by resolution and written notice to the sheriff of the  
51 county in which the community enhancement district is located,  
52 cause the next installment or installments of assessments then  
53 due and payable by each affected property owner to be reduced  
54 pro rata, and shall provide written notice to such property  
55 owners of the amount of such decrease by the deposit of such  
56 notice in the United States mail, postage prepaid.

57 (c) The value of the projects financed with the assessments  
58 shall be treated as a credit toward any impact fees related to the  
59 service or services provided levied under article twenty, chapter  
60 seven of this code.

**§16-13E-9. Exemption of public property from assessments.**

1 No lots or parcels of land owned or controlled by the  
2 United States, this state, any municipality, county, board of  
3 education or other public body shall be subject to any assess-  
4 ments.

**§16-13E-10. Assessment bonds; sinking fund for assessment  
bonds; tax exemption.**

1 (a) For constructing or acquiring any project authorized by  
2 this article, and also for reimbursing or paying the costs and  
3 expenses of creating the district, the board of any such district  
4 is hereby authorized to borrow money, from time to time, and  
5 in evidence thereof issue the bonds of such district, payable  
6 from the proceeds of the assessments granted under this article.  
7 Such bonds shall be issued in one or more series, may bear such  
8 date or dates, may mature at such time or times not exceeding  
9 thirty-five years from their respective dates, shall be fully  
10 registered as to principal and interest in the name of the  
11 bondholder with a certificate of authentication attached thereto,  
12 may bear interest at such rate or rates not exceeding eighteen  
13 percent per annum, may be payable at such times, may be  
14 executed in such manner, may be payable at such place or  
15 places, may be subject to such terms of redemption with or  
16 without premium, may be declared or become due before  
17 maturity date thereof, may be authenticated in any manner, and,  
18 upon compliance of such conditions, may contain such terms  
19 and covenants as provided by the resolution or resolutions of  
20 the board. All such bonds shall be, and shall be treated as,  
21 negotiable instruments for all purposes. Bonds bearing the

22 signatures of officers and offices on the dates of the signing  
23 thereof shall be valid and binding for all purposes notwithstanding  
24 ing that before the delivery thereof any or all such persons  
25 whose signatures appear thereon shall have ceased to be such  
26 officers. Notwithstanding the requirements or provisions of any  
27 other law, any such bonds may be negotiated or sold in such  
28 manner at such time or times and at such prices or prices as is  
29 found by the board to be most advantageous. Any resolution or  
30 resolutions providing for the issuance of such bonds may  
31 contain covenants and restrictions upon the issuance of addi-  
32 tional bonds thereafter as may be deemed necessary or advis-  
33 able for the assurance of the payment of the bonds thereby  
34 authorized.

35 (b) At or before the time of issuance of any bonds under  
36 this article, the board shall by resolution provide for the  
37 creation of a sinking fund and for payments in succession fund  
38 from the assessments granted pursuant to this article in such  
39 amount as shall be sufficient to pay the accruing interest and  
40 retire the bonds at or before the time each will respectively  
41 become due and to establish or maintain reserves therefor. All  
42 sums which are or should be, in accordance with such provi-  
43 sions, paid into such sinking fund shall be used solely for  
44 payment of interest and for the retirement of such bonds at or  
45 prior to maturity as may be provided or required by such  
46 resolution.

47 (c) The property, including leased property, of the commu-  
48 nity enhancement district and bonds and any income or interest  
49 thereon issued by the community enhancement district are  
50 exempt from taxation by the state of West Virginia and other  
51 taxing bodies of the state.

**§16-13E-11. Indebtedness of assessment district.**

1 No constitutional or statutory limitation with respect to the  
2 nature or amount of or rate of interest on indebtedness which  
3 may be incurred by municipalities, counties or other public or  
4 governmental bodies shall apply to the indebtedness of a  
5 community enhancement district. No indebtedness of any  
6 nature of a community enhancement district shall constitute an  
7 indebtedness of any municipality or county creating and  
8 establishing such community enhancement district or a charge  
9 against any property of said municipalities or counties but shall  
10 be paid solely from the assessments which the community  
11 enhancement district is authorized to impose on the owners of  
12 the property within the district by this article. No indebtedness  
13 or obligation incurred by any community enhancement district  
14 shall give any right against any member of the governing body  
15 of any municipality or any member of the county commission  
16 of any county or any member of the community enhancement  
17 board of any community enhancement district.

**§16-13E-12. Payment of assessments to sheriff; report to commu-  
nity enhancement district; collection of delinquent  
assessments.**

1 The assessments imposed pursuant to this article will not be  
2 considered to be ad valorem taxes or the equivalent of ad  
3 valorem taxes under any other provision of this code: *Provided,*  
4 That for the exclusive purposes of collection of the assessments  
5 imposed under section eight of this article and enforcement of  
6 the assessment liens created by section thirteen of this article,  
7 the provisions of chapter eleven-a of this code shall apply as if  
8 the assessments were taxes as that term is defined in section  
9 one, article one of that chapter. The sheriff shall promptly  
10 deposit all assessments upon receipt thereof in a segregated  
11 account established by the sheriff for such purpose and shall  
12 maintain a record of the assessments so received. Each month,  
13 the sheriff shall pay all moneys collected for the community  
14 enhancement district into the district treasury or if the sheriff

15 consents to a trustee for the benefit of bondholders if assess-  
16 ment bonds are issued by the community enhancement district.  
17 Payments to the community enhancement district shall be made  
18 in the time set forth in section fifteen, article one, chapter  
19 eleven-a of this code and the sheriff shall be entitled to take a  
20 commission for collection of the assessments on behalf of the  
21 community enhancement district, as provided in section  
22 seventeen of said article. For each tax year, the sheriff will  
23 prepare and deliver to the board of each community enhance-  
24 ment district located in the county, a statement setting forth the  
25 aggregate amount of assessments received for such district and  
26 the name of any property owner who failed to pay the assess-  
27 ments due and payable for the period in question. This report  
28 shall be due on or before the first day of August of the follow-  
29 ing year. The sheriff is authorized to collect delinquent assess-  
30 ments and enforce the liens created in section thirteen of this  
31 article as if those assessments were delinquent real property  
32 taxes and the liens are tax liens using the enforcement tools  
33 provided in articles two and three, chapter eleven-a of this code.

**§16-13E-13. Liens; recording notice of liens; priority; release of  
lien; notice to future property owners.**

1 (a) With the exception of property exempt from assessment  
2 pursuant to section nine of this article, there shall be a lien on  
3 all real property located within the community enhancement  
4 district for the assessments imposed by section eight of this  
5 article, which lien shall attach on the date specified in the notice  
6 to property owners. A notice of the liens of said assessments  
7 referring to the assessing resolution and setting forth a list of  
8 the property assessed, described respectively as to amounts of  
9 assessment, ownership and location of the property, shall be  
10 certified, by the chairman and secretary of the board, to the  
11 clerk of the county commission of the county wherein the  
12 project is located. The county clerk shall record the notice of  
13 such lien in the appropriate trust deed book or other appropriate

14 county lien book and index the same in the name of each owner  
15 of property assessed. From the date of an assessment, the  
16 trustee, for the benefit of bondholders if assessment bonds are  
17 issued by the community enhancement district, and/or the  
18 district shall have such lien and shall be entitled to enforce the  
19 same in its, his or their name to the extent of the amount,  
20 including principal and interest and any penalty due for any  
21 failure to pay an installment when due, of such assessments and  
22 against the property to which the assessment applies, as to any  
23 assessment not paid as and when due. The trustee or the district,  
24 as an alternative to the enforcement provision set forth in  
25 section twelve of this article, are granted all legal remedies as  
26 are necessary to collect the assessment. Such assessments shall  
27 be and constitute liens for the benefit of the community  
28 enhancement district or of the trustee, for the benefit of  
29 bondholders if assessment bonds are issued by the community  
30 enhancement district, upon the respective lots and parcels of  
31 land assessed and shall have priority over all other liens except  
32 those for land taxes due the state, county and municipality and  
33 except any liens for preexisting special assessments provided  
34 under this code. If any assessment is revised in accordance with  
35 this article, the lien created by this section shall extend to the  
36 assessment so revised and shall have the same priority as the  
37 priority of the lien created upon the laying of the original  
38 assessment. Such assessments and interest thereon shall be paid  
39 by the owners of the property assessed as and when the install-  
40 ments are due. Following the payment in full of any assessment  
41 bonds including any interest thereon, the chairman and secre-  
42 tary of the board shall execute a release of all liens and shall  
43 certify the same to county clerk for recordation.

44 (b) Following the grant of an assessment on property as  
45 provided in this article, the seller of such property shall provide  
46 reasonable disclosure to the buyer in the real estate contract that  
47 an assessment has been granted on the property, the amount of  
48 the assessment and the duration of the assessment.

**§16-13E-14. Liberal construction.**

1        This article being necessary for the public health, safety and  
2 welfare and economic development, it shall be liberally  
3 construed to effectuate the purpose hereof.

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## CHAPTER 15

(S. B. 2011 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-six, article three, chapter eleven-a of said code; to amend and reenact sections one and two, article three, chapter fifty of said code; to amend and reenact sections ten, eleven and twenty-eight-a, article one, chapter fifty-nine of said code; to amend and reenact section seventeen, article two of said chapter; and to amend and reenact section four, article seven, chapter sixty-one of said code, all relating to increasing certain county clerk, circuit clerk, assessor, sheriff, prosecuting attorney and magistrate court fees; and dedicating those fee increases to the courthouse facilities improvement fund and to the special revenue account to provide legal services to domestic violence victims.

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

That section seven, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended and reenacted; that section twenty-six, article three, chapter eleven-a of said code be amended and reenacted; that sections one and two, article three, chapter fifty of said code be amended and reenacted; that sections ten, eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted; that section seventeen, article two of said chapter be amended and reenacted; and that section four, article seven, chapter sixty-one of said code be amended and reenacted, all to read as follows:

**Chapter**

- 11. Taxation.
- 11A. Collection and Enforcement of Property Taxes.
- 50. Magistrate Courts.
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.
- 61. Crimes and Their Punishment.

**CHAPTER 11. TAXATION.**

**ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

**§11-1C-7. Duties of county assessors; property to be appraised at fair market value; exceptions; initial equalization; valuation plan.**

1 (a) Except for property appraised by the state tax commis-  
 2 sioner under section ten of this article and property appraised  
 3 and assessed under article six of this chapter, all assessors shall,  
 4 within three years of the approval of the county valuation plan  
 5 required pursuant to this section, appraise all real and personal  
 6 property in their jurisdiction at fair market value except for  
 7 special valuation provided for farmland and managed timber-  
 8 land. They shall utilize the procedures and methodologies  
 9 established by the property valuation training and procedures  
 10 commission and the valuation system established by the tax  
 11 commissioner.

12 (b) In determining the fair market value of the property in  
 13 their jurisdictions, assessors may use as an aid to valuation any  
 14 information available on the character and values of such



15 property, including, but not limited to, the updated information  
16 found on any statewide electronic data processing system  
17 network established pursuant to section twenty-one, article one-  
18 a of this chapter. Valuations shall not be based exclusively on  
19 such statewide electronic data processing system network and  
20 usage of the information on such files as an aid to proper  
21 valuation shall not constitute an implementation of the state-  
22 wide mass reappraisal of property.

23 (c) Before beginning the valuation process, each assessor  
24 shall develop a county valuation plan for using information  
25 currently available, for checking its accuracy and for correcting  
26 any errors found. The plan must be submitted to the tax  
27 commissioner on or before the first day of December, one  
28 thousand nine hundred ninety, for review and approval and such  
29 plan must be revised as necessary and resubmitted every three  
30 years thereafter. Whenever a plan is submitted to the tax  
31 commissioner, a copy shall also be submitted to the county  
32 commission of that county and the property valuation training  
33 and procedures commission and that county commission and  
34 the property valuation training and procedures commission may  
35 forward comments to the tax commissioner. The tax commis-  
36 sioner shall respond to any plan submitted or resubmitted  
37 within sixty days of its receipt. The valuation process shall not  
38 begin nor shall funds provided in section eight of this article be  
39 available until the plan has received approval by the tax  
40 commissioner: *Provided*, That any initial plan that has not  
41 received approval by the commissioner prior to the first day of  
42 May, one thousand nine hundred ninety-one, shall be submitted  
43 on or by such date to the valuation commission for resolution  
44 prior to the first day of July, one thousand nine hundred ninety-  
45 one, by which date all counties shall have an approved valua-  
46 tion plan in effect.

47 (d) Upon approval of the valuation plan, the assessor shall  
48 immediately begin implementation of the valuation process.

49 Any change in value discovered subsequent to the certification  
50 of values by the assessor to the county commission, acting as  
51 the board of equalization and review, in any given year shall be  
52 placed upon the property books for the next certification of  
53 values: *Provided*, That notwithstanding any other provision of  
54 this code to the contrary, the property valuation training and  
55 procedures commission may authorize the tax commissioner to  
56 approve a valuation plan and the board of public works to  
57 submit such a plan which would permit the placement of  
58 proportionately uniform percentage changes in values on the  
59 books that estimate the percentage difference between the  
60 current assessed value and sixty percent of the fair market value  
61 for classes or identified subclasses of property and distribute the  
62 change between the two tax years preceding the tax year  
63 beginning on the first day of July, one thousand nine hundred  
64 ninety-three. This procedure may be used in lieu of placing  
65 individual values on the books at sixty percent of value as  
66 discovered or may be in addition to such valuation. If such  
67 procedure is adopted by a county, then property whose reevalu-  
68 ation is the responsibility of the board of public works and the  
69 state tax commissioner shall have its values estimated and  
70 placed on the books in like manner. Such estimates shall be  
71 based on the best information obtained by the assessor, the  
72 board of public works and the tax commissioner and the  
73 changes shall move those values substantially toward sixty  
74 percent of fair market value, such sixty percent to be reached on  
75 or before the first day of July, one thousand nine hundred  
76 ninety-three.

77 (e) (1) The county assessor shall establish and maintain as  
78 official records of the county tax maps of the entire county  
79 drawn to scale or aerial maps, which maps shall indicate all  
80 property and lot lines, set forth dimensions or areas, indicate  
81 whether the land is improved and identify the respective parcels  
82 or lots by a system of numbers or symbols and numbers,  
83 whereby the ownership of such parcels and lots can be ascer-

84 tained by reference to the appropriate records: *Provided*, That  
85 all such records shall be established and maintained and the sale  
86 or reproduction of microfilm, photography and maps shall be in  
87 accordance with legislative rules promulgated by the commis-  
88 sion.

89 (2) The following fees apply in addition to any fee charged  
90 by the assessor or the map sales unit of the property tax division  
91 of the department of revenue for the sale or reproduction of  
92 microfilm, photography and maps pursuant to the legislative  
93 rules referenced in subdivision (1) of this subsection:

94 (A) For a full map sheet, an additional fee of three dollars  
95 per copy shall be charged, which shall be deposited in the  
96 courthouse facilities improvement fund created by section six,  
97 article twenty-six, chapter twenty-nine of this code;

98 (B) For a parcel reproduction on 8 ½ x 11" or 8 ½ x 14"  
99 paper, an additional fee of one dollar and fifty cents per copy  
100 shall be charged, which shall be deposited in the courthouse  
101 facilities improvement fund created by section six, article  
102 twenty-six, chapter twenty-nine of this code; and

103 (C) For all other map sizes, an additional fee of two dollars  
104 per copy shall be charged, which shall be deposited in the  
105 courthouse facilities improvement fund created by section six,  
106 article twenty-six, chapter twenty-nine of this code.

107 (f) Willing and knowing refusal of the assessor or the  
108 county commission to comply with and effect the provisions of  
109 this article, or to correct any deficiencies as may be ordered by  
110 the tax commissioner with the concurrence of the valuation  
111 commission under any authority granted pursuant to this article  
112 or other provisions of this code, shall constitute grounds for  
113 removal from office. Such removal may be appealed to the  
114 circuit court.

**CHAPTER 11A. COLLECTION AND  
ENFORCEMENT OF PROPERTY TAXES.**

**ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND  
WASTE AND UNAPPROPRIATED LANDS.**

**§11A-3-26. Certificate of redemption issued by clerk; record-  
ation; disposition of redemption money.**

1           (a) Upon payment of the sum necessary to redeem, the clerk  
2 shall execute a certificate of redemption in duplicate, which  
3 certificate shall specify the real estate redeemed, or the part  
4 thereof or the interest therein, as the case may be, together with  
5 any changes in respect thereto which were made in the  
6 landbook and in the record of delinquent lands; shall specify the  
7 year or years for which payment was made; and shall state that  
8 it is a receipt for the money paid and a release of the tax lien on  
9 the real estate redeemed. The original certificate shall be  
10 retained in the files in the clerk's office and one copy shall be  
11 delivered to the person redeeming. The clerk shall make any  
12 necessary changes in his record of delinquent lands and shall  
13 note the fact of redemption on such record and shall record the  
14 certificate in a separate volume provided for the purpose.

15           The fee for issuing the certificate of redemption shall be  
16 thirty-five dollars, of which ten dollars of that amount shall be  
17 deposited in the courthouse facilities improvement fund created  
18 by section six, article twenty-six, chapter twenty-nine of this  
19 code.

20           (b) All certificates of redemption issued by the clerk in each  
21 year shall be numbered consecutively and shall be filed by the  
22 clerk in numerical order. Reference to the year and number of  
23 the certificate shall be included in the notation of redemption  
24 required herein. No fee shall be charged by the clerk for any  
25 recordation, filing or notation required by this section.

**CHAPTER 50. MAGISTRATE COURTS.**

**ARTICLE 3. COSTS, FINES AND RECORDS.**

§50-3-1. Costs in civil actions.

§50-3-2. Costs in criminal proceedings.

**§50-3-1. Costs in civil actions.**

1           The following costs shall be charged in magistrate courts in  
2 civil actions and shall be collected in advance:

3           (a) For filing and trying any civil action and for all services  
4 connected therewith, but excluding services regarding enforce-  
5 ment of judgment, the following amounts dependent upon the  
6 amount of damages sought in the complaint:

7           Where the action is for five hundred dollars  
8           or less ..... \$30.00

9           Where the action is for more than five hundred  
10           dollars but not more than one thousand  
11           dollars ..... \$35.00

12           Where the action is for more than one thousand  
13           dollars but not more than two thousand  
14           dollars ..... \$40.00

15           Where the action is for more than two thousand  
16           dollars ..... \$50.00

17           Where the action seeks relief other than  
18           money damage ..... \$30.00

19           Five dollars from each of the filing fees listed above shall  
20 be deposited in the court security fund created by the provisions  
21 of section fourteen, article three, chapter fifty-one of this code.

22 Five dollars from each of the filing fees listed above shall  
23 be deposited in the courthouse facilities improvement fund  
24 created by section six, article twenty-six, chapter twenty-nine  
25 of this code.

26 (b) For each service regarding enforcement of  
27 a judgment including execution, suggestion,  
28 garnishment and suggestee execution . . . . . \$5.00

29 (c) For each bond filed in a case . . . . . \$1.00

30 (d) For taking deposition of witness  
31 for each hour or portion thereof . . . . . \$1.00

32 (e) For taking and certifying acknowledgment  
33 of a deed or other writing or taking oath  
34 upon an affidavit . . . . . \$ .50

35 (f) For mailing any matter required or  
36 provided by law to be mailed by certified or  
37 registered mail with return receipt . . . . . \$1.00

38 Costs incurred in a civil action shall be reflected in any  
39 judgment rendered thereon. The provisions of section one,  
40 article two, chapter fifty-nine of this code, relating to the  
41 payment of costs by poor persons, shall be applicable to all  
42 costs in civil actions.

**§50-3-2. Costs in criminal proceedings.**

1 (a) In each criminal case before a magistrate court in which  
2 the defendant is convicted, whether by plea or at trial, there is  
3 imposed, in addition to other costs, fines, forfeitures or penal-  
4 ties as may be allowed by law: (1) Costs in the amount of sixty  
5 dollars, of which five dollars of that amount shall be deposited  
6 in the courthouse facilities improvement fund created by  
7 section six, article twenty-six, chapter twenty-nine of this code;

8 and (2) an amount equal to the one-day per diem provided for  
9 in subsection (h), section ten, article twenty, chapter thirty-one  
10 of this code. A magistrate may not collect costs in advance.  
11 Notwithstanding any other provision of this code, a person  
12 liable for fines and court costs in a criminal proceeding in  
13 which the defendant is confined in a jail or prison and not  
14 participating in a work release program shall not be held liable  
15 for the fines and court costs until ninety days after completion  
16 of the term in jail or prison. A magistrate court shall deposit  
17 five dollars from each of the criminal proceedings fees col-  
18 lected pursuant to this section in the court security fund created  
19 in section fourteen, article three, chapter fifty-one of this code.  
20 A magistrate court shall, on or before the tenth day of the  
21 month following the month in which the fees imposed in this  
22 section were collected, remit an amount equal to the one-day  
23 per diem provided for in subsection (h), section ten, article  
24 twenty, chapter thirty-one of this code from each of the criminal  
25 proceedings in which the fees specified in this section were  
26 collected to the magistrate court clerk or, if there is no magis-  
27 trate court clerk to the clerk of the circuit, together with  
28 information as may be required by the rules of the supreme  
29 court of appeals and the rules of the office of chief inspector.  
30 These moneys are paid to the sheriff who shall distribute the  
31 moneys solely in accordance with the provisions of section  
32 fifteen, article five, chapter seven of this code. Amendments  
33 made to this section during the regular session of the Legisla-  
34 ture, two thousand one, are effective after the thirtieth day of  
35 June, two thousand one.

36 (b) A magistrate shall assess costs in the amount of two  
37 dollars and fifty cents for issuing a sheep warrant and the  
38 appointment and swearing appraisers and docketing the  
39 proceedings.

40 (c) In each criminal case which must be tried by the circuit  
41 court but in which a magistrate renders some service, costs in

42 the amount of ten dollars shall be imposed by the magistrate  
 43 court and is certified to the clerk of the circuit court in accor-  
 44 dance with the provisions of section six, article five, chapter  
 45 sixty-two of this code.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
 NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**Article**

- 1. Fees and Allowances.**
- 2. Costs Generally.**

**ARTICLE 1. FEES AND ALLOWANCES.**

§59-1-10. Fees to be charged by clerk of county commission.

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

**§59-1-10. Fees to be charged by clerk of county commission.**

1 For the purpose of this section, the word “page” is defined  
 2 as being a paper writing of not more than legal size, 8 ½” x 14”.

3 The clerk of the county commission shall charge and collect  
 4 the following fees:

5 (a) When a writing is admitted to record, for receiving  
 6 proof of acknowledgment thereof, entering an order in connec-  
 7 tion therewith, endorsing clerk’s certificate of recordation  
 8 thereon and indexing in a proper index, where the writing is a:

9 (1) Deed of conveyance (with or without a  
 10 plat), trust deed, fixture filing or security  
 11 agreement concerning real estate lease . . . . . \$10.00

12 (2) Financing, continuation, termination or  
 13 other statement or writing permitted to be filed  
 14 under chapter forty-six of this code . . . . . \$10.00



15 (3) Plat or map (with no deed of conveyance) . . . \$10.00

16 (4) Service discharge record . . . . . No Charge

17 (5) Any document or writing other than those  
18 referenced in subdivisions (1), (2), (3) and (4)  
19 of this subsection . . . . . \$5.00

20 (6) If any document or writing contains more  
21 than five pages, for each additional page . . . . \$1.00

22 (b) For administering any oath other than  
23 oaths by officers and employees of the state,  
24 political subdivisions of the state, or a public  
25 or quasi public entity of the state or a political  
26 subdivision of the state, taken in his or her  
27 official capacity . . . . . \$5.00

28 (c) For issuance of marriage license and  
29 other duties pertaining to the marriage license  
30 (including preparation of the application,  
31 administering the oath, registering and recording  
32 the license, mailing acknowledgment of minister's  
33 return to one of the licensees and notification to  
34 a licensee after sixty days of the nonreceipt of  
35 the minister's return) . . . . . \$35.00

36 (1) One dollar of the marriage license fee received pursuant  
37 to this subsection shall be paid by the county clerk into the state  
38 treasury as a state registration fee in the same manner that  
39 license taxes are paid into the treasury under article twelve,  
40 chapter eleven of this code;

41 (2) Fifteen dollars of the marriage license fee received  
42 pursuant to this subsection shall be paid by the county clerk into  
43 the state treasury for the family protection shelter support act in

44 the same manner that license taxes are paid into the treasury  
45 under article twelve, chapter eleven of this code;

46 (3) Ten dollars of the marriage license fee received pursu-  
47 ant to this subsection shall be deposited in the courthouse  
48 facilities improvement fund created by section six, article  
49 twenty-six, chapter twenty-nine of this code.

50 (d) (1) For a copy of any writing or document, if it is not  
51 otherwise provided for . . . . . \$1.50

52 (2) If the copy of the writing or document contains more  
53 than two pages, for each additional page . . . . . \$1.00

54 (3) For annexing the seal of the commission  
55 or clerk to any paper . . . . . \$1.00

56 (4) For a certified copy of a birth certificate,  
57 death certificate or marriage license . . . . . \$5.00

**§59-1-11. Fees to be charged by clerk of circuit court.**

1 (a) The clerk of a circuit court shall charge and collect for  
2 services rendered as such clerk the following fees, and such  
3 fees shall be paid in advance by the parties for whom such  
4 services are to be rendered:

5 (1) For instituting any civil action under the rules of civil  
6 procedure, any statutory summary proceeding, any extraordi-  
7 nary remedy, the docketing of civil appeals or any other action,  
8 cause, suit or proceeding, one hundred twenty-five dollars, of  
9 which thirty dollars of that amount shall be deposited in the  
10 courthouse facilities improvement fund created by section six,  
11 article twenty-six, chapter twenty-nine of this code and ten  
12 dollars shall be deposited in the special revenue account created  
13 in section six hundred three, article twenty-six, chapter

14 forty-eight of this code to provide legal services for domestic  
15 violence victims;

16 (2) For instituting an action for medical professional  
17 liability, two hundred sixty dollars, of which ten dollars of that  
18 amount shall be deposited in the courthouse facilities improve-  
19 ment fund created by section six, article twenty-six, chapter  
20 twenty-nine of this code;

21 (3) Beginning on and after the first day of July, one  
22 thousand nine hundred ninety-nine, for instituting an action for  
23 divorce, separate maintenance or annulment, one hundred  
24 thirty-five dollars;

25 (4) For petitioning for the modification of an order involv-  
26 ing child custody, child visitation, child support or spousal  
27 support, eighty-five dollars; and

28 (5) For petitioning for an expedited modification of a child  
29 support order, thirty-five dollars.

30 (b) In addition to the foregoing fees, the following fees  
31 shall likewise be charged and collected:

32 (1) For preparing an abstract of judgment, five dollars;

33 (2) For any transcript, copy or paper made by the clerk for  
34 use in any other court or otherwise to go out of the office, for  
35 each page, fifty cents;

36 (3) For action on suggestion, ten dollars;

37 (4) For issuing an execution, ten dollars;

38 (5) For issuing or renewing a suggestee execution, includ-  
39 ing copies, postage, registered or certified mail fees and the fee  
40 provided by section four, article five-a, chapter thirty-eight of  
41 this code, three dollars;

42 (6) For vacation or modification of a suggestee execution,  
43 one dollar;

44 (7) For docketing and issuing an execution on a transcript  
45 of judgment from magistrate's court, three dollars;

46 (8) For arranging the papers in a certified question, writ of  
47 error, appeal or removal to any other court, ten dollars, of which  
48 five dollars of that amount shall be deposited in the courthouse  
49 facilities improvement fund created by section six, article  
50 twenty-six, chapter twenty-nine of this code;

51 (9) For postage and express and for sending or receiving  
52 decrees, orders or records, by mail or express, three times the  
53 amount of the postage or express charges;

54 (10) For each subpoena, on the part of either plaintiff or  
55 defendant, to be paid by the party requesting the same, fifty  
56 cents;

57 (11) For additional service (plaintiff or appellant) where  
58 any case remains on the docket longer than three years, for each  
59 additional year or part year, twenty dollars;

60 (12) For processing of criminal bond, twenty-five dollars  
61 per bond, which shall be deposited in the courthouse facilities  
62 improvement fund created by section six, article twenty-six,  
63 chapter twenty-nine of this code; and

64 (13) For processing of bail piece, ten dollars per bail piece,  
65 which shall be deposited in the courthouse facilities improve-  
66 ment fund created by section six, article twenty-six, chapter  
67 twenty-nine of this code.

68 (c) The clerk shall tax the following fees for services in any  
69 criminal case against any defendant convicted in such court:

70 (1) In the case of any misdemeanor, fifty-five dollars;

71 (2) In the case of any felony, seventy-five dollars, of which  
72 ten dollars of that amount shall be deposited in the courthouse  
73 facilities improvement fund created by section six, article  
74 twenty-six, chapter twenty-nine of this code.

75 (d) No such clerk shall be required to handle or accept for  
76 disbursement any fees, cost or amounts, of any other officer or  
77 party not payable into the county treasury, except it be on order  
78 of the court or in compliance with the provisions of law  
79 governing such fees, costs or accounts.

**§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from amounts  
2 equaling filing fees received for the institution of divorce  
3 actions as prescribed in subsection (b) of this section, and  
4 except for those payments to be made from amounts equaling  
5 filing fees received for the institution of actions for divorce,  
6 separate maintenance and annulment as prescribed in said  
7 subsection, for each civil action instituted under the rules of  
8 civil procedure, any statutory summary proceeding, any  
9 extraordinary remedy, the docketing of civil appeals or any  
10 other action, cause, suit or proceeding in the circuit court, the  
11 clerk of the court shall, at the end of each month, pay into the  
12 funds or accounts described in this subsection an amount equal  
13 to the amount set forth in this subsection of every filing fee  
14 received for instituting the action as follows:

15 (1) Into the regional jail and correctional facility authority  
16 fund in the state treasury established pursuant to the provisions  
17 of section ten, article twenty, chapter thirty-one of this code, the  
18 amount of sixty dollars; and

19       (2) Into the court security fund in the state treasury estab-  
20 lished pursuant to the provisions of section fourteen, article  
21 three, chapter fifty-one of this code, the amount of five dollars.

22       (b) For each action for divorce, separate maintenance or  
23 annulment instituted in the circuit court, the clerk of the court  
24 shall, at the end of each month, report to the supreme court of  
25 appeals, the number of actions filed by persons unable to pay,  
26 and pay into the funds or accounts in this subsection an amount  
27 equal to the amount set forth in this subsection of every filing  
28 fee received for instituting the divorce action as follows:

29       (1) Into the regional jail and correctional facility authority  
30 fund in the state treasury established pursuant to the provisions  
31 of section ten, article twenty, chapter thirty-one of this code, the  
32 amount of ten dollars;

33       (2) Into the special revenue account of the state treasury,  
34 established pursuant to section six hundred four, article two,  
35 chapter forty-eight of this code, an amount of thirty dollars;

36       (3) Into the family court fund established under section  
37 twenty-two, article two-a, chapter fifty-one of this code, an  
38 amount of seventy dollars; and

39       (4) Into the court security fund in the state treasury,  
40 established pursuant to the provisions of section fourteen,  
41 article three, chapter fifty-one of this code, the amount of five  
42 dollars.

43       (c) Notwithstanding any provision of subsection (a) or (b)  
44 of this section to the contrary, the clerk of the court shall, at the  
45 end of each month, pay into the family court fund established  
46 under section twenty-two, article two-a, chapter fifty-one of this  
47 code an amount equal to the amount of every fee received for  
48 petitioning for the modification of an order involving child  
49 custody, child visitation, child support or spousal support as

50 determined by subdivision (3), subsection (a), section eleven of  
51 this article and for petitioning for an expedited modification of  
52 a child support order as provided in subdivision (4) of said  
53 subsection.

54 (d) The clerk of the court from which a protective order is  
55 issued shall, at the end of each month, pay into the family court  
56 fund established under section twenty-two, article two-a,  
57 chapter fifty-one of this code an amount equal to every fee  
58 received pursuant to the provisions of section five hundred  
59 eight, article twenty-seven, chapter forty-eight of this code.

60 (e) The clerk of each circuit court shall, at the end of each  
61 month, pay into the regional jail and correctional facility  
62 authority fund in the state treasury an amount equal to forty  
63 dollars of every fee for service received in any criminal case  
64 against any respondent convicted in such court and shall pay an  
65 amount equal to five dollars of every such fee into the court  
66 security fund in the state treasury established pursuant to the  
67 provisions of section fourteen, article three, chapter fifty-one of  
68 this code.

69 (f) Beginning the first day of January, two thousand two,  
70 the clerk of the circuit court shall, at the end of each month, pay  
71 into the medical liability fund established under article twelve-  
72 b, chapter twenty-nine of this code an amount equal to one  
73 hundred sixty-five dollars of every filing fee received for  
74 instituting a medical professional liability action.

75 (g) The clerk of the circuit court shall, at the end of each  
76 month, pay into the courthouse facilities improvement fund  
77 created by section six, article twenty-six, chapter twenty-nine  
78 of this code those amounts received by the clerk which are  
79 dedicated for deposit in the fund.

## ARTICLE 2. COSTS GENERALLY.

**§59-2-17. Fees of prosecuting attorney.**

1       The clerk shall include in the costs, for fees of the prosecut-  
2       ing attorney, the following:

3       (a) In cases of misdemeanor, or an action upon a bond for  
4       a violation of the license laws, fifteen dollars, of which five  
5       dollars of that amount shall be deposited in the courthouse  
6       facilities improvement fund created by section six, article  
7       twenty-six, chapter twenty-nine of this code;

8       (b) In a case of bastardy, ten dollars;

9       (c) In a suit or proceeding upon a forfeited recognizance  
10      upon behalf of the state, five percent upon the amount recov-  
11      ered and paid into the treasury;

12      (d) In cases of felony, thirty-five dollars, of which five  
13      dollars of that amount shall be deposited in the courthouse  
14      facilities improvement fund created by section six, article  
15      twenty-six, chapter twenty-nine of this code;

16      (e) In any other case of the state, if a different fee is not  
17      prescribed, ten dollars.

18      Such fees shall be collected and accounted for as provided  
19      in article one of this chapter, but shall not in any case be paid  
20      out of the county or state treasury.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.****ARTICLE 7. DANGEROUS WEAPONS.****§61-7-4. License to carry deadly weapons; how obtained.**

1       (a) Except as provided in subsection (h) of this section, any  
2       person desiring to obtain a state license to carry a concealed  
3       deadly weapon shall apply to the sheriff of his or her county for



4 such license, and shall pay to the sheriff, at the time of applica-  
5 tion, a fee of seventy-five dollars, of which fifteen dollars of  
6 that amount shall be deposited in the courthouse facilities  
7 improvement fund created by section six, article twenty-six,  
8 chapter twenty-nine of this code. Concealed weapons permits  
9 may only be issued for pistols or revolvers. Each applicant shall  
10 file with the sheriff, a complete application, as prepared by the  
11 superintendent of the West Virginia state police, in writing,  
12 duly verified, which sets forth only the following licensing  
13 requirements:

14 (1) The applicant's full name, date of birth, social security  
15 number and a description of the applicant's physical features;

16 (2) That, on the date the application is made, the applicant  
17 is a bona fide resident of this state and of the county in which  
18 the application is made and has a valid driver's license or other  
19 state-issued photo identification showing such residence;

20 (3) That the applicant is twenty-one years of age or older:  
21 *Provided*, That any individual who is less than twenty-one years  
22 of age and possesses a properly issued concealed weapons  
23 license as of the effective date of this article shall be licensed to  
24 maintain his or her concealed weapons license notwithstanding  
25 the provisions of this section requiring new applicants to be at  
26 least twenty-one years of age: *Provided, however*, That upon a  
27 showing of any applicant who is eighteen years of age or older  
28 that he or she is required to carry a concealed weapon as a  
29 condition for employment, and presents satisfactory proof to the  
30 sheriff thereof, then he or she shall be issued a license upon  
31 meeting all other conditions of this section. Upon discontinu-  
32 ance of employment that requires the concealed weapons  
33 license, if the individual issued the license is not yet twenty-one  
34 years of age, then the individual issued the license is no longer  
35 eligible and must return his or her license to the issuing sheriff;

36 (4) That the applicant is not addicted to alcohol, a con-  
37 trolled substance or a drug, and is not an unlawful user thereof;

38 (5) That the applicant has not been convicted of a felony or  
39 of an act of violence involving the misuse of a deadly weapon;

40 (6) That the applicant has no criminal charges pending and  
41 is not currently serving a sentence of confinement, parole,  
42 probation or other court-ordered supervision, because of a  
43 charge of domestic violence as provided for in section twenty-  
44 eight, article two of this chapter, or is the subject of a restrain-  
45 ing order as a result of a domestic violence act as defined in that  
46 section, or because of a verified petition of domestic violence  
47 as provided for in article two-a, chapter forty-eight of this code  
48 or is subject to a protective order as provided for in that article;

49 (7) That the applicant is physically and mentally competent  
50 to carry such weapon;

51 (8) That the applicant has not been adjudicated to be  
52 mentally incompetent;

53 (9) That the applicant has qualified under the minimum  
54 requirements set forth in subsection (d) of this section for  
55 handling and firing such weapon: *Provided*, That this require-  
56 ment shall be waived in the case of a renewal applicant who has  
57 previously qualified;

58 (10) That the applicant authorizes the sheriff of the county,  
59 or his or her designee, to conduct an investigation relative to the  
60 information contained in the application.

61 (b) The sheriff shall conduct an investigation which shall  
62 verify that the information required in subdivisions (1), (2), (3),  
63 (5), (6), (8) and (9), subsection (a) of this section are true and  
64 correct.

65 (c) Sixty dollars of the application fee and any fees for  
66 replacement of lost or stolen licenses received by the sheriff  
67 shall be deposited by the sheriff into a concealed weapons  
68 license administration fund. Such fund shall be administered by  
69 the sheriff and shall take the form of an interest bearing account  
70 with any interest earned to be compounded to the fund. Any  
71 funds deposited in this concealed weapon license administration  
72 fund are to be expended by the sheriff to pay for the costs  
73 associated with issuing concealed weapons licenses. Any  
74 surplus in the fund on hand at the end of each fiscal year may  
75 be expended for other law-enforcement purposes or operating  
76 needs of the sheriff's office, as the sheriff may consider  
77 appropriate.

78 (d) All persons applying for a license must complete a  
79 training course in handling and firing a handgun. The successful  
80 completion of any of the following courses fulfills this training  
81 requirement:

82 (1) Any official national rifle association handgun safety or  
83 training course;

84 (2) Any handgun safety or training course or class available  
85 to the general public offered by an official law-enforcement  
86 organization, community college, junior college, college or  
87 private or public institution or organization or handgun training  
88 school utilizing instructors duly certified by such institution;

89 (3) Any handgun training or safety course or class con-  
90 ducted by a handgun instructor certified as such by the state or  
91 by the national rifle association;

92 (4) Any handgun training or safety course or class con-  
93 ducted by any branch of the United States military, reserve or  
94 national guard.

95       A photocopy of a certificate of completion of any of the  
96 courses or classes or an affidavit from the instructor, school,  
97 club, organization or group that conducted or taught said course  
98 or class attesting to the successful completion of the course or  
99 class by the applicant or a copy of any document which shows  
100 successful completion of the course or class shall constitute  
101 evidence of qualification under this section.

102       (e) All concealed weapons license applications must be  
103 notarized by a notary public duly licensed under article four,  
104 chapter twenty-nine of this code. Falsification of any portion of  
105 the application constitutes false swearing and is punishable  
106 under the provisions of section two, article five, chapter sixty-  
107 one of this code.

108       (f) If the information in the application is found to be true  
109 and correct, the sheriff shall issue a license. The sheriff shall  
110 issue or deny the license within forty-five days after the  
111 application is filed if all required background checks authorized  
112 by this section are completed.

113       (g) Before any approved license shall be issued or become  
114 effective, the applicant shall pay to the sheriff a fee in the  
115 amount of fifteen dollars which the sheriff shall forward to the  
116 superintendent of the West Virginia state police within thirty  
117 days of receipt. Any such license shall be valid for five years  
118 throughout the state, unless sooner revoked.

119       (h) All persons holding a current and valid concealed  
120 weapons license as of the sixteenth day of December, one  
121 thousand nine hundred ninety-five, shall continue to hold a  
122 valid concealed weapons license until his or her license expires  
123 or is revoked as provided for in this article: *Provided*, That all  
124 reapplication fees shall be waived for applications received by  
125 the first day of January, one thousand nine hundred ninety-  
126 seven, for any person holding a current and valid concealed

127 weapons license as of the sixteenth day of December, one  
128 thousand nine hundred ninety-five, which contains use restric-  
129 tions placed upon the license as a condition of issuance by the  
130 issuing circuit court. Any licenses reissued pursuant to this  
131 subsection will be issued for the time period of the original  
132 license.

133 (i) Each license shall contain the full name, social security  
134 number and address of the licensee and a space upon which the  
135 signature of the licensee shall be signed with pen and ink. The  
136 issuing sheriff shall sign and attach his or her seal to all license  
137 cards. The sheriff shall provide to each new licensee a duplicate  
138 license card, in size similar to other state identification cards  
139 and licenses, suitable for carrying in a wallet, and such license  
140 card is deemed a license for the purposes of this section.

141 (j) The superintendent of the West Virginia state police  
142 shall prepare uniform applications for licenses and license cards  
143 showing that such license has been granted and shall do any  
144 other act required to be done to protect the state and see to the  
145 enforcement of this section.

146 (k) In the event an application is denied, the specific  
147 reasons for the denial shall be stated by the sheriff denying the  
148 application. Any person denied a license may file, in the circuit  
149 court of the county in which the application was made, a  
150 petition seeking review of the denial. Such petition shall be  
151 filed within thirty days of the denial. The court shall then  
152 determine whether the applicant is entitled to the issuance of a  
153 license under the criteria set forth in this section. The applicant  
154 may be represented by counsel, but in no case shall the court be  
155 required to appoint counsel for an applicant. The final order of  
156 the court shall include the court's findings of fact and conclu-  
157 sions of law. If the final order upholds the denial, the applicant  
158 may file an appeal in accordance with the rules of appellate  
159 procedure of the supreme court of appeals.

160 (l) In the event a license is lost or destroyed, the person to  
161 whom the license was issued may obtain a duplicate or substi-  
162 tute license for a fee of five dollars by filing a notarized  
163 statement with the sheriff indicating that the license has been  
164 lost or destroyed.

165 (m) The sheriff shall, immediately after the license is  
166 granted as aforesaid, furnish the superintendent of the West  
167 Virginia state police a certified copy of the approved applica-  
168 tion. It shall be the duty of the sheriff to furnish to the superin-  
169 tendent of the West Virginia state police at any time so re-  
170 quested a certified list of all such licenses issued in the county.  
171 The superintendent of the West Virginia state police shall  
172 maintain a registry of all persons who have been issued  
173 concealed weapons licenses.

174 (n) All licensees must carry with them a state-issued photo  
175 identification card with the concealed weapons license when-  
176 ever the licensee is carrying a concealed weapon. Any licensee  
177 who fails to have in his or her possession a state-issued photo  
178 identification card and a current concealed weapons license  
179 while carrying a concealed weapon shall be guilty of a misde-  
180 meanor and, upon conviction thereof, shall be fined not less  
181 than fifty or more than two hundred dollars for each offense.

182 (o) The sheriff shall deny any application or revoke any  
183 existing license upon determination that any of the licensing  
184 application requirements established in this section have been  
185 violated by the licensee.

186 (p) No person who is engaged in the receipt, review or in  
187 the issuance or revocation of a concealed weapon license shall  
188 incur any civil liability as the result of the lawful performance  
189 of his or her duties under this article.

190 (q) Notwithstanding the provisions of subsection (a) of this  
191 section, with respect to application by a former law-enforce-

192 ment officer honorably retired from agencies governed by  
193 article fourteen, chapter seven of this code; article fourteen,  
194 chapter eight of this code; article two, chapter fifteen of this  
195 code; and article seven, chapter twenty of this code, an honor-  
196 ably retired officer is exempt from payment of fees and costs as  
197 otherwise required by this section, and the application of the  
198 honorably retired officer shall be granted without proof or  
199 inquiry by the sheriff as to those requirements set forth in  
200 subdivision (9), subsection (a) of this section, if the officer  
201 meets the remainder of the requirements of this section and has  
202 the approval of the appropriate chief law-enforcement officer.

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## CHAPTER 16

**(H. B. 202 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed June 12, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nine-e, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount available from the consolidated fund as a revolving loan to the West Virginia economic development authority for the purpose of promoting certain business or industrial development projects.

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

That section nine-e, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.****§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.**

1 (a) The Legislature hereby finds and declares that the  
2 citizens of the state benefit from the creation of jobs and  
3 businesses within the state; that a business and industrial  
4 development loan program provides for economic growth and  
5 stimulation within the state; that loans from pools established  
6 in the consolidated fund will assist in providing the needed  
7 capital to assist business and industrial development; and that  
8 time constraints relating to business and industrial development  
9 projects prohibit duplicative review by both the board and the  
10 West Virginia economic development authority board. The  
11 Legislature further finds and declares that an investment in the  
12 West Virginia enterprise capital fund, LLC, of moneys in the  
13 consolidated fund as hereinafter provided will assist in creating  
14 jobs and businesses within the state and providing the needed  
15 risk capital to assist business and industrial development. This  
16 section is enacted in view of these findings.

17 (b) The board shall make available, subject to cash avail-  
18 ability, in the form of a revolving loan, up to one hundred  
19 seventy-five million dollars from the consolidated fund to loan  
20 the West Virginia economic development authority for business  
21 or industrial development projects authorized by section seven,  
22 article fifteen, chapter thirty-one of this code and to consolidate  
23 existing loans authorized to be made to the West Virginia  
24 economic development authority pursuant to this section and  
25 pursuant to section twenty, article fifteen, chapter thirty-one of  
26 this code which authorizes a one hundred fifty million dollar  
27 revolving loan, and article eighteen-b, chapter thirty-one of this  
28 code which authorizes a fifty million dollar investment pool:  
29 *Provided*, That the West Virginia economic development



30 authority may not loan more than fifteen million dollars for any  
31 one business or industrial development project. The revolving  
32 loan authorized by this subsection must be secured by one note  
33 at a variable interest rate equal to the twelve-month average of  
34 the board's yield on its cash liquidity pool. The rate must be set  
35 on the first day of July and the rate must be adjusted annually  
36 on the same date. The maximum annual adjustment may not  
37 exceed one percent. Monthly payments made by the West  
38 Virginia economic development authority to the board must be  
39 calculated on a one hundred twenty-month amortization. The  
40 revolving loan must be secured by a security interest that  
41 pledges and assigns the cash proceeds of collateral from all  
42 loans under this revolving loan pool. The West Virginia  
43 economic development authority may also pledge as collateral  
44 certain revenue streams from other revolving loan pools which  
45 source of funds does not originate from federal sources or from  
46 the board.

47       The outstanding principal balance of the revolving loan  
48 from the board to the West Virginia economic development  
49 authority may at no time exceed one hundred three percent of  
50 the aggregate outstanding principal balance of the business and  
51 industrial loans from the West Virginia economic development  
52 authority to economic development projects funded from this  
53 revolving loan pool. This provision must be certified annually  
54 by an independent audit of the West Virginia economic  
55 development authority financial records.

56       (c) The interest rates and maturity dates on the loans made  
57 by the West Virginia economic development authority for  
58 business and industrial development projects authorized by  
59 section seven, article fifteen, chapter thirty-one of this code  
60 must be at competitive rates and maturities as determined by  
61 the West Virginia economic development authority board.

62 (d) Any and all outstanding loans made by the board, or any  
63 predecessor entity, to the West Virginia economic development  
64 authority must be refunded by proceeds of the revolving loan  
65 contained in this section and no loans may be made hereafter by  
66 the board to the West Virginia economic development authority  
67 pursuant to section twenty, article fifteen, chapter thirty-one of  
68 this code or article eighteen-b of said chapter.

69 (e) The trustees of the board bear no fiduciary responsibility  
70 as provided in section eleven of this article with specific regard  
71 to the revolving loan contemplated in this section.

72 (f) Subject to cash availability, the board shall make  
73 available to the West Virginia economic development authority  
74 from the consolidated fund a nonrecourse loan in an amount up  
75 to twenty-five million dollars, for the purpose of the West  
76 Virginia economic development authority making a loan or  
77 loans from time to time to the West Virginia enterprise ad-  
78 vancement corporation, an affiliated nonprofit corporation of  
79 the West Virginia economic development authority. The  
80 respective loans authorized by this subsection by the board to  
81 the West Virginia economic development authority and by the  
82 West Virginia economic development authority to the West  
83 Virginia enterprise advancement corporation must each be  
84 evidenced by one note and must each bear interest at the rate of  
85 three percent per annum. The proceeds of any and all loans  
86 made by the West Virginia economic development authority to  
87 the West Virginia enterprise advancement corporation pursuant  
88 to this subsection must be invested by the West Virginia  
89 enterprise advancement corporation in the West Virginia  
90 enterprise capital fund, LLC, the manager of which is the West  
91 Virginia enterprise advancement corporation. The loan to West  
92 Virginia economic development authority authorized by this  
93 subsection must be nonrevolving, and advances thereunder  
94 must be made at times and in amounts as may be requested or

95 directed by the West Virginia economic development authority,  
96 upon reasonable notice to the board, the loan authorized by this  
97 subsection is not subject to or included in the limitations set  
98 forth in subsection (b) of this section with respect to the fifteen  
99 million dollar limitation for any one business or industrial  
100 development project and limitation of one hundred three  
101 percent of outstanding loans, and may not be included in the  
102 revolving fund loan principal balance for purposes of calculat-  
103 ing the loan amortization in subsection (b) of this section. The  
104 loan authorized by this subsection to the West Virginia eco-  
105 nomic development authority must be classified by the board as  
106 a long-term, fixed income investment, must bear interest on the  
107 outstanding principal balance thereof at the rate of three percent  
108 per annum payable annually on or before the thirtieth day of  
109 June of each year, and the principal of which must be repaid no  
110 later than the thirtieth day of June, two thousand twenty-two, in  
111 annual installments due on or before the thirtieth day of June of  
112 each year, which annual installments must commence no later  
113 than the thirtieth day of June, two thousand three, in annual  
114 principal amounts as may be agreed upon between the board  
115 and the West Virginia economic development authority, and  
116 which annual installments need not be equal. The loan autho-  
117 rized by this subsection must be nonrecourse and must be  
118 payable by the West Virginia economic development authority  
119 solely from amounts or returns received by the West Virginia  
120 economic development authority in respect of the loan autho-  
121 rized by this subsection to the West Virginia enterprise ad-  
122 vancement corporation, whether in the form of interest,  
123 dividends, realized capital gains, return of capital or otherwise,  
124 in all of which the board must have a security interest to secure  
125 repayment of the loan to the West Virginia economic develop-  
126 ment authority authorized by this subsection. Any and all loans  
127 from the West Virginia economic development authority to the  
128 West Virginia enterprise advancement corporation made

129 pursuant to this subsection must also bear interest on the  
130 outstanding principal balance thereof at the rate of three percent  
131 per annum payable annually on or before the thirtieth day of  
132 June of each year, must be nonrecourse and must be payable by  
133 the West Virginia enterprise advancement corporation solely  
134 from amounts of returns received by the West Virginia enter-  
135 prise advancement corporation in respect of its investment in  
136 the West Virginia enterprise capital fund, LLC, whether in the  
137 form of interest, dividends, realized capital gains, return of  
138 capital or otherwise, in all of which the board must have a  
139 security interest to secure repayment of the loan to the West  
140 Virginia economic development authority authorized by this  
141 subsection. In the event the amounts or returns received by the  
142 West Virginia enterprise advancement corporation in respect of  
143 its investment in the West Virginia enterprise capital fund,  
144 LLC, are not adequate to pay when due the principal or interest  
145 installments, or both, with respect to the loan from the West  
146 Virginia economic development authority and, as a result  
147 thereof, the West Virginia economic development authority is  
148 unable to pay the principal or interest installments, or both, with  
149 respect to the loan authorized by this subsection by the board to  
150 the West Virginia economic development authority, the  
151 principal or interest, or both, as the case may be due on the loan  
152 made to the West Virginia economic development authority  
153 pursuant to this subsection must be deferred, and any and all of  
154 these past-due principal and interest payments must promptly  
155 be paid to the fullest extent possible upon receipt by the West  
156 Virginia enterprise advancement corporation of moneys in  
157 respect of its investments in the West Virginia enterprise capital  
158 fund, LLC. The trustees or the board bear no fiduciary responsi-  
159 bility as provided in section eleven of this article with regard to  
160 the loan authorized by this subsection.

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## CHAPTER 17

**(S. B. 2010 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]**

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, six, seven, eight, nine, ten, twelve, fourteen, fifteen, seventeen and nineteen, article twenty-two, chapter seven of said code; to amend and reenact sections two, three, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and nineteen, article thirty-eight, chapter eight of said code; to amend and reenact section eleven-a, article ten, chapter eleven of said code; to amend and reenact section thirty-two, article fifteen-b of said chapter; and to further amend said article by adding thereto four new sections, designated sections thirty-three, thirty-four, thirty-five and thirty-six, all relating generally to creation and administration of economic opportunity districts by county commissions and Class I and II municipalities and the imposition, administration and collection of special district excise taxes to finance district economic development projects approved by council for community and economic development.

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

That section two, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, three, six, seven, eight, nine, ten, twelve, fourteen, fifteen, seventeen and nineteen, article

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

**Chapter**

- 5B. Economic Development Act of 1985.**
- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**
- 11. Taxation.**

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

**§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.**

1           (a) The council for community and economic development,  
 2 within the West Virginia development office, is a body corpo-  
 3 rate and politic, constituting a public corporation and govern-  
 4 ment instrumentality. Membership on the council consists of:

5           (1) No less than nine nor more than eleven members to be  
 6 appointed by the governor, with the advice and consent of the  
 7 Senate, representing community or regional interests, including  
 8 economic development, commerce, banking, manufacturing,  
 9 the utility industry, the mining industry, the telecommunica-  
 10 tions/data processing industry, small business, labor, tourism or  
 11 agriculture: *Provided*, That one member appointed pursuant to  
 12 this subsection shall be a member of a regional planning and  
 13 development council. Of the members representing community  
 14 or regional interests, there shall be at least three members from

15 each congressional district of the state and they shall be  
16 appointed in such a manner as to provide a broad geographical  
17 distribution of members of the council;

18 (2) Four at-large members to be appointed by the governor  
19 with the advice and consent of the Senate;

20 (3) One member to be appointed by the governor from a list  
21 of two persons recommended by the speaker of the House of  
22 Delegates: *Provided*, That on and after the effective date of the  
23 amendment and reenactment of this section in the year two  
24 thousand three, this subdivision shall be of no force or effect  
25 and the term of the member previously appointed pursuant to  
26 this subdivision shall expire;

27 (4) One member to be appointed by the governor from a list  
28 of two persons recommended by the president of the Senate:  
29 *Provided*, That on and after the effective date of the amendment  
30 and reenactment of this section in the year two thousand three,  
31 this subdivision shall be of no force or effect and the term of the  
32 member previously appointed pursuant to this subdivision shall  
33 expire;

34 (5) The president of the West Virginia economic develop-  
35 ment council; and

36 (6) The chair, or his or her designee, of the tourism com-  
37 mission created pursuant to the provisions of section eight of  
38 this article.

39 In addition, the president of the Senate and the speaker of  
40 the House of Delegates, or his or her designee, shall serve as ex  
41 officio nonvoting members.

42 (b) The governor shall appoint the appointed members of  
43 the council to four-year terms. Any member whose term has  
44 expired shall serve until his or her successor has been duly  
45 appointed and qualified. Any person appointed to fill a vacancy  
46 shall serve only for the unexpired term. Except as otherwise

47 provided in this section, any member is eligible for reappoint-  
48 ment. In cases of any vacancy in the office of a member, the  
49 vacancy shall be filled by the governor in the same manner as  
50 the original appointment.

51 (c) Members of the council are not entitled to compensation  
52 for services performed as members, but are entitled to reim-  
53 bursement for all reasonable and necessary expenses actually  
54 incurred in the performance of their duties. A majority of the  
55 voting members constitute a quorum for the purpose of con-  
56 ducting business. The council shall elect its chair for a term to  
57 run concurrent with the term of office of the member elected as  
58 chair. The chair is eligible for successive terms in that position.

59 (d) The council shall employ an executive director of the  
60 West Virginia development office who is qualified for the  
61 position by reason of his or her extensive education and  
62 experience in the field of professional economic development.  
63 The executive director shall serve at the will and pleasure of the  
64 council. The salary of the director shall be fixed by the council.  
65 The director shall have overall management responsibility and  
66 administrative control and supervision within the West Virginia  
67 development office. It is the intention of the Legislature that the  
68 director provide professional and technical expertise in the field  
69 of professional economic and tourism development in order to  
70 support the policy-making functions of the council, but that the  
71 director not be a public officer, agent, servant or contractor  
72 within the meaning of section thirty-eight, article VI of the  
73 constitution of West Virginia and not be a statutory officer  
74 within the meaning of section one, article two, chapter five-f of  
75 this code. Subject to the provisions of the contract provided in  
76 section four of this article, the director may hire and fire  
77 economic development representatives employed pursuant to  
78 the provisions of section five of this article.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**



**ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

- §7-22-2. Legislative findings and declaration of purpose.
- §7-22-3. Definitions.
- §7-22-6. Notice; hearing.
- §7-22-7. Application to council for community and economic development for approval of an economic development district project.
- §7-22-8. Establishment of the economic opportunity development district fund.
- §7-22-9. Authorization to levy special district excise tax.
- §7-22-10. Ordinance to create district as approved by council and authorized by the Legislature.
- §7-22-12. Special district excise tax authorized.
- §7-22-14. Modification of included area; notice; hearing.
- §7-22-15. Abolishment and dissolution of district; notice; hearing.
- §7-22-17. Security for bonds.
- §7-22-19. Refunding bonds.

**§7-22-2. Legislative findings and declaration of purpose.**

1       The Legislature finds that many significant business  
2 opportunities initiated within the counties of this state face  
3 financial and other economic obstacles. This adversely affects  
4 the economic and general well-being of the citizens of those  
5 counties.

6       The Legislature further finds that there are undeveloped,  
7 underdeveloped or seriously deteriorated development areas  
8 within certain counties of this state which are uniquely situated  
9 relative to large populations in other states or to other specific  
10 economic recreational or cultural activities or facilities which  
11 will attract large populations from this state and other states  
12 who would be likely to make substantial retail purchases of  
13 tangible personal property and services offered in modern and  
14 modernized structures and facilities constructed, supplemented,  
15 reconstructed or repaired in such undeveloped, underdeveloped  
16 or seriously deteriorated areas within certain counties of this  
17 state. The Legislature further finds that economic inducements  
18 provided by the state are necessary and appropriate to enable  
19 the construction, supplementation, reconstruction and repair of

20 such modern and modernized structures and facilities in such  
21 undeveloped, underdeveloped or seriously deteriorated areas  
22 within certain counties of this state. Establishment of economic  
23 opportunity development districts within counties of the state,  
24 in accordance with the purpose and powers set forth in this  
25 article, will serve a public purpose and promote the health,  
26 safety, prosperity, security and general welfare of all citizens in  
27 the state. It will also promote the establishment and vitality of  
28 significant business opportunities within counties while serving  
29 as an effective means for developing or restoring and promoting  
30 retail and other business activity within the economic opportu-  
31 nity development districts created herein. This will be of special  
32 benefit to the tax base of the counties within which any  
33 economic development district is created pursuant to this article  
34 and will specifically generate substantial incremental increases  
35 in excise taxes on sales within such economic opportunity  
36 development districts of tangible personal property and services  
37 and thereby and otherwise will stimulate economic growth and  
38 job creation.

### §7-22-3. Definitions.

1 For purposes of this article, the term:

2 (1) "Council" means the council for community and  
3 economic development established in section two, article two,  
4 chapter five-b of this code;

5 (2) "County commission" means the governing body of a  
6 county of this state;

7 (3) "Development expenditures" means payments for  
8 governmental functions, programs, activities, facility construc-  
9 tion, improvements and other goods and services which a  
10 district board is authorized to perform or provide under section  
11 five of this article;

12 (4) “District” means an economic opportunity development  
13 district created pursuant to this article;

14 (5) “District board” means a district board created pursuant  
15 to section ten of this article; and

16 (6) “Eligible property” means any taxable or exempt real  
17 property located in a district established pursuant to this article.

**§7-22-6. Notice; hearing.**

1 (a) *General.* — A county commission desiring to create an  
2 economic opportunity development district shall conduct a  
3 public hearing.

4 (b) *Notice of hearing.* — Notice of the public hearing shall  
5 be published as a Class I-0 legal advertisement in compliance  
6 with article three, chapter fifty-nine of this code at least twenty  
7 days prior to the scheduled hearing. In addition to the time and  
8 place of the hearing, the notice must also state:

9 (1) The purpose of the hearing;

10 (2) The name of the proposed district;

11 (3) The general purpose of the proposed district;

12 (4) The geographic boundaries of the property proposed to  
13 be included in the district; and

14 (5) The proposed method of financing any costs involved,  
15 including the base and rate of special district excise tax that  
16 may be imposed upon sales of tangible personal property and  
17 taxable services from business locations situated within the  
18 proposed district.

19 (c) *Opportunity to be heard.* — At the time and place set  
20 forth in the notice, the county commission shall afford the  
21 opportunity to be heard to any owner of real property situated  
22 in the proposed district and any residents of the county.

23 (d) *Application to council.* — If the county commission,  
24 following the public hearing, determines it advisable and in the  
25 public interest to establish an economic opportunity develop-  
26 ment district, it shall apply to the council for community and  
27 economic development for approval of the economic opportu-  
28 nity development district project pursuant to the procedures  
29 provided in section seven of this article.

**§7-22-7. Application to council for community and economic  
development for approval of an economic oppor-  
tunity development district project.**

1 (a) *General.* — The council for community and economic  
2 development shall receive and act on applications filed with it  
3 by county commissions pursuant to section six of this article.  
4 Each application must include:

5 (1) A true copy of the notice described in section six of this  
6 article;

7 (2) The total cost of the project;

8 (3) A reasonable estimate of the number of months needed  
9 to complete the project;

10 (4) A general description of the capital improvements,  
11 additional or extended services and other proposed develop-  
12 ment expenditures to be made in the district as part of the  
13 project;

14 (5) A description of the proposed method of financing the  
15 development expenditures, together with a description of the  
16 reserves to be established for financing ongoing development  
17 or redevelopment expenditures necessary to permanently  
18 maintain the optimum economic viability of the district  
19 following its inception: *Provided*, That the amounts of the  
20 reserves shall not exceed the amounts that would be required by  
21 ordinary commercial capital market considerations;

22 (6) A description of the sources and anticipated amounts of  
23 all financing, including, but not limited to, proceeds from the  
24 issuance of any bonds or other instruments, revenues from the  
25 special district excise tax and enhanced revenues from property  
26 taxes and fees;

27 (7) A description of the financial contribution of the county  
28 commission to the funding of development expenditures;

29 (8) Identification of any businesses that the county commis-  
30 sion expects to relocate their business locations from the district  
31 to another place in the state in connection with the establish-  
32 ment of the district or from another place in this state to the  
33 district: *Provided*, That for purposes of this article, any entities  
34 shall be designated “relocated entities”;

35 (9) Identification of any businesses currently conducting  
36 business in the proposed economic opportunity development  
37 district that the county commission expects to continue doing  
38 business there after the district is created;

39 (10) A good faith estimate of the aggregate amount of  
40 consumers sales and service tax that was actually remitted to  
41 the tax commissioner by all business locations identified as  
42 provided in subdivisions (8) and (9) of this subsection with  
43 respect to their sales made and services rendered from their  
44 then current business locations that will be relocated from, or  
45 to, or remain in the district, for the twelve full calendar months  
46 next preceding the date of the application: *Provided*, That for  
47 purposes of this article, the aggregate amount is designated as  
48 “the base tax revenue amount”;

49 (11) A good faith estimate of the gross annual district tax  
50 revenue amount;

51 (12) The proposed application of any surplus from all  
52 funding sources to further the objectives of this article;

53 (13) The tax commissioner's certification of: (i) The  
54 amount of consumers sales and service taxes collected from  
55 businesses located in the economic opportunity district during  
56 the twelve calendar months preceding the calendar quarter  
57 during which the application will be submitted to the council;  
58 (ii) the estimated amount of economic opportunity district  
59 excise tax that will be collected during the first twelve months  
60 after the month in which the tax commissioner would first begin  
61 to collect that tax; and (iii) the estimated amount of economic  
62 opportunity district excise tax that will be collected during the  
63 first thirty-six months after the month in which the tax commis-  
64 sioner would first begin to collect that tax; and

65 (14) Any additional information the council may require.

66 (b) *Review of applications.* — The council shall review all  
67 project proposals for conformance to statutory and regulatory  
68 requirements, the reasonableness of the project's budget and  
69 timetable for completion, and the following criteria:

70 (1) The quality of the proposed project and how it addresses  
71 economic problems in the area in which the project will be  
72 located;

73 (2) The merits of the project determined by a cost-benefit  
74 analysis that incorporates all costs and benefits, both public and  
75 private;

76 (3) Whether the project is supported by significant private  
77 sector investment and substantial credible evidence that but for  
78 the existence of sales tax increment financing the project would  
79 not be feasible;

80 (4) Whether the economic opportunity district excise tax  
81 dollars will leverage or be the catalyst for the effective use of  
82 private, other local government, state or federal funding that is  
83 available;

- 84       (5) Whether there is substantial and credible evidence that  
85 the project is likely to be started and completed in a timely  
86 fashion;
- 87       (6) Whether the project will, directly or indirectly, improve  
88 the opportunities, in the area where the project will be located,  
89 for the successful establishment or expansion of other industrial  
90 or commercial businesses;
- 91       (7) Whether the project will, directly or indirectly, assist in  
92 the creation of additional long-term employment opportunities  
93 in the area and the quality of jobs created in all phases of the  
94 project, to include, but not be limited to, wages and benefits;
- 95       (8) Whether the project will fulfill a pressing need for the  
96 area, or part of the area, in which the economic opportunity  
97 district is located;
- 98       (9) Whether the county commission has a strategy for  
99 economic development in the county and whether the project is  
100 consistent with that strategy;
- 101       (10) Whether the project helps to diversify the local  
102 economy;
- 103       (11) Whether the project is consistent with the goals of this  
104 article;
- 105       (12) Whether the project is economically and fiscally sound  
106 using recognized business standards of finance and accounting;  
107 and
- 108       (13) The ability of the county commission and the project  
109 developer or project team to carry out the project: *Provided*,  
110 That no project may be approved by the council unless the  
111 amount of all development expenditures proposed to be made  
112 in the first twenty-four months following the creation of the  
113 district results in capital investment of more than fifty million  
114 dollars in the district and the county submits clear and convinc-  
115 ing information, to the satisfaction of the council, that such

116 investment will be made if the council approves the project and  
117 the Legislature authorizes the county commission to levy an  
118 excise tax on sales of goods and services made within the  
119 economic opportunity district as provided in this article.

120 (c) *Additional criteria.* — The council for community and  
121 economic development may establish other criteria for consid-  
122 eration when approving the applications.

123 (d) *Action on the application.* — The council for commu-  
124 nity and economic development shall act to approve or not  
125 approve any application within thirty days following the receipt  
126 of the application or the receipt of any additional information  
127 requested by the council, whichever is the later.

128 (e) *Certification of project.* -- If the council for community  
129 and economic development approves a county's economic  
130 opportunity district project application, it shall issue to the  
131 county commission a written certificate evidencing the ap-  
132 proval.

133 The certificate shall expressly state a base tax revenue  
134 amount, the gross annual district tax revenue amount and the  
135 estimated net annual district tax revenue amount which, for  
136 purposes of this article, is the difference between the gross  
137 annual district tax revenue amount and the base tax revenue  
138 amount, all of which the council has determined with respect to  
139 the district's application based on any investigation it considers  
140 reasonable and necessary, including, but not limited to, any  
141 relevant information the council for community and economic  
142 development requests from the tax commissioner and the tax  
143 commissioner provides to the council: *Provided*, That in  
144 determining the net annual district tax revenue amount, the  
145 council may not use a base tax revenue amount less than that  
146 amount certified by the tax commissioner but, in lieu of  
147 confirmation from the tax commissioner of the gross annual  
148 district tax revenue amount, the council may use the estimate of



149 the gross annual district tax revenue amount provided by the  
150 county commission pursuant to subsection (a) of this section.

151 (f) *Certification of enlargement of geographic boundaries*  
152 *of previously certified district.* -- If the council for community  
153 and economic development approves a county's economic  
154 opportunity district project application to expand the geo-  
155 graphic boundaries of a previously certified district, it shall  
156 issue to the county commission a written certificate evidencing  
157 the approval.

158 The certificate shall expressly state a base tax revenue  
159 amount, the gross annual district tax revenue amount and the  
160 estimated net annual district tax revenue amount which, for  
161 purposes of this article, is the difference between the gross  
162 annual district tax revenue amount and the base tax revenue  
163 amount, all of which the council has determined with respect to  
164 the district's application based on any investigation it considers  
165 reasonable and necessary, including, but not limited to, any  
166 relevant information the council requests from the tax commis-  
167 sioner and the tax commissioner provides to the council:  
168 *Provided*, That in determining the net annual district tax  
169 revenue amount, the council may not use a base tax revenue  
170 amount less than that amount certified by the tax commissioner  
171 but, in lieu of confirmation from the tax commissioner of the  
172 gross annual district tax revenue amount, the council may use  
173 the estimate of the gross annual district tax revenue amount  
174 provided by the county commission pursuant to subsection (a)  
175 of this section.

176 (g) *Promulgation of rules.* -- The council for community  
177 and economic development may promulgate rules to implement  
178 the economic opportunity development district project applica-  
179 tion approval process and to describe the criteria and proce-  
180 dures it has established in connection therewith. These rules are  
181 not subject to the provisions of chapter twenty-nine-a of this  
182 code but shall be filed with the secretary of state.

**§7-22-8. Establishment of the economic opportunity development district fund.**

1       (a) *General.* -- There is hereby created a special revenue  
2 account in the state treasury designated the “economic opportu-  
3 nity development district fund” which is an interest-bearing  
4 account and shall be invested in the manner described in section  
5 nine-c, article six, chapter twelve of this code with the interest  
6 income a proper credit to the fund.

7       (b) *District subaccount.* -- A separate and segregated  
8 subaccount within the account shall be established for each  
9 economic opportunity development district that is approved by  
10 the council. In addition to the economic opportunity district  
11 excise tax levied and collected as provided in this article, funds  
12 paid into the account for the credit of any subaccount may also  
13 be derived from the following sources:

14       (1) All interest or return on the investment accruing to the  
15 subaccount;

16       (2) Any gifts, grants, bequests, transfers, appropriations or  
17 donations which are received from any governmental entity or  
18 unit or any person, firm, foundation or corporation; and

19       (3) Any appropriations by the Legislature which are made  
20 for this purpose.

**§7-22-9. Authorization to levy special district excise tax.**

1       (a) *General.* -- County commissions have no inherent  
2 authority to levy taxes and have only that authority expressly  
3 granted to them by the Legislature. The Legislature is specifi-  
4 cally extended, and intends by this article, to exercise certain  
5 relevant powers expressed in section six-a, article X of the  
6 constitution of this state as follows: (1) The Legislature may  
7 appropriate state funds for use in matching or maximizing  
8 grants-in-aid for public purposes from the United States or any

9 department, bureau, commission or agency thereof, or any other  
10 source, to any county, municipality or other political subdivi-  
11 sion of the state, under such circumstances and subject to such  
12 terms, conditions and restrictions as the Legislature may  
13 prescribe by law; and (2) the Legislature may impose a state tax  
14 or taxes or dedicate a state tax or taxes or any portion thereof  
15 for the benefit of and use by counties, municipalities or other  
16 political subdivisions of the state for public purposes, the  
17 proceeds of any such imposed or dedicated tax or taxes or  
18 portion thereof to be distributed to such counties, municipalities  
19 or other political subdivisions of the state under such circum-  
20 stances and subject to such terms, conditions and restrictions as  
21 the Legislature may prescribe.

22 Because a special district excise tax would have the effect  
23 of diverting, for a specified period of years, tax dollars which  
24 to the extent, if any, are not essentially incremental to tax  
25 dollars currently paid into the general revenue fund of the state,  
26 the Legislature finds that in order to substantially ensure that  
27 such special district excise taxes will not adversely impact the  
28 current level of the general revenue fund of the state, it is  
29 necessary for the Legislature to separately consider and act  
30 upon each and every economic development district which is  
31 proposed, including the unique characteristics of location,  
32 current condition and activity of and within the area included in  
33 such proposed economic opportunity development district and  
34 that for such reasons a statute more general in ultimate applica-  
35 tion is not feasible for accomplishment of the intention and  
36 purpose of the Legislature in enacting this article. Therefore, no  
37 economic opportunity development district excise tax may be  
38 levied by a county commission until after the Legislature  
39 expressly authorizes the county commission to levy a special  
40 district excise tax on sales of tangible personal property and  
41 services made within district boundaries approved by the  
42 Legislature.

43 (b) *Authorizations.* — The Legislature authorizes the  
44 following county commission to levy special district excise  
45 taxes on sales of tangible personal property and services made  
46 from business locations in the following economic opportunity  
47 development districts.

48 The Ohio County commission may levy a special district  
49 excise tax for the benefit of the “Fort Henry” economic  
50 opportunity development project district which comprises three  
51 hundred contiguous acres of land.

**§7-22-10. Ordinance to create district as approved by council and  
authorized by the Legislature.**

1 (a) *General.* — If an economic opportunity development  
2 district project has been approved by the council and the  
3 levying of a special district excise tax for the district has been  
4 authorized by the Legislature, all in accordance with this article,  
5 the county commission may create the district by order entered  
6 of record as provided in article one of this chapter: *Provided,*  
7 That the county commission may not amend, alter or change in  
8 any manner the boundaries of the economic opportunity  
9 development district authorized by the Legislature. In addition  
10 to all other requirements, the order shall contain the following:

11 (1) The name of the district and a description of its bound-  
12 aries;

13 (2) A summary of any proposed services to be provided and  
14 capital improvements to be made within the district and a  
15 reasonable estimate of any attendant costs;

16 (3) The base and rate of any special district excise tax that  
17 may be imposed upon sales by businesses for the privilege of  
18 operating within the district, which tax shall be passed on to and  
19 paid by the consumer, and the manner in which the taxes will  
20 be imposed, administered and collected, all of which shall be in  
21 conformity with the requirements of this article; and

22           (4) The district board members' terms, their method of  
23 appointment and a general description of the district board's  
24 powers and duties, which powers may include the authority:

25           (A) To make and adopt all necessary bylaws and rules for  
26 its organization and operations not inconsistent with any  
27 applicable laws;

28           (B) To elect its own officers, to appoint committees and to  
29 employ and fix compensation for personnel necessary for its  
30 operations;

31           (C) To enter into contracts with any person, agency,  
32 government entity, agency or instrumentality, firm, partnership,  
33 limited partnership, limited liability company or corporation,  
34 including both public and private corporations, and for-profit  
35 and not-for-profit organizations and generally to do any and all  
36 things necessary or convenient for the purpose of promoting,  
37 developing and advancing the purposes described in section two  
38 of this article;

39           (D) To amend or supplement any contracts or leases or to  
40 enter into new, additional or further contracts or leases upon the  
41 terms and conditions for consideration and for any term of  
42 duration, with or without option of renewal, as agreed upon by  
43 the district board and any person, agency, government entity,  
44 agency or instrumentality, firm, partnership, limited partner-  
45 ship, limited liability company or corporation;

46           (E) To, unless otherwise provided in, and subject to the  
47 provisions of any contracts or leases to operate, repair, manage  
48 and maintain buildings and structures and provide adequate  
49 insurance of all types and in connection with the primary use  
50 thereof and incidental thereto to provide services, such as retail  
51 stores and restaurants, and to effectuate incidental purposes,  
52 grant leases, permits, concessions or other authorizations to any  
53 person or persons upon the terms and conditions for consider-  
54 ation and for the term of duration as agreed upon by the district

55 board and any person, agency, governmental department, firm  
56 or corporation;

57 (F) To delegate any authority given to it by law to any of its  
58 officers, committees, agents or employees;

59 (G) To apply for, receive and use grants-in-aid, donations  
60 and contributions from any source or sources and to accept and  
61 use bequests, devises, gifts and donations from any person, firm  
62 or corporation;

63 (H) To acquire real property by gift, purchase or construc-  
64 tion or in any other lawful manner and hold title thereto in its  
65 own name and to sell, lease or otherwise dispose of all or part  
66 of any real property which it may own, either by contract or at  
67 public auction, upon the approval by the district board;

68 (I) To purchase or otherwise acquire, own, hold, sell, lease  
69 and dispose of all or part of any personal property which it may  
70 own, either by contract or at public auction;

71 (J) Pursuant to a determination by the district board that  
72 there exists a continuing need for redevelopment expenditures  
73 and that moneys or funds of the district are necessary therefor,  
74 to borrow money and execute and deliver the district's negotia-  
75 ble notes and other evidences of indebtedness therefor, on the  
76 terms as the district shall determine, and give security therefor  
77 as is requisite, including, without limitation, a pledge of the  
78 district's rights in its subaccount of the economic opportunity  
79 development district fund;

80 (K) To acquire (either directly or on behalf of the munici-  
81 pality) an interest in any entity or entities that own any real  
82 property situate in the district, to contribute capital to any entity  
83 or entities and to exercise the rights of an owner with respect  
84 thereto; and

85 (L) To expend its funds in the execution of the powers and  
86 authority given in this section, which expenditures, by the

87 means authorized in this section, are hereby determined and  
88 declared as a matter of legislative finding to be for a public  
89 purpose and use, in the public interest and for the general  
90 welfare of the people of West Virginia, to alleviate and prevent  
91 economic deterioration and to relieve the existing critical  
92 condition of unemployment existing within the state.

93 (b) *Additional contents of order.* — The county commis-  
94 sion's order shall also state the general intention of the county  
95 commission to develop and increase services and to make  
96 capital improvements within the district.

97 (c) *Mailing of certified copies of order.* — Upon entry of an  
98 order establishing an economic opportunity development  
99 district excise tax, a certified copy of the order shall be mailed  
100 to the state auditor, as ex officio the chief inspector and  
101 supervisor of public offices, the state treasurer and the tax  
102 commissioner.

#### §7-22-12. Special district excise tax authorized.

1 (a) *General.* — The county commission of a county,  
2 authorized by the Legislature to levy a special district excise tax  
3 for the benefit of an economic opportunity development district,  
4 may, by order entered of record, impose that tax on the privi-  
5 lege of selling tangible personal property and rendering select  
6 services in the district in accordance with this section.

