FOREWORD


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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</thead>
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<td></td>
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<tr>
<td></td>
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<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>(HB211)</td>
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<td>3.</td>
<td>(HB213)</td>
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<tr>
<td>4.</td>
<td>(HB214)</td>
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<td>5.</td>
<td>(HB215)</td>
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<tr>
<td>6.</td>
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<tr>
<td>7.</td>
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</tr>
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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:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**EXECUTIVE**

5—*Governor’s Office*

(WV Code Chapter 5)

**Fund 0101 FY 2004 Org 0100**

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

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

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0131, fiscal year 2004, organization 1400, be supplemented and amended to read as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

11—Department of Agriculture

(WV Code Chapter 19)

Fund 0131, FY 2004 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$3,596,423</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Commissioner</td>
<td>70,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>77,138</td>
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<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>1,295,578</td>
</tr>
<tr>
<td>5</td>
<td>State Farm Museum</td>
<td>110,000</td>
</tr>
<tr>
<td>6</td>
<td>Unclassified (R)</td>
<td>788,483</td>
</tr>
<tr>
<td>7</td>
<td>Gypsy Moth Program (R)</td>
<td>943,067</td>
</tr>
<tr>
<td>8</td>
<td>Huntington Farmers Market</td>
<td>50,000</td>
</tr>
<tr>
<td>9</td>
<td>Black Fly Control (R)</td>
<td>428,456</td>
</tr>
<tr>
<td>10</td>
<td>Tri-County Fair Association</td>
<td>0</td>
</tr>
<tr>
<td>11</td>
<td>Donated Foods Program</td>
<td>50,000</td>
</tr>
<tr>
<td>12</td>
<td>Predator Control</td>
<td>140,000</td>
</tr>
<tr>
<td>13</td>
<td>Bee Research</td>
<td>32,421</td>
</tr>
<tr>
<td>14</td>
<td>Microbiology Program (R)</td>
<td>152,680</td>
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<tr>
<td>15</td>
<td>Moorefield Agriculture Center (R)</td>
<td>994,135</td>
</tr>
<tr>
<td>16</td>
<td>WV Food Banks</td>
<td>50,000</td>
</tr>
<tr>
<td>17</td>
<td>Seniors’ Farmers’ Market Nutrition</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Coupon Program</td>
<td>60,000</td>
</tr>
<tr>
<td>19</td>
<td>BRIM Premium</td>
<td>77,862</td>
</tr>
<tr>
<td>20</td>
<td>Total</td>
<td>$8,916,243</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), Mingo County Surface Mine Project (fund 0131, activity 138) shall be available for other purposes as provided by law.
0131, activity 296), Charleston Farmers Market (fund 0131, activity 476), Capital Improvements - Total - Surplus (fund 0131, activity 672), Microbiology Program (fund 0131, activity 785), and Moorefield Agriculture Center (fund 0131, activity 786) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0131, fiscal year 2003, activity 099 ($79,333), fund 0131, fiscal year 2003, activity 119 ($12,930), fund 0131, fiscal year 2003, activity 137 ($65,000), fund 0131, fiscal year 2003, activity 296 ($62,000), and fund 0131, fiscal year 2003, activity 785 ($2,308) which shall expire on June 30, 2003.

A portion of the Unclassified appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

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

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**EXECUTIVE**

**12—Department of Agriculture—**

*State Conservation Committee*

(WV Code Chapter 19)

Fund 0132 FY 2004 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$464,113</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,900</td>
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</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), Conservation Reserve Enhancement Program (fund 0132, activity 141), Soil Conservation Projects - Surplus (fund 0132, activity 269), and Maintenance of Flood Control Projects (fund 0132, activity 522) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during fiscal year 2004, with the exception of fund 0132, fiscal year 2003, activity 120 ($208,335), which shall expire on June 30, 2003.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0593, fiscal year 2004, organization 0709, be supplemented and amended to read as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TAX AND REVENUE

65—West Virginia Office of Tax Appeals

Fund 0593 FY 2004 Org 0709

Unclassified - Total (R) ............... 096 $642,620
Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0593, activity 096) at the close of the fiscal year two thousand three is hereby reappropriated for expenditure during the fiscal year 2004, with the exception of fund 0593, fiscal year 2003, activity 096 ($14,280) which shall expire on June 30, 2003.

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

CHAPTER 2

(H. B. 211 — 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 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:
TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

57—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2004 Org 0612

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
</tr>
<tr>
<td>451</td>
<td>Vehicle Purchase</td>
</tr>
<tr>
<td>494</td>
<td>Barracks Maintenance</td>
</tr>
<tr>
<td>521</td>
<td>Trooper Class</td>
</tr>
<tr>
<td>556</td>
<td>Barracks Lease Payments</td>
</tr>
<tr>
<td>558</td>
<td>Other Equipment (R)</td>
</tr>
<tr>
<td>605</td>
<td>Trooper Retirement Fund</td>
</tr>
<tr>
<td>747</td>
<td>Handgun Administration Expense</td>
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<tr>
<td>898</td>
<td>Identification System</td>
</tr>
<tr>
<td>913</td>
<td>BRIM Premium</td>
</tr>
<tr>
<td></td>
<td>Total</td>
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</table>

Fund 0453 FY 2004 Org 0612

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
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<tbody>
<tr>
<td>001</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
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<td>010</td>
<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>451</td>
<td>Vehicle Purchase</td>
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<tr>
<td>494</td>
<td>Barracks Maintenance</td>
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<tr>
<td>521</td>
<td>Trooper Class</td>
</tr>
<tr>
<td>556</td>
<td>Barracks Lease Payments</td>
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<tr>
<td>558</td>
<td>Other Equipment (R)</td>
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<tr>
<td>605</td>
<td>Trooper Retirement Fund</td>
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<tr>
<td>747</td>
<td>Handgun Administration Expense</td>
</tr>
<tr>
<td>898</td>
<td>Identification System</td>
</tr>
<tr>
<td>913</td>
<td>BRIM Premium</td>
</tr>
<tr>
<td></td>
<td>Total</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), and Communications and Other Equipment (fund 0453, activity 558) at the close of the fiscal year 2003 are hereby reappropriated for expenditure during the fiscal year 2004.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand four, by decreasing and increasing items of 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.]
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**
34—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2004 Org 0402

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Revenue Funds</th>
</tr>
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<tbody>
<tr>
<td>Unclassified (R)</td>
<td>$ 900,000</td>
</tr>
<tr>
<td>Safe Schools</td>
<td>$ 1,000,000</td>
</tr>
</tbody>
</table>

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

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2004 Org 0431

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor’s Honors Academy</td>
<td>$ 410,000</td>
</tr>
<tr>
<td>Teacher Education Partnerships</td>
<td>$ 600,000</td>
</tr>
</tbody>
</table>
And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0256, fiscal year 2004, organization 0307, be supplemented and increased in the existing line item as follows:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**BUREAU OF COMMERCE**

73—*West Virginia Development Office—*

(WV Code Chapter 5B)

Fund 0256 FY 2004 Org 0307

<table>
<thead>
<tr>
<th>General Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>39 Local Economic</td>
</tr>
</tbody>
</table>

And, 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 a new line item as follows:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**HIGHER EDUCATION POLICY COMMISSION**

85—*Higher Education Policy Commission—*

*Administration—*
APPROPRIATIONS

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2004 Org 0441

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

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

86—Higher Education Policy Commission—

Systent—

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2004 Org 0442

West Virginia University -

Potomac State ............... 994 $100,000
And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0591, fiscal year 2004, organization 0441, be supplemented and increased in new and existing line items as follow:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**HIGHER EDUCATION POLICY COMMISSION**

88—Higher Education Policy Commission—

**Legislative—**

**Funding Priorities**

**Control Account**

(WV Code Chapter 18B)

Fund 0591 FY 2004 Org 0441

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research Challenge</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Higher Education - Special Projects</td>
<td>$ 865,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during fiscal year 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

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Surplus (R)</td>
<td>097 $ 200,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforementioned account for the designated spending unit for expenditure 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
### TITLE II - APPROPRIATIONS

#### Section 1. Appropriations from general revenue.

**HIGHER EDUCATION POLICY COMMISSION**

<table>
<thead>
<tr>
<th>Activity</th>
<th>General</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,305</td>
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<tr>
<td>WVNET</td>
<td>169</td>
<td>$3,920</td>
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And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0586, fiscal year 2004, organization 0442, be supplemented and increased in the existing and new line items as follows:

**85—Higher Education Policy Commission—**

**Administration—**

**Control Account**

(WV Code Chapter 18B)

Fund **0589 FY 2004 Org 0441**.

**86—Higher Education Policy Commission—**

**System—**

**Control Account**

(WV Code Chapter 18B)

Fund **0586 FY 2004 Org 0442**.
<table>
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<td>Bluefield State College</td>
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<td>Concord College</td>
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<td>Fairmont State College</td>
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<td>Fairmont State Community and Technical College</td>
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<td>Shepherd College</td>
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<td>Shepherd Community and Technical College</td>
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<td>West Liberty State College</td>
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<td>West Virginia State College</td>
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<td>West Virginia State Community and Technical College</td>
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<td>41</td>
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<td>42</td>
<td>Southern West Virginia Community and Technical College</td>
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<td>43</td>
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<td>44</td>
<td>West Virginia Northern Community and Technical College</td>
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<td>46</td>
<td>Marshall University</td>
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<td>47</td>
<td>Marshall Medical School</td>
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<td>West Virginia University</td>
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<tr>
<td>49</td>
<td>WVU - School of Health Sciences</td>
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<td>50</td>
<td>West Virginia University -</td>
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<td>51</td>
<td>Parkersburg</td>
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<td>52</td>
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<td>West Virginia University Institute for Technology</td>
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<td>West Virginia University Institute for Technology Community and Technical College</td>
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<td></td>
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<tr>
<td>58</td>
<td>Technical College</td>
<td>486</td>
</tr>
<tr>
<td>59</td>
<td>School of Osteopathic Medicine</td>
<td>172</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during fiscal year two thousand four.

CHAPTER 6

(H. B. 216 — 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 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:
TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

273—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2004 Org 0618

Act- Federal

ivity Funds

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

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during 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:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

289a—Board of Pharmacy

(WV Code Chapter 30)

Fund 8857 FY 2004 Org 0913

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
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</table>

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

CHAPTER 8

(H. B. 218 — 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 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 Legisla-
ture, 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:
TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

272a—Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2004 Org 0613

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand four, by providing for a new item of appropriation to be established therein to appropriate federal funds for the designated spending unit for expenditure 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
From the above appropriation for unclassified - total - transfer a total of $14,000,000 shall be transferred to the workers’ compensation fund, fund 3440, organization 0322, $19,418,122 shall be transferred to the tax reduction and federal funding increased compliance fund, fund 1732, organization 2300, and a total of $28,075,000 shall be transferred to the general revenue fund.

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand four, by providing for a new item of appropriation to be established therein to appropriate federal funds for the designated spending unit for 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.]
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.

CHAPTER 11

(H. B. 224 — 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 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.

CHAPTER 12

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

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

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 310a—Governor’s Office—

3 Civil Contingent Fund

4 (WV Code Chapter 5)
5  Fund 0105 FY 2004 Org 0100

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<tr>
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<tr>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

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

The purpose of this supplementary appropriation bill is to amend and add to section nine, Title II, chapter twenty, acts of the Legislature, regular session, two thousand three, relating to making appropriations 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.

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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.

ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS; REGISTRATION AND NOTICE FILING FOR INVESTMENT ADVISERS.


(a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application, together with a consent to service of process pursuant to subsection (g), section four hundred fourteen, article four of this chapter. The application shall contain whatever information the commissioner by rule requires concerning matters such as: (1) The applicant’s firm and place of organization; (2) the applicant’s proposed method of doing business; (3) the qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions or any person, directly or indirectly, controlling the broker-dealer or investment adviser and, in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) subject to the limitations of
§15(h)(1) of the Securities Exchange Act of 1934, the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area or areas for the publication shall be specified by the commissioner. If no denial order is in effect and no proceeding is pending under section two hundred four of this article, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions, as designated by the broker-dealer in writing to the commissioner and approved in writing by the commissioner. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer or director or a person occupying a similar status or performing similar functions as designated by the investment adviser in writing to the commissioner and approved in writing by the commissioner.

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

(c) Every applicant for initial or renewal registration shall pay a filing fee of two hundred fifty dollars in the case of a
broker-dealer and the agent of an issuer, fifty-five dollars in the case of an agent, two hundred dollars in the case of an investment adviser and seventy-five dollars for each investment advisor representative. When an application is denied or withdrawn, the commissioner shall retain all of the fee.

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

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

(f) The commissioner may, by rule or order, require registered broker-dealers, agents and investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts as the commissioner may prescribe, by rule or order, subject to the limitations of Section fifteen of the Securities Exchange Act of 1934 (for broker-dealers) and Section 222 of the Investment Advisers Act of 1940 (for investment advisers), up to twenty-five thousand dollars and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital or, in the case of an investment adviser, whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the commissioner.
Every bond shall provide for suit thereon by any person who has a cause of action under section four hundred ten, article four of this chapter and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations set forth in subsection (e), section four hundred ten, article four of this chapter.

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

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

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

ARTICLE 3. REGISTRATION OF SECURITIES.

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

(a) A registration or notice filing statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a registered broker-dealer. A registration or notice
filing statement filed under this chapter registering or noticing
investment company shares shall cover only one class, series or
portfolio of investment company shares.

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

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

(d) In any case where securities sold in this state are in
excess of the aggregate amount of securities specified under
subsection (c) of this section, the commissioner may require
payment of an oversale assessment which shall be three times
an amount which equals the difference between the filing fee
that would have been payable under subsection (b) of this
section based upon the total amount of securities sold in this
state and the total filing fees previously paid to the commis-
sioner with respect to such registration or notice filing, but in
no case shall the oversale assessment be less than three hundred
fifty dollars or be more than fifteen hundred dollars.
(e) Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

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

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

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

(i) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed with the commissioner or
preserved for any period up to three years specified in the rule or order.

(j) Every registration statement is effective for one year from its effective date or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, except during the time a stop order is in effect under section three hundred six of this article. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction: (1) So long as the registration statement is effective; and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section three hundred six of this article (if the registration statement did not relate, in whole or in part, to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

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

(l) A registration statement relating to a security issued by a face amount certificate company or a redeemable security issued by an open-end management company or unit investment
trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective when the commissioner so orders. Every person filing an amendment shall pay a filing fee, calculated in the manner specified in subsection (b) of this section, with respect to the additional securities proposed to be offered.

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

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

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

ARTICLE 4. GENERAL PROVISIONS.

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

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

(b) The auditor shall set up a special operating fund for the securities division in his or her office. The auditor shall pay into
the fund twenty percent of all fees collected as provided for in this chapter. If, at the end of any fiscal year, the balance in the operating fund exceeds half of the prior fiscal year’s appropriation, the excess shall be transferred to the general revenue fund.

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

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

(d) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this chapter authorizes the commissioner or any of his or her officers or employees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of the chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.

CHAPTER 14

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

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

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

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

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

(d) No proffer may be accepted by a county or municipality unless it has approved a list detailing any proposed capital improvements from all areas within the county or municipality, to which the proffer is made, and containing descriptions of any proposed capital improvements, cost estimates, projected time frames for constructing the improvements and proposed or anticipated funding sources: Provided, That the approval of the list does not limit the county or municipality from accepting proffers relating to items not contained on the list. For purposes of this subsection, "capital improvement" has the same definition as found in section three, article twenty, chapter seven of this code.

(e) If a voluntary proffer includes the dedication of real property or the payment of cash, the proffer shall provide for the alternate disposition of the property or cash payment in the
event the property or cash payment is not to be used for the
purpose for which it was proffered.

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

§8-24-87. Enforcement and guarantees.

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

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

CHAPTER 16. PUBLIC HEALTH.
ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.

§16-13E-1. Short title.

This article shall be known and may be cited as the "West Virginia Community Enhancement Act".

§16-13E-2. Definitions.

For purposes of this article:

(a) "Assessment bonds" means special obligation bonds or notes issued by a community enhancement district which are payable from the proceeds of assessments.

(b) "Assessment" means the fee, including interest, paid by the owner of real property located within a community enhancement district to pay for the cost of a project or projects
constructed upon or benefitting or protecting such property and
administrative expenses related thereto, which fee is in addition
to all taxes and other fees levied on the property.

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

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

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

(f) "Cost" means the cost of: (1) Construction, reconstruc-
tion, renovation and acquisition of all lands, structures, real or
personal property, rights, rights-of-way, franchises, easements
and interests acquired or to be acquired by the district; (2) all
machinery and equipment, including machinery and equipment
needed to expand or enhance county or city services to the
district; (3) financing charges and interest prior to and during
construction and, if deemed advisable by the district or govern-
ing body, for a limited period after completion of the construc-
tion; (4) interest and reserves for principal and interest, includ-
ing costs of municipal bond insurance and any other type of
financial guaranty; (5) costs of issuance in connection with the
issuance of assessment bonds; (6) the design of extensions,
enlargements, additions and improvements to the facilities of
any district; (7) architectural, engineering, financial and legal
services; (8) plans, specifications, studies, surveys and esti-
mates of costs and revenues; (9) administrative expenses
necessary or incident to determining to proceed with any
project; and (10) other expenses as may be necessary or
incident to the construction, acquisition and financing of a
project.
(g) “County commission” means the governing body of a county as defined in section one, article one, chapter seven of this code.