7 (b) *Tax base.* — The base of a special district excise tax  
8 imposed pursuant to this section shall be identical to the base of  
9 the consumers sales and service tax imposed pursuant to article  
10 fifteen, chapter eleven of this code on sales made and services  
11 rendered within the boundaries of the district: *Provided*, That  
12 except for the exemption provided in section nine-f of said  
13 article, all exemptions and exceptions from the consumers sales  
14 and service tax shall also apply to the special district excise tax  
15 and sales of gasoline and special fuel shall not be subject to

16 special district excise tax but shall remain subject to the tax  
17 levied by said article fifteen.

18 (c) *Tax rate.* — The rate of a special district excise tax  
19 levied pursuant to this section shall be stated in an order entered  
20 of record by the county commission and equal to the general  
21 rate of tax on each dollar of gross proceeds from sales of  
22 tangible personal property and services subject to the tax levied  
23 by section three, article fifteen, chapter eleven of this code. The  
24 tax on fractional parts of a dollar shall be levied and collected  
25 in conformity with the provision of said section.

26 (d) *Collection by tax commissioner.* — The order of the  
27 county commission imposing a special district excise tax shall  
28 provide for the tax to be collected by the tax commissioner in  
29 the same manner as the tax levied by section three, article  
30 fifteen, chapter eleven of this code is administered, assessed,  
31 collected and enforced.

32 (e) *Deposit of net tax collected.* —

33 (1) The order of the county commission imposing a special  
34 district excise tax shall provide that the tax commissioner  
35 deposit the net amount of tax collected in the special economic  
36 opportunity development district fund to the credit of the  
37 county commission's subaccount therein for the economic  
38 opportunity development district and that the money in the  
39 subaccount may only be used to pay for development expendi-  
40 tures as provided in this article except as provided in subsection  
41 (f) of this section.

42 (2) The state treasurer shall withhold from the county  
43 commission's subaccount in the economic opportunity develop-  
44 ment district fund and shall deposit in the general revenue fund  
45 of this state, on or before the twentieth day of each calendar  
46 month next following the effective date of a special district  
47 excise tax, a sum equal to one twelfth of the base tax revenue



48 amount last certified by the council pursuant to section seven of  
49 this article.

50 (f) *Effective date of special district excise tax.* — Any taxes  
51 imposed pursuant to the authority of this section shall be  
52 effective on the first day of the calendar month that begins sixty  
53 days after the date of adoption of an order entered of record  
54 imposing the tax or the first day of any later calendar month  
55 expressly designated in the order.

56 (g) *Copies of order.* — Upon entry of an order levying a  
57 special district excise tax, a certified copy of the order shall be  
58 mailed to the state auditor, as ex officio the chief inspector and  
59 supervisor of public offices, the state treasurer and the tax  
60 commissioner.

#### §7-22-14. Modification of included area; notice; hearing.

1 (a) *General.* — The order creating an economic opportunity  
2 development district may not be amended to include additional  
3 contiguous property until after the amendment is approved by  
4 the council in the same manner as an application to approve the  
5 establishment of the district is acted upon under section seven  
6 of this article and the amendment is authorized by the Legisla-  
7 ture.

8 (b) *Limitations.* — Additional property may not be included  
9 in the district unless it is situated within the boundaries of the  
10 county and is contiguous to the then current boundaries of the  
11 district.

12 (c) *Public hearing required.* —

13 (1) The county commission of any county desiring to  
14 amend its order shall designate a time and place for a public  
15 hearing upon the proposal to include additional property. The  
16 notice shall meet the requirements set forth in section six of this  
17 article.

18       (2) At the time and place set forth in the notice, the county  
19 commission shall afford the opportunity to be heard to any  
20 owners of real property either currently included in or proposed  
21 to be added to the existing district and to any other residents of  
22 the county.

23       (d) *Application to council.* -- Following the hearing, the  
24 county commission may, by resolution, apply to the council for  
25 community and economic development to approve inclusion of  
26 the additional property in the district.

27       (e) *Consideration by council.* -- Before the council for  
28 community and economic development approves inclusion of  
29 the additional property in the district, the council shall deter-  
30 mine the amount of taxes levied by article fifteen, chapter  
31 eleven of this code that were collected by businesses located in  
32 the area the county commission proposes to add to the district  
33 in the same manner as the base amount of tax was determined  
34 when the district was first created. The state treasurer shall also  
35 deposit one twelfth of this additional tax base amount into the  
36 general revenue fund each month, as provided in section twelve  
37 of this article.

38       (f) *Legislative action required.* -- After the council ap-  
39 proves amending the boundaries of the district, the Legislature  
40 must amend section nine of this article to allow levy of the  
41 special district excise tax on business located in geographic area  
42 to be included in the district. After the Legislature amends said  
43 section, the county commission may then amend its order:  
44 *Provided, That the order may not be effective any earlier than*  
45 *the first day of the calendar month that begins sixty days after*  
46 *the effective date of the act of the Legislature authorizing the*  
47 *levy on the special district excise tax on businesses located in*  
48 *the geographic area to be added to the boundaries of the district*  
49 *for which the tax is levied or a later date as set forth in the order*  
50 *of the county commission.*

51 (g) *Collection of special district excise tax.* — All busi-  
52 nesses included in a district because of the boundary amend-  
53 ment shall on the effective date of the order, determined as  
54 provided in subsection (f) of this section, collect the special  
55 district excise tax on all sales on tangible property or services  
56 made from locations in the district on or after the effective date  
57 of the county commission's order or a later date as set forth in  
58 the order.

**§7-22-15. Abolishment and dissolution of district; notice; hearing.**

1 (a) *General.* — Except upon the express written consent of  
2 the council for community and economic development and of  
3 all the holders or obligees of any indebtedness or other instru-  
4 ments the proceeds of which were applied to any development  
5 or redevelopment expenditures or any indebtedness the pay-  
6 ment of which is secured by revenues payable into the fund  
7 provided under section eight of this article or by any public  
8 property, a district may only be abolished by the county  
9 commission when there is no outstanding indebtedness, the  
10 proceeds of which were applied to any development or redevel-  
11 opment expenditures or the payment of which is secured by  
12 revenues payable into the fund provided under section eight of  
13 this article, or by any public property, and following a public  
14 hearing upon the proposed abolishment.

15 (b) *Notice of public hearing.* — Notice of the public hearing  
16 required by subsection (a) of this section shall be provided by  
17 first-class mail to all owners of real property within the district  
18 and shall be published as a Class I-0 legal advertisement in  
19 compliance with article three, chapter fifty-nine of this code at  
20 least twenty days prior to the public hearing.

21 (c) *Transfer of district assets and funds.* — Upon the  
22 abolishment of any economic opportunity development district,  
23 any funds or other assets, contractual rights or obligations,  
24 claims against holders of indebtedness or other financial

25 benefits, liabilities or obligations existing after full payment has  
26 been made on all existing contracts, bonds, notes or other  
27 obligations of the district are transferred to and assumed by the  
28 county commission. Any funds or other assets transferred shall  
29 be used for the benefit of the area included in the district being  
30 abolished.

31 (d) *Reinstatement of district.* -- Following abolishment of  
32 a district pursuant to this section, its reinstatement requires  
33 compliance with all requirements and procedures set forth in  
34 this article for the initial development, approval, establishment  
35 and creation of an economic opportunity development district.

**§7-22-17. Security for bonds.**

1 (a) *General.* -- Unless the county commission shall  
2 otherwise determine in the resolution authorizing the issuance  
3 of the bonds or notes under the authority of this article, there is  
4 hereby created a statutory lien upon the subaccount created  
5 pursuant to section eight of this article and all special district  
6 excise tax revenues collected for the benefit of the district  
7 pursuant to section eleven-a, article ten, chapter eleven of this  
8 code for the purpose of securing the principal of the bonds or  
9 notes and the interest thereon.

10 (b) *Security for debt service.* -- The principal of and interest  
11 on any bonds or notes issued under the authority of this article  
12 shall be secured by a pledge of the special district excise tax  
13 revenues derived from the economic opportunity development  
14 district project by the county commission issuing the bonds or  
15 notes to the extent provided in the resolution adopted by the  
16 county commission authorizing the issuance of the bonds or  
17 notes.

18 (c) *Trust indenture.* --

19 (1) In the discretion and at the option of the county com-  
20 mission, the bonds and notes may also be secured by a trust

21 indenture by and between the county commission and a  
22 corporate trustee, which may be a trust company or bank having  
23 trust powers, within or without the state of West Virginia.

24 (2) The resolution authorizing the bonds or notes and fixing  
25 the details thereof may provide that the trust indenture may  
26 contain provisions for the protection and enforcing the rights  
27 and remedies of the bondholders as are reasonable and proper,  
28 not in violation of law, including covenants setting forth the  
29 duties of the county commission in relation to the construction,  
30 acquisition or financing of an economic opportunity develop-  
31 ment district project, or part thereof or an addition thereto, and  
32 the improvement, repair, maintenance and insurance thereof  
33 and for the custody, safeguarding and application of all moneys  
34 and may provide that the economic opportunity development  
35 district project shall be constructed and paid for under the  
36 supervision and approval of the consulting engineers or  
37 architects employed and designated by the county commission  
38 or, if directed by the county commission in the resolution, by  
39 the district board, and satisfactory to the purchasers of the  
40 bonds or notes, their successors, assigns or nominees who may  
41 require the security given by any contractor or any depository  
42 of the proceeds of the bonds or notes or the revenues received  
43 from the district project be satisfactory to the purchasers, their  
44 successors, assigns or nominees.

45 (3) The indenture may set forth the rights and remedies of  
46 the bondholders, the county commission or trustee and the  
47 indenture may provide for accelerating the maturity of the  
48 revenue bonds, at the option of the bondholders or the county  
49 commission issuing the bonds, upon default in the payment of  
50 the amounts due under the bonds.

51 (4) The county commission may also provide by resolution  
52 and in the trust indenture for the payment of the proceeds of the  
53 sale of the bonds or notes and the revenues from the economic  
54 opportunity development district project to any depository it

55 determines, for the custody and investment thereof and for the  
56 method of distribution thereof, with safeguards and restrictions  
57 it determines to be necessary or advisable for the protection  
58 thereof and upon the filing of a certified copy of the resolution  
59 or of the indenture for record in the office of the clerk of the  
60 county commission of the county in which the economic  
61 opportunity development project is located, the resolution has  
62 the same effect, as to notice, as the recordation of a deed of  
63 trust or other recordable instrument.

64 (5) In the event that more than one certified resolution or  
65 indenture is recorded, the security interest granted by the first  
66 recorded resolution or indenture has priority in the same  
67 manner as an earlier filed deed of trust except to the extent the  
68 earlier recorded resolution or indenture provides otherwise.

69 (d) *Mortgage or deed of trust.* —

70 (1) In addition to or in lieu of the indenture provided in  
71 subsection (c) of this section, the principal of and interest on the  
72 bonds or notes may, but need not, be secured by a mortgage or  
73 deed of trust covering all or any part of the economic opportu-  
74 nity development district project from which the revenues  
75 pledged are derived and the same may be secured by an  
76 assignment or pledge of the income received from the economic  
77 opportunity development district project.

78 (2) The proceedings under which bonds or notes are  
79 authorized to be issued, when secured by a mortgage or deed of  
80 trust, may contain the same terms, conditions and provisions  
81 provided for herein when an indenture is entered into between  
82 the county commission and a trustee and any mortgage or deed  
83 of trust may contain any agreements and provisions customarily  
84 contained in instruments securing bonds or notes, including,  
85 without limiting the generality of the foregoing, provisions  
86 respecting the fixing and collection of revenues from the  
87 economic opportunity development district project covered by

88 the proceedings or mortgage, the terms to be incorporated in  
89 any lease, sale or financing agreement with respect to the  
90 economic opportunity development district project, the im-  
91 provement, repair, maintenance and insurance of the economic  
92 opportunity district project, the creation and maintenance of  
93 special funds from the revenues received from the economic  
94 opportunity development district project and the rights and  
95 remedies available in event of default to the bondholders or  
96 note holders, the county commission, or to the trustee under an  
97 agreement, indenture, mortgage or deed of trust, all as the  
98 county commission body considers advisable and shall not be  
99 in conflict with the provisions of this article or any existing law:  
100 *Provided*, That in making any agreements or provisions, a  
101 county commission shall not have the power to incur original  
102 indebtedness by indenture, order, resolution, mortgage or deed  
103 of trust except with respect to the economic opportunity  
104 development district project and the application of the revenues  
105 therefrom and shall not have the power to incur a pecuniary  
106 liability or a charge upon its general credit or against its taxing  
107 powers unless approved by the voters in accordance with article  
108 one, chapter thirteen of this code or as otherwise permitted by  
109 the constitution of this state.

110 (e) *Enforcement of obligations.* —

111 (1) The proceedings authorizing any bonds and any  
112 indenture, mortgage or deed of trust securing the bonds may  
113 provide that, in the event of default in payment of the principal  
114 of or the interest on the bonds, or notes, or in the performance  
115 of any agreement contained in the proceedings, indenture,  
116 mortgage or deed of trust, payment and performance may be  
117 enforced by the appointment of a receiver in equity with power  
118 to charge and collect rents or other amounts and to apply the  
119 revenues from the economic opportunity development district  
120 project in accordance with the proceedings or the provisions of  
121 the agreement, indenture, mortgage or deed of trust.

122 (2) Any agreement, indenture, mortgage or deed of trust  
123 may provide also that, in the event of default in payment or the  
124 violation of any agreement contained in the mortgage or deed  
125 of trust, the agreement, indenture, mortgage or deed of trust  
126 may be foreclosed either by sale at public outcry or by proceed-  
127 ings in equity and may provide that the holder or holders of any  
128 of the bonds secured thereby may become the purchaser at any  
129 foreclosure sale, if the highest bidder therefor.

130 (f) *No pecuniary liability.* -- No breach of any agreement,  
131 indenture, mortgage or deed of trust shall impose any pecuniary  
132 liability upon a county or any charge upon its general credit or  
133 against its taxing powers.

**§7-22-19. Refunding bonds.**

1 (a) Any bonds issued under this article and at any time  
2 outstanding may at any time, and from time to time, be re-  
3 funded by a county commission by the issuance of its refunding  
4 bonds in amount as the county commission considers necessary  
5 to refund the principal of the bonds to be refunded, together  
6 with any unpaid interest thereon; to make any improvements or  
7 alterations in the economic opportunity development district  
8 project; and any premiums and commissions necessary to be  
9 paid in connection therewith.

10 (b) Any refunding may be effected whether the bonds to be  
11 refunded shall have then matured or shall thereafter mature,  
12 either by sale of the refunding bonds and the application of the  
13 proceeds thereof for the redemption of the bonds to be refunded  
14 thereby, or by exchange of the refunding bonds for the bonds to  
15 be refunded thereby: *Provided*, That the holders of any bonds  
16 to be refunded shall not be compelled without their consent to  
17 surrender their bonds for payment or exchange prior to the date  
18 on which they are payable or, if they are called for redemption,  
19 prior to the date on which they are by their terms subject to  
20 redemption.



21 (c) Any refunding bonds issued under the authority of this  
 22 article is subject to the provisions contained in section sixteen  
 23 of this article and shall be secured in accordance with the  
 24 provisions of section seventeen of this article.

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

- §8-38-2. Legislative findings and declaration of purpose.
- §8-38-3. Definitions.
- §8-38-6. Notice; hearing.
- §8-38-7. Application to council for community and economic development for approval of an economic development district project.
- §8-38-8. Establishment of the economic opportunity development district fund.
- §8-38-9. Authorization to levy special district excise tax.
- §8-38-10. Ordinance to create district as approved by council and authorized by the Legislature.
- §8-38-11. District board; duties.
- §8-38-12. Special district excise tax authorized.
- §8-38-14. Modification of included area; notice; hearing.
- §8-38-15. Abolishment and dissolution of district; notice; hearing.
- §8-38-16. Bonds issued to finance economic opportunity development district projects.
- §8-38-17. Security for bonds.
- §8-38-19. Refunding bonds.

**§8-38-2. Legislative findings and declaration of purpose.**

1 The Legislature finds that many significant business  
 2 opportunities initiated within municipalities of this state face  
 3 financial and other economic obstacles.

4 The Legislature further finds that there are undeveloped,  
 5 underdeveloped or seriously deteriorated development areas  
 6 within certain municipalities of this state which are uniquely  
 7 situated relative to large populations in other states or to other  
 8 specific economic recreational or cultural activities or facilities  
 9 which will attract large populations from this state and other  
 10 states who would be likely to make substantial retail purchases  
 11 of tangible personal property and services offered in modern

12 and modernized structures and facilities constructed, supple-  
13 mented, reconstructed or repaired in such undeveloped,  
14 underdeveloped or seriously deteriorated areas within certain  
15 municipalities of this state. The Legislature further finds that  
16 economic inducements provided by the state are necessary and  
17 appropriate to enable the construction, supplementation,  
18 reconstruction and repair of such modern and modernized  
19 structures and facilities in such undeveloped, underdeveloped  
20 or seriously deteriorated areas within certain municipalities of  
21 this state. This adversely affects the economic and general well-  
22 being of the citizens of those municipalities. Establishment of  
23 economic opportunity development districts within municipali-  
24 ties of the state, in accordance with the purpose and powers set  
25 forth in this article, will serve a public purpose and promote the  
26 health, safety, prosperity, security and general welfare of all  
27 citizens in the state. It will also promote the establishment and  
28 vitality of significant business opportunities within those  
29 municipalities while serving as an effective means for develop-  
30 ing or restoring and promoting retail and other business activity  
31 within the economic opportunity development districts created  
32 herein. This will be of special benefit to the tax base of the  
33 municipalities within which any economic development district  
34 is created pursuant to this article and will specifically generate  
35 substantial incremental increases in excise taxes on sales within  
36 such economic opportunity development districts of tangible  
37 personal property and services and thereby and otherwise will  
38 stimulate economic growth and job creation.

### §8-38-3. Definitions.

1 For purposes of this article, the term:

2 (1) "Council" means the council for community and  
3 economic development established in section two, article two,  
4 chapter five-b of this code;

5 (2) "Development expenditures" means payments for  
6 governmental functions, programs, activities, facility construc-  
7 tion, improvements and other goods and services which a  
8 district board is authorized to perform or provide under section  
9 five of this article;

10 (3) "District" means an economic opportunity development  
11 district created pursuant to this article;

12 (4) "District board" means a district board created pursuant  
13 to section ten of this article;

14 (5) "Eligible property" means any taxable or exempt real  
15 property located in a district established pursuant to this article;  
16 and

17 (6) "Municipality" is a word of art and shall mean, for the  
18 purposes of this article, only Class I and Class II cities as  
19 classified in section three, article one of this chapter.

**§8-38-6. Notice; hearing.**

1 (a) *General.* -- A municipality desiring to create an  
2 economic opportunity development district shall conduct a  
3 public hearing.

4 (b) *Notice of hearing.* — Notice of the public hearing shall  
5 be published as a Class I-0 legal advertisement in compliance  
6 with article three, chapter fifty-nine of this code at least twenty  
7 days prior to the scheduled hearing. In addition to the time and  
8 place of the hearing, the notice must also state:

9 (1) The purpose of the hearing;

10 (2) The name of the proposed district;

11 (3) The general purpose of the proposed district;

12 (4) The geographic boundaries of the property proposed to  
13 be included in the district; and

14 (5) The proposed method of financing any costs involved,  
15 including the base and rate of special district excise tax that  
16 may be imposed upon sales of tangible personal property and  
17 taxable services from business locations situated within the  
18 proposed district.

19 (c) *Opportunity to be heard.* — At the time and place set  
20 forth in the notice, the municipality shall afford the opportunity  
21 to be heard to any owner of real property situated in the  
22 proposed district and any residents of the municipality.

23 (d) *Application to council.* — If the municipality, following  
24 the public hearing, determines it advisable and in the public  
25 interest to establish an economic opportunity development  
26 district, it shall apply to the council for community and eco-  
27 nomic development for approval of the economic opportunity  
28 development district project pursuant to the procedures pro-  
29 vided in section seven of this article.

**§8-38-7. Application to council for community and economic  
development for approval of an economic opportu-  
nity development district project.**

1 (a) *General.* — The council for community and economic  
2 development shall receive and act on applications filed with it  
3 by municipalities pursuant to section six of this article. Each  
4 application must include:

5 (1) A true copy of the notice described in section six of this  
6 article;

7 (2) The total cost of the project;

8 (3) A reasonable estimate of the number of months needed  
9 to complete the project;

10 (4) A general description of the capital improvements,  
11 additional or extended services and other proposed develop-

12 ment expenditures to be made in the district as part of the  
13 project;

14 (5) A description of the proposed method of financing the  
15 development expenditures, together with a description of the  
16 reserves to be established for financing ongoing development  
17 or redevelopment expenditures necessary to permanently  
18 maintain the optimum economic viability of the district  
19 following its inception: *Provided*, That the amounts of the  
20 reserves shall not exceed the amounts that would be required by  
21 ordinary commercial capital market considerations;

22 (6) A description of the sources and anticipated amounts of  
23 all financing, including, but not limited to, proceeds from the  
24 issuance of any bonds or other instruments, revenues from the  
25 special district excise tax and enhanced revenues from property  
26 taxes and fees;

27 (7) A description of the financial contribution of the  
28 municipality to the funding of development expenditures;

29 (8) Identification of any businesses that the municipality  
30 expects to relocate their business locations from the district to  
31 another place in the state in connection with the establishment  
32 of the district or from another place in this state to the district:  
33 *Provided*, That for purposes of this article, any entities shall be  
34 designated “relocated entities”;

35 (9) Identification of any businesses currently conducting  
36 business in the proposed economic opportunity development  
37 district that the municipality expects to continue doing business  
38 there after the district is created;

39 (10) A good faith estimate of the aggregate amount of  
40 consumers sales and service tax that was actually remitted to  
41 the tax commissioner by all business locations identified as  
42 provided in subdivisions (8) and (9) of this subsection with  
43 respect to their sales made and services rendered from their

44 then current business locations that will be relocated from, or  
45 to, or remain in the district, for the twelve full calendar months  
46 next preceding the date of the application: *Provided*, That for  
47 purposes of this article, the aggregate amount is designated as  
48 “the base tax revenue amount”;

49 (11) A good faith estimate of the gross annual district tax  
50 revenue amount;

51 (12) The proposed application of any surplus from all  
52 funding sources to further the objectives of this article;

53 (13) The tax commissioner’s certification of: (i) The  
54 amount of consumers sales and service taxes collected from  
55 businesses located in the economic opportunity district during  
56 the twelve calendar months preceding the calendar quarter  
57 during which the application will be submitted to the council;  
58 (ii) the estimated amount of economic opportunity district  
59 excise tax that will be collected during the first twelve months  
60 after the month in which the tax commissioner would first begin  
61 to collect that tax; and (iii) the estimated amount of economic  
62 opportunity district excise tax that will be collected during the  
63 first thirty-six months after the month in which the tax commis-  
64 sioner would first begin to collect that tax; and

65 (14) Any additional information the council may require.

66 (b) *Review of applications.* — The council shall review all  
67 project proposals for conformance to statutory and regulatory  
68 requirements, the reasonableness of the project’s budget and  
69 timetable for completion, and the following criteria:

70 (1) The quality of the proposed project and how it addresses  
71 economic problems in the area in which the project will be  
72 located;

73 (2) The merits of the project determined by a cost-benefit  
74 analysis that incorporates all costs and benefits, both public and  
75 private;

76 (3) Whether the project is supported by significant private  
77 sector investment and substantial credible evidence that but for  
78 the existence of sales tax increment financing the project would  
79 not be feasible;

80 (4) Whether the economic opportunity development district  
81 excise tax dollars will leverage or be the catalyst for the  
82 effective use of private, other local government, state or federal  
83 funding that is available;

84 (5) Whether there is substantial and credible evidence that  
85 the project is likely to be started and completed in a timely  
86 fashion;

87 (6) Whether the project will, directly or indirectly, improve  
88 the opportunities, in the area where the project will be located,  
89 for the successful establishment or expansion of other industrial  
90 or commercial businesses;

91 (7) Whether the project will, directly or indirectly, assist in  
92 the creation of additional long-term employment opportunities  
93 in the area and the quality of jobs created in all phases of the  
94 project, to include, but not be limited to, wages and benefits;

95 (8) Whether the project will fulfill a pressing need for the  
96 area, or part of the area, in which the economic opportunity  
97 district is located;

98 (9) Whether the municipality has a strategy for economic  
99 development in the municipality and whether the project is  
100 consistent with that strategy;

101 (10) Whether the project helps to diversify the local  
102 economy;

103 (11) Whether the project is consistent with the goals of this  
104 article;

105 (12) Whether the project is economically and fiscally sound  
106 using recognized business standards of finance and accounting;  
107 and

108 (13) The ability of the municipality and the project devel-  
109 oper or project team to carry out the project: *Provided*, That no  
110 project may be approved by the council unless the amount of all  
111 development expenditures proposed to be made in the first  
112 twenty-four months following the creation of the district results  
113 in capital investment of more than fifty million dollars in the  
114 district and the municipality submits clear and convincing  
115 information, to the satisfaction of the council, that such  
116 investment will be made if the council approves the project and  
117 the Legislature authorizes the municipality to levy an excise tax  
118 on sales of goods and services made within the economic  
119 opportunity development district as provided in this article.

120 (c) *Additional criteria.* — The council for community and  
121 economic development may establish other criteria for consid-  
122 eration when approving the applications.

123 (d) *Action on the application.* — The council for commu-  
124 nity and economic development shall act to approve or not  
125 approve any application within thirty days following the receipt  
126 of the application or the receipt of any additional information  
127 requested by the council, whichever is the later.

128 (e) *Certification of project.* — If the council for community  
129 and economic development approves a municipality's economic  
130 opportunity district project application, it shall issue to the  
131 municipality a written certificate evidencing the approval.

132 The certificate shall expressly state a base tax revenue  
133 amount, the gross annual district tax revenue amount and the  
134 estimated net annual district tax revenue amount which, for  
135 purposes of this article, is the difference between the gross  
136 annual district tax revenue amount and the base tax revenue  
137 amount, all of which the council for community and economic



138 development has determined with respect to the district's  
139 application based on any investigation it considers reasonable  
140 and necessary, including, but not limited to, any relevant  
141 information the council for community and economic develop-  
142 ment requests from the tax commissioner and the tax commis-  
143 sioner provides to the council: *Provided*, That in determining  
144 the net annual district tax revenue amount, the council may not  
145 use a base tax revenue amount less than that amount certified  
146 by the tax commissioner but, in lieu of confirmation from the  
147 tax commissioner of the gross annual district tax revenue  
148 amount, the council may use the estimate of the gross annual  
149 district tax revenue amount provided by the municipality  
150 pursuant to subsection (a) of this section.

151       (f) *Certification of enlargement of geographic boundaries*  
152 *of previously certified district.* — If the council for community  
153 and economic development approves a municipality's economic  
154 opportunity district project application to expand the geo-  
155 graphic boundaries of a previously certified district, it shall  
156 issue to the municipality a written certificate evidencing the  
157 approval.

158       The certificate shall expressly state a base tax revenue  
159 amount, the gross annual district tax revenue amount and the  
160 estimated net annual district tax revenue amount which, for  
161 purposes of this article, is the difference between the gross  
162 annual district tax revenue amount and the base tax revenue  
163 amount, all of which the council has determined with respect to  
164 the district's application based on any investigation it considers  
165 reasonable and necessary, including, but not limited to, any  
166 relevant information the council requests from the tax commis-  
167 sioner and the tax commissioner provides to the council:  
168 *Provided*, That in determining the net annual district tax  
169 revenue amount, the council may not use a base tax revenue  
170 amount less than that amount certified by the tax commissioner  
171 but, in lieu of confirmation from the tax commissioner of the

172 gross annual district tax revenue amount, the council may use  
173 the estimate of the gross annual district tax revenue amount  
174 provided by the municipality pursuant to subsection (a) of this  
175 section.

176 (g) *Promulgation of rules.* -- The council for community  
177 and economic development may promulgate rules to implement  
178 the economic opportunity development district project applica-  
179 tion approval process and to describe the criteria and proce-  
180 dures it has established in connection therewith. These rules are  
181 not subject to the provisions of chapter twenty-nine-a of this  
182 code but shall be filed with the secretary of state.

**§8-38-8. Establishment of the economic opportunity development  
district fund.**

1 (a) *General.* -- There is hereby created a special revenue  
2 account in the state treasury designated the "economic opportu-  
3 nity development district fund" which is an interest-bearing  
4 account and shall be invested in the manner described in section  
5 nine-c, article six, chapter twelve of this code with the interest  
6 income a proper credit to the fund.

7 (b) *District subaccount.* -- A separate and segregated  
8 subaccount within the account shall be established for each  
9 economic opportunity development district that is approved by  
10 the council. In addition to the economic opportunity district  
11 excise tax levied and collected as provided in this article, funds  
12 paid into the account for the credit of any subaccount may also  
13 be derived from the following sources:

14 (1) All interest or return on the investment accruing to the  
15 subaccount;

16 (2) Any gifts, grants, bequests, transfers, appropriations or  
17 donations which are received from any governmental entity or  
18 unit or any person, firm, foundation or corporation; and

19 (3) Any appropriations by the Legislature which are made  
20 for this purpose.

**§8-38-9. Authorization to levy special district excise tax.**

1 (a) *General.* -- Municipalities have no inherent authority to  
2 levy taxes and have only that authority expressly granted to  
3 them by the Legislature. The Legislature is specifically ex-  
4 tended, and intends by this article to exercise certain relevant  
5 powers expressed in section six-a, article X of the constitution  
6 of this state as follows: (1) The Legislature may appropriate  
7 state funds for use in matching or maximizing grants-in-aid for  
8 public purposes from the United States or any department,  
9 bureau, commission or agency thereof, or any other source, to  
10 any county, municipality or other political subdivision of the  
11 state, under such circumstances and subject to such terms,  
12 conditions and restrictions as the Legislature may prescribe by  
13 law; and (2) the Legislature may impose a state tax or taxes or  
14 dedicate a state tax or taxes or any portion thereof for the  
15 benefit of and use by counties, municipalities or other political  
16 subdivisions of the state for public purposes, the proceeds of  
17 any such imposed or dedicated tax or taxes or portion thereof to  
18 be distributed to such counties, municipalities or other political  
19 subdivisions of the state under such circumstances and subject  
20 to such terms, conditions and restrictions as the Legislature may  
21 prescribe.

22 Because a special district excise tax would have the effect  
23 of diverting, for a specified period of years, tax dollars which  
24 to the extent, if any, are not essentially incremental to tax  
25 dollars currently paid into the general revenue fund of the state,  
26 the Legislature finds that in order to substantially ensure that  
27 such special district excise taxes will not adversely impact the  
28 current level of the general revenue fund of the state, it is  
29 necessary for the Legislature to separately consider and act  
30 upon each and every economic development district which is  
31 proposed, including the unique characteristics of location,

32 current condition and activity of and within the area included in  
33 such proposed economic opportunity development district and  
34 that for such reasons a statute more general in ultimate applica-  
35 tion is not feasible for accomplishment of the intention and  
36 purpose of the Legislature in enacting this article. Therefore, no  
37 economic opportunity development district excise tax may be  
38 levied by a municipality until after the Legislature expressly  
39 authorizes the municipality to levy a special district excise tax  
40 on sales of tangible personal property and services made within  
41 district boundaries approved by the Legislature.

42 (b) *Authorizations.* — The Legislature authorizes the  
43 following municipalities to levy special district excise taxes on  
44 sales of tangible personal property and services made from  
45 business locations in the following economic opportunity  
46 development districts.

**§8-38-10. Ordinance to create district as approved by council and  
authorized by the Legislature.**

1 (a) *General.* — If an economic opportunity development  
2 district project has been approved by the council for community  
3 and economic development and the levying of a special district  
4 excise tax for the district has been authorized by the Legisla-  
5 ture, all in accordance with this article, the municipality may  
6 create the district by ordinance entered of record as provided in  
7 article one of this chapter: *Provided*, That the municipality may  
8 not amend, alter or change in any manner the boundaries of the  
9 economic opportunity development district authorized by the  
10 Legislature. In addition to all other requirements, the ordinance  
11 shall contain the following:

12 (1) The name of the district and a description of its bound-  
13 aries;

14 (2) A summary of any proposed services to be provided and  
15 capital improvements to be made within the district and a  
16 reasonable estimate of any attendant costs;

17           (3) The base and rate of any special district excise tax that  
18 may be imposed upon sales by businesses for the privilege of  
19 operating within the district, which tax shall be passed on to and  
20 paid by the consumer, and the manner in which the taxes will  
21 be imposed, administered and collected, all of which shall be in  
22 conformity with the requirements of this article; and

23           (4) The district board members' terms, their method of  
24 appointment and a general description of the district board's  
25 powers and duties, which powers may include the authority:

26           (A) To make and adopt all necessary bylaws and rules for  
27 its organization and operations not inconsistent with any  
28 applicable laws;

29           (B) To elect its own officers, to appoint committees and to  
30 employ and fix compensation for personnel necessary for its  
31 operations;

32           (C) To enter into contracts with any person, agency,  
33 government entity, agency or instrumentality, firm, partnership,  
34 limited partnership, limited liability company or corporation,  
35 including both public and private corporations, and for-profit  
36 and not-for-profit organizations and generally to do any and all  
37 things necessary or convenient for the purpose of promoting,  
38 developing and advancing the purposes described in section two  
39 of this article;

40           (D) To amend or supplement any contracts or leases or to  
41 enter into new, additional or further contracts or leases upon the  
42 terms and conditions for consideration and for any term of  
43 duration, with or without option of renewal, as agreed upon by  
44 the district board and any person, agency, government entity,  
45 agency or instrumentality, firm, partnership, limited partner-  
46 ship, limited liability company or corporation;

47           (E) To, unless otherwise provided in, and subject to the  
48 provisions of any contracts or leases to operate, repair, manage,

49 and maintain buildings and structures and provide adequate  
50 insurance of all types and in connection with the primary use  
51 thereof and incidental thereto to provide services, such as retail  
52 stores and restaurants, and to effectuate incidental purposes,  
53 grant leases, permits, concessions or other authorizations to any  
54 person or persons upon the terms and conditions for consider-  
55 ation and for the term of duration as agreed upon by the district  
56 board and any person, agency, governmental department, firm  
57 or corporation;

58 (F) To delegate any authority given to it by law to any of its  
59 officers, committees, agents or employees;

60 (G) To apply for, receive and use grants-in-aid, donations  
61 and contributions from any source or sources and to accept and  
62 use bequests, devises, gifts and donations from any person, firm  
63 or corporation;

64 (H) To acquire real property by gift, purchase or construc-  
65 tion or in any other lawful manner and hold title thereto in its  
66 own name and to sell, lease or otherwise dispose of all or part  
67 of any real property which it may own, either by contract or at  
68 public auction, upon the approval by the district board;

69 (I) To purchase or otherwise acquire, own, hold, sell, lease  
70 and dispose of all or part of any personal property which it may  
71 own, either by contract or at public auction;

72 (J) Pursuant to a determination by the district board that  
73 there exists a continuing need for redevelopment expenditures  
74 and that moneys or funds of the district are necessary therefor,  
75 to borrow money and execute and deliver the district's negotia-  
76 ble notes and other evidences of indebtedness therefor, on the  
77 terms as the district shall determine, and give security therefor  
78 as is requisite, including, without limitation, a pledge of the  
79 district's rights in its subaccount of the economic opportunity  
80 development district fund;

81 (K) To acquire (either directly or on behalf of the municipi-  
82 pality) an interest in any entity or entities that own any real  
83 property situate in the district, to contribute capital to any entity  
84 or entities and to exercise the rights of an owner with respect  
85 thereto; and

86 (L) To expend its funds in the execution of the powers and  
87 authority given in this section, which expenditures, by the  
88 means authorized in this section, are hereby determined and  
89 declared as a matter of legislative finding to be for a public  
90 purpose and use, in the public interest and for the general  
91 welfare of the people of West Virginia, to alleviate and prevent  
92 economic deterioration and to relieve the existing critical  
93 condition of unemployment existing within the state.

94 (b) *Additional contents of ordinance.* — The municipality's  
95 ordinance shall also state the general intention of the municipal-  
96 ity to develop and increase services and to make capital  
97 improvements within the district.

98 (c) *Mailing of certified copies of ordinance.* — Upon  
99 enactment of an ordinance establishing an economic opportu-  
100 nity development district excise tax, a certified copy of the  
101 ordinance shall be mailed to the state auditor, as ex officio the  
102 chief inspector and supervisor of public offices, the state  
103 treasurer and the tax commissioner.

#### §8-38-11. District board; duties.

1 (a) *General.* — The council of a municipality that has been  
2 authorized by the council for community and economic  
3 development to establish an economic opportunity development  
4 district, in accordance with this article, shall provide, by  
5 ordinance, for the appointment of a district board to oversee the  
6 operations of the district: *Provided*, That the municipality may,  
7 in the ordinance, in lieu of appointing a separate district board,  
8 designate itself to act as the district board.

9 (b) *Composition of board.* — If a separate district board is  
10 to be appointed, it shall be made up of at least seven members,  
11 two of which shall be owners, or representatives of owners, of  
12 real property situated in the economic opportunity development  
13 district and the other five shall be residents of the municipality  
14 within which the district is located.

15 (c) *Annual report.* — The district board, in addition to the  
16 duties prescribed by the ordinance creating the district, shall  
17 submit an annual report to the municipality and the council  
18 containing:

19 (1) An itemized statement of its receipts and disbursements  
20 for the preceding fiscal year;

21 (2) A description of its activities for the preceding fiscal  
22 year;

23 (3) A recommended program of services to be performed  
24 and capital improvements to be made within the district for the  
25 coming fiscal year; and

26 (4) A proposed budget to accomplish its objectives.

27 (d) *Conflict of interest exception.* — Nothing in this article  
28 prohibits any member of the district board from also serving on  
29 the board of directors of a nonprofit corporation with which the  
30 municipality may contract to provide specified services within  
31 the district.

32 (e) *Compensation of board members.* — Each member of  
33 the district board may receive reasonable compensation for  
34 services on the board in the amount determined by the munici-  
35 pality: *Provided*, That when a district board is not created for  
36 the district but the work of the board is done by the municipal-  
37 ity, the members shall receive no additional compensation.

**§8-38-12. Special district excise tax authorized.**



1           (a) *General.* — The council of a municipality, authorized by  
2 the Legislature to levy a special district excise tax for the  
3 benefit of an economic opportunity development district, may,  
4 by ordinance, impose that tax on the privilege of selling  
5 tangible personal property and rendering select services in the  
6 district in accordance with this section.

7           (b) *Tax base.* — The base of a special district excise tax  
8 imposed pursuant to this section shall be identical to the base of  
9 the consumers sales and service tax imposed pursuant to article  
10 fifteen, chapter eleven of this code on sales made and services  
11 rendered within the boundaries of the district: *Provided*, That  
12 except for the exemption provided in section nine-f of said  
13 article, all exemptions and exceptions from the consumers sales  
14 and service tax shall also apply to the special district excise tax  
15 and sales of gasoline and special fuel shall not be subject to  
16 special district excise tax but shall remain subject to the tax  
17 levied by said article fifteen.

18           (c) *Tax rate.* — The rate of a special district excise tax  
19 levied pursuant to this section shall be stated in an ordinance  
20 enacted by the municipality and equal to the general rate of tax  
21 on each dollar of gross proceeds from sales of tangible personal  
22 property and services subject to the tax levied by section three,  
23 article fifteen, chapter eleven of this code. The tax on fractional  
24 parts of a dollar shall be levied and collected in conformity with  
25 the provision of said section.

26           (d) *Collection by tax commissioner.* — The ordinance of the  
27 municipality imposing a special district excise tax shall provide  
28 for the tax to be collected by the tax commissioner in the same  
29 manner as the tax levied by section three, article fifteen, chapter  
30 eleven of this code is administered, assessed, collected and  
31 enforced.

32           (e) *Deposit of net tax collected.* —

33 (1) The ordinance of the municipality imposing a special  
34 district excise tax shall provide that the tax commissioner  
35 deposit the net amount of tax collected in the special economic  
36 opportunity development district fund to the credit of the  
37 municipality's subaccount therein for the economic opportunity  
38 development district and that the money in the subaccount may  
39 only be used to pay for development expenditures as provided  
40 in this article except as provided in subsection (f) of this  
41 section.

42 (2) The state treasurer shall withhold from the municipal-  
43 ity's subaccount in the economic opportunity development  
44 district fund and shall deposit in the general revenue fund of  
45 this state, on or before the twentieth day of each calendar month  
46 next following the effective date of a special district excise tax,  
47 a sum equal to one twelfth of the base tax revenue amount last  
48 certified by the council pursuant to section seven of this article.

49 (f) *Effective date of special district excise tax.* — Any taxes  
50 imposed pursuant to the authority of this section shall be  
51 effective on the first day of the calendar month that begins at  
52 least sixty days after the date of enactment of the ordinance  
53 imposing the tax or at any later date expressly designated in the  
54 ordinance that begins on the first day of a calendar month.

55 (g) *Copies of ordinance.* — Upon enactment of an ordi-  
56 nance levying a special district excise tax, a certified copy of  
57 the ordinance shall be mailed to the state auditor, as ex officio  
58 the chief inspector and supervisor of public offices, the state  
59 treasurer and the tax commissioner.

#### **§8-38-14. Modification of included area; notice; hearing.**

1 (a) *General.* — The ordinance creating an economic  
2 opportunity development district may not be amended to  
3 include additional contiguous property until after the amend-  
4 ment is approved by the council for community and economic  
5 development in the same manner as an application to approve

6 the establishment of the district is acted upon under section  
7 seven of this article.

8 (b) *Limitations.* -- Additional property may not be included  
9 in the district unless it is situated within the boundaries of the  
10 municipality and is contiguous to the then current boundaries of  
11 the district.

12 (c) *Public hearing required.* —

13 (1) The council of any municipality desiring to amend its  
14 ordinance shall designate a time and place for a public hearing  
15 upon the proposal to include additional property. The notice  
16 shall meet the requirements set forth in section six of this  
17 article.

18 (2) At the time and place set forth in the notice, the munici-  
19 pality shall afford the opportunity to be heard to any owners of  
20 real property either currently included in or proposed to be  
21 added to the existing district and to any other residents of the  
22 municipality.

23 (d) *Application to council.* — Following the hearing, the  
24 municipality may, by resolution, apply to the council for  
25 community and economic development to approve inclusion of  
26 the additional property in the district.

27 (e) *Consideration by council.* — Before the council for  
28 community and economic development approves inclusion of  
29 the additional property in the district, the council shall deter-  
30 mine the amount of taxes levied by article fifteen, chapter  
31 eleven of this code that were collected by businesses located in  
32 the area the municipality proposes to add to the district in the  
33 same manner as the base amount of tax was determined when  
34 the district was first created. The state treasurer shall also  
35 deposit one twelfth of this additional tax base amount into the  
36 general revenue fund each month, as provided in section twelve  
37 of this article.

38 (f) *Legislative action required.* -- After the council for  
39 community and economic development approves amending the  
40 boundaries of the district, the Legislature must amend section  
41 nine of this article to allow levy of the special district excise tax  
42 on business located in geographic area to be included in the  
43 district. After the Legislature amends said section, the municipi-  
44 pality may then amend its ordinance: *Provided*, That the  
45 ordinance may not be effective any earlier than the first day of  
46 the calendar month that begins sixty days after the effective  
47 date of the amended ordinance imposing the levy of the special  
48 district excise tax on businesses located in the geographic area  
49 to be added to the boundaries of the district for which the tax is  
50 levied or the first day of a later calendar month as set forth in  
51 the ordinance of the municipality.

52 (g) *Collection of special district excise tax.* -- All busi-  
53 nesses included in a district because of the boundary amend-  
54 ment shall on the effective date of the ordinance, determined as  
55 provided in subsection (f) of this section, collect the special  
56 district excise tax on all sales on tangible property or services  
57 made from locations in the district on or after the effective date  
58 of the municipality's ordinance or a later date as set forth in the  
59 ordinance.

**§8-38-15. Abolishment and dissolution of district; notice; hearing.**

1 (a) *General.* -- Except upon the express written consent of  
2 the council for community and economic development and of  
3 all the holders or obligees of any indebtedness or other instru-  
4 ments the proceeds of which were applied to any development  
5 or redevelopment expenditures or any indebtedness, the  
6 payment of which is secured by revenues payable into the fund  
7 provided under section eight of this article or by any public  
8 property, a district may only be abolished by the municipality  
9 when there is no outstanding indebtedness the proceeds of  
10 which were applied to any development or redevelopment  
11 expenditures or the payment of which is secured by revenues

12 payable into the fund provided under section eight of this  
13 article, or by any public property, and following a public  
14 hearing upon the proposed abolishment.

15 (b) *Notice of public hearing.* — Notice of the public hearing  
16 required by subsection (a) of this section shall be provided by  
17 first-class mail to all owners of real property within the district  
18 and shall be published as a Class I-0 legal advertisement in  
19 compliance with article three, chapter fifty-nine of this code at  
20 least twenty days prior to the public hearing.

21 (c) *Transfer of district assets and funds.* — Upon the  
22 abolishment of any economic opportunity development district,  
23 any funds or other assets, contractual rights or obligations,  
24 claims against holders of indebtedness or other financial  
25 benefits, liabilities or obligations existing after full payment has  
26 been made on all existing contracts, bonds, notes or other  
27 obligations of the district are transferred to and assumed by the  
28 municipality. Any funds or other assets transferred shall be used  
29 for the benefit of the area included in the district being abol-  
30 ished.

31 (d) *Reinstatement of district.* — Following abolishment of  
32 a district pursuant to this section, its reinstatement requires  
33 compliance with all requirements and procedures set forth in  
34 this article for the initial development, approval, establishment  
35 and creation of an economic opportunity development district.

**§8-38-16. Bonds issued to finance economic opportunity develop-  
ment district projects.**

1 (a) *General.* — The municipality that established the  
2 economic opportunity development district may issue bonds or  
3 notes for the purpose of financing development expenditures,  
4 as described in section five of this article, with respect to one or  
5 more projects within the economic opportunity development  
6 district.

7       (b) *Limited obligations.* -- All bonds and notes issued by a  
8 municipality under the authority of this article are limited  
9 obligations of the municipality.

10       (c) *Term of obligations.* — No municipality may issue  
11 notes, bonds or other instruments for funding district projects  
12 or improvements that exceed a repayment schedule of thirty  
13 years.

14       (d) *Debt service.* — The principal and interest on the bonds  
15 shall be payable out of the funds on deposit in the subaccount  
16 established for the economic opportunity development district  
17 pursuant to section eight of this article, including, without  
18 limitation, any funds derived from the special district excise tax  
19 imposed by section twelve of this article or other revenues  
20 derived from the economic opportunity development district to  
21 the extent pledged for the purpose by the municipality in the  
22 resolution authorizing the bonds.

23       (e) *Surplus funds.* — To the extent that the average daily  
24 amount on deposit in the subaccount established for a district  
25 pursuant to section eight of this article exceeds, for more than  
26 six consecutive calendar months, the sum of: (1) One hundred  
27 thousand dollars; plus (2) the amount required to be kept on  
28 deposit pursuant to the documents authorizing, securing or  
29 otherwise relating to the bonds or notes issued under this  
30 section, then the excess shall be used by the district either to  
31 redeem the bonds or notes previously issued or remitted to the  
32 general fund of this state.

33       (f) *Debt not general obligation of municipality.* -- Neither  
34 the notes or bonds and any interest coupons issued under the  
35 authority of this article shall ever constitute an indebtedness of  
36 the municipality issuing the notes or bonds within the meaning  
37 of any constitutional provision or statutory limitation and shall  
38 never constitute or give rise to a pecuniary liability of the  
39 municipality issuing the notes or bonds.

40 (g) *Debt not a charge general credit or taxing powers of*  
41 *municipality.* -- Neither the bonds or notes, nor interest thereon,  
42 is a charge against the general credit or taxing powers of the  
43 municipality and that fact shall be plainly stated on the face of  
44 each bond or note.

45 (h) *Issuance of bonds or notes.* —

46 (1) Bonds or notes allowed under this section may be  
47 executed, issued and delivered at any time, and from time to  
48 time, may be in a form and denomination, may be of a tenor,  
49 must be negotiable but may be registered as to the principal  
50 thereof or as to the principal and interest thereof, may be  
51 payable in any amounts and at any time or times, may be  
52 payable at any place or places, may bear interest at any rate or  
53 rates payable at any place or places and evidenced in any  
54 manner and may contain any provisions therein not inconsistent  
55 herewith, all as provided in the ordinance of the municipality  
56 whereunder the bonds or notes are authorized to be issued.

57 (2) The bonds may be sold by the municipality at public or  
58 private sale at, above or below par as the municipality autho-  
59 rizes.

60 (3) Bonds and notes issued pursuant to this article shall be  
61 signed by the authorized representative of the municipality and  
62 attested by the municipal recorder and be under the seal of the  
63 municipality.

64 (4) Any coupons attached to the bonds shall bear the  
65 facsimile signature of the authorized representative of the  
66 municipality. In case any of the officials whose signatures  
67 appear on the bonds, notes or coupons cease to be officers  
68 before the delivery of the bonds or notes, their signatures shall,  
69 nevertheless, be valid and sufficient for all purposes to the same  
70 extent as if they had remained in office until the delivery.

71 (i) *Additional bonds or notes.* -- If the proceeds of the  
72 bonds or notes, by error of calculation or otherwise, are less  
73 than the cost of the economic opportunity development district  
74 project, or if additional real or personal property is to be added  
75 to the district project or if it is determined that financing is  
76 needed for additional development or redevelopment expendi-  
77 tures, additional bonds or notes may, in like manner, be issued  
78 to provide the amount of the deficiency or to defray the cost of  
79 acquiring or financing any additional real or personal property  
80 or development or redevelopment expenditures and, unless  
81 otherwise provided in the trust agreement, mortgage or deed of  
82 trust, are considered to be of the same issue and shall be entitled  
83 to payment from the same fund, without preference or priority,  
84 and shall be of equal priority as to any security.

**§8-38-17. Security for bonds.**

1 (a) *General.* -- Unless the municipality shall otherwise  
2 determine in the resolution authorizing the issuance of the  
3 bonds or notes under the authority of this article, there is hereby  
4 created a statutory lien upon the subaccount created pursuant to  
5 section eight of this article and all special district excise tax  
6 revenues collected for the benefit of the district pursuant to  
7 section eleven-a, article ten, chapter eleven of this code for the  
8 purpose of securing the principal of the bonds or notes and the  
9 interest thereon.

10 (b) *Security for debt service.* -- The principal of and interest  
11 on any bonds or notes issued under the authority of this article  
12 shall be secured by a pledge of the special district excise tax  
13 revenues derived from the economic opportunity development  
14 district project by the municipality issuing the bonds or notes to  
15 the extent provided in the resolution adopted by the municipal-  
16 ity authorizing the issuance of the bonds or notes.

17 (c) *Trust indenture.* --



18           (1) In the discretion and at the option of the municipality,  
19 the bonds and notes may also be secured by a trust indenture by  
20 and between the municipality and a corporate trustee, which  
21 may be a trust company or bank having trust powers, within or  
22 without the state of West Virginia.

23           (2) The resolution authorizing the bonds or notes and fixing  
24 the details thereof may provide that the trust indenture may  
25 contain provisions for the protection and enforcing the rights  
26 and remedies of the bondholders as are reasonable and proper,  
27 not in violation of law, including covenants setting forth the  
28 duties of the municipality in relation to the construction,  
29 acquisition or financing of an economic opportunity develop-  
30 ment district project, or part thereof or an addition thereto, and  
31 the improvement, repair, maintenance and insurance thereof  
32 and for the custody, safeguarding and application of all moneys  
33 and may provide that the economic opportunity development  
34 district project shall be constructed and paid for under the  
35 supervision and approval of the consulting engineers or  
36 architects employed and designated by the municipality or, if  
37 directed by the municipality in the resolution, by the district  
38 board, and satisfactory to the purchasers of the bonds or notes,  
39 their successors, assigns or nominees who may require the  
40 security given by any contractor or any depository of the  
41 proceeds of the bonds or notes or the revenues received from  
42 the district project be satisfactory to the purchasers, their  
43 successors, assigns or nominees.

44           (3) The indenture may set forth the rights and remedies of  
45 the bondholders, the municipality or trustee and the indenture  
46 may provide for accelerating the maturity of the revenue bonds,  
47 at the option of the bondholders or the municipality issuing the  
48 bonds, upon default in the payment of the amounts due under  
49 the bonds.

50           (4) The municipality may also provide by resolution and in  
51 the trust indenture for the payment of the proceeds of the sale

52 of the bonds or notes and the revenues from the economic  
53 opportunity development district project to any depository it  
54 determines, for the custody and investment thereof and for the  
55 method of distribution thereof, with safeguards and restrictions  
56 it determines to be necessary or advisable for the protection  
57 thereof and upon the filing of a certified copy of the resolution  
58 or of the indenture for record with the clerk of the municipality  
59 in which the economic opportunity development project is  
60 located, the resolution has the same effect, as to notice, as the  
61 recordation of a deed of trust or other recordable instrument.

62 (5) In the event that more than one certified resolution or  
63 indenture is recorded, the security interest granted by the first  
64 recorded resolution or indenture has priority in the same  
65 manner as an earlier filed deed of trust except to the extent the  
66 earlier recorded resolution or indenture provides otherwise.

67 (d) *Mortgage or deed of trust.* —

68 (1) In addition to or in lieu of the indenture provided in  
69 subsection (c) of this section, the principal of and interest on the  
70 bonds or notes may, but need not, be secured by a mortgage or  
71 deed of trust covering all or any part of the economic opportu-  
72 nity development district project from which the revenues  
73 pledged are derived and the same may be secured by an  
74 assignment or pledge of the income received from the economic  
75 opportunity development district project.

76 (2) The proceedings under which bonds or notes are  
77 authorized to be issued, when secured by a mortgage or deed of  
78 trust, may contain the same terms, conditions and provisions  
79 provided for herein when an indenture is entered into between  
80 the municipality and a trustee and any mortgage or deed of trust  
81 may contain any agreements and provisions customarily  
82 contained in instruments securing bonds or notes, including,  
83 without limiting the generality of the foregoing, provisions  
84 respecting the fixing and collection of revenues from the

85 economic opportunity development district project covered by  
86 the proceedings or mortgage, the terms to be incorporated in  
87 any lease, sale or financing agreement with respect to the  
88 economic opportunity development district project, the im-  
89 provement, repair, maintenance and insurance of the economic  
90 opportunity development district project, the creation and  
91 maintenance of special funds from the revenues received from  
92 the economic opportunity development district project and the  
93 rights and remedies available in event of default to the bond-  
94 holders or note holders, the municipality, or to the trustee under  
95 an agreement, indenture, mortgage or deed of trust, all as the  
96 municipality considers advisable and shall not be in conflict  
97 with the provisions of this article or any existing law: *Provided,*  
98 That in making any agreements or provisions, a municipality  
99 shall not have the power to incur original indebtedness by  
100 indenture, ordinance, resolution, mortgage or deed of trust  
101 except with respect to the economic opportunity development  
102 district project and the application of the revenues therefrom  
103 and shall not have the power to incur a pecuniary liability or a  
104 charge upon its general credit or against its taxing powers  
105 unless approved by the voters in accordance with article one,  
106 chapter thirteen of this code or as otherwise permitted by the  
107 constitution of this state.

108 (e) *Enforcement of obligations.* —

109 (1) The proceedings authorizing any bonds and any  
110 indenture, mortgage or deed of trust securing the bonds may  
111 provide that, in the event of default in payment of the principal  
112 of or the interest on the bonds, or notes, or in the performance  
113 of any agreement contained in the proceedings, indenture,  
114 mortgage or deed of trust, payment and performance may be  
115 enforced by the appointment of a receiver in equity with power  
116 to charge and collect rents or other amounts and to apply the  
117 revenues from the economic opportunity development district

118 project in accordance with the proceedings or the provisions of  
119 the agreement, indenture, mortgage or deed of trust.

120 (2) Any agreement, indenture, mortgage or deed of trust  
121 may provide also that, in the event of default in payment or the  
122 violation of any agreement contained in the mortgage or deed  
123 of trust, the agreement, indenture, mortgage or deed of trust  
124 may be foreclosed either by sale at public outcry or by proceed-  
125 ings in equity and may provide that the holder or holders of any  
126 of the bonds secured thereby may become the purchaser at any  
127 foreclosure sale, if the highest bidder therefor.

128 (f) *No pecuniary liability.* -- No breach of any agreement,  
129 indenture, mortgage or deed of trust shall impose any pecuniary  
130 liability upon a municipality or any charge upon its general  
131 credit or against its taxing powers.

#### §8-38-19. Refunding bonds.

1 (a) Any bonds issued under this article and at any time  
2 outstanding may at any time, and from time to time, be re-  
3 funded by a municipality by the issuance of its refunding bonds  
4 in amount as the municipality considers necessary to refund the  
5 principal of the bonds to be refunded, together with any unpaid  
6 interest thereon; to make any improvements or alterations in the  
7 economic opportunity development district project; and any  
8 premiums and commissions necessary to be paid in connection  
9 therewith.

10 (b) Any refunding may be effected whether the bonds to be  
11 refunded shall have then matured or shall thereafter mature,  
12 either by sale of the refunding bonds and the application of the  
13 proceeds thereof for the redemption of the bonds to be refunded  
14 thereby, or by exchange of the refunding bonds for the bonds to  
15 be refunded thereby: *Provided*, That the holders of any bonds  
16 to be refunded shall not be compelled without their consent to  
17 surrender their bonds for payment or exchange prior to the date  
18 on which they are payable or, if they are called for redemption,

19 prior to the date on which they are by their terms subject to  
20 redemption.

21 (c) Any refunding bonds issued under the authority of this  
22 article are subject to the provisions contained in section sixteen  
23 of this article and shall be secured in accordance with the  
24 provisions of section seventeen of this article.

## CHAPTER 11. TAXATION.

### Article

10. Tax Procedure and Administration.

15B. Streamlined Sales and Use Tax Administration.

### ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

#### §11-10-11a. Administration of special district excise tax; commis- sion authorized.

1 (a) Any municipality or county commission which, pursu-  
2 ant to section twelve, article twenty-two, chapter seven of this  
3 code, section eleven, article thirteen-b, chapter eight of this  
4 code or section twelve, article thirty-eight, chapter eight of this  
5 code imposes a special district excise tax shall, by express  
6 provision in the order or ordinance imposing that tax, authorize  
7 the state tax commissioner to administer, assess, collect and  
8 enforce that tax on behalf of and as its agent.

9 (1) The county commission or municipality shall make such  
10 authorization by the adoption of a provision in its order or  
11 ordinance levying a special district excise tax stating its purpose  
12 and referring to this section and providing that the order or  
13 ordinance shall be effective on the first day of a month at least  
14 sixty days after its adoption.

15 (2) A certified copy of the order or ordinance shall be  
16 forwarded to the state auditor, the state treasurer and the tax  
17 commissioner so that it will be received within five days after  
18 its adoption or enactment.

19 (b) Any special district excise tax administered under this  
20 section shall be administered and collected by the tax commis-  
21 sioner in the same manner and subject to the same interest,  
22 additions to tax and penalties as provided for the tax imposed  
23 in article fifteen of this chapter.

24 (c) All special district excise tax moneys collected by the  
25 tax commissioner under this section shall be paid into the state  
26 treasury to the credit of each county commission's subaccount  
27 in the economic opportunity development district fund created  
28 pursuant to section nine, article twenty-two, chapter seven of  
29 this code, or to the credit of each municipality's subaccount in  
30 the economic opportunity development district fund created  
31 pursuant to section nine, article thirty-eight, chapter eight of  
32 this code, for the particular economic opportunity development  
33 district. The special district excise tax moneys shall be credited  
34 to the subaccount of each particular county commission or  
35 municipality levying a special district excise tax being adminis-  
36 tered under this section. The credit shall be made to the  
37 subaccount of the county commission or municipality for the  
38 economic opportunity development district in which the taxable  
39 sales were made and services rendered as shown by the records  
40 of the tax commissioner and certified by him or her monthly to  
41 the state treasurer, namely, the location of each place of  
42 business of every vendor collecting and paying the tax to the  
43 tax commissioner without regard to the place of possible use by  
44 the purchaser.

45 (d) As soon as practicable after the special district excise  
46 tax moneys have been paid into the state treasury in any month  
47 for the preceding reporting period, the district board may issue  
48 a requisition to the auditor requesting issuance of a state  
49 warrant for the proper amount in favor of each county commis-  
50 sion or municipality entitled to the monthly remittance of its  
51 special district excise tax moneys.

52 (1) Upon receipt of the requisition, the auditor shall issue  
53 his or her warrant on the state treasurer for the funds requested  
54 and the state treasurer shall pay the warrant out of the  
55 subaccount.

56 (2) If errors are made in any payment, or adjustments are  
57 otherwise necessary, whether attributable to refunds to taxpay-  
58 ers or to some other fact, the errors shall be corrected and  
59 adjustments made in the payments for the next six months as  
60 follows: One sixth of the total adjustment shall be included in  
61 the payments for the next six months. In addition, the payment  
62 shall include a refund of amounts erroneously not paid to the  
63 county commission or the municipality and not previously  
64 remitted during the three years preceding the discovery of the  
65 error.

66 (3) A correction and adjustment in payments described in  
67 this subsection due to the misallocation of funds by the vendor  
68 shall be made within three years of the date of the payment  
69 error.

70 (e) Notwithstanding any other provision of this code to the  
71 contrary, the tax commissioner shall deduct and retain for the  
72 benefit of his or her office for expenditure pursuant to appropri-  
73 ation of the Legislature from each payment into the state  
74 treasury, as provided in subsection (c) of this section, one  
75 percent thereof as a commission to compensate his or her office  
76 for the discharge of the duties described in this section.

#### **ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION.**

§11-15B-32. Effective date.

§11-15B-33. State administration of local sales and use taxes.

§11-15B-34. State and local sales and use tax bases.

§11-15B-35. Local rate and boundary changes.

§11-15B-36. Relief from certain liability for local taxes.

**§11-15B-32. Effective date.**

1 (a) The provisions of this article, as amended or added  
2 during the regular legislative session in the year two thousand  
3 three, shall take effect the first day of January, two thousand  
4 four, and apply to all sales made on or after that date and to all  
5 returns and payments due on or after that day, except as  
6 otherwise expressly provided in section five of this article.

7 (b) The provisions of this article, as amended or added  
8 during the second extraordinary legislative session in the year  
9 two thousand three, shall take effect the first day of January,  
10 two thousand four, and apply to all sales made on or after that  
11 date.

**§11-15B-33. State administration of local sales and use taxes.**

1 The tax commissioner shall conduct, or authorize others to  
2 conduct on his or her behalf, all audits of sellers registered  
3 under the streamlined sales and use tax agreement for compli-  
4 ance with the sales and use tax laws of this state and the sales  
5 and use tax laws of its local jurisdictions. A local jurisdiction  
6 may not conduct independent sales or use tax audits of sellers  
7 registered under the streamlined sales and use tax agreement.

**§11-15B-34. State and local sales and use tax bases.**

1 (a) *General.* -- The tax base of a local jurisdiction that  
2 levies a local sales or use tax pursuant to authority granted by  
3 the Legislature shall be identical to the sales and use tax base of  
4 this state, unless otherwise prohibited by federal law, except as  
5 provided in subsection (b) of this section.

6 (b) *Exceptions.* -- This section does not apply to sales or  
7 use taxes levied on: (1) The wholesale sale of gasoline or  
8 special fuel, which local jurisdictions are prohibited from  
9 taxing; or (2) the retail sale or transfer of motor vehicles,  
10 aircraft, watercraft, modular homes, manufactured homes or  
11 mobile homes.



**§11-15B-35. Local rate and boundary changes.**

1       (a) *General.* — Local tax rate changes shall be effective  
2 only on the first day of a calendar quarter after a minimum of  
3 sixty days' notice to seller, except as provided in subsection (b)  
4 of this section.

5       (b) *Printed catalogs.* — Local tax rate changes shall apply  
6 to purchases from printed catalogs where the purchaser com-  
7 puted the tax based upon the local tax rate published in the  
8 catalog only on and after the first day of a calendar quarter after  
9 a minimum of one hundred twenty days' notice to the sellers.

10       (c) *Local boundary changes.* — A local jurisdiction  
11 boundary change shall first apply for purposes of computation  
12 of a local sales and use tax on the first day of a calendar quarter  
13 after a minimum of sixty days' notice to sellers.

14       (d) *Database of local jurisdiction boundaries.* —

15       (1) The state shall provide and maintain a database that  
16 describes boundary changes for all taxing jurisdictions. This  
17 database shall include a description of the change and the  
18 effective date of the change for sales and use tax purposes.

19       (2) The state shall provide and maintain a database of all  
20 sales and use tax rates for all of the jurisdictions levying taxes  
21 within the state. For the identification of states, counties and  
22 cities, codes corresponding to the rates must be provided  
23 according to federal information processing standards (FIPS) as  
24 developed by the national institute of standards and technology.  
25 For the identification of all other jurisdictions, codes corre-  
26 sponding to the rates must be in the format determined by the  
27 members of the streamlined sales and use tax agreement.

28       (3) The state shall provide and maintain a database that  
29 assigns each five-digit and nine-digit zip code within a member  
30 state to the proper tax rates and jurisdictions. The state must  
31 apply the lowest combined tax rate imposed in the zip code area

32 if the area includes more than one tax rate in any level of taxing  
33 jurisdictions. If a nine-digit zip code designation is not avail-  
34 able for a street address or if a seller is unable to determine the  
35 nine-digit zip code designation of a purchaser after exercising  
36 due diligence to determine the designation, the seller may apply  
37 the rate for the five-digit zip code area. For the purposes of this  
38 section, there is a rebuttable presumption that a seller has  
39 exercised due diligence if the seller has attempted to determine  
40 the nine-digit zip code designation by utilizing software  
41 approved by the members of the streamlined sales and use tax  
42 agreement that makes this designation from the street address  
43 and the five-digit zip code of the purchaser.

44 (4) This state shall participate with other member states in  
45 the development of an address-based system for assigning  
46 taxing jurisdictions. The system shall meet the requirements  
47 developed pursuant to the federal Mobile Telecommunications  
48 Sourcing Act (4 U. S. C. §119). The governing board of the  
49 streamlined sales and use tax agreement may allow a member  
50 state to require sellers that register under this agreement to use  
51 an address-based system provided by that member state. If any  
52 member state develops an address-based assignment system  
53 pursuant to the Mobile Telecommunications Sourcing Act, a  
54 seller may use that system in place of the system provided in  
55 subdivision (3) of this subsection.

### **§11-15B-36. Relief from certain liability for local taxes.**

1 (a) *General.* -- Sellers and certified service providers  
2 registered under the streamlined sales and use tax agreement to  
3 collect sales and use taxes imposed by local jurisdiction of this  
4 state who charged and collected the incorrect amount of sales  
5 or use taxes resulting from the seller or the certified service  
6 provider relying on erroneous data provided by this state on tax  
7 rates, boundaries or taxing jurisdiction assignments shall be  
8 held harmless by the tax commissioner and the local taxing  
9 jurisdiction.

10 (b) *Exception.* -- A state that is a member of the stream-  
11 lined sales and use tax agreement and provides an address-  
12 based system for assigning taxing jurisdictions pursuant to  
13 subsection (G), section three hundred five of the agreement, or  
14 pursuant to the federal Mobile Telecommunications Sourcing  
15 Act, is not required to provide liability relief for errors resulting  
16 from reliance on information provided by the member state  
17 under subsection (F) of section three hundred five.

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## CHAPTER 18

(Com. Sub. for S. B. 2012 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]

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[Passed June 30, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to authorizing state agencies to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of reducing energy operating costs of agency-owned buildings.

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

That chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-b to read as follows:

### ARTICLE 3B. ENERGY-SAVINGS CONTRACTS.

§5A-3B-1. Definitions.

§5A-3B-2. Contracts for energy-savings contracts.

**§5A-3B-1. Definitions.**

1 As used in this article:

2 (a) “Agency” means any state department, division, office,  
3 commission, authority, board or other unit authorized by law to  
4 enter into contracts for the provision of goods or services.

5 (b) “Energy-conservation measures” means goods or  
6 services, or both, to reduce energy consumption operating costs  
7 of agency facilities. They include, but are not limited to,  
8 installation of one or more of the following:

9 (1) Insulation of a building structure and systems within a  
10 building;

11 (2) Storm windows or doors, caulking or weather stripping,  
12 multiglazed windows or doors, heat-absorbing or heat-reflective  
13 glazed and coated window or door systems, or other window or  
14 door modifications that reduce energy consumption;

15 (3) Automatic energy control systems;

16 (4) Heating, ventilating or air conditioning systems,  
17 including modifications or replacements;

18 (5) Replacement or modification of lighting fixtures to  
19 increase energy efficiency;

20 (6) Energy recovery systems;

21 (7) Cogeneration systems that produce steam or another  
22 form of energy for use by any agency in a building or complex  
23 of buildings owned by the agency; or

24 (8) Energy-conservation maintenance measures that provide  
25 long-term operating cost reductions of the building’s present  
26 cost of operation.

27 (c) “Energy-savings contract” means a performance-based  
28 contract for the evaluation and recommendation of energy  
29 operations conservation measures and for implementation of  
30 one or more measures.

31 (d) “Qualified provider” means a person, firm or corpora-  
32 tion experienced in the design, implementation and installation  
33 of energy-conservation measures.

**§5A-3B-2. Contracts for energy-savings contracts.**

1 (a) Agencies are authorized to enter into performance-based  
2 contracts with qualified providers of energy-conservation  
3 measures for the purpose of significantly reducing energy  
4 operating costs of agency owned buildings, subject to the  
5 requirements of this section.

6 (b) Before entering into a contract or before the installation  
7 of equipment, modifications or remodeling to be furnished  
8 under a contract, the qualified provider shall first issue a  
9 proposal summarizing the scope of work to be performed. A  
10 proposal must contain estimates of all costs of installation,  
11 modifications or remodeling, including the costs of design,  
12 engineering, installation, maintenance, repairs or debt service,  
13 as well as estimates of the amounts by which energy operating  
14 costs will be reduced. If the agency finds, after receiving the  
15 proposal, that the proposal includes one or more en-  
16 ergy-conservation measures, the installation of which is  
17 guaranteed to result in a net savings of a minimum of five  
18 percent of the then current energy operating costs which  
19 savings will, at a minimum, satisfy any debt service required,  
20 the agency may enter into a contract with the provider pursuant  
21 to this section.

22 (c) An energy-savings contract must include the following:

23 (1) A guarantee of a specific minimum net percentage  
24 amount of at least five percent of energy operating costs each  
25 year over the term of the contract that the agency will save;

26 (2) A statement of all costs of energy-conservation mea-  
27 sures, including the costs of design, engineering, installation,  
28 maintenance, repairs and operations; and

29 (3) A provision that payments, except obligations upon  
30 termination of the contract before its expiration, are to be made  
31 over time.

32 (d) An agency may supplement its payments with federal,  
33 state or local funds to reduce the annual cost or to lower the  
34 initial amount to be financed.

35 (e) An energy-savings contract is subject to competitive  
36 bidding requirements and other requirements of article three of  
37 this chapter.

38 (f) An energy-savings contract may extend beyond the  
39 fiscal year in which it first becomes effective: *Provided*, That  
40 such a contract may not exceed a fifteen-year term: *Provided*,  
41 *however*, That the long term contract will be void unless the  
42 agreement provides that the agency shall have the option during  
43 each fiscal year of the contract to terminate the agreement.

44 (g) Agencies may enter into a “lease with an option to  
45 purchase” contract for the purchase and installation of energy-  
46 conservation measures if the term of the lease does not exceed  
47 fifteen years and the lease contract includes the provisions  
48 contained in subsection (f) of this section and meets federal tax  
49 requirements for tax-exempt municipal leasing or long-term  
50 financing.

51 (h) The agency may include in its annual budget for each  
52 fiscal year any amounts payable under long-term en-  
53 ergy-savings contracts during that fiscal year.

54 (i) Upon the issuance of a request for proposals or request  
55 for quotations for an energy-savings contract, the agency shall  
56 provide a copy thereof to the joint committee on government  
57 and finance.

58 (j) Before signing an energy-savings contract or extending  
59 an existing energy-savings contract, the agency shall give thirty  
60 days' written notice, which notice shall include a copy of the  
61 proposal containing the information required by subsection (b)  
62 of this section, to the joint committee on government and  
63 finance.



## CHAPTER 19

**(S. B. 2009 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]**

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirteen, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the funding of the Hatfield-McCoy regional recreation authority projects by the West Virginia parkways, economic development and tourism authority.

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

That section thirteen, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.**

**§17-16A-13. Tolls, rents, fees, charges and revenues; competitive bidding on contracts.**

1 (a)(1) The parkways authority is hereby authorized to fix,  
2 revise, charge and collect tolls for the use of each parkway  
3 project and the different parts or sections thereof and to fix,  
4 revise, charge and collect rents, fees, charges and other reve-  
5 nues, of whatever kind or character, for the use of each eco-  
6 nomic development project or tourism project, or any part or  
7 section thereof, and to contract with any person, partnership,  
8 association or corporation desiring the use of any part thereof,  
9 including the right-of-way adjoining the paved portion, for  
10 placing thereon telephone, telegraph, electric light, power or  
11 other utility lines, gas stations, garages, stores, hotels, restau-  
12 rants and advertising signs, or for any other purpose except for  
13 tracks for railroad or railway use, and to fix the terms, condi-  
14 tions, rents and rates of charges for such use. Such tolls, rents,  
15 fees and charges shall be so fixed and adjusted in respect of the  
16 aggregate of tolls, or in respect of the aggregate rents, fees and  
17 charges, from the project or projects in connection with which  
18 the bonds of any issue shall have been issued as to provide a  
19 fund sufficient with other revenues, if any, to pay: (A) The cost  
20 of maintaining, repairing and operating such project or projects;  
21 and (B) the principal of and the interest on such bonds as the  
22 same shall become due and payable and to create reserves for  
23 such purposes. Such tolls, rents, fees and other charges shall not  
24 be subject to supervision or regulation by any other commis-  
25 sion, board, bureau, department or agency of the state. The  
26 tolls, rents, fees, charges and all other revenues derived from  
27 the project or projects in connection with which the bonds of  
28 any issue shall have been issued, except such part thereof as  
29 may be necessary to pay the cost of maintenance, repair and



30 operation and to provide such reserves therefor as may be  
31 provided in the resolution authorizing the issuance of such  
32 bonds or in the trust agreement securing the same, shall be set  
33 aside at regular intervals as may be provided in the resolution  
34 or the trust agreement in a sinking fund which is hereby  
35 pledged to, and charged with, the payment of: (i) The interest  
36 upon the bonds as such interest shall fall due; (ii) the principal  
37 of the bonds as the same shall fall due; (iii) the necessary  
38 charges of paying agents for paying principal and interest; and  
39 (iv) the redemption price or the purchase price of bonds retired  
40 by call or purchase as therein provided. The use and disposition  
41 of moneys to the credit of such sinking fund shall be subject to  
42 the provisions of the resolution authorizing the issuance of the  
43 bonds or of the trust agreement. Except as may otherwise be  
44 provided in the resolution or the trust agreement, such sinking  
45 fund shall be a fund for all bonds without distinction or priority  
46 of one over another. The moneys in the sinking fund, less such  
47 reserve as may be provided in the resolution or trust agreement,  
48 if not used within a reasonable time for the purchase of bonds  
49 for cancellation as above provided, shall be applied to the  
50 redemption of bonds at the redemption price then applicable.

51 (2)(A) In fiscal year one thousand nine hundred ninety-  
52 eight, after the parkways authority has met or provided for the  
53 satisfaction of each requirement imposed by the provisions of  
54 subdivision (1) of this subsection, the parkways authority shall  
55 pay two hundred fifty thousand dollars to the Hatfield-McCoy  
56 regional recreation authority from any remaining balance of  
57 revenues received from economic development projects and  
58 tourism projects.

59 (B) Upon the effective date of this act, the parkways  
60 authority shall seek authorization from the federal highway  
61 administration, the state department of transportation and the  
62 trustee under any trust indenture or agreement existing as the

63 result of the issuance of any revenue bonds under the provisions  
64 of this article to issue additional revenue bonds in a total  
65 amount not to exceed six million dollars for the purpose of  
66 funding projects of the Hatfield-McCoy regional recreation  
67 authority. Upon the agreement of all of such entities that the  
68 parkways authority be authorized to do so, as certified to the  
69 parkways authority, the governor and the joint committee on  
70 government and finance, the parkways authority is authorized  
71 to issue additional revenue bonds in a total amount not to  
72 exceed six million dollars. The proceeds of the revenue bonds  
73 shall be used to fund projects of the Hatfield-McCoy regional  
74 recreation authority. Each issuance of such revenue bonds and  
75 the application of the proceeds thereof shall be subject to each  
76 condition, restriction or other provision of this article applicable  
77 to the issuance of parkway revenue bonds. In the event the  
78 agreement is not certified as required by this subsection, and  
79 until the same is certified, the parkways authority shall pay two  
80 hundred fifty thousand dollars to the Hatfield-McCoy regional  
81 recreation authority in the fiscal year ending the thirtieth day of  
82 June, two thousand, and in each fiscal year thereafter, for a total  
83 of nine consecutive years, for the purpose of funding projects  
84 of the Hatfield-McCoy regional recreation authority. These  
85 amounts shall be paid in quarterly installments from remaining  
86 balances in each fiscal year of revenues received from eco-  
87 nomic development projects and tourism projects as determined  
88 in the manner provided in paragraph (A) of this subdivision.

89 (b) The parkways authority shall cause, as soon as it is  
90 legally able to do so, all contracts to which it is a party and  
91 which relate to the operation, maintenance or use of any  
92 restaurant, motel or other lodging facility, truck and automobile  
93 service facility, food vending facility or any other service  
94 facility located along the West Virginia turnpike, to be renewed  
95 on a competitive bid basis. All contracts relating to any facility  
96 or services entered into by the parkways authority with a private

97 party with respect to any project constructed after the effective  
98 date of this legislation shall be let on a competitive bid basis  
99 only. If the parkways authority receives a proposal for the  
100 development of a project, such proposal shall be made available  
101 to the public in a convenient location in the county wherein the  
102 proposed facility may be located. The parkways authority shall  
103 publish a notice of the proposal by a Class I legal advertisement  
104 in accordance with the provisions of article three, chapter  
105 fifty-nine of this code. The publication area shall be the county  
106 in which the proposed facility would be located. Any citizen  
107 may communicate by writing to the parkways authority his or  
108 her opposition to or approval to such proposal within a period  
109 of time not less than forty-five days from the publication of the  
110 notice. No contract for the development of a project may be  
111 entered into by the parkways authority until a public hearing is  
112 held in the vicinity of the location of the proposed project with  
113 at least twenty days' notice of such hearing by a Class I  
114 publication pursuant to section two of said article. The park-  
115 ways authority shall make written findings of fact prior to  
116 rendering a decision on any proposed project. All studies,  
117 records, documents and other materials which are considered by  
118 the parkways authority in making such findings shall be made  
119 available for public inspection at the time of the publication of  
120 the notice of public hearing and at a convenient location in the  
121 county where the proposed project may be located. The  
122 parkways authority shall promulgate rules in accordance with  
123 chapter twenty-nine-a of this code for the conduct of any  
124 hearing required by this section. Persons attending any such  
125 hearing shall be afforded a reasonable opportunity to speak and  
126 be heard on the proposed project.