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

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

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

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

(l) “Project” means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements) and start-up operation of water transmission and distribution facilities, sewage collection and transmission facilities, stormwater systems, police stations, fire stations, libraries, museums, schools, other public buildings, hospitals, piers, docks, terminals, drainage systems, culverts, streets, roads, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropri-
ate, useful, convenient or incidental to the regulation, control
and parking of motor vehicles), public transportation, public
recreation centers, public recreation parks, swimming pools,
tennis courts, golf courses, equine facilities, motor vehicle
competition and recreational facilities, flood protection or relief
projects, or the grading, regrading, paving, repaving, surfacing,
resurfacing, curbing, recurfing, widening, lighting or otherwise
improving any street, avenue, road, highway, alley or way, or
the building or renewing of sidewalks and flood protection; and
the terms shall mean and include any project as a whole, and all
integral parts thereof, including all necessary, appropriate,
useful, convenient or incidental appurtenances and equipment
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.

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

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

§16-13E-4. Petition for creation or expansion of community
enhancement district; petition requirements.
(a) The owners of at least sixty-one percent of the real property, determined by acreage, located within the boundaries of the area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition a governing body to create or expand a community enhancement district.

(b) The petition for the creation or expansion of a community enhancement district shall include, where applicable, the following:

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

(2) A detailed project description;

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

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

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

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

(7) A development schedule;

(8) A list of recommended members for the board;
(9) If the project includes water, wastewater or sewer improvements, written evidence from the utility or utilities that will provide service to the district that said utility or utilities:

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

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

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

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

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

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

(c) After reviewing the petition presented pursuant to this section, the governing body may by order or ordinance deter-
mine the necessity and economic feasibility of creating a community enhancement district and developing, constructing, acquiring, improving or extending a project therein. If the governing body determines that the creation of a community enhancement district and construction of the project is necessary and economically feasible, it shall set a date for the public meeting required under section five of this article and shall cause the petition to be filed with the clerk of the county commission or the clerk or recorder of the municipality, as the case may be, and be made available for inspection by interested persons before the meeting.

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

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

(2) The authority of the infrastructure and jobs development council as to the funding of utility facilities to the extent that loans, loan guarantees, grants or other funding assistance from 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.

(a) Before the adoption or enactment of an order or ordinance creating a community enhancement district, the governing body shall cause notice to be given to the owners of real property located within the proposed community enhancement district that such ordinance or order will be considered for
adoption or enactment, as the case may be, at a public meeting
of the governing body at a date, time and place named in the
notice and that all persons at that meeting, or any adjournment
thereof, shall be given an opportunity to protest or be heard
concerning the adoption, enactment or rejection of the order or
ordinance. At or after the meeting the governing body may
amend, revise or otherwise modify the information in the
petition for the community enhancement district or project as
it may deem appropriate after taking into account any com-
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(b) The notice required in this section shall be published at
least thirty days prior to the date of the meeting as a Class II-0
legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code and the publication area for
such publication shall be the county or municipality in which
the proposed community enhancement district is located. The
notice shall be in the form of, or substantially in the form of, the
following notice:

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

A petition has been presented to the .........................
(county commission, city council or other governing body) of
the ................ (county or municipality) of .............. (name of
county or municipality) requesting establishment of a commu-
nity enhancement district under chapter sixteen, article thirtecn-
b of the code of West Virginia to ................ (here describe the
project both within and outside of the proposed community
enhancement district to be financed, developed, constructed,
acquired, extended or improved, or the lots or parcels of land
which may be protected, in the case of a flood relief project) in
................... (name of county or municipality) by ................... (here
provide general description of the project) as the ...................
(county commission, city council or other governing body) may
deem proper and to assess the total cost (or, if the assessments
are only necessary to pay for part of the total cost, the approxi-
mate percentage of the total cost) of such improvement on the
property. A copy of the petition is available in the office of the
........... (name of clerk or recorder) for review by the public
during regular office hours.

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

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

......................... (official position)."

(c) An affidavit of publication of the notice made by the
newspaper publisher, or a person authorized to do so on behalf
of such publisher, and a copy of the notice shall be made part of
the minutes of the governing body and spread on its records of
the meeting described in the notice. The service of said notice
upon all persons owning any interest in any property located
within the proposed community enhancement district shall
conclusively be deemed to have been given upon the comple-
tion of such newspaper publication.
(d) The petitioners shall bear the expense of publication of the notice and the meeting, as requested by subsection (e) of this section.

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

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

(b) From and after the date of the adoption or enactment of the order or ordinance creating a community enhancement district, it shall thereafter be a public corporation and political subdivision of this state, but without any power to levy or collect ad valorem taxes. Each community enhancement district is hereby empowered and authorized, in addition to any other
rights, powers and authorities conferred upon it in this article or elsewhere in this code, to:

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

18 (2) Design, plan, finance, develop, construct, acquire, extend, improve and complete one or more projects and assess the cost of all or any portion of a project on real property 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 person or governmental agency necessary or incident to the development, planning, construction, acquisition or improvement of a project or for the operation, maintenance or disposition of a project or for any other services required by a project;

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

33 (7) Expend funds to acquire, or construct part of a project on property located outside of a community enhancement district, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;
(8) Enter into agreements with one or more counties, municipalities, public service districts or community enhancement districts to plan, develop, construct, acquire or improve a project jointly;

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

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

(11) Have a seal and alter the same;

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

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

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

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

(c) Notwithstanding the powers granted to community enhancement districts in subsection (b) of this section or as otherwise provided in this code, no community enhancement
district may expend funds to assist any utility to upgrade, improve, modify, repair or replace the utility's existing storage, treatment or source of supply facilities, whether such existing facilities are located within or outside of the district.

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

(e) The four members appointed by the governing body shall be appointed for overlapping terms of four years each and thereafter until their respective successors have been appointed and have qualified. For the purpose of initial appointments, one member shall be appointed for a term of four years; one member shall be appointed for a term of three years; one member shall be appointed for a term of two years; and one member shall be appointed for a term of one year. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall
take and subscribe to the oath required by section five, article IV of the constitution of this state. Vacancies shall be filled by appointment by the governing body of the county or municipality creating the assessment district for the unexpired term of the member whose office shall be vacant and such appointment shall be made within thirty days of the occurrence of such vacancy. Any such member may be removed by the governing body which appointed such member in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall be entitled to no more than fifty dollars per meeting and reasonable expenses associated with their services.

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

(g) The members of the board, and the chairman, secretary and treasurer thereof, shall make available to the governing body responsible for appointing the board, at all times, all of its books and records pertaining to the community enhancement district’s operation, finances and affairs for inspection and audit. The board shall meet at least semiannually.
(h) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

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

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

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

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

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

(a) After the creation of a community enhancement district and the appointment of the board thereof, the board shall provide by resolution for the construction of the project and shall also provide in the same or subsequent resolutions for the supervision of such work by a professional engineer, governmental agency or any other person designated by the board. The board may provide for the construction of the project by one of the two following methods or any combination thereof:

(1) If there exists a governmental agency with the experience, knowledge and authority to construct the project, the board may elect to enter into a contract with such agency for the construction of all or part of the project or for any other service necessary or incident to the construction of the project, in which case such governmental agency shall be responsible for entering into contracts, subject to the board’s approval, with such other persons as may be necessary or incident to the construction of the project; or

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

(b) The resolution described in subsection (a) of this section shall also provide for payment of the cost of the project.
§ 16-13E-8. Notice to property owners of assessments; correcting and laying assessments; report on project completion; credits.

(a) Prior to the issuance of assessment bonds or pledging any amounts to payment of tax increment financing obligation debt service, the board shall cause a report to be prepared describing each lot or parcel of land located within the community enhancement district and setting forth the total cost of the project based on the contract with the governmental agency, the accepted bid or bids, or a cost estimate certified by a professional engineer, and all other costs incurred prior to the commencement of construction and the future administrative costs, and the respective amounts chargeable upon each lot or parcel of land and the proper amount to be assessed against the respective lots or parcels of land with a description of the lots and parcels of land as to ownership and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to each respective project. The board shall thereupon give notice to the owners of real property to be assessed that on or after a date specified in the notice an assessment will be deemed granted against the property. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment and shall show the total cost of the
project, whether the assessments will pay for all or part of the
total cost of the project and the lots or parcels of property to be
assessed and the respective amounts to be assessed against such
lots or parcels, with a description of the respective lots and
parcels of land as to ownership and location. The notice shall
also be published as a Class II-0 legal advertisement in compli-
ance with the provisions of article three, chapter fifty-nine of
the code, and the publication area for such publication is the
assessment district. On or after the date so advertised, the board
may revise, amend, correct and verify the report and proceed by
resolution to establish the assessments as corrected and verified
and shall certify the same to the governing body which created
the district.

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

No lots or parcels of land owned or controlled by the United States, this state, any municipality, county, board of education or other public body shall be subject to any assessments.

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

(a) For constructing or acquiring any project authorized by this article, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money, from time to time, and in evidence thereof issue the bonds of such district, payable from the proceeds of the assessments granted under this article. Such bonds shall be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding thirty-five years from their respective dates, shall be fully registered as to principal and interest in the name of the bondholder with a certificate of authentication attached thereto, may bear interest at such rate or rates not exceeding eighteen percent per annum, may be payable at such times, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and, upon compliance of such conditions, may contain such terms and covenants as provided by the resolution or resolutions of the board. All such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the
signatures of officers and offices on the dates of the signing
thereof shall be valid and binding for all purposes notwithstanding
that before the delivery thereof any or all such persons
whose signatures appear thereon shall have ceased to be such
officers. Notwithstanding the requirements or provisions of any
other law, any such bonds may be negotiated or sold in such
manner at such time or times and at such prices or prices as is
found by the board to be most advantageous. Any resolution or
resolutions providing for the issuance of such bonds may
contain covenants and restrictions upon the issuance of addi-
tional bonds thereafter as may be deemed necessary or advis-
able for the assurance of the payment of the bonds thereby
authorized.

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

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

§16-13E-11. Indebtedness of assessment district.
No constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies shall apply to the indebtedness of a community enhancement district. No indebtedness of any nature of a community enhancement district shall constitute an indebtedness of any municipality or county creating and establishing such community enhancement district or a charge against any property of said municipalities or counties but shall be paid solely from the assessments which the community enhancement district is authorized to impose on the owners of the property within the district by this article. No indebtedness or obligation incurred by any community enhancement district shall give any right against any member of the governing body of any municipality or any member of the county commission of any county or any member of the community enhancement board of any community enhancement district.

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

The assessments imposed pursuant to this article will not be considered to be ad valorem taxes or the equivalent of ad valorem taxes under any other provision of this code: Provided, That for the exclusive purposes of collection of the assessments imposed under section eight of this article and enforcement of the assessment liens created by section thirteen of this article, the provisions of chapter eleven-a of this code shall apply as if the assessments were taxes as that term is defined in section one, article one of that chapter. The sheriff shall promptly deposit all assessments upon receipt thereof in a segregated account established by the sheriff for such purpose and shall maintain a record of the assessments so received. Each month, the sheriff shall pay all moneys collected for the community enhancement district into the district treasury or if the sheriff
consents to a trustee for the benefit of bondholders if assess-
ment bonds are issued by the community enhancement district.
Payments to the community enhancement district shall be made
in the time set forth in section fifteen, article one, chapter
eleven-a of this code and the sheriff shall be entitled to take a
commission for collection of the assessments on behalf of the
community enhancement district, as provided in section
seventeen of said article. For each tax year, the sheriff will
prepare and deliver to the board of each community enhance-
ment district located in the county, a statement setting forth the
aggregate amount of assessments received for such district and
the name of any property owner who failed to pay the assess-
ments due and payable for the period in question. This report
shall be due on or before the first day of August of the follow-
ing year. The sheriff is authoriized to collect delinquent assess-
ments and enforce the liens created in section thirteen of this
article as if those assessments were delinquent real property
taxes and the liens are tax liens using the enforcement tools
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.

(a) With the exception of property exempt from assessment
pursuant to section nine of this article, there shall be a lien on
all real property located within the community enhancement
district for the assessments imposed by section eight of this
article, which lien shall attach on the date specified in the notice
to property owners. A notice of the liens of said assessments
referring to the assessing resolution and setting forth a list of
the property assessed, described respectively as to amounts of
assessment, ownership and location of the property, shall be
certified, by the chairman and secretary of the board, to the
clerk of the county commission of the county wherein the
project is located. The county clerk shall record the notice of
such lien in the appropriate trust deed book or other appropriate
county lien book and index the same in the name of each owner of property assessed. From the date of an assessment, the trustee, for the benefit of bondholders if assessment bonds are issued by the community enhancement district, and/or the district shall have such lien and shall be entitled to enforce the same in its, his or their name to the extent of the amount, including principal and interest and any penalty due for any failure to pay an installment when due, of such assessments and against the property to which the assessment applies, as to any assessment not paid as and when due. The trustee or the district, as an alternative to the enforcement provision set forth in section twelve of this article, are granted all legal remedies as are necessary to collect the assessment. Such assessments shall be and constitute liens for the benefit of the community enhancement district or of the trustee, for the benefit of bondholders if assessment bonds are issued by the community enhancement district, upon the respective lots and parcels of land assessed and shall have priority over all other liens except those for land taxes due the state, county and municipality and except any liens for preexisting special assessments provided under this code. If any assessment is revised in accordance with this article, the lien created by this section shall extend to the assessment so revised and shall have the same priority as the priority of the lien created upon the laying of the original assessment. Such assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. Following the payment in full of any assessment bonds including any interest thereon, the chairman and secretary of the board shall execute a release of all liens and shall certify the same to county clerk for recordation.

(b) Following the grant of an assessment on property as provided in this article, the seller of such property shall provide reasonable disclosure to the buyer in the real estate contract that an assessment has been granted on the property, the amount of the assessment and the duration of the assessment.
§16-13E-14. Liberal construction.

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

CHAPTER 15

(S. B. 2011 — 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 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.

(a) Except for property appraised by the state tax commissioner under section ten of this article and property appraised and assessed under article six of this chapter, all assessors shall, within three years of the approval of the county valuation plan required pursuant to this section, appraise all real and personal property in their jurisdiction at fair market value except for special valuation provided for farmland and managed timberland. They shall utilize the procedures and methodologies established by the property valuation training and procedures commission and the valuation system established by the tax commissioner.

(b) In determining the fair market value of the property in their jurisdictions, assessors may use as an aid to valuation any information available on the character and values of such
property, including, but not limited to, the updated information
found on any statewide electronic data processing system
network established pursuant to section twenty-one, article one-
a of this chapter. Valuations shall not be based exclusively on
such statewide electronic data processing system network and
usage of the information on such files as an aid to proper
valuation shall not constitute an implementation of the state-
wide mass reappraisal of property.

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

(d) Upon approval of the valuation plan, the assessor shall
immediately begin implementation of the valuation process.
Any change in value discovered subsequent to the certification of values by the assessor to the county commission, acting as the board of equalization and review, in any given year shall be placed upon the property books for the next certification of values: Provided, That notwithstanding any other provision of this code to the contrary, the property valuation training and procedures commission may authorize the tax commissioner to approve a valuation plan and the board of public works to submit such a plan which would permit the placement of proportionately uniform percentage changes in values on the books that estimate the percentage difference between the current assessed value and sixty percent of the fair market value for classes or identified subclasses of property and distribute the change between the two tax years preceding the tax year beginning on the first day of July, one thousand nine hundred ninety-three. This procedure may be used in lieu of placing individual values on the books at sixty percent of value as discovered or may be in addition to such valuation. If such procedure is adopted by a county, then property whose revaluation is the responsibility of the board of public works and the state tax commissioner shall have its values estimated and placed on the books in like manner. Such estimates shall be based on the best information obtained by the assessor, the board of public works and the tax commissioner and the changes shall move those values substantially toward sixty percent of fair market value, such sixty percent to be reached on or before the first day of July, one thousand nine hundred ninety-three.

(e) (1) The county assessor shall establish and maintain as official records of the county tax maps of the entire county drawn to scale or aerial maps, which maps shall indicate all property and lot lines, set forth dimensions or areas, indicate whether the land is improved and identify the respective parcels or lots by a system of numbers or symbols and numbers, whereby the ownership of such parcels and lots can be ascer-
84 obtained 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; recordation; disposition of redemption money.

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

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

(b) All certificates of redemption issued by the clerk in each year shall be numbered consecutively and shall be filed by the clerk in numerical order. Reference to the year and number of the certificate shall be included in the notation of redemption required herein. No fee shall be charged by the clerk for any recordation, filing or notation required by this section.
§50-3-1. Costs in civil actions.

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

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

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

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

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

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

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

Five dollars from each of the filing fees listed above shall be deposited in the court security fund created by the provisions of section fourteen, article three, chapter fifty-one of this code.
Five dollars from each of the filing fees listed above shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code.

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

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

(d) For taking deposition of witness

for each hour or portion thereof ............ $1.00

(e) For taking and certifying acknowledgment of a deed or other writing or taking oath

upon an affidavit ......................... $ .50

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

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

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

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there is imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law: (1) Costs in the amount of sixty dollars, of which five dollars of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code;
and (2) an amount equal to the one-day per diem provided for in subsection (h), section ten, article twenty, chapter thirty-one of this code. A magistrate may not collect costs in advance. Notwithstanding any other provision of this code, a person liable for fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison and not participating in a work release program shall not be held liable for the fines and court costs until ninety days after completion of the term in jail or prison. A magistrate court shall deposit five dollars from each of the criminal proceedings fees collected pursuant to this section in the court security fund created in section fourteen, article three, chapter fifty-one of this code. A magistrate court shall, on or before the tenth day of the month following the month in which the fees imposed in this section were collected, remit an amount equal to the one-day per diem provided for in subsection (h), section ten, article twenty, chapter thirty-one of this code from each of the criminal proceedings in which the fees specified in this section were collected to the magistrate court clerk or, if there is no magistrate court clerk to the clerk of the circuit, together with information as may be required by the rules of the supreme court of appeals and the rules of the office of chief inspector. These moneys are paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of section fifteen, article five, chapter seven of this code. Amendments made to this section during the regular session of the Legislature, two thousand one, are effective after the thirtieth day of June, two thousand one.

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

(c) In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in
the amount of ten dollars shall be imposed by the magistrate
court and is certified to the clerk of the circuit court in accor-
dance with the provisions of section six, article five, chapter
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.

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

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

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

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

(2) Financing, continuation, termination or
other statement or writing permitted to be filed
under chapter forty-six of this code . . . . . . . . . . . . $10.00
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>(3) Plat or map (with no deed of conveyance)</td>
<td>$10.00</td>
</tr>
<tr>
<td>16</td>
<td>(4) Service discharge record</td>
<td>No Charge</td>
</tr>
<tr>
<td>17</td>
<td>(5) Any document or writing other than those referenced in subdivisions (1), (2), (3) and (4) of this subsection</td>
<td>$5.00</td>
</tr>
<tr>
<td>18</td>
<td>(6) If any document or writing contains more than five pages, for each additional page</td>
<td>$1.00</td>
</tr>
<tr>
<td>22</td>
<td>(b) For administering any oath other than oaths by officers and employees of the state, political subdivisions of the state, or a public or quasi public entity of the state or a political subdivision of the state, taken in his or her official capacity</td>
<td>$5.00</td>
</tr>
<tr>
<td>28</td>
<td>(c) For issuance of marriage license and other duties pertaining to the marriage license (including preparation of the application, administering the oath, registering and recording the license, mailing acknowledgment of minister’s return to one of the licensees and notification to a licensee after sixty days of the nonreceipt of the minister’s return)</td>
<td>$35.00</td>
</tr>
</tbody>
</table>

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

2. Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the state treasury for the family protection shelter support act in
the same manner that license taxes are paid into the treasury under article twelve, chapter eleven of this code;

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

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

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

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

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

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

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

(1) For instituting any civil action under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding, one hundred twenty-five dollars, of which thirty dollars of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code and ten dollars shall be deposited in the special revenue account created in section six hundred three, article twenty-six, chapter
(2) For instituting an action for medical professional liability, two hundred sixty dollars, of which ten dollars of that amount shall be deposited in the courthouse facilities improvement fund created by section six, article twenty-six, chapter twenty-nine of this code;

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

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

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

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

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

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

(3) For action on suggestion, ten dollars;

(4) For issuing an execution, ten dollars;

(5) For issuing or renewing a suggestee execution, including copies, postage, registered or certified mail fees and the fee provided by section four, article five-a, chapter thirty-eight of this code, three dollars;
(6) For vacation or modification of a suggestee execution, one dollar;

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

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

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

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

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

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

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

(c) The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:
(1) In the case of any misdemeanor, fifty-five dollars;

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

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

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

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

(1) Into the regional jail and correctional facility authority fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of sixty dollars; and
(2) Into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

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

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

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

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

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

(c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the family court fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as
determined by subdivision (3), subsection (a), section eleven of
this article and for petitioning for an expedited modification of
a child support order as provided in subdivision (4) of said
subsection.

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

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

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

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

ARTICLE 2. COSTS GENERALLY.
§59-2-17. Fees of prosecuting attorney.

The clerk shall include in the costs, for fees of the prosecuting attorney, the following:

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

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

(c) In a suit or proceeding upon a forfeited recognizance upon behalf of the state, five percent upon the amount recovered and paid into the treasury;

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

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

Such fees shall be collected and accounted for as provided in article one of this chapter, but shall not in any case be paid 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.

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for
such license, and shall pay to the sheriff, at the time of applica-
tion, a fee of seventy-five dollars, of which fifteen dollars of
that amount shall be deposited in the courthouse facilities
improvement fund created by section six, article twenty-six,
chapter twenty-nine of this code. Concealed weapons permits
may only be issued for pistols or revolvers. Each applicant shall
file with the sheriff, a complete application, as prepared by the
superintendent of the West Virginia state police, in writing,
duly verified, which sets forth only the following licensing
requirements:

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

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

(3) That the applicant is twenty-one years of age or older:
Provided, That any individual who is less than twenty-one years
of age and possesses a properly issued concealed weapons
license as of the effective date of this article shall be licensed to
maintain his or her concealed weapons license notwithstanding
the provisions of this section requiring new applicants to be at
least twenty-one years of age: Provided, however, That upon a
showing of any applicant who is eighteen years of age or older
that he or she is required to carry a concealed weapon as a
condition for employment, and presents satisfactory proof to the
sheriff thereof, then he or she shall be issued a license upon
meeting all other conditions of this section. Upon discontinu-
ance of employment that requires the concealed weapons
license, if the individual issued the license is not yet twenty-one
years of age, then the individual issued the license is no longer
eligible and must return his or her license to the issuing sheriff;
(4) That the applicant is not addicted to alcohol, a controlled substance or a drug, and is not an unlawful user thereof;

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

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

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

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

(9) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing such weapon: Provided, That this requirement shall be waived in the case of a renewal applicant who has previously qualified;

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

(b) The sheriff shall conduct an investigation which shall verify that the information required in subdivisions (1), (2), (3), (5), (6), (8) and (9), subsection (a) of this section are true and correct.
(c) Sixty dollars of the application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. Such fund shall be administered by the sheriff and shall take the form of an interest bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay for the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff’s office, as the sheriff may consider appropriate.

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

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

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

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the national rifle association;

(4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve or national guard.
A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class shall constitute evidence of qualification under this section.

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

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

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

(h) All persons holding a current and valid concealed weapons license as of the sixteenth day of December, one thousand nine hundred ninety-five, shall continue to hold a valid concealed weapons license until his or her license expires or is revoked as provided for in this article: Provided, That all reapplication fees shall be waived for applications received by the first day of January, one thousand nine hundred ninety-seven, for any person holding a current and valid concealed
weapons license as of the sixteenth day of December, one thousand nine hundred ninety-five, which contains use restric-
tions placed upon the license as a condition of issuance by the issuing circuit court. Any licenses reissued pursuant to this subsection will be issued for the time period of the original license.

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

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

(k) In the event an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. Such petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case shall the court be required to appoint counsel for an applicant. The final order of the court shall include the court’s findings of fact and conclu-
sions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the rules of appellate procedure of the supreme court of appeals.
(l) In the event a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of five dollars by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

(m) The sheriff shall, immediately after the license is granted as aforesaid, furnish the superintendent of the West Virginia state police a certified copy of the approved application. It shall be the duty of the sheriff to furnish to the superintendent of the West Virginia state police at any time so requested a certified list of all such licenses issued in the county. The superintendent of the West Virginia state police shall maintain a registry of all persons who have been issued concealed weapons licenses.

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

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

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

(q) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforce-
ment officer honorably retired from agencies governed by article fourteen, chapter seven of this code; article fourteen, chapter eight of this code; article two, chapter fifteen of this code; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section, and the application of the honorably retired officer shall be granted without proof or inquiry by the sheriff as to those requirements set forth in subdivision (9), subsection (a) of this section, if the officer meets the remainder of the requirements of this section and has the approval of the appropriate chief law-enforcement officer.

CHAPTER 16

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

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

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.

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

(b) The board shall make available, subject to cash availability, in the form of a revolving loan, up to one hundred seventy-five million dollars from the consolidated fund to loan the West Virginia economic development authority for business or industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code and to consolidate existing loans authorized to be made to the West Virginia economic development authority pursuant to this section and pursuant to section twenty, article fifteen, chapter thirty-one of this code which authorizes a one hundred fifty million dollar revolving loan, and article eighteen-b, chapter thirty-one of this code which authorizes a fifty million dollar investment pool: Provided, That the West Virginia economic development
authority may not loan more than fifteen million dollars for any one business or industrial development project. The revolving loan authorized by this subsection must be secured by one note at a variable interest rate equal to the twelve-month average of the board’s yield on its cash liquidity pool. The rate must be set on the first day of July and the rate must be adjusted annually on the same date. The maximum annual adjustment may not exceed one percent. Monthly payments made by the West Virginia economic development authority to the board must be calculated on a one hundred twenty-month amortization. The revolving loan must be secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia economic development authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

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

(c) The interest rates and maturity dates on the loans made by the West Virginia economic development authority for business and industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code must be at competitive rates and maturities as determined by the West Virginia economic development authority board.
(d) Any and all outstanding loans made by the board, or any predecessor entity, to the West Virginia economic development authority must be refunded by proceeds of the revolving loan contained in this section and no loans may be made hereafter by the board to the West Virginia economic development authority pursuant to section twenty, article fifteen, chapter thirty-one of this code or article eighteen-b of said chapter.

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

(f) Subject to cash availability, the board shall make available to the West Virginia economic development authority from the consolidated fund a nonrecourse loan in an amount up to twenty-five million dollars, for the purpose of the West Virginia economic development authority making a loan or loans from time to time to the West Virginia enterprise advancement corporation, an affiliated nonprofit corporation of the West Virginia economic development authority. The respective loans authorized by this subsection by the board to the West Virginia economic development authority and by the West Virginia economic development authority to the West Virginia enterprise advancement corporation must each be evidenced by one note and must each bear interest at the rate of three percent per annum. The proceeds of any and all loans made by the West Virginia economic development authority to the West Virginia enterprise advancement corporation pursuant to this subsection must be invested by the West Virginia enterprise advancement corporation in the West Virginia enterprise capital fund, LLC, the manager of which is the West Virginia enterprise advancement corporation. The loan to West Virginia economic development authority authorized by this subsection must be nonrevolving, and advances thereunder must be made at times and in amounts as may be requested or
directed by the West Virginia economic development authority, 
upon reasonable notice to the board, the loan authorized by this 
subsection is not subject to or included in the limitations set 
forth in subsection (b) of this section with respect to the fifteen 
million dollar limitation for any one business or industrial 
development project and limitation of one hundred three 
percent of outstanding loans, and may not be included in the 
revolving fund loan principal balance for purposes of calculat-
ing the loan amortization in subsection (b) of this section. The 
loan authorized by this subsection to the West Virginia eco-

tom economic development authority must be classified by the board as 
a long-term, fixed income investment, must bear interest on the 
outstanding principal balance thereof at the rate of three percent 
per annum payable annually on or before the thirtieth day of 
June of each year, and the principal of which must be repaid no 
later than the thirtieth day of June, two thousand twenty-two, in 
annual installments due on or before the thirtieth day of June of 
each year, which annual installments must commence no later 

than the thirtieth day of June, two thousand three, in annual 
principal amounts as may be agreed upon between the board 
and the West Virginia economic development authority, and 
which annual installments need not be equal. The loan autho-

rized by this subsection must be nonrecourse and must be 

payable by the West Virginia economic development authority 
solely from amounts or returns received by the West Virginia 

economic development authority in respect of the loan autho-

rized by this subsection to the West Virginia enterprise ad-
vancement corporation, whether in the form of interest, 
dividends, realized capital gains, return of capital or otherwise, 
in all of which the board must have a security interest to secure 
repayment of the loan to the West Virginia economic develop-
ment authority authorized by this subsection. Any and all loans 
from the West Virginia economic development authority to the 
West Virginia enterprise advancement corporation made
pursuant to this subsection must also bear interest on the
outstanding principal balance thereof at the rate of three percent
per annum payable annually on or before the thirtieth day of
June of each year, must be nonrecourse and must be payable by
the West Virginia enterprise advancement corporation solely
from amounts of returns received by the West Virginia enter-
prise advancement corporation in respect of its investment in
the West Virginia enterprise capital fund, LLC, whether in the
form of interest, dividends, realized capital gains, return of
capital or otherwise, in all of which the board must have a
security interest to secure repayment of the loan to the West
Virginia economic development authority authorized by this
subsection. In the event the amounts or returns received by the
West Virginia enterprise advancement corporation in respect of
its investment in the West Virginia enterprise capital fund, LLC, are not adequate to pay when due the principal or interest
installments, or both, with respect to the loan from the West
Virginia economic development authority and, as a result
thereof, the West Virginia economic development authority is
unable to pay the principal or interest installments, or both, with
respect to the loan authorized by this subsection by the board to
the West Virginia economic development authority, the
principal or interest, or both, as the case may be due on the loan
made to the West Virginia economic development authority
pursuant to this subsection must be deferred, and any and all of
these past-due principal and interest payments must promptly
be paid to the fullest extent possible upon receipt by the West
Virginia enterprise advancement corporation of moneys in
respect of its investments in the West Virginia enterprise capital
fund, LLC. The trustees or the board bear no fiduciary responsi-
bility as provided in section eleven of this article with regard to
the loan authorized by this subsection.
CHAPTER 17

(S. B. 2010 — 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 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
  7. County Commissions and Officers.
  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.

(a) The council for community and economic development, within the West Virginia development office, is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council consists of:

(1) No less than nine nor more than eleven members to be appointed by the governor, with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism or agriculture: Provided, That one member appointed pursuant to this subsection shall be a member of a regional planning and development council. Of the members representing community or regional interests, there shall be at least three members from
each congressional district of the state and they shall be
appointed in such a manner as to provide a broad geographical
distribution of members of the council;

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

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

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

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

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

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

(b) The governor shall appoint the appointed members of
the council to four-year terms. Any member whose term has
expired shall serve until his or her successor has been duly
appointed and qualified. Any person appointed to fill a vacancy
shall serve only for the unexpired term. Except as otherwise
provided in this section, any member is eligible for reappointment. In cases of any vacancy in the office of a member, the
vacancy shall be filled by the governor in the same manner as the original appointment.

(c) Members of the council are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. A majority of the voting members constitute a quorum for the purpose of conducting business. The council shall elect its chair for a term to run concurrent with the term of office of the member elected as chair. The chair is eligible for successive terms in that position.

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

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

The Legislature further finds that there are undeveloped, underdeveloped or seriously deteriorated development areas within certain counties of this state which are uniquely situated relative to large populations in other states or to other specific economic recreational or cultural activities or facilities which will attract large populations from this state and other states who would be likely to make substantial retail purchases of tangible personal property and services offered in modern and modernized structures and facilities constructed, supplemented, reconstructed or repaired in such undeveloped, underdeveloped or seriously deteriorated areas within certain counties of this state. The Legislature further finds that economic inducements provided by the state are necessary and appropriate to enable the construction, supplementation, reconstruction and repair of
such modern and modernized structures and facilities in such
undeveloped, underdeveloped or seriously deteriorated areas
within certain counties of this state. Establishment of economic
opportunity development districts within counties of the state,
in accordance with the purpose and powers set forth in this
article, will serve a public purpose and promote the health,
safety, prosperity, security and general welfare of all citizens in
the state. It will also promote the establishment and vitality of
significant business opportunities within counties while serving
as an effective means for developing or restoring and promoting
retail and other business activity within the economic opportu-
nity development districts created herein. This will be of special
benefit to the tax base of the counties within which any
economic development district is created pursuant to this article
and will specifically generate substantial incremental increases
in excise taxes on sales within such economic opportunity
development districts of tangible personal property and services
and thereby and otherwise will stimulate economic growth and
job creation.

§7-22-3. Definitions.

For purposes of this article, the term:

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

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

(3) "Development expenditures" means payments for
governmental functions, programs, activities, facility construc-
tion, improvements and other goods and services which a
district board is authorized to perform or provide under section
five of this article;
(4) "District" means an economic opportunity development district created pursuant to this article;

(5) "District board" means a district board created pursuant to section ten of this article; and

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

§7-22-6. Notice; hearing.

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

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

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

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

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

(c) Opportunity to be heard. — At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the county.
(d) Application to council. — If the county commission, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the council for community and economic development for approval of the economic opportunity development district project pursuant to the procedures provided in section seven of this article.