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## CHAPTER 20

**(S. B. 2014 — By Senators Kessler, Hunter, Jenkins, Minard,  
Oliverio, Ross, Snyder, White, Deem and Smith)**

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[Passed June 13, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; authorizing certain boards and agencies that are, in common, independent of state departmental supervision to promulgate legislative rules; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing commissioner of agriculture to promulgate legislative rule relating to inspection of meat and poultry; authorizing contractor licensing board to promulgate legislative rule relating to contractor licensing act; authorizing courthouse facilities improvement authority to promulgate legislative rule relating to authority; authorizing board of dental examiners to

promulgate legislative rule relating to board; authorizing board of dental examiners to promulgate legislative rule relating to formation and approval of dental corporations; authorizing family protection services board to promulgate legislative rule relating to operation of board; authorizing family protection services board to promulgate legislative rule relating to licensure of domestic violence and perpetrator intervention programs; authorizing family protection services board to promulgate legislative rule relating to perpetrator intervention program licensure; authorizing family protection services board to promulgate legislative rule relating to monitored visitation and exchange program certification; authorizing board of funeral service examiners to promulgate legislative rule relating to board; authorizing board of funeral service examiners to promulgate legislative rule relating to crematory requirements; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rule relating to law-enforcement training standards; authorizing governor's committee on crime, delinquency and correction to promulgate legislative rule relating to community corrections standards; authorizing massage therapy licensure board to promulgate legislative rule relating to board; authorizing board of medicine to promulgate legislative rule relating to licensure, disciplinary and complaint procedures, continuing education and physician assistants; authorizing nursing home administrators licensing board to promulgate legislative rule relating to nursing home administrators; authorizing board of optometry to promulgate legislative rule relating to licensure by endorsement; authorizing board of pharmacy to promulgate legislative rule relating to pharmacist recovery networks; authorizing board of pharmacy to promulgate legislative rule relating to controlled substances monitoring; authorizing radiologic technology board of examiners to promulgate legislative rule relating to board; authorizing real estate appraiser licensing and certification board to promulgate legislative rule relating to requirements for licensure and certification; authoriz-

ing real estate appraiser licensing and certification board to promulgate legislative rule relating to renewal of licensure and certification; authorizing real estate commission to promulgate legislative rule relating to requirements in licensing real estate brokers, associate brokers and salespersons and conduct of brokerage businesses; authorizing real estate commission to promulgate legislative rule relating to schedule of fees; authorizing real estate commission to promulgate legislative rule relating to requirements in approval and registration of real estate courses, course providers and instructors; authorizing secretary of state to promulgate legislative rule relating to registry for notification of state of emergency; authorizing board of veterinary medicine to promulgate legislative rule relating to standards of practice; and authorizing board of veterinary medicine to promulgate legislative rule relating to schedule of fees.

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

That article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.**

- §64-9-1. Commissioner of agriculture.
- §64-9-2. Contractor licensing board.
- §64-9-3. Courthouse facilities improvement authority.
- §64-9-4. Board of dental examiners.
- §64-9-5. Family protection services board.
- §64-9-6. Board of funeral service examiners.
- §64-9-7. Governor's committee on crime, delinquency and correction.
- §64-9-8. Massage therapy licensure board.
- §64-9-9. Board of medicine.
- §64-9-10. Nursing home administrators licensing board.
- §64-9-11. Board of optometry.
- §64-9-12. Board of pharmacy.
- §64-9-13. Radiologic technology board of examiners.
- §64-9-14. Real estate appraiser licensing and certification board.

§64-9-15. Real estate commission.

§64-9-16. Secretary of state.

§64-9-17. Board of veterinary medicine.

**§64-9-1. Commissioner of agriculture.**

1       The legislative rule filed in the state register on the twenty-  
2 second day of July, two thousand two, authorized under the  
3 authority of section three, article two-b, chapter nineteen of this  
4 code, relating to the commissioner of agriculture (inspection of  
5 meat and poultry, 61 CSR 16), is authorized.

**§64-9-2. Contractor licensing board.**

1       The legislative rule filed in the state register on the ninth  
2 day of July, two thousand two, authorized under the authority  
3 of sections five and sixteen, article eleven, chapter twenty-one  
4 of this code, modified by the contractor licensing board to meet  
5 the objections of the legislative rule-making review committee  
6 and refiled in the state register on the fourth day of December,  
7 two thousand two, relating to the contractor licensing board  
8 (West Virginia contractor licensing act, 28 CSR 2), is autho-  
9 rized with the following amendment:

10       “On page nine, section four, subsection 4.1, following the  
11 last semicolon by inserting the following ‘or any commercial  
12 property intended for sale or lease by an entity other than the  
13 employer where the total cost of the total undertaking, labor and  
14 materials, exceeds ten thousand dollars (\$10,000.00);’”.

**§64-9-3. Courthouse facilities improvement authority.**

1       The legislative rule filed in the state register on the twenty-  
2 fifth day of July, two thousand two, under the authority of  
3 section three-a, article twenty-six, chapter twenty-nine of this  
4 code, modified by the courthouse facilities improvement  
5 authority to meet the objections of the legislative rule-making  
6 review committee and refiled in the state register on the

7 nineteenth day of September, two thousand two, relating to the  
8 courthouse facilities improvement authority (courthouse  
9 facilities improvement authority, 203 CSR 1), is authorized  
10 with the following amendment:

11 “On page one, subsection 3.4, after the words ‘the Author-  
12 ity shall’ by striking out the words ‘make a written recommen-  
13 dation’ and inserting in lieu thereof the words ‘issue a written  
14 notification’”.

**§64-9-4. Board of dental examiners.**

1 (a) The legislative rule filed in the state register on the fifth  
2 day of April, two thousand two, under the authority of section  
3 one, article four, chapter thirty of this code, modified by the  
4 board of dental examiners to meet the objections of the legisla-  
5 tive rule-making review committee and refiled in the state  
6 register on the first day of November, two thousand two,  
7 relating to the board of dental examiners (general provisions, 5  
8 CSR 1), is authorized with the following amendments:

9 “Beginning on page eleven, section eight, subsection 8.2,  
10 by striking the entire subsection and inserting the following:

11 ‘8.2. Expanded duties of dental assistants. The following  
12 duties and/or intra-oral tasks may be assigned by a licensed  
13 dentist to a dental hygienist and/or assistant in the licensed  
14 dentist’s employment, provided that under no circumstances  
15 can an assistant use a power-driven instrument of any type  
16 intra-orally except as specifically set forth hereinafter:

17 (a): Placing, exposing, developing and mounting dental  
18 radiographs;

19 (b): Placing and removing rubber dams;

20 (c): Charting existing restorations and missing teeth;



- 21 (d): Holding and removing materials, trays, strips and  
22 sutures, ~~and bands~~ previously placed in the patient's mouth by  
23 the dentist;
- 24 (e): Removing excess cement from coronal surfaces of teeth  
25 without the use of rotating, ~~or~~ power-driven or scaling instru-  
26 ments; ~~and~~
- 27 (f): Taking impressions for study cast and pouring models;
- 28 (g) Recording medical and dental histories for interpreta-  
29 tion by the supervising dentist;
- 30 (h) Providing pre- and post-treatment instructions;
- 31 (i) Viewing the oral cavity and reporting the symp-  
32 toms/problems to the supervising dentist;
- 33 (j) Performing pulp vitality testing (thermal or electrical)  
34 with a final evaluation by the supervising dentist;
- 35 (k) Inserting and adjusting athletic mouth guards and  
36 bleaching trays with a final evaluation by the supervising  
37 dentist;
- 38 (l) Removing periodontal dressings with a final evaluation  
39 by the supervising dentist;
- 40 (m) Placing and removing matrices after a final evaluation  
41 by the supervising dentist;
- 42 (n) Applying topical anesthetic agents with prior approval  
43 by the supervising dentist;
- 44 (o) Applying topical anticariogenic agents after successful  
45 completion of a board-approved course and examination and  
46 with prior approval of the supervising dentist;

47 (p) Applying pit and fissure sealants after successful  
48 completion of a board-approved course and examination and  
49 with a final evaluation by the supervising dentist;

50 (q) Applying cavity liners and bases with a final evaluation  
51 by the supervising dentist;

52 (r) Removing soft tissue dressings with a final evaluation  
53 by the supervising dentist;

54 (s) Fabricating and cementing temporary crowns and  
55 bridges with a final evaluation by the supervising dentist;

56 (t) Placing and removing temporary restorations by a  
57 nonpower-driven method with a final evaluation by the super-  
58 vising dentist;

59 (u) Taking intra- and extra-oral photographs;

60 (v) Chemical conditioning of the tooth to accept a restora-  
61 tion and/or bracket by topical application after successful  
62 completion of a board-approved course and examination;

63 (w) Using a power-driven hand piece with rubber cup  
64 and/or brush only for preparing a tooth for accepting a restora-  
65 tion and/or appliance, which shall in no way be represented to  
66 the patient as a prophylaxis, after successful completion of a  
67 board-approved course and examination;

68 (x) Placing retraction cords for crown impressions after  
69 successful completion of a board-approved course and exami-  
70 nation and with prior approval of the supervising dentist;

71 (y) Taking final impressions for fixed or removable  
72 prosthesis and/or appliance with a final evaluation by the  
73 supervising dentist;

74 (z) Checking for loose orthodontic appliances with a final  
75 evaluation by the supervising dentist;

76 (aa) Taking orthodontic measurements with a final evalua-  
77 tion by the supervising dentist;

78 (bb) Fitting bands and brackets prior to final cementation  
79 and/or bonding by the supervising dentist;

80 (cc) Bending archwires with a final evaluation by the  
81 supervising dentist at the time of placement;

82 (dd) Placing or removing temporary space maintainers,  
83 orthodontic separating devices, ligatures, brackets and bands  
84 with a final evaluation by the supervising dentist at the time of  
85 placement or removal, after completion of a board-approved  
86 course and examination;

87 (ee) Removing loose or broken bands, brackets or archwires  
88 when directed by the supervising dentist; and

89 (ff) Visually monitoring a nitrous oxide analgesia unit. Two  
90 years after the effective date of this rule, a dental assistant or  
91 hygienist must have successfully completed a board-approved  
92 course and examination in order to perform this duty. Thereaf-  
93 ter, the assistant or hygienist must maintain current certification  
94 in accordance with the American Red Cross' or the American  
95 Heart Association's Cardio-Pulmonary Resuscitation (CPR)  
96 program.';

97 And,

98 . Beginning on page thirteen, section eight, subsection 8.3,  
99 by striking the entire subsection and inserting the following:

100 '8.3. Expanded duties of dental hygienists. The In addition  
101 to and including those duties set forth in subsection 8.2 of this

102 section, the following duties and/or intraoral tasks may be  
103 assigned by a licensed dentist to a dental hygienist in the  
104 licensed dentist's employment:

105 (a): ~~Supra-~~ and Subgingival ~~subgingival~~ scaling of teeth;

106 (b): Polishing of coronal and/or exposed surfaces of teeth;

107 (c): ~~Dental Health Education~~ health education;

108 (d): Nutritional Counseling ~~counseling~~;

109 (e): ~~Application of caries preventive agents and other~~  
110 ~~topical medicaments to the surfaces of teeth and surrounding~~  
111 ~~tissues (including topical anesthesia);~~

112 (f): ~~Placing, exposing, developing, and mounting dental~~  
113 ~~radiographs;~~

114 (g): ~~Finishing and polishing amalgam, resin, composite, and~~  
115 ~~silicate restorations;~~

116 (h): Examining and recording periodontal findings;

117 (i): ~~(f)~~ (f) Scaling excessive cement from the surfaces of teeth  
118 and restorations;

119 (j): ~~(g)~~ (g) Performing clinical examinations and diagnostic  
120 tests of teeth and surrounding tissues and recording findings for  
121 interpretation by a supervising dentist (~~includes including~~ such  
122 procedures as restorative chartings, caries activity test, cytology  
123 smears, salivary analysis and smears, endodontic cultures,  
124 vitality test, etc.);

125 (k): ~~Removing soft tissue dressings;~~

126 (l): ~~Removing ligature wires;~~

127 ~~(m). Preparing medical and dental histories for interpreta-~~  
128 ~~tion by a dentist;~~

129 ~~(n). Placing and removing rubber dams;~~

130 ~~(o). Taking intra and extra-oral photographs; and~~

131 ~~(p). Removing oral sutures;~~

132 (h) Placing of subgingival medicaments, fibers, chips, etc.;

133 (i) Finishing and polishing restorations with a slow speed  
134 hand piece;

135 (j) Debridement and/or root planing of teeth;

136 (k) Applying bleaching agents after successful completion  
137 of a board-approved course;

138 (l) Placing periodontal dressings with a final evaluation by  
139 the supervising dentist; and

140 (m) Administration of infiltration and block anesthesia after  
141 successful completion of a board-approved course and of a  
142 regional board examination and under the direct supervision of  
143 a licensed dentist.”.

144 (b) The legislative rule filed in the state register on the tenth  
145 day of May, two thousand two, under the authority of section  
146 one, article four, chapter thirty of this code, modified by the  
147 board of dental examiners to meet the objections of the legisla-  
148 tive rule-making review committee and refiled in the state  
149 register on the twenty-eighth day of May, two thousand two,  
150 relating to the board of dental service examiners (formation and  
151 approval of dental corporations, 5 CSR 6), is authorized with  
152 the following amendments:

153       “On page one, section three, subsection one, after the words  
154 ‘shall have as a’, by striking the word ‘member’ and inserting  
155 in lieu thereof the word ‘shareholder’;

156       On page one, section three, subsection four, after the words  
157 ‘on or before the’, by striking the words ‘first day of July’ and  
158 inserting in lieu thereof the words ‘thirtieth day of June’ and  
159 after the word ‘every’ by striking the word ‘member’ and  
160 inserting in lieu thereof the word ‘shareholder’;

161       On page one, section three, subsection five, after the words  
162 ‘on or before the’, by striking the words ‘first day of July’ and  
163 inserting in lieu thereof the words ‘thirtieth day of June’;

164       And,

165       On page one, section three, subsection seven, on each of the  
166 three occasions that the word ‘member’ appears, by striking the  
167 word ‘member’ and inserting in lieu thereof the word ‘share-  
168 holder’”.

#### **§64-9-5. Family protection services board.**

1       (a) The legislative rule filed in the state register on the  
2 twenty-sixth day of July, two thousand two, under the authority  
3 of section four hundred one, article twenty-six, chapter forty-  
4 eight of this code, modified by the family protection services  
5 board to meet the objections of the legislative rule-making  
6 review committee and refiled in the state register on the tenth  
7 day of January, two thousand three, relating to the family  
8 protection services board (operation of the family protection  
9 services board, 191 CSR 1), is authorized with the following  
10 amendments:

11       “On page three, section three, by inserting a new subsection  
12 to read as follows:

13       ‘3.11 “Partner Agencies” means state and community  
14 organizations whose mission and purpose require their response  
15 to the needs of victims of domestic violence and their chil-  
16 dren.’, and by renumbering the remaining subsections accord-  
17 ingly;

18       And,

19       On page eight, section five, subsection six, subdivision c,  
20 following the words ‘fifteen (15) days’, by inserting the words  
21 ‘after the receipt of the notice’”.

22       (b) The legislative rule filed in the state register on the  
23 twenty-sixth day of July, two thousand two, under the authority  
24 of section four hundred one, article twenty-six, chapter forty-  
25 eight of this code, modified by the family protection services  
26 board to meet the objections of the legislative rule-making  
27 review committee and refiled in the state register on the tenth  
28 day of January, two thousand three, relating to the family  
29 protection services board (licensure of domestic violence and  
30 perpetrator intervention programs, 191 CSR 2), is authorized  
31 with the following amendments:

32       “On page seven, section three, subsection one, subdivision  
33 g, after the words ‘client service agreements’ by striking the  
34 words ‘and other purchase of service agreements that exceed  
35 one thousand dollars (\$1000.00) annually’”.

36       (c) The legislative rule filed in the state register on the  
37 twenty-sixth day of July, two thousand two, under the authority  
38 of section four hundred one, article twenty-six, chapter forty of  
39 this code, modified by the family protection services board to  
40 meet the objections of the legislative rule-making review  
41 committee and refiled in the state register on the tenth day of  
42 January, two thousand three, relating to the family protection  
43 services board(perpetrator intervention program licensure, 191  
44 CSR 3), is authorized with the following amendments:

45 “On page one, section three, subsection one, subdivision b,  
46 after the words ‘client service agreements’ by striking the  
47 words ‘and other purchase of service agreements that exceed  
48 one thousand dollars (\$1000.00) annually’;

49 On page six, section three, subsection three, subdivision c,  
50 paragraph 4, by striking the words ‘Cultural competency’, and  
51 inserting in lieu thereof the words ‘Cultural sensitivity’;

52 On page six, section three, subsection four, after the words  
53 ‘conducted by the program’, by inserting the word ‘director’;

54 And,

55 On page nine, section three, subsection twelve, subdivision  
56 a, by striking out the words ‘Frequency of and reasons for low  
57 attendance of perpetrator(s).’, and inserting in lieu thereof the  
58 words ‘Attendance records of perpetrator(s) including reason(s)  
59 for repeated absences.’”

60 (d) The legislative rule filed in the state register on the  
61 twenty-sixth day of July, two thousand two, under the authority  
62 of section four hundred one, article twenty-six, chapter forty-  
63 eight of this code, modified by the family protection services  
64 board to meet the objections of the legislative rule-making  
65 review committee and refiled in the state register on the tenth  
66 day of January, two thousand three, relating to the family  
67 protection services board (monitored visitation and exchange  
68 program certification, 191 CSR 4), is authorized.

#### **§64-9-6. Board of funeral service examiners.**

1 (a) The legislative rule filed in the state register on the  
2 twenty-sixth day of June, two thousand two, under the authority  
3 of sections five and six, article six, chapter thirty of this code,  
4 modified by the board of funeral service examiners to meet the  
5 objections of the legislative rule-making review committee and



6 refiled in the state register on the sixteenth day of January, two  
7 thousand three, relating to the board of funeral service examin-  
8 ers (general provisions, 6 CSR 1), is authorized with the  
9 following amendment:

10 “On page thirteen, section sixteen, subsection ten, subdivi-  
11 sion two, by striking the words ‘twenty-five dollars (\$25)’ and  
12 inserting in lieu thereof the words ‘fifteen dollars (\$15)’”.

13 (b) The legislative rule filed in the state register on the  
14 twenty-sixth day of July, two thousand two, under the authority  
15 of section six, article six, chapter thirty of this code, modified  
16 by the board of funeral service examiners to meet the objections  
17 of the legislative rule-making review committee and refiled in  
18 the state register on the sixteenth day of January, two thousand  
19 three, relating to the board of funeral service examiners  
20 (crematory requirements, 6 CSR 2), is authorized with the  
21 following amendment:

22 “On page twenty-three, section twenty, subsection seven,  
23 subdivision two, by striking the words ‘twenty-five dollars  
24 (\$25)’ and inserting in lieu thereof the words ‘fifteen dollars  
25 (\$15)’”.

**§64-9-7. Governor’s committee on crime, delinquency and cor-  
rection.**

1 (a) The legislative rule filed in the state register on the  
2 twenty-sixth day of July, two thousand two, authorized under  
3 the authority of section three, article eleven-c, chapter sixty-two  
4 of this code, relating to the governor’s committee on crime,  
5 delinquency and correction (community corrections standards,  
6 149 CSR 4), is authorized.

7 (b) The legislative rule filed in the state register on the  
8 eighth day of July, two thousand two, authorized under the  
9 authority of section three, article twenty-nine, chapter thirty of

10 this code, modified by the governor's committee on crime,  
11 delinquency and correction to meet the objections of the  
12 legislative rule-making review committee and refiled in the  
13 state register on the nineteenth day of December, two thousand  
14 two, relating to the governor's committee on crime, delin-  
15 quency and correction (law-enforcement training standards, 149  
16 CSR 2), is authorized.

**§64-9-8. Massage therapy licensure board.**

1 The legislative rule filed in the state register on the twenty-  
2 sixth day of July, two thousand two, under the authority of  
3 section six, article thirty-seven, chapter thirty of this code,  
4 modified by the massage therapy licensure board to meet the  
5 objections of the legislative rule-making review committee and  
6 refiled in the state register on the twenty-second day of Novem-  
7 ber, two thousand two, relating to the massage therapy licensure  
8 board (general provisions, 194 CSR 1), is authorized.

**§64-9-9. Board of medicine.**

1 The legislative rule filed in the state register on the twenty-  
2 sixth day of July, two thousand two, under the authority of  
3 section sixteen, article three, chapter thirty of this code,  
4 modified by the board of medicine to meet the objections of the  
5 legislative rule-making review committee and refiled in the  
6 state register on the twenty-third day of October, two thousand  
7 two, relating to the board of medicine (licensure, disciplinary  
8 and complaint procedures, continuing education and physician  
9 assistants, 11 CSR 1B), is authorized.

**§64-9-10. Nursing home administrators licensing board.**

1 The legislative rule filed in the state register on the six-  
2 teenth day of May, two thousand two, under the authority of  
3 section seven, article twenty-five, chapter thirty of this code,  
4 modified by the nursing home administrators licensing board to

5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the twentieth day  
7 of December, two thousand two, relating to the nursing home  
8 administrators licensing board (nursing home administrators, 21  
9 CSR 1), is authorized.

**§64-9-11. Board of optometry.**

1 The legislative rule filed in the state register on the fifth day  
2 of June, two thousand two, authorized under the authority of  
3 section five, article eight, chapter thirty of this code, modified  
4 by the board of optometry to meet the objections of the legisla-  
5 tive rule-making review committee and refiled in the state  
6 register on the twenty-third day of December, two thousand  
7 two, relating to the board of optometry (licensure by endorse-  
8 ment, 14 CSR 8), is authorized.

**§64-9-12. Board of pharmacy.**

1 (a) The legislative rule filed in the state register on the  
2 seventeenth day of July, two thousand two, authorized under the  
3 authority of section six, article nine, chapter sixty-a of this  
4 code, modified by the board of pharmacy to meet the objections  
5 of the legislative rule-making review committee and refiled in  
6 the state register on the twenty-eighth day of October, two  
7 thousand two, relating to the board of pharmacy (controlled  
8 substances monitoring, 15 CSR 8), is authorized with the  
9 following amendment:

10 "On page three, by striking out all of section five and  
11 inserting in lieu thereof the following:

**§15-8-5. Prescription forms.**

1 5.1. The purpose of this section is to establish minimum  
2 requirements that will decrease the potential for forgery or

3 alteration of a prescription or a prescription blank for a con-  
4 trolled substance.

5       5.2. After June 1, 2003, the Board of Pharmacy recom-  
6 mends that a written prescription for a controlled substance in  
7 Schedules II, III or IV be on a security prescription blank.

8       5.3. Minimum Requirements of a Security Prescription  
9 Blank.

10       5.3.1. A prescription for a controlled substance should  
11 contain the following security features:

12       (a) A latent, repetitive “void” pattern screened and printed  
13 across the entire front of the prescription blank. If the prescrip-  
14 tion is photocopied, the word “void” shall appear in a pattern  
15 across the entire front of the prescription;

16       (b) A watermark printed on the backside of the prescription  
17 blank so that it is only seen at a forty-five (45) degree angle;

18       (c) An opaque “Rx” symbol or an “Rx” symbol printed in  
19 disappearing ink shall appear in the upper part of the blank. The  
20 symbol shall disappear if the prescription copy is lightened;

21       (d) Six (6) quantity check-off boxes printed on the form and  
22 the following quantities shall appear:

23           (1) ! 1-24;

24           (2) ! 25-49;

25           (3) ! 50-74;

26           (4) ! 75-100;

27           (5) ! 101-150; and

28 (6) ! 151 and over:

29 *Provided*, That if the blank has the quantity prescribed  
30 electronically printed in both numeric and word format, then the  
31 quantity check-off boxes would not be necessary;

32 (e) The following statement printed on the bottom of the  
33 prescription blank: "Prescription is void if more than one (1)  
34 controlled substance prescription is written per blank"; and

35 (f) Refill options in the following order: Refill NR 1 2 3 4  
36 5: *Provided*, That if the blank has the refill amount electroni-  
37 cally printed in both numeric and word format, then the  
38 quantity check-off boxes would not be necessary.

39 5.3.2. A prescription shall bear the preprinted, stamped,  
40 typed, or manually printed name, address and telephone number  
41 of the prescribing practitioner.

42 5.3.3. A prescription blank for a controlled substance shall  
43 not contain:

44 (a) An advertisement on the front or the back of the  
45 prescription blank;

46 (b) The preprinted name of a controlled substance; or

47 (c) The written, typed or rubber-stamped name of a  
48 controlled substance until the prescription blank is signed, dated  
49 and issued to a patient.

50 5.3.4. A prescription blank for a controlled substance shall  
51 provide space for the patient's name and address, the practitio-  
52 ner's signature and the practitioner's DEA registration number.

53 5.3.5. Only one (1) controlled substance prescription blank  
54 shall be written per prescription blank.

55       5.3.6. A quantity check-off box that corresponds to the  
56 quantity prescribed shall be marked or the quantity electroni-  
57 cally printed in both numeric and word format.

58       5.3.7. If a prescribed drug is a Schedule II, III or IV  
59 controlled substance, a refill option shall be marked or the refill  
60 amount electronically printed in both numeric and word format.

61       5.3.8. If a prescription for a Schedule II, III or IV controlled  
62 substance will be transmitted to a pharmacy by facsimile, the  
63 practitioner or the practitioner's agent shall, prior to transmis-  
64 sion, write or stamp "FAXED" on the face of the original  
65 prescription along with the date and the person's initials.

66       5.3.9. If a prescription for a Schedule II, III or IV controlled  
67 substance has been transmitted to a pharmacy by facsimile, the  
68 transmitting practitioner shall file the original prescription in  
69 the patient's record.

70       5.3.10. A pharmacist shall not be required to use a security  
71 prescription blank to record an oral prescription or a transferred  
72 prescription for a Schedule II, III or IV controlled substance.

73       5.3.11. The requirements of this section do not apply to  
74 prescriptions for controlled substances that are electronically  
75 transmitted from a prescriber to a pharmacy: *Provided*, That all  
76 electronically transmitted prescriptions for controlled sub-  
77 stances shall comply with all federal requirements."

78       (b) The legislative rule filed in the state register on the  
79 seventeenth day of July, two thousand two, authorized under the  
80 authority of section seven-c, article five, chapter thirty of this  
81 code, modified by the board of pharmacy to meet the objections  
82 of the legislative rule-making review committee and refiled in  
83 the state register on the twenty-eighth day of October, two

84 thousand two, relating to the board of pharmacy (pharmacist  
85 recovery networks, 15 CSR 10), is authorized.

**§64-9-13. Radiologic technology board of examiners.**

1 The legislative rule filed in the state register on the twenty-  
2 fifth day of July, two thousand two, under the authority of  
3 section five, article twenty-three, chapter thirty of this code,  
4 modified by the board of examiners of radiologic technology to  
5 meet the objections of the legislative rule-making review  
6 committee and refiled in the state register on the nineteenth day  
7 of November, two thousand two, relating to the board of  
8 examiners of radiologic technology (rules of the board, 18 CSR  
9 1), is authorized with the following amendments:

10 “On page two, section two, subsection e, subdivision seven,  
11 after the word ‘violating’, by striking the words ‘provisions of  
12 subsection 3.6 of this rule’ and inserting in lieu thereof the  
13 words ‘rules of the board’;

14 On page three, section four, subsection two, subdivision e,  
15 by striking the word ‘penalty’;

16 And,

17 On page six, section seven, subsection 4.7.e by striking the  
18 words ‘\$15.00’ and inserting in lieu thereof the words ‘maxi-  
19 mum allowable by West Virginia State Code”’.

**§64-9-14. Real estate appraiser licensing and certification board.**

1 (a) The legislative rule filed in the state register on the  
2 twenty-fifth day of July, two thousand two, under authority of  
3 section nine, article thirty-eight, chapter thirty of this code,  
4 modified by the real estate appraiser licensing and certification  
5 board to meet the objections of the legislative rule-making

6 review committee and filed in the state register on the thirtieth  
7 day of September, two thousand two, relating to the real estate  
8 appraiser licensing and certification board (requirements for  
9 licensure and certification, 190 CSR 2), is authorized.

10 (b) The legislative rule filed in the state register on the  
11 twenty-fifth day of July, two thousand two, under the authority  
12 of section nine, article thirty-eight, chapter thirty of this code,  
13 relating to the real estate appraiser licensing and certification  
14 board (renewal of licensure or certification, 190 CSR 3), is  
15 authorized.

**§64-9-15. Real estate commission.**

1 (a) The legislative rule filed in the state register on the  
2 nineteenth day of July, two thousand two, under the authority  
3 of section eight, article forty, chapter thirty of this code, relating  
4 to the real estate commission (requirements in licensing real  
5 estate brokers, associate brokers and salespersons and the  
6 conduct of brokerage business, 174 CSR 1), is authorized with  
7 the following amendment:

8 “On page nine, section sixteen, paragraph 16.3.b.1.,  
9 following the words ‘interest bearing’, by striking out the word  
10 ‘account’ and inserting in lieu thereof the words ‘trust fund  
11 account established in compliance with WV Code § 30-40-18’”.

12 (b) The legislative rule filed in the state register on the  
13 nineteenth day of July, two thousand two, under the authority  
14 of section eight, article forty, chapter thirty of this code, relating  
15 to the real estate commission (schedule of fees, 174 CSR 2), is  
16 authorized.

17 (c) The legislative rule filed in the state register on the  
18 nineteenth day of July, two thousand two, under the authority  
19 of section eight, article forty, chapter thirty of this code,



20 modified by the real estate commission to meet the objections  
21 of the legislative rule-making review committee and refiled in  
22 the state register on the twenty-second day of November, two  
23 thousand two, relating to the real estate commission (require-  
24 ments in approval and registration of real estate courses, course  
25 providers and instructors, 174 CSR 3), is authorized.

**§64-9-16. Secretary of state.**

1 The legislative rule filed in the state register on the twenty-  
2 second day of July, two thousand two, authorized under the  
3 authority of section four, article six-j, chapter forty-six-a of this  
4 code, modified by the secretary of state to meet the objections  
5 of the legislative rule-making review committee and refiled in  
6 the state register on the twenty-first day of October, two  
7 thousand two, relating to the secretary of state (registry for  
8 notification of a state of emergency, 153 CSR 33), is autho-  
9 rized.

**§64-9-17. Board of veterinary medicine.**

1 (a) The legislative rule filed in the state register on the  
2 twenty-sixth day of July, two thousand two, authorized under  
3 the authority of section four, article ten, chapter thirty of this  
4 code, modified by the board of veterinary medicine to meet the  
5 objections of the legislative rule-making review committee and  
6 refiled in the state register on the twenty-seventh day of  
7 December, two thousand two, relating to the board of veterinary  
8 medicine (standards of practice, 26 CSR 4), is authorized.

9 (b) The legislative rule filed in the state register on the  
10 twenty-sixth day of July, two thousand two, authorized under  
11 the authority of section four, article ten, chapter thirty of this  
12 code, relating to the board of veterinary medicine (schedule of  
13 fees, 26 CSR 6), is authorized.

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## CHAPTER 21

(S. B. 2001 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]

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[Passed June 12, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article eight, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for executive appointment of members of the pension bond review committee.

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

That section four, article eight, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. PENSION LIABILITY REDEMPTION.**

**§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.**

1       (a) Notwithstanding any other provision of this code and  
2 pursuant to section four, article ten of the constitution of West  
3 Virginia, the governor shall have the power, as provided by this  
4 article, to issue the bonds authorized in this section at a time or  
5 times as provided by a resolution adopted by the Legislature to  
6 redeem a previous liability of the state by funding all or a  
7 portion of the unfunded actuarial accrued liability, such bonds  
8 to be payable from and secured by moneys deposited in the  
9 pension liability redemption fund. Any bonds issued pursuant

10 to this article, other than refunding bonds, shall be issued no  
11 later than five years after the date of adoption of the resolution  
12 of the Legislature authorizing the issuance of the bonds referred  
13 to in this section.

14 (b) The aggregate principal amount of bonds issued  
15 pursuant to the provisions of this article is limited to no more  
16 than the lesser of the following: (1) The principal amount  
17 necessary, after deduction of costs, underwriter's discount and  
18 original issue discount, if any, to fund not in excess of one  
19 hundred percent of the unfunded actuarial accrued liability of  
20 the death, disability and retirement fund of the division of  
21 public safety established in article two, chapter fifteen of this  
22 code, one hundred percent of the unfunded actuarial accrued  
23 liability of the judges' retirement system established in article  
24 nine, chapter fifty-one of this code, and ninety-five percent of  
25 the unfunded actuarial accrued liability of the teachers retire-  
26 ment system established in article seven-a, chapter eighteen of  
27 this code, as certified by the consolidated public retirement  
28 board to the department of administration pursuant to subsec-  
29 tion (e) of this section; or (2) three billion nine hundred million  
30 dollars; but in no event shall the aggregate principal amount of  
31 bonds issued exceed the principal amount necessary, after  
32 deduction of costs, underwriter's discount and original issue  
33 discount, if any, to fund not in excess of the total unfunded  
34 actuarial accrued liability, as certified by the consolidated  
35 public retirement board to the department of administration  
36 pursuant to subsection (e) of this section.

37 (c) The costs of issuance, excluding fees for bond insur-  
38 ance, credit enhancements and liquidity facilities, plus under-  
39 writer's discount and any other costs associated with the  
40 issuance shall not exceed, in the aggregate, the sum of one  
41 percent of the aggregate principal amount of bonds issued. All  
42 such costs shall be subject to the review and approval of a

43 majority of the members of a review committee. The review  
44 committee shall consist of the state treasurer and four persons  
45 having skill and experience in bond issuance, appointed by the  
46 governor.

47 (d) The limitation on the aggregate principal amount of  
48 bonds provided in this section shall not preclude the issuance of  
49 bonds from time to time or in one or more series.

50 (e) No later than ten days after receipt of a request from the  
51 department of administration, the consolidated public retire-  
52 ment board shall provide the department of administration with  
53 a certified statement of the amount of each pension system's  
54 unfunded actuarial accrued liability calculated in an actuarial  
55 valuation report that establishes the amount of the unfunded  
56 actuarial accrued liability as of a date specified by the depart-  
57 ment of administration, based upon each pension system's most  
58 recent actuarial valuation.

59 (f) No later than fifteen days after receipt of a request from  
60 the governor, the department of administration shall provide the  
61 governor with a certification of the maximum aggregate  
62 principal amount of bonds that may be issued at that time  
63 pursuant to subsection (b) of this section.

64 (g) Prior to any request of the governor that the Legislature  
65 prepare and consider a resolution authorizing the issuance of  
66 bonds, the bonds shall be authorized by a majority of the  
67 members of the review committee described in subsection (c)  
68 of this section.

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## CHAPTER 22

**(S. B. 2007 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]**

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[Passed July 1, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eighteen-a, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to state excess lottery fund; deleting obsolete language; providing that certain bonds issued state on their face that they do not constitute a debt of the state; providing that the governor appoint six persons to the committee certifying projects to receive funds from bond proceeds; designating prior applications as refiled; requiring a certain applicant to file additional information with the committee; providing criteria to be used by the committee in certifying projects; prohibiting grants to individuals or private entities, but allowing low-interest loans to such persons; giving examples of the types of projects considered to be in the public interest; and providing that any excess funds be placed in the economic development project bridge loan fund.

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

That section eighteen-a, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. STATE LOTTERY ACT.**

**§29-22-18a. State excess lottery revenue fund.**

1 (a) There is continued a special revenue fund within the  
2 state lottery fund in the state treasury which is designated and  
3 known as the “state excess lottery revenue fund”. The fund  
4 consists of all appropriations to the fund and all interest earned  
5 from investment of the fund and any gifts, grants or contribu-  
6 tions received by the fund. All revenues received under the  
7 provisions of sections ten-b and ten-c, article twenty-two-a of  
8 this chapter and under article twenty-two-b of this chapter,  
9 except the amounts due the commission under section 29-22B-  
10 1408(a)(1) of this chapter, shall be deposited in the state  
11 treasury and placed into the “state excess lottery revenue fund”.  
12 The revenue shall be disbursed in the manner provided in this  
13 section for the purposes stated in this section and shall not be  
14 treated by the auditor and the state treasurer as part of the  
15 general revenue of the state.

16 (b) For the fiscal year beginning the first day of July, two  
17 thousand two, the commission shall deposit: (1) Sixty-five  
18 million dollars into the subaccount of the state excess lottery  
19 revenue fund hereby created in the state treasury to be known  
20 as the “general purpose account” to be expended pursuant to  
21 appropriation of the Legislature; (2) ten million dollars into the  
22 education improvement fund for appropriation by the Legisla-  
23 ture to the “promise scholarship fund” created in section seven,  
24 article seven, chapter eighteen-c of this code; (3) nineteen  
25 million dollars into the economic development project fund  
26 created in subsection (d) of this section for the issuance of  
27 revenue bonds and to be spent in accordance with the provi-  
28 sions of said subsection; (4) twenty million dollars into the  
29 school building debt service fund created in section six, article  
30 nine-d, chapter eighteen of this code for the issuance of revenue  
31 bonds; (5) forty million dollars into the West Virginia infra-  
32 structure fund created in section nine, article fifteen-a, chapter  
33 thirty-one of this code to be spent in accordance with the  
34 provisions of said article; (6) ten million dollars into the higher  
35 education improvement fund for higher education; and (7) five

36 million dollars into the state park improvement fund for park  
37 improvements. For the fiscal year beginning the first day of  
38 July, two thousand three, the commission shall deposit: (1)  
39 Sixty-five million dollars into the general purpose account to be  
40 expended pursuant to appropriation of the Legislature; (2)  
41 seventeen million dollars into the education improvement fund  
42 for appropriation by the Legislature to the “promise scholarship  
43 fund” created in section seven, article seven, chapter eighteen-c  
44 of this code; (3) nineteen million dollars into the economic  
45 development project fund created in subsection (d) of this  
46 section for the issuance of revenue bonds and to be spent in  
47 accordance with the provisions of said subsection; (4) twenty  
48 million dollars into the school building debt service fund  
49 created in section six, article nine-d, chapter eighteen of this  
50 code for the issuance of revenue bonds; (5) forty million dollars  
51 into the West Virginia infrastructure fund created in section  
52 nine, article fifteen-a, chapter thirty-one of this code to be spent  
53 in accordance with the provisions of said article; (6) ten million  
54 dollars into the higher education improvement fund for higher  
55 education; and (7) five million dollars into the state park  
56 improvement fund for park improvements.

57 (c) For the fiscal year beginning the first day of July, two  
58 thousand four, and subsequent fiscal years, the commission  
59 shall deposit: (1) Sixty-five million dollars into the general  
60 purpose account to be expended pursuant to appropriation of the  
61 Legislature; (2) twenty-seven million dollars into the education  
62 improvement fund for appropriation by the Legislature to the  
63 “promise scholarship fund” created in section seven, article  
64 seven, chapter eighteen-c of this code; (3) nineteen million  
65 dollars into the economic development project fund created in  
66 subsection (d) of this section for the issuance of revenue bonds  
67 and to be spent in accordance with the provisions of said  
68 subsection; (4) nineteen million dollars into the school building  
69 debt service fund created in section six, article nine-d, chapter  
70 eighteen of this code for the issuance of revenue bonds; (5)

71 forty million dollars into the West Virginia infrastructure fund  
72 created in section nine, article fifteen-a, chapter thirty-one of  
73 this code to be spent in accordance with the provisions of said  
74 article; (6) ten million dollars into the higher education im-  
75 provement fund for higher education; and (7) five million  
76 dollars into the state park improvement fund for park improve-  
77 ments. No portion of the distributions made as provided in this  
78 subsection and subsection (b) of this section, except distribu-  
79 tions made in connection with bonds issued under subsection  
80 (d) of this section, may be used to pay debt service on bonded  
81 indebtedness until after the Legislature expressly authorizes  
82 issuance of the bonds and payment of debt service on the bonds  
83 through statutory enactment or the adoption of a concurrent  
84 resolution by both houses of the Legislature. Until subsequent  
85 legislative enactment or adoption of a resolution that expressly  
86 authorizes issuance of the bonds and payment of debt service on  
87 the bonds with funds distributed under this subsection and  
88 subsection (b) of this section, except distributions made in  
89 connection with bonds issued under subsection (d) of this  
90 section, the distributions may be used only to fund capital  
91 improvements that are not financed by bonds and only pursuant  
92 to appropriation of the Legislature.

93 (d) The Legislature finds and declares that in order to  
94 attract new business, commerce and industry to this state, to  
95 retain existing business and industry providing the citizens of  
96 this state with economic security and to advance the business  
97 prosperity of this state and the economic welfare of the citizens  
98 of this state, it is necessary to provide public financial support  
99 for constructing, equipping, improving and maintaining  
100 economic development projects, capital improvement projects  
101 and infrastructure which promote economic development in this  
102 state.

103 (1) The West Virginia economic development authority  
104 created and provided for in article fifteen, chapter thirty-one of



105 this code shall, by resolution, in accordance with the provisions  
106 of this article and article fifteen, chapter thirty-one of this code,  
107 and upon direction of the governor, issue revenue bonds of the  
108 economic development authority in no more than two series to  
109 pay for all or a portion of the cost of constructing, equipping,  
110 improving or maintaining projects under this section or to  
111 refund the bonds at the discretion of the authority. Any revenue  
112 bonds issued on or after the first day of July, two thousand two,  
113 which are secured by state excess lottery revenue proceeds shall  
114 mature at a time or times not exceeding thirty years from their  
115 respective dates. The principal of, and the interest and redemp-  
116 tion premium, if any, on, the bonds shall be payable solely from  
117 the special fund provided in this section for the payment.

118 (2) There is continued in the state treasury a special revenue  
119 fund named the "economic development project fund" into  
120 which shall be deposited on and after the first day of July, two  
121 thousand two, the amounts to be deposited in said fund as  
122 specified in subsections (b) and (c) of this section. The eco-  
123 nomic development project fund shall consist of all such  
124 moneys, all appropriations to the fund, all interest earned from  
125 investment of the fund and any gifts, grants or contributions  
126 received by the fund. All amounts deposited in the fund shall be  
127 pledged to the repayment of the principal, interest and redemp-  
128 tion premium, if any, on any revenue bonds or refunding  
129 revenue bonds authorized by this section, including any and all  
130 commercially customary and reasonable costs and expenses  
131 which may be incurred in connection with the issuance,  
132 refunding, redemption or defeasance thereof. The West Virginia  
133 economic development authority may further provide in the  
134 resolution and in the trust agreement for priorities on the  
135 revenues paid into the economic development project fund as  
136 may be necessary for the protection of the prior rights of the  
137 holders of bonds issued at different times under the provisions  
138 of this section. The bonds issued pursuant to this subsection  
139 shall be separate from all other bonds which may be or have

140 been issued from time to time under the provisions of this  
141 article.

142 (3) After the West Virginia economic development author-  
143 ity has issued bonds authorized by this section and after the  
144 requirements of all funds have been satisfied, including any  
145 coverage and reserve funds established in connection with the  
146 bonds issued pursuant to this subsection, any balance remaining  
147 in the economic development project fund may be used for the  
148 redemption of any of the outstanding bonds issued under this  
149 subsection which, by their terms, are then redeemable or for the  
150 purchase of the outstanding bonds at the market price, but not  
151 to exceed the price, if any, at which redeemable, and all bonds  
152 redeemed or purchased shall be immediately canceled and shall  
153 not again be issued.

154 (4) Bonds issued under this subsection shall state on their  
155 face that the bonds do not constitute a debt of the state of West  
156 Virginia; that payment of the bonds, interest and charges  
157 thereon cannot become an obligation of the state of West  
158 Virginia; and that the bondholders' remedies are limited in all  
159 respects to the "special revenue fund" established in this  
160 subsection for the liquidation of the bonds.

161 (5) The West Virginia economic development authority  
162 shall expend the bond proceeds from the revenue bond issues  
163 authorized and directed by this section for such projects as may  
164 be certified under the provision of this subsection: *Provided*,  
165 That the bond proceeds shall be expended in accordance with  
166 the requirements and provisions of article five-a, chapter  
167 twenty-one of this code and either article twenty-two or twenty-  
168 two-a, chapter five of this code, as the case may be: *Provided*,  
169 *however*, That if such bond proceeds are expended pursuant to  
170 article twenty-two-a, chapter five of this code and if the design-  
171 build board created under said article determines that the  
172 execution of a design-build contract in connection with a

173 project is appropriate pursuant to the criteria set forth in said  
174 article and that a competitive bidding process was used in  
175 selecting the design builder and awarding such contract, such  
176 determination shall be conclusive for all purposes and shall be  
177 deemed to satisfy all the requirements of said article.

178 (6) For the purpose of certifying the projects that will  
179 receive funds from the bond proceeds, a committee is hereby  
180 established and comprised of the governor, or his or her  
181 designee, the secretary of the department of tax and revenue,  
182 the executive director of the West Virginia development office  
183 and six persons appointed by the governor: *Provided*, That at  
184 least one citizen member must be from each of the state's three  
185 congressional districts. The committee shall meet as often as  
186 necessary and make certifications from bond proceeds in  
187 accordance with this subsection. The committee shall meet  
188 within thirty days of the effective date of this section.

189 (7) Applications for grants submitted on or before the first  
190 day of July, two thousand two, shall be considered refiled with  
191 the committee. Within ten days from the effective date of this  
192 section as amended in the year two thousand three, the lead  
193 applicant shall file with the committee any amendments to the  
194 original application that may be necessary to properly reflect  
195 changes in facts and circumstances since the application was  
196 originally filed with the committee.

197 (8) When determining whether or not to certify a project,  
198 the committee shall take into consideration the following:

199 (A) The ability of the project to leverage other sources of  
200 funding;

201 (B) Whether funding for the amount requested in the grant  
202 application is or reasonably should be available from commer-  
203 cial sources;

204 (C) The ability of the project to create or retain jobs,  
205 considering the number of jobs, the type of jobs, whether  
206 benefits are or will be paid, the type of benefits involved and  
207 the compensation reasonably anticipated to be paid persons  
208 filling new jobs or the compensation currently paid to persons  
209 whose jobs would be retained;

210 (D) Whether the project will promote economic develop-  
211 ment in the region and the type of economic development that  
212 will be promoted;

213 (E) The type of capital investments to be made with bond  
214 proceeds and the useful life of the capital investments; and

215 (F) Whether the project is in the best interest of the public.

216 (9) No grant may be awarded to an individual or other  
217 private person or entity. Grants may be awarded only to an  
218 agency, instrumentality or political subdivision of this state or  
219 to an agency or instrumentality of a political subdivision of this  
220 state.

221 The project of an individual or private person or entity may  
222 be certified to receive a low-interest loan paid from bond  
223 proceeds. The terms and conditions of the loan, including, but  
224 not limited to, the rate of interest to be paid and the period of  
225 the repayment, shall be determined by the economic develop-  
226 ment authority after considering all applicable facts and  
227 circumstances.

228 (10) Prior to making each certification, the committee shall  
229 conduct at least one public hearing, which may be held outside  
230 of Kanawha County. Notice of the time, place, date and purpose  
231 of the hearing shall be published in at least one newspaper in  
232 each of the three congressional districts at least fourteen days  
233 prior to the date of the public hearing.

234 (11) The committee may not certify a project unless the  
235 committee finds that the project is in the public interest and the  
236 grant will be used for a public purpose. For purposes of this  
237 subsection, projects in the public interest and for a public  
238 purpose include, but are not limited to:

239 (A) Sports arenas, fields parks, stadiums and other sports  
240 and sports-related facilities;

241 (B) Health clinics and other health facilities;

242 (C) Traditional infrastructure, such as water and wastewater  
243 treatment facilities, pumping facilities and transmission lines;

244 (D) State-of-the-art telecommunications infrastructure;

245 (E) Biotechnical incubators, development centers and  
246 facilities;

247 (F) Industrial parks, including construction of roads, sewer,  
248 water, lighting and other facilities;

249 (G) Improvements at state parks, such as construction,  
250 expansion or extensive renovation of lodges, cabins, conference  
251 facilities and restaurants;

252 (H) Railroad bridges, switches and track extension or spurs  
253 on public or private land necessary to retain existing businesses  
254 or attract new businesses;

255 (I) Recreational facilities, such as amphitheaters, walking  
256 and hiking trails, bike trails, picnic facilities, restrooms, boat  
257 docking and fishing piers, basketball and tennis courts, and  
258 baseball, football and soccer fields;

259 (J) State-owned buildings that are registered on the national  
260 register of historic places;

261 (K) Retail facilities, including related service, parking and  
262 transportation facilities, appropriate lighting, landscaping and  
263 security systems to revitalize decaying downtown areas; and

264 (L) Other facilities that promote or enhance economic  
265 development, educational opportunities or tourism opportuni-  
266 ties thereby promoting the general welfare of this state and its  
267 residents.

268 (12) Prior to the issuance of bonds under this subsection,  
269 the committee shall certify to the economic development  
270 authority a list of those certified projects that will receive funds  
271 from the proceeds of the bonds. Once certified, the list may not  
272 thereafter be altered or amended other than by legislative  
273 enactment.

274 (13) If any proceeds from sale of bonds remain after paying  
275 costs and making grants and loans as provided in this subsec-  
276 tion, the surplus may be deposited in an account created in the  
277 state treasury to be known as the “economic development  
278 project bridge loan fund” to be administered by the council for  
279 community and economic development created in section two,  
280 article two, chapter five-b of this code. Expenditures from the  
281 fund are not authorized from collections but are to be made  
282 only in accordance with appropriation by the Legislature and in  
283 accordance with the provisions of article three, chapter twelve  
284 of this code and upon fulfillment of the provisions of article  
285 two, chapter five-a of this code. Loan repayment amounts,  
286 including the portion attributable to interest shall be paid into  
287 the fund created in this subdivision.

288 (e) If the commission receives revenues in an amount that  
289 is not sufficient to fully comply with the requirements of  
290 subsections (b), (c) and (h) of this section, the commission shall  
291 first make the distribution to the economic development project  
292 fund; second, make the distribution or distributions to the other

293 funds from which debt service is to be paid; third, make the  
294 distribution to the education improvement fund for appropria-  
295 tion by the Legislature to the promise scholarship fund; and  
296 fourth, make the distribution to the general purpose account:  
297 *Provided, That*, subject to the provisions of this subsection, to  
298 the extent such revenues are not pledged in support of revenue  
299 bonds which are or may be issued from time to time under this  
300 section, the revenues shall be distributed on a pro rata basis.

301 (f) For the fiscal year beginning on the first day of July, two  
302 thousand two, and each fiscal year thereafter, the commission  
303 shall, after meeting the requirements of subsections (b), (c) and  
304 (h) of this section and after transferring to the state lottery fund  
305 created under section eighteen of this article an amount equal  
306 to any transfer from the state lottery fund to the excess lottery  
307 fund pursuant to subsection (f), section eighteen of this article,  
308 deposit fifty percent of the amount by which annual gross  
309 revenue deposited in the state excess lottery revenue fund  
310 exceeds two hundred twenty-five million dollars in a fiscal year  
311 in a separate account in the state lottery fund to be available for  
312 appropriation by the Legislature.

313 (g) When bonds are issued for projects under subsection (d)  
314 of this section or for the school building authority, infrastruc-  
315 ture, higher education or park improvement purposes described  
316 in this section that are secured by profits from lotteries depos-  
317 ited in the state excess lottery revenue fund, the lottery director  
318 shall allocate first to the economic development project fund an  
319 amount equal to one tenth of the projected annual principal,  
320 interest and coverage requirements on any and all revenue  
321 bonds issued, or to be issued, on or after the first day of July,  
322 two thousand two, as certified to the lottery director; and  
323 second, to the fund or funds from which debt service is paid on  
324 bonds issued under this section for the school building author-  
325 ity, infrastructure, higher education and park improvements an  
326 amount equal to one tenth of the projected annual principal,

327 interest and coverage requirements on any and all revenue  
328 bonds issued, or to be issued, on or after the first day of April,  
329 two thousand two, as certified to the lottery director. In the  
330 event there are insufficient funds available in any month to  
331 transfer the amounts required pursuant to this subsection, the  
332 deficiency shall be added to the amount transferred in the next  
333 succeeding month in which revenues are available to transfer  
334 the deficiency.

335 (h) In fiscal year two thousand four and thereafter, prior to  
336 the distributions provided in subsection (c) of this section, the  
337 lottery commission shall deposit into the general revenue fund  
338 amounts necessary to provide reimbursement for the refundable  
339 credit allowable under section twenty-one, article twenty-one,  
340 chapter eleven of this code.

341 (i) (1) The Legislature considers the following as priorities  
342 in the expenditure of any surplus revenue funds:

343 (A) Providing salary and/or increment increases for  
344 professional educators and public employees;

345 (B) Providing adequate funding for the public employees  
346 insurance agency; and

347 (C) Providing funding to help address the shortage of  
348 qualified teachers and substitutes in areas of need, both in  
349 number of teachers and in subject matter areas.

350 (2) The provisions of this subsection may not be construed  
351 by any court to require any appropriation or any specific  
352 appropriation or level of funding for the purposes set forth in  
353 this subsection.

354 (j) The Legislature further directs the governor to focus  
355 resources on the creation of a prescription drug program for  
356 senior citizens by pursuing a medicaid waiver to offer prescrip-



357 tion drug services to senior citizens; by investigating the  
358 establishment of purchasing agreements with other entities to  
359 reduce costs; by providing discount prices or rebate programs  
360 for seniors; by coordinating programs offered by pharmaceuti-  
361 cal manufacturers that provide reduced cost or free drugs; by  
362 coordinating a collaborative effort among all state agencies to  
363 ensure the most efficient and cost effective program possible  
364 for the senior citizens of this state; and by working closely with  
365 the state's congressional delegation to ensure that a national  
366 program is implemented. The Legislature further directs that the  
367 governor report his progress back to the joint committee on  
368 government and finance on an annual basis beginning in  
369 November of the year two thousand one until a comprehensive  
370 program has been fully implemented.



## CHAPTER 23

**(S. B. 2004 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]**



[Passed June 14, 2003; in effect from passage. Approved by the Governor.]



AN ACT to amend and reenact section five, article five-e, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the equal pay commission.

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

That section five, article five-e, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.**

**§21-5E-5. Establishment of the equal pay commission; appointment of members; and expiration date.**

1 (a) The equal pay commission is continued. The commis-  
2 sion shall be composed of the following seven members:

3 (1) Two members of the House of Delegates, appointed by  
4 the speaker;

5 (2) Two members of the Senate, appointed by the president;  
6 and

7 (3) Three state employee representatives, including one  
8 labor union member representing state employees, as agreed to  
9 by the speaker and president; the director of the women's  
10 commission, or his or her designee; and the director of the  
11 office of equal employment opportunity, or his or her designee.

12 (b) The commission shall seek input from and invite the  
13 commissioner of labor or his or her designee and the director of  
14 the personnel division of the department of administration or  
15 his or her designee to attend meetings of the commission.

16 (c) One of the members of the Senate and one of the  
17 members of the House of Delegates, as designated by the  
18 president and the speaker respectively, shall serve as cochairs  
19 of the commission.

20 (d) The members of the House of Delegates, the members  
21 of the Senate and the state employee representative members  
22 shall be appointed to serve two-year terms.

23 (e) Any member whose term has expired shall serve until  
24 his or her successor has been duly appointed. Any person

25 appointed to fill a vacancy shall serve only for the unexpired  
26 term. Any member is eligible for reappointment.

27 (f) Any vacancies occurring in the membership of the  
28 commission shall be filled in the same manner as the original  
29 appointment for the position being vacated. The vacancy shall  
30 not affect the power of the remaining members to execute the  
31 duties of the commission.

32 (g) The commission expires on the first day of July, two  
33 thousand ten.

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## CHAPTER 24

**(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed June 12, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and updating effective date.

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

That section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-9. Meaning of terms.**

1           (a) Any term used in this article has the same meaning as  
2 when used in a comparable context in the laws of the United  
3 States relating to income taxes unless a different meaning is  
4 clearly required. Any reference in this article to the laws of the  
5 United States means the provisions of the Internal Revenue  
6 Code of 1986, as amended, and any other provisions of the laws  
7 of the United States that relate to the determination of income  
8 for federal income tax purposes. All amendments made to the  
9 laws of the United States after the thirty-first day of December,  
10 two thousand two, but prior to the first day of June, two  
11 thousand three, shall be given effect in determining the taxes  
12 imposed by this article to the same extent those changes are  
13 allowed for federal income tax purposes, whether the changes  
14 are retroactive or prospective, but no amendment to the laws of  
15 the United States made on or after the first day of June, two  
16 thousand three, shall be given any effect.

17           (b) *Medical savings accounts.*— The term “taxable trust”  
18 does not include a medical savings account established pursuant  
19 to section twenty, article fifteen, chapter thirty-three of this  
20 code or section fifteen, article sixteen of said chapter. Employer  
21 contributions to a medical savings account established pursuant  
22 to said sections are not “wages” for purposes of withholding  
23 under section seventy-one of this article.

24           (c) *Surtax.*— The term “surtax” means the twenty percent  
25 additional tax imposed on taxable withdrawals from a medical  
26 savings account under section twenty, article fifteen, chapter  
27 thirty-three of this code and the twenty percent additional tax  
28 imposed on taxable withdrawals from a medical savings  
29 account under section fifteen, article sixteen of said chapter  
30 which are collected by the tax commissioner as tax collected  
31 under this article.

32 (d) *Effective date.*— The amendments to this section  
33 enacted in the year two thousand three are retroactive to the  
34 extent allowable under federal income tax law. With respect to  
35 taxable years that began prior to the first day of June, two  
36 thousand three, the law in effect for each of those years shall be  
37 fully preserved as to that year except as provided in this section.

38 (e) For purposes of the refundable credit allowed to a low  
39 income senior citizen for property tax paid on his or her  
40 homestead in this state, the term “laws of the United States” as  
41 used in subsection (a) of this section means and includes the  
42 term “low income” as defined in subsection (b), section twenty-  
43 one of this article and as reflected in the poverty guidelines  
44 updated periodically in the federal register by the U.S. depart-  
45 ment of health and human services under the authority of 42  
46 U.S.C. 9902(2).

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## CHAPTER 25

**(H. B. 205 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed June 12, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective date.

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

That section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-3. Meaning of terms; general rule.**

1 (a) Any term used in this article has the same meaning as  
2 when used in a comparable context in the laws of the United  
3 States relating to federal income taxes unless a different  
4 meaning is clearly required by the context or by definition in  
5 this article. Any reference in this article to the laws of the  
6 United States means the provisions of the Internal Revenue  
7 Code of 1986, as amended, and any other provisions of the laws  
8 of the United States that relate to the determination of income  
9 for federal income tax purposes. All amendments made to the  
10 laws of the United States on or after the thirty-first day of  
11 December, two thousand two, but prior to the first day of June,  
12 two thousand three, shall be given effect in determining the  
13 taxes imposed by this article to the same extent those changes  
14 are allowed for federal income tax purposes, whether the  
15 changes are retroactive or prospective, but no amendment to the  
16 laws of the United States made on or after the first day of June,  
17 two thousand three, shall be given any effect.

18 (b) The term "Internal Revenue Code of 1986" means the  
19 Internal Revenue Code of the United States enacted by the  
20 federal Tax Reform Act of 1986 and includes the provisions of  
21 law formerly known as the Internal Revenue Code of 1954, as  
22 amended, and in effect when the federal Tax Reform Act of  
23 1986 was enacted that were not amended or repealed by the  
24 federal Tax Reform Act of 1986. Except when inappropriate,  
25 any reference in any law, executive order or other document:

26 (1) To the Internal Revenue Code of 1954 includes a  
27 reference to the Internal Revenue Code of 1986; and

28       (2) To the Internal Revenue Code of 1986 includes a  
29 reference to the provisions of law formerly known as the  
30 Internal Revenue Code of 1954.

31       (c) *Effective date.* — The amendments to this section  
32 enacted in the year two thousand three are retroactive to the  
33 extent allowable under federal income tax law. With respect to  
34 taxable years that began prior to the first day of June, two  
35 thousand three, the law in effect for each of those years shall be  
36 fully preserved as to that year, except as provided in this  
37 section.

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## CHAPTER 26

(S. B. 2015 — By Senators Helmick, Sharpe, Chafin, Plymale,  
Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Dempsey,  
Boley, Minear, Facemyer, Guills and Sprouse)

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[Passed June 14, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eleven, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine-a, article twenty-two, chapter twenty-nine of said code, all relating to the receipt and disbursement of funds for the architectural fees and project costs for the construction of a veterans' nursing home; and clarifying that only operational costs are appropriated by the Legislature.

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

That section eleven, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended and reenacted; and that section nine-a, article twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

**Chapter**

**9A. Veterans Affairs.**

**29. Miscellaneous Boards And Officers.**

**CHAPTER 9A. VETERANS AFFAIRS.**

**ARTICLE 1. DIVISION OF VETERANS AFFAIRS.**

**§9A-1-11. Establishment of veterans facilities support fund; authorized expenditures.**

1        There is hereby created in the state treasury a special  
2 revenue fund to be designated and known as the veterans  
3 facilities support fund. All interest or other returns earned on  
4 the investment of the moneys in the fund shall be credited to the  
5 fund. Funds paid into the account shall be derived from the  
6 following sources: (1) Any gift, grant, bequest, endowed fund  
7 or donation which may be received by any veterans facility  
8 created by statute from any governmental entity or unit or any  
9 person, firm, foundation or corporation; and (2) all interest or  
10 other return on investment accruing to the fund. Moneys in the  
11 fund are to be used for the operational costs of any veterans  
12 facility created by statute, the acquisition, design, construction,  
13 equipping, furnishing, including, without limitation, the  
14 payment of debt service on bonds issued to finance the forego-  
15 ing and/or as otherwise designated or specified by the donor.  
16 Any balance, including accrued interest or other earnings, in  
17 this special fund at the end of any fiscal year shall not revert to  
18 the general revenue fund but shall remain in the fund. Funds  
19 from the veterans facility support fund for operational costs will  
20 be distributed by appropriation of the Legislature. Funds from  
21 the veterans facility support fund for the acquisition, design,  
22 construction, equipping, furnishing, including, without limita-



23 tion, the payment of debt service on bonds issued to finance the  
24 veterans nursing home shall be transferred to the veterans  
25 nursing home building fund upon written request of the director  
26 of the division of veterans affairs to the investment manage-  
27 ment board and the state treasurer in accordance with the  
28 provisions of this section.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 22. STATE LOTTERY ACT.

#### §29-22-9a. Veterans instant lottery scratch-off game.

1 (a) Beginning the first day of September, two thousand, the  
2 commission shall establish an instant lottery scratch-off game  
3 designated as the veterans benefit game, which is offered by the  
4 lottery.

5 (b) Notwithstanding the provisions of section eighteen of  
6 this article, all net profits received from the sale of veterans  
7 benefit game lottery tickets, materials and games are deposited  
8 with the state treasurer into the veterans lottery fund created  
9 under subsection (c) of this section. The Legislature may make  
10 appropriations from this fund for operational costs from  
11 moneys remaining in the veterans lottery fund after the acquisi-  
12 tion, design, construction, equipping, furnishing, including,  
13 without limitation, the payment of debt service on bonds issued  
14 to finance the foregoing, have been paid. Funds from the  
15 veterans lottery fund for the acquisition, design, construction,  
16 equipping, furnishing, including, without limitation, the  
17 payment of debt service on bonds issued to finance the con-  
18 struction of a veterans nursing home shall be transferred to the  
19 veterans nursing home building fund upon written request of  
20 the director of the division of veterans affairs to the investment  
21 management board and the state treasurer in accordance with

22 the provisions of this section. Once the payment of the principal  
23 and interest, any required operational costs and architectural  
24 and other project costs associated with construction are paid in  
25 full for the construction and operation of the initial veterans  
26 skilled nursing facility, the Legislature may appropriate from  
27 the fund created under this section moneys for the construction,  
28 including the architectural fees and other associated costs,  
29 equipping and operation of additional skilled nursing facilities  
30 for veterans of the armed forces of the United States military:  
31 *Provided*, That after the payment of the above-mentioned items,  
32 the Legislature may appropriate any excess funds to the general  
33 revenue fund.

34 (c) There is hereby created in the state treasury a special  
35 revenue fund designated and known as the veterans lottery fund  
36 which shall consist of all revenues derived from the veterans  
37 benefit game and any appropriations to the fund by the Legisla-  
38 ture and all interest or other returns earned from investment of  
39 the fund.

40 (d) There is hereby created in the state treasury a special  
41 revenue fund designated and known as the veterans nursing  
42 home building fund which shall consist of all funds for the  
43 acquisition, design, construction, equipping, furnishing,  
44 including, without limitation, the payment of debt service on  
45 bonds issued to finance the foregoing. Following the selection  
46 of the architect, the director shall certify the estimated total cost  
47 of the architect and all construction and associated costs to the  
48 joint committee on government and finance prior to the transfer  
49 of funds for construction. If funds transferred exceed the  
50 estimated costs certified to the joint committee, the director  
51 shall certify the additional costs to the joint committee.

52 (e) There is hereby created in the state treasury a special  
53 revenue fund designated and known as the veterans nursing  
54 home debt service fund to which the required funding from the

55 veterans nursing home building fund is transferred to refund  
56 revenue bonds to pay the principal, interest, redemption  
57 premium and coverage ratio requirement, if any, on the revenue  
58 bonds issued under the provisions of section seven, article  
59 twenty-nine-a, chapter sixteen of this code. The veterans  
60 nursing home debt service fund has first priority to all funds in  
61 the veterans nursing home building fund established herein not  
62 otherwise designated or specified by the donor. Beginning on  
63 or before the twenty-eighth day of July, two thousand three, and  
64 continuing until the twenty-eighth day of June, two thousand  
65 thirty-five, the treasurer shall allocate to the veterans nursing  
66 home debt service fund from the veterans nursing home  
67 building fund, as a first priority, an amount equal to one tenth  
68 of the projected annual principal, interest, redemption premium  
69 and coverage ratio requirement on any and all revenue bonds  
70 and refunding bonds issued, or to be issued, on or after the first  
71 day of July, two thousand three, under the provisions of said  
72 section in connection with a veterans nursing home as certified  
73 to the treasurer and the investment management board by the  
74 director of the division of veterans affairs. In the event there are  
75 insufficient funds available in any month to transfer the amount  
76 required pursuant to this subsection to the veterans nursing  
77 home debt service fund, the deficiency shall be added to the  
78 amount transferred in the next succeeding month in which  
79 revenues are available to transfer the deficiency.

80 (f) The commission shall change the design or theme of  
81 the veterans benefit game regularly so that the game remains  
82 competitive with the other instant lottery scratch-off games  
83 offered by the commission. The tickets for the instant lottery  
84 game created in this section shall clearly state that the profits  
85 derived from the game are being used to benefit veterans in this  
86 state.

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## CHAPTER 27

**(S. B. 2013 — By Senators Kessler, Ross, Snyder,  
Harrison, Smith and Weeks)**

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[Passed July 1, 2003; in effect from passage. Approved by the Governor.]

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AN ACT to repeal sections one, two, three, four, five, six and seven, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section five-b, article two, chapter twenty-three of said code; to repeal section seven, article four-a of said chapter; to amend and reenact section thirty-three-d, article three, chapter five-a of said code; to amend and reenact sections four and five, article three, chapter five-b of said code; to amend and reenact section one, article two, chapter five-f of said code; to amend and reenact section seven, article twelve, chapter eleven of said code; to amend and reenact section four, article one-a, chapter twelve of said code; to amend and reenact section six, article six of said chapter; to amend and reenact section ten, article two, chapter fifteen of said code; to amend and reenact section fifteen, article one, chapter sixteen of said code; to amend and reenact section three, article twenty-nine-d of said chapter; to amend and reenact section three, article thirty-six of said chapter; to amend and reenact section twenty-six, article nine-a, chapter eighteen of said code; to amend and reenact section twelve-a, article ten-a of said chapter; to amend and reenact section two, article ten-k of said chapter; to amend and reenact section three, article three-a, chapter twenty-one of said code; to amend and reenact section four, article one, chapter twenty-one-a of said code; to amend and reenact sections six, six-c and thirteen, article two of said chapter; to amend and reenact section eleven, article ten of said chapter;

to amend and reenact section eight, article three, chapter twenty-two of said code; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen and eighteen, article one, chapter twenty-three of said code; to further amend said article by adding thereto eight new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, four-a and nineteen; to amend and reenact sections one, one-c, one-d, two, three, four, five, five-a, five-c, five-d, six, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article two of said chapter; to amend and reenact section one, article two-a of said chapter; to amend and reenact sections one, two and three, article two-b of said chapter; to amend and reenact sections one, one-a, two, three and five, article three of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact sections one, one-a, one-b, one-c, one-d, one-e, two, three, three-b, three-c, four, five, six, six-a, six-b, six-d, seven, seven-a, seven-b, eight, eight-a, eight-b, eight-c, nine, nine-b, ten, eleven, twelve, fourteen, fifteen, fifteen-a, fifteen-b, sixteen, sixteen-a, seventeen, eighteen, twenty, twenty-two, twenty-three, twenty-four and twenty-five, article four of said chapter; to further amend said article by adding thereto a new section, designated section one-g; to amend and reenact sections one, three, five, six and eight, article four-a of said chapter; to amend and reenact sections two, five, six and seven, article four-b of said chapter; to further amend said article by adding thereto a new section, designated section eight-b; to amend and reenact sections two, three, four and five, article four-c of said chapter; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fifteen, seventeen and eighteen, article five of said chapter; to amend and reenact section two, article eight, chapter twenty-six of said code; to amend and reenact sections one hundred twenty-five and one hundred thirty-one, article eighteen, chapter forty-eight of said code; and to amend and reenact sections twenty-four-e, twenty-four-f and twenty-

four-g, article three, chapter sixty-one of said code, all relating to workers' compensation generally; repealing provisions relating to the compensation programs performance council; repealing provisions relating to default settlement; repealing provisions relating to employees and payment of salaries from the disabled workmen's relief fund; removing workers' compensation from the bureau of employment programs; directing certain reports to be filed quarterly; providing legislative findings; creating workers' compensation commission as an independent agency assuming all duties of division; creating the workers' compensation board of managers; establishing composition of board; establishing qualifications for membership; establishing appointment procedures for members; providing for compensation and travel expenses; setting forth the powers and duties of board; establishing position, powers and duties of executive director; establishing qualifications; establishing procedure for removal; providing violator system to prohibit certain persons from obtaining state licenses, certificates and permits in certain circumstances; providing for payment withholding and interception of moneys of certain employers; providing penalties for failure to withhold or intercept payments; authorizing interagency agreements for the bureau of employment programs and workers' compensation commission; providing for the adoption of workers' compensation rules by commission; transferring assets and contracts; establishing fraud and abuse investigation and prosecution unit; providing powers and duties of unit; providing for legislative oversight of commission; providing for salaries and expenses of commission; requiring bond and insurance for the executive director and associate director; authorizing the executive director to hire an associate director and other employees; providing for associate director to assume authority in absence of executive director; authorizing certain commission employees to administer oaths; providing for issuance and enforcement of agency subpoenas; providing additional civil remedies for violations of law; allowing certain elected local officials not to

participate in workers' compensation; providing that limited liability companies may elect to not provide workers' compensation coverage to certain members; clarifying that extraction of natural resources is provision of services; requiring promulgation of rule to prevent contractors from avoiding liability for workers' compensation premiums; creating ongoing duty to provide information to commission; authorizing rate reductions for safety and loss prevention and drug-free workplace initiatives; requiring rates, surcharges and assessments to be financially sound and sufficient to meet needs of the funds; establishing rate caps; authorizing the commission to require employers to pay premium taxes more often than quarterly; extending time for commission to collect from defaulting or delinquent employers; establishing statute of limitations; allowing specified groups of employers to self-insure their obligations to the commission; requiring self-insured employers to administer claims; requiring self-insured employers to comply with the law and commission rules; establishing components of self-insured premium tax; requiring employers that self-insure second injury benefits to continue to be responsible for the claims; providing that self-insured employers who fail to make benefit payments are in default in certain circumstances; authorizing the commission to determine self-insured rates; authorizing self-insured employers to obtain third-party insurance for catastrophic claims and requiring copy of policy; prohibiting self-insured employers from contracting with third-party administrators who have not been approved by the commission; allowing for subrogation of medical benefits and authorizing reasonable attorney fees and reasonable portion of costs; eliminating second injury awards and the second injury reserve fund for certain claims; providing for management of the deficit; authorizing emergency fiscal measures; reporting requirements of self-insurers; requiring commission to adopt standards for evaluation of whole-body impairment with regard to certain occupational diseases; providing an expedited appeal to the office of judges where self-insured denies compensability;

requiring assessment of claimant's return-to-work potential; providing assistance in return-to-work efforts; authorizing repayment of overpayments from future benefits and providing for liability of attorney for certain fees and expenses; prohibiting a claimant from receiving certain workers' compensation benefits and private benefits in certain circumstances; requiring award of permanent partial disability benefits be made as expeditiously as possible; requiring medical providers to submit timely requests for payment; authorizing certain employers with managed health care plans to require employees to use the plan for treatment of compensable injuries; exceptions; authorizing the commission to establish managed health care plans; providing for weighing of evidence; providing for suspension or termination of health care providers; requiring commission to set standards for medical management of claims; providing benefits for cemetery expenses; eliminating annual increases in benefits; reducing certain benefit rates; establishing new criteria for eligibility for benefits for certain injuries and diseases; increasing to fifty percent the percentage of whole body impairment for eligibility for consideration for a permanent total disability award; establishing internal operative dates; requiring the executive director to promulgate a rule to establish requirements for an application for permanent total disability benefits; specifying application required for claim for permanent total disability benefits; providing for the establishment of an onset date for permanent total disability benefits; providing for increase of minimum aggregation of percentages of permanent disability or medical impairment prior to applying for permanent total disability award; providing for prior disability awards excluded from calculation; providing that ability to acquire skills may be considered in permanent total disability determination; providing that neither certain proximity of employment nor comparison of wages may be considered when determining permanent total disability; terminating permanent total disability benefits at age seventy in certain circumstances; eliminating the five-percent presumptive award of occupational



pneumoconiosis; authorizing application for occupational pneumoconiosis benefits within three years of determination of impairment; providing that the commission may suspend benefits to a claimant for refusing, without good cause, treatment or examination by a physician; providing for a trial work period; modifying provisions for vocational rehabilitation services; authorizing reopening and review of claims; establishing duty to provide information to commission; expanding monitoring in injury claims; authorizing suspension or termination of benefits in certain circumstances; removing certain offset provisions; providing certain incentives for premium discounts; providing that certain portion of rate increase not be subject to collection; expanding sources from which overpayment of benefits and awards may be collected; providing for further examinations of certain disability benefit recipients; providing for transfer of certain funds from and to coal-workers' pneumoconiosis fund; permitting certain employers to self-insure certain obligations; providing for the settlement of claims; providing a statute of limitations on employer liability in certain circumstances; requiring certain security or bond from employers; administration of claims by self-insured employers; requiring certain additional amounts to be paid to the commission by employers; providing circumstances in which employers are in default in obligations to the commission; requiring commission approval of employer use of third-party administrator; requiring electronic transfer of funds; providing time limitation for certain payments; authorizing rule to permit employers to contract with certain providers of services in certain circumstances; providing for payments of certain benefits during participation in certain rehabilitation plans; providing for the termination of or limitation on certain benefits in certain circumstances; requiring rules for certain administrative functions; requiring expedited hearings in certain circumstances; providing for finality of certain administrator decisions; providing standards of review; providing for mediation; providing for removal of chief administrative law judge; providing for appeals;

establishing time frames for appeals; establishing standards for appeal; creating the workers' compensation board of review; authorizing salary for members; providing for appointment of members of board; establishing qualifications of members of the board; establishing position of chairman; authorizing rules of procedure; authorizing clerk and other employees; providing for remand of cases; providing for standards for appeals to the West Virginia supreme court of appeals; providing civil and criminal penalties and judgments for restitution; making technical corrections and removing archaic language throughout; and providing conforming amendments.

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

That sections one, two, three, four, five, six and seven, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section five-b, article two, chapter twenty-three of said code be repealed; that section seven, article four-a of said chapter be repealed; that section thirty-three-d, article three, chapter five-a of said code be amended and reenacted; that sections four and five, article three, chapter five-b of said code be amended and reenacted; that section one, article two, chapter five-f of said code be amended and reenacted; that section seven, article twelve, chapter eleven of said code be amended and reenacted; that section four, article one-a, chapter twelve of said code be amended and reenacted; that section six, article six of said chapter be amended and reenacted; that section ten, article two, chapter fifteen of said code be amended and reenacted; that section fifteen, article one, chapter sixteen of said code be amended and reenacted; that section three, article twenty-nine-d of said chapter be amended and reenacted; that section three, article thirty-six of said chapter be amended and reenacted; that section twenty-six, article nine-a, chapter eighteen of said code be amended and reenacted; that section twelve-a, article ten-a of said chapter be amended and reenacted; that section two, article ten-k of said chapter be amended and reenacted; that section three, article three-a, chapter twenty-one

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

article eight, chapter twenty-six of said code be amended and reenacted; that sections one hundred twenty-five and one hundred thirty-one, article eighteen, chapter forty-eight of said code be amended and reenacted; and that sections twenty-four-e, twenty-four-f and twenty-four-g, article three, chapter sixty-one of said code be amended and reenacted, all to read as follows:

**Chapter**

- 5A. Department of Administration.**
- 5B. Economic Development Act of 1985.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 11. Taxation.**
- 12. Public Moneys and Securities.**
- 15. Public Safety.**
- 16. Public Health.**
- 18. Education.**
- 21. Labor.**
- 21A. Unemployment Compensation.**
- 22. Environmental Resources.**
- 23. Workers' Compensation.**
- 26. State Benevolent Institutions.**
- 48. Domestic Relations.**
- 61. Crimes and Their Punishment.**

**CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-33d. Grounds for debarment.**

1       Grounds for debarment are:

2       (1) Conviction of an offense involving fraud or a felony  
 3 offense in connection with obtaining or attempting to obtain a  
 4 public contract or subcontract;

5       (2) Conviction of any federal or state antitrust statute  
 6 relating to the submission of offers;

7       (3) Conviction of an offense involving embezzlement, theft,  
8       forgery, bribery, falsification or destruction of records, making  
9       false statements or receiving stolen property in connection with  
10      the performance of a contract;

11      (4) Conviction of a felony offense demonstrating a lack of  
12      business integrity or business honesty that affects the present  
13      responsibility of the vendor or subcontractor;

14      (5) Default on obligations owed to the state, including, but  
15      not limited to, obligations under the West Virginia workers'  
16      compensation act, the West Virginia unemployment compensa-  
17      tion act and West Virginia state tax and revenue laws. For  
18      purposes of this subsection, a vendor is in default when, after  
19      due notice, the vendor fails to submit a required payment,  
20      interest thereon or penalty, and has not entered into a repayment  
21      agreement with the appropriate agency of the state or has  
22      entered into a repayment agreement but does not remain in  
23      compliance with its obligations under the repayment agreement.  
24      In the case of a vendor granted protection by order of a federal  
25      bankruptcy court or a vendor granted an exemption under any  
26      rule of the bureau of employment programs or the workers'  
27      compensation commission, the director may waive debarment  
28      under section thirty-three-f of this article: *Provided*, That in no  
29      event may debarment be waived with respect to any vendor  
30      who has not paid all current state obligations for at least the  
31      four most recent calendar quarters, excluding the current  
32      calendar quarter, or with respect to any vendor who is in default  
33      on a repayment agreement with an agency of the state;

34      (6) The vendor is not in good standing with a licensing  
35      board, in that the vendor is not licensed when licensure is  
36      required by the law of this state, or the vendor has been found  
37      to be in violation of an applicable licensing law after notice,  
38      opportunity to be heard and other due process required by law;  
39      and

40 (7) Violation of the terms of a public contract or subcon-  
41 tract for:

42 (A) Willful failure to substantially perform in accordance  
43 with the terms of one or more public contracts;

44 (B) Performance in violation of standards established by  
45 law or generally accepted standards of the trade or profession  
46 amounting to intentionally deficient or grossly negligent  
47 performance on one or more public contracts;

48 (C) Use of substandard materials on one or more public  
49 contracts or defects in construction in one or more public  
50 construction projects amounting to intentionally deficient or  
51 grossly negligent performance, even if discovery of the defect  
52 is subsequent to acceptance of a construction project and  
53 expiration of any warranty thereunder;

54 (D) A repeated pattern or practice of failure to perform so  
55 serious and compelling as to justify debarment; or

56 (E) Any other cause of a serious and compelling nature  
57 amounting to knowing and willful misconduct of the vendor  
58 that demonstrates a wanton indifference to the interests of the  
59 public and that caused, or that had a substantial likelihood of  
60 causing, serious harm to the public.