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

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

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

(2) The total cost of the project;

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

(4) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

(5) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development or redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves shall not exceed the amounts that would be required by ordinary commercial capital market considerations;
(6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

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

(8) Identification of any businesses that the county commission expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated "relocated entities";

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

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

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

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;
(13) The tax commissioner's certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the council; (ii) the estimated amount of economic opportunity district excise tax that will be collected during the first twelve months after the month in which the tax commissioner would first begin to collect that tax; and (iii) the estimated amount of economic opportunity district excise tax that will be collected during the first thirty-six months after the month in which the tax commissioner would first begin to collect that tax; and

(14) Any additional information the council may require.

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

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

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

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

(4) Whether the economic opportunity district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;
(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

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

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

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

(9) Whether the county commission has a strategy for economic development in the county and whether the project is consistent with that strategy;

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

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

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

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

(c) Additional criteria. — The council for community and economic development may establish other criteria for consideration when approving the applications.

(d) Action on the application. — The council for community and economic development shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the council, whichever is the later.

(e) Certification of project. — If the council for community and economic development approves a county’s economic opportunity district project application, it shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the council has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the council for community and economic development requests from the tax commissioner and the tax commissioner provides to the council: Provided, That in determining the net annual district tax revenue amount, the council may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council may use the estimate of
the gross annual district tax revenue amount provided by the
county commission pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries
of previously certified district. — If the council for community
and economic development approves a county’s economic
opportunity district project application to expand the geo-
graphic boundaries of a previously certified district, it shall
issue to the county commission a written certificate evidencing
the approval.

The certificate shall expressly state a base tax revenue
amount, the gross annual district tax revenue amount and the
estimated net annual district tax revenue amount which, for
purposes of this article, is the difference between the gross
annual district tax revenue amount and the base tax revenue
amount, all of which the council has determined with respect to
the district’s application based on any investigation it considers
reasonable and necessary, including, but not limited to, any
relevant information the council requests from the tax commis-
ioner and the tax commissioner provides to the council:
Provided, That in determining the net annual district tax
revenue amount, the council may not use a base tax revenue
amount less than that amount certified by the tax commissioner
but, in lieu of confirmation from the tax commissioner of the
gross annual district tax revenue amount, the council may use
the estimate of the gross annual district tax revenue amount
provided by the county commission pursuant to subsection (a)
of this section.

(g) Promulgation of rules. — The council for community
and economic development may promulgate rules to implement
the economic opportunity development district project applica-
tion approval process and to describe the criteria and proce-
dures it has established in connection therewith. These rules are
not subject to the provisions of chapter twenty-nine-a of this
code but shall be filed with the secretary of state.
§7-22-8. Establishment of the economic opportunity development district fund.

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

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

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

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

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


(a) General. — County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. The Legislature is specifically extended, and intends by this article, to exercise certain relevant powers expressed in section six-a, article X of the constitution of this state as follows: (1) The Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any
department, bureau, commission or agency thereof, or any other
source, to any county, municipality or other political subdivi-
sion of the state, under such circumstances and subject to such
terms, conditions and restrictions as the Legislature may
prescribe by law; and (2) the Legislature may impose a state tax
or taxes or dedicate a state tax or taxes or any portion thereof
for the benefit of and use by counties, municipalities or other
political subdivisions of the state for public purposes, the
proceeds of any such imposed or dedicated tax or taxes or
portion thereof to be distributed to such counties, municipalities
or other political subdivisions of the state under such circum-
stances and subject to such terms, conditions and restrictions as
the Legislature may prescribe.

Because a special district excise tax would have the effect
of diverting, for a specified period of years, tax dollars which
to the extent, if any, are not essentially incremental to tax
dollars currently paid into the general revenue fund of the state,
the Legislature finds that in order to substantially ensure that
such special district excise taxes will not adversely impact the
current level of the general revenue fund of the state, it is
necessary for the Legislature to separately consider and act
upon each and every economic development district which is
proposed, including the unique characteristics of location,
current condition and activity of and within the area included in
such proposed economic opportunity development district and
that for such reasons a statute more general in ultimate applica-
tion is not feasible for accomplishment of the intention and
purpose of the Legislature in enacting this article. Therefore, no
economic opportunity development district excise tax may be
levied by a county commission until after the Legislature
expressly authorizes the county commission to levy a special
district excise tax on sales of tangible personal property and
services made within district boundaries approved by the
Legislature.
(b) Authorizations. — The Legislature authorizes the following county commission to levy special district excise taxes on sales of tangible personal property and services made from business locations in the following economic opportunity development districts.

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

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

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

(1) The name of the district and a description of its boundaries;

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

(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and
(4) The district board members' terms, their method of appointment and a general description of the district board's powers and duties, which powers may include the authority:

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

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

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

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

(E) To, unless otherwise provided in, and subject to the provisions of any contracts or leases to operate, repair, manage and maintain buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district
board and any person, agency, governmental department, firm or corporation;

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

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

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

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

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district’s negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district’s rights in its subaccount of the economic opportunity development district fund;

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

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

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

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

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

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

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

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

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

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

(1) The order of the county commission imposing a special district excise tax shall provide that the tax commissioner deposit the net amount of tax collected in the special economic opportunity development district fund to the credit of the county commission’s subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

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

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

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

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

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

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

(c) **Public hearing required.** —

(1) The county commission of any county desiring to
amend its order shall designate a time and place for a public
hearing upon the proposal to include additional property. The
notice shall meet the requirements set forth in section six of this
article.
(2) At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the county.

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

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

(f) Legislative action required. — After the council approves amending the boundaries of the district, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the county commission may then amend its order: Provided, That the order may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the act of the Legislature authorizing the levy on the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or a later date as set forth in the order of the county commission.
(g) Collection of special district excise tax. — All businesses included in a district because of the boundary amendment shall on the effective date of the order, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the county commission’s order or a later date as set forth in the order.

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

(a) General. — Except upon the express written consent of the council for community and economic development and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development or redevelopment expenditures or any indebtedness the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the county commission when there is no outstanding indebtedness, the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.

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

(c) Transfer of district assets and funds. — Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial
benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the county commission. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

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


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

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

(c) Trust indenture. —

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

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

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

(4) The county commission may also provide by resolution and in the trust indenture for the payment of the proceeds of the sale of the bonds or notes and the revenues from the economic opportunity development district project to any depository it
determines, for the custody and investment thereof and for the
method of distribution thereof, with safeguards and restrictions
it determines to be necessary or advisable for the protection
thereof and upon the filing of a certified copy of the resolution
or of the indenture for record in the office of the clerk of the
county commission of the county in which the economic
opportunity development project is located, the resolution has
the same effect, as to notice, as the recordation of a deed of
trust or other recordable instrument.

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

(d) Mortgage or deed of trust. —

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

(2) The proceedings under which bonds or notes are
authorized to be issued, when secured by a mortgage or deed of
trust, may contain the same terms, conditions and provisions
provided for herein when an indenture is entered into between
the county commission and a trustee and any mortgage or deed
of trust may contain any agreements and provisions customarily
contained in instruments securing bonds or notes, including,
without limiting the generality of the foregoing, provisions
respecting the fixing and collection of revenues from the
economic opportunity development district project covered by
the proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to the economic opportunity development district project, the improvement, repair, maintenance and insurance of the economic opportunity district project, the creation and maintenance of special funds from the revenues received from the economic opportunity development district project and the rights and remedies available in event of default to the bondholders or note holders, the county commission, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the county commission body considers advisable and shall not be in conflict with the provisions of this article or any existing law: 

Provided, That in making any agreements or provisions, a county commission shall not have the power to incur original indebtedness by indenture, order, resolution, mortgage or deed of trust except with respect to the economic opportunity development district project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers unless approved by the voters in accordance with article one, chapter thirteen of this code or as otherwise permitted by the constitution of this state.

(e) Enforcement of obligations. —

(1) The proceedings authorizing any bonds and any indenture, mortgage or deed of trust securing the bonds may provide that, in the event of default in payment of the principal of or the interest on the bonds, or notes, or in the performance of any agreement contained in the proceedings, indenture, mortgage or deed of trust, payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents or other amounts and to apply the revenues from the economic opportunity development district project in accordance with the proceedings or the provisions of the agreement, indenture, mortgage or deed of trust.
(2) Any agreement, indenture, mortgage or deed of trust may provide also that, in the event of default in payment or the violation of any agreement contained in the mortgage or deed of trust, the agreement, indenture, mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity and may provide that the holder or holders of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the highest bidder therefor.

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


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

(b) Any refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption.
(c) Any refunding bonds issued under the authority of this article is subject to the provisions contained in section sixteen of this article and shall be secured in accordance with the 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.


§8-38-6. 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.


§8-38-10. 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.


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

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

The Legislature further finds that there are undeveloped, underdeveloped or seriously deteriorated development areas within certain municipalities of this state which are uniquely situated relative to large populations in other states or to other specific economic recreational or cultural activities or facilities which will attract large populations from this state and other states who would be likely to make substantial retail purchases of tangible personal property and services offered in modern
and modernized structures and facilities constructed, supplemented, reconstructed or repaired in such undeveloped, underdeveloped or seriously deteriorated areas within certain municipalities of this state. The Legislature further finds that economic inducements provided by the state are necessary and appropriate to enable the construction, supplementation, reconstruction and repair of such modern and modernized structures and facilities in such undeveloped, underdeveloped or seriously deteriorated areas within certain municipalities of this state. This adversely affects the economic and general well-being of the citizens of those municipalities. Establishment of economic opportunity development districts within municipalities of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the establishment and vitality of significant business opportunities within those municipalities while serving as an effective means for developing or restoring and promoting retail and other business activity within the economic opportunity development districts created herein. This will be of special benefit to the tax base of the municipalities within which any economic development district is created pursuant to this article and will specifically generate substantial incremental increases in excise taxes on sales within such economic opportunity development districts of tangible personal property and services and thereby and otherwise will stimulate economic growth and job creation.


For purposes of this article, the term:

(1) "Council" means the council for community and economic development established in section two, article two, chapter five-b of this code;
(2) "Development expenditures" means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

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

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

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

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

§8-38-6. Notice; hearing.

(a) General. — A municipality desiring to create an economic opportunity development district shall conduct a public hearing.

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

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

(4) The geographic boundaries of the property proposed to be included in the district; and
14 (5) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

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

23 (d) Application to council. — If the municipality, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the council for community and economic development for approval of the economic opportunity development district project pursuant to the procedures provided in section seven of this article.

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

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

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

7 (2) The total cost of the project;

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

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

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

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

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

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

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

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

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

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

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

(14) Any additional information the council may require.

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

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

(2) The merits of the project determined by a cost-benefit
analysis that incorporates all costs and benefits, both public and
private;
(3) Whether the project is supported by significant private sector investment and substantial credible evidence that but for the existence of sales tax increment financing the project would not be feasible;

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

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

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

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

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

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

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

(11) Whether the project is consistent with the goals of this article;
(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

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

(c) Additional criteria. — The council for community and economic development may establish other criteria for consideration when approving the applications.

(d) Action on the application. — The council for community and economic development shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the council, whichever is the later.

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

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the council for community and economic
development has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the council for community and economic development requests from the tax commissioner and the tax commissioner provides to the council: Provided, That in determining the net annual district tax revenue amount, the council may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. — If the council for community and economic opportunity district project application to expand the geographic boundaries of a previously certified district, it shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the council has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the council requests from the tax commissioner and the tax commissioner provides to the council: Provided, That in determining the net annual district tax revenue amount, the council may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the
§8-38-8. Establishment of the economic opportunity development district fund.

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

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

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

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and
Any appropriations by the Legislature which are made for this purpose.


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

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

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

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

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

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

(2) A summary of any proposed services to be provided and
capital improvements to be made within the district and a
reasonable estimate of any attendant costs;
(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

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

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

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

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

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

(E) To, unless otherwise provided in, and subject to the provisions of any contracts or leases to operate, repair, manage,
and maintain buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

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

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

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

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

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefore, to borrow money and execute and deliver the district’s negotiable notes and other evidences of indebtedness therefore, on the terms as the district shall determine, and give security therefore as is requisite, including, without limitation, a pledge of the district’s rights in its subaccount of the economic opportunity development district fund;
(K) To acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and

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

(b) Additional contents of ordinance. — The municipality’s ordinance shall also state the general intention of the municipality to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of ordinance. — Upon enactment of an ordinance establishing an economic opportunity development district excise tax, a certified copy of the ordinance shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

§8-38-11. District board; duties.

(a) General. — The council of a municipality that has been authorized by the council for community and economic development to establish an economic opportunity development district, in accordance with this article, shall provide, by ordinance, for the appointment of a district board to oversee the operations of the district: Provided, That the municipality may, in the ordinance, in lieu of appointing a separate district board, designate itself to act as the district board.
(b) Composition of board. — If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of real property situated in the economic opportunity development district and the other five shall be residents of the municipality within which the district is located.

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

1. An itemized statement of its receipts and disbursements for the preceding fiscal year;
2. A description of its activities for the preceding fiscal year;
3. A recommended program of services to be performed and capital improvements to be made within the district for the coming fiscal year; and
4. A proposed budget to accomplish its objectives.

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

(e) Compensation of board members. — Each member of the district board may receive reasonable compensation for services on the board in the amount determined by the municipality: Provided, That when a district board is not created for the district but the work of the board is done by the municipality, the members shall receive no additional compensation.

§8-38-12. Special district excise tax authorized.
(a) General. — The council of a municipality, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by ordinance, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

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

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

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

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

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

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

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

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

(a) General. — The ordinance creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the council for community and economic development in the same manner as an application to approve
the establishment of the district is acted upon under section seven of this article.

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

(c) *Public hearing required.* —

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

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

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

(e) *Consideration by council.* — Before the council for community and economic development approves inclusion of the additional property in the district, the council shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the municipality proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The state treasurer shall also deposit one twelfth of this additional tax base amount into the general revenue fund each month, as provided in section twelve of this article.
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(f) Legislative action required. — After the council for community and economic development approves amending the boundaries of the district, the Legislature must amend section nine of this article to allow levy of the special district excise tax on business located in geographic area to be included in the district. After the Legislature amends said section, the municipality may then amend its ordinance: Provided, That the ordinance may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the amended ordinance imposing the levy of the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or the first day of a later calendar month as set forth in the ordinance of the municipality.

(g) Collection of special district excise tax. — All businesses included in a district because of the boundary amendment shall on the effective date of the ordinance, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the municipality’s ordinance or a later date as set forth in the ordinance.

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

(a) General. — Except upon the express written consent of the council for community and economic development and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development or redevelopment expenditures or any indebtedness, the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the municipality when there is no outstanding indebtedness the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues
payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolition.

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

(c) Transfer of district assets and funds. — Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the municipality. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

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

§8-38-16. Bonds issued to finance economic opportunity development district projects.

(a) General. — The municipality that established the economic opportunity development district may issue bonds or notes for the purpose of financing development expenditures, as described in section five of this article, with respect to one or more projects within the economic opportunity development district.
(b) Limit ed obligations. — All bonds and notes issued by a
municipality under the authority of this article are limited
obligations of the municipality.

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

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

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

(f) Debt not general obligation of municipality. — Neither
the notes or bonds and any interest coupons issued under the
authority of this article shall ever constitute an indebtedness of
the municipality issuing the notes or bonds within the meaning
of any constitutional provision or statutory limitation and shall
never constitute or give rise to a pecuniary liability of the
municipality issuing the notes or bonds.
(g) *Debt not a charge general credit or taxing powers of municipality.* -- Neither the bonds or notes, nor interest thereon, is a charge against the general credit or taxing powers of the municipality and that fact shall be plainly stated on the face of each bond or note.

(h) *Issuance of bonds or notes.* —

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

(2) The bonds may be sold by the municipality at public or private sale at, above or below par as the municipality authorizes.

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

(4) Any coupons attached to the bonds shall bear the facsimile signature of the authorized representative of the municipality. In case any of the officials whose signatures appear on the bonds, notes or coupons cease to be officers before the delivery of the bonds or notes, their signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until the delivery.
(i) Additional bonds or notes. — If the proceeds of the bonds or notes, by error of calculation or otherwise, are less than the cost of the economic opportunity development district project, or if additional real or personal property is to be added to the district project or if it is determined that financing is needed for additional development or redevelopment expenditures, additional bonds or notes may, in like manner, be issued to provide the amount of the deficiency or to defray the cost of acquiring or financing any additional real or personal property or development or redevelopment expenditures and, unless otherwise provided in the trust agreement, mortgage or deed of trust, are considered to be of the same issue and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.


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

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

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

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

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

(4) The municipality may also provide by resolution and in the trust indenture for the payment of the proceeds of the sale
of the bonds or notes and the revenues from the economic
opportunity development district project to any depository it
determines, for the custody and investment thereof and for the
method of distribution thereof, with safeguards and restrictions
it determines to be necessary or advisable for the protection
thereof and upon the filing of a certified copy of the resolution
or of the indenture for record with the clerk of the municipality
in which the economic opportunity development project is
located, the resolution has the same effect, as to notice, as the
recording of a deed of trust or other recordable instrument.

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

(d) Mortgage or deed of trust. —

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

(2) The proceedings under which bonds or notes are
authorized to be issued, when secured by a mortgage or deed of
trust, may contain the same terms, conditions and provisions
provided for herein when an indenture is entered into between
the municipality and a trustee and any mortgage or deed of trust
may contain any agreements and provisions customarily
contained in instruments securing bonds or notes, including,
without limiting the generality of the foregoing, provisions
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
project in accordance with the proceedings or the provisions of
the agreement, indenture, mortgage or deed of trust.

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

(f) *No pecuniary liability.* — No breach of any agreement,
indenture, mortgage or deed of trust shall impose any pecuniary
liability upon a municipality or any charge upon its general
credit or against its taxing powers.


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

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

(c) Any refunding bonds issued under the authority of this article are subject to the provisions contained in section sixteen of this article and shall be secured in accordance with the 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; commission authorized.

(a) Any municipality or county commission which, pursuant to section twelve, article twenty-two, chapter seven of this code, section eleven, article thirteen-b, chapter eight of this code or section twelve, article thirty-eight, chapter eight of this code imposes a special district excise tax shall, by express provision in the order or ordinance imposing that tax, authorize the state tax commissioner to administer, assess, collect and enforce that tax on behalf of and as its agent.

(1) The county commission or municipality shall make such authorization by the adoption of a provision in its order or ordinance levying a special district excise tax stating its purpose and referring to this section and providing that the order or ordinance shall be effective on the first day of a month at least sixty days after its adoption.

(2) A certified copy of the order or ordinance shall be forwarded to the state auditor, the state treasurer and the tax commissioner so that it will be received within five days after its adoption or enactment.
(b) Any special district excise tax administered under this section shall be administered and collected by the tax commis-
sioner in the same manner and subject to the same interest, additions to tax and penalties as provided for the tax imposed in article fifteen of this chapter.

(c) All special district excise tax moneys collected by the tax commissioner under this section shall be paid into the state treasury to the credit of each county commission’s subaccount in the economic opportunity development district fund created pursuant to section nine, article twenty-two, chapter seven of this code, or to the credit of each municipality’s subaccount in the economic opportunity development district fund created pursuant to section nine, article thirty-eight, chapter eight of this code, for the particular economic opportunity development district. The special district excise tax moneys shall be credited to the subaccount of each particular county commission or municipality levying a special district excise tax being adminis-
tered under this section. The credit shall be made to the subaccount of the county commission or municipality for the economic opportunity development district in which the taxable sales were made and services rendered as shown by the records of the tax commissioner and certified by him or her monthly to the state treasurer, namely, the location of each place of business of every vendor collecting and paying the tax to the tax commissioner without regard to the place of possible use by the purchaser.

(d) As soon as practicable after the special district excise tax moneys have been paid into the state treasury in any month for the preceding reporting period, the district board may issue a requisition to the auditor requesting issuance of a state warrant for the proper amount in favor of each county commis-
sion or municipality entitled to the monthly remittance of its special district excise tax moneys.
(1) Upon receipt of the requisition, the auditor shall issue his or her warrant on the state treasurer for the funds requested and the state treasurer shall pay the warrant out of the subaccount.

(2) If errors are made in any payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: One sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the county commission or the municipality and not previously remitted during the three years preceding the discovery of the error.

(3) A correction and adjustment in payments described in this subsection due to the misallocation of funds by the vendor shall be made within three years of the date of the payment error.

(e) Notwithstanding any other provision of this code to the contrary, the tax commissioner shall deduct and retain for the benefit of his or her office for expenditure pursuant to appropriation of the Legislature from each payment into the state treasury, as provided in subsection (c) of this section, one percent thereof as a commission to compensate his or her office 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.
(a) The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

(b) The provisions of this article, as amended or added during the second extraordinary legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date.

§11-15B-33. State administration of local sales and use taxes.

The tax commissioner shall conduct, or authorize others to conduct on his or her behalf, all audits of sellers registered under the streamlined sales and use tax agreement for compliance with the sales and use tax laws of this state and the sales and use tax laws of its local jurisdictions. A local jurisdiction may not conduct independent sales or use tax audits of sellers registered under the streamlined sales and use tax agreement.

§11-15B-34. State and local sales and use tax bases.

(a) General. -- The tax base of a local jurisdiction that levies a local sales or use tax pursuant to authority granted by the Legislature shall be identical to the sales and use tax base of this state, unless otherwise prohibited by federal law, except as provided in subsection (b) of this section.

(b) Exceptions. -- This section does not apply to sales or use taxes levied on: (1) The wholesale sale of gasoline or special fuel, which local jurisdictions are prohibited from taxing; or (2) the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes.
§11-15B-35. Local rate and boundary changes.

(a) General. — Local tax rate changes shall be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to seller, except as provided in subsection (b) of this section.

(b) Printed catalogs. — Local tax rate changes shall apply to purchases from printed catalogs where the purchaser computed the tax based upon the local tax rate published in the catalog only on and after the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the sellers.

(c) Local boundary changes. — A local jurisdiction boundary change shall first apply for purposes of computation of a local sales and use tax on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

(d) Database of local jurisdiction boundaries. —

(1) The state shall provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

(2) The state shall provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties and cities, codes corresponding to the rates must be provided according to federal information processing standards (FIPS) as developed by the national institute of standards and technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the members of the streamlined sales and use tax agreement.

(3) The state shall provide and maintain a database that assigns each five-digit and nine-digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area.
if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the members of the streamlined sales and use tax agreement that makes this designation from the street address and the five-digit zip code of the purchaser.

(4) This state shall participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U. S. C. §119). The governing board of the streamlined sales and use tax agreement may allow a member state to require sellers that register under this agreement to use an address-based system provided by that member state. If any member state develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided in subdivision (3) of this subsection.

§11-15B-36. Relief from certain liability for local taxes.

(a) General. — Sellers and certified service providers registered under the streamlined sales and use tax agreement to collect sales and use taxes imposed by local jurisdiction of this state who charged and collected the incorrect amount of sales or use taxes resulting from the seller or the certified service provider relying on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments shall be held harmless by the tax commissioner and the local taxing jurisdiction.
(b) Exception. — A state that is a member of the streamlined sales and use tax agreement and provides an address-based system for assigning taxing jurisdictions pursuant to subsection (G), section three hundred five of the agreement, or pursuant to the federal Mobile Telecommunications Sourcing Act, is not required to provide liability relief for errors resulting from reliance on information provided by the member state under subsection (F) of section three hundred five.

CHAPTER 18

(Com. Sub. for S. B. 2012 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

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

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.

As used in this article:

(a) "Agency" means any state department, division, office, commission, authority, board or other unit authorized by law to enter into contracts for the provision of goods or services.

(b) "Energy-conservation measures" means goods or services, or both, to reduce energy consumption operating costs of agency facilities. They include, but are not limited to, installation of one or more of the following:

1. Insulation of a building structure and systems within a building;
2. Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door modifications that reduce energy consumption;
3. Automatic energy control systems;
4. Heating, ventilating or air conditioning systems, including modifications or replacements;
5. Replacement or modification of lighting fixtures to increase energy efficiency;
6. Energy recovery systems;
7. Cogeneration systems that produce steam or another form of energy for use by any agency in a building or complex of buildings owned by the agency; or
8. Energy-conservation maintenance measures that provide long-term operating cost reductions of the building’s present cost of operation.
(c) "Energy-savings contract" means a performance-based contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more measures.

(d) "Qualified provider" means a person, firm or corporation experienced in the design, implementation and installation of energy-conservation measures.

§5A-3B-2. Contracts for energy-savings contracts.

(a) Agencies are authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of agency owned buildings, subject to the requirements of this section.

(b) Before entering into a contract or before the installation of equipment, modifications or remodeling to be furnished under a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. A proposal must contain estimates of all costs of installation, modifications or remodeling, including the costs of design, engineering, installation, maintenance, repairs or debt service, as well as estimates of the amounts by which energy operating costs will be reduced. If the agency finds, after receiving the proposal, that the proposal includes one or more energy-conservation measures, the installation of which is guaranteed to result in a net savings of a minimum of five percent of the then current energy operating costs which savings will, at a minimum, satisfy any debt service required, the agency may enter into a contract with the provider pursuant to this section.

(c) An energy-savings contract must include the following:
(1) A guarantee of a specific minimum net percentage amount of at least five percent of energy operating costs each year over the term of the contract that the agency will save;

(2) A statement of all costs of energy-conservation measures, including the costs of design, engineering, installation, maintenance, repairs and operations; and

(3) A provision that payments, except obligations upon termination of the contract before its expiration, are to be made over time.

(d) An agency may supplement its payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(e) An energy-savings contract is subject to competitive bidding requirements and other requirements of article three of this chapter.

(f) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: Provided, That such a contract may not exceed a fifteen-year term: Provided, however, That the long term contract will be void unless the agreement provides that the agency shall have the option during each fiscal year of the contract to terminate the agreement.

(g) Agencies may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions contained in subsection (f) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(h) The agency may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.
(i) Upon the issuance of a request for proposals or request for quotations for an energy-savings contract, the agency shall provide a copy thereof to the joint committee on government and finance.

(j) Before signing an energy-savings contract or extending an existing energy-savings contract, the agency shall give thirty days' written notice, which notice shall include a copy of the proposal containing the information required by subsection (b) of this section, to the joint committee on government and finance.

CHAPTER 19

(S. B. 2009 — 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 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.

(a)(1) The parkways authority is hereby authorized to fix, revise, charge and collect tolls for the use of each parkway project and the different parts or sections thereof and to fix, revise, charge and collect rents, fees, charges and other revenues, of whatever kind or character, for the use of each economic development project or tourism project, or any part or section thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, telegraph, electric light, power or other utility lines, gas stations, garages, stores, hotels, restaurants and advertising signs, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use. Such tolls, rents, fees and charges shall be so fixed and adjusted in respect of the aggregate of tolls, or in respect of the aggregate rents, fees and charges, from the project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay: (A) The cost of maintaining, repairing and operating such project or projects; and (B) the principal of and the interest on such bonds as the same shall become due and payable and to create reserves for such purposes. Such tolls, rents, fees and other charges shall not be subject to supervision or regulation by any other commission, board, bureau, department or agency of the state. The tolls, rents, fees, charges and all other revenues derived from the project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay the cost of maintenance, repair and
operation and to provide such reserves therefor as may be provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at regular intervals as may be provided in the resolution or the trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of: (i) The interest upon the bonds as such interest shall fall due; (ii) the principal of the bonds as the same shall fall due; (iii) the necessary charges of paying agents for paying principal and interest; and (iv) the redemption price or the purchase price of bonds retired by call or purchase as therein provided. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of the bonds or of the trust agreement. Except as may otherwise be provided in the resolution or the trust agreement, such sinking fund shall be a fund for all bonds without distinction or priority of one over another. The moneys in the sinking fund, less such reserve as may be provided in the resolution or trust agreement, if not used within a reasonable time for the purchase of bonds for cancellation as above provided, shall be applied to the redemption of bonds at the redemption price then applicable.

(2)(A) In fiscal year one thousand nine hundred ninety-eight, after the parkways authority has met or provided for the satisfaction of each requirement imposed by the provisions of subdivision (1) of this subsection, the parkways authority shall pay two hundred fifty thousand dollars to the Hatfield-McCoy regional recreation authority from any remaining balance of revenues received from economic development projects and tourism projects.

(B) Upon the effective date of this act, the parkways authority shall seek authorization from the federal highway administration, the state department of transportation and the trustee under any trust indenture or agreement existing as the
result of the issuance of any revenue bonds under the provisions of this article to issue additional revenue bonds in a total amount not to exceed six million dollars for the purpose of funding projects of the Hatfield-McCoy regional recreation authority. Upon the agreement of all of such entities that the parkways authority be authorized to do so, as certified to the parkways authority, the governor and the joint committee on government and finance, the parkways authority is authorized to issue additional revenue bonds in a total amount not to exceed six million dollars. The proceeds of the revenue bonds shall be used to fund projects of the Hatfield-McCoy regional recreation authority. Each issuance of such revenue bonds and the application of the proceeds thereof shall be subject to each condition, restriction or other provision of this article applicable to the issuance of parkway revenue bonds. In the event the agreement is not certified as required by this subsection, and until the same is certified, the parkways authority shall pay two hundred fifty thousand dollars to the Hatfield-McCoy regional recreation authority in the fiscal year ending the thirtieth day of June, two thousand, and in each fiscal year thereafter, for a total of nine consecutive years, for the purpose of funding projects of the Hatfield-McCoy regional recreation authority. These amounts shall be paid in quarterly installments from remaining balances in each fiscal year of revenues received from economic development projects and tourism projects as determined in the manner provided in paragraph (A) of this subdivision.

(b) The parkways authority shall cause, as soon as it is legally able to do so, all contracts to which it is a party and which relate to the operation, maintenance or use of any restaurant, motel or other lodging facility, truck and automobile service facility, food vending facility or any other service facility located along the West Virginia turnpike, to be renewed on a competitive bid basis. All contracts relating to any facility or services entered into by the parkways authority with a private
party with respect to any project constructed after the effective date of this legislation shall be let on a competitive bid basis only. If the parkways authority receives a proposal for the development of a project, such proposal shall be made available to the public in a convenient location in the county wherein the proposed facility may be located. The parkways authority shall publish a notice of the proposal by a Class I legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the county in which the proposed facility would be located. Any citizen may communicate by writing to the parkways authority his or her opposition to or approval to such proposal within a period of time not less than forty-five days from the publication of the notice. No contract for the development of a project may be entered into by the parkways authority until a public hearing is held in the vicinity of the location of the proposed project with at least twenty days' notice of such hearing by a Class I publication pursuant to section two of said article. The parkways authority shall make written findings of fact prior to rendering a decision on any proposed project. All studies, records, documents and other materials which are considered by the parkways authority in making such findings shall be made available for public inspection at the time of the publication of the notice of public hearing and at a convenient location in the county where the proposed project may be located. The parkways authority shall promulgate rules in accordance with chapter twenty-nine-a of this code for the conduct of any hearing required by this section. Persons attending any such hearing shall be afforded a reasonable opportunity to speak and be heard on the proposed project.
CHAPTER 20

(S. B. 2014 — By Senators Kessler, Hunter, Jenkins, Minard, Oliverio, Ross, Snyder, White, Deem and Smith)

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

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, delin-
quency 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 legisla-
tive 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.
§64-9-4. 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.
§64-9-10. Nursing home administrators licensing board.
§64-9-12. Board of pharmacy.
§64-9-14. Real estate appraiser licensing and certification board.
§64-9-16. Secretary of state.
§64-9-17. Board of veterinary medicine.

§64-9-1. Commissioner of agriculture.

The legislative rule filed in the state register on the twenty-second day of July, two thousand two, authorized under the authority of section three, article two-b, chapter nineteen of this code, relating to the commissioner of agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

§64-9-2. Contractor licensing board.

The legislative rule filed in the state register on the ninth day of July, two thousand two, authorized under the authority of sections five and sixteen, article eleven, chapter twenty-one of this code, modified by the contractor licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of December, two thousand two, relating to the contractor licensing board (West Virginia contractor licensing act, 28 CSR 2), is authorized with the following amendment:

"On page nine, section four, subsection 4.1, following the last semicolon by inserting the following 'or any commercial property intended for sale or lease by an entity other than the employer where the total cost of the total undertaking, labor and materials, exceeds ten thousand dollars ($10,000.00);’’.


The legislative rule filed in the state register on the twenty-fifth day of July, two thousand two, under the authority of section three-a, article twenty-six, chapter twenty-nine of this code, modified by the courthouse facilities improvement authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the
nineteenth day of September, two thousand two, relating to the
courthouse facilities improvement authority (courthouse
facilities improvement authority, 203 CSR 1), is authorized
with the following amendment:

"On page one, subsection 3.4, after the words 'the Author-
ity shall' by striking out the words 'make a written recommen-
dation' and inserting in lieu thereof the words 'issue a written
notification'".

§64-9-4. Board of dental examiners.