## **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

### **ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY: A VISION SHARED.**

§5B-3-4. Commission review of procedural rules, interpretive rules and existing legislative rules.

§5B-3-5. Joint commission on economic development studies.

**§5B-3-4. Commission review of procedural rules, interpretive rules and existing legislative rules.**

1 (a) The joint commission on economic development may  
2 review any procedural rule, interpretive rule or existing  
3 legislative rule and make recommendations concerning the  
4 rules to the Legislature.

5 (b) The development office and the tourism commission  
6 established pursuant to article two of this chapter, the economic  
7 development authority established pursuant to article fifteen,  
8 chapter thirty-one of this code, the bureau of employment  
9 programs established pursuant to article four, chapter twenty-  
10 one-a of this code, the workers' compensation commission  
11 established pursuant to article one, chapter twenty-three of this  
12 code, the workforce investment commission established  
13 pursuant to article two-c of this chapter, West Virginia jobs  
14 investment trust, regional planning and development councils,  
15 West Virginia rural development council, governor's office of  
16 technology and West Virginia clearinghouse for workforce  
17 education shall each file a copy of its legislative rules with the  
18 commission as provided for in this section. Each agency that  
19 proposes legislative rules in accordance to the provisions of  
20 article three, three-a or three-b, chapter twenty-nine-a of this  
21 code relating to economic development or workforce develop-  
22 ment shall file the rules with the joint commission at the time  
23 the rules are filed with the secretary of state prior to the public  
24 comment period or public hearing required in said chapter.

**§5B-3-5. Joint commission on economic development studies.**

1 (a) The joint commission on economic development shall  
2 study the following:

3 (1) The feasibility of establishing common regional  
4 configurations for such purposes as local workforce investment  
5 areas, regional educational service agencies and for all other  
6 purposes the commission considers feasible. The study should  
7 review the existing levels of cooperation between state and

8 local economic developers, complete an analysis of possible  
9 regional configurations and outline examples of other success-  
10 ful regional systems or networks found throughout the world.  
11 If the study determines that the common regional configura-  
12 tions are feasible, the commission shall recommend legislation  
13 establishing common regional designations for all purposes the  
14 commission considers feasible. In making the designation of  
15 regional areas, the study shall take into consideration, but not  
16 be limited to, the following:

17 (A) Geographic areas served by local educational agencies  
18 and intermediate educational agencies;

19 (B) Geographic areas served by post-secondary educational  
20 institutions and area vocational education schools;

21 (C) The extent to which the local areas are consistent with  
22 labor market areas;

23 (D) The distance that individuals will need to travel to  
24 receive services provided in the local areas; and

25 (E) The resources of the local areas that are available to  
26 effectively administer the activities or programs;

27 (2) The effectiveness and fiscal impact of incentives for  
28 attracting and growing businesses, especially technology-  
29 intensive companies; and

30 (3) A comprehensive review of West Virginia's existing  
31 economic and community development resources and the  
32 recommendation of an organizational structure, including, but  
33 not limited to, the reorganization of the bureau of commerce  
34 and the development office that would allow the state to  
35 successfully compete in the new global economy.



36 (b) In order to effectuate in the most cost-effective and  
37 efficient manner the studies required in this article, it is  
38 necessary for the joint commission to assemble and compile a  
39 tremendous amount of information. The development office  
40 will assist the joint commission in the collection and analysis of  
41 this information. The tourism commission established pursuant  
42 to article two of this chapter, the economic development  
43 authority established pursuant to article fifteen, chapter  
44 thirty-one of this code, the bureau of employment programs  
45 established pursuant to article four, chapter twenty-one-a of this  
46 code, the workers' compensation commission established  
47 pursuant to article one, chapter twenty-three of this code, the  
48 workforce investment commission established pursuant to  
49 article two-c of this chapter, West Virginia jobs investment  
50 trust, regional planning and development councils, West  
51 Virginia rural development council, governor's office of  
52 technology and West Virginia clearinghouse for workforce  
53 education all shall provide a copy of the agency's annual report  
54 as submitted to the governor in accordance with the require-  
55 ments set forth in section twenty, article one, chapter five of  
56 this code to the West Virginia development office. The devel-  
57 opment office shall review, analyze and summarize the data  
58 contained in the reports, including its own annual report, and  
59 annually submit its findings to the joint commission on or  
60 before the thirty-first day of December.

61 (c) The legislative auditor shall provide to the joint com-  
62 mission a copy of any and all reports on agencies listed in  
63 subsection (b) of this section, which are required under article  
64 ten, chapter four of this code.

65 (d) The joint commission shall complete the studies set  
66 forth in this section and any other studies the joint commission  
67 determines to undertake prior to the first day of December of  
68 each year and may make recommendations, including recom-

69 mended legislation for introduction during the regular session  
70 of the Legislature.

## **CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.**

### **ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

#### **§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

1 (a) The following agencies and boards, including all of the  
2 allied, advisory, affiliated or related entities and funds associ-  
3 ated with any agency or board, are transferred to and incorpo-  
4 rated in and administered as a part of the department of  
5 administration:

6 (1) Building commission provided for in article six, chapter  
7 five of this code;

8 (2) Public employees insurance agency and public employ-  
9 ees insurance agency advisory board provided for in article  
10 sixteen, chapter five of this code;

11 (3) Governor's mansion advisory committee provided for  
12 in article five, chapter five-a of this code;

13 (4) Commission on uniform state laws provided for in  
14 article one-a, chapter twenty-nine of this code;

15 (5) Education and state employees grievance board pro-  
16 vided for in article twenty-nine, chapter eighteen of this code  
17 and article six-a, chapter twenty-nine of this code;

18 (6) Board of risk and insurance management provided for  
19 in article twelve, chapter twenty-nine of this code;

20 (7) Boundary commission provided for in article twenty-  
21 three, chapter twenty-nine of this code;

22 (8) Public defender services provided for in article  
23 twenty-one, chapter twenty-nine of this code;

24 (9) Division of personnel provided for in article six, chapter  
25 twenty-nine of this code;

26 (10) The West Virginia ethics commission provided for in  
27 article two, chapter six-b of this code; and

28 (11) Consolidated public retirement board provided for in  
29 article ten-d, chapter five of this code.

30 (b) The department of commerce, labor and environmental  
31 resources and the office of secretary of the department of  
32 commerce, labor and environmental resources are abolished.  
33 For purposes of administrative support and liaison with the  
34 office of the governor, the following agencies and boards,  
35 including all allied, advisory and affiliated entities, are grouped  
36 under two bureaus and one commission as follows:

37 (1) Bureau of commerce:

38 (A) Division of labor provided for in article one, chapter  
39 twenty-one of this code, which includes:

40 (i) Occupational safety and health review commission  
41 provided for in article three-a, chapter twenty-one of this code;  
42 and

43 (ii) Board of manufactured housing construction and safety  
44 provided for in article nine, chapter twenty-one of this code;

45 (B) Office of miners' health, safety and training provided  
46 for in article one, chapter twenty-two-a of this code. The

47 following boards are transferred to the office of miners' health,  
48 safety and training for purposes of administrative support and  
49 liaison with the office of the governor:

50 (i) Board of coal mine health and safety and coal mine  
51 safety and technical review committee provided for in article  
52 six, chapter twenty-two-a of this code;

53 (ii) Board of miner training, education and certification  
54 provided for in article seven, chapter twenty-two-a of this code;  
55 and

56 (iii) Mine inspectors' examining board provided for in  
57 article nine, chapter twenty-two-a of this code;

58 (C) The West Virginia development office provided for in  
59 article two, chapter five-b of this code, which includes:

60 (i) Economic development authority provided for in article  
61 fifteen, chapter thirty-one of this code; and

62 (ii) Tourism commission provided for in article two,  
63 chapter five-b of this code and the office of the tourism  
64 commissioner;

65 (D) Division of natural resources and natural resources  
66 commission provided for in article one, chapter twenty of this  
67 code. The Blennerhassett historical state park provided for in  
68 article eight, chapter twenty-nine of this code is under the  
69 division of natural resources;

70 (E) Division of forestry provided for in article one-a,  
71 chapter nineteen of this code;

72 (F) Geological and economic survey provided for in article  
73 two, chapter twenty-nine of this code;

74 (G) Water development authority and board provided for in  
75 article one, chapter twenty-two-c of this code;

76 (2) Bureau of employment programs provided for in article  
77 one, chapter twenty-one-a of this code; and

78 (3) Workers' compensation commission provided for in  
79 article one, chapter twenty-three of this code.

80 (c) Bureau of environment is abolished and the following  
81 agencies and boards, including all allied, advisory and affiliated  
82 entities, are transferred to the department of environmental  
83 protection for purposes of administrative support and liaison  
84 with the office of the governor:

85 (1) Air quality board provided for in article two, chapter  
86 twenty-two-b of this code;

87 (2) Solid waste management board provided for in article  
88 three, chapter twenty-two-c of this code;

89 (3) Environmental quality board, or its successor board,  
90 provided for in article three, chapter twenty-two-b of this code;

91 (4) Surface mine board provided for in article four, chapter  
92 twenty-two-b of this code;

93 (5) Oil and gas inspectors' examining board provided for in  
94 article seven, chapter twenty-two-c of this code;

95 (6) Shallow gas well review board provided for in article  
96 eight, chapter twenty-two-c of this code; and

97 (7) Oil and gas conservation commission provided for in  
98 article nine, chapter twenty-two-c of this code.

99 (d) The following agencies and boards, including all of the  
100 allied, advisory, affiliated or related entities and funds associ-

101 ated with any agency or board, are transferred to and incorpo-  
102 rated in and administered as a part of the department of  
103 education and the arts:

104 (1) Library commission provided for in article one, chapter  
105 ten of this code;

106 (2) Educational broadcasting authority provided for in  
107 article five, chapter ten of this code;

108 (3) Joint commission for vocational-technical-occupational  
109 education provided for in article three-a, chapter eighteen-b of  
110 this code;

111 (4) Division of culture and history provided for in article  
112 one, chapter twenty-nine of this code; and

113 (5) Division of rehabilitation services provided for in  
114 section two, article ten-a, chapter eighteen of this code.

115 (e) The following agencies and boards, including all of the  
116 allied, advisory, affiliated or related entities and funds associ-  
117 ated with any agency or board, are transferred to and incorpo-  
118 rated in and administered as a part of the department of health  
119 and human resources:

120 (1) Human rights commission provided for in article eleven,  
121 chapter five of this code;

122 (2) Division of human services provided for in article two,  
123 chapter nine of this code;

124 (3) Bureau for public health provided for in article one,  
125 chapter sixteen of this code;

126 (4) Office of emergency medical services and advisory  
127 council thereto provided for in article four-c, chapter sixteen of  
128 this code;

129 (5) Health care authority provided for in article twenty-  
130 nine-b, chapter sixteen of this code;

131 (6) Commission on mental retardation provided for in  
132 article fifteen, chapter twenty-nine of this code;

133 (7) Women's commission provided for in article twenty,  
134 chapter twenty-nine of this code; and

135 (8) The child support enforcement division provided for in  
136 chapter forty-eight of this code.

137 (f) The following agencies and boards, including all of the  
138 allied, advisory, affiliated or related entities and funds associ-  
139 ated with any agency or board, are transferred to and incorpo-  
140 rated in and administered as a part of the department of military  
141 affairs and public safety:

142 (1) Adjutant general's department provided for in article  
143 one-a, chapter fifteen of this code;

144 (2) Armory board provided for in article six, chapter fifteen  
145 of this code;

146 (3) Military awards board provided for in article one-g,  
147 chapter fifteen of this code;

148 (4) West Virginia state police provided for in article two,  
149 chapter fifteen of this code;

150 (5) Office of emergency services and disaster recovery  
151 board provided for in article five, chapter fifteen of this code  
152 and emergency response commission provided for in article  
153 five-a of said chapter;

154 (6) Sheriffs' bureau provided for in article eight, chapter  
155 fifteen of this code;

156 (7) Division of corrections provided for in chapter  
157 twenty-five of this code;

158 (8) Fire commission provided for in article three, chapter  
159 twenty-nine of this code;

160 (9) Regional jail and correctional facility authority provided  
161 for in article twenty, chapter thirty-one of this code;

162 (10) Board of probation and parole provided for in article  
163 twelve, chapter sixty-two of this code; and

164 (11) Division of veterans' affairs and veterans' council  
165 provided for in article one, chapter nine-a of this code.

166 (g) The following agencies and boards, including all of the  
167 allied, advisory, affiliated or related entities and funds associ-  
168 ated with any agency or board, are transferred to and incorpo-  
169 rated in and administered as a part of the department of tax and  
170 revenue:

171 (1) Tax division provided for in article one, chapter eleven  
172 of this code;

173 (2) Racing commission provided for in article twenty-three,  
174 chapter nineteen of this code;

175 (3) Lottery commission and position of lottery director  
176 provided for in article twenty-two, chapter twenty-nine of this  
177 code;

178 (4) Agency of insurance commissioner provided for in  
179 article two, chapter thirty-three of this code;

180 (5) Office of alcohol beverage control commissioner  
181 provided for in article sixteen, chapter eleven of this code and  
182 article two, chapter sixty of this code;



183 (6) Board of banking and financial institutions provided for  
184 in article three, chapter thirty-one-a of this code;

185 (7) Lending and credit rate board provided for in chapter  
186 forty-seven-a of this code; and

187 (8) Division of banking provided for in article two, chapter  
188 thirty-one-a of this code.

189 (h) The following agencies and boards, including all of the  
190 allied, advisory, affiliated or related entities and funds associ-  
191 ated with any agency or board, are transferred to and incorpo-  
192 rated in and administered as a part of the department of  
193 transportation:

194 (1) Division of highways provided for in article two-a,  
195 chapter seventeen of this code;

196 (2) Parkways, economic development and tourism authority  
197 provided for in article sixteen-a, chapter seventeen of this code;

198 (3) Division of motor vehicles provided for in article two,  
199 chapter seventeen-a of this code;

200 (4) Driver's licensing advisory board provided for in article  
201 two, chapter seventeen-b of this code;

202 (5) Aeronautics commission provided for in article two-a,  
203 chapter twenty-nine of this code;

204 (6) State rail authority provided for in article eighteen,  
205 chapter twenty-nine of this code; and

206 (7) Port authority provided for in article sixteen-b, chapter  
207 seventeen of this code.

208 (i) Except for powers, authority and duties that have been  
209 delegated to the secretaries of the departments by the provisions

210 of section two of this article, the existence of the position of  
211 administrator and of the agency and the powers, authority and  
212 duties of each administrator and agency are not affected by the  
213 enactment of this chapter.

214 (j) Except for powers, authority and duties that have been  
215 delegated to the secretaries of the departments by the provisions  
216 of section two of this article, the existence, powers, authority  
217 and duties of boards and the membership, terms and qualifica-  
218 tions of members of the boards are not affected by the enact-  
219 ment of this chapter and all boards which are appellate bodies  
220 or were otherwise established to be independent decisionmakers  
221 will not have their appellate or independent decision-making  
222 status affected by the enactment of this chapter.

223 (k) Any department previously transferred to and incorpo-  
224 rated in a department created in section two, article one of this  
225 chapter by prior enactment of this section in chapter three, acts  
226 of the Legislature, first extraordinary session, one thousand nine  
227 hundred eighty-nine, and subsequent amendments means a  
228 division of the appropriate department. Wherever reference is  
229 made to any department transferred to and incorporated in a  
230 department created in section two, article one of this chapter,  
231 the reference means a division of the appropriate department  
232 and any reference to a division of a department so transferred  
233 and incorporated means a section of the appropriate division of  
234 the department.

235 (l) When an agency, board or commission is transferred  
236 under a bureau or agency other than a department headed by a  
237 secretary pursuant to this section, that transfer is solely for  
238 purposes of administrative support and liaison with the office  
239 of the governor, a department secretary or a bureau. The  
240 bureaus created by the Legislature upon the abolishment of the  
241 department of commerce, labor and environmental resources in  
242 the year one thousand nine hundred ninety-four will be headed

243 by a commissioner or other statutory officer of an agency  
244 within that bureau. Nothing in this section extends the powers  
245 of department secretaries under section two of this article to any  
246 person other than a department secretary and nothing limits or  
247 abridges the statutory powers and duties of statutory commis-  
248 sioners or officers pursuant to this code.

249 (m) The amendments to this section effected by the  
250 enactment of Enrolled Senate Bill No. 2013 in the year two  
251 thousand three shall become operative on the first day of  
252 October, two thousand three.

## CHAPTER 11. TAXATION.

### ARTICLE 12. BUSINESS REGISTRATION TAX.

#### **§11-12-7. Display of registration certificate; injunction; public information, reciprocal exchange of information.**

1 Any person to whom a certificate of registration has been  
2 issued under the provisions of section four of this article shall  
3 keep the certificate posted in a conspicuous position in the place  
4 where the privilege of the business is exercised. The certificate  
5 of registration shall be produced for inspection whenever  
6 required by the tax commissioner or by any law-enforcement  
7 officers of this state, county or municipality in which the  
8 privileges to conduct business are exercised.

9 No injunction shall issue from any court in the state  
10 enjoining the collection of any business registration certificate  
11 tax required in this section; and any person claiming that any  
12 business certificate is not due, for any reason, shall pay the tax  
13 under protest and petition the tax commissioner for a refund in  
14 accordance with the provisions of section fourteen, article ten  
15 of this chapter.

16 If any person engaging in or prosecuting any business, or  
17 trade, contrary to any other provisions of this article, whether  
18 without obtaining a business certificate therefor before com-  
19 mencing the same, or by continuing the same after the termina-  
20 tion of the effective period of the business certificate, the circuit  
21 court, or the judge thereof in vacation, of the county in which  
22 the violation occurred shall, upon proper application in the  
23 name of the state, and after ten days' written notice thereof to  
24 such person, grant an injunction prohibiting that person from  
25 continuing the business, activity or trade until he or she has  
26 fully complied with the provisions of this article. The remedy  
27 provided in this section is in addition to all other penalties and  
28 remedies provided by law.

29 The tax commissioner shall make available, when re-  
30 quested, information as to whether a person is registered to do  
31 business in the state of West Virginia.

32 The tax commissioner shall deliver to the commissioner of  
33 the bureau of employment programs and the executive director  
34 of the workers' compensation commission the information  
35 contained in the business franchise registration certificate when  
36 this information is used to implement and administer a single  
37 point of registration program for persons engaging in any  
38 business activity in the state of West Virginia. The single point  
39 of registration program shall provide that, once an individual  
40 has received a business franchise registration certificate, the tax  
41 commissioner shall notify the commissioner of the bureau of  
42 employment programs and the executive director of the work-  
43 ers' compensation commission of the names, addresses and  
44 other identifying information of that individual or entity. Upon  
45 receiving this information, the commissioner of the bureau of  
46 employment programs and the executive director of the work-  
47 ers' compensation commission shall contact all businesses  
48 receiving a business franchise registration certificate and  
49 provide all necessary forms and paperwork to register a

50 business within the bureau and commission pursuant to  
51 subsection (b), section six-b, article two, chapter twenty-one-a  
52 of this code and subsection (c), section two, article two, chapter  
53 twenty-three of this code.

54 Notwithstanding the provisions of section five, article ten  
55 of this chapter, the tax commissioner may enter into a recipr-  
56 cal agreement with the governor's office of community and  
57 industrial development and other departments or agencies of  
58 this state for the exchange of information contained in the  
59 application for a business franchise registration certificate filed  
60 under section four of this article when the purpose for the  
61 exchange is to implement and administer a single-point of  
62 registration program for persons engaging in business in this  
63 state. The other departments and agencies may enter into a  
64 reciprocal exchange agreement for this purpose notwithstanding  
65 any provision of this code to the contrary.

## CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

### Article

1A. West Virginia Small Business Linked Deposit Program.

6. West Virginia Investment Management Board.

### ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

#### §12-1A-4. Applications for loan priority; loan package; counseling.

1 (a) An eligible lending institution that desires to participate  
2 in the linked deposit program shall accept and review loan  
3 applications from eligible small businesses that have been  
4 prepared with the advice of the small business development  
5 center. The lending institution shall apply all usual lending  
6 standards to determine the credit worthiness of each eligible  
7 small business and whether the loan application meets the  
8 criteria established in this article.

9 (b) An eligible small business shall certify on its loan  
10 application that: (1) The small business is in good standing with  
11 the state tax division, the workers' compensation commission  
12 and the bureau of employment programs as of the date of the  
13 application; (2) the linked deposit loan will be used to create  
14 new jobs or preserve existing jobs and employment opportuni-  
15 ties; and (3) the linked deposit loan shall not be used to refi-  
16 nance an existing debt.

17 (c) In considering which eligible small businesses should  
18 receive linked deposit loans, the eligible lending institution  
19 shall give priority to the economic needs of the area in which  
20 the business is located, the number of jobs to be created and  
21 preserved by the receipt of the loan, the reasonable ability of the  
22 small business to repay the loan and other factors considered  
23 appropriate by the eligible financial institution.

24 (d) A small business receiving a linked deposit loan shall  
25 receive supervision and counseling provided by the small  
26 business development center when applying for the loan. The  
27 services available from the small business development center  
28 include eligibility certification, business planning, quarterly  
29 financial statement review and loan application assistance. The  
30 state tax division, the bureau of employment programs and the  
31 workers' compensation commission shall provide the small  
32 business development center with information as to the standing  
33 of each small business loan applicant. The small business  
34 development center shall include these certifications with the  
35 loan application.

36 (e) The eligible financial institution shall forward to the  
37 treasurer a linked deposit loan package in the form and manner  
38 prescribed by the treasurer. The treasurer shall forward notice  
39 of approval of the loan to the small business development  
40 center at the same time it is furnished to the eligible financial  
41 institution.

**ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.****§12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.**

1           (a) The board shall cause an annual financial and compli-  
2     ance audit of the assets managed by the board to be made by a  
3     certified public accounting firm which has a minimum staff of  
4     ten certified public accountants and which is a member of the  
5     American institute of certified public accountants and, if doing  
6     business in West Virginia, a member of the West Virginia  
7     society of certified public accountants. The financial and  
8     compliance audit shall be made of the board's books, accounts  
9     and records with respect to its receipts, disbursements, invest-  
10    ments, contracts and all other matters relating to its financial  
11    operations. Copies of the audit report shall be furnished to the  
12    governor, state treasurer, state auditor, president of the Senate,  
13    speaker of the House of Delegates, council of finance and  
14    administration and consolidated public retirement board.

15           (b) The board shall produce monthly financial statements  
16    for the assets managed by the board and cause them to be  
17    delivered to each member of the board and the executive  
18    secretary of the consolidated public retirement board as  
19    established in sections one and two, article ten-d, chapter five  
20    of this code and to the executive director of the workers'  
21    compensation commission as administrator of the workers'  
22    compensation fund and coal-workers' pneumoconiosis fund as  
23    provided in section one-b, article one, chapter twenty-three of  
24    this code and section one, article three of said chapter and  
25    section seven, article four-b of said chapter.

26 (c) The board shall deliver in each quarter to the council of  
27 finance and administration and the consolidated public retire-  
28 ment board a report detailing the investment performance of the  
29 401(a) plans.

30 (d) The board shall cause an annual audit of the reported  
31 returns of the assets managed by the board to be made by an  
32 investment consulting or a certified public accounting firm  
33 meeting the criteria set out in subsection (a) of this section. The  
34 board shall furnish copies of the audit report to the governor,  
35 state treasurer, state auditor, president of the Senate, speaker of  
36 the House of Delegates, council of finance and administration  
37 and consolidated public retirement board.

38 (e) The board shall provide any other information requested  
39 in writing by the council of finance and administration.

40 (f) All statements and reports with respect to participant  
41 plans required in this section shall be available for inspection  
42 by the members and beneficiaries and designated representa-  
43 tives of the participant plans.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 2. WEST VIRGINIA STATE POLICE.

#### **§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.**

1 (a) The standard uniform to be used by the West Virginia  
2 state police after the effective date of this article shall be as  
3 follows: Forestry green blouse with West Virginia state police  
4 emblem on sleeve; black shoulder strap one-inch black stripe  
5 around sleeve, four inches from end of sleeve; forestry green



6 breeches with one-inch black stripe down the side; trousers  
7 (slacks) with one-inch black stripe down the side for officers  
8 and clerks regularly enlisted in the state police; forestry green  
9 shirts with West Virginia state police emblem on sleeve; black  
10 shoulder straps; forestry green mackinaw with West Virginia  
11 state police emblem on sleeve; black shoulder straps; one-inch  
12 black stripe around sleeve four inches from end of sleeve;  
13 campaign hat of olive drab color; black Sam Browne belt with  
14 holster; black leggings and shoes; the officer's uniform will  
15 have one and one-quarter inch black stripe around the sleeve of  
16 blouse and mackinaw four inches from end of sleeve  
17 circumposed with one-half inch gold braid, also black collars on  
18 blouse, with two silver shoulder bars for captains, one silver  
19 shoulder bar for first lieutenant, one gold shoulder bar for  
20 second lieutenant. For noncommissioned officers the uniform  
21 blouse and shirt will have thereon black chevrons of the  
22 appropriate rank.

23 (b) The superintendent shall establish the weapons and  
24 enforcement equipment which are authorized for use by  
25 members of the state police and shall provide for periodic  
26 inspection of the weapons and equipment. He or she shall  
27 provide for the discipline of members using other than autho-  
28 rized weapons and enforcement equipment.

29 (c) The superintendent shall provide the members of the  
30 state police with suitable arms and weapons and, when he or  
31 she considers it necessary, with suitably equipped automobiles,  
32 motorcycles, watercraft, airplanes and other means of convey-  
33 ance to be used by the West Virginia state police, the governor  
34 and other officers and executives in the discretion of the  
35 governor, in times of flood, disaster and other emergencies, for  
36 traffic study and control, criminal and safety work and in other  
37 matters of official business. He or she shall also provide the  
38 standard uniforms for all members of the state police, for  
39 officers, noncommissioned officers and troopers provided for

40 in this section. All uniforms and all arms, weapons and other  
41 property furnished the members of the state police by the state  
42 of West Virginia are and remain the property of the state.

43 (d) The superintendent may purchase and maintain on  
44 behalf of members group life insurance not to exceed the  
45 amount of five thousand dollars on behalf of each member.

46 (e) The superintendent may contract and furnish at state  
47 police expense medical and hospital services for treatment of  
48 illness or injury of a member which shall be determined by the  
49 superintendent to have been incurred by the member while  
50 engaged in the performance of duty and from causes beyond  
51 control of the members. Notwithstanding any other provision of  
52 this code, the superintendent has the right of subrogation in any  
53 civil action or settlement brought by or on behalf of a member  
54 in relation to any act by another which results in the illness,  
55 injury or death of a member. To this end, the superintendent  
56 may initiate an action on behalf of the state police in order to  
57 recover the costs incurred in providing medical and hospital  
58 services for the treatment of a member resulting from injury or  
59 illness originating in the performance of official duties. This  
60 subsection shall not affect the power of a court to apply  
61 ordinary equitable defenses to the right of subrogation.

62 The superintendent may also consult with the executive  
63 director of the workers' compensation commission in an effort  
64 to defray the cost of medical and hospital services. In no case  
65 will the compensation rendered to health care providers for  
66 medical and hospital services exceed the then current rate  
67 schedule in use by the workers' compensation commission.

68 Third-party reimbursements received by the superintendent  
69 after the expiration of the fiscal year in which the injury, illness  
70 or death occurred will be deposited to a nonexpiring special  
71 revenue account. Funds deposited to this account may be used

72 solely for defraying the costs of medical or hospital services  
73 rendered to any sworn members as a direct result of an illness,  
74 injury or death resulting from the performance of official  
75 duties.

76 (f) The superintendent shall establish and maintain local  
77 headquarters at those places in West Virginia that are in his or  
78 her judgment suitable and proper to render the West Virginia  
79 state police most efficient for the purpose of preserving the  
80 peace, protecting property, preventing crime, apprehending  
81 criminals and carrying into effect all other provisions of this  
82 article. The superintendent shall provide, by acquisition, lease  
83 or otherwise, for local headquarters, for housing and quarters  
84 for the accommodation of the members of the West Virginia  
85 state police, and for any other facilities necessary or useful for  
86 the effective operation of the West Virginia state police and  
87 shall provide all equipment and supplies necessary for the  
88 members of the West Virginia state police to perform their  
89 duties.

## CHAPTER 16. PUBLIC HEALTH.

### Article

1. State Public Health System.
- 29D. State Health Care.
36. Needlestick Injury Prevention.

### ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

#### **§16-1-15. Investigations and hearings; power to administer oaths, subpoena witnesses, etc.; use of information and material acquired.**

1 (a) The secretary, the commissioner, any officer or em-  
2 ployee of the department designated by the secretary, or any  
3 other individual designated by the secretary may hold investiga-  
4 tions, inquiries and hearings concerning matters covered by the  
5 laws of this state pertaining to public health and within the

6 authority and the rules and orders of the secretary. Hearings  
7 shall be open to the public and shall be held upon any call or  
8 notice considered advisable by the secretary.

9 (b) Each individual designated to hold any inquiry, investi-  
10 gation or hearing may administer oaths and affirmations, certify  
11 to all official acts, issue subpoenas and order the attendance and  
12 testimony of witnesses in the production of papers, books and  
13 documents. In case of the failure of any person to comply with  
14 any subpoena or order issued under the authority of this section,  
15 the secretary or his or her authorized representative may invoke  
16 the aid of any circuit court of this state. The court may there-  
17 upon order that person to comply with the requirements of the  
18 subpoena order or to give evidence as to the matter in question.  
19 Failure to obey the order of the court may be punished by the  
20 court as a contempt of court.

21 (c) Subject to the provisions of subsections (a) and (b) of  
22 this section, the secretary may in his or her discretion make  
23 available to appropriate federal, state and municipal agencies  
24 information and material developed in the course of its investi-  
25 gation and hearings: *Provided*, That information obtained from  
26 studies or from any investigation made or hearing held pursuant  
27 to the provisions of this article may not be admissible in  
28 evidence in any action at law to recover damages for personal  
29 injury or in any action under the workers' compensation act, but  
30 the information, if available, shall be furnished upon request to  
31 the executive director of the workers' compensation commis-  
32 sion for the sole purpose of adjusting claims presented to the  
33 commission.

#### ARTICLE 29D. STATE HEALTH CARE.

**§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.**

1 (a) All departments and divisions of the state, including, but  
2 not limited to, the bureau of employment programs; the division  
3 of health and the division of human services within the depart-  
4 ment of health and human resources; the public employees  
5 insurance agency within the department of administration; the  
6 division of rehabilitation services; the workers' compensation  
7 commission; or the other department or division as shall  
8 supervise or provide rehabilitation; and the university of West  
9 Virginia board of trustees, as the governing board for the state's  
10 medical schools, are authorized and directed to cooperate in  
11 order, among other things, to ensure the quality of the health  
12 care services delivered to the beneficiaries of the departments  
13 and divisions and to ensure the containment of costs in the  
14 payment for services.

15 (b) It is expressly recognized that no other entity may  
16 interfere with the discretion and judgment given to the single  
17 state agency which administers the state's medicaid program.  
18 Thus, it is the intention of the Legislature that nothing con-  
19 tained in this article shall be interpreted, construed or applied  
20 to interfere with the powers and actions of the single state  
21 agency which, in keeping with applicable federal law, shall  
22 administer the state's medicaid program as it perceives to be in  
23 the best interest of that program and its beneficiaries.

24 (c) The departments and divisions shall develop a plan or  
25 plans to ensure that a reasonable and appropriate level of health  
26 care is provided to the beneficiaries of the various programs  
27 including the public employees insurance agency and the  
28 workers' compensation fund, the division of rehabilitation  
29 services and, to the extent permissible, the state medicaid  
30 program. The plan or plans may include, among other things,  
31 and the departments and divisions are hereby authorized to  
32 enter into:

33 (1) Utilization review and quality assurance programs;

34       (2) The establishment of a schedule or schedules of the  
35 maximum reasonable amounts to be paid to health care provid-  
36 ers for the delivery of health care services covered by the plan  
37 or plans. The schedule or schedules may be either prospective  
38 in nature or cost reimbursement in nature, or a mixture of both:  
39 *Provided*, That any payment methods or schedules for institu-  
40 tions which provide inpatient care shall be institution-specific  
41 and shall, at a minimum, take into account a disproportionate  
42 share of medicaid, charity care and medical education: *Pro-*  
43 *vided, however*, That in no event may any rate set in this article  
44 for an institutional health care provider be greater than the  
45 institution's current rate established and approved by the health  
46 care cost review authority pursuant to article twenty-nine-b of  
47 this chapter;

48       (3) Provisions for making payments in advance of the  
49 receipt of health care services by a beneficiary, or in advance of  
50 the receipt of specific charges for the services, or both;

51       (4) Provisions for the receipt or payment of charges by  
52 electronic transfers;

53       (5) Arrangements, including contracts, with preferred  
54 provider organizations; and

55       (6) Arrangements, including contracts, with particular  
56 health care providers to deliver health care services to the  
57 beneficiaries of the programs of the departments and divisions  
58 at agreed-upon rates in exchange for controlled access to the  
59 beneficiary populations.

60       (d) The director of the public employees insurance agency  
61 shall contract with an independent actuarial company for a  
62 review every four years of the claims experience of all govern-  
63 mental entities whose employees participate in the public  
64 employees insurance agency program, including, but not

65 limited to, all branches of state government, all state depart-  
66 ments or agencies (including those receiving funds from the  
67 federal government or a federal agency), all county and  
68 municipal governments or any other similar entity for the  
69 purpose of determining the cost of providing coverage under  
70 the program, including administrative cost, to each government-  
71 tal entity.

72 (e) Nothing in this section shall be construed to give or  
73 reserve to the Legislature any further or greater power or  
74 jurisdiction over the operations or programs of the various  
75 departments and divisions affected by this article than that  
76 already possessed by the Legislature in the absence of this  
77 article.

78 (f) For the purchase of health care or health care services by  
79 a health care provider participating in a plan under this section  
80 on or after the first day of September, one thousand nine  
81 hundred eighty-nine, by the public employees insurance agency,  
82 the division of rehabilitation services and the workers' compen-  
83 sation commission, a state check shall be issued in payment  
84 thereof within sixty-five days after a legitimate uncontested  
85 invoice is actually received by the division, commission or  
86 agency. Any state check issued after sixty-five days shall  
87 include interest at the current rate, as determined by the state  
88 tax commissioner under the provisions of section seventeen-a,  
89 article ten, chapter eleven of this code. The interest shall be  
90 calculated from the sixty-sixth day after the invoice was  
91 actually received by the commission or agency until the date on  
92 which the state check is mailed to the vendor.

#### **ARTICLE 36. NEEDLESTICK INJURY PREVENTION.**

##### **§16-36-3. Needlestick injury prevention advisory committee.**

1 (a) There is established a needlestick injury prevention  
2 advisory committee to advise the director in the development of  
3 rules required under this article.

4 (b) The committee shall meet at least four times a year for  
5 the initial two years after the effective date of this article and on  
6 the call of the director thereafter. The director shall serve as the  
7 chair and shall appoint thirteen members, one representing each  
8 of the following groups:

9 (1) A representative of the health insurance industry;

10 (2) The executive director of the workers' compensation  
11 commission, or his or her designee;

12 (3) Five nurses who work primarily providing direct patient  
13 care in a hospital or nursing home, at least one of which is  
14 employed in a state-operated facility;

15 (4) A phlebotomist employed in a hospital or nursing home;

16 (5) Two administrators of different hospitals operating  
17 within the state;

18 (6) A director of nursing employed in a nursing home  
19 within the state;

20 (7) A licensed physician practicing in the state; and

21 (8) An administrator of a nursing home operating within the  
22 state.

23 (c) Members of the committee serve without compensation.  
24 Each member shall be reimbursed for actual and necessary  
25 expenses incurred for each day or portion thereof engaged in  
26 the discharge of official duties, in a manner consistent with



27 guidelines of the travel management office of the department of  
28 administration.

29 (d) A majority of all members constitutes a quorum for the  
30 transaction of all business. Members serve for two-year terms  
31 and may not serve for more than two consecutive terms.

## CHAPTER 18. EDUCATION.

### Article

9A. Public School Support.

10A. Rehabilitation Services.

10K. West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Act.

### ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

#### §18-9A-26. Allowance for workers' compensation for unpaid student work-based learning.

1 (a) The workers' compensation commission shall create a  
2 classification and calculate a base premium tax rate for students  
3 participating in an unpaid work-based learning experience off  
4 school premises as a part of the school curriculum with employ-  
5 ers other than the county board of education. The workers'  
6 compensation commission shall report to the state department  
7 of education:

8 (1) The amount of the base premium tax rate for the class;  
9 and

10 (2) The amount of wages per student to be used to provide  
11 the minimum weekly benefits required by section six, article  
12 four, chapter twenty-three of this code.

13 (b) The state department of education shall communicate  
14 the amount of the premium to the governor and Legislature by  
15 the first day of December of each year.

16 (c) The base premium tax rate reported to the state depart-  
17 ment of education shall be that which was published by the  
18 workers' compensation commission prior to the first day of the  
19 immediately preceding July. The workers' compensation  
20 commission shall make no merit rate adjustment, as otherwise  
21 provided for in paragraph (A), subdivision (1), subsection (a),  
22 section four, article two, chapter twenty-three of this code for  
23 the members of the class required to be created by subsection  
24 (a) of this section.

25 (d) Notwithstanding anything to the contrary in any rules  
26 adopted to implement the provisions of section four, article two,  
27 chapter twenty-three of this code and for the sole purpose of  
28 this section, the workers' compensation commission shall  
29 permit any county board of education affected by this section  
30 to be classified in accordance with this section and to be also  
31 classified as otherwise required by any rules adopted to  
32 implement the provisions of section four, article two, chapter  
33 twenty-three of this code.

34 (e) Subject to an appropriation by the Legislature, funds  
35 shall be provided to the department of education to distribute to  
36 the county boards. If the appropriation is less than the total  
37 premium calculated, the county boards, individually, shall  
38 either reduce the number of students participating in work-  
39 based learning experiences off school premises or the county  
40 boards shall pay the difference between the amount of the  
41 premium calculated by the workers' compensation commission  
42 and the amount allocated to the county board by the department  
43 of education.

#### ARTICLE 10A. REHABILITATION SERVICES.

##### **§18-10A-12a. Workers' compensation for clients participating in unpaid work-based training programs.**

1 (a) The workers' compensation commission shall create a  
2 classification and calculate a base premium tax rate for clients  
3 of the division of rehabilitation services participating in unpaid  
4 work-based training programs within integrated commu-  
5 nity-based settings. The workers' compensation commission  
6 shall report to the division of rehabilitation services:

7 (1) The amount of the base premium tax rate for the class;  
8 and

9 (2) The hourly wages per client to be used to provide the  
10 minimum weekly benefits required by section six, article four,  
11 chapter twenty-three of this code.

12 (b) The base premium tax rate reported annually to the  
13 division of rehabilitation services by the workers' compensation  
14 commission shall not be effective until the first day of July and  
15 shall remain in effect through the last day of the next June.

16 (c) The division of rehabilitation services and the participat-  
17 ing entity shall be considered the joint employers of record of  
18 the clients while the clients are participating in unpaid work-  
19 based training programs in integrated community-based  
20 settings: *Provided*, That the participating entity shall not be  
21 held responsible for any liability due the workers' compensa-  
22 tion commission. The clients shall be considered to be paid the  
23 amount of wages sufficient to provide the minimum workers'  
24 compensation weekly benefits required by section six, article  
25 four, chapter twenty-three of this code.

**ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL  
CORD INJURY REHABILITATION FUND ACT.**

**§18-10K-2. Board created, membership, terms, officers and staff.**

1 (a) There is hereby established the West Virginia traumatic  
2 brain and spinal cord injury rehabilitation fund board.

3 (b) The board shall consist of twenty-three members. The  
4 members shall include:

5 (1) The secretary of the department of education and the  
6 arts, ex officio, or his or her designee;

7 (2) The secretary of health and human resources, ex officio,  
8 or his or her designee;

9 (3) The state superintendent of schools, ex officio, or his or  
10 her designee;

11 (4) The secretary of the department of military affairs and  
12 public safety, ex officio, or his or her designee;

13 (5) The director of the bureau of behavioral health within  
14 the department of health and human resources, ex officio, or his  
15 or her designee;

16 (6) The director of the division of rehabilitation services, ex  
17 officio, or his or her designee;

18 (7) The director of the bureau of medical services, ex  
19 officio, or his or her designee;

20 (8) The director of the office of emergency services, ex  
21 officio, or his or her designee;

22 (9) The executive director of the workers' compensation  
23 commission, ex officio, or his or her designee;

24 (10) Seven members appointed by the governor to represent  
25 public and private health organizations or other disability  
26 coalitions or advisory groups; and

27 (11) Seven members appointed by the governor who are  
28 either survivors of traumatic brain or spinal cord injury or

29 family members of persons with traumatic brain or spinal cord  
30 injury.

31 (c) The citizen members shall be appointed by the governor  
32 for terms of three years, except that of the members first  
33 appointed, two of the representatives of public and nonprofit  
34 private health organizations, disability coalitions or advisory  
35 groups and two of the representatives of survivors or family  
36 members of persons with traumatic brain or spinal cord injuries  
37 shall serve for terms of one year, two of the representatives of  
38 each of those respective groups shall serve for terms of two  
39 years and the remaining three representatives of each of those  
40 respective groups shall serve for terms of three years. All  
41 subsequent appointments shall be for three years. Members  
42 shall serve until the expiration of the term for which they have  
43 been appointed or until their successors have been appointed  
44 and qualified. In the event of a vacancy, the governor shall  
45 appoint a qualified person to serve for the unexpired term. No  
46 member may serve more than two consecutive three-year terms.  
47 State officers or employees may be appointed to the board  
48 unless otherwise prohibited by law.

49 (d) In the event a board member fails to attend more than  
50 twenty-five percent of the scheduled meetings in a twelve-  
51 month period, the board may, after written notification to that  
52 member and the secretary of education and the arts, request in  
53 writing that the governor remove the member and appoint a  
54 new member to serve his or her unexpired term.

55 (e) The board shall elect from its membership a chairper-  
56 son, treasurer and secretary as well as any other officer as  
57 appropriate. The term of the chairperson is for two years in  
58 duration and he or she cannot serve more than two consecutive  
59 terms.

**CHAPTER 21. LABOR.****ARTICLE 3A. OCCUPATIONAL SAFETY AND HEALTH ACT.****§21-3A-3. Division of occupational safety and health; coordination of activities with workers' compensation commission.**

1 (a) There is continued in the labor department a division of  
 2 occupational safety and health comprised of a subdivision for  
 3 safety, a subdivision for health and the other subdivisions the  
 4 commissioner considers necessary. This division shall adminis-  
 5 ter all matters pertaining to occupational safety and occupa-  
 6 tional health.

7 (b) The labor commissioner may require the assistance of  
 8 other state agencies and may enter into agreements with other  
 9 state agencies and political subdivisions of the state for the  
 10 administration of this chapter.

11 (c) The labor commissioner shall provide for coordination  
 12 between the division of occupational safety and health and the  
 13 workers' compensation commission including, but not limited  
 14 to, the establishment of standardized procedures and reportings.

**CHAPTER 21A. UNEMPLOYMENT COMPENSATION.****Article**

1. Unemployment Compensation.
2. The Commissioner of the Bureau of Employment Programs.
10. General Provisions.

**ARTICLE I. UNEMPLOYMENT COMPENSATION.****§21A-1-4. Bureau of employment programs created; division; "bureau" defined.**

1 There is continued an agency designated as the bureau of  
 2 employment programs, composed of a division of unemploy-

3 ment compensation, a division of employment service, a  
4 division of job training programs and any other divisions or  
5 units that the commissioner determines are necessary.

6 Wherever within this chapter the term "department",  
7 "bureau" or "fund" is used, it shall be taken to mean bureau of  
8 employment programs unless otherwise indicated.

9 The bureau shall be administered pursuant to subsection  
10 (b), section one, article two, chapter five-f of this code.

## ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

§21A-2-6. Powers and duties generally.

§21A-2-6c. Payment withholding and interception.

§21A-2-13. Deputies.

### §21A-2-6. Powers and duties generally.

1 The commissioner is the executive and administrative head  
2 of the bureau and has the power and duty to:

3 (1) Exercise general supervision for the governance of the  
4 bureau and propose rules for promulgation in accordance with  
5 the provisions of article three, chapter twenty-nine-a of this  
6 code to implement the requirements of this chapter;

7 (2) Prescribe uniform rules pertaining to investigations,  
8 departmental hearings and propose rules for promulgation;

9 (3) Supervise fiscal affairs and responsibilities of the  
10 bureau;

11 (4) Prescribe the qualifications of, appoint, remove and fix  
12 the compensation of the officers and employees of the bureau,  
13 subject to the provisions of section ten, article four of this  
14 chapter, relating to the board of review;

15       (5) Organize and administer the bureau so as to comply  
16 with the requirements of this chapter and to satisfy any condi-  
17 tions established in applicable federal law or regulation;

18       (6) Make reports in the form and containing information  
19 required by the United States department of labor and comply  
20 with any requirements that the United States department of  
21 labor finds necessary to assure the correctness and verification  
22 of the reports;

23       (7) Make available to any agency of the United States  
24 charged with the administration of public works or assistance  
25 through public employment, upon its request, the name,  
26 address, ordinary occupation and employment status of each  
27 recipient of unemployment compensation and a statement of the  
28 recipient's rights to further compensation under this chapter;

29       (8) Keep an accurate and complete record of all bureau  
30 proceedings, record and file all bonds and contracts and assume  
31 responsibility for the custody and preservation of all papers and  
32 documents of the bureau;

33       (9) Sign and execute in the name of the state, by the  
34 "Bureau of Employment Programs", any contract or agreement  
35 with the federal government, its agencies, other states, their  
36 subdivisions or private persons;

37       (10) Prescribe a salary scale to govern compensation of  
38 appointees and employees of the bureau;

39       (11) Make the original determination of right in claims for  
40 benefits;

41       (12) Make recommendations and an annual report to the  
42 governor concerning the condition, operation and functioning  
43 of the bureau;



44 (13) Invoke any legal or special remedy for the enforcement  
45 of orders or the provisions of this chapter;

46 (14) Exercise any other power necessary to standardize  
47 administration, expedite bureau business, assure the establish-  
48 ment of fair rules and promote the efficiency of the service;

49 (15) Keep an accurate and complete record and prepare a  
50 monthly report of the number of persons employed and  
51 unemployed in the state. The report shall be made available  
52 upon request to members of the public and press;

53 (16) Provide at bureau expense a program of continuing  
54 professional, technical and specialized instruction for the  
55 personnel of the bureau;

56 (17) (A) Propose for promulgation rules under which  
57 agencies of this state shall not grant, issue or renew any  
58 contract, license, permit, certificate or other authority to  
59 conduct a trade, profession or business to or with any employ-  
60 ing unit whose account is in default with the commissioner with  
61 regard to the administration of this chapter. The term "agency"  
62 includes any unit of state government such as officers, agencies,  
63 divisions, departments, boards, commissions, authorities or  
64 public corporations. An employing unit is not in default if it has  
65 entered into a repayment agreement with the unemployment  
66 compensation division of the bureau and remains in compliance  
67 with its obligations under the repayment agreement.

68 (B) The rules shall provide that, before granting, issuing or  
69 renewing any contract, license, permit, certificate or other  
70 authority to conduct a trade, profession or business to or with  
71 any employing unit, the designated agencies shall review a list  
72 or lists provided by the bureau of employers that are in default.  
73 If the employing unit's name is not on the list, the agency,  
74 unless it has actual knowledge that the employing unit is in

75 default with the bureau, may grant, issue or renew the contract,  
76 license, permit, certificate or other authority to conduct a trade,  
77 profession or business. The list may be provided to the agency  
78 in the form of a computerized database or databases that the  
79 agency can access. Any objections to the refusal to issue or  
80 renew shall be reviewed under the appropriate provisions of this  
81 chapter. The rules provided for by this subdivision shall be  
82 promulgated pursuant to the provisions of article three, chapter  
83 twenty-nine-a of this code. The prohibition against granting,  
84 issuing or renewing any contract, license, permit, certificate or  
85 other authority under this subdivision shall continue in full  
86 force and effect until the revised rules are promulgated and are  
87 in effect.

88 (C) The rules may be promulgated or implemented in  
89 phases so that specific agencies or specific types of contracts,  
90 licenses, permits, certificates or other authority to conduct  
91 trades, professions or businesses will be subject to the rules  
92 beginning on different dates. The presumptions of ownership or  
93 control contained in the division of environmental protection's  
94 surface mining reclamation regulations promulgated under the  
95 provisions of article three, chapter twenty-two of this code are  
96 not applicable or controlling in determining the identity of  
97 employing units who are in default for the purposes of this  
98 subdivision. The rules shall also provide a procedure allowing  
99 any agency or interested person, after being covered under the  
100 rules for at least one year, to petition the bureau of employment  
101 programs to be exempt from the provisions of the rules. Rules  
102 subjecting all applicable agencies and contracts, licenses,  
103 permits, certificates or other authority to conduct trades,  
104 professions or businesses to the requirements of this subdivi-  
105 sion that were promulgated prior to the first day of October, two  
106 thousand three, shall be revised and submitted for legislative  
107 review no later than the first day of June, two thousand four;

108       (18) Deposit to the credit of the appropriate special revenue  
109 account or fund, notwithstanding any other provision of this  
110 code and to the extent allowed by federal law, all amounts of  
111 delinquent payments or overpayments, interest and penalties  
112 thereon, and attorneys' fees and costs collected under the  
113 provisions of this chapter. The amounts collected shall not be  
114 treated by the auditor or treasurer as part of the general revenue  
115 of the state; and

116       (19) Enter into interagency agreements to assist in exchang-  
117 ing information and fulfilling the provisions of this article.

**§21A-2-6c. Payment withholding and interception.**

1       (a) All state, county, district and municipal officers and  
2 agents making contracts on behalf of the state of West Virginia  
3 or any political subdivision thereof shall withhold payment in  
4 the final settlement of contracts until the receipt of a certificate  
5 from the commissioner to the effect that all payments, interest  
6 and penalties thereon accrued against the contractor under this  
7 chapter have been paid or that provisions satisfactory to the  
8 commissioner have been made for payment. Any official  
9 violating this subsection is guilty of a misdemeanor and, on  
10 conviction thereof, shall be fined not more than one thousand  
11 dollars or confined in a county or regional jail for not more than  
12 one year, or both fined and confined.

13       (b) Any agency of the state, for the limited purpose of  
14 intercepting, pursuant to section sixteen, article five of this  
15 chapter and pursuant to section five-a, article two, chapter  
16 twenty-three of this code, any payment by or through the state  
17 to an employer who is in default in payment of contributions,  
18 premiums, deposits, interest or penalties under the provisions  
19 of this chapter or of chapter twenty-three of this code, shall  
20 assist the commissioner in collecting the payment that is due.  
21 For this purpose, disclosure of joint delinquency and default

22 lists of employers with respect to unemployment compensation  
23 and workers' compensation as provided in section one-c, article  
24 one, chapter twenty-three of this code contributions, premiums,  
25 interest, deposits or penalties is authorized. The bureau and the  
26 workers' compensation commission may enter into an inter-  
27 agency agreement to effect the provisions of this section. The  
28 lists may be in the form of a computerized database to be  
29 accessed by the auditor, the department of tax and revenue, the  
30 department of administration, the division of highways or any  
31 other appropriate state agency or officer.

### **§21A-2-13. Deputies.**

1 For the original determination of claims under this chapter,  
2 the commissioner shall appoint a necessary number of deputies  
3 as his or her representatives.

## **ARTICLE 10. GENERAL PROVISIONS.**

### **§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.**

1 (a) Each employer, including labor organizations as defined  
2 in subsection (i) of this section, shall, quarterly, submit  
3 certified reports on or before the last day of the month next  
4 following the calendar quarter, on forms to be prescribed by the  
5 commissioner. The reports shall contain:

6 (1) The employer's assigned unemployment compensation  
7 registration number, the employer's name and the address at  
8 which the employer's payroll records are maintained;

9 (2) Each employee's social security account number, name  
10 and the gross wages paid to each employee, which shall include  
11 the first eight thousand dollars of remuneration and all amounts  
12 in excess of that amount, notwithstanding subdivision (1),

13 subsection (b), section twenty-eight, article one-a of this  
14 chapter;

15 (3) The total gross wages paid within the quarter for  
16 employment, which includes money wages and the cash value  
17 of other remuneration, and shall include the first eight thousand  
18 dollars of remuneration paid to each employee and all amounts  
19 in excess of that amount, notwithstanding subdivision (1),  
20 subsection (b), section twenty-eight, article one-a of this  
21 chapter; and

22 (4) Other information that is reasonably connected with the  
23 administration of this chapter.

24 (b) Information obtained may not be published or be open  
25 to public inspection to reveal the identity of the employing unit  
26 or the individual.

27 (c) Notwithstanding the provisions of subsection (b) of this  
28 section, the commissioner may provide information obtained to  
29 the following governmental entities for purposes consistent  
30 with state and federal laws:

31 (1) The United States department of agriculture;

32 (2) The state agency responsible for enforcement of the  
33 medicaid program under Title XIX of the Social Security Act;

34 (3) The United States department of health and human  
35 services or any state or federal program operating and approved  
36 under Title I, Title II, Title X, Title XIV or Title XVI of the  
37 Social Security Act;

38 (4) Those agencies of state government responsible for  
39 economic and community development; secondary, post-  
40 secondary and vocational education; vocational rehabilitation,  
41 employment and training, including, but not limited to, the

42 administration of the Perkins Act and the Job Training and  
43 Partnership Act;

44 (5) The tax division, but only for the purposes of collection  
45 and enforcement;

46 (6) The division of labor for purposes of enforcing the  
47 wage bond and the contractor licensing provisions of chapter  
48 twenty-one of this code;

49 (7) Any agency of this or any other state, or any federal  
50 agency, charged with the administration of an unemployment  
51 compensation law or the maintenance of a system of public  
52 employment offices;

53 (8) Any claimant for benefits or any other interested party  
54 to the extent necessary for the proper presentation or defense of  
55 a claim; and

56 (9) The workers' compensation commission for purposes  
57 of collection and enforcement: *Provided*, That the workers'  
58 compensation commission shall provide similar information to  
59 the bureau of employment programs.

60 (d) The agencies or organizations which receive informa-  
61 tion under subsection (c) of this section shall agree that the  
62 information shall remain confidential as not to reveal the  
63 identity of the employing unit or the individual consistent with  
64 the provisions of this chapter.

65 (e) The commissioner may, before furnishing any informa-  
66 tion permitted under this section, require that those who request  
67 the information shall reimburse the bureau of employment  
68 programs for any cost associated for furnishing the information.

69 (f) The commissioner may refuse to provide any informa-  
70 tion requested under this section if the agency or organization

71 making the request does not certify that it will comply with the  
72 state and federal law protecting the confidentiality of the  
73 information.

74 (g) A person who violates the confidentiality provisions of  
75 this section is guilty of a misdemeanor and, upon conviction  
76 thereof, shall be fined not less than twenty dollars nor more  
77 than two hundred dollars or confined in a county or regional  
78 jail not longer than ninety days, or both.

79 (h) No action for slander or libel, either criminal or civil,  
80 shall be predicated upon information furnished by any em-  
81 ployer or any employee to the commissioner in connection with  
82 the administration of any of the provisions of this chapter.

83 (i) For purposes of subsection (a) of this section, the term  
84 "labor organization" means any organization of any kind, or  
85 any agency or employee representation committee or plan, in  
86 which employees participate and which exists for the purpose,  
87 in whole or in part, of dealing with employers concerning  
88 grievances, labor disputes, wages, rates of pay, hours of  
89 employment or conditions of work. It includes any entity, also  
90 known as a hiring hall, which is used by the organization and an  
91 employer to carry out requirements described in 29 U. S. C.  
92 §158(f)(3) of an agreement between the organization and the  
93 employer.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

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

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

1 No person may engage in surface mining operations unless  
2 he or she has first obtained a permit from the director in  
3 accordance with the following:

4 (1) All permits issued pursuant to the requirements of this  
5 article shall be issued for a term not to exceed five years:  
6 *Provided*, That if the applicant demonstrates that a specified  
7 longer term is reasonably needed to allow the applicant to  
8 obtain necessary financing for equipment and the opening of  
9 the operation, and if the application is full and complete for the  
10 specified longer term, the director may extend a permit for a  
11 longer term: *Provided, however*, That subject to the prior  
12 approval of the director, with the approval being subject to the  
13 provisions of subsection (c), section eighteen of this article, a  
14 successor in interest to a permittee who applies for a new  
15 permit, or transfer of a permit, within thirty days of succeeding  
16 to the interest, and who is able to obtain the bond coverage of  
17 the original permittee, may continue surface mining and  
18 reclamation operations according to the approved mining and  
19 reclamation plan of the original permittee until the successor's  
20 permit application or application for transfer is granted or  
21 denied.

22 (2) Proof of insurance is required on an annual basis.

23 (3) A permit terminates if the permittee has not commenced  
24 the surface mining operations covered by the permit within  
25 three years of the date the permit was issued: *Provided*, That the  
26 director may grant reasonable extensions of time upon a timely  
27 showing that the extensions are necessary by reason of litigation  
28 precluding commencement, or threatening substantial  
29 economic loss to the permittee, or by reason of conditions  
30 beyond the control and without the fault or negligence of the  
31 permittee: *Provided, however*, That with respect to coal to be  
32 mined for use in a synthetic fuel facility or specific major  
33 electric generating facility, the permittee shall be considered to



34 have commenced surface mining operations at the time the  
35 construction of the synthetic fuel or generating facility is  
36 initiated.

37 (4) Each application for a new surface mining permit filed  
38 pursuant to this article shall be accompanied by a fee of one  
39 thousand dollars. All permit fees and renewal fees provided for  
40 in this section or elsewhere in this article shall be collected by  
41 the director and deposited with the treasurer of the state of West  
42 Virginia to the credit of the operating permit fees fund and shall  
43 be used, upon requisition of the director, for the administration  
44 of this article.

45 (5) Prior to the issuance of any permit, the director shall  
46 ascertain from the commissioner of the division of labor  
47 whether the applicant is in compliance with section fourteen,  
48 article five, chapter twenty-one of this code. Upon issuance of  
49 the permit, the director shall forward a copy to the commis-  
50 sioner of the division of labor, who shall assure continued  
51 compliance under the permit.

52 (6) (A) Prior to the issuance of any permit the director shall  
53 ascertain from the commissioner of the bureau of employment  
54 programs and the executive director of the workers' compensa-  
55 tion commission whether the applicant is in compliance with  
56 the provisions of section six-c, article two, chapter twenty-one-a  
57 of this code and section five, article two, chapter twenty-three  
58 of this code with regard to any required subscription to the  
59 unemployment compensation fund or to the workers' compen-  
60 sation fund, the payment of premiums and other charges to the  
61 fund, the timely filing of payroll reports and the maintenance of  
62 adequate deposits. If the applicant is delinquent or defaulted, or  
63 has been terminated by the bureau or the commission, the  
64 permit shall not be issued until the applicant returns to compli-  
65 ance or is restored by the bureau or the commission under a  
66 reinstatement agreement: *Provided*, That in all inquiries the

67 commissioner of the bureau of employment programs and the  
 68 executive director of the workers' compensation commission  
 69 shall make response to the division of environmental protection  
 70 within fifteen calendar days; otherwise, failure to respond  
 71 timely is considered to indicate the applicant is in compliance  
 72 and the failure will not be used to preclude issuance of the  
 73 permit.

74 (B) It is a requirement of this article that each operator  
 75 maintain continued compliance with the provisions of section  
 76 five, article two, chapter twenty-three and section six-c, article  
 77 two, chapter twenty-one-a of this code and provide proof of  
 78 compliance to the director on a quarterly basis.

## CHAPTER 23. WORKERS' COMPENSATION.

### Article

1. **General Administrative Provisions.**
2. **Employers and Employees Subject to Chapter; Extraterritorial Coverage.**
- 2A. **Subrogation.**
- 2B. **Occupational Safety and Health Programs.**
3. **Workers' Compensation Fund.**
4. **Disability and Death Benefits.**
- 4A. **Disabled Workers' Relief Fund.**
- 4B. **Coal-Workers' Pneumoconiosis Fund.**
- 4C. **Employers' Excess Liability Fund.**
5. **Review.**

### ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

- §23-1-1. Workers' compensation commission created; findings.
- §23-1-1a. Workers' compensation board of managers; appointment; composition; qualifications; terms; chairperson; meetings and quorum; compensation and travel expenses; powers and duties.
- §23-1-1b. Executive director; qualifications; oath; seal; removal; powers and duties.
- §23-1-1c. Payment withholding; interception; penalty.
- §23-1-1d. Rules of former division of workers' compensation.
- §23-1-1e. Transfer of assets and contracts.
- §23-1-1f. Continuation.
- §23-1-2. Oversight of the workers' compensation commission.

- §23-1-3. Payment of salaries and expenses generally; manner; limitation.
- §23-1-4. Office hours; records; confidentiality; exceptions.
- §23-1-4a. Bond for executive director and associate director.
- §23-1-5. Office of executive director; hearings.
- §23-1-6. Employment of associate director and other assistants; compensation and travel expenses.
- §23-1-7. Associate director to act during executive director's absence or inability to act and in case of vacancy; bond of associate director.
- §23-1-8. Authority of executive director and employees as to oaths and evidence.
- §23-1-9. Compelling compliance with order or subpoena.
- §23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.
- §23-1-11. Depositions; investigations.
- §23-1-12. Copies of proceedings as evidence.
- §23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.
- §23-1-14. Forms.
- §23-1-15. Procedure before commission.
- §23-1-17. Annual report by commission and occupational pneumoconiosis board.
- §23-1-18. Commission employees not subject to subpoena for workers' compensation hearings.
- §23-1-19. Civil remedies.

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

1           (a) The Legislature finds that a deficit exists in the workers'  
2 compensation fund of such critical proportions that it consti-  
3 tutes an imminent threat to the immediate and long-term  
4 solvency of the fund. The Legislature further finds that address-  
5 ing the workers' compensation crisis requires the efforts of all  
6 persons and entities involved. Modification to the rate system,  
7 alteration of the benefit structure, improvement of current  
8 management practices and changes in perception must be  
9 merged into a unified effort to make the workers' compensation  
10 system viable and solvent. It is the intent of the Legislature that  
11 the amendments to this chapter enacted in the year two thou-  
12 sand three be applied from the date upon which the enactment  
13 is made effective by the Legislature. The Legislature finds that  
14 an emergency exists as a result of the combined effect of this  
15 deficit, other state budgetary deficits and liabilities and other  
16 grave social and economic circumstances currently confronting  
17 the state and that unless the changes provided by the enactment  
18 of the amendments to this chapter, as well as other legislation

19 designed to address the problem are made effective immedi-  
20 ately, the fiscal stability of this state will suffer irreparable  
21 harm. Accordingly, the Legislature finds that the need of the  
22 citizens of this state for the protection of the state treasury and  
23 the solvency of the workers' compensation funds requires the  
24 limitations on any expectations that may have arisen from prior  
25 enactments of this chapter.

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

48 (c) The "workers' compensation division of the bureau of  
49 employment programs" is, on or after the first day of October,  
50 two thousand three, reestablished, reconstituted and continued  
51 as the workers' compensation commission, an agency of the  
52 state. The purpose of the commission is to ensure the fair,

53 efficient and financially stable administration of the workers'  
54 compensation system of the state of West Virginia. The powers  
55 and duties heretofore imposed upon the workers' compensation  
56 division and the commissioner of the bureau of employment  
57 programs as they relate to workers' compensation are hereby  
58 transferred to and imposed upon the workers' compensation  
59 commission and its executive director in the manner prescribed  
60 by this chapter.

61 (d) It is the intent of the Legislature that the transfer of the  
62 administration of the workers' compensation system of this  
63 state from the workers' compensation division under the  
64 commissioner of the bureau of employment programs to the  
65 workers' compensation commission under its executive director  
66 and the workers' compensation board of managers is to become  
67 effective the first day of October, two thousand three. Any  
68 provisions of the enactment of Enrolled Senate Bill No. 2013 in  
69 the year two thousand three relating to the transfer of the  
70 administration of the workers' compensation system of this  
71 state that conflict with the intent of the Legislature as described  
72 in this subsection shall, to that extent, become operative on the  
73 first day of October, two thousand three, and until that date,  
74 prior enactments of this code in effect on the effective date of  
75 Enrolled Senate Bill No. 2013 relating to the administration of  
76 the workers' compensation system of this state, whether  
77 amended and reenacted or repealed by the passage of Enrolled  
78 Senate Bill No. 2013, have full force and effect. All provisions  
79 of the enactment of Enrolled Senate Bill No. 2013 in the year  
80 two thousand three relating to matters other than the transfer of  
81 the administration of the workers' compensation system of this  
82 state shall become operative on the effective date of that  
83 enactment, unless otherwise specifically provided for in that  
84 enactment.

**§23-1-1a. Workers' compensation board of managers; appointment; composition; qualifications; terms; chair-**

**person; 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 code is  
4 hereby abolished and there is hereby created the "workers'  
5 compensation board of managers", which may also be referred  
6 to as "the board of managers" or "the board".

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

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

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

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

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

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

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

41           (2) Eight members shall be appointed by the governor with  
42 the advice and consent of the Senate for terms that begin the  
43 first day of January, two thousand five, and expire as follows:

44           Two members shall be appointed for a term ending the  
45 thirtieth day of June, two thousand six;

46           Three members shall be appointed for a term ending the  
47 thirtieth day of June, two thousand seven; and

48           Three members shall be appointed for a term ending the  
49 thirtieth day of June, two thousand eight.

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

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

62       (d) Except for those initially appointed under the provisions  
63 of paragraph (D), subdivision (1), subsection (a) of this section,  
64 each of the appointed voting members of the board shall be  
65 appointed based upon his or her demonstrated knowledge and  
66 experience to effectively accomplish the purposes of this  
67 chapter. They shall meet the minimum qualifications as  
68 follows:

69       (1) Each shall hold a baccalaureate degree from an accred-  
70 ited college or university: *Provided*, That no more than three of  
71 the appointed voting members may serve without a baccalaure-  
72 ate degree from an accredited college or university if the  
73 member has a minimum of fifteen years' experience in his or  
74 her field of expertise as required in subdivision (2) of this  
75 subsection;

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



90           (3) At least one shall be a certified public accountant with  
91 financial management or pension or insurance audit expertise;  
92 at least one shall be an attorney with financial management  
93 experience; and one shall be an academician holding an  
94 advanced degree from an accredited college or university in  
95 business, finance, insurance or economics.

96           (e) Each member of the board shall have a fiduciary  
97 responsibility to the commission and all workers' compensation  
98 funds and shall assure the proper administration of the funds in  
99 a fiscally responsible manner.

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

112           (g) Notwithstanding any provision of article seven, chapter  
113 six of this code to the contrary, the board shall establish the  
114 salary of the executive director. The board shall establish a set  
115 of performance measurements to evaluate the performance of  
116 the executive director in fulfilling his or her duties as prescribed  
117 in this chapter and shall annually rate the executive director's  
118 performance according to the established measurements and  
119 may adjust his or her annual salary in accordance with that  
120 performance rating.

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

125 (2) Each voting appointed member of the board is entitled  
126 to be reimbursed for actual and necessary expenses incurred for  
127 each day or portion thereof engaged in the discharge of official  
128 duties in a manner consistent with guidelines of the travel  
129 management office of the department of administration.

130 (i) Each member of the board shall be provided appropriate  
131 liability insurance, including, but not limited to, errors and  
132 omissions coverage, without additional premium, by the state  
133 board of risk and insurance management established pursuant  
134 to article twelve, chapter twenty-nine of this code.

135 (j) The board of managers shall:

136 (1) Review and approve, reject or modify recommendations  
137 from the executive director for the development of overall  
138 policy for the administration of this chapter;

139 (2) In consultation with the executive director, propose  
140 legislation and establish operating guidelines and policies  
141 designed to ensure the effective administration and financial  
142 viability of the workers' compensation system of West Vir-  
143 ginia;

144 (3) Review and approve, reject or modify rules that are  
145 proposed by the executive director for operation of the workers'  
146 compensation system before the rules are filed with the  
147 secretary of state. The rules adopted by the board are not  
148 subject to sections nine through sixteen, inclusive, article three,  
149 chapter twenty-nine-a of this code. The board shall follow the  
150 remaining provisions of said chapter for giving notice to the

151 public of its actions and for holding hearings and receiving  
152 public comments on the rules;

153 (4) In accordance with the laws, rules and regulations of  
154 West Virginia and the United States government, establish and  
155 monitor performance standards and measurements to ensure the  
156 timeliness and accuracy of activities performed under the  
157 workers' compensation laws and rules;

158 (5) Review and approve, reject or modify all classifications  
159 of occupations or industries, premium rates and taxes, adminis-  
160 trative charges, rules and systems of rating, rating plans, rate  
161 revisions, deficit management and deficit reduction assessments  
162 and merit rating for employers covered by this chapter. The  
163 executive director shall provide all information required for the  
164 board's review;

165 (6) In conjunction with the executive director initiate,  
166 oversee and review all independent financial and actuarial  
167 reviews of the commission. The board shall employ an internal  
168 auditor for the purpose of examining internal compliance with  
169 the provisions of this chapter. The internal auditor shall be  
170 employed directly by the board. The internal auditor shall  
171 submit copies of all reports prepared by the internal auditor for  
172 the board to the joint committee on government and finance  
173 within five days of submitting or making the report to the  
174 board, by filing the report with the legislative librarian;

175 (7) Approve the allocation of sufficient administrative  
176 resources and funding to efficiently operate the workers'  
177 compensation system of West Virginia. To assure efficient  
178 operation, the board shall direct the development of a plan for  
179 the collections performed under section five-a, article two of  
180 this chapter. The plan for collections shall maximize ratio of  
181 dollars potentially realized by the collection proceeding to the  
182 dollars invested in collection activity;

183 (8) Review and approve, reject or modify the budget  
184 prepared by the executive director for the operation of the  
185 commission. The budget shall include estimates of the costs and  
186 necessary expenditures of the commission in the discharge of  
187 all duties imposed by this chapter as well as the cost of provid-  
188 ing offices, furniture, equipment and supplies to all commission  
189 officers and employees;

190 (9) In consultation with the executive director, approve the  
191 designation of health care providers to make decisions for the  
192 commission regarding appropriateness of medical services;

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

196 (11) Require the workers' compensation commission to  
197 develop, maintain and use thorough and efficient claims  
198 management procedures and processes and fund management  
199 in accordance with the generally accepted practices of the  
200 workers' compensation insurance industry;

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

204 (13) Review and approve, reject or modify standards  
205 recommended by the executive director to be considered by the  
206 commission in making decisions on all levels of disability  
207 awards. The standards should be established as an effective  
208 means to make prompt, appropriate decisions relating to  
209 medical care and methods to assist employees to return to work  
210 as quickly as possible;

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

212 (15) Employ sufficient professional and clerical staff to  
213 carry out the duties of the board. Employees of the board shall  
214 serve at the will and pleasure of the board. The board's employ-  
215 ees are exempt from the salary schedule or pay plan adopted by  
216 the division of personnel; and

217 (16) Study the feasibility of, provide a plan for and provide  
218 a proposal for a request for proposals from the private sector  
219 for, privatizing the workers' compensation system of this state,  
220 including, but not limited to, a plan for privatizing the adminis-  
221 tration of the workers' compensation system of this state and a  
222 plan for allowing employers to obtain private insurance to  
223 insure their obligations under the workers' compensation  
224 system of this state; study the effect, if any, of attorneys fees on  
225 the cost of administering the workers' compensation system;  
226 study the extent to which fraud or abuse on the part of employ-  
227 ees, providers and others have an effect on the cost of adminis-  
228 tering the workers' compensation system; study the extent, if  
229 any, that the rates and amounts of disability awards exceed the  
230 rates and amounts of such awards in other states; study the  
231 comparative desirability of alternative permanent disability  
232 administration in those other states, and alternative deficit  
233 management strategies, including nontraditional funding; study  
234 the feasibility of authorizing a plan of multiple rate classifica-  
235 tions by individual employers for employers who have different  
236 or seasonally diverse job classifications and duties: *Provided,*  
237 That no such plan may be implemented until adopted by the  
238 Legislature; and, in consultation with the director of the  
239 division of personnel, study the feasibility of establishing a  
240 work incentive program to place unemployed qualified recipi-  
241 ents of workers' compensation benefits in state or local  
242 government employment. On or before the first day of January,  
243 two thousand six, the commission shall report the findings and  
244 conclusions of each study, the plans and proposals, and any  
245 recommendations the commission may have as a result of the  
246 study to the joint committee on government and finance.

**§23-1-1b. Executive director; qualifications; oath; seal; removal; 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 terms:  
4 *Provided*, That the executive director of the division of work-  
5 ers' compensation on the date of the enactment of this section  
6 in the year two thousand three shall serve as the initial execu-  
7 tive director of the commission and shall receive the same  
8 salary and benefits as received as the executive director of the  
9 division of workers' compensation through and until the board  
10 of managers establishes his or her salary and benefits as the  
11 executive director of the commission. The position of executive  
12 director shall be full-time employment. Except for the initial  
13 executive director, candidates for the position of executive  
14 director shall have a minimum of a bachelor of arts or science  
15 degree from an accredited four-year college or university in one  
16 or more of the following disciplines: Finance; economics;  
17 insurance administration; law; public administration; account-  
18 ing; or business administration. Candidates for the position of  
19 executive director will be considered based on their demon-  
20 strated education, knowledge and a minimum of ten years'  
21 experience in the areas of workers' compensation, insurance  
22 company management, administrative and management  
23 experience with an organization comparable in size to the  
24 workers' compensation commission or any relevant experience  
25 which demonstrates an ability to effectively accomplish the  
26 purposes of this chapter.