(a) The legislative rule filed in the state register on the fifth
day of April, two thousand two, under the authority of section
one, article four, chapter thirty of this code, modified by the
board of dental examiners to meet the objections of the legisla-
tive rule-making review committee and refiled in the state
register on the first day of November, two thousand two,
relating to the board of dental examiners (general provisions, 5
CSR 1), is authorized with the following amendments:

"Beginning on page eleven, section eight, subsection 8.2,
by striking the entire subsection and inserting the following:

'8.2. Expanded duties of dental assistants. The following
duties and/or intra-oral tasks may be assigned by a licensed
dentist to a dental hygienist and/or assistant in the licensed
dentist's employment, provided that under no circumstances
can an assistant use a power-driven instrument of any type
intra-orally except as specifically set forth hereinafter:

(a): Placing, exposing, developing and mounting dental
radiographs;

(b): Placing and removing rubber dams;

(c): Charting existing restorations and missing teeth;
(d): Holding and removing materials, trays, strips and sutures; and bands previously placed in the patient's mouth by the dentist;

(e): Removing excess cement from coronal surfaces of teeth without the use of rotating, or power-driven or scaling instruments; and

(f): Taking impressions for study cast and pouring models;

(g) Recording medical and dental histories for interpretation by the supervising dentist;

(h) Providing pre- and post-treatment instructions;

(i) Viewing the oral cavity and reporting the symptoms/problems to the supervising dentist;

(j) Performing pulp vitality testing (thermal or electrical) with a final evaluation by the supervising dentist;

(k) Inserting and adjusting athletic mouth guards and bleaching trays with a final evaluation by the supervising dentist;

(l) Removing periodontal dressings with a final evaluation by the supervising dentist;

(m) Placing and removing matrices after a final evaluation by the supervising dentist;

(n) Applying topical anesthetic agents with prior approval by the supervising dentist;

(o) Applying topical anticariogenic agents after successful completion of a board-approved course and examination and with prior approval of the supervising dentist;
(p) Applying pit and fissure sealants after successful completion of a board-approved course and examination and with a final evaluation by the supervising dentist;

(q) Applying cavity liners and bases with a final evaluation by the supervising dentist;

(r) Removing soft tissue dressings with a final evaluation by the supervising dentist;

(s) Fabricating and cementing temporary crowns and bridges with a final evaluation by the supervising dentist;

(t) Placing and removing temporary restorations by a nonpower-driven method with a final evaluation by the supervising dentist;

(u) Taking intra- and extra-oral photographs;

(v) Chemical conditioning of the tooth to accept a restoration and/or bracket by topical application after successful completion of a board-approved course and examination;

(w) Using a power-driven hand piece with rubber cup and/or brush only for preparing a tooth for accepting a restoration and/or appliance, which shall in no way be represented to the patient as a prophylaxis, after successful completion of a board-approved course and examination;

(x) Placing retraction cords for crown impressions after successful completion of a board-approved course and examination with prior approval of the supervising dentist;

(y) Taking final impressions for fixed or removable prosthesis and/or appliance with a final evaluation by the supervising dentist;
(z) Checking for loose orthodontic appliances with a final evaluation by the supervising dentist;

(aa) Taking orthodontic measurements with a final evaluation by the supervising dentist;

(bb) Fitting bands and brackets prior to final cementation and/or bonding by the supervising dentist;

(cc) Bending archwires with a final evaluation by the supervising dentist at the time of placement;

(dd) Placing or removing temporary space maintainers, orthodontic separating devices, ligatures, brackets and bands with a final evaluation by the supervising dentist at the time of placement or removal, after completion of a board-approved course and examination;

(ee) Removing loose or broken bands, brackets or archwires when directed by the supervising dentist; and

(ff) Visually monitoring a nitrous oxide analgesia unit. Two years after the effective date of this rule, a dental assistant or hygienist must have successfully completed a board-approved course and examination in order to perform this duty. Thereafter, the assistant or hygienist must maintain current certification in accordance with the American Red Cross' or the American Heart Association’s Cardio-Pulmonary Resuscitation (CPR) program.';
section. the following duties and/or intraoral tasks may be assigned by a licensed dentist to a dental hygienist in the licensed dentist's employment:

(a): Supra- and Subgingival scaling of teeth;

(b): Polishing of coronal and/or exposed surfaces of teeth;

(c): Dental Health Education health education;

(d): Nutritional Counseling counseling;

(e): Application of caries-preventive agents and other topical medicaments to the surfaces of teeth and surrounding tissues (including topical anesthesia);

(f): Placing, exposing, developing, and mounting dental radiographs;

(g): Finishing and polishing amalgas, resin-composite, and silicate restorations;

(h): Examining and recording periodontal findings;

(i): (f) Scaling excessive cement from the surfaces of teeth and restorations;

(j): (g) Performing clinical examinations and diagnostic tests of teeth and surrounding tissues and recording findings for interpretation by a supervising dentist (includes including such procedures as restorative chartings, caries activity test, cytology smears, salivary analysis and smears, endodontic cultures, vitality test, etc.);

(k): Removing soft tissue dressings;

(l): Removing ligature wires.
(m). Preparing medical and dental histories for interpretation by a dentist;

(n). Placing and removing rubber dams;

(o). Taking intra and extra-oral photographs, and

(p). Removing oral sutures;

(h) Placing of subgingival medicaments, fibers, chips, etc.;

(i) Finishing and polishing restorations with a slow speed hand piece;

(j) Debridement and/or root planing of teeth;

(k) Applying bleaching agents after successful completion of a board-approved course;

(l) Placing periodontal dressings with a final evaluation by the supervising dentist; and

(m) Administration of infiltration and block anesthesia after successful completion of a board-approved course and of a regional board examination and under the direct supervision of a licensed dentist.""

(b) The legislative rule filed in the state register on the tenth day of May, two thousand two, under the authority of section one, article four, chapter thirty of this code, modified by the board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of May, two thousand two, relating to the board of dental service examiners (formation and approval of dental corporations, 5 CSR 6), is authorized with the following amendments:
On page one, section three, subsection one, after the words 'shall have as a', by striking the word 'member' and inserting in lieu thereof the word 'shareholder';

On page one, section three, subsection four, after the words 'on or before the', by striking the words 'first day of July' and inserting in lieu thereof the words 'thirtieth day of June' and after the word 'every' by striking the word 'member' and inserting in lieu thereof the word 'shareholder';

On page one, section three, subsection five, after the words 'on or before the', by striking the words 'first day of July' and inserting in lieu thereof the words 'thirtieth day of June';

And,

On page one, section three, subsection seven, on each of the three occasions that the word 'member' appears, by striking the word 'member' and inserting in lieu thereof the word 'shareholder'".

§64-9-5. Family protection services board.

(a) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section four hundred one, article twenty-six, chapter forty-eight of this code, modified by the family protection services board to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, two thousand three, relating to the family protection services board (operation of the family protection services board, 191 CSR 1), is authorized with the following amendments:

"On page three, section three, by inserting a new subsection to read as follows:
‘3.11 “Partner Agencies” means state and community organizations whose mission and purpose require their response to the needs of victims of domestic violence and their children.”, and by renumbering the remaining subsections accordingly;

And,

On page eight, section five, subsection six, subdivision c, following the words ‘fifteen (15) days’, by inserting the words ‘after the receipt of the notice’.

(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section four hundred one, article twenty-six, chapter forty-eight of this code, modified by the family protection services board to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, two thousand three, relating to the family protection services board (licensure of domestic violence and perpetrator intervention programs, 191 CSR 2), is authorized with the following amendments:

“On page seven, section three, subsection one, subdivision g, after the words ‘client service agreements’ by striking the words ‘and other purchase of service agreements that exceed one thousand dollars ($1000.00) annually’.”

(c) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section four hundred one, article twenty-six, chapter forty of this code, modified by the family protection services board to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, two thousand three, relating to the family protection services board(perpetrator intervention program licensure, 191 CSR 3), is authorized with the following amendments:
"On page one, section three, subsection one, subdivision b, after the words 'client service agreements' by striking the words 'and other purchase of service agreements that exceed one thousand dollars ($1000.00) annually';

On page six, section three, subsection three, subdivision c, paragraph 4, by striking the words 'Cultural competency', and inserting in lieu thereof the words 'Cultural sensitivity';

On page six, section three, subsection four, after the words 'conducted by the program', by inserting the word 'director';

And,

On page nine, section three, subsection twelve, subdivision a, by striking out the words 'Frequency of and reasons for low attendance of perpetrator(s).', and inserting in lieu thereof the words 'Attendance records of perpetrator(s) including reason(s) for repeated absences.'"

(d) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section four hundred one, article twenty-six, chapter forty-eight of this code, modified by the family protection services board to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, two thousand three, relating to the family protection services board (monitored visitation and exchange program certification, 191 CSR 4), is authorized.

§64-9-6. Board of funeral service examiners.

(a) The legislative rule filed in the state register on the twenty-sixth day of June, two thousand two, under the authority of sections five and six, article six, chapter thirty of this code, modified by the board of funeral service examiners to meet the objections of the legislative rule-making review committee and
refiled in the state register on the sixteenth day of January, two
thousand three, relating to the board of funeral service examin-
ers (general provisions, 6 CSR 1), is authorized with the
following amendment:

“On page thirteen, section sixteen, subsection ten, subdivi-
sion two, by striking the words ‘twenty-five dollars ($25)’ and
inserting in lieu thereof the words ‘fifteen dollars ($15)’”.

(b) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand two, under the authority
of section six, article six, chapter thirty of this code, modified
by the board of funeral service examiners to meet the objections
of the legislative rule-making review committee and refiled in
the state register on the sixteenth day of January, two thousand
three, relating to the board of funeral service examiners
(crematory requirements, 6 CSR 2), is authorized with the
following amendment:

“On page twenty-three, section twenty, subsection seven,
subdivision two, by striking the words ‘twenty-five dollars
($25)’ and inserting in lieu thereof the words ‘fifteen dollars
($15)’”.

§64-9-7. Governor’s committee on crime, delinquency and cor-
rection.

(a) The legislative rule filed in the state register on the
twenty-sixth day of July, two thousand two, authorized under
the authority of section three, article eleven-c, chapter sixty-two
of this code, relating to the governor’s committee on crime,
delinquency and correction (community corrections standards,
149 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the
eighth day of July, two thousand two, authorized under the
authority of section three, article twenty-nine, chapter thirty of
this code, modified by the governor’s committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of December, two thousand two, relating to the governor’s committee on crime, delinquency and correction (law-enforcement training standards, 149 CSR 2), is authorized.


The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section six, article thirty-seven, chapter thirty of this code, modified by the massage therapy licensure board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of November, two thousand two, relating to the massage therapy licensure board (general provisions, 194 CSR 1), is authorized.


The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, under the authority of section sixteen, article three, chapter thirty of this code, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, two thousand two, relating to the board of medicine (licensure, disciplinary and complaint procedures, continuing education and physician assistants, 11 CSR 1B), is authorized.

§64-9-10. Nursing home administrators licensing board.

The legislative rule filed in the state register on the sixteenth day of May, two thousand two, under the authority of section seven, article twenty-five, chapter thirty of this code, modified by the nursing home administrators licensing board to
meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, two thousand two, relating to the nursing home administrators licensing board (nursing home administrators, 21 CSR 1), is authorized.


The legislative rule filed in the state register on the fifth day of June, two thousand two, authorized under the authority of section five, article eight, chapter thirty of this code, modified by the board of optometry to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, two thousand two, relating to the board of optometry (licensure by endorsement, 14 CSR 8), is authorized.

§64-9-12. Board of pharmacy.

(a) The legislative rule filed in the state register on the seventeenth day of July, two thousand two, authorized under the authority of section six, article nine, chapter sixty-a of this code, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, two thousand two, relating to the board of pharmacy (controlled substances monitoring, 15 CSR 8), is authorized with the following amendment:

“On page three, by striking out all of section five and inserting in lieu thereof the following:

§15-8-5. Prescription forms.

5.1. The purpose of this section is to establish minimum requirements that will decrease the potential for forgery or
alteration of a prescription or a prescription blank for a controlled substance.

5.2. After June 1, 2003, the Board of Pharmacy recommends that a written prescription for a controlled substance in Schedules II, III or IV be on a security prescription blank.


5.3.1. A prescription for a controlled substance should contain the following security features:

(a) A latent, repetitive "void" pattern screened and printed across the entire front of the prescription blank. If the prescription is photocopied, the word "void" shall appear in a pattern across the entire front of the prescription;

(b) A watermark printed on the backside of the prescription blank so that it is only seen at a forty-five (45) degree angle;

(c) An opaque "Rx" symbol or an "Rx" symbol printed in disappearing ink shall appear in the upper part of the blank. The symbol shall disappear if the prescription copy is lightened;

(d) Six (6) quantity check-off boxes printed on the form and the following quantities shall appear:

(1) 1-24;

(2) 25-49;

(3) 50-74;

(4) 75-100;

(5) 101-150; and
(6) ! 151 and over:

Provided, That if the blank has the quantity prescribed electronically printed in both numeric and word format, then the quantity check-off boxes would not be necessary;

(e) The following statement printed on the bottom of the prescription blank: “Prescription is void if more than one (1) controlled substance prescription is written per blank”; and

(f) Refill options in the following order: Refill NR 1 2 3 4 5: Provided, That if the blank has the refill amount electronically printed in both numeric and word format, then the quantity check-off boxes would not be necessary.

5.3.2. A prescription shall bear the preprinted, stamped, typed, or manually printed name, address and telephone number of the prescribing practitioner.

5.3.3. A prescription blank for a controlled substance shall not contain:

(a) An advertisement on the front or the back of the prescription blank;

(b) The preprinted name of a controlled substance; or

(c) The written, typed or rubber-stamped name of a controlled substance until the prescription blank is signed, dated and issued to a patient.

5.3.4. A prescription blank for a controlled substance shall provide space for the patient’s name and address, the practitioner’s signature and the practitioner’s DEA registration number.

5.3.5. Only one (1) controlled substance prescription blank shall be written per prescription blank.
5.3.6. A quantity check-off box that corresponds to the quantity prescribed shall be marked or the quantity electronically printed in both numeric and word format.

5.3.7. If a prescribed drug is a Schedule II, III or IV controlled substance, a refill option shall be marked or the refill amount electronically printed in both numeric and word format.

5.3.8. If a prescription for a Schedule II, III or IV controlled substance will be transmitted to a pharmacy by facsimile, the practitioner or the practitioner’s agent shall, prior to transmission, write or stamp “FAXED” on the face of the original prescription along with the date and the person’s initials.

5.3.9. If a prescription for a Schedule II, III or IV controlled substance has been transmitted to a pharmacy by facsimile, the transmitting practitioner shall file the original prescription in the patient’s record.

5.3.10. A pharmacist shall not be required to use a security prescription blank to record an oral prescription or a transferred prescription for a Schedule II, III or IV controlled substance.

5.3.11. The requirements of this section do not apply to prescriptions for controlled substances that are electronically transmitted from a prescriber to a pharmacy: Provided, That all electronically transmitted prescriptions for controlled substances shall comply with all federal requirements.”

(b) The legislative rule filed in the state register on the seventeenth day of July, two thousand two, authorized under the authority of section seven-c, article five, chapter thirty of this code, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, two
section two, subsection e, subdivision seven,
after the word ‘violating’, by striking the words ‘provisions of
subsection 3.6 of this rule’ and inserting in lieu thereof the
words ‘rules of the board’;

On page three, section four, subsection two, subdivision e,
by striking the word ‘penalty’;

And,

On page six, section seven, subsection 4.7.e by striking the
words ‘$15.00’ and inserting in lieu thereof the words ‘maxi-
mum allowable by West Virginia State Code’”.

§64-9-14. Real estate appraiser licensing and certification board.

(a) The legislative rule filed in the state register on the
twenty-fifth day of July, two thousand two, under authority of
section nine, article thirty-eight, chapter thirty of this code,
modified by the real estate appraiser licensing and certification
board to meet the objections of the legislative rule-making
review committee and filed in the state register on the thirtieth
day of September, two thousand two, relating to the real estate
appraiser licensing and certification board (requirements for
licensure and certification, 190 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the
twenty-fifth day of July, two thousand two, under the authority
of section nine, article thirty-eight, chapter thirty of this code,
relating to the real estate appraiser licensing and certification
board (renewal of licensure or certification, 190 CSR 3), is
authorized.


(a) The legislative rule filed in the state register on the
nineteenth day of July, two thousand two, under the authority
of section eight, article forty, chapter thirty of this code, relating
to the real estate commission (requirements in licensing real
estate brokers, associate brokers and salespersons and the
conduct of brokerage business, 174 CSR 1), is authorized with
the following amendment:

"On page nine, section sixteen, paragraph 16.3.b.1.,
following the words 'interest bearing', by striking out the word
'account' and inserting in lieu thereof the words 'trust fund
account established in compliance with WV Code § 30-40-18'."

(b) The legislative rule filed in the state register on the
nineteenth day of July, two thousand two, under the authority
of section eight, article forty, chapter thirty of this code, relating
to the real estate commission (schedule of fees, 174 CSR 2), is
authorized.

(c) The legislative rule filed in the state register on the
nineteenth day of July, two thousand two, under the authority
of section eight, article forty, chapter thirty of this code,
modified by the real estate commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of November, two thousand two, relating to the real estate commission (requirements in approval and registration of real estate courses, course providers and instructors, 174 CSR 3), is authorized.

§64-9-16. Secretary of state.

The legislative rule filed in the state register on the twenty-second day of July, two thousand two, authorized under the authority of section four, article six-j, chapter forty-six-a of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of October, two thousand two, relating to the secretary of state (registry for notification of a state of emergency, 153 CSR 33), is authorized.

§64-9-17. Board of veterinary medicine.

(a) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article ten, chapter thirty of this code, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, two thousand two, relating to the board of veterinary medicine (standards of practice, 26 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand two, authorized under the authority of section four, article ten, chapter thirty of this code, relating to the board of veterinary medicine (schedule of fees, 26 CSR 6), is authorized.
CHAPTER 21

(S. B. 2001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

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

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
to this article, other than refunding bonds, shall be issued no later than five years after the date of adoption of the resolution of the Legislature authorizing the issuance of the bonds referred to in this section.