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

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

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

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

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

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

57 (1) Establish, with the approval of the board of managers,  
58 the overall administrative policy of the commission for the  
59 purposes of this chapter;

60 (2) Employ, direct and supervise all employees required in  
61 the connection with the performance of the duties assigned to  
62 the commission by this chapter and fix the compensation of the  
63 employees in accordance with the provisions of article six,

64 chapter twenty-nine of this code: *Provided*, That the executive  
65 director shall identify which members of the staff of the  
66 workers' compensation commission shall be exempted from the  
67 salary schedules or pay plan adopted by the state personnel  
68 board and further identify such staff members by job classifica-  
69 tion or designation, together with the salary or salary ranges for  
70 each such job classification or designation and shall file this  
71 information with the director of the division of personnel no  
72 later than the thirty-first day of December, two thousand three,  
73 and thereafter as changes are made or at least annually;

74 (3) Reorganize the work of the commission, its divisions,  
75 sections and offices to the extent necessary to achieve the most  
76 efficient performance of its functions. All persons employed by  
77 the workers' compensation division in positions that were  
78 formerly supervised and directed by the commissioner of the  
79 bureau of employment programs under chapter twenty-one-a of  
80 this code are hereby assigned and transferred in their respective  
81 classifications to the workers' compensation commission  
82 effective the first day of October, two thousand three. Further,  
83 the executive director may select persons that are employed by  
84 the bureau of employment programs on the effective date of the  
85 enactment of this section in the year two thousand three to be  
86 assigned and transferred to the workers' compensation commis-  
87 sion in their respective classifications, such assignment and  
88 transfer to take effect no later than the thirty-first day of  
89 December, two thousand three. Employees in the classified  
90 service who have gained permanent status as of the effective  
91 date of this article will not be subject to further qualifying  
92 examination in their respective classifications by reason of any  
93 transfer required by the provisions of this subdivision. Due to  
94 the emergency currently existing at the commission and the  
95 urgent need to develop fast, efficient claims processing,  
96 management and administration, the executive director is  
97 hereby granted authority to reorganize internal functions and  
98 operations and to delegate, assign, transfer, combine, establish,



99 eliminate and consolidate responsibilities and duties to and  
100 among the positions transferred under the authority of this  
101 subdivision. The division of personnel shall cooperate fully by  
102 assisting in all personnel activities necessary to expedite all  
103 changes for the commission. Nothing contained in this subdivi-  
104 sion shall be construed to either abridge the rights of employees  
105 within the classified service of the state to the procedures and  
106 protections set forth in article six, chapter twenty-nine of this  
107 code or to preclude the reclassification or reallocation of  
108 positions in accordance with procedures set forth in article six,  
109 chapter twenty-nine of this code;

110 (4) Exempt no more than twenty-five of any of the newly  
111 created positions from the classified service of the state, the  
112 employees of which positions shall serve at the will and  
113 pleasure of the executive director. The executive director shall  
114 report all exemptions made under this subdivision to the  
115 director of the division of personnel no later than the first day  
116 of January, two thousand four, and thereafter as the executive  
117 director determines to be necessary;

118 (5) With the advice and approval of the board of managers,  
119 propose operating guidelines and policies to standardize  
120 administration, expedite commission business and promote the  
121 efficiency of the services provided by the commission;

122 (6) Prepare and submit to the board of managers informa-  
123 tion the board requires for classifications of occupations or  
124 industries; the basis for premium rates, taxes, surcharges and  
125 assessment for administrative charges, for assessments related  
126 to loss experience, for assessments of prospective risk exposure,  
127 for assessments of deficit management and deficit reduction  
128 costs incurred, for other deficit management and deficit  
129 reduction assessments, for rules and systems of rating, rate  
130 revisions and merit rating for employers covered by this  
131 chapter; and information regarding the extent, degree and

132 amount of subsidization between the classifications. The  
133 executive director shall obtain, prepare and submit any other  
134 information the board of managers requires for the prompt and  
135 efficient discharge of its duties;

136 (7) Keep accurate and complete accounts and records  
137 necessary to the collection, administration and distribution of  
138 the workers' compensation funds;

139 (8) Sign and execute in the name of the state, by "The  
140 Workers' Compensation Commission", any contract or agree-  
141 ment;

142 (9) Make recommendations and an annual report to the  
143 governor concerning the condition, operation and functioning  
144 of the commission;

145 (10) Invoke any legal or special remedy for the enforcement  
146 of orders or the provisions of this chapter;

147 (11) Prepare and submit for approval to the board of  
148 managers a budget for each fiscal year, including estimates of  
149 the costs and necessary expenditures of the commission in the  
150 discharge of all duties imposed by this chapter as well as the  
151 costs of furnishing office space to the officers and employees  
152 of the commission;

153 (12) Ensure that all employees of the commission follow  
154 the orders, operating guidelines and policies of the commission  
155 as they relate to the commission's overall policy-making,  
156 management and adjudicatory duties under this chapter;

157 (13) Delegate all powers and duties vested in the executive  
158 director to his or her appointees and employees; but the  
159 executive director is responsible for their acts;

160 (14) Provide at commission expense a program of continu-  
161 ing professional, technical and specialized instruction for the  
162 personnel of the commission. The executive director shall  
163 consult with and report at least annually to the legislative  
164 oversight commission on workforce investment for economic  
165 development to obtain the most appropriate training using all  
166 available resources;

167 (15) (A) Contract or employ counsel to perform all legal  
168 services for the commission including, but not limited to,  
169 representing the executive director, board of managers and  
170 commission in any administrative proceeding and in any state  
171 or federal court. Additionally, the commission may, but shall  
172 not be required to, call upon the attorney general for legal  
173 assistance and representation as provided by law. The attorney  
174 general shall not approve or exercise authority over in-house  
175 counsel or contract counsel hired pursuant to this section;

176 (B) In addition to the authority granted by this section to the  
177 executive director and notwithstanding any provision to the  
178 contrary elsewhere in this code, use any attorney regularly  
179 employed by the commission or the office of the attorney  
180 general to represent the commission, the executive director or  
181 the board of managers in any matter arising from the perfor-  
182 mance of its duties or the execution of its powers under this  
183 chapter. In addition, the executive director, with the approval of  
184 the board of managers, may retain counsel for any purpose in  
185 the administration of this chapter relating to the collection of  
186 any amounts due from employers to the commission: *Provided*,  
187 That the allocation of resources for the purpose of any collec-  
188 tions shall be pursuant to the plan developed by the board of  
189 managers. The board of managers shall solicit proposals from  
190 counsel who are interested in representing the commission  
191 under the terms of this subdivision. Thereafter, the board of  
192 managers shall select any attorneys it determines necessary to  
193 pursue the collection objectives of this subdivision:

194 (i) Payment to retained counsel may either be hourly or by  
195 other fixed fee, or as determined by the court or administrative  
196 law judge as provided for in this section. A contingency fee  
197 payable from the amount recovered by judgment or settlement  
198 for the commission is only permitted, to the extent not prohib-  
199 ited by federal law, when the assets of a defendant or respon-  
200 dent are depleted so that a full recovery plus attorneys' fees is  
201 not possible;

202 (ii) In the event that any collections action, other than a  
203 collections action against a claimant, initiated either by retained  
204 counsel or other counsel on behalf of the commission results in  
205 a judgment or settlement in favor of the commission, the court  
206 or, if there was no judicial component to the action, the  
207 administrative law judge, shall determine the amount of  
208 attorneys' fees that shall be paid by the defendants or respon-  
209 dents to the retained or other counsel representing the commis-  
210 sion. If the court is to determine the amount of attorneys' fees,  
211 it shall include in its determination the amount of fee that  
212 should be paid for the representation of the commission in  
213 pursuing the administrative component, if any, of the action.  
214 The amount so paid shall be fixed by the court or the adminis-  
215 trative law judge in an amount no less than twenty percent of its  
216 recovery. Any additional amount of attorneys' fees shall be  
217 determined by use of the following factors:

218 (I) The counsel's normal hourly rate or, if the counsel is an  
219 employee of the commission or is an employee of the office of  
220 the attorney general, an hourly rate the court or the administra-  
221 tive law judge determines to be customary based upon the  
222 attorney's experience and skill level;

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

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

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

227 (V) The overhead costs incurred by counsel with regard to  
228 the use of paralegals and other office staff, experts and investi-  
229 gators; and

230 (VI) The public purpose served or public objective achieved  
231 by the attorney in obtaining the judgment or settlement on  
232 behalf of the commission;

233 (iii) Notwithstanding the provisions of paragraph (B) of this  
234 subdivision, if the commission and the defendants or respon-  
235 dents to any administrative or judicial action settle the action,  
236 the parties may negotiate a separate settlement of attorneys'  
237 fees to be paid by the defendants or respondents above and  
238 beyond the amount recovered by the commission. In the event  
239 that a settlement of attorneys' fees is made, it must be submit-  
240 ted to the court or administrative law judge for approval;

241 (iv) Any attorney regularly employed by the commission or  
242 by the office of the attorney general may not receive any  
243 remuneration for his or her services other than the attorney's  
244 regular salary. Any attorneys' fees awarded for an employed  
245 attorney are payable to the commission;

246 (16) Propose rules for promulgation by the board of  
247 managers under which agencies of this state shall revoke or  
248 refuse to grant, issue or renew any contract, license, permit,  
249 certificate or other authority to conduct a trade, profession or  
250 business to or with any employing unit whose account is in  
251 default with the commission with regard to the administration  
252 of this chapter. The term "agency" includes any unit of state  
253 government such as officers, agencies, divisions, departments,  
254 boards, commissions, authorities or public corporations. An  
255 employing unit is not in default if it has entered into a repay-

256 ment agreement with the commission and remains in compli-  
257 ance with its obligations under the repayment agreements;

258 (A) The rules shall provide that, before granting, issuing or  
259 renewing any contract, license, permit, certificate or other  
260 authority to conduct a trade, profession or business to or with  
261 any employing unit, the designated agencies shall review a list  
262 or lists provided by the commission of employers that are in  
263 default. If the employing unit's name is not on the list, the  
264 agency, unless it has actual knowledge that the employing unit  
265 is in default with the commission, may grant, issue or renew the  
266 contract, license, permit, certificate or other authority to  
267 conduct a trade, profession or business. The list may be  
268 provided to the agency in the form of a computerized database  
269 or databases that the agency can access. Any objections to the  
270 refusal to issue or renew shall be reviewed under the appropri-  
271 ate provisions of this chapter. The prohibition against granting,  
272 issuing or renewing any contract, license, permit, certificate or  
273 other authority under this subdivision shall remain in full force  
274 and effect as promulgated under section six, article two, chapter  
275 twenty-one-a of this code until the rules required by this  
276 subsection are promulgated and in effect;

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

281 (17) Deposit to the credit of the appropriate special revenue  
282 account or fund, notwithstanding any other provision of this  
283 code and to the extent allowed by federal law, all amounts of  
284 delinquent payments or overpayments, interest and penalties  
285 thereon and attorneys' fees and costs collected under the  
286 provisions of this chapter. The amounts collected shall not be  
287 treated by the auditor or treasurer as part of the general revenue  
288 of the state;

289       (18) Recommend for approval of the board of managers  
290 rules for the administration of claims management by self-  
291 insured employers and third-party administrators including  
292 regulation and sanctions for the rejection of claims and for  
293 maintaining claim records and ensuring access to all claim  
294 records by interested claimants, claimant representatives, the  
295 commission and the office of judges;

296       (19) Recommend for approval of the board of managers,  
297 rules to eliminate the ability of an employer to avoid an  
298 experience modification factor by virtue of a reorganization of  
299 a business;

300       (20) Submit for approval of the board of managers rules  
301 setting forth procedures for auditing and investigating employ-  
302 ers, including employer premium audits and including auditing  
303 and investigating programs of self-insured employers and third-  
304 party administrators, employees, health care providers and  
305 medical and vocational rehabilitation service providers;

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

309       (22) Establish and maintain a fraud and abuse investigation  
310 and prosecution unit. This unit has the responsibility and  
311 authority for investigating and controlling fraud and abuse of  
312 the workers' compensation system of the state of West Virginia.  
313 The fraud and abuse unit shall be under the supervision of an  
314 inspector general, who shall be appointed by the executive  
315 director of the workers' compensation commission;

316       (A) The inspector general shall, with the consent and advice  
317 of the executive director, employ all personnel as necessary for  
318 the institution, development and finalization of procedures and  
319 investigations which serve to ensure that only necessary and

320 proper workers' compensation benefits and expenses are paid  
321 to or on behalf of injured employees and to insure employers  
322 subscribe to and pay the proper premium to the West Virginia  
323 workers' compensation commission. Qualification, compensa-  
324 tion and personnel practice relating to the employees of the  
325 fraud and abuse unit, including that of the position of inspector  
326 general, shall be governed by the provisions of the statutes,  
327 rules and regulations of the classified service pursuant to article  
328 six, chapter twenty-nine of this code. The inspector general  
329 shall supervise all personnel, which collectively shall be  
330 referred to in this chapter as the fraud and abuse unit;

331 (B) The fraud and abuse unit shall have the following  
332 powers and duties:

333 (i) The fraud and abuse unit shall propose for promulgation  
334 by the board of managers rules for determining the existence of  
335 fraud and abuse as it relates to the workers' compensation  
336 system in West Virginia;

337 (ii) The fraud and abuse unit will be responsible for the  
338 initiation, development, review, and proposal for promulgation  
339 by the board of managers of rules regarding the existence of  
340 fraud and abuse as it relates to the workers' compensation  
341 system in West Virginia;

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

344 (iv) The fraud and abuse unit, in cases of criminal fraud,  
345 has the authority to review and prosecute those cases for  
346 violations of sections twenty-four-e, twenty-four-f, twenty-four-  
347 g and twenty-four-h, article three, chapter sixty-one of this  
348 code, as well as any other criminal statutes that may be applica-  
349 ble. In addition the fraud and abuse unit not only has the  
350 authority to prosecute and refer cases involving criminal fraud



351 to appropriate state authorities for prosecution, but it also has  
352 the authority, and is encouraged, to cooperate with the appropri-  
353 ate federal authorities for review and possible prosecution, by  
354 either state or federal agencies, of cases involving criminal  
355 fraud concerning the workers' compensation system in West  
356 Virginia;

357 (v) The fraud and abuse unit, in cases which do not meet  
358 the definition of criminal fraud, but would meet a reasonable  
359 person's definition of an abuse of the workers' compensation  
360 system, shall take the appropriate action to discourage and  
361 prevent such abuse. Furthermore, the fraud and abuse unit shall  
362 assist the commission to develop evidence of fraud or abuse  
363 which can be used pursuant to the provisions of this chapter to  
364 suspend, and where appropriate, terminate, a claimant's  
365 benefits. In addition, evidence developed pursuant to these  
366 provisions can be used in hearings before the office of judges  
367 on protests to commission decisions terminating, or not  
368 terminating, temporary total disability benefits; and

369 (vi) The fraud and abuse unit, is expressly authorized to  
370 initiate investigations and participate in the development of, and  
371 if necessary, the prosecution of any health care provider,  
372 including a provider of rehabilitation services, alleged to have  
373 violated the provisions of section three-c, article four of this  
374 chapter;

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

378 (D) Notwithstanding any provision of this code to the  
379 contrary, specific personnel designated by the inspector general  
380 may carry handguns in the course of their official duties after  
381 meeting specialized qualifications established by the governor's  
382 committee on crime, delinquency and correction, which

383 qualifications shall include the successful completion of  
384 handgun training provided to law-enforcement officers by the  
385 West Virginia state police: *Provided*, That nothing in this  
386 subsection shall be construed to include the personnel so  
387 designated by the inspector general to carry handguns within  
388 the meaning of the term law-enforcement official as defined in  
389 section one, article twenty-nine, chapter thirty of this code;

390 (E) The fraud and abuse unit is not subject to any require-  
391 ment of article nine-a, chapter six of this code and the investi-  
392 gations conducted by the fraud and abuse unit and the materials  
393 placed in the files of the unit as a result of any such investiga-  
394 tion are exempt from public disclosure under the provisions of  
395 chapter twenty-nine-b of this code;

396 (F) In the event that a final judicial decision adjudges that  
397 the statewide prosecutorial powers vested by this subdivision in  
398 the fraud and abuse unit may only be exercised by a public  
399 official other than an employee of the fraud and abuse unit, then  
400 to that extent the provisions of this subdivision vesting state-  
401 wide prosecutorial power shall thenceforth be of no force and  
402 effect, the remaining provisions of this subdivision shall  
403 continue in full force and effect and prosecutions hereunder  
404 may only be exercised by the prosecuting attorneys of this state  
405 and their assistants or special assistant prosecuting attorneys  
406 appointed as provided by law;

407 (23) Enter into interagency agreements to assist in exchange-  
408 ing information and fulfilling the default provisions of this  
409 chapter;

410 (24) Notwithstanding any provision of this code to the  
411 contrary, the executive director, under emergency authorization:

412 (A) May expend up to fifty thousand dollars for purchases  
413 of and may contract for goods and services without securing

414 competitive bids. This emergency spending authority expires on  
415 the first day of July, two thousand five; and

416 (B) May expend such sums as the executive director  
417 determines are necessary for professional services, contracts for  
418 the purchase of an automated claims administration system and  
419 associated computer hardware and software in the administra-  
420 tion of claims for benefits made under provisions of this chapter  
421 and contracts for technical services and related services  
422 necessary to develop, implement and maintain the system and  
423 associated computer hardware and software. The provisions of  
424 article three, chapter five-a of this code relating to the purchas-  
425 ing division of the department administration shall not apply to  
426 these contracts. The director shall award the contract or  
427 contracts on a competitive basis. This emergency spending  
428 authority expires on the thirty-first day of December, two  
429 thousand six;

430 (25) Establish an employer violator system to identify  
431 individuals and employers who are in default or are delinquent  
432 on any premium, assessment, surcharge, tax or penalty owed to  
433 the commission. The employer violator system shall prohibit  
434 violators who own, control or have a ten percent or more  
435 ownership interest, or other ownership interest as may be  
436 defined by the commission, in any company from obtaining or  
437 maintaining any license, certificate or permit issued by the state  
438 until the violator has paid all moneys owed to the commission  
439 or has entered into and remains in compliance with a repayment  
440 agreement;

441 (26) Propose the designation of health care providers to  
442 make decisions for the commission regarding appropriateness  
443 of medical services; and

444 (27) Study the correlation between premium tax merit  
445 rating for employers and the safety performance of employers.

446 This study shall be completed prior to the first day of July, two  
447 thousand four, and the results thereof provided to the board of  
448 managers.

**§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 Virginia  
3 or any political subdivision thereof shall withhold payment in  
4 the final settlement of contracts until the receipt of a certificate  
5 from the commission to the effect that all payments, interest  
6 and penalties thereon accrued against the contractor under this  
7 chapter have been paid or that provisions satisfactory to the  
8 commission have been made for payment. Any official violat-  
9 ing this subsection is guilty of a misdemeanor and, on convic-  
10 tion thereof, shall be fined not more than one thousand dollars  
11 or confined in the county or regional jail for not more than one  
12 year, or both fined and confined.

13 (b) Any agency of the state, for the limited purpose of  
14 intercepting, pursuant to section five-a, article two of this  
15 chapter, any payment by or through the state to an employer  
16 who is in default in payment of contributions, premiums,  
17 deposits, interest or penalties under the provisions of this  
18 chapter, shall assist the commission in collecting the payment  
19 that is due. For this purpose, disclosure of joint delinquency and  
20 default lists of employers with respect to unemployment  
21 compensation as provided in section six-c, article one, chapter  
22 twenty-one-a of this code and workers' compensation contribu-  
23 tions, premiums, interest, deposits or penalties is authorized.  
24 The commission and the bureau of employment programs may  
25 enter into an interagency agreement to effect the provisions of  
26 this section. The lists may be in the form of a computerized  
27 database to be accessed by the auditor, the department of tax  
28 and revenue, the department of administration, the division of  
29 highways or other appropriate state agency or officer.

**§23-1-1d. Rules of former division of workers' compensation.**

1 Except as otherwise provided for in this chapter, all rules  
2 applicable to the former workers' compensation division of the  
3 bureau of employment programs are hereby adopted and made  
4 effective as to the operation of the workers' compensation  
5 commission under this chapter to the extent that they are not in  
6 conflict with the current law. The board of managers shall  
7 review and approve, modify or replace all existing rules no later  
8 than the first day of July, two thousand six.

**§23-1-1e. Transfer of assets and contracts.**

1 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 employment  
5 programs in furtherance of the purposes of this chapter, are  
6 hereby transferred and assigned to the workers' compensation  
7 commission.

**§23-1-1f. Continuation.**

1 The workers' compensation division shall continue to exist  
2 pursuant to article ten, chapter four of this code through the  
3 thirtieth day of September, two thousand three, at which time  
4 all powers and duties are transferred to the workers' compensa-  
5 tion commission. The workers' compensation commission shall  
6 continue to exist, pursuant to said article until the first day of  
7 July, two thousand six, unless sooner terminated, continued or  
8 reestablished pursuant to the provisions of that article.

**§23-1-2. Oversight of the workers' compensation commission.**

1 (a) In addition to any other oversight of the commission  
2 exercised by the Legislature, the commission shall report at  
3 least quarterly to the joint committee on government and

4 finance and the joint commission on economic development.  
5 The commission shall collect data and report on claims and  
6 injuries and on the costs and outcomes of injuries by standard  
7 codes for medical treatment, vocation rehabilitation services,  
8 return-to-work services, other benefits payable to or on behalf  
9 of employees, efforts to eliminate fraud and abuse and the  
10 impact of judicial and quasijudicial rulings on the administra-  
11 tion of the workers' compensation system and the solvency of  
12 the fund. The workers' compensation commission shall provide  
13 to the joint committee on government and finance and the joint  
14 commission on economic development an action plan for  
15 improving the workers' compensation system. This plan shall  
16 include detail on any administrative changes undertaken by the  
17 commission, a report on the anticipated outcome of the  
18 changes, a cost-benefit analysis of the changes and time frames  
19 for commencement and completion of these changes. Subse-  
20 quent reports to the joint committee on government and finance  
21 and the joint commission on economic development shall report  
22 on the progress of these changes. The administrative changes  
23 shall include, but are not limited to, claims processing, reorga-  
24 nization, staff development and training, return-to-work  
25 programs, workplace alternatives for injured workers, safety  
26 programs and medical and vocational services.

27 (b) The commission shall also report on the current status  
28 of the workers' compensation fund and the coal-workers'  
29 pneumoconiosis fund. This analysis shall include the current  
30 balances in the fund and revenue generated and expended in  
31 relationship to the liabilities and assets of the funds and  
32 estimates of any debt reduction relative to the fund over the  
33 next reporting period.

34 (c) The commission shall further report on the impact on  
35 the workers' compensation system of the amendments to  
36 subdivision (2), subsection (n), section six, article four of this  
37 chapter enacted during the year two thousand three, including,

38 but not limited to, an analysis of any litigation resulting from  
39 the amendments and the availability of health care to injured  
40 workers resulting from the amendments.

41 (d) The commission shall further report on methodologies  
42 used to establish all types of assessments and rates.

43 (e) The commission shall further report on legislative action  
44 that may be required to further improve the operation of the  
45 commission.

46 (f) The commission shall further report on efforts to  
47 eliminate fraud and abuse including a statistical breakdown of  
48 investigations being conducted and their outcomes. The  
49 commission shall report to the joint committee on government  
50 and finance on a monthly basis until the first day of July, two  
51 thousand four, on fraud and abuse and quarterly thereafter.

**§23-1-3. Payment of salaries and expenses generally; manner;  
limitation.**

1 (a) All expenses peculiar to the administration of this  
2 chapter and, when on official business, the travel and incidental  
3 expenses of the executive director and salaries or other compen-  
4 sation, traveling and other expenses of all officers or employees  
5 of the commission and all expenses for furniture, books, maps,  
6 stationery, appliances, property of all kinds and dues for  
7 membership in all organizations pertaining to workers' com-  
8 pensation, safety maintenance or professional designation in  
9 which the executive director considers it advisable to maintain  
10 membership shall be paid out of the workers' compensation  
11 fund.

12 (b) All payments of salaries and expenses in the administra-  
13 tion of this chapter shall be made by the state treasurer upon  
14 requisition signed by the executive director, directed to the  
15 auditor of the state, who shall draw his or her warrant therefor,

16 and the payment shall be charged to the workers' compensation  
17 fund: *Provided*, That the total charges against the fund under  
18 this section for any one fiscal year shall not exceed the amount  
19 appropriated for the administration of this chapter.

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

1 (a) The offices of the workers' compensation commission  
2 shall be open for the transaction of business between the hours  
3 of eight-thirty o'clock a.m. and five o'clock p.m. of each and  
4 every day, excepting Saturdays, Sundays and legal holidays,  
5 and be open upon any additional days and at any additional  
6 times elected by the commission. The executive director is the  
7 chief executive officer of the workers' compensation commis-  
8 sion.

9 (b) Except as expressly provided for in this subsection,  
10 information obtained regarding employers and claimants  
11 pursuant to this chapter for the purposes of its administration is  
12 not subject to the provisions of chapter twenty-nine-b of this  
13 code unless the provisions are hereafter specifically made  
14 applicable, in whole or in part. The information that is reason-  
15 ably necessary may be released in formal orders or opinions of  
16 any tribunal or court which is presented with an issue arising  
17 under this chapter as well as in the presentations of the parties  
18 before the tribunal or court. Similarly, claimants or other  
19 interested parties to an issue arising under this chapter may,  
20 upon request, obtain information from the commission's  
21 records to the extent necessary for the proper presentation or  
22 defense of a claim or other matter. Information may be released  
23 pursuant to the provisions of chapter twenty-nine-b of this code  
24 only if all identifying information has first been eliminated  
25 from the records. Nothing in this subsection shall prevent the  
26 release of information to another agency of the state or of the  
27 federal government for the legitimate purposes of those  
28 agencies: *Provided*, That the agency shall guarantee the



29 confidentiality of the information provided to the fullest extent  
30 possible in keeping with its own statutory and regulatory  
31 mandates. Nothing in this section shall prevent the commission  
32 from complying with any subpoena duces tecum: *Provided,*  
33 *however,* That the issuing tribunal or court shall take such  
34 actions as proper to maintain the confidentiality of the informa-  
35 tion.

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

39 (1) The base premium tax rate for a specific employer;

40 (2) Whether or not a specific employer has obtained  
41 coverage under the provisions of this chapter;

42 (3) Whether or not a specific employer is in good standing  
43 or is delinquent or in default according to the commission's  
44 records and the time periods thereof; and

45 (4) If a specific employer is delinquent or in default, what  
46 the payments due the commission are and what the components  
47 of that payment are, including the time periods affected.

**§23-1-4a. Bond for executive director and associate director.**

1 (a) The executive director and associate director of the  
2 workers' compensation commission shall give bond in an  
3 amount determined by the board of managers conditioned for  
4 the faithful management of the fund and performance of their  
5 duties. The bond shall be approved by the attorney general as to  
6 form. The surety of the bond may be a bonding or surety  
7 company, in which case the premium shall be paid out of the  
8 workers' compensation fund.

9 (b) The executive director and associate director shall be  
10 provided appropriate insurance, including, but not limited to,  
11 errors and omission coverage, without additional premium, by  
12 the state board of risk and insurance management established  
13 pursuant to article twelve, chapter twenty-nine of this code.

**§23-1-5. Office of executive director; hearings.**

1 The executive director shall keep and maintain his or her  
2 office at the seat of government and shall provide a suitable  
3 room or rooms, necessary office furniture, supplies, books,  
4 periodicals, maps and other equipment. After due notice,  
5 showing the time and place, the executive director may hold  
6 hearings anywhere within the state, or elsewhere by agreement  
7 of claimant and employer, with the approval of the executive  
8 director.

**§23-1-6. Employment of associate director and other assistants;  
compensation and travel expenses.**

1 (a) The executive director may employ an associate  
2 director, actuary, accountants, inspectors, examiners, experts,  
3 clerks, stenographers and other assistants, and fix their compen-  
4 sation, which shall be paid as provided in section three of this  
5 article. The associate director shall be hired with the approval  
6 of the board of managers and serves at the will and pleasure of  
7 the executive director.

8 (b) The associate director, supervisory officers, actuaries,  
9 accountants, inspectors, examiners, experts, clerks, stenogra-  
10 phers and other assistants who may be employed are entitled to  
11 receive from the workers' compensation fund their necessary  
12 expense while traveling on business of the commission. Travel  
13 reimbursement shall be paid in accordance with the travel  
14 guidelines established by the department of administration. All  
15 expenses shall be itemized and sworn to by the person who  
16 incurred the expense, and are subject to the approval of the

17 executive director: *Provided*, That the expenses of the executive  
18 director shall be subject to the approval of the board of manag-  
19 ers.

**§23-1-7. Associate director to act during executive director's  
absence or inability to act and in case of vacancy;  
bond of associate director.**

1 Whenever it appears that the executive director will be  
2 absent or unable to act for one week or more, the associate  
3 director of the commission may be designated by the executive  
4 director to act during his or her absence or inability to act, and  
5 during that period he or she shall have all the duties and powers  
6 of the executive director. In the event a vacancy occurs in the  
7 office of executive director, the associate director shall have all  
8 the duties and powers of the executive director until an execu-  
9 tive director or a temporary executive director is hired by the  
10 board of managers. The board of managers may determine the  
11 amount of additional compensation the associate director may  
12 receive as acting executive director.

**§23-1-8. Authority of executive director and employees as to  
oaths and evidence.**

1 The executive director, associate director and other  
2 employees appointed by the executive director may, for the  
3 purpose contemplated by this chapter, administer oaths, certify  
4 official acts, take depositions, issue subpoenas and compel the  
5 attendance of witnesses and the production of pertinent books,  
6 accounts, papers, records, documents and testimony.

**§23-1-9. Compelling compliance with order or subpoena.**

1 In case of failure or refusal of any person to comply with  
2 the order of the executive director, or subpoena issued by him  
3 or her, the associate director, or duly appointed employee, or on  
4 the refusal of a witness to testify to any matter regarding which

5 he or she may be lawfully interrogated, or refusal to permit an  
6 inspection as aforesaid, the circuit judge of the county in which  
7 the person resides, on application of the executive director,  
8 associate director or any duly appointed employee, shall compel  
9 obedience by attachment proceedings as for contempt, as in the  
10 case of disobedience of the requirements of a subpoena issued  
11 from the court on a refusal to testify in the court.

**§23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.**

1 Each officer who serves subpoenas on behalf of the  
2 commission shall receive the same fee as a sheriff and each  
3 witness who appears in obedience to a subpoena before the  
4 executive director, associate director or duly appointed em-  
5 ployee shall receive for his or her attendance the fees and  
6 mileage provided for witnesses in civil cases in the circuit  
7 court, which shall be audited and paid out of the workers'  
8 compensation fund in the same manner as other expenses are  
9 audited and paid, if the witness was subpoenaed without the  
10 request of either claimant or employer at the instance of the  
11 executive director, associate director or duly appointed em-  
12 ployee. The witness fees and mileage of any witness subpoe-  
13 naed by, or at the instance of, either claimant or employer shall  
14 be paid by the party who subpoenas the witness.

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

1 (a) In an investigation into any matter arising under articles  
2 one through five, inclusive, of this chapter, the commission may  
3 cause depositions of witnesses residing within or without the  
4 state to be taken in the manner prescribed by law for like  
5 depositions in the circuit court, but the depositions shall be  
6 upon reasonable notice to claimant and employer or other  
7 affected persons or their respective attorneys. The commission

8 shall designate the person to represent it for the taking of the  
9 deposition.

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

#### **§23-1-12. Copies of proceedings as evidence.**

1 A transcribed copy of the evidence and proceedings, or any  
2 specific part thereof, on any investigation or hearing, taken by  
3 a stenographer appointed by the executive director and certified  
4 and sworn to by the stenographer to be a true and correct  
5 transcript of the testimony in the investigation or hearing, or of  
6 a particular witness, or of a specific part thereof, or to be a  
7 correct transcript of the proceedings had on the investigation or  
8 hearing purporting to be taken and subscribed, may be received  
9 in evidence by the executive director with the same effect as if  
10 the stenographer were present and testified to the facts certified.  
11 A copy of the transcript shall be furnished on demand to any  
12 party upon payment of the fee prescribed in the rules and  
13 policies of the commission. The fee shall not exceed that  
14 prescribed for transcripts in the circuit court.

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

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

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

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

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

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

32           (4) Pro se.

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

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

39           (2) By a nonresident attorney duly licensed and admitted to  
40 practice before a court of record of general jurisdiction in  
41 another state or country or in the District of Columbia who has  
42 complied with the provisions of rule 8.0—admission pro hac  
43 vice, West Virginia supreme court rules for admission to the  
44 practice of law, as amended;

45           (3) By a member of the board of directors of a corporation  
46 or by an officer of the corporation for purposes of representing  
47 the interest of the corporation in the presentation of facts,  
48 figures and factual conclusions as distinguished from the  
49 presentation of legal conclusions in respect to the facts and  
50 figures; or

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

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

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

67 (f) At the direction of a treating or evaluating psychiatrist  
68 or clinical doctoral-level psychologist, a psychiatric or psycho-  
69 logical report concerning a claimant who is receiving treatment  
70 or is being evaluated for psychiatric or psychological problems  
71 may be withheld from the claimant. In that event, a summary of  
72 the report shall be compiled by the reporting psychiatrist or  
73 clinical doctoral-level psychologist. The summary shall be  
74 provided to the claimant upon his or her request. Any represen-  
75 tative or attorney of the claimant must agree to provide the  
76 claimant with only the summary before the full report is  
77 provided to the representative or attorney for his or her use in  
78 preparing the claimant's case. The report shall only be withheld  
79 from the claimant in those instances where the treating or  
80 evaluating psychiatrist or clinical doctoral-level psychologist  
81 certifies that exposure to the contents of the full report is likely  
82 to cause serious harm to the claimant or is likely to cause the  
83 claimant to pose a serious threat of harm to a third party.

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

#### **§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 so  
3 that they may be readily available) of applications for benefits  
4 for compensation from the workers' compensation fund, or  
5 directly from employers, as the case may be, notices to employ-



6 ers, proofs of injury or death, of medical attendance, of employ-  
7 ment and wage earnings, and any other forms considered proper  
8 and advisable. It is the duty of employers to constantly keep on  
9 hand a sufficient supply of the forms.

**§23-1-15. Procedure before commission.**

1 The commission is not bound by the usual common-law or  
2 statutory rules of evidence, but shall adopt formal rules of  
3 practice and procedure as herein provided, and may make  
4 investigations in a manner that in his or her judgment is best  
5 calculated to ascertain the substantial rights of the parties and  
6 to carry out the provisions of this chapter.

**§23-1-17. Annual report by commission and occupational pneumoconiosis board.**

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

**§23-1-18. Commission employees not subject to subpoena for workers' compensation hearings.**

1 No employee of the workers' compensation commission  
2 shall be compelled to testify as to the basis, findings or reasons  
3 for any decision or order rendered by the employee under this  
4 chapter in any hearing conducted pursuant to article five of this  
5 chapter.

**§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 by  
3 concealment of any material fact, or by other fraudulent  
4 scheme, device or artifice on behalf of himself, itself or others,  
5 obtains or attempts to obtain benefits, payments, allowances or  
6 reduced premium costs or other charges, including workers'  
7 compensation coverage under the programs of the workers'  
8 compensation commission to which he or it is not entitled, or in  
9 a greater amount than that to which he or it is entitled, shall be  
10 liable to the workers' compensation commission in an amount  
11 equal to three times the amount of such benefits, payments or  
12 allowances to which he or it is not entitled and shall be liable  
13 for the payment of reasonable attorney fees and all other fees  
14 and costs of litigation.

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

18 (c) A civil action under this section may be prosecuted and  
19 maintained on behalf of the workers' compensation commission  
20 by the attorney general and his assistants or by any attorney in  
21 contract with or employed by the workers' compensation  
22 commission to provide such representation.

23 (d) Venue for a civil action under this section shall be either  
24 in the county in which the defendant resides or in Kanawha  
25 County, as selected by the commission.

26 (e) The remedies and penalties provided in this section are  
27 in addition to those remedies and penalties provided elsewhere  
28 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 registration certificates.
- §23-2-1c. Extraterritorial coverage; approval and change of agreements.
- §23-2-1d. Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.
- §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.
- §23-2-3. Report forms and other forms for use of employers.
- §23-2-4. Classification of industries; rate of premiums; authority to adopt various systems; accounts.
- §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.
- §23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.
- §23-2-5c. Statute of limitations; effective date for new payments; previous payments due not affected.
- §23-2-5d. Uncollectible receivables; write-offs.
- §23-2-6. Exemption of contributing employers from liability.
- §23-2-9. Election of employer or employers' group to be self-insured and to provide own system of compensation; exceptions; catastrophe coverage; self administration; rules; penalties; regulation of self-insurers.
- §23-2-10. Application of chapter to interstate commerce.
- §23-2-11. Partial invalidity of chapter.
- §23-2-12. Effect of repeal or invalidity of chapter on action for damages.
- §23-2-13. Interest on past-due payments; reinstatement agreements.

§23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability.

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

§23-2-16. Acceptance or assignment of premium rate.

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

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

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

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

19 (1) Employers of employees in domestic services;

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

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

25 (4) Casual employers. An employer is a casual employer  
26 when the number of his or her employees does not exceed three  
27 and the period of employment is temporary, intermittent and  
28 sporadic in nature and does not exceed ten calendar days in any  
29 calendar quarter;

30 (5) Churches;

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

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

48 (c) Notwithstanding any other provision of this chapter to  
49 the contrary, whenever there are churches in a circuit which  
50 employ one individual clergyman and the payments to the  
51 clergyman from the churches constitute his or her full salary,  
52 such circuit or group of churches may elect to be considered a

53 single employer for the purpose of premium payment into the  
54 workers' compensation fund.

55 (d) Employers who are not required to subscribe to the  
56 workers' compensation fund may voluntarily choose to  
57 subscribe to and pay premiums into the fund for the protection  
58 of their employees and in that case are subject to all require-  
59 ments of this chapter and all rules and regulations prescribed by  
60 the commission with reference to rates, classifications and  
61 premium payments and shall afford to them the protection of  
62 this chapter, including section six of this article, but the failure  
63 of the employers to choose to subscribe to and to pay premiums  
64 into the fund shall not impose any liability upon them other  
65 than any liability that would exist notwithstanding the provi-  
66 sions of this chapter.

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

85 (f) Any foreign corporation employer choosing to comply  
86 with the provisions of this chapter and to receive the benefits  
87 under this chapter shall, at the time of making application to the  
88 commission in addition to other requirements of this chapter,  
89 furnish the commission with a certificate from the secretary of  
90 state, where the certificate is necessary, showing that it has  
91 complied with all the requirements necessary to enable it  
92 legally to do business in this state and no application of a  
93 foreign corporation employer shall be accepted by the commis-  
94 sion until the certificate is filed.

95 (g) The following employers may elect not to provide  
96 coverage to certain of their employees under the provisions of  
97 this chapter:

98 (1) Any political subdivision of the state including county  
99 commissions and municipalities, boards of education, or  
100 emergency services organizations organized under the auspices  
101 of a county commission may elect not to provide coverage to  
102 any elected official. The election not to provide coverage does  
103 not apply to individuals in appointed positions or to any other  
104 employees of the political subdivision;

105 (2) If an employer is a partnership, sole proprietorship,  
106 association or corporation, the employer may elect not to  
107 include as an "employee" within this chapter, any member of  
108 the partnership, the owner of the sole proprietorship or any  
109 corporate officer or member of the board of directors of the  
110 association or corporation. The officers of a corporation or an  
111 association shall consist of a president, a vice president, a  
112 secretary and a treasurer, each of whom is elected by the board  
113 of directors at the time and in the manner prescribed by the  
114 bylaws. Other officers and assistant officers that are considered  
115 necessary may be elected or appointed by the board of directors  
116 or chosen in any other manner prescribed by the bylaws and, if  
117 elected, appointed or chosen, the employer may elect not to

118 include the officer or assistant officer as an “employee” within  
119 the meaning of this chapter: *Provided*, That except for those  
120 persons who are members of the board of directors or who are  
121 the corporation’s or association’s president, vice president,  
122 secretary and treasurer and who may be excluded by reason of  
123 their positions from the benefits of this chapter even though  
124 their duties, responsibilities, activities or actions may have a  
125 dual capacity of work which is ordinarily performed by an  
126 officer and also of work which is ordinarily performed by a  
127 worker, an administrator or an employee who is not an officer,  
128 no other officer or assistant officer who is elected or appointed  
129 shall be excluded by election from coverage or be denied the  
130 benefits of this chapter merely because he or she is an officer or  
131 assistant officer if, as a matter of fact:

132       (A) He or she is engaged in a dual capacity of having the  
133 duties and responsibilities for work ordinarily performed by an  
134 officer and also having duties and work ordinarily performed by  
135 a worker, administrator or employee who is not an officer;

136       (B) He or she is engaged ordinarily in performing the duties  
137 of a worker, an administrator or an employee who is not an  
138 officer and receives pay for performing the duties in the  
139 capacity of an employee; or

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

143       (3) If an employer is a limited liability company, the  
144 employer may elect not to include as an “employee” within this  
145 chapter a total of no more than four persons, each of whom are  
146 acting in the capacity of manager, officer or member of the  
147 company.



148 (h) In the event of election under subsection (g) of this  
149 section, the employer shall serve upon the commission written  
150 notice naming the positions not to be covered and shall not  
151 include the "employee's" remuneration for premium purposes  
152 in all future payroll reports, and the partner, proprietor or  
153 corporate or executive officer is not considered an employee  
154 within the meaning of this chapter after the notice has been  
155 served. Notwithstanding the provisions of subsection (g),  
156 section five of this article, if an employer is delinquent or in  
157 default or has not subscribed to the fund even though it is  
158 obligated to do so under the provisions of this article, any  
159 partner, proprietor or corporate or executive officer shall not be  
160 covered and shall not receive the benefits of this chapter.

161 (i) "Regularly employing" or "regular employment" means  
162 employment by an employer which is not a casual employer  
163 under this section.

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

1 (a) Whenever, with respect to an employee of an employer  
2 who is a subscriber in good standing to the workers' compensa-  
3 tion fund or an employer who has elected to pay compensation  
4 directly, as provided in section nine of this article, there is a  
5 possibility of conflict with respect to the application of work-  
6 ers' compensation laws because the contract of employment is  
7 entered into and all or some portion of the work is performed or  
8 is to be performed in a state or states other than this state, the  
9 employer and the employee may agree to be bound by the laws  
10 of this state or by the laws of any other state in which all or  
11 some portion of the work of the employee is to be performed:  
12 *Provided*, That the executive director may review and accept or  
13 reject the agreement. The review shall be conducted in keeping  
14 with the executive director's fiduciary obligations to the  
15 workers' compensation fund which may include, among other

16 things, the nexus of the employer and the employee to the state:  
17 *Provided, however,* That nothing in this section shall be  
18 construed as to require an agreement in those instances where  
19 subdivision (3), subsection (b), section one of this article or  
20 subdivision (1), subsection (a), section one-a of this article are  
21 applicable. All agreements shall be in writing and filed with the  
22 executive director within ten days after execution of the  
23 agreement but shall not become effective until approved by the  
24 executive director and shall, thereafter, remain in effect until  
25 terminated or modified by agreement of the parties similarly  
26 filed or by order of the executive director. If the parties agree to  
27 be bound by the laws of this state, an employee injured within  
28 the terms and provisions of this chapter is entitled to benefits  
29 under this chapter regardless of the situs of the injury or  
30 exposure to occupational pneumoconiosis or other occupational  
31 disease, and the rights of the employee and his or her depend-  
32 ents under the laws of this state shall be the exclusive remedy  
33 against the employer on account of injury, disease or death in  
34 the course of and as a result of the employment.

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

43 (c) If the employee is a resident of a state other than this  
44 state and is subject to the terms and provisions of the workers'  
45 compensation law or similar laws of a state other than this state,  
46 the employee and his or her dependents are not entitled to the  
47 benefits payable under this chapter on account of injury, disease  
48 or death in the course of and as a result of employment tempo-  
49 rarily within this state, and the rights of the employee and his or

50 her dependents under the laws of the other state shall be the  
51 exclusive remedy against the employer on account of any  
52 injury, disease or death.

53 (d) If any employee or his or her dependents are awarded  
54 workers' compensation benefits or recover damages from the  
55 employer under the laws of another state for an injury received  
56 in the course of and resulting from the employment, the amount  
57 awarded or recovered, whether paid or to be paid in future  
58 installments, shall be credited against the amount of any  
59 benefits payable under this chapter for the same injury.

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

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

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

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

46 (2) In order to continue avoiding liability under this section,  
47 the primary contractor shall request that the commission inform  
48 the primary contractor of any subsequent default by the  
49 subcontractor. In the event that the subcontractor does default,  
50 the commission shall notify the primary contractor of the  
51 default by placing a notice in the first-class United States mail,  
52 postage prepaid, and addressed to the primary contractor at the

53 address furnished to the commission by the primary contractor.  
54 The mailing is good and sufficient notice to the primary  
55 contractor of the subcontractor's default. However, the primary  
56 contractor is not liable under this section until the first day of  
57 the calendar quarter following the calendar quarter in which the  
58 notice is given and then the liability is only for that following  
59 calendar quarter and thereafter and only if the subcontract has  
60 not been terminated: *Provided*, That the commission is entitled  
61 to collect only once for the amount of premiums, premium  
62 deposits and interest due to the default, but the commission may  
63 impose other penalties on the primary contractor or on the  
64 subcontractor, or both.

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

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

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

**§23-2-2. Commission to be furnished information by employers,  
state tax commissioner and division of unemploy-  
ment compensation; secrecy of information; exami-  
nation 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 carry out  
3 the purposes of this chapter. Every employer shall have a  
4 continuous and ongoing duty to maintain current information  
5 about its activities, risks and rates on the books of the commis-  
6 sion. The executive director, or any person employed by the  
7 commission for that purpose, may examine under oath any  
8 employer or officer, agent or employee of any employer.

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

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

25 (2) Upon written application to the division of unemploy-  
26 ment compensation: In addition to the information that may be  
27 released to the workers' compensation commission for the  
28 purposes of this chapter under the provisions of chapter twenty-  
29 one-a of this code, the names, addresses and other identifying  
30 information of all employing units filing reports and informa-  
31 tion pursuant to section eleven, article ten, chapter twenty-one-a  
32 of this code as well as information contained in those reports  
33 regarding the number and names, addresses and social security

34 numbers of employees employed and the gross quarterly wages  
35 paid by each employing unit to each identified employee.

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

57 (d) Reasonable costs of compilation and production of any  
58 information made available pursuant to subsection (b) of this  
59 section shall be charged to the workers' compensation commis-  
60 sion.

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

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

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

**§23-2-4. Classification of industries; rate of premiums; authority  
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 of  
4 employers subject to this chapter, a system for determining  
5 rates of premium taxes applicable to employers subject to this  
6 chapter, a system of multiple policy options with criteria for  
7 subscription and criteria for an annual employer's statement  
8 providing both benefits liability information and rate determina-  
9 tion information.

10       (1) In addition, the rule shall provide for, but not be limited  
11 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 consistent  
18 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 premium  
21 rates for employers who meet either of the following require-  
22 ments:

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

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

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

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

40 (5) The rule shall be consistent with classification and rate-  
41 making methodologies found in the insurance industry; and

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

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

53 (c) Prospective rates set in accordance with the provisions  
54 of this article shall at all times be financially sound in accor-  
55 dance with generally accepted accounting principles and fully  
56 fund the prospective claim obligations for the year in which the  
57 rates were made. Rates, surcharges or assessments for deficit  
58 management and deficit reduction purposes shall be fair and  
59 equitable, financially sound in accordance with generally  
60 accepted accounting principles and sufficient to meet the  
61 payment obligations of the fund.

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

79 (e) Claims management incentive adjustments, whether  
80 imposed in a manner that would result in either a debit or a  
81 credit to any employer's account, shall not be considered by the  
82 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 fund or  
3 who elects to subscribe to the fund shall pay premium taxes  
4 calculated as a percentage of the employer's gross wages  
5 payroll as defined by the commission at the rate determined by  
6 the commission and then in effect plus any additional premium  
7 taxes developed from rates, surcharges or assessments as  
8 determined by the commission. At the time each employer  
9 subscribes to the fund, the application required by the commis-  
10 sion shall be filed and a premium deposit equal to the first  
11 quarter's estimated premium tax payment shall be remitted. The  
12 minimum quarterly premium to be paid by any employer is  
13 twenty-five dollars.

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

23 (2) Every subscribing employer shall make a gross wages  
24 payroll report to the commission for the preceding reporting

25 period. The report shall be on the form or forms prescribed by  
26 the commission and shall contain all information required by  
27 the commission.

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

41 (4) All premium taxes and premium deposits required by  
42 this article to be paid shall be paid by the employers to the  
43 commission, which shall maintain a record of all sums so  
44 received. Any sum mailed to the commission is considered to  
45 be received on the date the envelope transmitting it is post-  
46 marked by the United States postal service. All sums received  
47 by the commission shall be deposited in the state treasury to the  
48 credit of the workers' compensation commission in the manner  
49 now prescribed by law.

50 (5) The commission shall encourage employer efforts to  
51 create and maintain safe workplaces, to encourage loss preven-  
52 tion programs and to encourage employer-provided wellness  
53 programs, through the normal operation of the experience rating  
54 formula, seminars and other public presentations, the develop-  
55 ment of model safety programs and other initiatives as may be  
56 determined by the executive director and the board of manag-  
57 ers.

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

93 payment of premium taxes or premium deposit, the interest  
94 penalty and an amount sufficient to maintain the premium  
95 deposit before the end of the third month following the end of  
96 the preceding quarter. Interest shall accrue and be charged on  
97 the delinquent premium payment and premium deposit pursuant  
98 to section thirteen of this article.

99 (c) Whenever the commission notifies an employer of the  
100 delinquent status of its account, the notification shall explain  
101 the legal consequence of subsequent default by an employer  
102 required to subscribe to the fund and the legal consequences of  
103 termination of an electing employer's account.

104 (d) Failure by the employer, who is required to subscribe to  
105 the fund and who fails to resolve the delinquency within the  
106 prescribed period, shall place the account in default and shall  
107 deprive the default employer of the benefits and protection  
108 afforded by this chapter, including section six of this article,  
109 and the employer is liable as provided in section eight of this  
110 article. The default employer's liability under these sections is  
111 retroactive to midnight of the last day of the month following  
112 the end of the quarter for which the delinquency occurs. The  
113 commission shall notify the default employer of the method by  
114 which the employer may be reinstated with the fund. The  
115 commission shall also notify the employees of the employer by  
116 written notice as hereinafter provided for in this section.

117 (e) Failure by any employer, who voluntarily elects to  
118 subscribe, to resolve the delinquency within the prescribed  
119 period shall place the account in default and shall automatically  
120 terminate the election of the employer to pay into the workers'  
121 compensation fund and shall deprive the employer and the  
122 employees of the default elective employer of the benefits and  
123 protection afforded by this chapter, including section six of this  
124 article, and the employer is liable as provided in section eight  
125 of this article. The default employer's liability under that

126 section is retroactive to midnight of the last day of the month  
127 following the end of the quarter for which the delinquency  
128 occurs. Employees who were the subject of the default em-  
129 ployer's voluntary election to provide them the benefits  
130 afforded by this chapter shall have the protection terminated at  
131 the time of their employer's default.

132 (f)(1) Except as provided for in subdivision (3) of this  
133 subsection, any employer who is required to subscribe to the  
134 fund and who is in default on the effective date of this section  
135 or who subsequently defaults, and any employer who has  
136 elected to subscribe to the fund and who defaults and whose  
137 account is terminated prior to the effective date of this section  
138 or whose account is subsequently terminated, shall be restored  
139 immediately to the benefits and protection of this chapter only  
140 upon the filing of all delinquent payroll and other reports  
141 required by the commission and payment into the fund of all  
142 unpaid premiums, an adequate premium deposit, accrued  
143 interest and the penalty for late reporting and payment. Interest  
144 is calculated as provided for by section thirteen of this article.

145 The commission shall not have the authority to waive either  
146 premium or accrued interest. The provisions of section seven-  
147 teen of this article apply to any action or decision of the  
148 commission under this section.

149 (2) The commission may restore a defaulted or terminated  
150 employer through a reinstatement agreement. The reinstatement  
151 agreement shall require the payment in full of all premium  
152 taxes, premium deposits, the penalty for late reporting and  
153 payment, past accrued interest and future interest calculated  
154 pursuant to the provisions of section thirteen of this article.  
155 Notwithstanding the filing of a reinstatement application or the  
156 entering into of a reinstatement agreement, the commission is  
157 authorized to file a lien against the employer as provided by  
158 section five-a of this article. In addition, entry into a reinstate-

159 ment agreement is discretionary with the commission. Its  
160 discretion shall be exercised in keeping with the fiduciary  
161 obligations owed to the workers' compensation fund. If the  
162 commission declines to enter into a reinstatement agreement  
163 and if the employer does not comply with the provisions of  
164 subdivision (1) of this subsection, the commission may proceed  
165 with any of the collection efforts provided for by section five-a  
166 of this article or as otherwise provided for by this code.  
167 Applications for reinstatement shall: (A) Be made upon forms  
168 prescribed by the commission; (B) include a report of the gross  
169 wages payroll of the employer which had not been reported to  
170 the commission during the entire period of delinquency and  
171 default. The gross wages information shall be certified by the  
172 employer or its authorized agent; and (C) include a payment of  
173 a portion of the liability equal to one half of one percent of the  
174 gross payroll during the period of delinquency and default or  
175 equal to another portion of the liability determined by rule but  
176 not to exceed the amount of the entire liability due and owing  
177 for the period of delinquency and default. An employer who  
178 applies for reinstatement is entitled to the benefits and protec-  
179 tion of this chapter on the day a properly completed and  
180 acceptable application which is accompanied by the application  
181 payment is received by the commission: *Provided*, That if the  
182 commission reinstates an employer subject to the terms of a  
183 reinstatement agreement, the subsequent failure of the employer  
184 to make scheduled payments or to pay accrued or future interest  
185 in accordance with the reinstatement agreement or to timely file  
186 current reports and to pay current premiums within the month  
187 following the end of the period for which the report and  
188 payment are due, or to otherwise maintain its account in good  
189 standing or, if the reinstatement agreement does not require  
190 earlier restoration of the premium deposit, to restore the  
191 premium deposit to the required amount by the end of the  
192 repayment period shall cause the reinstatement application and  
193 the reinstatement agreement to be null, void and of no effect,



194 and the employer is denied the benefits and protection of this  
195 chapter effective from the date that the employer's account  
196 originally became delinquent.

197 (3) Any employer who fails to maintain its account in good  
198 standing with regard to subsequent premium taxes and premium  
199 deposits after filing an application for reinstatement and prior  
200 to the final resolution of an application for reinstatement by  
201 entering into a reinstatement agreement or by payment of the  
202 liability in full as provided for in subdivision (1) of this  
203 subsection shall cause the reinstatement application to be null,  
204 void and of no effect, and the employer shall be denied the  
205 benefits and protection of this chapter effective from the date  
206 that the employer's account originally became delinquent.

207 (4) Following any failure of an employer to comply with  
208 the provisions of a reinstatement agreement, the commission  
209 may make and continue with any of the collection efforts  
210 provided for by this chapter or elsewhere in this code even if  
211 the employer files another reinstatement application.

212 (g) With the exception noted in subsection (h), section one  
213 of this article, no employee of an employer required by this  
214 chapter to subscribe to the workers' compensation fund shall be  
215 denied benefits provided by this chapter because the employer  
216 failed to subscribe or because the employer's account is either  
217 delinquent or in default.

218 (h)(1) The provisions of this section shall not deprive any  
219 individual of any cause of action which has accrued as a result  
220 of an injury or death which occurred during any period of  
221 delinquency not resolved in accordance with the provisions of  
222 this article, or subsequent failure to comply with the terms of  
223 the repayment agreement.

224       (2) Upon withdrawal from the fund or termination of  
225 election of any employer, the employer shall be refunded the  
226 balance due the employer of its deposit, after deducting all  
227 amounts owed by the employer to the workers' compensation  
228 fund and other agencies of this state, and the commission shall  
229 notify the employees of the employer of the termination in the  
230 manner as the commission may consider best and sufficient.

231       (3) Notice to employees provided for in this section shall be  
232 given by posting written notice that the employer is defaulted  
233 under the compensation law of West Virginia, and in the case  
234 of employers required by this chapter to subscribe and pay  
235 premiums to the fund, that the defaulted employer is liable to its  
236 employees for injury or death, both in workers' compensation  
237 benefits and in damages at common law or by statute; and in the  
238 case of employers not required by this chapter to subscribe and  
239 pay premiums to the fund, but voluntarily electing to do so as  
240 provided in this article, that neither the employer nor the  
241 employees are protected by the law as to any injury or death  
242 sustained after the date specified in the notice. The notice shall  
243 be in the form prescribed by the commission and shall be  
244 posted in a conspicuous place at the chief works of the em-  
245 ployer, as it appears in records of the commission. If the chief  
246 works of the employer cannot be found or identified, the notices  
247 shall be posted at the front door of the courthouse of the county  
248 in which the chief works are located, according to the commis-  
249 sion's records. Any person who shall, prior to the reinstatement  
250 of the employer, as provided for in this section, or prior to sixty  
251 days after the posting of the notice, whichever shall first occur,  
252 remove, deface or render illegible the notice, shall be guilty of  
253 a misdemeanor and, upon conviction thereof, shall be fined one  
254 thousand dollars. The notice shall state this provision upon its  
255 face. The commission may require any sheriff, deputy sheriff,  
256 constable or other official of the state of West Virginia,  
257 authorized to serve civil process, to post the notice and to make  
258 return thereof of the fact of the posting to the commission. Any

259 failure of the officer to post any notice within ten days after he  
260 or she has received the notice from the commission, without  
261 just cause or excuse, constitutes a willful failure or refusal to  
262 perform a duty required of him or her by law within the  
263 meaning of section twenty-eight, article five, chapter sixty-one  
264 of this code. Any person actually injured by reason of the  
265 failure has an action against the official, and upon any official  
266 bond he or she may have given, for the damages as the person  
267 may actually have incurred, but not to exceed, in the case of any  
268 surety upon the bond, the amount of the penalty of the bond.  
269 Any official posting the notice as required in this subdivision is  
270 entitled to the same fee as is now or may hereafter be provided  
271 for the service of process in suits instituted in courts of record  
272 in the state of West Virginia. The fee shall be paid by the  
273 commission out of any funds at its disposal, but shall be  
274 charged by the commission against the account of the employer  
275 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 purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.**

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

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

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

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

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

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

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

1 For payments due after the effective date of the amendment  
2 and reenactment of this section during the year one thousand

3 nine hundred ninety-three, every action or process to collect any  
4 premium, premium deposit, interest or penalty due from an  
5 employer pursuant to this article by the executive director shall  
6 be brought or issued within five years next after the date on  
7 which the employer is required by the section imposing the  
8 premium, premium deposit, interest or penalty to file a report  
9 and pay the amount due thereunder. The limitation provided by  
10 this section shall also apply to enforcement of the lien, if any,  
11 securing the payment of the premium, premium deposit, interest  
12 or penalty, but shall not apply in the event of fraud or in the  
13 event the employer wholly fails to file the report required by the  
14 section imposing the premium, premium deposit, interest or  
15 penalty. For payments that were due prior to the effective date  
16 of this section, there continues to be no limitation on when  
17 actions or processes may be brought or issued. For every debt  
18 collectible under this section which first becomes due and  
19 owing after the effective date of the amendment and  
20 reenactment of this section during the year two thousand three,  
21 every action or process to collect the debt shall be brought or  
22 issued within ten years after the date on which the employer is  
23 required to file a report and pay the amount assessed or owed to  
24 the commission.

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

1 Notwithstanding any other provision to the contrary, the  
2 executive director, with the approval of the board of managers,  
3 may write-off any uncollected receivable due under the  
4 provisions of this article or article four of this chapter which the  
5 executive director and the board of managers determine  
6 uncollectible.

**§23-2-6. Exemption of contributing employers from liability.**

1 Any employer subject to this chapter who subscribes and  
2 pays into the workers' compensation fund the premiums

3 provided by this chapter or who elects to make direct payments  
4 of compensation as provided in this section is not liable to  
5 respond in damages at common law or by statute for the injury  
6 or death of any employee, however occurring, after so subscrib-  
7 ing or electing, and during any period in which the employer is  
8 not in default in the payment of the premiums or direct pay-  
9 ments and has complied fully with all other provisions of this  
10 chapter. Continuation in the service of the employer shall be  
11 considered a waiver by the employee and by the parents of any  
12 minor employee of the right of action as aforesaid, which the  
13 employee or his or her parents would otherwise have: *Provided,*  
14 That in case of employers not required by this chapter to  
15 subscribe and pay premiums into the workers' compensation  
16 fund, the injured employee has remained in the employer's  
17 service with notice that his or her employer has elected to pay  
18 into the workers' compensation fund the premiums provided by  
19 this chapter, or has elected to make direct payments as afore-  
20 said.

**§23-2-9. Election of employer or employers' group to be self-insured and to provide own system of compensation; exceptions; catastrophe coverage; self administration; 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 workers'  
4 compensation risk including their risk of catastrophic injuries.

5 (1) The types of employers are:

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

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

16 (C) Any group of employers who are subject to the same  
17 collective bargaining agreement or who are in a collective  
18 bargaining group may apply to the commission to collectively  
19 self-insure their obligations under this chapter. The employers'  
20 group must individually and collectively meet the conditions set  
21 forth in paragraph (A) or (B) of this subdivision. There shall be  
22 joint and several liability for all groups of employers who  
23 choose to self-insure under the provisions of this article.

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

26 (A) Have an effective health and safety program at its  
27 workplaces; and

28 (B) Provide security or bond in an amount and form  
29 determined by the executive director with the approval of the  
30 board of managers which shall balance the employer's financial  
31 condition based upon an analysis of its audited financial  
32 statements and the full accrued value of current liability for  
33 future claim payments based upon generally accepted actuarial  
34 and accounting principles of the employer's existing and  
35 expected liability.

36 (3) Any employer whose record upon the books of the  
37 commission shows a liability, as determined on an accrued  
38 basis against the workers' compensation fund incurred on  
39 account of injury to or death of any of the employer's employ-  
40 ees, in excess of premiums paid by the employer, shall not be  
41 granted the right, individually and directly or from the benefit



42 funds or system of compensation, to be self-insured until the  
43 employer has paid into the workers' compensation fund the  
44 amount of the excess of liability over premiums paid, including  
45 the employer's proper proportion of the liability incurred on  
46 account of catastrophes or second injuries as defined in section  
47 one, article three of this chapter and charged against such fund.

48 (4) Upon a finding that the employer has met all of the  
49 requirements of this section, the employer may be permitted  
50 self-insurance status. An annual review of each self-insurer's  
51 continuing ability to meet its obligations and the requirements  
52 of this section shall be made by the workers' compensation  
53 commission. This review shall include a redetermination of the  
54 amount of security or bond which shall be provided by the  
55 employer. Failure to provide any new amount or form of  
56 security or bond may cause the employer's self-insurance status  
57 to be terminated by the workers' compensation commission.  
58 The security or bond provided by employers prior to the second  
59 day of February, one thousand nine hundred ninety-five, shall  
60 continue in full force and effect until the performance of the  
61 employer's annual review and the entry of any appropriate  
62 decision on the amount or form of the employer's security or  
63 bond.

64 (5) Whenever a self-insured employer furnishes security or  
65 bond, including replacement and amended bonds and other  
66 securities, as surety to ensure the employer's or guarantor's  
67 payment of all obligations under this chapter for which the  
68 security or bond was furnished, the security or bond shall be in  
69 the most current form or forms approved and authorized by the  
70 commission for use by the employer or its guarantors, surety  
71 companies, banks, financial institutions or others in its behalf  
72 for that purpose.

73 (b)(1) Notwithstanding any provision in this chapter to the  
74 contrary, self-insured employers shall, effective the first day of

75 July, two thousand four, administer their own claims. The  
76 executive director shall, pursuant to rules promulgated by the  
77 board of managers, regulate the administration of claims by  
78 employers granted permission to self-insure their obligations  
79 under this chapter. Such rules shall be promulgated at least  
80 thirty days prior to the first day of July, two thousand four. A  
81 self-insured employer shall comply with rules promulgated by  
82 the board of managers governing the self-administration of its  
83 claims.

84 (2) An employer or employers' group who self-insures its  
85 risk and self-administers its claims shall exercise all authority  
86 and responsibility granted to the commission in this chapter and  
87 provide notices of action taken to effect the purposes of this  
88 chapter to provide benefits to persons who have suffered  
89 injuries or diseases covered by this chapter. An employer or  
90 employers' group granted permission to self-insure and self-  
91 administer its obligations under this chapter shall at all times be  
92 bound and shall comply fully with all of the provisions of this  
93 chapter. Furthermore, all of the provisions contained in article  
94 four of this chapter pertaining to disability and death benefits  
95 are binding on and shall be strictly adhered to by the self-  
96 insured employer in its administration of claims presented by  
97 employees of the self-insured employer. Violations of the  
98 provisions of this chapter and such rules relating to this chapter  
99 as may be approved by the board of managers may constitute  
100 sufficient grounds for the termination of the authority for any  
101 employer to self-insure its obligations under this chapter. Claim  
102 notices currently generated by the commission on behalf of  
103 self-insured employers must be generated and sent by the self-  
104 insured employer or its third-party administrator.

105 (c) Each self-insured employer shall, on or before the last  
106 day of the first month of each quarter, file with the commission  
107 a certified statement of the total gross wages and earnings of all  
108 of the employer's employees subject to this chapter for the

109 preceding quarter. Each self-insured employer shall pay into the  
110 workers' compensation fund as portions of its self-insured  
111 premium tax:

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

114 (2) A sum sufficient to pay the employer's proper portion  
115 of the expense of claims for those employers who are in default  
116 in the payment of premium taxes or other obligations;

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

119 (4) A sum sufficient to maintain as an advance deposit an  
120 amount equal to the previous quarter's payment of each of the  
121 foregoing three sums;

122 (5) A sum as determined by the commission to be sufficient  
123 to pay the employer's portion of rates, surcharges or deficit  
124 management and deficit reduction assessments; and

125 (6) A sum as determined by the commission to pay the  
126 employer's portion of self-insured catastrophic injury benefits,  
127 and second injury payments on all self-insured second injury  
128 claims other than second injury claims for those employers self-  
129 insured for second injury. Any employer previously self-insured  
130 for second injury benefits shall continue to be responsible for  
131 payment of those benefits.

132 (d) The required payments to the employer's injured  
133 employees or dependents of fatally injured employees as  
134 benefits provided for by this chapter including second injury  
135 benefits and catastrophic injury benefits, if applicable, shall  
136 constitute the remaining portion of the self-insurer's premium  
137 tax.

138 (e) Notwithstanding any provision of subsection (d) of this  
139 section to the contrary, except for those increases made  
140 effective for fiscal year two thousand four by action of the  
141 compensation programs performance council heretofore  
142 established in article three, chapter twenty-one-a of this code  
143 taken prior to the effective date of the amendment and  
144 reenactment of this section, the portion of the premium taxes  
145 for each self-insured employer as determined under subdivi-  
146 sions (1) through (6), inclusive, subsection (c) of this section  
147 shall not be increased during fiscal years two thousand four,  
148 two thousand five and two thousand six.

149 (f)(1) If an employer defaults in the payment of any portion  
150 of its self-insured premium taxes, surcharges or assessments,  
151 the commission shall, in an appropriate case, determine the full  
152 accrued value based upon generally accepted actuarial and  
153 accounting principles of the employer's liability including the  
154 costs of all awarded claims and of all incurred but not reported  
155 claims. The amount determined may, in an appropriate case, be  
156 assessed against the employer. The commission may demand  
157 and collect the present value of the defaulted tax liability.  
158 Interest shall accrue upon the demanded amount as provided for  
159 in section thirteen of this article until the premium tax is fully  
160 paid. Payment of all amounts then due to the commission and  
161 to the employer's employees is a sufficient basis for reinstating  
162 the employer to good standing with the fund. In addition, any  
163 self-insured employer who, without good cause, ceases to make  
164 required payments to the employer's injured employees or  
165 dependents of fatally injured employees as benefits provided for  
166 by this chapter including second injury benefits and cata-  
167 strophic injury benefits, if applicable, is in default. The board  
168 of managers shall establish by rule the procedures by which the  
169 existence or nonexistence of good cause is to be determined by  
170 the commission.

171 (2) Premium tax assessments are special revenue taxes  
172 under and according to the provisions of state workers' com-  
173 pensation law and are considered to be tax claims, as priority  
174 claims or administrative expense claims according to those  
175 provisions under the law provided in the United States bank-  
176 ruptcy code, Title 11 of the United States Code. In addition, as  
177 the same was previously intended by the prior provisions of this  
178 section, this amendment and reenactment is for the purpose of  
179 clarification of the taxing authority of the workers' compensa-  
180 tion commission.

181 (g) Each self-insured employer shall elect whether or not to  
182 self-insure its catastrophic injury risk as defined in subsection  
183 (c), section one, article three of this chapter. A self-insured  
184 employer who elects to insure its catastrophic risk through a  
185 policy of excess insurance obtained through a private insurance  
186 carrier approved by the commission shall provide a copy of the  
187 policy to the commission.

188 (1) If the employer does not elect to self-insure its cata-  
189 strophic risk, the employer shall pay premium taxes for this  
190 coverage in the same manner as is provided for in section four  
191 of this article and in rules adopted to implement that section. If  
192 the employees of that employer suffer injury or death from a  
193 catastrophe, the payment of the resulting benefits shall be made  
194 from the catastrophe reserve of the surplus fund provided for in  
195 subsection (b), section one, article three of this chapter. Any  
196 portion of an employer's catastrophic liability insured and paid  
197 under a policy of insurance purchased by the employer shall not  
198 be included in the liabilities upon which the employer's security  
199 or bond is determined in subsection (a) of this section.

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

204 (h) For those employers previously permitted to self-insure  
205 their second injury risks, the amount of the security or bond  
206 required in subsection (a) of this section shall include the  
207 liability for that risk. All benefits provided for by this chapter  
208 which are awarded to the employer's employees which consti-  
209 tute second injury life awards shall be paid by the employer and  
210 not the commission.

211 (i) The commission may create, implement, establish and  
212 administer a perpetual self-insurance security risk pool of  
213 funds, sureties, securities, insurance provided by private  
214 insurance carriers or other states' programs, and other property,  
215 of both real and personal properties, to secure the payment of  
216 obligations of self-insured employers. If a pool is created, the  
217 board of managers shall adopt rules for the organizational plan,  
218 participation, contributions and other payments which may be  
219 required of self-insured employers under this section. The board  
220 of managers may adopt a rule authorizing the commission to  
221 assess each self-insured employer in proportion according to  
222 each employer's portion of the unsecured obligation and  
223 liability or to assess according to some other method provided  
224 for by rule which shall properly create and fund the risk pool to  
225 serve the needs of employees, employers and the workers'  
226 compensation fund by providing adequate security. The board  
227 of managers, in establishing a security risk pool, may authorize  
228 the executive director to use any assessments, premium taxes  
229 and revenues and appropriations as may be made available to  
230 the commission.

231 (j) Any self-insured employer which has had a period of  
232 inactivity due to the nonemployment of employees which  
233 results in its reporting of no wages on reports to the commission  
234 for a period of four or more consecutive quarters shall have its  
235 status at the commission inactivated and shall apply for  
236 reactivation to status as a self-insured employer prior to its  
237 reemployment of employees. Despite the inactivation, the self-

238 insured employer shall continue to make payments on all  
239 awards for which it is responsible. Upon application for  
240 reactivation of its status as an operating self-insured employer,  
241 the employer shall document that it meets the eligibility  
242 requirements needed to maintain self-insured status under this  
243 section and any rules adopted to implement it. If the employer  
244 is unable to requalify and obtain approval for reactivation, the  
245 employer shall, effective with the date of employment of any  
246 employee, become a subscriber to the workers' compensation  
247 fund, but shall continue to be a self-insurer as to the prior  
248 period of active status and to furnish security or bond and meet  
249 its prior self-insurance obligations.

250 (k) In any case under the provisions of this section that  
251 require the payment of compensation or benefits by an em-  
252 ployer in periodical payments and the nature of the case makes  
253 it possible to compute the present value of all future payments,  
254 the commission may, in its discretion, at any time compute and  
255 permit to be paid into the workers' compensation fund an  
256 amount equal to the present value of all unpaid future payments  
257 on the award or awards for which liability exists in trust.  
258 Thereafter, the employer shall be discharged from any further  
259 portion of premium tax liability upon the award or awards and  
260 payment of the award or awards shall be assumed by the  
261 commission.

262 (l) Any employer subject to this chapter, who elects to carry  
263 the employer's own risk by being self-insured and who has  
264 complied with the requirements of this section and of any  
265 applicable rules, shall not be liable to respond in damages at  
266 common law or by statute for the injury or death of any  
267 employee, however occurring, after the election's approval and  
268 during the period that the employer is allowed to carry the  
269 employer's own risk.

270 (m) An employer may not hire any person or group to self-  
271 administer claims under this chapter as a third-party administra-  
272 tor unless the person or group has been determined to be  
273 qualified to be a third-party administrator by the commission  
274 pursuant to rules adopted by the board of managers. Any person  
275 or group whose status as a third-party administrator has been  
276 revoked, suspended or terminated by the commission shall  
277 immediately cease administration of claims and shall not  
278 administer claims unless subsequently authorized by the  
279 commission.

**§23-2-10. Application of chapter to interstate commerce.**

1 (a) In case any employer within the meaning of this chapter  
2 is also engaged in interstate or foreign commerce, and for  
3 whom a rule of liability or method of compensation has been  
4 established by the Congress of the United States, this chapter  
5 applies to him or her only to the extent that his or her mutual  
6 connection with work in this state is clearly separable and  
7 distinguishable from his or her interstate work, and to the extent  
8 that the work in this state is clearly separable and distinguish-  
9 able from his or her interstate work, the employer is subject to  
10 the terms and provisions of this chapter in like manner as all  
11 other employers under this chapter. Payments of premiums  
12 shall be on the basis of the payroll of those employees who  
13 perform work in this state only.

14 (b) Unless and until the Congress of the United States has  
15 by appropriate legislation established a rule of liability or  
16 method of compensation governing employers and employees  
17 engaged in commerce within the purview of the commerce  
18 clause of the United States Constitution (article I, section 8),  
19 section one of this article applies without regard to the interstate  
20 or intrastate character or nature of the work or business engaged  
21 in.



**§23-2-11. Partial invalidity of chapter.**

1        If any employer is adjudicated to be outside the lawful  
2 scope of this chapter, the chapter shall not apply to him or her  
3 or his or her employee; or if any employee is adjudicated to be  
4 outside the lawful scope of this chapter, because of remoteness  
5 of his or her work from the hazard of his or her employer's  
6 work, the adjudication shall not impair the validity of this  
7 chapter in other respects and in every case an accounting in  
8 accordance with the justice of the case shall be had of moneys  
9 received. If the provisions of this chapter for the creation of the  
10 workers' compensation fund, or the provisions of this chapter  
11 making the compensation to the employee provided in it  
12 exclusive of any other remedy on the part of the employee, is  
13 held invalid, the entire chapter shall be invalidated and an  
14 accounting according to the justice of the case shall be had of  
15 money received. In other respects an adjudication of invalidity  
16 of any part of this chapter shall not affect the validity of the  
17 chapter as a whole or any part of this chapter.

**§23-2-12. Effect of repeal or invalidity of chapter on action for damages.**

1        If the provisions of this chapter relating to compensation for  
2 injuries to, or death of, workers are repealed or adjudged invalid  
3 or unconstitutional, the period intervening between the occur-  
4 rence of any injury or death and the repeal, or the final adjudi-  
5 cation of invalidity or unconstitutionality, shall not be com-  
6 puted as a part of the time limited by law for the commence-  
7 ment of any action relating to the injuries or death, but the  
8 amount of any compensation which may have been paid on  
9 account of injury or death shall be deducted from any judgment  
10 for damages recovered on account of the injury or death.

**§23-2-13. Interest on past-due payments; reinstatement agreements.**

1       Effective the first day of July, one thousand nine hundred  
2 ninety-nine, payments unpaid on the date on which due and  
3 payable shall immediately begin bearing interest as specified in  
4 this section. The interest rate per annum for each fiscal year  
5 shall be calculated as the greater of the commission's current  
6 discount rate or the prime rate plus four percent, each rounded  
7 to the nearest whole percent. The discount rate shall be deter-  
8 mined by the board of managers on an annual basis. The prime  
9 rate shall be the rate published in the *Wall Street Journal* on the  
10 last business day of the commission's prior fiscal year reflect-  
11 ing the base rate on corporate loans posted by at least seventy-  
12 five percent of the nation's thirty largest banks. This same rate  
13 of interest shall be applicable to all reinstatement agreements  
14 entered into by the commission pursuant to section five of this  
15 article on and after the effective date of this section: *Provided,*  
16 That if an employer enters into a subsequent reinstatement  
17 agreement within seven years of the date of the first agreement,  
18 the interest rate shall be eighteen percent per annum. Interest  
19 shall be compounded quarterly until payment plus accrued  
20 interest is received by the commission: *Provided, however,* That  
21 on and after the date of execution of a reinstatement agreement,  
22 for determining future interest on any past-due premium,  
23 premium deposit, and past compounded interest thereon, any  
24 reinstatement agreement entered into by the commission shall  
25 provide for a simple rate of interest, determined in accordance  
26 with the provisions of this section which is not subject to  
27 change during the life of the reinstatement agreement for the  
28 future interest. Interest collected pursuant to this section shall  
29 be paid into the workers' compensation fund: *Provided further,*  
30 That in no event shall the rate of interest charged a political  
31 subdivision of the state or a volunteer fire department pursuant  
32 to this section exceed ten percent per annum.

**§23-2-14. Sale or transfer of business; attachment of lien for premium, etc.; payments due; criminal penalties for**

**failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability.**

1           (a) If any employer sells or otherwise transfers substantially  
2 all of the employer's assets, so as to give up substantially all of  
3 the employer's capacity and ability to continue in the business  
4 in which the employer has previously engaged:

5           (1) The employer's premium taxes, premium deposits,  
6 interest and other payments owed to the commission are due  
7 and owing to the commission upon the execution of the  
8 agreement of sale or other transfer;

9           (2) Any repayment agreement entered into by the employer  
10 with the commission pursuant to section five of this article  
11 terminates upon the execution of the agreement of sale or other  
12 transfer and all amounts owed to the commission but not yet  
13 paid become due; and

14           (3) Upon execution of an agreement of sale or other  
15 transfer, as aforesaid, the commission shall continue to have a  
16 lien, as provided for in section five-a of this article, against all  
17 of the remaining property of the employer as well as all of the  
18 sold or transferred assets. The lien constitutes a personal  
19 obligation of the employer.

20           (b) Notwithstanding any provisions of section five-a of this  
21 article to the contrary, in the event that a new employer acquires  
22 by sale or other transfer or assumes all or substantially all of a  
23 predecessor employer's assets:

24           (1) Any liens for payments owed to the commission for  
25 premium taxes, premium deposits, interest or other payments  
26 owed to the commission by the predecessor employer shall be  
27 extended to the successor employer;

28       (2) Any liens held by the commission against the predeces-  
29       sor employer's property shall be extended to all of the assets of  
30       the successor employer; and

31       (3) Liens acquired in the manner described in subdivisions  
32       (1) and (2) of this subsection are enforceable by the commission  
33       to the same extent as provided for the enforcement of liens  
34       against the predecessor employer in section five-a of this  
35       article.

36       (c) Notwithstanding the provisions of section five-a of this  
37       article to the contrary, if any employer as described in subsec-  
38       tion (a) of this section sells or otherwise transfers a portion of  
39       the employer's assets so as to affect the employer's capacity to  
40       do business:

41       (1) The employer's premium taxes, premium deposits,  
42       interest and other payments owed to the commission are due  
43       and owing to the commission upon the execution of the  
44       agreement of sale or other transfer;

45       (2) Any repayment agreement entered into by the employer  
46       with the commission pursuant to section five of this article  
47       terminates upon the execution of the aforesaid agreement of  
48       sale or other transfer and all amounts owed to the commission  
49       but not yet paid shall become due; and

50       (3) Upon execution of an agreement of sale or other  
51       transfer, as aforesaid, the commission shall continue to have a  
52       lien, as provided for in section five-a of this article, against all  
53       of the remaining property of the employer as well as all the sold  
54       or transferred assets. The lien constitutes a personal obligation  
55       of the employer.

56       (d) If an employer subject to subsection (a), (b) or (c) of  
57       this section pays to the commission, prior to the execution of an  
58       agreement of sale or other transfer, a sum sufficient to retire all

59 of the indebtedness that the employer would owe at the time of  
60 the execution, the commission shall issue a certificate to the  
61 employer stating that the employer's account is in good  
62 standing with the commission and that the assets may be sold  
63 or otherwise transferred without the attachment of the commis-  
64 sion's lien. An agreement of sale or other transfer may provide  
65 for the creation of an escrow account into which the employers  
66 shall pay the full amount owed to the commission. The subse-  
67 quent timely payment of that full amount to the commission  
68 operates to place both employers in good standing with the  
69 commission to the extent of the predecessor employer's  
70 liabilities retroactive to the date of sale or other transfer. In the  
71 event that the employer would not owe any sum to the commis-  
72 sion on the aforesaid date of execution, a certificate shall also  
73 be issued to the employer upon the employer's request stating  
74 that the employer's account is in good standing with the  
75 commission and that the assets may be sold or otherwise  
76 transferred without the attachment of the commission's lien.

77 (e) As used in this article, the term "assets" means all  
78 property of whatever type in which the employer has an interest  
79 including, but not limited to, goodwill, business assets, custom-  
80 ers, clients, contracts, access to leases such as the right to  
81 sublease, assignment of contracts for the sale of products,  
82 operations, stock of goods or inventory, accounts receivable,  
83 equipment or transfer of substantially all of its employees.

84 (f) The transfer of any assets of the employer is presumed  
85 to be a transfer of all or substantially all of the assets if the  
86 transfer affects the employer's capacity to do business. The  
87 presumption can be overcome upon petition presented and an  
88 administrative hearing in accordance with section seventeen of  
89 this article.

90 (g) The provisions of this section are expressly intended to  
91 impose upon successor employers the duty of obtaining from

92 the commission or predecessor employer, prior to the date of  
93 the acquisition, a valid "certificate of good standing to transfer  
94 a business or business assets" to verify that the predecessor  
95 employer's account with the commission is in good standing.

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

1 (a) At any time prior to or following the acquisition  
2 described in subsection (a), (b) or (c), section fourteen of this  
3 article, the buyer or other recipient may file a certified petition  
4 with the commission requesting that the commission waive the  
5 payment by the buyer or other recipient of premiums, premium  
6 deposits, interest and imposition of the modified rate of  
7 premiums attributable to the predecessor employer or other  
8 penalty, or any combination thereof. The commission shall  
9 review the petition by considering the following seven factors:

10 (1) The exact nature of the default;

11 (2) The amount owed to the commission;

12 (3) The solvency of the fund;

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

14 (5) The equities exhibited towards the fund by the buyer or  
15 other recipient during the acquisition process;

16 (6) The potential economic impact upon the state and the  
17 specific geographic area in which the buyer or other recipient  
18 is to be or is located, if the acquisition were not to occur; and

19 (7) Whether the assets are purchased in an arms-length  
20 transaction.

21 Unless requested by a party or by the commission, no  
22 hearing need be held on the petition. However, any decision  
23 made by the commission on the petition shall be in writing and  
24 shall include appropriate findings of fact and conclusions of  
25 law. The decision shall be effective ten days following notice  
26 to the public of the decision unless an objection is filed in the  
27 manner provided in this section. Notice shall be given by the  
28 commission's filing with the secretary of state, for publication  
29 in the state register, of a notice of the decision. At the time of  
30 filing the notice of its decision, the commission shall also file  
31 with the secretary of state a true copy of the decision. The  
32 publication shall include a statement advising that any person  
33 objecting to the decision must file, within ten days after  
34 publication of the notice, a verified response with the commis-  
35 sion setting forth the objection and the basis for the objection.  
36 If any objection is filed, the commission shall hold an adminis-  
37 trative hearing, conducted pursuant to article five, chapter  
38 twenty-nine-a of this code, within fifteen days of receiving the  
39 response unless the buyer or other recipient consents to a later  
40 hearing. Nothing in this subsection shall be construed to be  
41 applicable to the seller or other transferor or to affect in any  
42 way a proceeding under sections five and five-a of this article.

43 (b) In the factual situations set forth in subsection (a), (b) or  
44 (c), section fourteen of this article, if the predecessor's modified  
45 rate of premium tax, as calculated in accordance with section  
46 four of this article, is greater than the manual rate of premium  
47 tax, as calculated in accordance with that section, for other  
48 employers in the same class or group, and if the new employer  
49 does not already have a modified rate of premium, it shall also  
50 assume the predecessor employer's modified rates for the  
51 payment of premiums as determined under sections four and  
52 five of this article until sufficient time has elapsed for the new  
53 employer's experience record to be combined with the experi-  
54 ence record of the predecessor employer so as to calculate the  
55 new employer's own modified rate of premium tax.

**§23-2-16. Acceptance or assignment of premium rate.**

1 (a) If a new corporate employer which is not subject to the  
2 provisions of section fifteen of this article is created by the  
3 officers or shareholders of a preexisting corporate employer and  
4 if the new corporate employer and the preexisting corporate  
5 employer: (1) Are managed by the same, or substantially the  
6 same, management personnel; (2) have a common ownership by  
7 at least forty percent of each corporation's shareholders; (3) are  
8 in the same class or group as determined by the executive  
9 director under the provisions of section four of this article; and  
10 (4) if the preexisting corporate employer's account is in good  
11 standing with the commission, at the time the new corporate  
12 employer registers with the commission, the new corporate  
13 employer may request that the commission assign to it the same  
14 rate of payment of premiums as that assigned to the preexisting  
15 corporate employer. If the executive director decides that the  
16 granting of the request is in keeping with his or her fiduciary  
17 obligations to the workers' compensation fund, the executive  
18 director may grant the request of the employer.

19 (b) If a new corporate employer which is not subject to the  
20 provisions of section fifteen of this article is created by the  
21 officers or shareholders of a preexisting corporate employer and  
22 if the new corporate employer and the preexisting corporate  
23 employer: (1) Are managed by the same, or substantially the  
24 same, management personnel; (2) have a common ownership by  
25 at least forty percent of each corporation's shareholders; and (3)  
26 are in the same class or group as determined by the executive  
27 director under the provisions of section four of this article, at  
28 any time within one year of the new corporate employer's  
29 registration with the commission, the executive director may  
30 decide that, in keeping with his or her fiduciary obligations to  
31 the workers' compensation fund, the new corporate employer  
32 shall be assigned the same rate of payment of premiums as that  
33 assigned to the preexisting corporate employer at any time



34 within the aforesaid one-year period: *Provided*, That if the new  
35 corporate employer fails to reveal to the commission on the  
36 forms provided by the commission that its situation meets the  
37 factual requirements of this section, the commission may  
38 demand payment from the new corporate employer in an  
39 amount sufficient to eliminate the deficiency in payments by  
40 the new corporate employer from the date of registration to the  
41 date of discovery plus interest thereon as provided for by  
42 section thirteen of this article. The commission may use its  
43 powers pursuant to section five-a of this article to collect the  
44 amount due.

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

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

15 The employer's petition shall clearly identify the decision  
16 or action disputed and the bases upon which the employer  
17 disputes the decision or action. Upon receipt of a petition, the  
18 executive director shall schedule a hearing which shall be  
19 conducted in accordance with the provisions of article five,  
20 chapter twenty-nine-a of this code. An appeal from a final  
21 decision of the executive director shall be taken in accord with

22 the provisions of articles five and six of said chapter: *Provided,*  
23 That all appeals shall be taken to the circuit court of Kanawha  
24 County.

**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, the  
3 injured worker or, if he or she is deceased or physically or  
4 mentally incompetent, his or her dependents or personal  
5 representative are entitled to compensation under the provisions  
6 of this chapter and shall not by having received compensation  
7 be precluded from making claim against the third party.

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

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

28 payment in full of the amount permitted to be subrogated under  
29 subsection (b) of this section is paid.

30 (d) The right of subrogation granted by the provisions of  
31 this section shall not attach to any claim arising from a right of  
32 action which arose or accrued, in whole or in part, prior to the  
33 effective date of the amendment and reenactment of this section  
34 during the year two thousand three.

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

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

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

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

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

1 In order to carry out the purposes of this chapter and to  
2 encourage voluntary compliance with occupational safety and  
3 health laws, regulations, rules and standards and to promote  
4 more effective workplace health and safety programs, the  
5 executive director acting in conjunction with the board of  
6 managers shall:

7 (a) Develop greater knowledge and interest in the causes  
8 and prevention of industrial accidents, occupational diseases  
9 and related subjects through:

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

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

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

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

23 (c) Place emphasis, in the research, education and consulta-  
24 tion program, on development of a model for providing services  
25 to groups of small employers in particular industries and their  
26 employees and for all employers whose experience modifica-  
27 tion factor for rate-setting purposes is in excess of the criteria  
28 established by the board of managers.

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

1 (a) Based upon and to the extent authorized by criteria  
2 established by the executive director, the commission is  
3 authorized to conduct special inspections or investigations  
4 focused on specific problems or hazards in the workplace with  
5 or without the agreement of the employer. The executive  
6 director shall issue a report on his or her findings and shall  
7 furnish a copy of the report to the employer and to any bargain-  
8 ing unit representing the employees of the employer. The  
9 executive director may share information obtained or developed  
10 pursuant to this article with other governmental agencies.

11 (b) For any employer whose experience modification factor  
12 exceeds the criteria established by the board of managers, the  
13 executive director may require the employer to establish a  
14 safety committee composed of representatives of the employer  
15 and the employees of the employer.

16 (c) In carrying out the provisions of this article, the execu-  
17 tive director shall propose rules for promulgation which shall  
18 include, but are not limited to, the following provisions:

19 (1) Prescribing the membership of the committees, training,  
20 frequency of meetings, recordkeeping and compensation of  
21 employee representatives on safety committees; and

22 (2) Prescribing the duties and functions of safety commit-  
23 tees which include, but are not limited to:

24 (A) Establishing procedures for workplace safety inspec-  
25 tions and for investigating job-related accidents, illnesses and  
26 deaths; and

27 (B) Evaluating accident and illness prevention programs.

28 (d) An employer that is a member of a multiemployer group  
29 operating under a collective bargaining agreement that contains  
30 provisions regulating the formation and operation of a safety  
31 committee that meets or exceeds the minimum requirements of  
32 this section is considered to have met the requirements of this  
33 section.

34 (e) It is not the purpose of this article to either supercede  
35 the federal Occupational Health and Safety Act program,  
36 federal Mine Safety and Health Act program or to create a state  
37 counterpart to these programs.

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

1 (a) The executive director may establish by rule a premium  
2 credit program for certain employers. The program is applicable  
3 solely to regular subscribers to the workers' compensation fund  
4 and not to self-insurers. Participation in any premium credit  
5 program is voluntary and no employer is required to participate.

6 (b) The program applies a prospective credit to the pre-  
7 mium rate of a subscribing employer who participates in a  
8 qualified loss management program. The prospective credit is  
9 given for a period of up to three years: *Provided*, That the  
10 employer remains in the program for a corresponding period of  
11 time.

12 (c) The rule shall specify the requirements of a qualified  
13 loss management program and shall include a requirement that  
14 a recognized loss management firm participate in the program.  
15 A loss management firm shall be recognized if it has demon-  
16 strated an ability to significantly reduce workers' compensation  
17 losses for its client employers by implementing a loss control  
18 management program. The amount of credit against premium  
19 rates that may be allowed by the executive director shall vary  
20 from firm to firm and shall be primarily determined by the loss  
21 reduction success experienced by all of the subscribing employ-  
22 ers of the sponsoring loss management firm over a period of  
23 time to be determined by the executive director.

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

33 (e) The employer may terminate participation in the  
34 program upon three years of continuous participation in the  
35 program without penalty. Sooner termination may result in a  
36 penalty being applied to the employer's premium rate.

37 (f) An employer who has subscribed to an existing program  
38 of a qualified loss management firm prior to the effective date  
39 of this section is subject to a reduction in credit as follows:

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

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

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

46 (4) Participation for three years or more shall result in no  
47 credit.

48 (g) This section shall not become effective until the board  
49 of managers promulgates an appropriate rule to implement this  
50 section's provisions.

### ARTICLE 3. WORKERS' COMPENSATION FUND.

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

§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under  
former article six.

§23-3-2. Custody, investment and disbursement of funds.

§23-3-3. Investment of surplus funds required.

§23-3-5. Authorization to require the electronic invoices and transfers.

§23-3-6. Emergency fiscal measures.

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

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

10 compensation fund as provided for in this section, and for the  
11 benefit of the dependents of all the employees, and for the  
12 payment of the administration expenses of this chapter.

13 (b) A portion of all premiums that are paid into the work-  
14 ers' compensation fund by subscribers not electing to carry  
15 their own risk under section nine, article two of this chapter that  
16 is set aside to create and maintain a reserve of the fund to cover  
17 the catastrophe hazard and all losses not otherwise specifically  
18 provided for in this chapter. The percentage to be set aside is  
19 determined pursuant to the rules adopted to implement section  
20 four, article two of this chapter and shall be in an amount  
21 sufficient to maintain a solvent fund. All interest earned on  
22 investments by the workers' compensation fund, which is  
23 attributable to the reserve, shall be credited to the fund.

24 (c) A catastrophe is hereby defined as an accident in which  
25 three or more employees are killed or receive injuries, which,  
26 in the case of each individual, consist of: Loss of both eyes or  
27 the sight thereof; loss of both hands or the use thereof; loss of  
28 both feet or the use thereof; or loss of one hand and one foot or  
29 the use thereof. The aggregate of all medical and hospital bills  
30 and other costs and all benefits payable on account of a catas-  
31 trophe is defined as "catastrophe payment". In case of a  
32 catastrophe to the employees of an employer who is an ordinary  
33 premium-paying subscriber to the fund, or to the employees of  
34 an employer who, having elected to carry the employer's own  
35 risk under section nine, article two of this chapter, has previ-  
36 ously elected, or may later elect, to pay into the catastrophe  
37 reserve of the fund under the provisions of said section, the  
38 catastrophe payment arising from the catastrophe shall not be  
39 charged against, or paid by, the employer but shall be paid from  
40 the catastrophe reserve of the fund.

41 (d) For all awards made on or after the effective date of the  
42 amendments to this section enacted during the year two



43 thousand three, the following provisions relating to second  
44 injury are not applicable. For awards made before the date  
45 specified in this subsection, if an employee who has a definitely  
46 ascertainable physical impairment, caused by a previous  
47 occupational injury, occupational pneumoconiosis or occupa-  
48 tional disease, irrespective of its compensability, becomes  
49 permanently and totally disabled through the combined effect  
50 of the previous injury and a second injury received in the course  
51 of and as a result of his or her employment, the employer shall  
52 be chargeable only for the compensation payable for the second  
53 injury: *Provided*, That in addition to the compensation, and  
54 after the completion of the payments therefor, the employee  
55 shall be paid the remainder of the compensation that would be  
56 due for permanent total disability out of the workers' compen-  
57 sation fund. The procedure by which the claimant's request for  
58 a permanent total disability award under this section is ruled  
59 upon shall require that the issue of the claimant's degree of  
60 permanent disability first be determined. Thereafter, by means  
61 of a separate order, a decision shall be made as to whether the  
62 award is a second injury award under this subsection or a  
63 permanent total disability award to be charged to the em-  
64 ployer's account or to be paid directly by the employer if the  
65 employer has elected to be self-insured under the provisions of  
66 section nine, article two of this chapter.

67 (e) Employers electing, as provided in this chapter, to  
68 compensate individually and directly their injured employees  
69 and their fatally injured employees' dependents shall do so in  
70 the manner prescribed by the commission and shall make all  
71 reports and execute all blanks, forms and papers as directed by  
72 the commission, and as provided in this chapter.

**§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.**

1 Ten percent of the funds collected and held as the workers'  
2 compensation silicosis fund under the provisions of former  
3 article six of this chapter shall be transferred to and made a part  
4 of the workers' compensation fund provided for in the preced-  
5 ing section, and the balance of the silicosis fund shall be  
6 refunded to the subscribers to the fund in proportion to their  
7 contributions to the fund under the provisions of former article  
8 six; and all awards previously made under the provisions of  
9 article six shall be paid from the workers' compensation fund,  
10 or directly by the employer, under order of the executive  
11 director, if the employer has elected to carry his or her own risk  
12 under the provisions of section nine, article two of this chapter:  
13 *Provided*, That notwithstanding the repeal of article six, the  
14 provisions of the article are applicable in all cases of the disease  
15 or death, because of silicosis, or an employee whose last  
16 exposure to silicon dioxide dust has occurred prior to the  
17 effective date of this section, whose claim or application for  
18 compensation benefits for silicosis, or that of his or her depend-  
19 ent, has not been filed prior to that date, and whose employer,  
20 at the time of the exposure, was subject to the provisions of  
21 article six of this chapter.

### §23-3-2. Custody, investment and disbursement of funds.

1 The state treasurer is the custodian of the workers' compen-  
2 sation fund and all premiums, deposits or other moneys payable  
3 to each fund shall be deposited in the state treasury to the credit  
4 of the fund for which it was assessed, transferred or collected  
5 in the manner prescribed in this chapter. The workers' compen-  
6 sation fund shall consist of the premiums and deposits provided  
7 by this chapter and any other moneys or funds given, appropri-  
8 ated or otherwise designated or accruing to it and all earnings.  
9 The fund shall be a separate and distinct fund upon the books  
10 and records of the auditor and treasurer. Disbursements  
11 therefrom shall be made upon requisitions signed by the  
12 executive director.

13       The workers' compensation fund is a participant plan as  
14 defined in section two, article six, chapter twelve of this code  
15 and is subject to the provisions of section nine-a of said article.  
16 The fund shall be invested by the investment management  
17 board in accordance with said article.

**§23-3-3. Investment of surplus funds required.**

1       Whenever there is in the state treasury any funds belonging  
2 to the workers' compensation fund not likely, in the opinion of  
3 the commission, to be required for immediate use, it is the duty  
4 of the investment management board to invest the funds as  
5 prescribed in section two of this article. Whenever it becomes  
6 necessary or expedient to use any of the invested funds, the  
7 investment management board, at the direction of the commis-  
8 sion, shall collect, sell or otherwise realize upon any investment  
9 to the amount considered necessary or expedient to use.

**§23-3-5. Authorization to require the electronic invoices and transfers.**

1       (a) The workers' compensation commission shall on or  
2 before the thirty-first day of December, two thousand five,  
3 establish a program to require the acceptance of disbursements  
4 by electronic transfer from the workers' compensation fund to  
5 employers, vendors and all others lawfully entitled to receive  
6 such disbursements: *Provided*, That until the thirty-first day of  
7 December, two thousand five, claimants may not be required to  
8 accept the transfers but may elect to do so.

9       (b) The commission may establish a program to require  
10 payments of deposits, premiums and other funds into the  
11 workers' compensation fund by electronic transfer of funds.

12       (c) The commission may establish a program that invoices  
13 and other charges against the workers' compensation fund may  
14 be submitted to the commission by electronic means.

15 (d) Any program authorized by this section must be  
16 implemented through a rule promulgated by the board of  
17 managers.

**§23-3-6. Emergency fiscal measures.**

1 (a) In addition to other measures intended by the Legisla-  
2 ture to address the imminent threat to the fiscal solvency of the  
3 workers' compensation fund, the Legislature finds that the  
4 prudent use of available moneys may be necessary to supple-  
5 ment ongoing efforts to reduce and eliminate that threat. The  
6 provisions of this section are enacted for those purposes.

7 (b) The following measures are authorized for the purposes  
8 described in subsection (a) of this section:

9 (1) Upon meeting the conditions and requirements of  
10 subsection (a), section eight-b, article four-b of this chapter, the  
11 commission may expend the assets described in said subsection  
12 and any income earned thereon to satisfy the obligations of the  
13 workers' compensation fund.

14 (2) Upon meeting the conditions and requirements of  
15 subsection (b), section eight-b, article four-b of this chapter, the  
16 commission may expend the assets described in said subsection  
17 and any income earned thereon to satisfy the obligations of the  
18 workers' compensation fund.

19 (3) In each fiscal year beginning after the thirtieth day of  
20 June, two thousand three, it is the intent of the Legislature that,  
21 pursuant to appropriation in the budget bill for each respective  
22 fiscal year, five million dollars of general revenue funds be  
23 transferred to the workers' compensation fund and that the  
24 amounts transferred be expended to satisfy the obligations of  
25 the workers' compensation fund.

26           (4) (A) If in any year expenditures from the workers'  
27 compensation fund are expected to exceed assets in that fund,  
28 the executive director may under the following conditions  
29 request a transfer of moneys from the principal of the West  
30 Virginia tobacco settlement medical trust fund created in  
31 section two, article eleven-a, chapter four of this code. Prior to  
32 requesting the transfer the executive director shall obtain an  
33 opinion from the commission's actuary as to the amount of the  
34 deficit in the workers' compensation fund. Upon meeting the  
35 requirements of this subdivision, the executive director shall,  
36 upon approval of the board of managers, submit a written  
37 request to the joint committee on government and finance that  
38 an amount determined by the Legislature be transferred by  
39 appropriation from the principal of the West Virginia tobacco  
40 settlement medical trust fund to the workers' compensation  
41 fund. Upon appropriation of the Legislature, the commission  
42 may expend the assets transferred and any income earned  
43 thereon to satisfy the obligations of the workers' compensation  
44 fund.

45           (B) Upon any exercise of the authority granted by this  
46 subdivision, the executive director shall not increase benefit  
47 rates during the year as provided in section fourteen, article four  
48 of this chapter and shall conduct an investigation into the causes  
49 of the deficit and determine the best course of action to alleviate  
50 the shortfall.

51           (5) It is the intent of the Legislature that, pursuant to  
52 legislative appropriation, fourteen million dollars of funds made  
53 available to the state pursuant to the federal Jobs and Growth  
54 Tax Relief Reconciliation Act of 2003, PL 108-27, be trans-  
55 ferred to the workers' compensation fund and that the amounts  
56 transferred be expended to satisfy the obligations of the work-  
57 ers' compensation fund.

58 (6) It is the intent of the Legislature that, pursuant to  
 59 legislative appropriation, one million dollars will be expired  
 60 from the alcohol beverage control administration's general  
 61 administrative fund and transferred to the workers' compensa-  
 62 tion fund and that the amounts transferred be expended to  
 63 satisfy the obligations of the workers' compensation fund.

64 (7) It is the intent of the Legislature that, pursuant to  
 65 legislative appropriation, four million dollars will be transferred  
 66 from the unappropriated balance of the state excess lottery  
 67 reserve fund to the workers' compensation fund and that the  
 68 amounts transferred be expended to satisfy the obligations of  
 69 the workers' compensation fund.

70 (8) Funds transferred to the workers' compensation fund  
 71 pursuant to the provisions of this subsection are anticipated to  
 72 generate income of at least six million dollars over the course  
 73 of the three-year period following the enactment of this section  
 74 in the year two thousand three. The commission may expend  
 75 any income earned on these transferred funds to satisfy the  
 76 obligations of the workers' compensation fund.

#### ARTICLE 4. DISABILITY AND DEATH BENEFITS.

- §23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.
- §23-4-1a. Report of injuries by employee.
- §23-4-1b. Report of injuries by employers.
- §23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission to collect payments improperly made.
- §23-4-1d. Method and time of payments for permanent disability.
- §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.
- §23-4-1g. Weighing of evidence.

- §23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.
- §23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.
- §23-4-3b. Creation of health care advisory panel.
- §23-4-3c. Suspension or termination of providers of health care.
- §23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.
- §23-4-5. Benefits for first three days after injury.
- §23-4-6. Classification of and criteria for disability benefits.
- §23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.
- §23-4-6b. Occupational hearing loss claims.
- §23-4-6d. Benefits payable to part-time employees.
- §23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.
- §23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority; suspension of benefits.
- §23-4-7b. Trial return to work.
- §23-4-8. Physical examination of claimant.
- §23-4-8a. Occupational pneumoconiosis board; composition; term of office; duties; quorum; remuneration.
- §23-4-8b. Occupational pneumoconiosis board; procedure; autopsy.
- §23-4-8c. Occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.
- §23-4-9. Physical and vocational rehabilitation.
- §23-4-9b. Preexisting impairments not considered in fixing amount of compensation.
- §23-4-10. Classification of death benefits; "dependent" defined.
- §23-4-11. To whom death benefits paid.
- §23-4-12. Application of benefits.
- §23-4-14. Computation of benefits.
- §23-4-15. Application for benefits.

- §23-4-15a. Nonresident alien beneficiaries.
- §23-4-15b. Determination of nonmedical questions by commission; claims for occupational pneumoconiosis hearing.
- §23-4-16. Commission's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.
- §23-4-16a. Interest on benefits.
- §23-4-17. Commutation of periodical benefits.
- §23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.
- §23-4-20. Postmortem examinations.
- §23-4-22. Permanent disability evaluations; limitations; notice.
- §23-4-23. Permanent total disability benefits; reduction of disability benefits; reduction of benefits; application of section; severability.
- §23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.
- §23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

**§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.**

1       (a) Subject to the provisions and limitations elsewhere in  
 2 this chapter, the commission shall disburse the workers'  
 3 compensation fund to the employees of employers subject to  
 4 this chapter who have received personal injuries in the course  
 5 of and resulting from their covered employment or to the  
 6 dependents, if any, of the employees in case death has ensued,  
 7 according to the provisions hereinafter made; and also for the  
 8 expenses of the administration of this chapter, as provided in  
 9 section two, article one of this chapter: *Provided*, That in the  
 10 case of any employees of the state and its political subdivisions,  
 11 including: Counties; municipalities; cities; towns; any separate  
 12 corporation or instrumentality established by one or more  
 13 counties, cities or towns as permitted by law; any corporation  
 14 or instrumentality supported in most part by counties, cities or



15 towns; any public corporation charged by law with the perfor-  
16 mance of a governmental function and whose jurisdiction is  
17 coextensive with one or more counties, cities or towns; any  
18 agency or organization established by the department of mental  
19 health for the provision of community health or mental retarda-  
20 tion services and which is supported, in whole or in part, by  
21 state, county or municipal funds; board, agency, commission,  
22 department or spending unit, including any agency created by  
23 rule of the supreme court of appeals, who have received  
24 personal injuries in the course of and resulting from their  
25 covered employment, the employees are ineligible to receive  
26 compensation while the employees are at the same time and for  
27 the same reason drawing sick leave benefits. The state employ-  
28 ees may only use sick leave for nonjob-related absences  
29 consistent with sick leave use and may draw workers' compen-  
30 sation benefits only where there is a job-related injury. This  
31 proviso shall not apply to permanent benefits: *Provided,*  
32 *however,* That the employees may collect sick leave benefits  
33 until receiving temporary total disability benefits. The division  
34 of personnel shall promulgate rules pursuant to article three,  
35 chapter twenty-nine-a of this code relating to use of sick leave  
36 benefits by employees receiving personal injuries in the course  
37 of and resulting from covered employment: *Provided further,*  
38 That in the event an employee is injured in the course of and  
39 resulting from covered employment and the injury results in  
40 lost time from work, and the employee for whatever reason uses  
41 or obtains sick leave benefits and subsequently receives  
42 temporary total disability benefits for the same time period, the  
43 employee may be restored sick leave time taken by him or her  
44 as a result of the compensable injury by paying to his or her  
45 employer the temporary total disability benefits received or an  
46 amount equal to the temporary total disability benefits received.  
47 The employee shall be restored sick leave time on a day-for-day  
48 basis which corresponds to temporary total disability benefits  
49 paid to the employer: *And provided further,* That since the

50 intent of this subsection is to prevent an employee of the state  
51 or any of its political subdivisions from collecting both tempo-  
52 rary total disability benefits and sick leave benefits for the same  
53 time period, nothing in this subsection prevents an employee of  
54 the state or any of its political subdivisions from electing to  
55 receive either sick leave benefits or temporary total disability  
56 benefits but not both.

57       (b) For the purposes of this chapter, the terms “injury” and  
58 “personal injury” includes occupational pneumoconiosis and  
59 any other occupational disease, as hereinafter defined, and the  
60 commission shall also disburse the workers’ compensation fund  
61 to the employees of the employers in whose employment the  
62 employees have been exposed to the hazards of occupational  
63 pneumoconiosis or other occupational disease and in this state  
64 have contracted occupational pneumoconiosis or other occupa-  
65 tional disease, or have suffered a perceptible aggravation of an  
66 existing pneumoconiosis or other occupational disease, or to the  
67 dependents, if any, of the employees, in case death has ensued,  
68 according to the provisions hereinafter made: *Provided*, That  
69 compensation shall not be payable for the disease of occupa-  
70 tional pneumoconiosis, or death resulting from the disease,  
71 unless the employee has been exposed to the hazards of  
72 occupational pneumoconiosis in the state of West Virginia over  
73 a continuous period of not less than two years during the ten  
74 years immediately preceding the date of his or her last exposure  
75 to such hazards, or for any five of the fifteen years immediately  
76 preceding the date of his or her last exposure. An application  
77 for benefits on account of occupational pneumoconiosis shall  
78 set forth the name of the employer or employers and the time  
79 worked for each. The commission may allocate to and divide  
80 any charges resulting from such claim among the employers by  
81 whom the claimant was employed for as much as sixty days  
82 during the period of three years immediately preceding the date  
83 of last exposure to the hazards of occupational pneumoconiosis.

84 The allocation shall be based upon the time and degree of  
85 exposure with each employer.

86 (c) For the purposes of this chapter, disability or death  
87 resulting from occupational pneumoconiosis, as defined in  
88 subsection (d) of this section shall be treated and compensated  
89 as an injury by accident.

90 (d) Occupational pneumoconiosis is a disease of the lungs  
91 caused by the inhalation of minute particles of dust over a  
92 period of time due to causes and conditions arising out of and  
93 in the course of the employment. The term "occupational  
94 pneumoconiosis" includes, but is not limited to, such diseases  
95 as silicosis, anthracosilicosis, coal worker's pneumoconiosis,  
96 commonly known as black lung or miner's asthma, silico-  
97 tuberculosis (silicosis accompanied by active tuberculosis of the  
98 lungs), coal worker's pneumoconiosis accompanied by active  
99 tuberculosis of the lungs, asbestosis, siderosis, anthrax and any  
100 and all other dust diseases of the lungs and conditions and  
101 diseases caused by occupational pneumoconiosis which are not  
102 specifically designated in this section meeting the definition of  
103 occupational pneumoconiosis set forth in this subsection.

104 (e) In determining the presence of occupational pneumoco-  
105 niosis, X-ray evidence may be considered but shall not be  
106 accorded greater weight than any other type of evidence  
107 demonstrating occupational pneumoconiosis.

108 (f) For the purposes of this chapter, occupational disease  
109 means a disease incurred in the course of and resulting from  
110 employment. No ordinary disease of life to which the general  
111 public is exposed outside of the employment is compensable  
112 except when it follows as an incident of occupational disease as  
113 defined in this chapter. Except in the case of occupational  
114 pneumoconiosis, a disease shall be considered to have been  
115 incurred in the course of or to have resulted from the employ-

116 ment only if it is apparent to the rational mind, upon consider-  
117 ation of all the circumstances: (1) That there is a direct causal  
118 connection between the conditions under which work is  
119 performed and the occupational disease; (2) that it can be seen  
120 to have followed as a natural incident of the work as a result of  
121 the exposure occasioned by the nature of the employment; (3)  
122 that it can be fairly traced to the employment as the proximate  
123 cause; (4) that it does not come from a hazard to which work-  
124 men would have been equally exposed outside of the employ-  
125 ment; (5) that it is incidental to the character of the business and  
126 not independent of the relation of employer and employee; and  
127 (6) that it appears to have had its origin in a risk connected with  
128 the employment and to have flowed from that source as a  
129 natural consequence, though it need not have been foreseen or  
130 expected before its contraction: *Provided*, That compensation  
131 shall not be payable for an occupational disease or death  
132 resulting from the disease unless the employee has been  
133 exposed to the hazards of the disease in the state of West  
134 Virginia over a continuous period that is determined to be  
135 sufficient, by rule of the board of managers, for the disease to  
136 have occurred in the course of and resulting from the em-  
137 ployee's employment. An application for benefits on account of  
138 an occupational disease shall set forth the name of the employer  
139 or employers and the time worked for each. The commission  
140 may allocate to and divide any charges resulting from such  
141 claim among the employers by whom the claimant was em-  
142 ployed. The allocation shall be based upon the time and degree  
143 of exposure with each employer.

144 (g) No award shall be made under the provisions of this  
145 chapter for any occupational disease contracted prior to the first  
146 day of July, one thousand nine hundred forty-nine. An em-  
147 ployee shall be considered to have contracted an occupational  
148 disease within the meaning of this subsection if the disease or  
149 condition has developed to such an extent that it can be diag-  
150 nosed as an occupational disease.

151 (h) Claims for occupational disease as defined in subsection  
152 (f) of this section, except occupational pneumoconiosis, shall be  
153 processed in like manner as claims for all other personal  
154 injuries.

155 (i) On or before the first day of January, two thousand four,  
156 workers' compensation commission shall adopt standards for  
157 the evaluation of claimants and the determination of a claim-  
158 ant's degree of whole body medical impairment in claims of  
159 carpal tunnel syndrome.

**§23-4-1a. Report of injuries by employee.**

1 Every employee who sustains an injury subject to this  
2 chapter, or his or her representative, shall immediately on the  
3 occurrence of the injury or as soon thereafter as practicable give  
4 or cause to be given to the employer or any of the employer's  
5 agents a written notice of the occurrence of the injury, with like  
6 notice or a copy of the notice to the workers' compensation  
7 commission stating in ordinary language the name and address  
8 of the employer, the name and address of the employee, the  
9 time, place, nature and cause of the injury, and whether  
10 temporary total disability has resulted from the injury. The  
11 notice shall be given personally to the employer or any of the  
12 employer's agents, or may be sent by certified mail addressed  
13 to the employer at the employer's last known residence or place  
14 of business. The notice may be given to the workers' compensa-  
15 tion commission by mail.

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

1 It is the duty of every employer to report to the commission  
2 every injury sustained by any person in his or her employ. The  
3 report shall be on forms prescribed by the commission and shall  
4 be made within five days of the employer's receipt of the  
5 employee's notice of injury, required by section one-a of this

6 article, or within five days after the employer has been notified  
7 by the commission that a claim for benefits has been filed on  
8 account of such injury, whichever is sooner, and, notwithstand-  
9 ing any other provision of this chapter to the contrary, the five-  
10 day period may not be extended by the commission, but the  
11 employer has the right to file a supplemental report at a later  
12 date. The employer's report of injury shall include a statement  
13 as to whether or not, on the basis of the information available,  
14 the employer disputes the compensability of the injury or  
15 objects to the payment of temporary total disability benefits in  
16 connection with the injury. The statements by the employer  
17 shall not prejudice the employer's right thereafter to contest the  
18 compensability of the injury, or to object to any subsequent  
19 finding or award, in accordance with article five of this chapter;  
20 but an employer's failure to make timely report of an injury as  
21 required in this section, or statements in the report to the effect  
22 that the employer does not dispute the compensability of the  
23 injury or object to the payment of temporary total disability  
24 benefits for the injury, shall be considered to be a waiver of the  
25 employer's right to object to any interim payment of temporary  
26 total disability benefits paid by the commission with respect to  
27 any period from the date of injury to the date of the commis-  
28 sion's receipt of any objection made to the interim payments by  
29 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 to collect payments improperly made.**

1 (a) In any claim for benefits under this chapter, the work-  
2 ers' compensation commission shall determine whether the  
3 claimant has sustained a compensable injury within the mean-  
4 ing of section one of this article and enter an order giving all  
5 parties immediate notice of the decision.

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

16 (2) In making a determination regarding the compensability  
17 of a newly filed claim or upon a filing for the reopening of a  
18 prior claim pursuant to the provisions of section sixteen of this  
19 article based upon an allegation of recurrence, reinjury,  
20 aggravation or progression of the previous compensable injury  
21 or in the case of a filing of a request for any other benefits  
22 under the provisions of this chapter, the commission shall  
23 consider the date of the filing of the claim for benefits for a  
24 determination of the following:

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

27 (B) Whether the claimant received notice within sixty days  
28 of the filing that his or her employment position was to be  
29 eliminated, including, but not limited to, the claimant's  
30 worksite, a layoff or the elimination of the claimant's employ-  
31 ment position;

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

34 (D) Whether the claimant has received unemployment  
35 compensation benefits within sixty days of the filing.

36 In the event of an affirmative finding upon any of these four  
37 factors, the finding shall be given probative weight in the  
38 overall determination of the compensability of the claim or of  
39 the merits of the reopening request.

40 (3) Any party may object to the order of the commission  
41 and obtain an evidentiary hearing as provided in section one,  
42 article five of this chapter: *Provided*, That if the claimant files  
43 a timely protest to the ruling of a self-insured employer denying  
44 the compensability of the claim, the office of judges shall  
45 provide a hearing on the protest on an expedited basis as  
46 determined by rule of the office of judges.

47 (b) Where it appears from the employer's report, or from  
48 proper medical evidence, that a compensable injury will result  
49 in a disability which will last longer than three days as provided  
50 in section five of this article, the commission may immediately  
51 enter an order commencing the payment of temporary total  
52 disability benefits to the claimant in the amounts provided for  
53 in sections six and fourteen of this article, and the payment of  
54 the expenses provided for in subsection (a), section three of this  
55 article, relating to the injury, without waiting for the expiration  
56 of the thirty-day period during which objections may be filed to  
57 the findings as provided in section one, article five of this  
58 chapter. The commission shall enter an order commencing the  
59 payment of temporary total disability or medical benefits within  
60 fifteen days of receipt of either the employee's or employer's  
61 report of injury, whichever is received sooner, and also upon  
62 receipt of either a proper physician's report or any other  
63 information necessary for a determination. The commission  
64 shall give to the parties immediate notice of any order granting  
65 temporary total disability or medical benefits. When an order  
66 granting temporary total disability benefits is made, the  
67 claimant's return-to-work potential shall be assessed. The  
68 commission may schedule medical and vocational evaluation of



69 the claimant and assign appropriate personnel to expedite the  
70 claimant's return to work as soon as reasonably possible.

71 (c) The commission may enter orders granting temporary  
72 total disability benefits upon receipt of medical evidence  
73 justifying the payment of the benefits. The commission may not  
74 enter an order granting prospective temporary total disability  
75 benefits for a period of more than ninety days: *Provided*. That  
76 when the commission determines that the claimant remains  
77 disabled beyond the period specified in the prior order granting  
78 temporary total disability benefits, the commission shall enter  
79 an order continuing the payment of temporary total disability  
80 benefits for an additional period not to exceed ninety days and  
81 shall give immediate notice to all parties of the decision.

82 (d) Upon receipt of the first report of injury in claim, the  
83 commission shall request from the employer or employers any  
84 wage information necessary for determining the rate of benefits  
85 to which the employee is entitled. If an employer does not  
86 furnish the commission with this information within fifteen  
87 days from the date the commission received the first report of  
88 injury in the case, the employee shall be paid temporary total  
89 disability benefits for lost time at the rate the commission  
90 obtains from reports made pursuant to subsection (b), section  
91 two, article two of this chapter. If no wages have been reported,  
92 the commission shall make the payments at the rate the com-  
93 mission finds would be justified by the usual rate of pay for the  
94 occupation of the injured employee. The commission shall  
95 adjust the rate of benefits both retroactively and prospectively  
96 upon receipt of proper wage information. The commission shall  
97 have access to all wage information in the possession of any  
98 state agency.

99 (e) Subject to the limitations set forth in section sixteen of  
100 this article, upon a finding of the commission or a self-insured  
101 employer that a claimant who has sustained a previous compen-

102 sable injury which has been closed by order, or by the claim-  
103 ant's return to work, suffers further temporary total disability or  
104 requires further medical or hospital treatment resulting from the  
105 compensable injury, the commission or the self-insured  
106 employer shall immediately commence the payment of tempo-  
107 rary total disability benefits to the claimant in the amount  
108 provided for in sections six and fourteen of this article, and the  
109 expenses provided for in subsection (a), section three of this  
110 article, relating to the disability, without waiting for the  
111 expiration of the thirty-day period during which objections may  
112 be filed. The commission or self-insured employer shall give  
113 immediate notice to the parties of its decision.

114 (f) Where the employer is a subscriber to the workers'  
115 compensation fund under the provisions of article three of this  
116 chapter, and upon the findings aforesaid, the commission shall  
117 mail all workers' compensation checks paying temporary total  
118 disability benefits directly to the claimant and not to the  
119 employer for delivery to the claimant.

120 (g) Where the employer has elected to carry its own risk  
121 under section nine, article two of this chapter, and upon the  
122 findings aforesaid, the self-insured employer shall immediately  
123 pay the amounts due the claimant for temporary total disability  
124 benefits. A copy of the notice shall be sent to the claimant.

125 (h) In the event that an employer files a timely objection to  
126 any order of the division with respect to compensability, or any  
127 order denying an application for modification with respect to  
128 temporary total disability benefits, or with respect to those  
129 expenses outlined in subsection (a), section three of this article,  
130 the division shall continue to pay to the claimant such benefits  
131 and expenses during the period of such disability. Where it is  
132 subsequently found by the division that the claimant was not  
133 entitled to receive such temporary total disability benefits or  
134 expenses, or any part thereof, so paid, the division shall, when

135 the employer is a subscriber to the fund, credit said employer's  
136 account with the amount of the overpayment. When the  
137 employer has protested the compensability or applied for  
138 modification of a temporary total disability benefit award or  
139 expenses and the final decision in that case determines that the  
140 claimant was not entitled to the benefits or expenses, the  
141 amount of benefits or expenses is considered overpaid. For all  
142 awards made or nonawarded partial benefits paid the commis-  
143 sion or self-insured employer may only recover the amount of  
144 overpaid benefits or expenses by withholding, in whole or in  
145 part, future disability benefits payable to the individual in the  
146 same or other claims and credit the amount against the overpay-  
147 ment until it is repaid in full.

148 (i) In the event that the commission finds that, based upon  
149 the employer's report of injury, the claim is not compensable,  
150 the commission shall provide a copy of the employer's report  
151 to the claimant in addition to the order denying the claim.

152 (j) If a claimant is receiving benefits paid through a wage  
153 replacement plan, salary continuation plan or other benefit plan  
154 provided by the employer to which the employee has not  
155 contributed, and that plan does not provide an offset for  
156 temporary total disability benefits to which the claimant is also  
157 entitled under this chapter as a result of the same injury or  
158 disease, the employer shall notify the commission of the  
159 duplication of the benefits paid to the claimant. Upon receipt of  
160 the notice, the commission shall reduce the temporary total  
161 disability benefits provided under this chapter by an amount  
162 sufficient to ensure that the claimant does not receive monthly  
163 benefits in excess of the amount provided by the employer's  
164 plan or the temporary total disability benefit, whichever is  
165 greater: *Provided*, That this subsection does not apply to  
166 benefits being paid under the terms and conditions of a collec-  
167 tive bargaining agreement.

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

1           (a) If the commission makes an award for permanent partial  
2 or permanent total disability, the commission or self-insured  
3 employer shall start payment of benefits by mailing or deliver-  
4 ing the amount due directly to the employee within fifteen days  
5 from the date of the award: *Provided*, That the commission may  
6 withhold payment of the portion of the award that is the subject  
7 of subsection (b) of this section until seventy-seven days have  
8 expired without an objection being filed.

9           (b) When the commission, self-insured employer, the office  
10 of judges or the workers' compensation board of review enters  
11 an order or provides notice granting the claimant a permanent  
12 total disability award and an objection or petition for appeal is  
13 filed by the employer or the commission, the commission or  
14 self-insured employer shall begin the payment of monthly  
15 permanent total disability benefits. However, any payment for  
16 a back period of benefits from the onset date of total permanent  
17 disability to the date of the award shall be limited to a period of  
18 twelve months of benefits. If, after all litigation is completed  
19 and the time for the filing of any further objections or appeals  
20 to the award has expired and the award of permanent total  
21 disability benefits is upheld, the claimant shall receive the  
22 remainder of benefits due to him or her based upon the onset  
23 date of permanent total disability that was finally determined.

24           (c) If the claimant is owed any additional payment of back  
25 permanent total disability benefits, the commission or self-  
26 insured employer shall not only pay the claimant the sum owed  
27 but shall also add thereto interest at the simple rate of six  
28 percent per annum from the date of the initial award granting  
29 the total permanent disability to the date of the final order  
30 upholding the award. In the event that an intermediate order  
31 directed an earlier onset date of permanent total disability than  
32 was found in the initial award, the interest-earning period for

33 that additional period shall begin upon the date of the interme-  
34 diate award. Any interest payable shall be charged to the  
35 account of the employer or shall be paid by the employer if it  
36 has elected to carry its own risk.

37 (d) If a timely protest to the award is filed, as provided in  
38 section one or nine, article five of this chapter, the commission  
39 or self-insured employer shall continue to pay to the claimant  
40 benefits during the period of the disability unless it is subse-  
41 quently found that the claimant was not entitled to receive the  
42 benefits, or any part thereof, in which event the commission  
43 shall, where the employer is a subscriber to the fund, credit the  
44 employer's account with the amount of the overpayment. If the  
45 final decision in any case determines that a claimant was not  
46 lawfully entitled to benefits paid to him or her pursuant to a  
47 prior decision, the amount of benefit paid shall be considered  
48 overpaid. For all awards made or nonawarded partial benefits  
49 paid the commission or self-insured employer may only recover  
50 that amount by withholding, in whole or in part, as determined  
51 by the commission, future disability benefits payable to the  
52 individual in the same or other claims and credit the amount  
53 against the overpayment until it is repaid in full.

54 (e) An award for permanent partial disability shall be made  
55 as expeditiously as possible and in accordance with the time  
56 frame requirements promulgated by the board of managers.

57 (f) If a claimant is receiving benefits paid through a  
58 retirement plan, wage replacement plan, salary continuation  
59 plan or other benefit plan provided by the employer to which  
60 the employee has not contributed, and that plan does not  
61 provide an offset for permanent total disability benefits to  
62 which the claimant is also entitled under this chapter as a result  
63 of the same injury or disease, the employer shall notify the  
64 commission of the duplication of the benefits paid to the  
65 claimant. Upon receipt of the notice, the commission shall

66 reduce the permanent total disability benefits provided under  
67 this chapter by an amount sufficient to ensure that the claimant  
68 does not receive monthly benefits in excess of the amount  
69 provided by the employer's plan or the permanent total disabili-  
70 ty benefit, whichever is greater: *Provided*, That this subsection  
71 does not apply to benefits being paid under the terms and  
72 conditions of a 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 tempo-  
3 rary total disability benefits for that period of time in excess of  
4 three days during which that person is confined in a state  
5 correctional facility or a county or regional jail: *Provided*, That  
6 confinement shall not affect the claimant's eligibility for  
7 payment of expenses: *Provided, however*, That this subsection  
8 is applicable only to injuries and diseases incurred prior to any  
9 period of confinement. Upon release from confinement, the  
10 payment of benefits for the remaining period of temporary total  
11 disability shall be made if justified by the evidence and autho-  
12 rized by order of the commission.

13 (b) Notwithstanding any provision of this code to the  
14 contrary, no person confined in a state correctional facility or a  
15 county or regional jail who suffers injury or a disease in the  
16 course of and resulting from his or her work during the period  
17 of confinement which work is imposed by the administration of  
18 the state correctional facility or the county or regional jail and  
19 is not suffered during the person's usual employment with his  
20 or her usual employer when not confined shall receive benefits  
21 under the provisions of this chapter for the injury or disease.

**§23-4-1g. Weighing of evidence.**

1           (a) For all awards made on or after the effective date of the  
2 amendment and reenactment of this section during the year two  
3 thousand three, resolution of any issue raised in administering  
4 this chapter shall be based on a weighing of all evidence  
5 pertaining to the issue and a finding that a preponderance of the  
6 evidence supports the chosen manner of resolution. The process  
7 of weighing evidence shall include, but not be limited to, an  
8 assessment of the relevance, credibility, materiality and  
9 reliability that the evidence possesses in the context of the issue  
10 presented. Under no circumstances will an issue be resolved by  
11 allowing certain evidence to be dispositive simply because it is  
12 reliable and is most favorable to a party's interests or position.  
13 If, after weighing all of the evidence regarding an issue in  
14 which a claimant has an interest, there is a finding that an equal  
15 amount of evidentiary weight exists favoring conflicting  
16 matters for resolution, the resolution that is most consistent  
17 with the claimant's position will be adopted.

18           (b) Except as provided in subsection (a) of this section, a  
19 claim for compensation filed pursuant to this chapter must be  
20 decided on its merit and not according to any principle that  
21 requires statutes governing workers' compensation to be  
22 liberally construed because they are remedial in nature. No such  
23 principle may be used in the application of law to the facts of a  
24 case arising out of this chapter or in determining the constitu-  
25 tionality of this chapter.

**§23-4-2. Disbursement where injury is self-inflicted or intention-  
ally caused by employer; legislative declarations  
and findings; "deliberate intention" defined.**

1           (a) Notwithstanding anything contained in this chapter, no  
2 employee or dependent of any employee is entitled to receive  
3 any sum from the workers' compensation fund, from a self-

4 insured employer, or otherwise under the provisions of this  
5 chapter, on account of any personal injury to or death to any  
6 employee caused by a self-inflicted injury or the intoxication of  
7 the employee. Upon the occurrence of an injury which the  
8 employee asserts, or which reasonably appears to have,  
9 occurred in the course of and resulting from the employee's  
10 employment, the employer may require the employee to  
11 undergo a blood test for the purpose of determining the exist-  
12 tence or nonexistence of evidence of intoxication pursuant to  
13 rules for the administration of the test promulgated by the board  
14 of managers: *Provided*, That the employer must have a reason-  
15 able and good faith objective suspicion of the employee's  
16 intoxication and may only test for the purpose of determining  
17 whether the person is intoxicated.

18 (b) For the purpose of this chapter, the commission may  
19 cooperate with the office of miners' health, safety and training  
20 and the state division of labor in promoting general safety  
21 programs and in formulating rules to govern hazardous employ-  
22 ments.

23 (c) If injury or death result to any employee from the  
24 deliberate intention of his or her employer to produce the injury  
25 or death, the employee, the widow, widower, child or dependent  
26 of the employee has the privilege to take under this chapter and  
27 has a cause of action against the employer, as if this chapter had  
28 not been enacted, for any excess of damages over the amount  
29 received or receivable under this chapter.

30 (d) (1) It is declared that enactment of this chapter and the  
31 establishment of the workers' compensation system in this  
32 chapter was and is intended to remove from the common law  
33 tort system all disputes between or among employers and  
34 employees regarding the compensation to be received for injury  
35 or death to an employee except as expressly provided in this  
36 chapter and to establish a system which compensates even



37 though the injury or death of an employee may be caused by his  
38 or her own fault or the fault of a coemployee; that the immunity  
39 established in sections six and six-a, article two of this chapter  
40 is an essential aspect of this workers' compensation system;  
41 that the intent of the Legislature in providing immunity from  
42 common lawsuit was and is to protect those immunized from  
43 litigation outside the workers' compensation system except as  
44 expressly provided in this chapter; that, in enacting the immu-  
45 nity provisions of this chapter, the Legislature intended to  
46 create a legislative standard for loss of that immunity of more  
47 narrow application and containing more specific mandatory  
48 elements than the common law tort system concept and  
49 standard of willful, wanton and reckless misconduct; and that  
50 it was and is the legislative intent to promote prompt judicial  
51 resolution of the question of whether a suit prosecuted under the  
52 asserted authority of this section is or is not prohibited by the  
53 immunity granted under this chapter.

54 (2) The immunity from suit provided under this section and  
55 under section six-a, article two of this chapter may be lost only  
56 if the employer or person against whom liability is asserted  
57 acted with "deliberate intention". This requirement may be  
58 satisfied only if:

59 (i) It is proved that the employer or person against whom  
60 liability is asserted acted with a consciously, subjectively and  
61 deliberately formed intention to produce the specific result of  
62 injury or death to an employee. This standard requires a  
63 showing of an actual, specific intent and may not be satisfied by  
64 allegation or proof of: (A) Conduct which produces a result that  
65 was not specifically intended; (B) conduct which constitutes  
66 negligence, no matter how gross or aggravated; or (C) willful,  
67 wanton or reckless misconduct; or

68 (ii) The trier of fact determines, either through specific  
69 findings of fact made by the court in a trial without a jury, or

70 through special interrogatories to the jury in a jury trial, that all  
71 of the following facts are proven:

72 (A) That a specific unsafe working condition existed in the  
73 workplace which presented a high degree of risk and a strong  
74 probability of serious injury or death;

75 (B) That the employer had a subjective realization and an  
76 appreciation of the existence of the specific unsafe working  
77 condition and of the high degree of risk and the strong probabili-  
78 ty of serious injury or death presented by the specific unsafe  
79 working condition;

80 (C) That the specific unsafe working condition was a  
81 violation of a state or federal safety statute, rule or regulation,  
82 whether cited or not, or of a commonly accepted and well-  
83 known safety standard within the industry or business of the  
84 employer, which statute, rule, regulation or standard was  
85 specifically applicable to the particular work and working  
86 condition involved, as contrasted with a statute, rule, regulation  
87 or standard generally requiring safe workplaces, equipment or  
88 working conditions;

89 (D) That notwithstanding the existence of the facts set forth  
90 in subparagraphs (A) through (C), inclusive, of this paragraph,  
91 the employer nevertheless thereafter exposed an employee to  
92 the specific unsafe working condition intentionally; and

93 (E) That the employee exposed suffered serious injury or  
94 death as a direct and proximate result of the specific unsafe  
95 working condition.

96 (iii) In cases alleging liability under the provisions of  
97 paragraph (ii) of this subdivision:

98 (A) No punitive or exemplary damages shall be awarded to  
99 the employee or other plaintiff;

100 (B) Notwithstanding any other provision of law or rule to  
101 the contrary, and consistent with the legislative findings of  
102 intent to promote prompt judicial resolution of issues of  
103 immunity from litigation under this chapter, the court shall  
104 dismiss the action upon motion for summary judgment if it  
105 finds, pursuant to rule 56 of the rules of civil procedure that one  
106 or more of the facts required to be proved by the provisions of  
107 subparagraphs (A) through (E), inclusive, paragraph (ii) of this  
108 subdivision do not exist, and the court shall dismiss the action  
109 upon a timely motion for a directed verdict against the plaintiff  
110 if after considering all the evidence and every inference  
111 legitimately and reasonably raised thereby most favorably to  
112 the plaintiff, the court determines that there is not sufficient  
113 evidence to find each and every one of the facts required to be  
114 proven by the provisions of subparagraphs (A) through (E),  
115 inclusive, paragraph (ii) of this subdivision; and

116 (C) The provisions of this paragraph and of each subpara-  
117 graph thereof are severable from the provisions of each other  
118 subparagraph, subsection, section, article or chapter of this code  
119 so that if any provision of a subparagraph of this paragraph is  
120 held void, the remaining provisions of this act and this code  
121 remain valid.

122 (e) The reenactment of this section in the regular session of  
123 the Legislature during the year one thousand nine hundred  
124 eighty-three does not in any way affect the right of any person  
125 to bring an action with respect to or upon any cause of action  
126 which arose or accrued prior to the effective date of the  
127 reenactment.

**§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 appli-**

**ances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.**

1       (a) The workers' compensation commission shall establish  
2 and alter from time to time, as the commission determines  
3 appropriate, a schedule of the maximum reasonable amounts to  
4 be paid to health care providers, providers of rehabilitation  
5 services, providers of durable medical and other goods and  
6 providers of other supplies and medically related items or other  
7 persons, firms or corporations for the rendering of treatment or  
8 services to injured employees under this chapter. The commis-  
9 sion also, on the first day of each regular session and also from  
10 time to time, as the commission may consider appropriate, shall  
11 submit the schedule, with any changes thereto, to the Legisla-  
12 ture.

13       The commission shall disburse and pay from the fund for  
14 personal injuries to the employees who are entitled to the  
15 benefits under this chapter as follows:

16       (1) Sums for health care services, rehabilitation services,  
17 durable medical and other goods and other supplies and  
18 medically related items as may be reasonably required. The  
19 commission shall determine that which is reasonably required  
20 within the meaning of this section in accordance with the  
21 guidelines developed by the health care advisory panel pursuant  
22 to section three-b of this article: *Provided*, That nothing in this  
23 section shall prevent the implementation of guidelines applica-  
24 ble to a particular type of treatment or service or to a particular  
25 type of injury before guidelines have been developed for other  
26 types of treatment or services or injuries: *Provided, however*,  
27 That any guidelines for utilization review which are developed

28 in addition to the guidelines provided for in section three-b of  
29 this article may be used by the commission until superseded by  
30 guidelines developed by the health care advisory panel pursuant  
31 to said section. Each health care provider who seeks to provide  
32 services or treatment which are not within any guideline shall  
33 submit to the commission specific justification for the need for  
34 the additional services in the particular case and the commis-  
35 sion shall have the justification reviewed by a health care  
36 professional before authorizing the additional services. The  
37 commission may enter into preferred provider and managed  
38 care agreements.

39 (2) Payment for health care services, rehabilitation services,  
40 durable medical and other goods and other supplies and  
41 medically related items authorized under this subsection may be  
42 made to the injured employee or to the person, firm or corpora-  
43 tion who or which has rendered the treatment or furnished  
44 health care services, rehabilitation services, durable medical or  
45 other goods or other supplies and items, or who has advanced  
46 payment for them, as the commission considers proper, but no  
47 payments or disbursements shall be made or awarded by the  
48 commission unless duly verified statements on forms prescribed  
49 by the commission have been filed with the commission within  
50 six months after the rendering of the treatment or the delivery  
51 of such goods, supplies or items or within ninety days of a  
52 subsequent compensability ruling if a claim is initially rejected:  
53 *Provided*, That no payment under this section shall be made  
54 unless a verified statement shows no charge for or with respect  
55 to the treatment or for or with respect to any of the items  
56 specified in this subdivision has been or will be made against  
57 the injured employee or any other person, firm or corporation.  
58 When an employee covered under the provisions of this chapter  
59 is injured in the course of and as a result of his or her employ-  
60 ment and is accepted for health care services, rehabilitation  
61 services, or the provision of durable medical or other goods or  
62 other supplies or medically related items, the person, firm or

63 corporation rendering the treatment may not make any charge  
64 or charges for the treatment or with respect to the treatment  
65 against the injured employee or any other person, firm or  
66 corporation which would result in a total charge for the treat-  
67 ment rendered in excess of the maximum amount set forth  
68 therefor in the commission's schedule.

69 (3) Any pharmacist filling a prescription for medication for  
70 a workers' compensation claimant shall dispense a generic  
71 brand of the prescribed medication if a generic brand exists. If  
72 a generic brand does not exist, the pharmacist may dispense the  
73 name brand. In the event that a claimant wishes to receive the  
74 name brand medication in lieu of the generic brand, the  
75 claimant may receive the name brand medication but, in that  
76 event, the claimant is personally liable for the difference in  
77 costs between the generic brand medication and the brand name  
78 medication.

79 (4) In the event that a claimant elects to receive health care  
80 services from a health care provider from outside of the state of  
81 West Virginia and if that health care provider refuses to abide  
82 by and accept as full payment the reimbursement made by the  
83 workers' compensation commission pursuant to the schedule of  
84 maximum reasonable amounts of fees authorized by subsection  
85 (a) of this section, with the exceptions noted below, the  
86 claimant is personally liable for the difference between the  
87 scheduled fee and the amount demanded by the out-of-state  
88 health care provider.

89 (A) In the event of an emergency where there is an urgent  
90 need for immediate medical attention in order to prevent the  
91 death of a claimant or to prevent serious and permanent harm  
92 to the claimant, if the claimant receives the emergency care  
93 from an out-of-state health care provider who refuses to accept  
94 as full payment the scheduled amount, the claimant is not  
95 personally liable for the difference between the amount

96 scheduled and the amount demanded by the health care pro-  
97 vider. Upon the claimant's attaining a stable medical condition  
98 and being able to be transferred to either a West Virginia health  
99 care provider or an out-of-state health care provider who has  
100 agreed to accept the scheduled amount of fees as payment in  
101 full, if the claimant refuses to seek the specified alternative  
102 health care providers, he or she is personally liable for the  
103 difference in costs between the scheduled amount and the  
104 amount demanded by the health care provider for services  
105 provided after attaining stability and being able to be trans-  
106 ferred.

107 (B) In the event that there is no health care provider  
108 reasonably near to the claimant's home who is qualified to  
109 provide the claimant's needed medical services who is either  
110 located in the state of West Virginia or who has agreed to  
111 accept as payment in full the scheduled amounts of fees, the  
112 commission, upon application by the claimant, may authorize  
113 the claimant to receive medical services from another health  
114 care provider. The claimant is not personally liable for the  
115 difference in costs between the scheduled amount and the  
116 amount demanded by the health care provider.

117 (b) (1) No employer shall enter into any contracts with any  
118 hospital, its physicians, officers, agents or employees to render  
119 medical, dental or hospital service or to give medical or surgical  
120 attention to any employee for injury compensable within the  
121 purview of this chapter, and no employer shall permit or require  
122 any employee to contribute, directly or indirectly, to any fund  
123 for the payment of such medical, surgical, dental or hospital  
124 service within such hospital for the compensable injury. Any  
125 employer violating this subsection is liable in damages to the  
126 employer's employees as provided in section eight, article two  
127 of this chapter, and any employer or hospital or agent or  
128 employee thereof violating the provisions of this section is  
129 guilty of a misdemeanor and, upon conviction thereof, shall be

130 punished by a fine not less than one hundred dollars nor more  
131 than one thousand dollars or by imprisonment not exceeding  
132 one year, or both.

133 (2) The provisions of this subsection shall not prohibit an  
134 employer from participating in a managed health care plan,  
135 including, but not limited to, a preferred provider organization  
136 or program or a health maintenance organization or managed  
137 care organization or other medical cost containment relation-  
138 ship with the providers of medical, hospital or other health care.  
139 An employer that provides a managed health care plan ap-  
140 proved by the commission for its employees may require an  
141 injured employee to use health care providers authorized by the  
142 managed health care plan for care and treatment of his or her  
143 compensable injuries. If the employer does not provide a  
144 managed health care plan or program, the claimant may select  
145 his or her initial health care provider for treatment of a compen-  
146 sable injury or disease, except as provided under subdivision (3)  
147 of this subsection. If a claimant wishes to change his or her  
148 health care provider and if his or her employer has established  
149 and maintains a managed health care plan, the claimant shall  
150 select a new health care provider through the managed health  
151 care plan. A claimant who has used the providers under the  
152 employer's managed health care plan may select a health care  
153 provider outside the employer's plan for treatment of the  
154 compensable injury or disease if the employee receives written  
155 approval from the commission to do so and the approval is  
156 given pursuant to criteria established by rule of the commission.

157 (3) If the commission enters into an agreement which has  
158 been approved by the board of managers with a managed health  
159 care plan, including, but not limited to, a preferred provider  
160 organization or program, a health maintenance organization or  
161 managed care organization or other health care delivery  
162 organization or organizations or other medical cost containment



163 relationship with the providers of medical, hospital or other  
164 health care, then:

165 (A) If an injured employee's employer does not provide a  
166 managed health care plan approved by the commission for its  
167 employees as described in subdivision (2) of this subsection, the  
168 commission may require the employee to use health care  
169 providers authorized by the commission's managed health care  
170 plan for care and treatment of his or her compensable injuries;  
171 and

172 (B) If a claimant seeks to change his or her initial choice of  
173 health care provider where neither the employer or the commis-  
174 sion had an approved health care management plan at the time  
175 the initial choice was made, and if the claimant's employer does  
176 not provide access to such a plan as part of the employer's  
177 general health insurance benefit, then the claimant shall be  
178 provided with a new health care provider from the commis-  
179 sion's managed health care plan available to him or her.

180 (c) When an injury has been reported to the commission by  
181 the employer without protest, the commission or self-insured  
182 employer may pay, within the maximum amount provided by  
183 schedule established under this section, bills for health care  
184 services without requiring the injured employee to file an  
185 application for benefits.

186 (d) The commission or self-insured employer shall provide  
187 for the replacement of artificial limbs, crutches, hearing aids,  
188 eyeglasses and all other mechanical appliances provided in  
189 accordance with this section which later wear out, or which  
190 later need to be refitted because of the progression of the injury  
191 which caused the devices to be originally furnished, or which  
192 are broken in the course of and as a result of the employee's  
193 employment. The commission or self-insured employer shall

194 pay for these devices, when needed, notwithstanding any time  
195 limits provided by law.

196 (e) No payment shall be made to a health care provider who  
197 is suspended or terminated under the terms of section three-c of  
198 this article except as provided in subsection (c) of said section.

199 (f) The commission may engage in and contract for medical  
200 cost containment programs, pharmacy benefits management  
201 programs, medical case management programs and utilization  
202 review programs. Payments for these programs shall be made  
203 from the workers' compensation fund. Any order issued  
204 pursuant to the program shall be interlocutory in nature until an  
205 objecting party has exhausted all review processes provided for  
206 by the commission.

207 (g) Notwithstanding the provisions of this section, the  
208 commission may establish fee schedules, make payments and  
209 take other actions required or allowed pursuant to article  
210 twenty-nine-d, chapter sixteen 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 and  
3 specialties among health care providers in this state. There shall  
4 be a minimum of five members of the health care advisory  
5 panel who shall receive reasonable compensation for their  
6 services and reimbursement for reasonable actual expenses.  
7 Each member of this panel shall be provided appropriate  
8 professional or other liability insurance, without additional  
9 premium, by the state board of risk and insurance management  
10 created pursuant to article twelve, chapter twenty-nine of this  
11 code. The panel shall:

12 (1) Establish guidelines for the health care which is  
13 reasonably required for the treatment of the various types of

14 injuries and occupational diseases within the meaning of section  
15 three of this article;

16 (2) Establish protocols and procedures for the performance  
17 of examinations or evaluations performed by physicians or  
18 medical examiners pursuant to sections seven-a and eight of  
19 this article;

20 (3) Assist the commission in establishing guidelines for the  
21 evaluation of the care provided by health care providers to  
22 injured employees for purposes of section three-c of this article;

23 (4) Assist the commission in establishing guidelines  
24 regarding the anticipated period of disability for the various  
25 types of injuries pursuant to subsection (b), section seven-a of  
26 this article; and

27 (5) Assist the commission in establishing appropriate  
28 professional review of requests by health care providers to  
29 exceed the guidelines for treatment of injuries and occupational  
30 diseases established pursuant to subdivision (1) of this section.

31 (b) In addition to the requirements of subsection (a) of this  
32 section, on or before the thirty-first day of December, two  
33 thousand three, the board of managers shall promulgate a rule  
34 establishing the process for the medical management of claims  
35 and awards of disability which includes, but is not limited to,  
36 reasonable and standardized guidelines and parameters for  
37 appropriate treatment, expected period of time to reach maxi-  
38 mum medical improvement and range of permanent partial  
39 disability awards for common injuries and diseases or, in the  
40 alternative, which incorporates by reference the medical and  
41 disability management guidelines, plan or program being  
42 utilized by the commission for the medical and disability  
43 management of claims, with the requirements, standards,  
44 parameters and limitations of such guidelines, plan or program

45 having the same force and effect as the rule promulgated in  
46 compliance herewith.

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

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

6 (1) If the commission finds that the health care provider is  
7 regularly providing to injured employees health care that is  
8 excessive, medically unreasonable or unethical, which shall  
9 include abusing the workers' compensation system in the  
10 treatment provided to injured employees or in its billing  
11 practices;

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

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

22 (4) If the commission determines that the health care  
23 provider has been convicted of any crime in relation to his or  
24 her practice, or any felony; or

25 (5) If the commission determines that the health care  
26 provider has made medically unsupported recommendations  
27 regarding a percentage of disability or has prescribed medically

28 unsupported treatment including medication. The rules promul-  
29 gated under this section shall establish criteria for determining  
30 whether recommendations or treatment are medically un-  
31 supported.

32 The executive director shall consult with medical experts,  
33 including the health care advisory panel established pursuant to  
34 section three-b of this article, for purposes of determining  
35 whether a health care provider should be suspended or termi-  
36 nated pursuant to this section.

37 (b) Upon the determination by the executive director that  
38 there is probable cause to believe that a health care provider  
39 should be suspended or terminated pursuant to this section, the  
40 executive director shall provide the health care provider with  
41 written notice stating the nature of the charges against the  
42 health care provider and the time and place of a hearing. Upon  
43 issuance of the notice and due consideration of the executive  
44 director's fiduciary duties, the executive director may immedi-  
45 ately suspend payment to the health care provider pending the  
46 final order of suspension or termination. The health care  
47 provider shall appear to show cause why the health care  
48 provider's right to receive payment under this chapter should  
49 not be suspended or terminated. At the hearing the health care  
50 provider shall be afforded an opportunity to review the evi-  
51 dence, to cross-examine the witnesses, and present testimony  
52 and enter evidence in support of its position. The hearing shall  
53 be conducted in accordance with the provisions of article five,  
54 chapter twenty-nine-a of this code. The hearing may be  
55 conducted by the executive director or a hearing officer  
56 appointed by the executive director. The executive director or  
57 hearing officer has the power to subpoena witnesses, papers,  
58 records, documents and other data and things in connection  
59 with the proceeding under this subsection and to administer  
60 oaths or affirmations in the hearing. If, after reviewing the  
61 record of the hearing, the executive director determines that the

62 right of the health care provider to obtain payment under this  
63 article should be suspended for a specified period of time or  
64 should be permanently terminated, the executive director shall  
65 issue a final order suspending or terminating the right of the  
66 health care provider to obtain payment for services under this  
67 article. The order shall set forth findings of fact and conclusions  
68 of law in support of the decision. The order shall be mailed to  
69 the health care provider by certified mail, return receipt  
70 requested. Any appeal by the health care provider shall be  
71 brought in the circuit court of Kanawha County or in the county  
72 in which the provider's principal place of business is located.  
73 The scope of the court's review of the final order shall be as  
74 provided in section four, article five, chapter twenty-nine-a of  
75 this code. The provider may be suspended or terminated, based  
76 upon the final order of the executive director or hearing officer,  
77 pending final disposition of any appeal. The final order may be  
78 stayed by the circuit court after hearing, but shall not be stayed  
79 in or as a result of any ex parte proceeding. If the health care  
80 provider does not appeal the final order within thirty days, it is  
81 final.

82 (c) No payment shall be made to a health care provider or  
83 to an injured employee for services provided by a health care  
84 provider after the effective date of a final order terminating or  
85 suspending the health care provider: *Provided*, That nothing in  
86 this subsection shall prohibit payment by the executive director  
87 or self-insured employer to a suspended or terminated health  
88 care provider for medical services rendered where the medical  
89 services were rendered to an injured employee in an emergency  
90 situation. The suspended or terminated provider may not make  
91 any charge or charges for any services provided against the  
92 injured employee unless the injured employee, before any  
93 services are rendered, is given notice by the provider in writing  
94 that the provider does not participate in the workers' compensa-  
95 tion program and that the injured employee will be solely  
96 responsible for all payments to the provider and unless the

97 injured employee also signs a written consent, before any  
98 services are rendered, to make payment directly and to waive  
99 any right to reimbursement from the executive director or the  
100 self-insured employer. The written consent and waiver signed  
101 by the injured employee shall be filed by the provider with the  
102 executive director and shall be made a part of the claim file.

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

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

115 (f) A suspended provider may apply for reinstatement at the  
116 end of the term of suspension.

117 (g) The board of managers shall promulgate rules for the  
118 purpose of implementing this section.

**§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, from  
3 time to time, by the commission shall be paid from the fund,  
4 payment to be made to the persons who have furnished the  
5 services and supplies, or to the persons who have advanced  
6 payment for the services and supplies, as the commission may

7 determine proper, in addition to any award made to the em-  
8 ployee's dependents.

9 (b) A funeral director or cemeterian, or any person who  
10 furnished the services and supplies associated with the funeral  
11 or cemetery expenses, or a person who has advanced payment  
12 for the services and supplies, is prohibited from making any  
13 charge or charges against the employee's dependents for funeral  
14 expenses which would result in a total charge for funeral  
15 expenses in excess of the amount fixed by the commission  
16 unless:

17 (1) The person seeking funeral expenses notifies, in writing  
18 and prior to the rendering of any service, the employee's  
19 dependent as to the exact cost of the service and the exact  
20 amount the employee's dependent would be responsible for  
21 paying in excess of the amount fixed by the commission; and

22 (2) The person seeking funeral expenses secures, in writing  
23 and prior to the rendering of any service, consent from the  
24 employee's dependent that he or she will be responsible to  
25 make payment for the amount in excess of the amount fixed by  
26 the commission.

27 (c) Any person who knowingly and willfully seeks or  
28 receives payment of funeral expenses in excess of the amount  
29 fixed by the commission without satisfying both of the require-  
30 ments of subsection (b) of this section is guilty of a misde-  
31 meanor and, upon conviction thereof, shall be fined three  
32 thousand dollars or confined in a county or regional jail for a  
33 definite term of confinement of twelve months, or both.

#### **§23-4-5. Benefits for first three days after injury.**

1 If the period of disability does not last longer than three  
2 days from the day the employee leaves work as the result of the  
3 injury, no award shall be allowed, except the disbursements



4 provided for in the two next preceding sections, but if the  
5 period of disability lasts longer than seven days from the day  
6 the employee leaves work as a result of the injury, an award  
7 shall be allowed for the first three days of such disability.

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

1 Where compensation is due an employee under the provi-  
2 sions of this chapter for personal injury, the compensation shall  
3 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 forth in  
8 section fourteen of this article except for the purpose of  
9 computing temporary total disability benefits for part-time  
10 employees pursuant to the provisions of section six-d of this  
11 article.

12 (b) For all awards made on and after the effective date of  
13 the amendment and reenactment of this section during the year  
14 two thousand three, if the injury causes temporary total disabili-  
15 ty, the employee shall receive during the continuance of the  
16 disability a maximum weekly benefit to be computed on the  
17 basis of sixty-six and two-thirds percent of the average weekly  
18 wage earnings, wherever earned, of the injured employee, at the  
19 date of injury, not to exceed one hundred percent of the average  
20 weekly wage in West Virginia: *Provided*, That in no event shall  
21 an award for temporary total disability be subject to annual  
22 adjustments resulting from changes in the average weekly wage  
23 in West Virginia: *Provided, however*, in the case of a claimant  
24 whose award was granted prior to the effective date of the  
25 amendment and reenactment of this section during the year two  
26 thousand three, the maximum benefit rate shall be the rate  
27 applied under the prior enactment of this subsection which was

28 in effect at the time the injury occurred. The minimum weekly  
29 benefits paid under this subdivision shall not be less than thirty-  
30 three and one-third percent of the average weekly wage in West  
31 Virginia, except as provided in sections six-d and nine of this  
32 article. In no event, however, shall the minimum weekly  
33 benefits exceed the level of benefits determined by use of the  
34 applicable federal minimum hourly wage: *Provided further,*  
35 That any claimant receiving permanent total disability benefits,  
36 permanent partial disability benefits or dependents' benefits  
37 prior to the first day of July, one thousand nine hundred ninety-  
38 four, shall not have his or her benefits reduced based upon the  
39 requirement in this subdivision that the minimum weekly  
40 benefit shall not exceed the applicable federal minimum hourly  
41 wage.

42 (c) Subdivision (b) of this section is limited as follows:  
43 Aggregate award for a single injury causing temporary disabil-  
44 ity shall be for a period not exceeding two hundred eight weeks;  
45 aggregate award for a single injury for which an award of  
46 temporary total disability benefits is made on or after the  
47 effective date of the amendment and reenactment of this section  
48 in the year two thousand three shall be for a period not exceed-  
49 ing one hundred four weeks. Notwithstanding any other  
50 provision of this subdivision to the contrary, no person may  
51 receive temporary total disability benefits under an award for a  
52 single injury for a period exceeding one hundred four weeks  
53 from the effective date of the amendment and reenactment of  
54 this section in the year two thousand three.

55 (d) For all awards of permanent total disability benefits that  
56 are made on or after the second day of February, one thousand  
57 nine hundred ninety-five, including those claims in which a  
58 request for an award was pending before the division or which  
59 were in litigation but not yet submitted for a decision, then  
60 benefits shall be payable until the claimant attains the age  
61 necessary to receive federal old age retirement benefits under

62 the provisions of the Social Security Act, 42 U. S. C. §401 and  
63 402, in effect on the effective date of this section. The claimant  
64 shall be paid benefits so as not to exceed a maximum benefit of  
65 sixty-six and two-thirds percent of the claimant's average  
66 weekly wage earnings, wherever earned, at the time of the date  
67 of injury not to exceed one hundred percent of the average  
68 weekly wage in West Virginia. The minimum weekly benefits  
69 paid under this section shall be as is provided for in subdivision  
70 (b) of this section. In all claims in which an award for perma-  
71 nent total disability benefits was made prior to the second day  
72 of February, one thousand nine hundred ninety-five, the awards  
73 shall continue to be paid at the rate in effect prior to the  
74 effective date of the amendment and reenactment of this section  
75 in the year two thousand three: *Provided*, That the provisions of  
76 sections one through eight, inclusive, article four-a of this  
77 chapter shall be applied thereafter to all prior awards that were  
78 previously subject to its provisions. A single or aggregate  
79 permanent disability of eighty-five percent or more entitles the  
80 employee to a rebuttable presumption of a permanent total  
81 disability for the purpose of paragraph (2), subdivision (n) of  
82 this section: *Provided, however*, That the claimant must also be  
83 at least fifty percent medically impaired upon a whole body  
84 basis or has sustained a thirty-five percent statutory disability  
85 pursuant to the provisions of subdivision (f) of this section. The  
86 presumption may be rebutted if the evidence establishes that the  
87 claimant is not permanently and totally disabled pursuant to  
88 subdivision (n) of this section. Under no circumstances may the  
89 commission grant an additional permanent disability award to  
90 a claimant receiving a permanent total disability award:  
91 *Provided further*, That if any claimant thereafter sustains  
92 another compensable injury and has permanent partial disability  
93 resulting from the injury, the total permanent disability award  
94 benefit rate shall be computed at the highest benefit rate  
95 justified by any of the compensable injuries.

96 (e) (1) For all awards made on or after the effective date of  
97 the amendment and reenactment of this section during the year  
98 two thousand three, if the injury causes permanent disability  
99 less than permanent total disability, the percentage of disability

100 to total disability shall be determined and the award computed  
101 on the basis of four weeks' compensation for each percent of  
102 disability determined at the maximum or minimum benefit rates  
103 as follows: Sixty-six and two-thirds percent of the average  
104 weekly wage earnings, wherever earned, of the injured em-  
105 ployee at the date of injury, not to exceed seventy percent of the  
106 average weekly wage in West Virginia: *Provided*, That in no  
107 event shall an award for permanent partial disability be subject  
108 to annual adjustments resulting from changes in the average  
109 weekly wage in West Virginia: *Provided, however*, That in the  
110 case of a claimant whose award was granted prior to the  
111 effective date of the amendment and reenactment of this section  
112 during the year two thousand three the maximum benefit rate  
113 shall be the rate applied under the prior enactment of this  
114 section which was in effect at the time the injury occurred.

115 (2) If a claimant is released by his or her treating physician  
116 to return to work at the job he or she held before the occupa-  
117 tional injury occurred and if the claimant's preinjury employer  
118 does not offer the preinjury job or a comparable job to the  
119 employee when a position is available to be offered, the award  
120 for the percentage of partial disability shall be computed on the  
121 basis of six weeks of compensation for each percent of disabil-  
122 ity.

123 (3) The minimum weekly benefit under this subdivision  
124 shall be as provided in subdivision (b) of this section for  
125 temporary total disability.