(b) The aggregate principal amount of bonds issued pursuant to the provisions of this article is limited to no more than the lesser of the following: (1) The principal amount necessary, after deduction of costs, underwriter’s discount and original issue discount, if any, to fund not in excess of one hundred percent of the unfunded actuarial accrued liability of the death, disability and retirement fund of the division of public safety established in article two, chapter fifteen of this code, one hundred percent of the unfunded actuarial accrued liability of the judges’ retirement system established in article nine, chapter fifty-one of this code, and ninety-five percent of the unfunded actuarial accrued liability of the teachers retirement system established in article seven-a, chapter eighteen of this code, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section; or (2) three billion nine hundred million dollars; but in no event shall the aggregate principal amount of bonds issued exceed the principal amount necessary, after deduction of costs, underwriter’s discount and original issue discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for bond insurance, credit enhancements and liquidity facilities, plus underwriter’s discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued. All such costs shall be subject to the review and approval of a
majority of the members of a review committee. The review committee shall consist of the state treasurer and four persons having skill and experience in bond issuance, appointed by the governor.

(d) The limitation on the aggregate principal amount of bonds provided in this section shall not preclude the issuance of bonds from time to time or in one or more series.

(e) No later than ten days after receipt of a request from the department of administration, the consolidated public retirement board shall provide the department of administration with a certified statement of the amount of each pension system’s unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the department of administration, based upon each pension system’s most recent actuarial valuation.

(f) No later than fifteen days after receipt of a request from the governor, the department of administration shall provide the governor with a certification of the maximum aggregate principal amount of bonds that may be issued at that time pursuant to subsection (b) of this section.

(g) Prior to any request of the governor that the Legislature prepare and consider a resolution authorizing the issuance of bonds, the bonds shall be authorized by a majority of the members of the review committee described in subsection (c) of this section.
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 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.
(a) There is continued a special revenue fund within the state lottery fund in the state treasury which is designated and known as the "state excess lottery revenue fund". The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under section 29-22B-1408(a)(1) of this chapter, shall be deposited in the state treasury and placed into the "state excess lottery revenue fund". The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and the state treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the state excess lottery revenue fund hereby created in the state treasury to be known as the "general purpose account" to be expended pursuant to appropriation of the Legislature; (2) ten million dollars into the education improvement fund for appropriation by the Legislature to the "promise scholarship fund" created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five
million dollars into the state park improvement fund for park
improvements. For the fiscal year beginning the first day of
July, two thousand three, the commission shall deposit: (1)
Sixty-five million dollars into the general purpose account to be
expended pursuant to appropriation of the Legislature; (2)
seventeen million dollars into the education improvement fund
for appropriation by the Legislature to the "promise scholarship
fund" created in section seven, article seven, chapter eighteen-c
of this code; (3) nineteen million dollars into the economic
development project fund created in subsection (d) of this
section for the issuance of revenue bonds and to be spent in
accordance with the provisions of said subsection; (4) twenty
million dollars into the school building debt service fund
created in section six, article nine-d, chapter eighteen of this
code for the issuance of revenue bonds; (5) forty million dollars
into the West Virginia infrastructure fund created in section
nine, article fifteen-a, chapter thirty-one of this code to be spent
in accordance with the provisions of said article; (6) ten million
dollars into the higher education improvement fund for higher
education; and (7) five million dollars into the state park
improvement fund for park improvements.

(c) For the fiscal year beginning the first day of July, two
thousand four, and subsequent fiscal years, the commission
shall deposit: (1) Sixty-five million dollars into the general
purpose account to be expended pursuant to appropriation of the
Legislature; (2) twenty-seven million dollars into the education
improvement fund for appropriation by the Legislature to the
"promise scholarship fund" created in section seven, article
seven, chapter eighteen-c of this code; (3) nineteen million
dollars into the economic development project fund created in
subsection (d) of this section for the issuance of revenue bonds
and to be spent in accordance with the provisions of said
subsection; (4) nineteen million dollars into the school building
debt service fund created in section six, article nine-d, chapter
eighteen of this code for the issuance of revenue bonds; (5)
forty million dollars into the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia economic development authority created and provided for in article fifteen, chapter thirty-one of
this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code, and upon direction of the governor, issue revenue bonds of the economic development authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on, the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) There is continued in the state treasury a special revenue fund named the "economic development project fund" into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsections (b) and (c) of this section. The economic development project fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance thereof. The West Virginia economic development authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the economic development project fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have
been issued from time to time under the provisions of this article.

(3) After the West Virginia economic development authority has issued bonds authorized by this section and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in connection with the bonds issued pursuant to this subsection, any balance remaining in the economic development project fund may be used for the redemption of any of the outstanding bonds issued under this subsection which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(4) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the state of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the state of West Virginia; and that the bondholders' remedies are limited in all respects to the “special revenue fund” established in this subsection for the liquidation of the bonds.

(5) The West Virginia economic development authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for such projects as may be certified under the provision of this subsection: Provided, That the bond proceeds shall be expended in accordance with the requirements and provisions of article five-a, chapter twenty-one of this code and either article twenty-two or twenty-two-a, chapter five of this code, as the case may be: Provided, however, That if such bond proceeds are expended pursuant to article twenty-two-a, chapter five of this code and if the design-build board created under said article determines that the execution of a design-build contract in connection with a
project is appropriate pursuant to the criteria set forth in said article and that a competitive bidding process was used in selecting the design builder and awarding such contract, such determination shall be conclusive for all purposes and shall be deemed to satisfy all the requirements of said article.

(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the governor, or his or her designee, the secretary of the department of tax and revenue, the executive director of the West Virginia development office and six persons appointed by the governor: Provided, That at least one citizen member must be from each of the state’s three congressional districts. The committee shall meet as often as necessary and make certifications from bond proceeds in accordance with this subsection. The committee shall meet within thirty days of the effective date of this section.

(7) Applications for grants submitted on or before the first day of July, two thousand two, shall be considered refiled with the committee. Within ten days from the effective date of this section as amended in the year two thousand three, the lead applicant shall file with the committee any amendments to the original application that may be necessary to properly reflect changes in facts and circumstances since the application was originally filed with the committee.

(8) When determining whether or not to certify a project, the committee shall take into consideration the following:

(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;
(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved and the compensation reasonably anticipated to be paid persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;

(D) Whether the project will promote economic development in the region and the type of economic development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) No grant may be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state.

The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by the economic development authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing.
(11) The committee may not certify a project unless the committee finds that the project is in the public interest and the grant will be used for a public purpose. For purposes of this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields parks, stadiums and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting and other facilities;

(G) Improvements at state parks, such as construction, expansion or extensive renovation of lodges, cabins, conference facilities and restaurants;

(H) Railroad bridges, switches and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;

(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football and soccer fields;

(J) State-owned buildings that are registered on the national register of historic places;
(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping and security systems to revitalize decaying downtown areas; and

(L) Other facilities that promote or enhance economic development, educational opportunities or tourism opportunities thereby promoting the general welfare of this state and its residents.

(12) Prior to the issuance of bonds under this subsection, the committee shall certify to the economic development authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account created in the state treasury to be known as the "economic development project bridge loan fund" to be administered by the council for community and economic development created in section two, article two, chapter five-b of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Loan repayment amounts, including the portion attributable to interest shall be paid into the fund created in this subdivision.

(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c) and (h) of this section, the commission shall first make the distribution to the economic development project fund; second, make the distribution or distributions to the other
funds from which debt service is to be paid; third, make the
distribution to the education improvement fund for appropria-
tion by the Legislature to the promise scholarship fund; and
fourth, make the distribution to the general purpose account:

Provided, That, subject to the provisions of this subsection, to
the extent such revenues are not pledged in support of revenue
bonds which are or may be issued from time to time under this
section, the revenues shall be distributed on a pro rata basis.

(f) For the fiscal year beginning on the first day of July, two
thousand two, and each fiscal year thereafter, the commission
shall, after meeting the requirements of subsections (b), (c) and
(h) of this section and after transferring to the state lottery fund
created under section eighteen of this article an amount equal
to any transfer from the state lottery fund to the excess lottery
fund pursuant to subsection (f), section eighteen of this article,
deposit fifty percent of the amount by which annual gross
revenue deposited in the state excess lottery revenue fund
exceeds two hundred twenty-five million dollars in a fiscal year
in a separate account in the state lottery fund to be available for
appropriation by the Legislature.

(g) When bonds are issued for projects under subsection (d)
of this section or for the school building authority, infrastruc-
ture, higher education or park improvement purposes described
in this section that are secured by profits from lotteries depos-
ited in the state excess lottery revenue fund, the lottery director
shall allocate first to the economic development project fund an
amount equal to one tenth of the projected annual principal,
interest and coverage requirements on any and all revenue
bonds issued, or to be issued, on or after the first day of July,
two thousand two, as certified to the lottery director; and
second, to the fund or funds from which debt service is paid on
bonds issued under this section for the school building author-
ity, infrastructure, higher education and park improvements an
amount equal to one tenth of the projected annual principal,
interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, as certified to the lottery director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(h) In fiscal year two thousand four and thereafter, prior to the distributions provided in subsection (c) of this section, the lottery commission shall deposit into the general revenue fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one, article twenty-one, chapter eleven of this code.

(i) (1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the public employees insurance agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a medicaid waiver to offer prescrip-
tion drug services to senior citizens; by investigating the
establishment of purchasing agreements with other entities to
reduce costs; by providing discount prices or rebate programs
for seniors; by coordinating programs offered by pharmaceuti-
cal manufacturers that provide reduced cost or free drugs; by
coordinating a collaborative effort among all state agencies to
ensure the most efficient and cost effective program possible
for the senior citizens of this state; and by working closely with
the state’s congressional delegation to ensure that a national
program is implemented. The Legislature further directs that the
governor report his progress back to the joint committee on
government and finance on an annual basis beginning in
November of the year two thousand one until a comprehensive
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 SE. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-5. Establishment of the equal pay commission; appointment of members; and expiration date.

(a) The equal pay commission is continued. The commission shall be composed of the following seven members:

(1) Two members of the House of Delegates, appointed by the speaker;

(2) Two members of the Senate, appointed by the president; and

(3) Three state employee representatives, including one labor union member representing state employees, as agreed to by the speaker and president; the director of the women's commission, or his or her designee; and the director of the office of equal employment opportunity, or his or her designee.

(b) The commission shall seek input from and invite the commissioner of labor or his or her designee and the director of the personnel division of the department of administration or his or her designee to attend meetings of the commission.

(c) One of the members of the Senate and one of the members of the House of Delegates, as designated by the president and the speaker respectively, shall serve as cochairs of the commission.

(d) The members of the House of Delegates, the members of the Senate and the state employee representative members shall be appointed to serve two-year terms.

(e) Any member whose term has expired shall serve until his or her successor has been duly appointed. Any person
appointed to fill a vacancy shall serve only for the unexpired term. Any member is eligible for reappointment.

(f) Any vacancies occurring in the membership of the commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the commission.

(g) The commission expires on the first day of July, two thousand ten.

CHAPTER 24

(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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

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.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand two, but prior to the first day of June, two thousand three, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of June, two thousand three, shall be given any effect.

(b) Medical savings accounts.— The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections are not “wages” for purposes of withholding under section seventy-one of this article.

(c) Surtax.— The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter which are collected by the tax commissioner as tax collected under this article.
(d) Effective date.— The amendments to this section enacted in the year two thousand three are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of June, two thousand three, the law in effect for each of those years shall be fully preserved as to that year except as provided in this section.

(e) For purposes of the refundable credit allowed to a low income senior citizen for property tax paid on his or her homestead in this state, the term “laws of the United States” as used in subsection (a) of this section means and includes the term “low income” as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. department of health and human services under the authority of 42 U.S.C. 9902(2).

CHAPTER 25

(H. B. 205 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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

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.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States on or after the thirty-first day of December, two thousand two, but prior to the first day of June, two thousand three, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of June, two thousand three, shall be given any effect.

(b) The term “Internal Revenue Code of 1986” means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and
(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year two thousand three are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of June, two thousand three, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 26

(S. B. 2015 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)

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


1 There is hereby created in the state treasury a special revenue fund to be designated and known as the veterans facilities support fund. All interest or other returns earned on the investment of the moneys in the fund shall be credited to the fund. Funds paid into the account shall be derived from the following sources: (1) Any gift, grant, bequest, endowed fund or donation which may be received by any veterans facility created by statute from any governmental entity or unit or any person, firm, foundation or corporation; and (2) all interest or other return on investment accruing to the fund. Moneys in the fund are to be used for the operational costs of any veterans facility created by statute, the acquisition, design, construction, equipping, furnishing, including, without limitation, the payment of debt service on bonds issued to finance the foregoing and/or as otherwise designated or specified by the donor. Any balance, including accrued interest or other earnings, in this special fund at the end of any fiscal year shall not revert to the general revenue fund but shall remain in the fund. Funds from the veterans facility support fund for operational costs will be distributed by appropriation of the Legislature. Funds from the veterans facility support fund for the acquisition, design, construction, equipping, furnishing, including, without limita-
tion, the payment of debt service on bonds issued to finance the veterans nursing home shall be transferred to the veterans nursing home building fund upon written request of the director of the division of veterans affairs to the investment management board and the state treasurer in accordance with the provisions of this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.

(a) Beginning the first day of September, two thousand, the commission shall establish an instant lottery scratch-off game designated as the veterans benefit game, which is offered by the lottery.

(b) Notwithstanding the provisions of section eighteen of this article, all net profits received from the sale of veterans benefit game lottery tickets, materials and games are deposited with the state treasurer into the veterans lottery fund created under subsection (c) of this section. The Legislature may make appropriations from this fund for operational costs from moneys remaining in the veterans lottery fund after the acquisition, design, construction, equipping, furnishing, including, without limitation, the payment of debt service on bonds issued to finance the foregoing, have been paid. Funds from the veterans lottery fund for the acquisition, design, construction, equipping, furnishing, including, without limitation, the payment of debt service on bonds issued to finance the construction of a veterans nursing home shall be transferred to the veterans nursing home building fund upon written request of the director of the division of veterans affairs to the investment management board and the state treasurer in accordance with
the provisions of this section. Once the payment of the principal
and interest, any required operational costs and architectural
and other project costs associated with construction are paid in
full for the construction and operation of the initial veterans
skilled nursing facility, the Legislature may appropriate from
the fund created under this section moneys for the construction,
including the architectural fees and other associated costs,
equipping and operation of additional skilled nursing facilities
for veterans of the armed forces of the United States military:
Provided, That after the payment of the above-mentioned items,
the Legislature may appropriate any excess funds to the general
revenue fund.

(c) There is hereby created in the state treasury a special
revenue fund designated and known as the veterans lottery fund
which shall consist of all revenues derived from the veterans
benefit game and any appropriations to the fund by the Legisla-
ture and all interest or other returns earned from investment of
the fund.

(d) There is hereby created in the state treasury a special
revenue fund designated and known as the veterans nursing
home building fund which shall consist of all funds for the
acquisition, design, construction, equipping, furnishing,
including, without limitation, the payment of debt service on
bonds issued to finance the foregoing. Following the selection
of the architect, the director shall certify the estimated total cost
of the architect and all construction and associated costs to the
joint committee on government and finance prior to the transfer
of funds for construction. If funds transferred exceed the
estimated costs certified to the joint committee, the director
shall certify the additional costs to the joint committee.

(e) There is hereby created in the state treasury a special
revenue fund designated and known as the veterans nursing
home debt service fund to which the required funding from the
veterans nursing home building fund is transferred to refund revenue bonds to pay the principal, interest, redemption premium and coverage ratio requirement, if any, on the revenue bonds issued under the provisions of section seven, article twenty-nine-a, chapter sixteen of this code. The veterans nursing home debt service fund has first priority to all funds in the veterans nursing home building fund established herein not otherwise designated or specified by the donor. Beginning on or before the twenty-eighth day of July, two thousand three, and continuing until the twenty-eighth day of June, two thousand thirty-five, the treasurer shall allocate to the veterans nursing home debt service fund from the veterans nursing home building fund, as a first priority, an amount equal to one tenth of the projected annual principal, interest, redemption premium and coverage ratio requirement on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of July, two thousand three, under the provisions of said section in connection with a veterans nursing home as certified to the treasurer and the investment management board by the director of the division of veterans affairs. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the veterans nursing home debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(f) The commission shall change the design or theme of the veterans benefit game regularly so that the game remains competitive with the other instant lottery scratch-off games offered by the commission. The tickets for the instant lottery game created in this section shall clearly state that the profits derived from the game are being used to benefit veterans in this state.
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 one, article two, chapter nine-a of said code; to amend and reenact section two, article ten-k of said chapter; 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 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, one-b, 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 work-
ers’ compensation commission as an independent agency
assuming all duties of division; creating the workers’ compensa-
tion board of managers; establishing composition of board;
establishing qualifications for membership; establishing appoint-
ment 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 intercep-
tion 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 work-
ers’ compensation rules by commission; transferring assets and
contracts; establishing fraud and abuse investigation and prosecu-
tion 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 execu-
tive 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.
5F. Reorganization of the Executive Branch of State Government.
11. Taxation.
15. Public Safety.
18. Education.
21A. Unemployment Compensation.
22. Environmental Resources.
23. Workers' Compensation.
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;
(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property in connection with the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

(5) Default on obligations owed to the state, including, but not limited to, obligations under the West Virginia workers' compensation act, the West Virginia unemployment compensation act and West Virginia state tax and revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the bureau of employment programs or the workers' compensation commission, the director may waive debarment under section thirty-three-f of this article: Provided, That in no event may debarment be waived with respect to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;

(6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard and other due process required by law; and
(7) Violation of the terms of a public contract or subcontract for:

(A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;

(B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;

(C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder;

(D) A repeated pattern or practice of failure to perform so serious and compelling as to justify debarment; or

(E) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of 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.
(a) The joint commission on economic development may review any procedural rule, interpretive rule or existing legislative rule and make recommendations concerning the rules to the Legislature.