126 (f) If the injury results in the total loss by severance of any  
127 of the members named in this subdivision, the percentage of  
128 disability shall be determined by the percentage of disability,  
129 specified in the following table:

130 The loss of a great toe shall be considered a ten percent  
131 disability.

132       The loss of a great toe (one phalanx) shall be considered a  
133 five percent disability.

134       The loss of other toes shall be considered a four percent  
135 disability.

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

138       The loss of all toes shall be considered a twenty-five  
139 percent disability.

140       The loss of forepart of foot shall be considered a thirty  
141 percent disability.

142       The loss of a foot shall be considered a thirty-five percent  
143 disability.

144       The loss of a leg shall be considered a forty-five percent  
145 disability.

146       The loss of thigh shall be considered a fifty percent  
147 disability.

148       The loss of thigh at hip joint shall be considered a sixty  
149 percent disability.

150       The loss of a little or fourth finger (one phalanx) shall be  
151 considered a three percent disability.

152       The loss of a little or fourth finger shall be considered a five  
153 percent disability.

154       The loss of ring or third finger (one phalanx) shall be  
155 considered a three percent disability.

156       The loss of ring or third finger shall be considered a five  
157 percent disability.

158       The loss of middle or second finger (one phalanx) shall be  
159 considered a three percent disability.

160       The loss of middle or second finger shall be considered a  
161 seven percent disability.

162       The loss of index or first finger (one phalanx) shall be  
163 considered a six percent disability.

164       The loss of index or first finger shall be considered a ten  
165 percent disability.

166       The loss of thumb (one phalanx) shall be considered a  
167 twelve percent disability.

168       The loss of thumb shall be considered a twenty percent  
169 disability.

170       The loss of thumb and index fingers shall be considered a  
171 thirty-two percent disability.

172       The loss of index and middle fingers shall be considered a  
173 twenty percent disability.

174       The loss of middle and ring fingers shall be considered a  
175 fifteen percent disability.

176       The loss of ring and little fingers shall be considered a ten  
177 percent disability.

178       The loss of thumb, index and middle fingers shall be  
179 considered a forty percent disability.

180       The loss of index, middle and ring fingers shall be consid-  
181 ered a thirty percent disability.

182       The loss of middle, ring and little fingers shall be consid-  
183 ered a twenty percent disability.

184       The loss of four fingers shall be considered a thirty-two  
185 percent disability.

186       The loss of hand shall be considered a fifty percent disabil-  
187 ity.

188       The loss of forearm shall be considered a fifty-five percent  
189 disability.

190       The loss of arm shall be considered a sixty percent disabil-  
191 ity.

192       The total and irrecoverable loss of the sight of one eye shall  
193 be considered a thirty-three percent disability. For the partial  
194 loss of vision in one or both eyes, the percentages of disability  
195 shall be determined by the commission, using as a basis the  
196 total loss of one eye.

197       The total and irrecoverable loss of the hearing of one ear  
198 shall be considered a twenty-two and one-half percent disabil-  
199 ity. The total and irrecoverable loss of hearing of both ears shall  
200 be considered a fifty-five percent disability.

201       For the partial loss of hearing in one or both ears, the  
202 percentage of disability shall be determined by the commission,  
203 using as a basis the total loss of hearing in both ears.

204       If a claimant sustains a compensable injury which results in  
205 the total loss by severance of any of the bodily members named  
206 in this subdivision or dies from sickness or noncompensable  
207 injury before the commission makes the proper award for the  
208 injury, the commission shall make the award to the claimant's  
209 dependents as defined in this chapter, if any; the payment to be  
210 made in the same installments that would have been paid to  
211 claimant if living: *Provided*, That no payment shall be made to  
212 any surviving spouse of the claimant after his or her remarriage  
213 and that this liability shall not accrue to the estate of the

214 claimant and is not subject to any debts of, or charges against,  
215 the estate.

216 (g) If a claimant to whom has been made a permanent  
217 partial award dies from sickness or noncompensable injury, the  
218 unpaid balance of the award shall be paid to claimant's depend-  
219 ents as defined in this chapter, if any; the payment to be made  
220 in the same installments that would have been paid to claimant  
221 if living: *Provided*, That no payment shall be made to any  
222 surviving spouse of the claimant after his or her remarriage, and  
223 that this liability shall not accrue to the estate of the claimant  
224 and is not subject to any debts of, or charges against, such  
225 estate.

226 (h) For the purposes of this chapter, a finding of the  
227 occupational pneumoconiosis board has the force and effect of  
228 an award.

229 (i) For the purposes of this chapter, with the exception of  
230 those injuries provided for in subdivision (f) of this section and  
231 in section six-b of this article, the degree of permanent disabili-  
232 ty other than permanent total disability shall be determined  
233 exclusively by the degree of whole body medical impairment  
234 that a claimant has suffered. For those injuries provided for in  
235 subdivision (f) of this section and section six-b of this article,  
236 the degree of disability shall be determined exclusively by the  
237 provisions of said subdivision and said section. The occupa-  
238 tional pneumoconiosis board created pursuant to section eight-a  
239 of this article shall premise its decisions on the degree of  
240 pulmonary function impairment that claimants suffer solely  
241 upon whole body medical impairment. The workers' compensa-  
242 tion commission shall adopt standards for the evaluation of  
243 claimants and the determination of a claimant's degree of whole  
244 body medical impairment. Once the degree of medical impair-  
245 ment has been determined, that degree of impairment shall be  
246 the degree of permanent partial disability that shall be awarded



247 to the claimant. This subdivision is applicable to all injuries  
248 incurred and diseases with a date of last exposure on or after the  
249 second day of February, one thousand nine hundred ninety-five,  
250 to all applications for an award of permanent partial disability  
251 made on and after that date and to all applications for an award  
252 of permanent partial disability that were pending before the  
253 commission or pending in litigation but not yet submitted for  
254 decision on and after that date. The prior provisions of this  
255 subdivision remain in effect for all other claims.

256 (j) From a list of names of seven persons submitted to the  
257 executive director by the health care advisory panel, the  
258 executive director shall appoint an interdisciplinary examining  
259 board consisting of five members to evaluate claimants,  
260 including by examination if the board elects. The board shall be  
261 composed of three qualified physicians with specialties and  
262 expertise qualifying them to evaluate medical impairment and  
263 two vocational rehabilitation specialists who are qualified to  
264 evaluate the ability of a claimant to perform gainful employ-  
265 ment with or without retraining. One member of the board shall  
266 be designated annually as chairperson by the executive director.  
267 The term of office of each member of the board shall be six  
268 years and until his or her successor has been appointed and has  
269 qualified. Any member of the board may be appointed to any  
270 number of terms. Any two physician members and one voca-  
271 tional rehabilitation specialist member shall constitute a  
272 quorum for the transaction of business. The executive director,  
273 from time to time, shall fix the compensation to be paid to each  
274 member of the board, and the members are also entitled to  
275 reasonable and necessary traveling and other expenses incurred  
276 while actually engaged in the performance of their duties. The  
277 board shall perform the duties and responsibilities assigned by  
278 the provisions of this chapter, consistent with the administrative  
279 policies developed by the executive director with the approval  
280 of the board of managers.

281 (1) The executive director shall establish requirements for  
282 the proper completion and support for an application for  
283 permanent total disability benefits within an existing or a new  
284 rule no later than the first day of January, two thousand four.  
285 Upon adoption of the rule by the board of managers, no issue of  
286 permanent total disability may be referred to the interdisciplin-  
287 ary examining board unless a properly completed and supported  
288 application for permanent total disability benefits has been first  
289 filed with the commission. Prior to the referral of any issue to  
290 the interdisciplinary examining board, the commission shall  
291 conduct examinations of the claimant that it finds necessary and  
292 obtain all pertinent records concerning the claimant's medical  
293 history and reports of examinations and forward them to the  
294 board at the time of the referral. The commission shall provide  
295 adequate notice to the employer of the filing of the request for  
296 a permanent total disability award and the employer shall be  
297 granted an appropriate period in which to respond to the  
298 request. The claimant and the employer may furnish all  
299 pertinent information to the board and shall furnish to the board  
300 any information requested by the board. The claimant and the  
301 employer may each submit no more than one report and opinion  
302 regarding each issue present in a given claim. The employer  
303 may have the claimant examined by medical specialists and  
304 vocational rehabilitation specialists: *Provided*, That the  
305 employer is entitled to only one examination on each issue  
306 present in a given claim. Any additional examinations must be  
307 approved by the commission and shall be granted only upon a  
308 showing of good cause. The reports from all employer-con-  
309 ducted examinations must be filed with the board and served  
310 upon the claimant. The board may request that those persons  
311 who have furnished reports and opinions regarding a claimant  
312 provide it with additional information considered necessary by  
313 the board. Both the claimant and the employer, as well as the  
314 commission, may submit reports from experts challenging or  
315 supporting the other reports in the record regardless of whether

316 or not the expert examined the claimant or relied solely upon  
317 the evidence of record.

318 (2) If the board or a quorum of the board elects to examine  
319 a claimant, the individual members shall conduct any examina-  
320 tions that are pertinent to each of their specialties. If a claim  
321 presents an issue beyond the expertise of the board, the board  
322 may obtain advice or evaluations by other specialists. In  
323 addition, if the board of managers determines that the number  
324 of applications pending before the interdisciplinary examining  
325 board has exceeded the level at which the board can review and  
326 make recommendations within a reasonable time, the board of  
327 managers may authorize the executive director to appoint any  
328 additional members to the board that are necessary to reduce the  
329 backlog of applications. The additional members shall be  
330 recommended by the health care advisory panel. The executive  
331 director may make any appointments he or she chooses from  
332 the recommendations. The additional board members shall not  
333 serve a set term but shall serve until the board of managers  
334 determines that the number of pending applications has been  
335 reduced to an acceptable level.

336 (3) Referrals to the board shall be limited to matters related  
337 to the determination of permanent total disability under the  
338 provisions of subdivision (n) of this section and to questions  
339 related to medical cost containment, utilization review deci-  
340 sions and managed care decisions arising under section three of  
341 this article.

342 (4) In the event the board members elect to examine a  
343 claimant, the board shall prepare a report stating the tests,  
344 examinations, procedures and other observations that were  
345 made, the manner in which each was conducted and the results  
346 of each. The report shall state the findings made by the board  
347 and the reasons for the findings. Copies of the reports of all  
348 examinations made by the board shall be served upon the

349 parties and the commission. Each shall be given an opportunity  
350 to respond in writing to the findings and conclusions stated in  
351 the reports.

352 (5) The board shall state its initial recommendations to the  
353 commission in writing with an explanation for each recommen-  
354 dation setting forth the reasons for each. The recommendations  
355 shall be served upon the parties and the commission and each  
356 shall be afforded a thirty-day opportunity to respond in writing  
357 to the board regarding the board's recommendations. The board  
358 shall review any responses and issue its final recommendations.  
359 The final recommendations shall be effectuated by the entry of  
360 an appropriate order by the commission. For all awards for  
361 permanent total disability where the claim was filed on or after  
362 the effective date of the amendment and reenactment of this  
363 section in the year two thousand three, the commission shall  
364 establish the date of onset of the claimant's permanent total  
365 disability as the date when a properly completed and supported  
366 application for permanent total disability benefits as prescribed  
367 in subdivision (1) of this subsection that results in a finding of  
368 permanent total disability was filed with the commission:  
369 *Provided*, That upon notification of the commission by a  
370 claimant or his or her representative that the claimant seeks to  
371 be evaluated for permanent total disability, the commission  
372 shall send the claimant or his or her representative the proper  
373 application form. The commission shall set time limits for the  
374 return of the application. A properly completed and supported  
375 application returned within the time limits set by the commis-  
376 sion shall be treated as if received on the date the commission  
377 was notified the claimant was seeking evaluation for permanent  
378 total disability: *Provided, however*, That notwithstanding any  
379 other provision of this section to the contrary, the onset date  
380 may not be sooner than the date upon which the claimant meets  
381 the percentage thresholds of prior permanent partial disability  
382 that are established by subsection (n) of this section as a

383 prerequisite to the claimant's qualification for consideration for  
384 a permanent total disability award.

385 (6) Except as noted below, objections pursuant to section  
386 one, article five of this chapter to any order shall be limited in  
387 scope to matters within the record developed before the work-  
388 ers' compensation commission and the board and shall further  
389 be limited to the issue of whether the board properly applied the  
390 standards for determining medical impairment, if applicable,  
391 and the issue of whether the board's findings are clearly wrong  
392 in view of the reliable, probative and substantial evidence on  
393 the whole record. If either party contends that the claimant's  
394 condition has changed significantly since the review conducted  
395 by the board, the party may file a motion with the administra-  
396 tive law judge, together with a report supporting that assertion.  
397 Upon the filing of the motion, the administrative law judge  
398 shall cause a copy of the report to be sent to the examining  
399 board asking the board to review the report and provide  
400 comments if the board chooses within sixty days of the board's  
401 receipt of the report. The board may either supply comments or,  
402 at the board's discretion, request that the claim be remanded to  
403 the board for further review. If remanded, the claimant is not  
404 required to submit to further examination by the employer's  
405 medical specialists or vocational rehabilitation specialists.  
406 Following the remand, the board shall file its recommendations  
407 with the administrative law judge for his or her review. If the  
408 board elects to respond with comments, the comments shall be  
409 filed with the administrative law judge for his or her review.  
410 Following the receipt of either the board's recommendations or  
411 comments, the administrative law judge shall issue a written  
412 decision ruling upon the asserted change in the claimant's  
413 condition. No additional evidence may be introduced during the  
414 review of the objection before the office of judges or elsewhere  
415 on appeal: *Provided*, That each party and the commission may  
416 submit one written opinion on each issue pertinent to a given  
417 claim based upon a review of the evidence of record either

418 challenging or defending the board's findings and conclusions.  
419 Thereafter, based upon the evidence of record, the administra-  
420 tive law judge shall issue a written decision containing his or  
421 her findings of fact and conclusions of law regarding each issue  
422 involved in the objection.

423 (k) Compensation payable under any subdivision of this  
424 section shall not exceed the maximum nor be less than the  
425 weekly benefits specified in subdivision (b) of this section.

426 (l) Except as otherwise specifically provided in this chapter,  
427 temporary total disability benefits payable under subdivision (b)  
428 of this section shall not be deductible from permanent partial  
429 disability awards payable under subdivision (e) or (f) of this  
430 section. Compensation, either temporary total or permanent  
431 partial, under this section shall be payable only to the injured  
432 employee and the right to the compensation shall not vest in his  
433 or her estate, except that any unpaid compensation which would  
434 have been paid or payable to the employee up to the time of his  
435 or her death, if he or she had lived, shall be paid to the depend-  
436 ents of the injured employee if there are any dependents at the  
437 time of death.

438 (m) The following permanent disabilities shall be conclu-  
439 sively presumed to be total in character:

440 Loss of both eyes or the sight thereof.

441 Loss of both hands or the use thereof.

442 Loss of both feet or the use thereof.

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

444 (n) (1) Other than for those injuries specified in subdivision  
445 (m) of this section, in order to be eligible to apply for an award  
446 of permanent total disability benefits for all injuries incurred

447 and all diseases, including occupational pneumoconiosis,  
448 regardless of the date of last exposure, on and after the effective  
449 date of the amendment and reenactment of this section during  
450 the year two thousand three a claimant: (A) Must have been  
451 awarded the sum of fifty percent in prior permanent partial  
452 disability awards; (B) must have suffered a single occupational  
453 injury or disease which results in a finding by the commission  
454 that the claimant has suffered a medical impairment of fifty  
455 percent; or (C) has sustained a thirty-five percent statutory  
456 disability pursuant to the provisions of subdivision (f) of this  
457 section. Upon filing an application, the claim will be reevaluated  
458 by the examining board pursuant to subdivision (i) of this  
459 section to determine if the claimant has suffered a whole body  
460 medical impairment of fifty percent or more resulting from  
461 either a single occupational injury or occupational disease or a  
462 combination of occupational injuries and occupational diseases  
463 or has sustained a thirty-five percent statutory disability  
464 pursuant to the provisions of subdivision (f) of this section. A  
465 claimant whose prior permanent partial disability awards total  
466 eighty-five percent or more shall also be examined by the board  
467 and must be found to have suffered a whole body medical  
468 impairment of fifty percent in order for his or her request to be  
469 eligible for further review. The examining board shall review  
470 the claim as provided for in subdivision (j) of this section. If the  
471 claimant has not suffered whole body medical impairment of at  
472 least fifty percent or has sustained a thirty-five percent statutory  
473 disability pursuant to the provisions of subdivision (f) of this  
474 section, the request shall be denied. Upon a finding that the  
475 claimant has a fifty percent whole body medical impairment or  
476 has sustained a thirty-five percent statutory disability pursuant  
477 to the provisions of subdivision (f) of this section, the review of  
478 the application continues as provided for in the following  
479 paragraph of this subdivision. Those claimants whose prior  
480 permanent partial disability awards total eighty-five percent or  
481 more and who have been found to have a whole body medical

482 impairment of at least fifty percent or have sustained a thirty-  
483 five percent statutory disability pursuant to the provisions of  
484 subdivision (f) of this section are entitled to the rebuttable  
485 presumption created pursuant to subdivision (d) of this section  
486 for the remaining issues in the request.

487       (2) For all awards made on or after the effective date of the  
488 amendment and reenactment of this section during the year two  
489 thousand three, disability which renders the injured employee  
490 unable to engage in substantial gainful activity requiring skills  
491 or abilities which can be acquired or which are comparable to  
492 those of any gainful activity in which he or she has previously  
493 engaged with some regularity and over a substantial period of  
494 time shall be considered in determining the issue of total  
495 disability. The comparability of preinjury income to  
496 post-disability income will not be a factor in determining  
497 permanent total disability. Geographic availability of gainful  
498 employment within a driving distance of seventy-five miles  
499 from the residence of the employee or within the distance from  
500 the residence of the employee to his or her preinjury employ-  
501 ment, whichever is greater, will be a factor in determining  
502 permanent total disability. For any permanent total disability  
503 award made after the amendment and reenactment of this  
504 section in the year two thousand three, permanent total disabili-  
505 ty benefits shall cease at age seventy years. In addition, the  
506 vocational standards adopted pursuant to subsection (m),  
507 section seven, article three of this chapter shall be considered  
508 once they are effective.

509       (3) In the event that a claimant, who has been found to have  
510 at least a fifty percent whole body medical impairment or has  
511 sustained a thirty-five percent statutory disability pursuant to  
512 the provisions of subdivision (f) of this section, is denied an  
513 award of permanent total disability benefits pursuant to this  
514 subdivision and accepts and continues to work at a lesser  
515 paying job than he or she previously held, the claimant is



516 eligible, notwithstanding the provisions of section nine of this  
517 article, to receive temporary partial rehabilitation benefits for  
518 a period of four years. The benefits shall be paid at the level  
519 necessary to ensure the claimant's receipt of the following  
520 percentages of the average weekly wage earnings of the  
521 claimant at the time of injury calculated as provided in this  
522 section and sections six-d and fourteen of this article:

523 (A) Eighty percent for the first year;

524 (B) Seventy percent for the second year;

525 (C) Sixty percent for the third year; and

526 (D) Fifty percent for the fourth year: *Provided*, That in no  
527 event shall the benefits exceed one hundred percent of the  
528 average weekly wage in West Virginia. In no event shall the  
529 benefits be subject to the minimum benefit amounts required by  
530 the provisions of subdivision (b) of this section.

531 (4) Notwithstanding any provision of this subsection,  
532 subsection (d) of this section or any other provision of this code  
533 to the contrary, on any claim filed on or after the effective date  
534 of the amendment and reenactment of this section in the year  
535 two thousand three:

536 (A) No percent of whole body medical impairment existing  
537 as the result of carpal tunnel syndrome for which a claim has  
538 been made under this chapter may be included in the aggrega-  
539 tion of permanent disability under the provisions of this  
540 subsection or subsection (d) of this section; and

541 (B) No percent of whole body medical impairment existing  
542 as the result of any occupational disease, the diagnosis of which  
543 is based solely upon symptoms rather than specific, objective  
544 and measurable medical findings, and for which a claim has  
545 been made under this chapter may be included in the aggrega-

546 tion of permanent disability under the provisions of this  
547 subsection or subsection (d) of this section.

548 (o) To confirm the ongoing permanent total disability status  
549 of the claimant, the commission may elect to have any recipient  
550 of a permanent total disability award undergo one independent  
551 medical examination during each of the first five years that the  
552 permanent total disability award is paid and one independent  
553 medical examination during each three-year period thereafter  
554 until the claimant reaches the age of seventy years: *Provided,*  
555 That the commission may elect to have any recipient of a  
556 permanent total disability award under the age of fifty years  
557 undergo one independent medical examination during each year  
558 that the permanent total disability award is paid until the  
559 recipient reaches the age of fifty years, and thereafter one  
560 independent medical examination during each three-year period  
561 thereafter until 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 to  
2 occupational pneumoconiosis, as defined in section one of this  
3 article, the percentage of permanent disability is determined by  
4 the degree of medical impairment that is found by the occupa-  
5 tional pneumoconiosis board. The commission shall enter an  
6 order setting forth the findings of the occupational pneumoconi-  
7 osis board with regard to whether the claimant has occupational  
8 pneumoconiosis and the degree of medical impairment, if any,  
9 resulting therefrom. That order is the final decision of the  
10 commission for purposes of section one, article five of this  
11 chapter. If a decision is objected to, the office of judges shall  
12 affirm the decision of the occupational pneumoconiosis board  
13 made following hearing unless the decision is clearly wrong in

14 view of the reliable, probative and substantial evidence on the  
15 whole record. Compensation is paid therefor in the same  
16 manner and at the same rate as is provided for permanent  
17 disability under the provisions of subdivisions (d), (e), (g), (h),  
18 (i), (j), (k), (m) and (n), section six of this article: *Provided*,  
19 That for any employee who applies for occupational pneumoco-  
20 niosis benefits whose award was granted on or after the  
21 effective date of the amendment and reenactment of this section  
22 during the year two thousand three, there shall be no permanent  
23 partial disability awarded based solely upon a diagnosis of  
24 occupational pneumoconiosis, it being the intent of the Legisla-  
25 ture to eliminate any permanent partial disability awards for  
26 occupational pneumoconiosis without a specific finding of  
27 measurable impairment.

28 If the employee dies from occupational pneumoconiosis,  
29 the benefits shall be as provided for in section ten of this article;  
30 as to the benefits sections eleven to fourteen, inclusive, of this  
31 article apply.

32 In cases of permanent disability or death due to occupa-  
33 tional pneumoconiosis, as defined in section one of this article,  
34 accompanied by active tuberculosis of the lungs, compensation  
35 shall be payable as for disability or death due to occupational  
36 pneumoconiosis alone.

37 The provisions of section sixteen, article four of this  
38 chapter and sections two, three, four and five, article five of this  
39 chapter providing for the further adjustment of claims are  
40 applicable to the claim of any claimant who receives a perma-  
41 nent partial disability award for occupational 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 hazardous

3 noise in the course of and resulting from employment, the  
4 degree of permanent partial disability, if any, shall be deter-  
5 mined in accordance with the provisions of this section and  
6 awards made in accordance with the provisions of section six of  
7 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 the  
14 injured ear and the total shall be divided by four to ascertain the  
15 average decibel loss;

16 (2) The percent of monaural hearing impairment for the  
17 injured ear shall be calculated by multiplying by one and six-  
18 tenths percent the difference by which the aforementioned  
19 average decibel loss exceeds twenty-seven and one-half  
20 decibels, up to a maximum of one hundred percent hearing  
21 impairment, which maximum is reached at ninety decibels; and

22 (3) The percent of monaural hearing impairment obtained  
23 shall be multiplied by twenty-two and one-half to ascertain the  
24 degree of permanent partial disability.

25 (c) The percent of permanent partial disability for a binaural  
26 hearing loss shall be computed in the following manner:

27 (1) The measured decibel loss of hearing due to injury at  
28 the sound frequencies of five hundred, one thousand, two  
29 thousand and three thousand hertz is determined for each ear  
30 and the total for each ear shall be divided by four to ascertain  
31 the average decibel loss for each ear;

32       (2) The percent of hearing impairment for each ear is  
33 calculated by multiplying by one and six-tenths percent the  
34 difference by which the aforementioned average decibel loss  
35 exceeds twenty-seven and one-half decibels, up to a maximum  
36 of one hundred percent hearing impairment, which maximum  
37 is reached at ninety decibels;

38       (3) The percent of binaural hearing impairment shall be  
39 calculated by multiplying the smaller percentage (better ear) by  
40 five, adding this figure to the larger percentage (poorer ear) and  
41 dividing the sum by six; and

42       (4) The percent of binaural hearing impairment obtained  
43 shall be multiplied by fifty-five to ascertain the degree of  
44 permanent partial disability.

45       (d) No permanent partial disability benefits shall be granted  
46 for tinnitus, psychogenic hearing loss, recruitment or hearing  
47 loss above three thousand hertz.

48       (e) An additional amount of permanent partial disability  
49 shall be granted for impairment of speech discrimination, if  
50 any, to determine the additional amount for binaural impair-  
51 ment, the percentage of speech discrimination in each ear shall  
52 be added together and the result divided by two to calculate the  
53 average percentage of speech discrimination, and the permanent  
54 partial disability shall be ascertained by reference to the  
55 percentage of permanent partial disability in the table below on  
56 the line with the percentage of speech discrimination obtained.  
57 To determine the additional amount for monaural impairment,  
58 the permanent partial disability shall be ascertained by refer-  
59 ence to the percentage of permanent partial disability in the  
60 table below on the line with the percentage of speech discrimi-  
61 nation in the injured ear.

62

**TABLE**

63

64 **% of Speech Discrimination****% of Permanent  
Partial Disability**

65

90% and up to and including 100%

0%

66

80% and up to but not including 90%

1%

67

70% and up to but not including 80%

3%

68

60% and up to but not including 70%

4%

69

0% and up to but not including 60%

5%

70

(f) No temporary total disability benefits shall be granted

71

for noise-induced hearing loss.

72

(g) An application for benefits alleging a noise-induced

73

hearing loss shall set forth the name of the employer or employ-

74

ers and the time worked for each. The commission shall

75

allocate to and divide any charges resulting from the claim

76

among the employers with whom the claimant sustained

77

exposure to hazardous noise for as much as sixty days during

78

the period of three years immediately preceding the date of last

79

exposure. The allocation is based upon the time of exposure

80

with each employer. In determining the allocation, the commis-

81

sion shall consider all the time of employment by each em-

82

ployer during which the claimant was exposed and not just the

83

time within the three-year period, under the same allocation as

84

is applied in occupational pneumoconiosis cases.

85

(h) The commission shall provide, consistent with current

86

practice, for prompt referral the claims for evaluation, for all

87

medical reimbursement and for prompt authorization of hearing

88

enhancement devices.

89

(i) The provisions of this section and the amendments to

90

section six of this article insofar as applicable to permanent

91

partial disabilities for hearing loss are operative as to any claim

92

filed after thirty days from the effective date of this section.

**§23-4-6d. Benefits payable to part-time employees.**

1 (a) For purposes of this section, a part-time employee  
2 means an employee who, at the date of injury, is customarily  
3 employed twenty-five hours per week or less on a regular basis  
4 and is classified by the employer as a part-time employee:  
5 *Provided*, That the term “part-time employee” shall not include  
6 an employee who regularly works more than twenty-five hours  
7 per week for the employer, nor shall it include an employee  
8 who regularly works for more than one employer and whose  
9 regular combined working hours total more than twenty-five  
10 hours per week when that employee is rendered unable to  
11 perform the duties of his or her employment as a result of the  
12 injury, nor shall it include any employee in the construction  
13 industry who works less than twenty-five hours per week.

14 (b) For purposes of establishing temporary total disability  
15 weekly benefits pursuant to subdivision (b), section six of this  
16 article for part-time employees, the “average weekly wage  
17 earnings, wherever earned, of the injured person at the date of  
18 injury” shall be computed based upon the best average weekly  
19 gross pay, wherever earned, which is received by the employee  
20 during the best quarter of wages out of the preceding four  
21 quarters of wages as reported to the commission pursuant to  
22 subsection (b), section two, article two of this chapter: *Pro-*  
23 *vided*, That for part-time employees who have been employed  
24 less than two months but more than one week prior to the date  
25 of injury or any employee whose wages have not yet been  
26 reported to the commission, the average weekly wage earnings  
27 shall be calculated based upon the average gross earnings in the  
28 weeks actually worked: *Provided, however*, That for part-time  
29 employees who have been employed one week or less, the  
30 average weekly wage earnings shall be calculated based upon  
31 the average weekly wage prevailing for the same or similar  
32 part-time employment at the time of injury except that when an  
33 employer has agreed to pay a certain hourly wage to a part-time

34 employee, the average weekly wage shall be computed by  
35 multiplying the hourly wage by the regular numbers of hours  
36 contracted to be worked each week: *Provided further*, That  
37 notwithstanding any provision of this article to the contrary, no  
38 part-time employee shall receive temporary total disability  
39 benefits greater than his or her average weekly wage earnings  
40 as so calculated.

41 (c) Notwithstanding any other provisions of this article to  
42 the contrary, benefits payable to a part-time injured employee  
43 for any permanent disability shall be computed and paid on the  
44 same basis as if the injured employee is not a part-time em-  
45 ployee within the meaning of this section.

**§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 system  
3 established by this chapter are to provide benefits to an injured  
4 claimant promptly and to effectuate his or her return to work at  
5 the earliest possible time; that the prompt dissemination of  
6 medical information to the commission and employer as to  
7 diagnosis, treatment and recovery is essential if these two  
8 objectives are to be achieved; that claimants are increasingly  
9 burdened with the task of contacting their treating physicians to  
10 request the furnishing of detailed medical information to the  
11 commission and their employers; that the commission is  
12 increasingly burdened with the administrative responsibility of  
13 providing copies of medical reports to the employer involved,  
14 whereas in other states the employer can obtain the necessary  
15 medical information direct from the treating physician; that  
16 much litigation is occasioned in this state because of a lack of  
17 medical information having been received by the employer as  
18 to the continuing disability of a claimant; and that detailed



19 narrative reports from the treating physician are often necessary  
20 in order for the commission, the claimant's representatives and  
21 the employer to evaluate a claim and determine whether  
22 additional or different treatment is indicated.

23 (b) In view of the foregoing findings, a claimant irrevocably  
24 agrees by the filing of his or her application for benefits that  
25 any physician may release to and orally discuss with the  
26 claimant's employer, or its representative, or with a representa-  
27 tive of the commission, from time to time, the claimant's  
28 medical history and any medical reports pertaining to the  
29 occupational injury or disease and to any prior injury or disease  
30 of the portion of the claimant's body to which a medical  
31 impairment is alleged containing detailed information as to the  
32 claimant's condition, treatment, prognosis and anticipated  
33 period of disability and dates as to when the claimant will reach  
34 or has reached his or her maximum degree of improvement or  
35 will be or was released to return to work. For the exclusive  
36 purposes of this chapter, the patient-physician privilege of  
37 confidentiality is waived with regard to the physician's provid-  
38 ing this medical information to the commission, the employer  
39 or to the employer's representative. Whenever a copy of any  
40 medical report is obtained by the employer or its representative  
41 and the physician has not also forwarded a copy of the medical  
42 report to the commission, the employer shall forward a copy of  
43 the medical report to the commission within ten days from the  
44 date the employer received the medical report from the physi-  
45 cian.

**§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical 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 injured  
2 claimants should receive the type of treatment needed as  
3 promptly as possible; that overpayments of benefits with the  
4 resultant hardship created by the requirement of repayment  
5 should be minimized; and that to achieve these two objectives  
6 it is essential that the commission establish and operate a  
7 systematic program for the monitoring of injury claims where  
8 the disability continues longer than might ordinarily be ex-  
9 pected.

10 (b) In view of the foregoing findings, the commission, in  
11 consultation with the health care advisory panel, shall establish  
12 guidelines as to the anticipated period of disability for the  
13 various types of injuries. Each injury claim in which temporary  
14 total disability continues beyond the anticipated period of  
15 disability established for the injury involved shall be reviewed  
16 by the commission. If satisfied, after reviewing the medical  
17 evidence, that the claimant would not benefit by an independent  
18 medical evaluation, the commission shall mark the claim file  
19 accordingly and shall diary the claim file as to the next date for  
20 required review which shall not exceed sixty days. If the  
21 commission concludes that the claimant might benefit by an  
22 independent medical evaluation, the commission shall proceed  
23 as specified in subsections (d) and (e) of this section.

24 (c) When the authorized treating physician concludes that  
25 the claimant has either reached his or her maximum degree of  
26 improvement or is ready for disability evaluation, or when the  
27 claimant has returned to work, the authorized treating physician  
28 may recommend a permanent partial disability award for  
29 residual impairment relating to and resulting from the compen-  
30 sable injury, and the following provisions govern and control:

31 (1) If the authorized treating physician recommends a  
32 permanent partial disability award of fifteen percent or less, the  
33 commission shall enter an award of permanent partial disability

34 benefits based upon the recommendation and all other available  
35 information. The claimant's entitlement to temporary total  
36 disability benefits ceases upon the entry of the award unless  
37 previously terminated under the provisions of subsection (e) of  
38 this section.

39 (2) If, however, the authorized treating physician recom-  
40 mends a permanent partial disability award in excess of fifteen  
41 percent, or recommends a permanent total disability award, the  
42 claimant's entitlement to temporary total disability benefits  
43 ceases upon the receipt by the commission of the medical  
44 report. The commission shall refer the claimant to a physician  
45 or physicians of the commission's selection for independent  
46 evaluation prior to the entry of a permanent disability award:  
47 *Provided*, That unless the claimant has returned to work, the  
48 claimant shall thereupon receive benefits which shall be at the  
49 permanent partial disability rate as provided in subdivision (e),  
50 section six of this article until the entry of a permanent disabili-  
51 ty award or until the claimant returns to work. The amount of  
52 benefits paid prior to the receipt of the independent evaluation  
53 report shall be considered and determined to be payment of the  
54 permanent disability award granted, if any. In the event that  
55 benefits actually paid exceed the amount granted by the  
56 permanent partial disability award, the claimant is entitled to no  
57 further benefits by the award and the excess paid shall be an  
58 overpayment. For all awards made or nonawarded partial  
59 benefits paid the commission or self-insured employer may  
60 only recover the amount of overpaid benefits or expenses by  
61 withholding, in whole or in part, future disability benefits  
62 payable to the individual in the same or other claims and credit  
63 the amount against the overpayment until it is repaid in full.

64 (d) When the commission concludes that an independent  
65 medical evaluation is indicated, or that a claimant may be ready  
66 for disability evaluation in accordance with other provisions of  
67 this chapter, the commission shall refer the claimant to a

68 physician or physicians of the commission's selection for  
69 examination and evaluation. If the physician or physicians  
70 selected recommend continued, additional or different treat-  
71 ment, the recommendation shall be relayed to the claimant and  
72 the claimant's treating physician and the recommended  
73 treatment may be authorized by the commission.

74 (e) Notwithstanding any provision in subsection (c) of this  
75 section, the commission shall enter a notice suspending the  
76 payment of temporary total disability benefits but providing a  
77 reasonable period of time during which the claimant may  
78 submit evidence justifying the continued payment of temporary  
79 total disability benefits when:

80 (1) The physician or physicians selected by the commission  
81 conclude that the claimant has reached his or her maximum  
82 degree of improvement;

83 (2) When the authorized treating physician advises the  
84 commission that the claimant has reached his or her maximum  
85 degree of improvement or that he or she is ready for disability  
86 evaluation and when the authorized treating physician has not  
87 made any recommendation with respect to a permanent  
88 disability award as provided in subsection (c) of this section;

89 (3) When other evidence submitted to the commission  
90 justifies a finding that the claimant has reached his or her  
91 maximum degree of improvement; or

92 (4) When other evidence submitted or otherwise obtained  
93 justifies a finding that the claimant has engaged or is engaging  
94 in abuse, including, but not limited to, physical activities  
95 inconsistent with his or her compensable workers' compensa-  
96 tion injury.

97 In all cases, a finding by the commission that the claimant  
98 has reached his or her maximum degree of improvement

99 terminates the claimant's entitlement to temporary total  
100 disability benefits regardless of whether the claimant has been  
101 released to return to work. Under no circumstances shall a  
102 claimant be entitled to receive temporary total disability  
103 benefits either beyond the date the claimant is released to return  
104 to work or beyond the date he or she actually returns to work.

105       In the event that the medical or other evidence indicates  
106 that claimant has a permanent disability, unless he or she has  
107 returned to work, the claimant shall thereupon receive benefits  
108 which shall be at the permanent partial disability rate as  
109 provided in subdivision (e), section six of this article until entry  
110 of a permanent disability award, pursuant to an evaluation by a  
111 physician or physicians selected by the commission, or until the  
112 claimant returns to work. The amount of benefits shall be  
113 considered and determined to be payment of the permanent  
114 disability award granted, if any. In the event that benefits  
115 actually paid exceed the amount granted under the permanent  
116 disability award, the claimant is entitled to no further benefits  
117 by the order.

118       (f) Notwithstanding the anticipated period of disability  
119 established pursuant to the provisions of subsection (b) of this  
120 section, whenever in any claim temporary total disability  
121 continues longer than one hundred twenty days from the date of  
122 injury (or from the date of the last preceding examination and  
123 evaluation pursuant to the provisions of this subsection or  
124 pursuant to the directions of the commission under other  
125 provisions of this chapter), the commission shall refer the  
126 claimant to a physician or physicians of the commission's  
127 selection for examination and evaluation in accordance with the  
128 provisions of subsection (d) of this section and the provisions  
129 of subsection (e) of this section are fully applicable: *Provided,*  
130 That the requirement of mandatory examinations and evalua-  
131 tions pursuant to the provisions of this subsection shall not  
132 apply to any claimant who sustained a brain stem or spinal cord

133 injury with resultant paralysis or an injury which resulted in an  
134 amputation necessitating a prosthetic appliance.

135 (g) The provisions of this section are in addition to and in  
136 no way in derogation of the power and authority vested in the  
137 commission by other provisions of this chapter or vested in the  
138 employer to have a claimant examined by a physician or  
139 physicians of the employer's selection and at the employer's  
140 expense, or vested in the claimant or employer to file a protest,  
141 under other provisions of this chapter.

142 (h) All evaluations and examinations performed by physi-  
143 cians shall be performed in accordance with the protocols and  
144 procedures established by the health care advisory panel  
145 pursuant to section three-b of this article: *Provided*, That the  
146 physician may exceed these protocols when additional evalua-  
147 tion is medically necessary.

148 (i) The commission may suspend benefits being paid to a  
149 claimant if the claimant refuses, without good cause, to undergo  
150 the examinations or needed treatments provided for in this  
151 section until the claimant submits to the examination or needed  
152 treatments. The executive director shall propose rules for  
153 approval by the commission to implement the provisions of this  
154 subsection.

**§23-4-7b. Trial return to work.**

1 (a) The Legislature hereby finds and declares that it is in the  
2 interest of employees, employers and the commission that  
3 injured employees be encouraged to return to work as quickly  
4 as possible after an injury and that appropriate protections be  
5 afforded to injured employees who return to work on a trial  
6 basis.

7 (b) Notwithstanding any other provisions of this chapter to  
8 the contrary, the injured employee shall not have his or her

9 eligibility to receive temporary total disability benefits termi-  
10 nated when he or she returns to work on a trial basis as set forth  
11 in this section. An employee is eligible to return to work on a  
12 trial basis when he or she is released to work on a trial basis by  
13 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 notifica-  
16 tion to the commission. Upon receipt of the notification, the  
17 commission shall note the date of the first day of work pursuant  
18 to the trial return and shall continue the claimant's eligibility  
19 for temporary total disability benefits, but shall temporarily  
20 suspend the payment of temporary total disability benefits  
21 during the period actually worked by the injured employee. The  
22 claim shall be closed on a temporary total disability basis either  
23 when the injured employee or the authorized treating physician  
24 notifies the commission that the injured employee is able to  
25 perform his or her job or automatically at the end of a period of  
26 three months from the date of the first day of work unless the  
27 employee notifies the commission that he or she is unable to  
28 perform the duties of the job, whichever occurs first. If the  
29 injured employee is unable to continue working due to the  
30 compensable injury for a three-month period, the injured  
31 employee shall notify the commission and temporary total  
32 disability benefits shall be reinstated immediately and he or she  
33 shall be referred for a rehabilitation evaluation as provided in  
34 section nine of this article. No provision of this section shall be  
35 construed to prohibit the commission from referring the injured  
36 employee for any permanent disability evaluation required or  
37 permitted by any other provision of this article.

38 (d) Nothing in this section shall prevent the employee from  
39 returning to work without a trial return-to-work period.

40 (e) Nothing in this section shall be construed to require an  
41 injured employee to return to work on a trial basis.

42 (f) The provisions of this section shall be terminated and be  
43 of no further force and effect on the first day of July, two  
44 thousand seven.

**§23-4-8. Physical examination of claimant.**

1 The commission may, after due notice to the employer and  
2 claimant, whenever in the commission's opinion it is necessary,  
3 order a claimant of compensation for a personal injury other  
4 than occupational pneumoconiosis to appear for examination  
5 before a medical examiner or examiners selected by the  
6 commission; and the claimant and employer, respectively, each  
7 have the right to select a physician of the claimant's or the  
8 employer's own choosing and at the claimant's or the em-  
9 ployer's own expense to participate in the examination. All  
10 examinations shall be performed in accordance with the  
11 protocols and procedures established by the health care advi-  
12 sory panel pursuant to section three-b of this article: *Provided,*  
13 That the physician may exceed these protocols when additional  
14 evaluation is medically necessary. The claimant and employer  
15 shall, respectively, be furnished with a copy of the report of  
16 examination made by the medical examiner or examiners  
17 selected by the commission. The respective physicians selected  
18 by the claimant and employer have the right to concur in any  
19 report made by the medical examiner or examiners selected by  
20 the commission, or each may file with the commission a  
21 separate report, which separate report shall be considered by the  
22 commission in passing upon the claim. If the compensation  
23 claimed is for occupational pneumoconiosis, the commission  
24 may, after due notice to the employer, and whenever in the  
25 commission's opinion it is necessary, order a claimant to appear  
26 for examination before the occupational pneumoconiosis board  
27 provided for in section eight-a of this article. In any case the  
28 claimant is entitled to reimbursement for loss of wages, and to  
29 reasonable traveling and other expenses necessarily incurred by  
30 him or her in obeying the order.



31 Where the claimant is required to undergo a medical  
32 examination or examinations by a physician or physicians  
33 selected by the employer, as aforesaid or in connection with any  
34 claim which is in litigation, the employer shall reimburse the  
35 claimant for loss of wages, and reasonable traveling and other  
36 expenses in connection with the examination or examinations,  
37 not to exceed the expenses paid when a claimant is examined by  
38 a physician or physicians selected by the commission.

**§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 execu-  
3 tive director. No person shall be appointed as a member of the  
4 board, or as a consultant thereto, who has not by special study  
5 or experience, or both, acquired special knowledge of pulmo-  
6 nary diseases. All members of the occupational pneumoconiosis  
7 board shall be physicians of good professional standing  
8 admitted to practice medicine and surgery in this state. Two  
9 members shall be roentgenologists. One member of the board  
10 shall be designated annually as chairman by the executive  
11 director. The term of office of each member of the board shall  
12 be six years. The five members of the existing board in office  
13 on the effective date of this section shall continue to serve until  
14 their terms expire and until their successors have been ap-  
15 pointed and have qualified. Any member of the board may be  
16 appointed to any number of terms. The function of the board is  
17 to determine all medical questions relating to cases of compen-  
18 sation for occupational pneumoconiosis under the direction and  
19 supervision of the executive director. Any three members of the  
20 board constitute a quorum for the transaction of its business if  
21 at least one of the members present is a roentgenologist. The  
22 executive director shall, from time to time, fix the compensa-  
23 tion to be paid each member of the board. Members are also  
24 entitled to reasonable and necessary traveling and other

25 expenses incurred while actually engaged in the performance of  
26 their duties. In fixing the compensation of board members, the  
27 executive director shall take into consideration the number of  
28 claimants a member of the board actually examines, the actual  
29 time spent by members in discharging their duties and the  
30 recommendation of the board of managers as to reasonable  
31 reimbursement per unit of time expended based on comparative  
32 data for physicians within the state in the same medical  
33 specialties.

**§23-4-8b. Occupational pneumoconiosis board; procedure;  
autopsy.**

1 The occupational pneumoconiosis board, upon reference to  
2 it by the commission of a case of occupational pneumoconiosis,  
3 shall notify the employee, or in case he or she is dead, the  
4 claimant, and the employer to appear before the board at a time  
5 and place stated in the notice. If the employee is living, he or  
6 she shall appear before the board at the time and place specified  
7 and submit to the examination, including clinical and X-ray  
8 examinations, required by the board. If a physician licensed to  
9 practice medicine in the state makes an affidavit that the  
10 employee is physically unable to appear at the time and place  
11 designated by the board, the board shall, on notice to the proper  
12 parties, change the place and time as may reasonably facilitate  
13 the hearing or examination of the employee or may appoint a  
14 qualified specialist in the field of respiratory disease to examine  
15 the claimant on behalf of the board. The employee, or in case he  
16 or she is dead, the claimant, and employer shall also produce as  
17 evidence to the board all reports of medical and X-ray examina-  
18 tions which may be in their respective possession or control,  
19 showing the past or present condition of the employee. If the  
20 employee is dead, the notice of the board shall further require  
21 that the claimant produce necessary consents and permits so  
22 that an autopsy may be performed, if the board so directs. When  
23 in the opinion of the board an autopsy is considered necessary

24 accurately and scientifically to ascertain and determine the  
25 cause of death, the autopsy examination shall be ordered by the  
26 board, which shall designate a duly licensed physician, a  
27 pathologist or any other specialists determined necessary by the  
28 board, to make the examination and tests to determine the cause  
29 of death and certify his or her or their written findings, in  
30 triplicate, to the board. The findings shall be public records. In  
31 the event that a claimant for compensation for the death refuses  
32 to consent and permit the autopsy to be made, all rights for  
33 compensation are forfeited.

34 The employee, or if he or she be dead, the claimant, and the  
35 employer, shall be entitled to be present at all examinations  
36 conducted by the board and to be represented by attorneys and  
37 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 make  
3 its written report, to the commission of its findings and conclu-  
4 sions on every medical question in controversy and the com-  
5 mission shall send one copy of the report to the employee or  
6 claimant and one copy to the employer. The board shall also  
7 return to and file with the commission all the evidence as well  
8 as all statements under oath, if any, of the persons who ap-  
9 peared before it on behalf of the employee or claimant, or  
10 employer, and also all medical reports and X-ray examinations  
11 produced by or on behalf of the employee or claimant, or  
12 employer.

13 (b) If it can be shown that the claimant or deceased em-  
14 ployee has been exposed to the hazard of inhaling minute

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

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

26 (1) Whether or not the claimant or the deceased employee  
27 has contracted occupational pneumoconiosis and, if so, the  
28 percentage of permanent disability resulting therefrom;

29 (2) Whether or not the exposure in the employment was  
30 sufficient to have caused the claimant's or deceased employee's  
31 occupational pneumoconiosis or to have perceptibly aggravated  
32 an existing occupational pneumoconiosis or other occupational  
33 disease; and

34 (3) What, if any, physician appeared before the board on  
35 behalf of the claimant or employer and what, if any, medical  
36 evidence was produced by or on behalf of the claimant or  
37 employer.

38 (d) If either party objects to the whole or any part of the  
39 findings and conclusions of the board, the party shall file with  
40 the commission or, on or after the first day of July, one thou-  
41 sand nine hundred ninety-one, with the office of judges, within  
42 thirty days from receipt of the copy to that party, unless for  
43 good cause shown the commission or chief administrative law  
44 judge extends the time, the party's objections to the findings  
45 and conclusions of the board in writing, specifying the particu-

46 lar statements of the board's findings and conclusions to which  
47 such party objects. The filing of an objection within the time  
48 specified is a condition of the right to litigate the findings and  
49 therefore jurisdictional. After the time has expired for the filing  
50 of objections to the findings and conclusions of the board, the  
51 commission or administrative law judge shall proceed to act as  
52 provided in this chapter. If after the time has expired for the  
53 filing of objections to the findings and conclusions of the board  
54 no objections have been filed, the report of a majority of the  
55 board of its findings and conclusions on any medical question  
56 shall be taken to be plenary and conclusive evidence of the  
57 findings and conclusions stated in the report. If objection has  
58 been filed to the findings and conclusions of the board, notice  
59 of the objection shall be given to the board, and the members of  
60 the board joining in the findings and conclusions shall appear  
61 at the time fixed by the commission or office of judges for the  
62 hearing to submit to examination and cross-examination in  
63 respect to the findings and conclusions. At the hearing, evi-  
64 dence to support or controvert the findings and conclusions of  
65 the board shall be limited to examination and cross-examination  
66 of the members of the board and to the taking of testimony of  
67 other qualified physicians and roentgenologists.

68 (e) In the event that a claimant receives a final decision that  
69 he or she has no evidence of occupational pneumoconiosis, the  
70 claimant is barred for a period of three years from the date of  
71 the occupational pneumoconiosis board's decision or until his  
72 or her employment with the employer who employed the  
73 claimant at the time designated as the claimant's last date of  
74 exposure in the denied claim has terminated, whichever is  
75 sooner, from filing a new claim or pursuing a previously filed,  
76 but unrulled upon, claim for occupational pneumoconiosis or  
77 requesting a modification of any prior ruling finding him or her  
78 not to be suffering from occupational pneumoconiosis. For the  
79 purposes of this subsection, a claimant's employment shall be  
80 considered to be terminated if, for any reason, he or she has not

81 worked for that employer for a period in excess of ninety days.  
82 Any previously filed, but unruled upon, claim shall be consoli-  
83 dated with the claim in which the board's decision is made and  
84 shall be denied together with the decided claim. The provisions  
85 of this subsection shall not be applied in any claim where doing  
86 so would, in and of itself, later cause a claimant's claim to be  
87 forever barred by the provisions of section fifteen 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 return  
3 to suitable gainful employment after an injury. In order to  
4 encourage workers to return to employment and to encourage  
5 and assist employers in providing suitable employment to  
6 injured employees, it is a priority of the commission to achieve  
7 early identification of individuals likely to need rehabilitation  
8 services and to assess the rehabilitation needs of these injured  
9 employees. It is the goal of rehabilitation to return injured  
10 employees to employment which is comparable in work and  
11 pay to that which the individual performed prior to the injury.  
12 If a return to comparable work is not possible, the goal of  
13 rehabilitation is to return the individual to alternative suitable  
14 employment, using all possible alternatives of job modification,  
15 restructuring, reassignment and training, so that the individual  
16 will return to productivity with his or her employer or, if  
17 necessary, with another employer. The Legislature further finds  
18 that it is the shared responsibility of the employer, the em-  
19 ployee, the physician and the commission to cooperate in the  
20 development of a rehabilitation process designed to promote  
21 reemployment for the injured employee.

22 (b) In cases where an employee has sustained a permanent  
23 disability, or has sustained an injury likely to result in tempo-  
24 rary disability as determined by the commission, the commis-  
25 sion shall at the earliest possible time determine whether the

26 employee would be assisted in returning to remunerative  
27 employment with the provision of rehabilitation services and if  
28 the commission determines that the employee can be physically  
29 and vocationally rehabilitated and returned to remunerative  
30 employment by the provision of rehabilitation services includ-  
31 ing, but not limited to, vocational or on-the-job training,  
32 counseling, assistance in obtaining appropriate temporary or  
33 permanent work site, work duties or work hours modification,  
34 by the provision of crutches, artificial limbs or other approved  
35 mechanical appliances, or medicines, medical, surgical, dental  
36 or hospital treatment or other services which the commission in  
37 its sole discretion determines will directly assist the employee's  
38 return to employment, the commission shall immediately  
39 develop a rehabilitation plan for the employee and, after due  
40 notice to the employer, expend an amount necessary for that  
41 purpose: *Provided*, That the expenditure for vocational rehabili-  
42 tation shall not exceed twenty thousand dollars for any one  
43 injured employee: *Provided, however*, That no payment shall be  
44 made for such vocational rehabilitation purposes as provided in  
45 this section unless authorized by the commission prior to the  
46 rendering of the physical or vocational rehabilitation, except  
47 that payments shall be made for reasonable medical expenses  
48 without prior authorization if sufficient evidence exists which  
49 would relate the treatment to the injury and the attending  
50 physician or physicians have requested authorization prior to  
51 the rendering of the treatment: *Provided further*, That payment  
52 for physical rehabilitation, including the purchase of prosthetic  
53 devices and other equipment and training in use of the devices  
54 and equipment, are considered expenses within the meaning of  
55 section three of this article and are subject to the provisions of  
56 sections three, three-b and three-c of this article. The provision  
57 of any rehabilitation services may be pursuant to a rehabilita-  
58 tion plan to be developed and monitored by a rehabilitation  
59 professional for each injured employee or by such other  
60 provider as determined by the commission. Notwithstanding

61 any other provision of this section to the contrary, the commis-  
62 sion may determine under rules promulgated by the board of  
63 managers that a rehabilitation plan or any component thereof is  
64 not appropriate for an injured employee.

65 (c) In every case in which the commission orders physical  
66 or vocational rehabilitation of a claimant as provided in this  
67 section, the claimant shall, during the time he or she is receiv-  
68 ing any vocational rehabilitation or rehabilitative treatment that  
69 renders him or her totally disabled during the period of rehabili-  
70 tation, be compensated on a temporary total disability basis for  
71 that period.

72 (d) In every case in which the claimant returns to gainful  
73 employment as part of a rehabilitation plan, and the employee's  
74 average weekly wage earnings are less than the average weekly  
75 wage earnings earned by the injured employee at the time of the  
76 injury, he or she shall receive temporary partial rehabilitation  
77 benefits calculated as follows: The temporary partial rehabilita-  
78 tion benefit shall be seventy percent of the difference between  
79 the average weekly wage earnings earned at the time of the  
80 injury and the average weekly wage earnings earned at the new  
81 employment, both to be calculated as provided in sections six,  
82 six-d and fourteen of this article as the calculation is performed  
83 for temporary total disability benefits, subject to the following  
84 limitations: In no event are the benefits subject to the minimum  
85 benefit amounts required by the provisions of subdivision (b),  
86 section six of this article, nor may the benefits exceed the  
87 temporary total disability benefits to which the injured em-  
88 ployee would be entitled pursuant to sections six, six-d and  
89 fourteen of this article during any period of temporary total  
90 disability resulting from the injury in the claim: *Provided*, That  
91 no temporary total disability benefits shall be paid for any  
92 period for which temporary partial rehabilitation benefits are  
93 paid: *Provided, however*, That the aggregate award of tempo-  
94 rary total rehabilitation or temporary partial rehabilitation



95 benefits for a single injury for which an award of temporary  
96 total rehabilitation or temporary partial rehabilitation benefits  
97 is made on or after the effective date of the amendment and  
98 reenactment of this section in the year two thousand three shall  
99 be for a period not exceeding fifty-two weeks unless the  
100 payment of temporary total rehabilitation disability benefits is  
101 in conjunction with an approved vocational rehabilitation plan  
102 for retraining, in which event the payment period of temporary  
103 total rehabilitation disability benefits may be extended for a  
104 period not to exceed a total of one hundred four weeks. The  
105 amount of temporary partial rehabilitation benefits payable  
106 under this subsection shall be reviewed every ninety days to  
107 determine whether the injured employee's average weekly wage  
108 in the new employment has changed and, if the change has  
109 occurred, the amount of benefits payable under this subsection  
110 shall be adjusted prospectively. Temporary partial rehabilitation  
111 benefits shall only be payable when the injured employee is  
112 receiving vocational rehabilitation services in accordance with  
113 a rehabilitation plan developed under this section and no  
114 payment of temporary partial rehabilitation benefits shall be  
115 made after the claimant has received the vocational training  
116 provided under the rehabilitation plan.

117 (e) The executive director, in consultation with the board of  
118 managers, shall propose for promulgation rules for the purpose  
119 of developing a comprehensive rehabilitation program which  
120 will assist injured workers to return to suitable gainful employ-  
121 ment after an injury in a manner consistent with the provisions  
122 and findings of this section. The rules shall provide definitions  
123 for rehabilitation facilities and rehabilitation services pursuant  
124 to this section. Notwithstanding any other provision of this  
125 chapter to the contrary, and in addition to the provisions of  
126 section three of this article authorizing employers to participate  
127 in a managed health care plan, including a managed health care  
128 plan that provide physical and vocational rehabilitation ser-  
129 vices, an employer may contract directly with one or more

130 providers of vocational rehabilitation services to be the em-  
131 ployer's preferred provider of vocational rehabilitation services  
132 for its employees who receive injuries compensable under the  
133 provisions of this chapter and the rules promulgated under this  
134 section may require those employees to use the preferred  
135 providers.

**§23-4-9b. Preexisting impairments not considered in fixing amount of compensation.**

1       Where an employee has a definitely ascertainable impair-  
2 ment resulting from an occupational or a nonoccupational  
3 injury, disease or any other cause, whether or not disabling, and  
4 the employee thereafter receives an injury in the course of and  
5 resulting from his or her employment, unless the subsequent  
6 injury results in total permanent disability within the meaning  
7 of section one, article three of this chapter, the prior injury, and  
8 the effect of the prior injury, and an aggravation, shall not be  
9 taken into consideration in fixing the amount of compensation  
10 allowed by reason of the subsequent injury. Compensation shall  
11 be awarded only in the amount that would have been allowable  
12 had the employee not had the preexisting impairment. Nothing  
13 in this section requires that the degree of the preexisting  
14 impairment be definitely ascertained or rated prior to the injury  
15 received in the course of and resulting from the employee's  
16 employment or that benefits must have been granted or paid for  
17 the preexisting impairment. The degree of the preexisting  
18 impairment may be established at any time by competent  
19 medical or other evidence. Notwithstanding the foregoing  
20 provisions of this section, if the definitely ascertainable  
21 preexisting impairment resulted from an injury or disease  
22 previously held compensable and the impairment had not been  
23 rated, benefits for the impairment shall be payable to the  
24 claimant by or charged to the employer in whose employ the  
25 injury or disease occurred. The employee shall also receive the

26 difference, if any, in the benefit rate applicable in the more  
27 recent claim and the prior claim.

**§23-4-10. Classification of death benefits; "dependent" defined.**

1 In case a personal injury, other than occupational pneumo-  
2 coniosis or other occupational disease, suffered by an employee  
3 in the course of and resulting from his or her employment,  
4 causes death, and disability is continuous from the date of the  
5 injury until the date of death, or if death results from occupa-  
6 tional pneumoconiosis or from any other occupational disease,  
7 the benefits shall be in the amounts and to the persons as  
8 follows:

9 (a) If there are no dependents, the disbursements shall be  
10 limited to the expense provided for in sections three and four of  
11 this article;

12 (b) If there are dependents as defined in subdivision (d) of  
13 this section, the dependents shall be paid for as long as their  
14 dependency continues in the same amount that was paid or  
15 would have been paid the deceased employee for total disability  
16 had he or she lived. The order of preference of payment and  
17 length of dependence shall be as follows:

18 (1) A dependent widow or widower until death or remar-  
19 riage of the widow or widower, and any child or children  
20 dependent upon the decedent until each child reaches eighteen  
21 years of age or where the child after reaching eighteen years of  
22 age continues as a full-time student in an accredited high  
23 school, college, university, business or trade school, until the  
24 child reaches the age of twenty-five years, or if an invalid child,  
25 to continue as long as the child remains an invalid. All persons  
26 are jointly entitled to the amount of benefits payable as a result  
27 of employee's death;

28 (2) A wholly dependent father or mother until death; and

29       (3) Any other wholly dependent person for a period of six  
30 years after the death of the deceased employee;

31       (c) If the deceased employee leaves no wholly dependent  
32 person, but there are partially dependent persons at the time of  
33 death, the payment shall be fifty dollars a month to continue for  
34 the portion of the period of six years after the death, determined  
35 by the commission, but no partially dependent person shall  
36 receive compensation payments as a result of the death of more  
37 than one employee.

38       Compensation under subdivisions (b) and (c) of this section  
39 shall, except as may be specifically provided to the contrary in  
40 those subdivisions, cease upon the death of the dependent, and  
41 the right to the compensation shall not vest in his or her estate.

42       (d) "Dependent", as used in this chapter, means a widow,  
43 widower, child under eighteen years of age, or under twenty-  
44 five years of age when a full-time student as provided in this  
45 section, invalid child or posthumous child, who, at the time of  
46 the injury causing death, is dependent, in whole or in part, for  
47 his or her support upon the earnings of the employee, stepchild  
48 under eighteen years of age, or under twenty-five years of age  
49 when a full-time student as provided in this section, child under  
50 eighteen years of age legally adopted prior to the injury causing  
51 death, or under twenty-five years of age when a full-time  
52 student as provided in this section, father, mother, grandfather  
53 or grandmother, who, at the time of the injury causing death, is  
54 dependent, in whole or in part, for his or her support upon the  
55 earnings of the employee; and invalid brother or sister wholly  
56 dependent for his or her support upon the earnings of the  
57 employee at the time of the injury causing death; and

58       (e) If a person receiving permanent total disability benefits  
59 dies from a cause other than a disabling injury leaving any  
60 dependents as defined in subdivision (d) of this section, an

61 award shall be made to the dependents in an amount equal to  
62 one hundred four times the weekly benefit the worker was  
63 receiving at the time of his or her death and be paid either as a  
64 lump sum or in periodic payments, at the option of the depend-  
65 ent or dependents.

#### **§23-4-11. To whom death benefits paid.**

1 The benefits, in case of death, shall be paid to one or more  
2 dependents of the decedent, or to any other persons, for the  
3 benefit of all of the dependents, as may be determined by the  
4 commission, who may apportion the benefits among the  
5 dependents in the manner as they consider just and equitable.  
6 Payment to a dependent subsequent in right may be made if the  
7 commission considers proper and it operates to discharge all  
8 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 the  
3 benefits according to their respective claims upon the decedent  
4 for support, in compliance with the finding and direction of the  
5 commission.

#### **§23-4-14. Computation of benefits.**

1 (a) The average weekly wage earnings, wherever earned, of  
2 the injured person at the date of injury and the average weekly  
3 wage in West Virginia as determined by the commission, in  
4 effect at the date of injury, shall be taken as the basis upon  
5 which to compute the benefits.

6 (1) In cases involving occupational pneumoconiosis or  
7 other occupational diseases, the "date of injury" is the date of  
8 the last exposure to the hazards of occupational pneumoconiosis  
9 or other occupational diseases.

10       (2) In computing benefits payable on account of occupa-  
11 tional pneumoconiosis, the commission shall deduct the amount  
12 of all prior workers' compensation benefits paid to the same  
13 claimant on account of silicosis, but a prior silicosis award shall  
14 not, in any event, preclude an award for occupational pneumo-  
15 coniosis otherwise payable under this article.

16       (b) (1) Until the first day of July, one thousand nine  
17 hundred ninety-four, the expression "average weekly wage  
18 earnings, wherever earned, of the injured person, at the date of  
19 injury", within the meaning of this chapter, shall be computed  
20 based upon the daily rate of pay at the time of the injury or  
21 upon the average pay received during the two months, six  
22 months or twelve months immediately preceding the date of the  
23 injury, whichever is most favorable to the injured employee,  
24 except for the purpose of computing temporary total disability  
25 benefits for part-time employees pursuant to the provisions of  
26 section six-d of this article.

27       (2) On and after the first day of July, one thousand nine  
28 hundred ninety-four, the expression "average weekly wage  
29 earnings, wherever earned, of the injured person, at the date of  
30 injury", within the meaning of this chapter, shall be computed  
31 based upon the daily rate of pay at the time of the injury or  
32 upon the weekly average derived from the best quarter of wages  
33 out of the preceding four quarters of wages as reported to the  
34 commission pursuant to subsection (b), section two, article two  
35 of this chapter, whichever is most favorable to the injured  
36 employee, except for the purpose of computing temporary total  
37 disability benefits for part-time employees pursuant to the  
38 provisions of section six-d of this article.

39       (c) The expression "average weekly wage in West Vir-  
40 ginia", within the meaning of this chapter, is the average  
41 weekly wage in West Virginia as determined by the commis-  
42 sioner of the bureau of employment programs in accordance

43 with the provisions of sections ten and eleven, article six,  
44 chapter twenty-one-a of this code and other applicable provi-  
45 sions of said chapter.

46 (d) In any claim for injuries, including occupational  
47 pneumoconiosis and other occupational diseases, occurring on  
48 or after the first day of July, one thousand nine hundred  
49 seventy-one, any award for temporary total, permanent partial  
50 or permanent total disability benefits or for dependent benefits  
51 shall be paid at the weekly rates or in the monthly amount in the  
52 case of dependent benefits applicable to the claimant in effect  
53 on the date of the injury. In no event shall an award for perma-  
54 nent total disability be subject to annual adjustments resulting  
55 from 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 for  
3 occupational pneumoconiosis or other occupational disease, the  
4 application for compensation shall be made on the form or  
5 forms prescribed by the commission and filed with the commis-  
6 sion within six months from and after the injury or death, as the  
7 case may be, and unless filed within the six months period, the  
8 right to compensation under this chapter is forever barred, such  
9 time limitation being hereby declared to be a condition of the  
10 right and hence jurisdictional, and all proofs of dependency in  
11 fatal cases must also be filed with the commission within six  
12 months from and after the death. In case the employee is  
13 mentally or physically incapable of filing the application, it  
14 may be filed by his or her attorney or by a member of his or her  
15 family.

16 (b) To entitle any employee to compensation for occupa-  
17 tional pneumoconiosis under the provisions of this subsection,  
18 the application for compensation shall be made on the form or

19 forms prescribed by the commission and filed with the commis-  
20 sion within three years from and after the last day of the last  
21 continuous period of sixty days or more during which the  
22 employee was exposed to the hazards of occupational pneumo-  
23 coniosis or within three years from and after a diagnosed  
24 impairment due to occupational pneumoconiosis was made  
25 known to the employee by a physician and unless filed within  
26 the three-year period, the right to compensation under this  
27 chapter is forever barred, such time limitation being hereby  
28 declared to be a condition of the right and hence jurisdictional,  
29 or, in the case of death, the application shall be filed by the  
30 dependent of the employee within one year from and after the  
31 employee's death, and such time limitation is a condition of the  
32 right and hence jurisdictional.

33 (c) To entitle any employee to compensation for occupa-  
34 tional disease other than occupational pneumoconiosis under  
35 the provisions of this section, the application for compensation  
36 shall be made on the form or forms prescribed by the commis-  
37 sion and filed with the commission within three years from and  
38 after the day on which the employee was last exposed to the  
39 particular occupational hazard involved or within three years  
40 from and after the employee's occupational disease was made  
41 known to him or her by a physician or which he or she should  
42 reasonably have known, whichever last occurs, and unless filed  
43 within the three-year period, the right to compensation under  
44 this chapter shall be forever barred, such time limitation being  
45 hereby declared to be a condition of the right and therefore  
46 jurisdictional, or, in case of death, the application shall be filed  
47 as aforesaid by the dependent of the employee within one year  
48 from and after the employee's death, and such time limitation  
49 is a condition 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 benefits  
3 as citizens of the United States: *Provided*, That the commission  
4 in its discretion may make, and the beneficiary shall accept,  
5 commutation of the benefits into a lump sum settlement and  
6 payment. Nonresident alien beneficiaries within the meaning of  
7 this section means persons not citizens of the United States  
8 residing outside of the territorial limits of the United States at  
9 the time of the injury with respect to which benefits are  
10 awarded.

**§23-4-15b. Determination of nonmedical questions by commis-  
sion; claims for occupational pneumoconiosis;  
hearing.**

1       If a claim for occupational pneumoconiosis benefits is filed  
2 by an employee within three years from and after the last day  
3 of the last continuous period of sixty days' exposure to the  
4 hazards of occupational pneumoconiosis, the commission shall  
5 determine whether the claimant was exposed to the hazards of  
6 occupational pneumoconiosis for a continuous period of not  
7 less than sixty days while in the employ of the employer within  
8 three years prior to the filing of his or her claim, whether in the  
9 state of West Virginia the claimant was exposed to such hazard  
10 over a continuous period of not less than two years during the  
11 ten years immediately preceding the date of his or her last  
12 exposure to the hazard and whether the claimant was exposed  
13 to the hazard over a period of not less than ten years during the  
14 fifteen years immediately preceding the date of his or her last  
15 exposure to the hazard. If a claim for occupational pneumoconi-  
16 osis benefits is filed by an employee within three years from  
17 and after the employee's occupational pneumoconiosis was  
18 made known to the employee by a physician, the commission  
19 shall determine whether the claimant filed his or her application  
20 within that period and whether in the state of West Virginia the  
21 claimant was exposed to the hazard over a continuous period of

22 not less than two years during the ten years immediately  
23 preceding the date of last exposure to the hazard and whether  
24 the claimant was exposed to the hazard over a period of not less  
25 than ten years during the fifteen years immediately preceding  
26 the date of last exposure to the hazard. If a claim for occupa-  
27 tional pneumoconiosis benefits is filed by a dependent of a  
28 deceased employee, the commission shall determine whether  
29 the deceased employee was exposed to the hazards of occupa-  
30 tional pneumoconiosis for a continuous period of not less than  
31 sixty days while in the employ of the employer within ten years  
32 prior to the filing of the claim, whether in the state of West  
33 Virginia the deceased employee was exposed to the hazard over  
34 a continuous period of not less than two years during the ten  
35 years immediately preceding the date of his or her last exposure  
36 to the hazard and whether the claimant was exposed to the  
37 hazard over a period of not less than ten years during the fifteen  
38 years immediately preceding the date of his or her last exposure  
39 to the hazard. The commission shall also determine other  
40 nonmedical facts that, in the commission's opinion, are  
41 pertinent to a decision on the validity of the claim.

42 The commission shall enter an order with respect to  
43 nonmedical findings within ninety days following receipt by the  
44 commission of both the claimant's application for occupational  
45 pneumoconiosis benefits and the physician's report filed in  
46 connection with the claimant's application and shall give each  
47 interested party notice in writing of these findings with respect  
48 to all the nonmedical facts. The findings and actions of the  
49 commission are final unless the employer, employee, claimant  
50 or dependent, within thirty days after receipt of the notice,  
51 objects to the findings, and unless an objection is filed within  
52 the thirty-day period, the findings are forever final, the time  
53 limitation is a condition of the right to litigate the findings and  
54 therefor jurisdictional. Upon receipt of an objection, the chief  
55 administrative law judge shall set a hearing as provided in  
56 section nine, article five of this chapter. In the event of an

57 objection to the findings by the employer, the claim shall,  
58 notwithstanding the fact that one or more hearings may be held  
59 with respect to the objection, mature for reference to the  
60 occupational pneumoconiosis board with like effect as if the  
61 objection had not been filed. If the administrative law judge  
62 concludes after the protest hearings that the claim should be  
63 dismissed, a final order of dismissal shall be entered. The final  
64 order is subject to appeal in accordance with the provisions of  
65 sections ten and twelve, article five of this chapter. If the  
66 administrative law judge concludes after the protest hearings  
67 that the claim should be referred to the occupational pneumoco-  
68 niosis board for its review, the order entered shall be interlocu-  
69 tory only and may be appealed only in conjunction with an  
70 appeal from a final order with respect to the findings of the  
71 occupational pneumoconiosis board.

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

1 (a) The power and jurisdiction of the commission over each  
2 case is continuing and the commission may, in accordance with  
3 the provisions of this section and after due notice to the  
4 employer, make modifications or changes with respect to  
5 former findings or orders that are justified. Upon and after the  
6 second day of February, one thousand nine hundred ninety-five,  
7 the period in which a claimant may request a modification,  
8 change or reopening of a prior award that was entered either  
9 prior to or after that date shall be determined by the following  
10 subdivisions of this subsection. Any request that is made  
11 beyond that period shall be refused.

12 (1) Except as provided in section twenty-two of this article,  
13 in any claim which was closed without the entry of an order

14 regarding the degree, if any, of permanent disability that a  
15 claimant has suffered, or in any case in which no award has  
16 been made, any request must be made within five years of the  
17 closure. During that time period, only two requests may be  
18 filed.

19 (2) Except as stated below, in any claim in which an award  
20 of permanent disability was made, any request must be made  
21 within five years of the date of the initial award. During that  
22 time period, only two requests may be filed. With regard to  
23 those occupational diseases, including occupational pneumoco-  
24 niosis, which are medically recognized as progressive in nature,  
25 if any such request is granted by the commission, a new five-  
26 year period begins upon the date of the subsequent award. With  
27 the advice of the health care advisory panel, the executive  
28 director and the board of managers shall by rule designate those  
29 progressive diseases which are customarily the subject of  
30 claims.

31 (3) No further award may be made in fatal cases except  
32 within two years after the death of the employee.

33 (4) With the exception of the items set forth in subsection  
34 (d), section three of this article, in any claim in which medical  
35 or any type of rehabilitation service has not been rendered or  
36 durable medical goods or other supplies have not been received  
37 for a period of five years, no request for additional medical or  
38 any type of rehabilitation benefits shall be granted nor shall any  
39 medical or any type of rehabilitation benefits or any type of  
40 goods or supplies be paid for by the commission if they were  
41 provided without a prior request. For the exclusive purposes of  
42 this subdivision, medical services and rehabilitation services  
43 shall not include any encounter in which significant treatment  
44 was not performed.

45 (b) In any claim in which an injured employee makes  
46 application for a further period of temporary total disability, if  
47 the application is in writing and filed within the applicable time  
48 limit stated above, the commission shall pass upon the request  
49 within thirty days of the receipt of the request. If the decision is  
50 to grant the request, the order shall provide for the receipt of  
51 temporary total disability benefits. In any case in which an  
52 injured employee makes application for a further award of  
53 permanent partial disability benefits or for an award of perma-  
54 nent total disability benefits, if the application is in writing and  
55 filed within the applicable time limit as stated above, the  
56 commission shall pass upon the request within thirty days of its  
57 receipt and, if the commission determines that the claimant may  
58 be entitled to an award, the commission shall refer the claimant  
59 for further examinations that are necessary.

60 (c) If the application is based on a report of any medical  
61 examination made of the claimant and submitted by the  
62 claimant to the commission in support of his or her application  
63 and the claim is opened for further consideration and additional  
64 award is later made, the claimant shall be reimbursed for the  
65 expenses of the examination. The reimbursement shall be made  
66 by the commission to the claimant, in addition to all other  
67 benefits awarded, upon due proof of the amount thereof being  
68 furnished the commission by the claimant, but shall in no case  
69 exceed the sum fixed pursuant to the commission's schedule of  
70 maximum reasonable fees established under the provisions of  
71 section three of this article.

72 (d) The commission has continuing power and jurisdiction  
73 over claims in which permanent total disability awards have  
74 been made after the eighth day of April, one thousand nine  
75 hundred ninety-three.

76 (1) The commission shall continuously monitor permanent  
77 total disability awards and may, from time to time, after due

78 notice to the claimant, reopen a claim for reevaluation of the  
79 continuing nature of the disability and possible modification of  
80 the award. At such times as the commission may determine, the  
81 commission may require the claimant to provide documents and  
82 other information to the commission, including, but not limited  
83 to, tax returns, financial records and affidavits demonstrating  
84 level of income, recreational activities, work activities, medica-  
85 tions used and physicians or other medical or rehabilitation  
86 providers treating or prescribing medication or other services  
87 for the claimant; require the claimant to appear under oath  
88 before the commission or its duly authorized representative and  
89 answer questions; and suspend or terminate any benefits of a  
90 claimant who willfully fails to provide the information or  
91 appear as required: *Provided*, That the commission shall  
92 develop, implement and complete a program as soon as  
93 reasonably possible that requires each person receiving perma-  
94 nent total disability benefits on the effective date of the  
95 amendment and reenactment of this section in the year two  
96 thousand three, and each person who is awarded those benefits  
97 thereafter, to submit the tax returns and the affidavit described  
98 herein at least once: *Provided, however*, That this requirement  
99 does not restrict the commission's authority to require the  
100 information that may be required herein at such other times as  
101 the commission may determine. The commission may reopen  
102 a claim for reevaluation when, in the commission's sole  
103 discretion, it concludes that there exists good cause to believe  
104 that the claimant no longer meets the eligibility requirements  
105 under subdivision (n), section six of this article. The eligibility  
106 requirements, including any vocational standards, shall be  
107 applied as those requirements are stated at the time of a claim's  
108 reopening.

109 (2) Upon reopening a claim under this subsection, the  
110 commission may take evidence, have the claimant evaluated,  
111 make findings of fact and conclusions of law and shall vacate,  
112 modify or affirm the original permanent total disability award

113 as the record requires. The claimant's former employer shall  
114 not be a party to the reevaluation, but shall be notified of the  
115 reevaluation and may submit any information to the commis-  
116 sion as the employer may elect. In the event the claimant retains  
117 his or her award following the reevaluation, the claimant's  
118 reasonable attorneys' fees incurred in defending the award shall  
119 be paid by the workers' compensation commission from the  
120 workers' compensation fund. In addition, the workers' compen-  
121 sation commission shall reimburse a prevailing claimant for his  
122 or her costs in obtaining one evaluation on each issue during the  
123 course of the reevaluation with the reimbursement being made  
124 from the fund. The board of managers shall adopt criteria for  
125 the determination of reasonable attorneys' fees.

126 (3) This subsection shall not be applied to awards made  
127 under the provisions of subdivision (m), section six of this  
128 article. The claimant may seek review of the commission's final  
129 order as otherwise provided for in article five of this chapter for  
130 review of orders granting or denying permanent disability  
131 awards.

132 (4) The commission shall establish by rule criteria for  
133 review, reopening and reevaluating a claim under this subsec-  
134 tion. The commission shall at least quarterly provide a report of  
135 the exercise of its authority to continuously monitor permanent  
136 total disability awards under this section to the joint committee  
137 on government and finance and the joint commission on  
138 economic development.

139 (e) A claimant may have only one active request for a  
140 permanent disability award pending in a claim at any one time.  
141 Any new request that is made while another is pending shall be  
142 consolidated into the former request.

**§23-4-16a. Interest on benefits.**

1 Whenever any award of temporary total, permanent partial  
2 or permanent total disability benefits or dependent benefits is  
3 made on or after the first day of July, one thousand nine  
4 hundred seventy-one, and a protest is filed to the award or an  
5 appeal is taken from the award by an employer only and not by  
6 the claimant or dependent and the award is not ultimately  
7 denied or reduced following the protest or appeal, the commis-  
8 sion shall add interest to the award at the simple rate of six  
9 percent per annum from the date the award would have been  
10 payable had the protest or appeal not been filed or taken,  
11 exclusive of any period for which a continuance was granted  
12 upon motion of any party other than the protesting or appealing  
13 employer. Any interest payable shall be charged to the account  
14 of the protesting or appealing employer to the extent that the  
15 benefits upon which such interest is computed are charged to  
16 the account of the employer.

**§23-4-17. Commutation of periodical benefits.**

1 The commission, under special circumstances and when it  
2 is considered advisable, may commute periodical benefits to  
3 one or more lump-sum payments. Upon the application of any  
4 claimant who has received an award of partial or total disabili-  
5 ty, who is not a citizen of the United States and desires to  
6 reside permanently beyond the territorial limits of the United  
7 States, or upon the application of an alien dependent of a  
8 deceased employee with respect of whose death award of  
9 compensation has been made, the dependent residing in the  
10 territorial limits of the United States at the time of the dece-  
11 dent's death, and desiring to reside permanently beyond the  
12 territorial limits of the United States, the commission may  
13 commute into one lump-sum payment the periodical payments  
14 to which the claimant or dependent would be entitled, but at the  
15 rate of one-half the amount that would be payable to a citizen  
16 of the United States under like circumstances. The lump-sum  
17 payment at the rate specified in this section discharges all



18 liability with respect to the award, but in no event shall the  
19 award be paid until the claimant or dependent has actually  
20 arrived and domiciled himself or herself outside the territorial  
21 limits of the United States, except a sufficient portion of the  
22 award to pay transportation and other necessary expenses.

**§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.**

1 Except as provided by this section, compensation shall be  
2 paid only to the employees or their dependents and is exempt  
3 from all claims of creditors and from any attachment, execution  
4 or assignment other than compensation to counsel for legal  
5 services, under the provisions of, and subject to the limitations  
6 contained in section sixteen, article five of this chapter, and  
7 other than for the enforcement of orders for child or spousal  
8 support entered pursuant to the provisions of chapter forty-eight  
9 of this code. Payments may be made in the periodic install-  
10 ments determined by the commission in each case, but in no  
11 event less frequently than semimonthly for any temporary  
12 award and monthly for any permanent award. Payments for  
13 permanent disability shall be paid on or before the third day of  
14 the month in which they are due. In all cases where compensa-  
15 tion is awarded or increased, the amount of compensation shall  
16 be calculated and paid from the date of disability.

**§23-4-20. Postmortem examinations.**

1 The commission may, after due notice to the employer and  
2 claimant, whenever it considers it necessary, order an autopsy  
3 and may designate a duly licensed physician to make the  
4 postmortem examination or examinations that are necessary to  
5 determine the cause of the deceased employee's death. The  
6 physician shall file with the commission a written report of his  
7 or her findings. The claimant and the employer, respectively,  
8 have the right to select a physician of his, her or its own

9 choosing and, at his, her or its own expense, to participate in the  
10 postmortem examination. The respective physicians selected by  
11 the claimant and the employer have the right to concur in any  
12 report made by the physician selected by the commission, or  
13 each may file with the commission a separate report. In any  
14 case, including silicosis cases, in which either the employer or  
15 a claimant requests that an autopsy be performed, the autopsy  
16 shall be directed as provided in this section. In the event that a  
17 claimant for compensation for the death refuses to consent and  
18 permit the autopsy to be made all rights to compensation shall  
19 be forfeited.

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

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

**§23-4-23. Permanent total disability benefits; reduction of dis-  
ability benefits; reduction of benefits; application  
of section; severability.**

1 (a) This section is applicable whenever benefits are being  
2 paid for permanent total disability benefits arising under  
3 subdivision (d), (m) or (n), section six of this article or under  
4 section eight-c of this article. This section is not applicable to  
5 the receipt of temporary total disability benefits, the receipt of  
6 permanent partial disability benefits, the receipt of benefits by  
7 partially or wholly dependent persons or to the receipt of  
8 benefits pursuant to the provisions of subsection (e), section ten  
9 of this article. This section is not applicable to the receipt of  
10 medical benefits or the payment for medical benefits.

11 (b) Whenever applicable benefits are paid to a beneficiary  
12 with respect to the same time period for which payments under  
13 a self-insurance plan, a wage continuation plan or a disability  
14 insurance policy provided by an employer are also received or  
15 being received by the beneficiary, the applicable benefits shall  
16 be reduced by these amounts:

17 (1) The after-tax amount of the payments received or being  
18 received under a self-insurance plan, a wage continuation plan  
19 or under a disability insurance policy provided by an employer  
20 if the employee did not contribute directly to the plan or to the  
21 payment of premiums regarding the disability insurance policy;  
22 or

23 (2) The proportional amount, based on the ratio of the  
24 employer's contributions to the total insurance premiums for  
25 the policy period involved, of the after-tax amount of the  
26 payments received or being received by the employee pursuant  
27 to a disability insurance policy provided by an employer if the  
28 employee did contribute directly to the payment of premiums  
29 regarding the disability insurance policy: *Provided*, That in no  
30 event shall applicable benefits be reduced below the minimum  
31 weekly benefits as provided for in subdivisions (b) and (d),  
32 section six of this article.

33 (c) This section applies to awards of permanent total  
34 disability made after the effective date of this section.

35 (d) The board of managers shall promulgate the appropriate  
36 rules for the interpretation, processing and enforcement of this  
37 section.

38 (e) If any portion of this section or any application of this  
39 section is subsequently found to be unconstitutional or in  
40 violation of applicable law, it shall not affect the validity of the  
41 remainder of this section or the applications of the section that  
42 are not unconstitutional or in violation.

**§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 awarded  
3 permanent total disability benefits arising under subdivision (d)  
4 or (n), section six of this article or section eight-c of this article  
5 who terminates active employment and is receiving full old-age  
6 retirement benefits under the Social Security Act, 42 U. S. C.  
7 §401 and 402. Any claimant shall be evaluated only for the  
8 purposes of receiving a permanent partial disability award  
9 premised solely upon the claimant's impairments. This subsec-  
10 tion is not applicable in any claim in which the claimant has  
11 completed the submission of his or her evidence on the issue of  
12 permanent total disability prior to the later of the following:  
13 Termination of active employment or the initial receipt of full  
14 old-age retirement benefits under the Social Security Act. Once  
15 the claimant has terminated active employment and has begun  
16 to receive full old-age social security retirement benefits, the  
17 claimant may not produce additional evidence of permanent  
18 total disability before the commission or the office of judges  
19 nor shall the claim be remanded for the production of the  
20 evidence.

21 (b) The workers' compensation commission has the sole  
22 and exclusive jurisdiction to initially hear and decide any claim  
23 or request pertaining, in whole or in part, to subdivision (d) or  
24 (n), section six of this article. Any claim or request for perma-  
25 nent total disability benefits arising under said subdivisions  
26 shall first be presented to the commission as part of the initial  
27 claim filing or by way of an application for modification or  
28 adjustment pursuant to section sixteen of this article. The office  
29 of judges may consider a claim only after the commission has  
30 entered an appropriate 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 benefits as  
3 specified in subsection (b) of this section shall be made  
4 whenever benefits are being paid for a permanent total disabili-  
5 ty award regardless of when the benefits were awarded. This  
6 section is not applicable to the receipt of medical benefits or the  
7 payment for medical benefits, the receipt of permanent partial  
8 disability benefits, the receipt of benefits by partially or wholly  
9 dependent persons, or to the receipt of benefits pursuant to the  
10 provisions of subsection (e), section ten of this article. Prior to  
11 the application of this section to any claimant, the commission  
12 shall give the claimant notice of the effect of this section upon  
13 a claimant's award if and when the claimant later earns wages.

14 (b) Whenever applicable benefits are paid to a claimant  
15 with respect to the same time period in which the claimant has  
16 earned wages as a result of his or her employment, the follow-  
17 ing reduction in applicable benefits shall be made. The claim-  
18 ant's applicable monthly benefits and monthly net wages  
19 received from the current employment shall be added together.  
20 If the total exceeds by more than one hundred twenty percent of  
21 the amount of the claimant's monthly net wages earned during

22 his or her last employment prior to the award of permanent total  
23 disability benefits, the excess shall be reduced by one dollar for  
24 each two dollars that the claimant's monthly benefits and  
25 monthly net wages exceed the one hundred twenty percent  
26 level: *Provided*, That in no event shall applicable benefits be  
27 reduced below the minimum weekly benefits as provided for in  
28 subdivisions (b) and (d), section six of this article.

#### ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-1. Disabled workers' relief fund created.

§23-4A-3. Computation of benefits.

§23-4A-5. Employers providing own system of compensation.

§23-4A-6. Powers of commission over disabled workers' relief fund.

§23-4A-8. Disabled workers' relief fund; how funded.

#### §23-4A-1. Disabled workers' relief fund created.

1 For the relief of persons who are receiving benefits pursu-  
2 ant to a permanent total disability award in amounts less than  
3 thirty-three and one-third percent of the average weekly wage  
4 for the state of West Virginia per month, and for the relief of  
5 widows who are receiving benefits on account of the death of  
6 an employee in amounts less than thirty-three and one-third  
7 percent of the average weekly wage in the state of West  
8 Virginia per month, and for the relief of children of employees  
9 deceased before one thousand nine hundred sixty-seven, who  
10 are under the age of twenty-three and who are full-time  
11 students, and for the relief of other persons who are receiving  
12 dependents' benefits on account of the death of an employee in  
13 amounts less than the specific monetary amounts set forth in  
14 section ten, article four of this chapter and in effect as of the  
15 first day of July, one thousand nine hundred seventy-three,  
16 there is continued a separate fund, heretofore known as the  
17 "Disabled Workmen's Relief Fund", and which shall hereafter  
18 be known as the "Disabled Workers' Relief Fund", which shall  
19 consist of any sums that are, from time to time, made available  
20 to carry out the objects and purposes of this article. The fund

21 shall be in the custody of the state treasurer and disbursements  
22 from the fund shall be made upon requisition signed by the  
23 executive director to those persons entitled to participate in the  
24 fund and in such amounts to each participant that are provided  
25 in section three of this article.

### **§23-4A-3. Computation of benefits.**

1 Each individual entitled to participate in the disabled  
2 workers' relief fund is entitled to receive payments without  
3 application (except that an application shall be required under  
4 section five of this article) from the fund of an amount equal to  
5 the difference between the amounts set forth in section one of  
6 this article and the amount the individual is in fact receiving by  
7 virtue of and under the laws of this state. The first payment  
8 shall be made concurrently with the payment to him or her of  
9 workers' compensation on the first day of August, one thousand  
10 nine hundred seventy-six, and subsequent payments shall be  
11 made during the period thereafter in which the participant is  
12 entitled to workers' compensation benefits by virtue of and  
13 under the laws of this state.

### **§23-4A-5. Employers providing own system of compensation.**

1 The executive director shall promptly require of each  
2 employer who has elected to pay direct compensation under the  
3 provisions of section nine, article two of this chapter a verified  
4 list of the names and addresses of all persons to whom the  
5 employer is paying workers' compensation on account of  
6 permanent total disability or because of the death of an em-  
7 ployee and any evidence respecting those persons as the  
8 executive director may reasonably consider necessary to  
9 determine the eligibility of any person to participate in the  
10 disabled workers' relief fund. Any person claiming the right to  
11 participate in the fund under the provisions of this section may

- 12 file his or her application for participation with the executive
- 13 director and shall be accorded a hearing on the application.

**§23-4A-6. Powers of commission over disabled workers' relief fund.**

1 In the investigation and determination of the right of  
2 persons to participate in the disabled workers' relief fund, the  
3 executive director has and may exercise all the powers which he  
4 or she possesses under the other articles of this chapter. His or  
5 her powers and jurisdiction over each case is continuing, but  
6 there shall be no appeal from the commission's decisions to any  
7 other body or tribunal. No attorney, representative or agent of  
8 any claimant or participant is entitled to charge or receive a fee  
9 or compensation or gratuity in any form for representing or  
10 assisting or pretending to represent or assist any person to  
11 become a participant in the disabled workers' relief fund.

**§23-4A-8. Disabled workers' relief fund; how funded.**

1 For the purpose of carrying out the provisions of this  
2 article, the board of managers shall transfer annually, out of the  
3 interest earned during the previous year on investments held by  
4 the workers' compensation fund, and out of the amount  
5 assessed against self-insured employers pursuant to the provi-  
6 sions of section nine, article two of this chapter an amount  
7 estimated by the executive director to be necessary to carry out  
8 the provisions of this article for one year.

9 The money shall be deposited by the board of managers in  
10 the disabled workers' relief fund, as required by this article.

**ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.**

- §23-4B-2. Coal-workers' pneumoconiosis fund established.
- §23-4B-5. Payment of benefits.
- §23-4B-6. Coal-workers' pneumoconiosis fund; how funded.
- §23-4B-7. Administration.
- §23-4B-8b. Transfer of funds to workers' compensation fund.



**§23-4B-2. Coal-workers' pneumoconiosis fund established.**

1 For the relief of persons who are entitled to receive benefits  
2 by virtue of Title IV of the federal Coal Mine Health and Safety  
3 Act of 1969, as amended, there is continued a fund to be known  
4 as the coal-workers' pneumoconiosis fund, which fund shall be  
5 separate from the workers' compensation fund. The coal-  
6 workers' pneumoconiosis fund shall consist of premiums and  
7 other funds paid to the fund by employers, subject to the  
8 provisions of Title IV of the federal Coal Mine Health and  
9 Safety Act of 1969, as amended, who shall elect to subscribe to  
10 the fund to ensure the payment of benefits required by the act.

11 The state treasurer shall be the custodian of the coal-  
12 workers' pneumoconiosis fund, and all premiums, deposits or  
13 other moneys paid to the fund shall be deposited in the state  
14 treasury to the credit of the coal-workers' pneumoconiosis fund.  
15 Disbursements from the fund shall be made upon requisition  
16 signed by the executive director of the workers' compensation  
17 commission to those persons entitled to participate in the fund.  
18 The West Virginia state board of investments may invest any  
19 surplus, reserve or other moneys belonging to the coal-workers'  
20 pneumoconiosis fund in accordance with article six, chapter  
21 twelve of this code.

**§23-4B-5. Payment of benefits.**

1 Upon receipt of an order of compensation issued pursuant  
2 to a claim for benefits filed under the provisions of Title IV of  
3 the federal Coal Mine Health and Safety Act of 1969, as  
4 amended, the executive director shall disburse the coal-work-  
5 ers' pneumoconiosis fund in the amounts and to the persons as  
6 directed by the order.

**§23-4B-6. Coal-workers' pneumoconiosis fund; how funded.**

1 For the purpose of creating the coal-workers' pneumoconi-  
2 osis fund, each employer, who elects to subscribe to the fund,  
3 shall pay premiums based upon and being a percentage of the  
4 payroll of the employer determined by the board of managers.  
5 It is the duty of the board of managers to fix and maintain the  
6 lowest possible rates of premiums consistent with the mainte-  
7 nance of a solvent fund and the creation and maintenance of a  
8 reasonable surplus after providing for payment to maturity of  
9 all liability insured pursuant to Title IV of the federal Coal  
10 Mine Health and Safety Act of 1969, as amended. The rates  
11 shall be adjusted annually or more often as may, in the opinion  
12 of the board of managers, be necessary.

13 The board of managers may by rule classify subscribers  
14 into groups or classes according to the nature of the hazards  
15 incident to the business of the subscribers and assign premium  
16 rates to the subscribers. In addition, the board of managers may  
17 by rule prescribe procedures for subscription, payroll reporting,  
18 premium payment, termination of subscription, reinstatement  
19 and other matters pertinent to the subscribers' continuing  
20 participation in the coal-workers' pneumoconiosis fund.

#### **§23-4B-7. Administration.**

1 The coal-workers' pneumoconiosis fund shall be adminis-  
2 tered by the executive director of the workers' compensation  
3 commission, who shall employ any employees necessary to  
4 discharge his or her duties and responsibilities under this  
5 article. All payments of salaries and expenses of the employees  
6 and all expenses peculiar to the administration of this article  
7 shall be made by the state treasurer from the coal-workers'  
8 pneumoconiosis fund upon requisitions signed by the executive  
9 director.

#### **§23-4B-8b. Transfer of funds to workers' compensation fund.**

1 (a) Notwithstanding any provision of section eight of this  
2 article to the contrary, the assets which were previously  
3 transferred from the coal-workers' pneumoconiosis fund and  
4 held in a separate account may, on or after the first day of July,  
5 two thousand three, be expended for workers' compensation  
6 fund liabilities.

7 (b) The Legislature hereby finds and declares that there is  
8 a substantial actuarial surplus in the coal-workers' pneumoconi-  
9 osis fund in excess of one hundred seventy million dollars. The  
10 Legislature further finds and declares that there is a substantial  
11 actuarial deficit in the workers' compensation fund. The  
12 executive director shall conduct an actuarial audit to determine  
13 the amount of the actuarial surplus in the coal-workers'  
14 pneumoconiosis fund as of the thirtieth day of June, two  
15 thousand three, and certify the amount, as of that date, in a  
16 written order which together with the results of the audit shall  
17 be a public record. The executive director shall also obtain a  
18 statement from the commission's actuary that a distributable  
19 surplus exists in the coal-workers' pneumoconiosis fund. When  
20 the actuary provides the statement, and notwithstanding any  
21 provision of this article to the contrary, the executive director  
22 shall, by written order, transfer an amount not to exceed one  
23 hundred seventy million dollars from the coal-workers'  
24 pneumoconiosis fund to the workers' compensation fund, which  
25 assets shall thereupon become merged into and consolidated  
26 with the workers' compensation fund and expended for work-  
27 ers' compensation fund liabilities: *Provided*, That a level of  
28 reserve shall be retained in the coal-workers' pneumoconiosis  
29 fund sufficient within a seventy percent confidence level, on an  
30 actuarial basis, to satisfy the payment of all claims incurred,  
31 including claims which were incurred but not reported, on or  
32 before the thirtieth day of June, two thousand three. In the event  
33 the commission's actuary or an actuary employed by the board  
34 of managers determines prior to the thirtieth day of June, two

35 thousand six, that the assets of the coal-workers' pneumoconio-  
36 sis fund are not adequate to enable the coal-workers' pneumo-  
37 coniosis fund to meet its claim obligations under Title IV of the  
38 federal Coal Mine Health and Safety Act of 1996, as amended,  
39 the executive director shall, upon appropriation of the Legisla-  
40 ture, transfer an amount not to exceed fifty million dollars from  
41 the workers' compensation fund to the coal-workers' pneumo-  
42 coniosis fund for expenditure to meet those obligations.

#### **ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.**

§23-4C-2. Employers' excess liability fund established.

§23-4C-3. Payment of excess damages from fund.

§23-4C-4. Employers' excess liability fund; how funded.

§23-4C-5. Administration.

#### **§23-4C-2. Employers' excess liability fund established.**

1 (a) To provide insurance coverage for employers subject to  
2 this chapter who may be subjected to liability for any excess of  
3 damages over the amount received or receivable under this  
4 chapter, the commission may continue the fund known as the  
5 employers' excess liability fund, which fund shall be separate  
6 from the workers' compensation fund. The employers' excess  
7 liability fund shall consist of premiums paid to it by employers  
8 who may voluntarily elect to subscribe to the fund for coverage  
9 of potential liability to any person who may be entitled to any  
10 excess of damages over the amount received or receivable  
11 under this chapter.

12 (b) The board of managers may provide for, by the promul-  
13 gation of a rule pursuant to section one-a, article one of this  
14 chapter, the continuance, abolition or sale of the employers'  
15 excess liability fund established by section one of this article.  
16 In the event that the fund is to be sold, the sale shall be con-  
17 ducted through the solicitation of competitive bids. Any funds  
18 that remain after the sale or abolition of the employers' excess  
19 liability fund shall be paid into and become a part of the

20 workers' compensation fund to be used for the purposes of that  
21 fund. In the event that the employers' excess liability fund  
22 program is abolished and the remaining liabilities of that  
23 program exceed the amount retained in the employers' excess  
24 liability fund, the excess liability including the costs of admin-  
25 istration shall be paid for from the workers' compensation fund.

**§23-4C-3. Payment of excess damages from fund.**

1       Upon receipt of a final order of a court determining the  
2 liability under section two, article four of this chapter of a  
3 subscribing employer and the amount of the excess of damages  
4 over the amount received or receivable under this chapter, the  
5 executive director shall make disbursements from the employ-  
6 ers' excess liability fund in the amounts and to the persons as  
7 directed by the final order. In the event of a proposed settlement  
8 of a disputed claim against a subscribing employer, the execu-  
9 tive director, upon approving the settlement upon petition by  
10 the subscribing employer, shall make disbursements from the  
11 employers' excess liability fund in the amounts and to the  
12 persons specified in the approved settlement. In the event of the  
13 settlement of any disputed claim in which one or more of the  
14 persons entitled to the proceeds to be paid pursuant to the  
15 settlement is under a legal disability by reason of age, mental  
16 incapacity or other reason, the settlement, if required by other  
17 provisions of law to be approved by a circuit court, shall be  
18 approved by the circuit court of the county in which the person  
19 under disability is a resident or in which a civil action could be  
20 brought and maintained upon the claim, in addition to being  
21 approved by the commission as required by this section. The  
22 executive director shall by rule establish criteria and procedures  
23 for the settlement of all disputed claims.

**§23-4C-4. Employers' excess liability fund; how funded.**

1 For the purpose of creating the employers' excess liability  
2 fund, each employer who elects to subscribe to the fund shall  
3 pay premiums based upon and being a percentage of the payroll  
4 of the employer determined by the board of managers. It is the  
5 duty of the board of managers to fix and maintain the lowest  
6 possible rates or premiums consistent with the maintenance of  
7 a solvent fund. The premium rates shall be adjusted annually or  
8 more often as may, in the opinion of the board of managers, be  
9 necessary.

10 The board of managers shall initially classify subscribers  
11 into groups or classes according to the nature of the unusual  
12 hazards incident to the business of the subscribers as contem-  
13 plated by section four, article two of this chapter and assign  
14 premium rates to the subscribers. The fixing, maintaining and  
15 adjusting of premium rates and the initial classification of  
16 subscribers into groups or classes pursuant to this section are  
17 findings or determinations of fact and not a legislative rule. In  
18 addition, the board of managers shall by rule prescribe proce-  
19 dures for subscription, payroll reporting, premium payment,  
20 termination of subscription, reinstatement, reclassification of  
21 groups, classes or subscribers, the increase or decrease of  
22 premiums based upon incidence of liability and amounts  
23 awarded, and other matters pertinent to the subscribers'  
24 continuing participation in the employers' excess liability fund.

#### **§23-4C-5. Administration.**

1 The employers' excess liability fund shall be administered  
2 by the executive director, who shall employ any employees that  
3 are necessary to discharge his or her duties and responsibilities  
4 under this article. All payments of salaries and expenses of the  
5 employees and all expenses peculiar to the administration of  
6 this article shall be made by the state treasurer from the  
7 employers' excess liability fund upon requisitions signed by the  
8 executive director.

**ARTICLE 5. REVIEW.**

- §23-5-1. Notice by commission or self-insured of decision; procedures on claims; objections and hearing.
- §23-5-2. Application by employee for further adjustment of claim; objection to modification; hearing.
- §23-5-3. Refusal to reopen claim; notice; objection.
- §23-5-4. Application by employer for modification of award; objection to modification; hearing.
- §23-5-5. Refusal of modification; notice; objection.
- §23-5-6. Time periods for objections and appeals; extensions.
- §23-5-7. Compromise and settlement.
- §23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge.
- §23-5-9. Hearings on objections to commission or self-insured employer decisions; mediation; remand.
- §23-5-10. Appeal from administrative law judge decision to appeal board.
- §23-5-11. Workers' compensation board of review generally.
- §23-5-12. Appeal to board; procedure; remand and supplemental hearing.
- §23-5-15. Appeals from final decisions of board to supreme court of appeals; procedure; costs.
- §23-5-17. Termination of office of judges.
- §23-5-18. Termination of the workers' compensation appeal board and the workers' compensation board of review.

**§23-5-1. Notice by commission or self-insured of decision; procedures on claims; objections and hearing.**

1           (a) The workers' compensation commission may hear and  
2 determine all questions within its jurisdiction. In matters arising  
3 under articles three and four of this chapter, the commission  
4 shall promptly review and investigate all claims. The parties to  
5 a claim shall file the information in support of their respective  
6 positions as they consider proper. In addition, the commission  
7 may develop additional information that it considers to be  
8 necessary in the interests of fairness to the parties and in  
9 keeping with the fiduciary obligations owed to the fund. With  
10 regard to any issue which is ready for a decision, the commis-  
11 sion shall explain the basis of its decisions.

12           (b) Except with regard to interlocutory matters and those  
13 matters set forth in subsection (d) of this section, upon making

14 any decision, upon making or refusing to make any award or  
15 upon making any modification or change with respect to former  
16 findings or orders, as provided by section sixteen, article four  
17 of this chapter, the commission shall give notice, in writing, to  
18 the employer, employee, claimant or dependant as the case may  
19 be, of its action. The notice shall state the time allowed for  
20 filing an objection to the finding. The action of the commission  
21 is final unless the employer, employee, claimant or dependant  
22 shall, within thirty days after the receipt of the notice, object in  
23 writing, to the finding. Unless an objection is filed within the  
24 thirty-day period, the finding or action is final. This time  
25 limitation is a condition of the right to litigate the finding or  
26 action and hence jurisdictional. Any objection shall be filed  
27 with the office of judges with a copy served upon the commis-  
28 sion and other parties in accordance with the procedures set  
29 forth in sections eight and nine of this article. In all instances  
30 where a self-insured employer or a third-party administrator has  
31 made claims decisions as authorized in this chapter, they shall  
32 provide claimants and the commission notice of all claims  
33 decisions as provided for by rules for self-administration  
34 promulgated by the board of managers and shall be bound by  
35 each requirement imposed upon the commission by this article.

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

44 (d) The commission or self-insured employer may amend,  
45 correct or set aside any order or decision on any issue entered  
46 by it which, at the time of issuance or any time thereafter, is  
47 discovered to be defective or clearly erroneous or the result of



48 mistake, clerical error or fraud, or otherwise not supported by  
49 the evidence. Jurisdiction to take this action continues until the  
50 expiration of two years from the date of entry of an order unless  
51 the order is sooner affected by appellate action: *Provided*, That  
52 corrective actions in the case of fraud may be taken at any time.

53 (e) All objections to orders of the commission or self-  
54 insured employers shall be styled in the name of the workers'  
55 compensation commission. All appeals prosecuted from the  
56 office of judges shall either be in the name of the workers'  
57 compensation commission or shall be against the workers'  
58 compensation commission unless the parties to the appeal are  
59 limited to a claimant and a self-insured employer. In all actions  
60 under this article, the workers' compensation commission shall  
61 be the party in interest unless the parties to the appeal are  
62 limited to a 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 application  
2 in writing for a further adjustment of his or her claim under the  
3 provisions of section sixteen, article four of this chapter and the  
4 application discloses cause for a further adjustment, the  
5 commission shall, after due notice to the employer, make the  
6 modifications, or changes with respect to former findings or  
7 orders in the claim that are justified. Any party dissatisfied with  
8 any modification or change made by the commission is, upon  
9 proper and timely objection, entitled to a hearing, as provided  
10 in section nine of this article.

**§23-5-3. Refusal to reopen claim; notice; objection.**

1 If it appears to the commission that an application filed  
2 under section two of this article fails to disclose a progression  
3 or aggravation in the claimant's condition, or some other fact or

4 facts which were not previously considered by the commission  
5 in its former findings and which would entitle the claimant to  
6 greater benefits than the claimant has already received, the  
7 commission shall, within a reasonable time, notify the claimant  
8 and the employer that the application fails to establish a prima  
9 facie cause for reopening the claim. The notice shall be in  
10 writing stating the reasons for denial and the time allowed for  
11 objection to the decision of the commission. The claimant may,  
12 within thirty days after receipt of the notice, object in writing to  
13 the finding. Unless the objection is filed within the thirty-day  
14 period, no objection shall be allowed. This time limitation is a  
15 condition of the right to objection and hence jurisdictional.  
16 Upon receipt of an objection, the office of judges shall afford  
17 the claimant an evidentiary hearing as provided in section nine  
18 of this 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 to an  
3 employee of the employer, the commission shall make a  
4 decision upon the application. If the application discloses cause  
5 for a further adjustment, the commission shall, after due notice  
6 to the employee, make the modifications or changes with  
7 respect to former findings or orders that are justified. Any party  
8 dissatisfied with any modification or change made by the  
9 commission or by the denial of an application for modification  
10 is, upon proper and timely objection, entitled to a hearing as  
11 provided in section nine of this article.

**§23-5-5. Refusal of modification; notice; objection.**

1 If in any case it appears to the commission that the applica-  
2 tion filed pursuant to section four of this article fails to disclose  
3 some fact or facts which were not previously considered by the

4 commission in its former findings, and which would entitle the  
5 employer to any modification of the previous award, the  
6 commission shall, within sixty days from the receipt of the  
7 application, notify the claimant and employer that the applica-  
8 tion fails to establish a just cause for modification of the award.  
9 The notice shall be in writing stating the reasons for denial and  
10 the time allowed for objection to the decision of the commis-  
11 sion. The employer may, within thirty days after receipt of the  
12 notice, object in writing to the decision. Unless the objection is  
13 filed within the thirty-day period, no objection shall be allowed.  
14 This time limitation is a condition of the right to objection and  
15 hence jurisdictional. Upon receipt of the objection, the office of  
16 judges shall afford the employer an evidentiary hearing as  
17 provided in section nine of this article.

**§23-5-6. Time periods for objections and appeals; extensions.**

1 Notwithstanding the fact that the time periods set forth for  
2 objections, protests and appeals to or from the workers'  
3 compensation office of judges are jurisdictional, the periods  
4 may be extended or excused upon application of either party  
5 within a period of time equal to the applicable period by  
6 requesting an extension of the time period showing good cause  
7 or excusable neglect, accompanied by the objection or appeal  
8 petition. In exercising discretion the administrative law judge,  
9 appeal board or court, as the case may be, shall consider  
10 whether the applicant was represented by counsel and whether  
11 timely and proper notice was actually received by the applicant  
12 or the applicant's representative.

**§23-5-7. Compromise and settlement.**

1 With the exception of medical benefits for nonorthopedic  
2 occupational disease claims, the claimant, the employer and the  
3 workers' compensation commission may negotiate a final  
4 settlement of any and all issues in a claim wherever the claim

5 is in the administrative or appellate processes. Upon entering  
6 into an agreement, the parties shall file the written and executed  
7 agreement with the office of judges. The office of judges shall  
8 review the proposed agreement to determine if it is fair and  
9 reasonable to the parties and shall ensure that each of the parties  
10 is fully aware of the effects of the agreement including what  
11 each party is conceding in exchange for the agreement. If the  
12 office of judges concludes that the agreement is not fair or is  
13 not reasonable or that one of the parties is not fully informed,  
14 the agreement will not be approved. The decision on this  
15 question is not reviewable. If the employer is not active in the  
16 claim, the commission may negotiate a final settlement of any  
17 and all issues in a claim except for medical benefits for  
18 nonorthopedic occupational disease claims with the claimant.  
19 Upon approval of the settlement, it shall be made a part of the  
20 claim record. The office of judges shall send written notice of  
21 the settlement to all parties and, where appropriate, to the  
22 appeal board or the supreme court of appeals. Except in cases  
23 of fraud, no issue that is the subject of an approved settlement  
24 agreement may be reopened by any party, including the  
25 commission. Any settlement agreement may provide for a  
26 lump-sum payment or a structured payment plan, or any  
27 combination thereof, or any other basis as the parties may  
28 agree. If a self-insured employer later fails to make the agreed-  
29 upon payment, the commission shall assume the obligation to  
30 make the payments and shall recover the amounts paid or to be  
31 paid from the self-insured employer and its sureties or guaran-  
32 tors or both as provided for in sections five and five-a, article  
33 two of this chapter.

34       The amendments to this section enacted during the regular  
35 session of the Legislature in the year one thousand nine hundred  
36 ninety-nine shall apply to all settlement agreements executed  
37 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 law  
2 judges previously created pursuant to chapter twelve, acts of the  
3 Legislature, one thousand nine hundred ninety, second extraor-  
4 dinary session, is hereby continued and designated to be an  
5 integral part of the workers' compensation system of this state.  
6 The office of judges shall be under the supervision of a chief  
7 administrative law judge who shall be appointed by the gover-  
8 nor, with the advice and consent of the Senate.

9       (b) The chief administrative law judge shall be a person  
10 who has been admitted to the practice of law in this state and  
11 shall also have had at least four years of experience as an  
12 attorney. The chief administrative law judge's salary shall be  
13 set by the workers' compensation board of managers. The  
14 salary shall be within the salary range for comparable chief  
15 administrative law judges as determined by the state personnel  
16 board created by section six, article six, chapter twenty-nine of  
17 this code. The chief administrative law judge may only be  
18 removed by a vote of two thirds of the members of the workers'  
19 compensation board of managers and shall not be removed  
20 except for cause and then only after he or she has been pre-  
21 sented in writing with the reasons for his or her removal and is  
22 given opportunity to respond and to present evidence. No other  
23 provision of this code purporting to limit the term of office of  
24 any appointed official or employee or affecting the removal of  
25 any appointed official or employee is applicable to the chief  
26 administrative law judge.

27       (c) The chief administrative law judge shall employ  
28 administrative law judges and other personnel that are neces-  
29 sary for the proper conduct of a system of administrative review  
30 of orders issued by the workers' compensation commission  
31 which orders have been objected to by a party. The employees

32 shall be in the classified service of the state. Qualifications,  
33 compensation and personnel practice relating to the employees  
34 of the office of judges, other than the chief administrative law  
35 judge, shall be governed by the provisions of this code and rules  
36 of the classified service pursuant to article six, chapter  
37 twenty-nine of this code. All additional administrative law  
38 judges shall be persons who have been admitted to the practice  
39 of law in this state and shall also have had at least two years of  
40 experience as an attorney. The chief administrative law judge  
41 shall supervise the other administrative law judges and other  
42 personnel which collectively shall be referred to in this chapter  
43 as the office of judges.

44 (d) The administrative expense of the office of judges shall  
45 be included within the annual budget of the workers' compensa-  
46 tion commission.

47 (e) The office of judges shall, from time to time, promul-  
48 gate rules of practice and procedure for the hearing and  
49 determination of all objections to findings or orders of the  
50 workers' compensation commission. The office of judges shall  
51 not have the power to initiate or to promulgate legislative rules  
52 as that phrase is defined in article three, chapter twenty-nine-a  
53 of this code. Any rules adopted pursuant to this section which  
54 are applicable to the provisions of this article are not subject to  
55 sections nine through sixteen, inclusive, article three, chapter  
56 twenty-nine-a of this code. The office of judges shall follow the  
57 remaining provisions of said chapter for giving notice to the  
58 public of its actions and the holding of hearings or receiving of  
59 comments on the rules.

60 (f) The chief administrative law judge has the power to hear  
61 and determine all disputed claims in accordance with the  
62 provisions of this article, establish a procedure for the hearing  
63 of disputed claims, take oaths, examine witnesses, issue  
64 subpoenas, establish the amount of witness fees, keep records

65 and make reports that are necessary for disputed claims and  
66 exercise any additional powers, including the delegation of  
67 powers to administrative law judges or hearing examiners that  
68 are necessary for the proper conduct of a system of administra-  
69 tive review of disputed claims. The chief administrative law  
70 judge shall make reports that are requested of him or her by the  
71 workers' compensation board of 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 or of a self-insured employer made pursuant to the  
3 provisions of section one of this article shall be filed with the  
4 office of judges. Upon receipt of an objection, the office of  
5 judges shall notify the commission and all other parties of the  
6 filing of the objection. The office of judges shall establish by  
7 rule promulgated in accordance with the provisions of subsec-  
8 tion (e), section eight of this article an adjudicatory process that  
9 enables parties to present evidence in support of their positions  
10 and provides an expeditious resolution of the objection. The  
11 employer, the claimant and the commission shall be notified of  
12 any hearing at least ten days in advance.

13 (b) The office of judges shall establish a program for  
14 mediation to be conducted in accordance with the requirements  
15 of rule twenty-five of the West Virginia trial court rules. The  
16 parties may agree that the result of the mediation is binding. A  
17 case may be referred to mediation by the administrative law  
18 judge on his or her own motion, on motion of a party or by  
19 agreement of the parties. Upon issuance of an order for media-  
20 tion, the office of judges shall assign a mediator from a list of  
21 qualified mediators maintained by the West Virginia state bar.

22 (c) The office of judges shall keep full and complete  
23 records of all proceedings concerning a disputed claim. Subject

24 to the rules of practice and procedure promulgated pursuant to  
25 section eight of this article, the record upon which the matter  
26 shall be decided shall include any evidence submitted by a party  
27 to the office of judges, evidence taken at hearings conducted by  
28 the office of judges and any documents in the commission's  
29 claim files which relate to the subject matter of the objection.  
30 The record may include evidence or documents submitted in  
31 electronic form or other appropriate medium in accordance with  
32 the rules of practice and procedure. The office of judges is not  
33 bound by the usual common law or statutory rules of evidence.

34 (d) All hearings shall be conducted as determined by the  
35 chief administrative law judge pursuant to the rules of practice  
36 and procedure promulgated pursuant to section eight of this  
37 article. Upon consideration of the designated record, the chief  
38 administrative law judge or other authorized adjudicator within  
39 the office of judges shall, based on the determination of the  
40 facts of the case and applicable law, render a decision affirm-  
41 ing, reversing or modifying the commission's action. The  
42 decision shall contain findings of fact and conclusions of law  
43 and shall be mailed to all parties.

44 (e) The rule authorized by subsection (a) of this section  
45 shall be promulgated on or before the first day of October, two  
46 thousand three. Until the rule is promulgated, any rules previ-  
47 ously promulgated shall remain in full force and effect.

48 (f) The office of judges may remand a claim to the commis-  
49 sion for further development of the facts or administrative  
50 matters as, in the opinion of the administrative law judge, may  
51 be necessary for a full and complete disposition of the case. The  
52 administrative law judge shall establish a time within which the  
53 commission must report back to the administrative law judge.

54 (g) The decision of the workers' compensation office of  
55 judges regarding any objections to a decision of the workers'



56 compensation commission or a self-insured employer is final  
57 and benefits shall be paid or denied in accordance with the  
58 decision unless the decision is subsequently appealed and  
59 reversed in accordance with the procedures set forth in this  
60 article.

**§23-5-10. Appeal from administrative law judge decision to appeal board.**

1 The employer, claimant or workers' compensation commis-  
2 sion may appeal to the appeal board created in section eleven of  
3 this article for a review of a decision by an administrative law  
4 judge. No appeal or review shall lie unless application therefor  
5 be made within thirty days of receipt of notice of the adminis-  
6 trative law judge's final action or in any event within sixty days  
7 of the date of such final action, regardless of notice and, unless  
8 the application for appeal or review is filed within the time  
9 specified, no such appeal or review shall be allowed, such time  
10 limitation being hereby declared to be a condition of the right  
11 to 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, the  
2 workers' compensation appeal board heretofore established in  
3 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 board  
6 of review" or "the board". Effective the first day of February,  
7 two thousand four, the board of review shall exercise exclusive  
8 jurisdiction over all appeals from the workers' compensation  
9 office judges including any and all appeals pending with the  
10 board of appeals on the thirty-first day of January, two thousand  
11 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, three  
16 qualified attorneys to serve as members of the board of review.  
17 If the governor does not select a nominee for any vacant  
18 position from the names provided by the nominating commit-  
19 tee, he shall notify the nominating committee of that circum-  
20 stance and the committee shall provide additional names for  
21 consideration by the governor. A member of the board of  
22 review may be removed by the governor for official miscon-  
23 duct, incompetence, neglect of duty, gross immorality or  
24 malfeasance and then only after notice and opportunity to  
25 respond and present evidence. No more than two of the mem-  
26 bers of the board may be of the same political party. The  
27 members of the board of review shall be paid an annual salary  
28 of eighty-five thousand dollars. Members are entitled to be  
29 reimbursed for actual and necessary travel expenses incurred in  
30 the discharge of official duties in a manner consistent with the  
31 guidelines of the travel management office of the department of  
32 administration.

33 (e) The nominating committee shall consist of the following  
34 members: (1) The president of the West Virginia state bar who  
35 will serve as the chairperson of the committee; (2) an active  
36 member of the West Virginia state bar workers' compensation  
37 committee selected by the major trade association representing  
38 employers in this state; (3) an active member of the West  
39 Virginia state bar workers' compensation committee selected  
40 by the highest ranking officer of the major employee organiza-  
41 tion representing workers in this state; (4) the dean of the West  
42 Virginia university school of law; and (5) the chairman of the  
43 judicial investigation committee.

44 (f) The nominating committee is responsible for reviewing  
45 and evaluating candidates for possible appointment to the board  
46 of review by the governor. In reviewing candidates, the

47 nominating committee may accept comments from and request  
48 information from any person or source.

49 (g) Each member of the nominating committee may submit  
50 up to three names of qualified candidates for each position on  
51 the board of review: *Provided*, That the member of the nomi-  
52 nating committee selected by the major trade organization  
53 representing employers of this state shall submit at least one  
54 name of a qualified candidate for each position on the board  
55 who either is, or who represents, small business employers of  
56 this state. After careful review of the candidates, the committee  
57 shall select a minimum of one candidate for each position on  
58 the board.

59 (h) No later than the first day of November, two thousand  
60 three, the nominating committee shall present to the governor  
61 its list of candidates for the initial board of review. The gover-  
62 nor shall appoint the initial board no later than the thirty-first  
63 day of December, two thousand three: *Provided*, That upon the  
64 thirty-first day of December, two thousand three, the deadline  
65 for filling all positions of the board of review will be extended,  
66 as necessary, if on or before that date the governor has timely  
67 requested additional names from the nominating committee.  
68 Thereafter, the nominating committee shall meet at the request  
69 of the governor in order to make timely recommendations to the  
70 governor for appointees to the board as the initial and subse-  
71 quent terms expire or become vacant. The recommendations  
72 shall be submitted no later than thirty days prior to the expira-  
73 tion of any term.

74 (i) Of the initial appointments, one member shall be  
75 appointed for a term ending the thirty-first day of December,  
76 two thousand six; one member shall be appointed for a term  
77 ending the thirty-first day of December, two thousand eight;  
78 and one member shall be appointed for a term ending the thirty-

79 first day of December, two thousand ten. Thereafter, the  
80 appointments shall be for six-year terms.

81 (j) A member of the board of review must, at the time he or  
82 she takes office and thereafter during his or her continuance in  
83 office, be a resident of this state, be a member in good standing  
84 of the West Virginia state bar, have a minimum of ten years'  
85 experience as an attorney admitted to practice law in this state  
86 prior to appointment and have a minimum of five years'  
87 experience in preparing and presenting cases or hearing actions  
88 and making decisions on the basis of the record of those  
89 hearings before administrative agencies, regulatory bodies or  
90 courts of record at the federal, state or local level.

91 (k) No member of the board of review may hold any other  
92 office, or accept any appointment or public trust, nor may he or  
93 she become a candidate for any elective public office or  
94 nomination thereto. Violation of this subsection requires the  
95 member to vacate his or her office. No member of the board of  
96 review may engage in the practice of law during his or her term  
97 of office.

98 (l) A vacancy occurring on the board other than by expira-  
99 tion of a term shall be filled in the manner original appoint-  
100 ments were made, for the unexpired portion of the term.

101 (m) The board shall designate one of its members in  
102 rotation to be chairman of the board for as long as the board  
103 may determine by order made and entered of record. In the  
104 absence of the chairman, any other member designated by the  
105 members present shall act as chairman.

106 (n) The board of review shall meet as often as necessary to  
107 hold review hearings, at such times and places as the chairman  
108 may determine. Two members shall be present in order to  
109 conduct review hearings or other business. All decisions of the

110 board shall be determined by a majority of the members of the  
111 board.

112 (o) The board of review shall make general rules regarding  
113 the pleading, including the form of the petition and any  
114 responsive pleadings, practice and procedure to be used by the  
115 board.

116 (p) The board of review may hire a clerk and other profes-  
117 sional and clerical staff necessary to carry out the requirements  
118 of this article. It is the duty of the clerk of the board of review  
119 to attend in person, or by deputy, all the sessions of the board,  
120 to obey its orders and directions, to take care of and preserve in  
121 an office, kept for the purpose, all records and papers of the  
122 board and to perform other duties as prescribed by law or  
123 required of him or her by the board. All employees of the board  
124 shall serve at the will and pleasure of the board. The board's  
125 employees are exempt from the salary schedule or pay plan  
126 adopted by the division of personnel. All personnel of the board  
127 of review shall be under the supervision of the chairman of the  
128 board of review.

129 (q) If deemed necessary by the board, the board may,  
130 through staffing or other resources, procure assistance in review  
131 of medical portions of decisions.

132 (r) Upon the conclusion of any hearing, or prior thereto  
133 with concurrence of the parties, the member shall promptly  
134 determine the matter and make an award in accordance with his  
135 or her determination.

136 (s) The award shall become a part of the commission file.  
137 A copy of the award shall be sent forthwith by mail to all  
138 parties in interest.

139 (t) The award is final when entered. The award shall  
140 contain a statement explaining the rights of the parties to an

141 appeal to the board of review and the applicable time limita-  
142 tions involved.

143 (u) The board shall submit a budget to the executive  
144 director for inclusion in the budget for the workers' compensa-  
145 tion commission sufficient to adequately provide for the  
146 administrative and other operating expenses of the board.

147 (v) The board shall report monthly to the board of managers  
148 on the status of all claims on appeal.

**§23-5-12. Appeal to board; procedure; remand and supplemental hearing.**

1 (a) Any employer, employee, claimant or dependent, who  
2 shall feel aggrieved at any final action of the administrative law  
3 judge taken after a hearing held in accordance with the provi-  
4 sions of section nine of this article, shall have the right to  
5 appeal to the board created in section eleven of this article for  
6 a review of such action. The workers' compensation commis-  
7 sion shall likewise have the right to appeal to the board any  
8 final action taken by the administrative law judge. The ag-  
9 grieved party shall file a written notice of appeal with the office  
10 of judges directed to the board, within thirty days after receipt  
11 of notice of the action complained of, or in any event, regard-  
12 less of notice, within sixty days after the date of the action  
13 complained of, and unless the notice of appeal is filed within  
14 the time specified, no appeal shall be allowed, the time limita-  
15 tion is a condition of the right to appeal and hence jurisdic-  
16 tional. The office of judges shall notify the other parties  
17 immediately upon the filing of a notice of appeal. The notice of  
18 appeal shall state the ground for review and whether oral  
19 argument is requested. The office of judges shall forthwith  
20 make up a transcript of the proceedings before the office of  
21 judges and certify and transmit it to the board. The certificate  
22 shall incorporate a brief recital of the proceedings in the case  
23 and recite each order entered and the date thereof.

24 (b) The board shall set a time and place for the hearing of  
25 arguments on each claim and shall notify the interested parties  
26 thereof. The review by the board shall be based upon the record  
27 submitted to it and such oral argument as may be requested and  
28 received. The board may affirm, reverse, modify or supplement  
29 the decision of the administrative law judge and make such  
30 disposition of the case as it determines to be appropriate. Briefs  
31 may be filed by the interested parties in accordance with the  
32 rules of procedure prescribed by the board. The board may  
33 affirm the order or decision of the administrative law judge or  
34 remand the case for further proceedings. It shall reverse, vacate  
35 or modify the order or decision of the administrative law judge  
36 if the substantial rights of the petitioner or petitioners have been  
37 prejudiced because the administrative law judge's findings are:

38 (1) In violation of statutory provisions; or

39 (2) In excess of the statutory authority or jurisdiction of the  
40 administrative law judge; or

41 (3) Made upon unlawful procedures; or

42 (4) Affected by other error of law; or

43 (5) Clearly wrong in view of the reliable, probative and  
44 substantial evidence on the whole record; or

45 (6) Arbitrary or capricious or characterized by abuse of  
46 discretion or clearly unwarranted exercise of discretion.

47 (c) After a review of the case, the board shall issue a written  
48 decision to be filed with the commission and a copy thereof  
49 sent by mail to the parties.

50 (1) All decisions, findings of fact and conclusions of law of  
51 the board of review shall be in writing and state with specificity

52 the laws and facts relied upon to sustain, reverse or modify the  
53 administrative law judge's decision.

54 (2) Decisions of the board of review shall be made by a  
55 majority vote of the board of review.

56 (3) A decision of the board of review is binding upon the  
57 executive director and the commission with respect to the  
58 parties involved in the particular appeal. The executive director  
59 shall have the right to seek judicial review of a board of review  
60 decision irrespective of whether or not he appeared or partici-  
61 pated in the appeal to the board of review.

62 (d) Instead of affirming, reversing or modifying the  
63 decision of the administrative law judge, the board may, upon  
64 motion of any party or upon its own motion, for good cause  
65 shown, to be set forth in the order of the board, remand the case  
66 to the chief administrative law judge for the taking of such new,  
67 additional or further evidence as in the opinion of the board  
68 may be necessary for a full and complete development of the  
69 facts of the case. In the event the board shall remand the case to  
70 the chief administrative law judge for the taking of further  
71 evidence, the administrative law judge shall proceed to take  
72 new, additional or further evidence in accordance with any  
73 instruction given by the board within thirty days after receipt of  
74 the order remanding the case. The chief administrative law  
75 judge shall give to the interested parties at least ten days'  
76 written notice of the supplemental hearing, unless the taking of  
77 evidence is postponed by agreement of parties, or by the  
78 administrative law judge for good cause. After the completion  
79 of a supplemental hearing, the administrative law judge shall,  
80 within sixty days, render his or her decision affirming, revers-  
81 ing or modifying the former action of the administrative law  
82 judge. The decision shall be appealable to, and proceeded with  
83 by the board of review in the same manner as other appeals. In  
84 addition, upon a finding of good cause, the board may remand



85 the case to the workers' compensation commission for further  
86 development. Any decision made by the commission following  
87 a remand shall be subject to objection to the office of judges  
88 and not to the board. The board may remand any case as often  
89 as in its opinion is necessary for a full development and just  
90 decision of the case.

91 (e) All appeals from the action of the administrative law  
92 judge shall be decided by the board at the same session at which  
93 they are heard, unless good cause for delay thereof be shown  
94 and entered of record.

95 (f) In all proceedings before the board, any party may be  
96 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 any  
2 order of remand, may be prosecuted by either party or by the  
3 workers' compensation commission to the supreme court of  
4 appeals within thirty days from the date of the final order by  
5 filing a petition therefor with the court against the board and the  
6 adverse party or parties as respondents. Unless the petition for  
7 review is filed within the thirty-day period, no appeal or review  
8 shall be allowed, such time limitation is a condition of the right  
9 to such appeal or review and hence jurisdictional. The clerk of  
10 the supreme court of appeals shall notify each of the respon-  
11 dents and the workers' compensation commission of the filing  
12 of such petition. The board shall, within ten days after receipt  
13 of the notice, file with the clerk of the court the record of the  
14 proceedings had before it, including all the evidence. The court  
15 or any judge thereof in vacation may thereupon determine  
16 whether or not a review shall be granted. If review is granted to  
17 a nonresident of this state, he or she shall be required to execute  
18 and file with the clerk before an order or review shall become

19 effective, a bond, with security to be approved by the clerk,  
20 conditioned to perform any judgment which may be awarded  
21 against him or her. The board may certify to the court and  
22 request its decision of any question of law arising upon the  
23 record, and withhold its further proceeding in the case, pending  
24 the decision of court on the certified question, or until notice  
25 that the court has declined to docket the same. If a review is  
26 granted or the certified question is docketed for hearing, the  
27 clerk shall notify the board and the parties litigant or their  
28 attorneys and the workers' compensation commission of that  
29 fact by mail. If a review is granted or the certified question  
30 docketed, the case shall be heard by the court in the same  
31 manner as in other cases, except that neither the record nor  
32 briefs need be printed. Every review granted or certified  
33 question docketed prior to thirty days before the beginning of  
34 the term, shall be placed upon the docket for that term. The  
35 attorney general shall, without extra compensation, represent  
36 the board in such cases. The court shall determine the matter  
37 brought before it and certify its decision to the board and to the  
38 commission. The cost of the proceedings on petition, including  
39 a reasonable attorney's fee, not exceeding thirty dollars to the  
40 claimant's attorney, shall be fixed by the court and taxed  
41 against the employer if the latter is unsuccessful. If the claim-  
42 ant, or the commission (in case the latter is the applicant for  
43 review) is unsuccessful, the costs, not including attorney's fees,  
44 shall be taxed against the commission, payable out of the  
45 workers' compensation fund, or shall be taxed against the  
46 claimant, in the discretion of the court. But there shall be no  
47 cost taxed upon a certified question.

48 (b) In reviewing a decision of the board of review, the  
49 supreme court of appeals shall consider the record provided by  
50 the board and give deference to the board's findings, reasoning  
51 and conclusions, in accordance with subsections (c) and (d) of  
52 this section.

53 (c) If the decision of the board represents an affirmation of  
54 a prior ruling by both the commission and the office of judges  
55 that was entered on the same issue in the same claim, the  
56 decision of the board may be reversed or modified by the  
57 supreme court of appeals only if the decision is in clear  
58 violation of constitutional or statutory provision, is clearly the  
59 result of erroneous conclusions of law, or is based upon the  
60 board's material misstatement or mischaracterization of  
61 particular components of the evidentiary record. The court may  
62 not conduct a de novo re-weighing of the evidentiary record. If  
63 the court reverses or modifies a decision of the board pursuant  
64 to this subsection, it shall state with specificity the basis for the  
65 reversal or modification and the manner in which the decision  
66 of the board clearly violated constitutional or statutory provi-  
67 sions, resulted from erroneous conclusions of law, or was based  
68 upon the board's material misstatement or mischaracterization  
69 of particular components of the evidentiary record.

70 (d) If the decision of the board effectively represents a  
71 reversal of a prior ruling of either the commission or the office  
72 of judges that was entered on the same issue in the same claim,  
73 the decision of the board may be reversed or modified by the  
74 supreme court of appeals only if the decision is in clear  
75 violation of constitutional or statutory provisions, is clearly the  
76 result of erroneous conclusions of law, or is so clearly wrong  
77 based upon the evidentiary record that even when all inferences  
78 are resolved in favor of the board's findings, reasoning and  
79 conclusions, there is insufficient support to sustain the decision.  
80 The court may not conduct a de novo re-weighing of the  
81 evidentiary record. If the court reverses or modifies a decision  
82 of the board pursuant to this subsection, it shall state with  
83 specificity the basis for the reversal or modification and the  
84 manner in which the decision of the board clearly violated  
85 constitutional or statutory provisions, resulted from erroneous  
86 conclusions of law, or was so clearly wrong based upon the  
87 evidentiary record that even when all inferences are resolved in

88 favor of the board's findings, reasoning and conclusions, there  
89 is insufficient support to sustain the decision.

**§23-5-17. Termination of office of judges.**

1 The office of judges terminates on the first day of July, two  
2 thousand nine, pursuant to the provisions of article ten, chapter  
3 four of this code unless sooner terminated, continued or  
4 reestablished pursuant to the provisions of said article.

**§23-5-18. Termination of the workers' compensation appeal  
board and the workers' compensation board of  
review.**

1 After the thirty-first day of December, two thousand three,  
2 the workers' compensation appeal board shall be terminated  
3 and all matters pending before the appeal board on the thirty-  
4 first day of December, two thousand three, shall be transferred  
5 to the board of review.

6 Pursuant to the provisions of article ten, chapter four of this  
7 code, the workers' compensation board of review shall continue  
8 to exist until the first day of July, two thousand nine, unless  
9 sooner terminated, continued or reestablished by act of the  
10 Legislature.

**CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.**

**ARTICLE 8. EMERGENCY HOSPITALS.**

**§26-8-2. Patients; expenses; disposition of receipts.**

1 The department of health and human resources shall admit  
2 to the hospitals, under its rules, persons requiring hospital care  
3 and shall treat free of charge persons accidentally injured in this  
4 state while engaged in their usual employment, but preference  
5 at all times shall be given to persons accidentally injured:  
6 *Provided*, That the executive director of the workers' compen-

7 sation commission shall pay to the hospitals for the treatment  
8 of anyone entitled to benefits or aid out of the workers'  
9 compensation fund the same fee or expenses that would be paid  
10 to a private hospital for similar treatment. All moneys collected  
11 under this section shall be paid into the state treasury through  
12 the state commissioner of public institutions as required in  
13 section thirteen, article one, chapter twenty-five of this code.

## CHAPTER 48. DOMESTIC RELATIONS.

### ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-125. Employment and income reporting.

§48-18-131. Access to records, confidentiality.

#### **§48-18-125. Employment and income reporting.**

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "employee"  
3 for purposes of federal income tax withholding, as defined in 26  
4 U. S. C. §3401;

5 (2) "Employer" means the person or entity for whom an  
6 individual performs or performed any service of whatever  
7 nature and who has control of the payment of the individual's  
8 wages for performance of the service or services, as defined in  
9 26 U. S. C. §3401;

10 (3) An individual is considered a "new hire" on the first day  
11 in which that individual performs services for remuneration and  
12 on which an employer begins to withhold amounts for income  
13 tax purposes.

14 (b) Except as provided in subsections (c) and (d) of this  
15 section, all employers doing business in the state shall report to  
16 the bureau for child support enforcement:

17       (1) The hiring of any person who resides or works in this  
18 state to whom the employer anticipates paying earnings; and

19       (2) The rehiring or return to work of any employee who  
20 resides or works in this state.

21       (c) Employers are not required to report the hiring, rehiring  
22 or return to work of any person who is an employee of a federal  
23 or state agency performing intelligence or counterintelligence  
24 functions if the head of the agency has determined that report-  
25 ing could endanger the safety of the employee or compromise  
26 an ongoing investigation or intelligence mission.

27       (d) An employer that has employees in states other than this  
28 state and that transmits reports magnetically or electronically is  
29 not required to report to the bureau for child support enforce-  
30 ment the hiring, rehiring or return to work of any employee if  
31 the employer has filed with the secretary of the federal depart-  
32 ment of health and human services, as required by 42 U. S. C.  
33 §653A, a written designation of another state in which it has  
34 employees as the reporting state.

35       (e) Employers shall report by mailing to the bureau for  
36 child support enforcement a copy of the employee's W-4 form;  
37 however, an employer may transmit the information through  
38 another means if approved in writing by the bureau for child  
39 support enforcement prior to the transmittal. The report shall  
40 include the employee's name, address and social security  
41 number, the employer's name and address, any different  
42 address of the payroll office and the employer's federal tax  
43 identification number. The employer may report other informa-  
44 tion, such as date of birth or income information, if desired.

45       (f) Employers shall submit a report within fourteen days of  
46 the date of the hiring, rehiring or return to work of the em-  
47 ployee. However, if the employer transmits the reports magneti-  
48 cally or electronically by two monthly submissions, the reports

49 shall be submitted not less than twelve days nor more than  
50 sixteen days apart.

51 (g) An employer shall provide to the bureau for child  
52 support enforcement, upon its written request, information  
53 regarding an obligor's employment, wages or salary, medical  
54 insurance, start date and location of employment.

55 (h) Any employer who fails to report in accordance with the  
56 provisions of this section shall be assessed a civil penalty of no  
57 more than twenty-five dollars per failure. If the failure to report  
58 is the result of a conspiracy between the employer and the  
59 employee not to supply the required report or to supply a false  
60 or incomplete report, the employer shall be assessed a civil  
61 penalty of no more than five hundred dollars.

62 (i) Employers required to report under this section may  
63 assess each employee reported one dollar for the administrative  
64 costs of reporting.

65 (j) Uses for the new hire information include, but are not  
66 limited to, the following:

67 (1) The state directory of new hires shall furnish the  
68 information to the national directory of new hires;

69 (2) The bureau for child support enforcement shall use  
70 information received pursuant to this section to locate individu-  
71 als for purposes of establishing paternity and of establishing,  
72 modifying and enforcing child support obligations and may  
73 disclose the information to any agent of the agency that is under  
74 contract with the bureau to carry out those purposes;

75 (3) State agencies responsible for administering a program  
76 specified in 42 U. S. C. §1320b-7(b) shall have access to  
77 information reported by employers for purposes of verifying  
78 eligibility for the program; and

79           (4) The bureau of employment programs and the workers'  
80 compensation commission shall have access to information  
81 reported by employers for purposes of administering employ-  
82 ment security and workers' compensation programs.

**§48-18-131. Access to records, confidentiality.**

1           (a) All records in the possession of the bureau for child  
2 support enforcement, including records concerning an individ-  
3 ual case of child or spousal support, are confidential and shall  
4 not be released except as follows:

5           (1) Records shall be disclosed or withheld as required by  
6 federal law or regulations promulgated thereunder notwith-  
7 standing other provisions of this section.

8           (2) Information as to the whereabouts of a party or the child  
9 shall not be released to a person against whom a protective  
10 order has been entered with respect to that party or child or  
11 where the state has reason to believe that the release of the  
12 information to the person making the request may result in  
13 physical or emotional harm to the party or the child.

14           (3) The phone number, address, employer and other  
15 information regarding the location of the obligor, the obligee  
16 and the child shall only be disclosed: (A) Upon his or her  
17 written consent, to the person whom the consent designates; or  
18 (B) notwithstanding subdivision (4) of this subsection, to the  
19 obligee, the obligor, the child or the caretaker or representative  
20 of the child, upon order of a court if the court finds that the  
21 disclosure is for a bona fide purpose, is not contrary to the best  
22 interest of a child and does not compromise the safety of any  
23 party: *Provided*, That the identity and location of the employer  
24 may be disclosed on the letters, notices and pleadings of the  
25 bureau as necessary and convenient for the determination of  
26 support amounts and the establishment, investigation, modifica-  
27 tion, enforcement, collection and distribution of support.



28       (4) Information and records other than the phone number,  
29 address, employer and information regarding the location of the  
30 obligor, the obligee and the child shall be disclosed to the  
31 obligor, the obligee, the child or the caretaker of the child or his  
32 or her duly authorized representative, upon his or her written  
33 request: *Provided*, That when the obligor requests records other  
34 than collection and distribution records, financial records  
35 relevant to the determination of the amount of support pursuant  
36 to the guidelines, or records the obligor has supplied, the bureau  
37 shall mail a notice by first-class mail to the last known address  
38 of the obligee notifying him or her of the request. The notice  
39 shall advise the obligee of his or her right to object to the  
40 release of records on the grounds that the records are not  
41 relevant to the determination of the amount of support or the  
42 establishment, modification, enforcement, collection or  
43 distribution of support. The notice shall also advise the obligee  
44 of his or her right to disclosure of records provided in this  
45 section in order to determine what records the bureau for child  
46 support enforcement may have. In the event of any objection,  
47 the bureau shall determine whether or not the information shall  
48 be released.

49       (5) Information in specific cases may be released as  
50 necessary to determine the identity, location, employment,  
51 income and assets of an obligor.

52       (6) Information and records may be disclosed to the bureau  
53 of vital statistics, bureau of employment programs, the workers'  
54 compensation commission, state tax department and the internal  
55 revenue service, or other state or federal agencies or depart-  
56 ments that are necessary or desirable in obtaining any address,  
57 employment, wage or benefit information for the purpose of  
58 determining the amount of support or establishing, enforcing,  
59 collecting and distributing support.

60 (b) Any person who willfully violates this section is guilty  
61 of a misdemeanor and, upon conviction thereof, shall be fined  
62 not less than one hundred dollars nor more than one thousand  
63 dollars, or confined in the county or regional jail not more than  
64 six months, or both fined and confined.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24e. Omission to subscribe to the workers' compensation fund; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

§61-3-24f. Wrongfully seeking workers' compensation; false testimony or statements; penalties; venue.

§61-3-24g. Workers' compensation health care offenses; fraud: theft or embezzlement; false statements; penalties; notice: prohibition against providing future services; penalties; asset forfeiture; venue.

**§61-3-24e. Omission to subscribe to the workers' compensation fund; 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 as  
3 owner, partner, president, other officer, or manager of a sole  
4 proprietorship, firm, partnership, company, corporation or  
5 association, who, as a person who is responsible for and who is  
6 required by specific assignment, duty or legal duty, which is  
7 either expressed or inherent in laws which require the em-  
8 ployer's principals to be informed and to know the facts and  
9 laws affecting the business organization and to make internal  
10 policy and decisions which ensure that the individual and  
11 organization comply with the general laws and provisions of  
12 chapter twenty-three of this code, knowingly and willfully fails  
13 to subscribe to the workers' compensation fund shall be guilty

14 of a felony and, upon conviction, shall be imprisoned in a state  
15 correctional facility not less than one nor more than ten years,  
16 or in the discretion of the court, be confined in a county or  
17 regional jail not more than one year and shall be fined not more  
18 than two thousand five hundred dollars.

19 (B) Any corporation, association or partnership who, as an  
20 employer as defined in chapter twenty-three of this code,  
21 knowingly and willfully fails to subscribe to the workers'  
22 compensation fund shall be guilty of a felony and, upon  
23 conviction, shall be fined not less than two thousand five  
24 hundred dollars nor more than ten thousand dollars.

25 (2) Failure to pay:

26 (A) Any person who individually or as owner, partner,  
27 president, other officer or manager of a sole proprietorship,  
28 firm, partnership, company, corporation or association, who, as  
29 a responsible person as defined in this section, knowingly and  
30 willfully fails to make premium tax payments to the workers'  
31 compensation fund as required by chapter twenty-three of this  
32 code, shall be guilty of the larceny of the premium owed and,  
33 if the amount is one thousand dollars or more, such person shall  
34 be guilty of a felony and, upon conviction thereof, shall be  
35 imprisoned in a state correctional facility not less than one nor  
36 more than ten years or, in the discretion of the court, be  
37 confined in a county or regional jail not more than one year and  
38 shall be fined not more than two thousand five hundred dollars.  
39 If the amount is less than one thousand dollars, such person  
40 shall be guilty of a misdemeanor and, upon conviction thereof,  
41 shall be confined in a county or regional jail for a term not to  
42 exceed one year or fined an amount not to exceed two thousand  
43 five hundred dollars, or both, in the discretion of the court.

44 (B) Any corporation, association, company or partnership  
45 which, as an employer as defined in chapter twenty-three of this  
46 code, knowingly and willfully fails to make premium tax  
47 payments to the workers' compensation fund as required by  
48 chapter twenty-three of this code shall be guilty of the larceny  
49 of the premium owed, and, if the amount is one thousand  
50 dollars or more, such corporation, association, company or  
51 partnership shall be guilty of a felony and, upon conviction  
52 thereof, shall be fined not less than two thousand five hundred  
53 dollars nor more than ten thousand dollars. If the amount is less  
54 than one thousand dollars, such corporation, association,  
55 company or partnership shall be guilty of a misdemeanor and,  
56 upon conviction thereof, shall be fined an amount not to exceed  
57 two thousand five hundred dollars.

58 (C) Any person who individually or as owner, partner,  
59 president, other officer, or manager of a sole proprietorship,  
60 firm, partnership, company, corporation or association, who, as  
61 a responsible person, as defined in this section, knowingly and  
62 willfully and with fraudulent intent sells, transfers or otherwise  
63 disposes of substantially all of the employer's assets for the  
64 purpose of evading the payment of workers' compensation  
65 premium taxes to the workers' compensation fund as required  
66 by chapter twenty-three of this code, shall be guilty of the  
67 larceny of the premium owed and, if the amount is one thou-  
68 sand dollars or more, such person shall be guilty of a felony  
69 and, upon conviction thereof, shall be imprisoned in a state  
70 correctional facility not less than one nor more than ten years  
71 or, in the discretion of the court, be confined in a county or  
72 regional jail not more than one year and shall be fined not more  
73 than two thousand five hundred dollars. If the amount is less  
74 than one thousand dollars, such person shall be guilty of a  
75 misdemeanor and, upon conviction thereof, shall be confined in  
76 a county or regional jail for a term not to exceed one year or  
77 fined an amount not to exceed two thousand five hundred  
78 dollars, or both, in the discretion of the court.

79 (D) Any corporation, association, company or partnership  
80 which, as an employer as defined in chapter twenty-three of this  
81 code, knowingly and willfully and with fraudulent intent sells,  
82 transfers or otherwise disposes of substantially all of the  
83 employer's assets for the purpose of evading the payment of  
84 workers' compensation premium taxes to the workers' compen-  
85 sation fund as required by chapter twenty-three of this code  
86 shall be guilty of the larceny of the premium owed, and, if the  
87 amount is one thousand dollars or more, such corporation,  
88 association, company or partnership shall be guilty of a felony  
89 and, upon conviction thereof, shall be fined not less than two  
90 thousand five hundred dollars nor more than ten thousand  
91 dollars. If the amount is less than one thousand dollars, such  
92 corporation, association, company or partnership shall be guilty  
93 of a misdemeanor and, upon conviction thereof, shall be fined  
94 an amount not to exceed two thousand five hundred dollars.

95 (3) Failure to file premium tax reports:

96 (A) Any person who individually or as owner, partner,  
97 president, other officer, or manager of a sole proprietorship,  
98 firm, partnership, company, corporation or association, who, as  
99 a responsible person as defined in this section, knowingly and  
100 willfully fails to file a premium tax report with the workers'  
101 compensation fund as required by chapter twenty-three of this  
102 code, shall be guilty of a felony and, upon conviction thereof,  
103 shall be imprisoned in a state correctional facility not less than  
104 one nor more than ten years, or in the discretion of the court, be  
105 confined in a county or regional jail for a term not to exceed  
106 one year and shall be fined not more than two thousand five  
107 hundred dollars.

108 (B) Any corporation, association, company or partnership  
109 which, as an employer as defined in chapter twenty-three of this  
110 code, knowingly and willfully fails to file a premium tax report  
111 with the workers' compensation fund as required by chapter

112 twenty-three of this code, shall be guilty of a felony and, upon  
113 conviction thereof, shall be fined not less than two thousand  
114 five hundred dollars nor more than ten thousand dollars.

115 (4) Failure to file other reports:

116 (A) Any person, individually or as owner, partner, president  
117 or other officer, or manager of a sole proprietorship, firm,  
118 partnership, company, corporation or association who, as a  
119 responsible person as defined in this section, knowingly and  
120 willfully fails to file any report, other than a premium tax  
121 report, required by such chapter shall be guilty of a misde-  
122 meanor and, upon conviction thereof, shall be confined in a  
123 county or regional jail for a term not to exceed one year or fined  
124 an amount not to exceed two thousand five hundred dollars, or  
125 both, in the discretion of the court.

126 (B) Any corporation, association, company or partnership  
127 which, as an employer as defined in chapter twenty-three of this  
128 code, knowingly and willfully fails to file any report, other than  
129 a premium tax report, with the workers' compensation fund as  
130 required by chapter twenty-three of this code, shall be guilty of  
131 a misdemeanor and, upon conviction thereof, shall be fined an  
132 amount not to exceed two thousand five hundred dollars.

133 (5) False testimony or statements:

134 Any person, individually or as owner, partner, president,  
135 other officer, or manager of a sole proprietorship, firm, partner-  
136 ship, company, corporation or association who, as a responsible  
137 person as defined in this section, knowingly and willfully  
138 makes a false report or statement under oath, affidavit, certifica-  
139 tion or by any other means respecting any information required  
140 to be provided under chapter twenty-three of this code shall be  
141 guilty of a felony and, upon conviction thereof, shall be  
142 confined in a state correctional facility for a definite term of

143 imprisonment which is not less than one year nor more than  
144 three years or fined not less than one thousand dollars nor more  
145 than ten thousand dollars, or both, in the discretion of the court.  
146 In addition to any other penalty imposed, the court shall order  
147 any defendant convicted under this section to make full  
148 restitution of all moneys paid by or due to the workers' com-  
149 pensation fund as the result of a violation of this section. The  
150 restitution ordered shall constitute a judgment against the  
151 defendant and in favor of the state of West Virginia workers'  
152 compensation commission.

153 (6) Asset forfeiture:

154 (A) The court, in imposing sentence on a person or entity  
155 convicted of an offense under this section, shall order the  
156 person or entity to forfeit property, real or personal, that  
157 constitutes or is derived, directly or indirectly, from gross  
158 proceeds traceable to the commission of the offense. Any  
159 person or entity convicted under this section shall pay the costs  
160 of asset forfeiture.

161 (B) For purposes of subdivision (A) of this subsection, the  
162 term "payment of the costs of asset forfeiture" means:

163 (i) The payment of any expenses necessary to seize, detain,  
164 inventory, safeguard, maintain, advertise, sell or dispose of  
165 property under seizure, detention, forfeiture or of any other  
166 necessary expenses incident to the seizure, detention, forfeiture,  
167 or disposal of such property, including payment for:

168 (I) Contract services;

169 (II) The employment of outside contractors to operate and  
170 manage properties or provide other specialized services  
171 necessary to dispose of such properties in an effort to maximize  
172 the return from such properties; and

173 (III) Reimbursement of any state or local agency for any  
174 expenditures made to perform the functions described in this  
175 subparagraph;

176 (ii) The compromise and payment of valid liens and  
177 mortgages against property that has been forfeited, subject to  
178 the discretion of the workers' compensation fund to determine  
179 the validity of any such lien or mortgage and the amount of  
180 payment to be made, and the employment of attorneys and  
181 other personnel skilled in state real estate law as necessary;

182 (iii) Payment authorized in connection with remission or  
183 mitigation procedures relating to property forfeited; and

184 (iv) The payment of state and local property taxes on  
185 forfeited real property that accrued between the date of the  
186 violation giving rise to the forfeiture and the date of the  
187 forfeiture order.

188 (7) Venue:

189 Venue for prosecution of any violation of this section shall  
190 be either the county in which the defendant's principal business  
191 operations are located or in Kanawha County where the work-  
192 ers' 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 or from a self-insured employer:

4 (A) That is larger in amount than that to which he or she is  
5 entitled; or

6 (B) That is longer in term than that to which he or she is  
7 entitled; or



8 (C) To which he or she is not entitled, shall be guilty of a  
9 larceny and, if the amount is one thousand dollars or more, such  
10 person shall be guilty of a felony and, upon conviction thereof,  
11 shall be imprisoned in a state correctional facility not less than  
12 one nor more than ten years or, in the discretion of the court, be  
13 confined in a county or regional jail not more than one year and  
14 shall be fined not more than two thousand five hundred dollars.  
15 If the amount is less than one thousand dollars, such person  
16 shall be guilty of a misdemeanor and, upon conviction thereof,  
17 shall be confined in a county or regional jail for a term not to  
18 exceed one year or fined an amount not to exceed two thousand  
19 five hundred dollars, or both, in the discretion of the court.

20 (2) Any person who shall knowingly and willfully make a  
21 false report or statement under oath, affidavit, certification or  
22 by any other means respecting any information required to be  
23 provided under chapter twenty-three of this code shall be guilty  
24 of a felony and, upon conviction thereof, shall be confined in a  
25 state correctional facility for a definite term of imprisonment  
26 which is not less than one year nor more than three years or  
27 fined not less than one thousand dollars nor more than ten  
28 thousand dollars, or both, in the discretion of the court.

29 (3) In addition to any other penalty imposed, the court shall  
30 order any person convicted under this section to make full  
31 restitution of all moneys paid by the workers' compensation  
32 fund or self-insured employer as the result of a violation of this  
33 section. The restitution ordered shall constitute a judgment  
34 against the defendant and in favor of the state of West Virginia  
35 workers' compensation commission or self-insured employer.

36 (4) If the person so convicted is receiving compensation  
37 from such fund or employer, he or she shall, from and after  
38 such conviction, cease to receive such compensation as a result  
39 of any alleged injury or disease.

40 (5) Venue for prosecution of any violation of this section  
41 shall either be the county in which the claimant resides, the  
42 county in which the claimant is employed or working, or in  
43 Kanawha County where the workers' compensation fund is  
44 located.

**§61-3-24g. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; 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 or a  
4 self-insured employer in connection with the delivery of or  
5 payment for workers' compensation health care benefits, items  
6 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 or a self-insured employer in connection  
11 with the delivery of or payment for workers' compensation  
12 health care benefits, items or services; or

13 (C) To make any charge or charges against any injured  
14 employee or any other person, firm or corporation which would  
15 result in a total charge for the treatment or service rendered in  
16 excess of the maximum amount set forth in the workers'  
17 compensation commission's schedule of maximum reasonable  
18 amounts to be paid for the treatment or services issued pursuant  
19 to subsection (a), section three, article four, chapter twenty-  
20 three of this code is guilty of a felony and, upon conviction  
21 thereof, shall be imprisoned in a state correctional facility not  
22 less than one year nor more than ten years or, in the discretion  
23 of the court, be confined in a county or regional jail not more

24 than one year and shall be fined not more than two thousand  
25 five hundred dollars.

26 (2) Any person who, in any matter involving a health care  
27 program related to the workers' compensation fund, knowingly  
28 and willfully:

29 (A) Falsifies, conceals or covers up by any trick, scheme or  
30 device a material fact; or

31 (B) Makes any materially false, fictitious or fraudulent  
32 statement or representation, or makes or uses any materially  
33 false writing or document knowing the same to contain any  
34 materially false, fictitious or fraudulent statement or entry, is  
35 guilty of a felony and, upon conviction thereof, shall be  
36 confined in a state correctional facility for a definite term of  
37 imprisonment which is not less than one year nor more than  
38 three years or fined not less than one thousand dollars nor more  
39 than ten thousand dollars, or both, in the discretion of the court.

40 (3) Any person who willfully embezzles, steals or otherwise  
41 unlawfully converts to the use of any person other than the  
42 rightful owner, or intentionally misapplies any of the moneys,  
43 funds, securities, premiums, credits, property or other assets of  
44 a health care program related to the workers' compensation  
45 fund, is guilty of a felony and, upon conviction thereof, shall be  
46 imprisoned in a state correctional facility for not less than one  
47 year nor more than ten years or fined not less than ten thousand  
48 dollars, or both, in the discretion of the court.

49 (4) Any health care provider who fails, in violation of  
50 subsection (5) of this section to post a notice, in the form  
51 required by the workers' compensation commission, in the  
52 provider's public waiting area that the provider cannot accept  
53 any patient whose treatment or other services or supplies would  
54 ordinarily be paid for from the workers' compensation fund or

55 by a self-insured employer unless the patient consents, in  
56 writing, prior to the provision of the treatment or other services  
57 or supplies, to make payment for that treatment or other  
58 services or supplies himself or herself, is guilty of a misde-  
59 meanor and, upon conviction thereof, shall be fined one  
60 thousand dollars.

61 (5) Any person convicted under the provisions of this  
62 section shall, after such conviction, be barred from providing  
63 future services or supplies to injured employees for the pur-  
64 poses of workers' compensation and shall cease to receive  
65 payment for services or supplies. In addition to any other  
66 penalty imposed, the court shall order any defendant convicted  
67 under this section to make full restitution of all moneys paid by  
68 or due to the workers' compensation fund as the result of a  
69 violation of this section. The restitution ordered shall constitute  
70 a judgment against the defendant and in favor of the state of  
71 West Virginia workers' compensation commission.

72 (6)(A) The court, in imposing sentence on a person con-  
73 victed of an offense under this section, shall order the person to  
74 forfeit property, real or personal, that constitutes or is derived,  
75 directly or indirectly, from gross proceeds traceable to the  
76 commission of the offense. Any person convicted under this  
77 section shall pay the costs of asset forfeiture.

78 (B) For purposes of subdivision (A) of this subsection, the  
79 term "payment of the costs of asset forfeiture" means:

80 (i) The payment of any expenses necessary to seize, detain,  
81 inventory, safeguard, maintain, advertise, sell or dispose of  
82 property under seizure, detention or forfeiture, or of any other  
83 necessary expenses incident to the seizure, detention, forfeiture  
84 or disposal of the property, including payment for:

85 (I) Contract services;

86 (II) The employment of outside contractors to operate and  
87 manage properties or provide other specialized services  
88 necessary to dispose of the properties in an effort to maximize  
89 the return from the properties; and

90 (III) Reimbursement of any state or local agency for any  
91 expenditures made to perform the functions described in this  
92 subparagraph;

93 (ii) The compromise and payment of valid liens and  
94 mortgages against property that has been forfeited, subject to  
95 the discretion of the workers' compensation fund to determine  
96 the validity of the lien or mortgage and the amount of payment  
97 to be made, and the employment of attorneys and other person-  
98 nel skilled in state real estate law as necessary;

99 (iii) Payment authorized in connection with remission or  
100 mitigation procedures relating to property forfeited; and

101 (iv) The payment of state and local property taxes on  
102 forfeited real property that accrued between the date of the  
103 violation giving rise to the forfeiture and the date of the  
104 forfeiture order.

105 (7) Venue for prosecution of any violation of this section  
106 shall be either the county in which the defendant's principal  
107 business operations are located or in Kanawha County where  
108 the workers' compensation fund is located.



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