(b) The development office and the tourism commission established pursuant to article two of this chapter, the economic development authority established pursuant to article fifteen, chapter thirty-one of this code, the bureau of employment programs established pursuant to article four, chapter twenty-one-a of this code, the workers’ compensation commission established pursuant to article one, chapter twenty-three of this code, the workforce investment commission established pursuant to article two-c of this chapter, West Virginia jobs investment trust, regional planning and development councils, West Virginia rural development council, governor’s office of technology and West Virginia clearinghouse for workforce education shall each file a copy of its legislative rules with the commission as provided for in this section. Each agency that proposes legislative rules in accordance to the provisions of article three, three-a or three-b, chapter twenty-nine-a of this code relating to economic development or workforce development shall file the rules with the joint commission at the time the rules are filed with the secretary of state prior to the public comment period or public hearing required in said chapter.

§5B-3-5. Joint commission on economic development studies.

(a) The joint commission on economic development shall study the following:

1. The feasibility of establishing common regional configurations for such purposes as local workforce investment areas, regional educational service agencies and for all other purposes the commission considers feasible. The study should review the existing levels of cooperation between state and
local economic developers, complete an analysis of possible
regional configurations and outline examples of other success-
ful regional systems or networks found throughout the world.

If the study determines that the common regional configura-
tions are feasible, the commission shall recommend legislation
establishing common regional designations for all purposes the
commission considers feasible. In making the designation of
regional areas, the study shall take into consideration, but not
be limited to, the following:

(A) Geographic areas served by local educational agencies
and intermediate educational agencies;

(B) Geographic areas served by post-secondary educational
institutions and area vocational education schools;

(C) The extent to which the local areas are consistent with
labor market areas;

(D) The distance that individuals will need to travel to
receive services provided in the local areas; and

(E) The resources of the local areas that are available to
effectively administer the activities or programs;

(2) The effectiveness and fiscal impact of incentives for
attracting and growing businesses, especially technology-
intensive companies; and

(3) A comprehensive review of West Virginia's existing
economic and community development resources and the
recommendation of an organizational structure, including, but
not limited to, the reorganization of the bureau of commerce
and the development office that would allow the state to
successfully compete in the new global economy.
(b) In order to effectuate in the most cost-effective and efficient manner the studies required in this article, it is necessary for the joint commission to assemble and compile a tremendous amount of information. The development office will assist the joint commission in the collection and analysis of this information. The tourism commission established pursuant to article two of this chapter, the economic development authority established pursuant to article fifteen, chapter thirty-one of this code, the bureau of employment programs established pursuant to article four, chapter twenty-one-a of this code, the workers’ compensation commission established pursuant to article one, chapter twenty-three of this code, the workforce investment commission established pursuant to article two-c of this chapter, West Virginia jobs investment trust, regional planning and development councils, West Virginia rural development council, governor’s office of technology and West Virginia clearinghouse for workforce education all shall provide a copy of the agency’s annual report as submitted to the governor in accordance with the requirements set forth in section twenty, article one, chapter five of this code to the West Virginia development office. The development office shall review, analyze and summarize the data contained in the reports, including its own annual report, and annually submit its findings to the joint commission on or before the thirty-first day of December.

(c) The legislative auditor shall provide to the joint commission a copy of any and all reports on agencies listed in subsection (b) of this section, which are required under article ten, chapter four of this code.

(d) The joint commission shall complete the studies set forth in this section and any other studies the joint commission determines to undertake prior to the first day of December of each year and may make recommendations, including recom-
mended legislation for introduction during the regular session 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.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of administration:

(1) Building commission provided for in article six, chapter five of this code;

(2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;

(3) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;

(4) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(5) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;

(6) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;
(7) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(8) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(9) Division of personnel provided for in article six, chapter twenty-nine of this code;

(10) The West Virginia ethics commission provided for in article two, chapter six-b of this code; and

(11) Consolidated public retirement board provided for in article ten-d, chapter five of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities, are grouped under two bureaus and one commission as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which includes:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and

(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The
following boards are transferred to the office of miners’ health, safety and training for purposes of administrative support and liaison with the office of the governor:

(i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;

(ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and

(iii) Mine inspectors’ examining board provided for in article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in article two, chapter five-b of this code, which includes:

(i) Economic development authority provided for in article fifteen, chapter thirty-one of this code; and

(ii) Tourism commission provided for in article two, chapter five-b of this code and the office of the tourism commissioner;

(D) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett historical state park provided for in article eight, chapter twenty-nine of this code is under the division of natural resources;

(E) Division of forestry provided for in article one-a, chapter nineteen of this code;

(F) Geological and economic survey provided for in article two, chapter twenty-nine of this code;
(G) Water development authority and board provided for in article one, chapter twenty-two-c of this code;

(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code; and

(3) Workers' compensation commission provided for in article one, chapter twenty-three of this code.

(c) Bureau of environment is abolished and the following agencies and boards, including all allied, advisory and affiliated entities, are transferred to the department of environmental protection for purposes of administrative support and liaison with the office of the governor:

(1) Air quality board provided for in article two, chapter twenty-two-b of this code;

(2) Solid waste management board provided for in article three, chapter twenty-two-c of this code;

(3) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(4) Surface mine board provided for in article four, chapter twenty-two-b of this code;

(5) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code;

(6) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code; and

(7) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associ-
ated with any agency or board, are transferred to and incorpo-
rated in and administered as a part of the department of
education and the arts:

(1) Library commission provided for in article one, chapter
ten of this code;

(2) Educational broadcasting authority provided for in
article five, chapter ten of this code;

(3) Joint commission for vocational-technical-occupational
education provided for in article three-a, chapter eighteen-b of
this code;

(4) Division of culture and history provided for in article
one, chapter twenty-nine of this code; and

(5) Division of rehabilitation services provided for in
section two, article ten-a, chapter eighteen of this code.

(e) The following agencies and boards, including all of the
allied, advisory, affiliated or related entities and funds associ-
ated with any agency or board, are transferred to and incorpo-
rated in and administered as a part of the department of health
and human resources:

(1) Human rights commission provided for in article eleven,
chapter five of this code;

(2) Division of human services provided for in article two,
chapter nine of this code;

(3) Bureau for public health provided for in article one,
chapter sixteen of this code;

(4) Office of emergency medical services and advisory
council thereto provided for in article four-c, chapter sixteen of
this code;
(5) Health care authority provided for in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

(7) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

(8) The child support enforcement division provided for in chapter forty-eight of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of military affairs and public safety:

(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;
(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans’ affairs and veterans’ council provided for in article one, chapter nine-a of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

(2) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(3) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(4) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(5) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;
(6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(7) Lending and credit rate board provided for in chapter forty-seven-a of this code; and

(8) Division of banking provided for in article two, chapter thirty-one-a of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of transportation:

(1) Division of highways provided for in article two-a, chapter seventeen of this code;

(2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(4) Driver’s licensing advisory board provided for in article two, chapter seventeen-b of this code;

(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(i) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions
of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(j) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers will not have their appellate or independent decision-making status affected by the enactment of this chapter.

(k) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(l) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four will be headed
by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

(m) The amendments to this section effected by the enactment of Enrolled Senate Bill No. 2013 in the year two thousand three shall become operative on the first day of 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.

Any person to whom a certificate of registration has been issued under the provisions of section four of this article shall keep the certificate posted in a conspicuous position in the place where the privilege of the business is exercised. The certificate of registration shall be produced for inspection whenever required by the tax commissioner or by any law-enforcement officers of this state, county or municipality in which the privileges to conduct business are exercised.

No injunction shall issue from any court in the state enjoining the collection of any business registration certificate tax required in this section; and any person claiming that any business certificate is not due, for any reason, shall pay the tax under protest and petition the tax commissioner for a refund in accordance with the provisions of section fourteen, article ten of this chapter.
If any person engaging in or prosecuting any business, or trade, contrary to any other provisions of this article, whether without obtaining a business certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of the business certificate, the circuit court, or the judge thereof in vacation, of the county in which the violation occurred shall, upon proper application in the name of the state, and after ten days' written notice thereof to such person, grant an injunction prohibiting that person from continuing the business, activity or trade until he or she has fully complied with the provisions of this article. The remedy provided in this section is in addition to all other penalties and remedies provided by law.

The tax commissioner shall make available, when requested, information as to whether a person is registered to do business in the state of West Virginia.

The tax commissioner shall deliver to the commissioner of the bureau of employment programs and the executive director of the workers' compensation commission the information contained in the business franchise registration certificate when this information is used to implement and administer a single point of registration program for persons engaging in any business activity in the state of West Virginia. The single point of registration program shall provide that, once an individual has received a business franchise registration certificate, the tax commissioner shall notify the commissioner of the bureau of employment programs and the executive director of the workers' compensation commission of the names, addresses and other identifying information of that individual or entity. Upon receiving this information, the commissioner of the bureau of employment programs and the executive director of the workers' compensation commission shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms and paperwork to register a
business within the bureau and commission pursuant to
subsection (b), section six-b, article two, chapter twenty-one-a
of this code and subsection (c), section two, article two, chapter
twenty-three of this code.

Notwithstanding the provisions of section five, article ten
of this chapter, the tax commissioner may enter into a recipro-
cal agreement with the governor’s office of community and
industrial development and other departments or agencies of
this state for the exchange of information contained in the
application for a business franchise registration certificate filed
under section four of this article when the purpose for the
exchange is to implement and administer a single-point of
registration program for persons engaging in business in this
state. The other departments and agencies may enter into a
reciprocal exchange agreement for this purpose notwithstanding
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; counsel-
ing.

(a) An eligible lending institution that desires to participate
in the linked deposit program shall accept and review loan
applications from eligible small businesses that have been
prepared with the advice of the small business development
center. The lending institution shall apply all usual lending
standards to determine the credit worthiness of each eligible
small business and whether the loan application meets the
criteria established in this article.
(b) An eligible small business shall certify on its loan application that: (1) The small business is in good standing with the state tax division, the workers’ compensation commission and the bureau of employment programs as of the date of the application; (2) the linked deposit loan will be used to create new jobs or preserve existing jobs and employment opportunities; and (3) the linked deposit loan shall not be used to refinance an existing debt.

(c) In considering which eligible small businesses should receive linked deposit loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located, the number of jobs to be created and preserved by the receipt of the loan, the reasonable ability of the small business to repay the loan and other factors considered appropriate by the eligible financial institution.

(d) A small business receiving a linked deposit loan shall receive supervision and counseling provided by the small business development center when applying for the loan. The services available from the small business development center include eligibility certification, business planning, quarterly financial statement review and loan application assistance. The state tax division, the bureau of employment programs and the workers’ compensation commission shall provide the small business development center with information as to the standing of each small business loan applicant. The small business development center shall include these certifications with the loan application.

(e) The eligible financial institution shall forward to the treasurer a linked deposit loan package in the form and manner prescribed by the treasurer. The treasurer shall forward notice of approval of the loan to the small business development center at the same time it is furnished to the eligible financial 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.

(a) The board shall cause an annual financial and compliance audit of the assets managed by the board to be made by a certified public accounting firm which has a minimum staff of ten certified public accountants and which is a member of the American institute of certified public accountants and, if doing business in West Virginia, a member of the West Virginia society of certified public accountants. The financial and compliance audit shall be made of the board's books, accounts and records with respect to its receipts, disbursements, investments, contracts and all other matters relating to its financial operations. Copies of the audit report shall be furnished to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(b) The board shall produce monthly financial statements for the assets managed by the board and cause them to be delivered to each member of the board and the executive secretary of the consolidated public retirement board as established in sections one and two, article ten-d, chapter five of this code and to the executive director of the workers' compensation commission as administrator of the workers' compensation fund and coal-workers' pneumoconiosis fund as provided in section one-b, article one, chapter twenty-three of this code and section one, article three of said chapter and section seven, article four-b of said chapter.
(c) The board shall deliver in each quarter to the council of finance and administration and the consolidated public retirement board a report detailing the investment performance of the 401(a) plans.

(d) The board shall cause an annual audit of the reported returns of the assets managed by the board to be made by an investment consulting or a certified public accounting firm meeting the criteria set out in subsection (a) of this section. The board shall furnish copies of the audit report to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(e) The board shall provide any other information requested in writing by the council of finance and administration.

(f) All statements and reports with respect to participant plans required in this section shall be available for inspection by the members and beneficiaries and designated representatives 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.

(a) The standard uniform to be used by the West Virginia state police after the effective date of this article shall be as follows: Forestry green blouse with West Virginia state police emblem on sleeve; black shoulder strap one-inch black stripe around sleeve, four inches from end of sleeve; forestry green
breeches with one-inch black stripe down the side; trousers (slacks) with one-inch black stripe down the side for officers and clerks regularly enlisted in the state police; forestry green shirts with West Virginia state police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia state police emblem on sleeve; black shoulder straps; one-inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; black Sam Browne belt with holster; black leggings and shoes; the officer’s uniform will have one and one-quarter inch black stripe around the sleeve of blouse and mackinaw four inches from end of sleeve circumposed with one-half inch gold braid, also black collars on blouse, with two silver shoulder bars for captains, one silver shoulder bar for first lieutenant, one gold shoulder bar for second lieutenant. For noncommissioned officers the uniform blouse and shirt will have thereon black chevrons of the appropriate rank.

(b) The superintendent shall establish the weapons and enforcement equipment which are authorized for use by members of the state police and shall provide for periodic inspection of the weapons and equipment. He or she shall provide for the discipline of members using other than authorized weapons and enforcement equipment.

(c) The superintendent shall provide the members of the state police with suitable arms and weapons and, when he or she considers it necessary, with suitably equipped automobiles, motorcycles, watercraft, airplanes and other means of conveyance to be used by the West Virginia state police, the governor and other officers and executives in the discretion of the governor, in times of flood, disaster and other emergencies, for traffic study and control, criminal and safety work and in other matters of official business. He or she shall also provide the standard uniforms for all members of the state police, for officers, noncommissioned officers and troopers provided for
in this section. All uniforms and all arms, weapons and other
property furnished the members of the state police by the state
of West Virginia are and remain the property of the state.

(d) The superintendent may purchase and maintain on
behalf of members group life insurance not to exceed the
amount of five thousand dollars on behalf of each member.

(e) The superintendent may contract and furnish at state
police expense medical and hospital services for treatment of
illness or injury of a member which shall be determined by the
superintendent to have been incurred by the member while
engaged in the performance of duty and from causes beyond
control of the members. Notwithstanding any other provision of
this code, the superintendent has the right of subrogation in any
civil action or settlement brought by or on behalf of a member
in relation to any act by another which results in the illness,
injury or death of a member. To this end, the superintendent
may initiate an action on behalf of the state police in order to
recover the costs incurred in providing medical and hospital
services for the treatment of a member resulting from injury or
illness originating in the performance of official duties. This
subsection shall not affect the power of a court to apply
ordinary equitable defenses to the right of subrogation.

The superintendent may also consult with the executive
director of the workers' compensation commission in an effort
to defray the cost of medical and hospital services. In no case
will the compensation rendered to health care providers for
medical and hospital services exceed the then current rate
schedule in use by the workers' compensation commission.

Third-party reimbursements received by the superintendent
after the expiration of the fiscal year in which the injury, illness
or death occurred will be deposited to a nonexpiring special
revenue account. Funds deposited to this account may be used
solely for defraying the costs of medical or hospital services rendered to any sworn members as a direct result of an illness, injury or death resulting from the performance of official duties.

(f) The superintendent shall establish and maintain local headquarters at those places in West Virginia that are in his or her judgment suitable and proper to render the West Virginia state police most efficient for the purpose of preserving the peace, protecting property, preventing crime, apprehending criminals and carrying into effect all other provisions of this article. The superintendent shall provide, by acquisition, lease or otherwise, for local headquarters, for housing and quarters for the accommodation of the members of the West Virginia state police, and for any other facilities necessary or useful for the effective operation of the West Virginia state police and shall provide all equipment and supplies necessary for the members of the West Virginia state police to perform their duties.

CHAPTER 16. PUBLIC HEALTH.

Article
1. State Public Health System.
29D. State Health Care.

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.

(a) The secretary, the commissioner, any officer or employee of the department designated by the secretary, or any other individual designated by the secretary may hold investigations, inquiries and hearings concerning matters covered by the laws of this state pertaining to public health and within the
authority and the rules and orders of the secretary. Hearings shall be open to the public and shall be held upon any call or notice considered advisable by the secretary.

(b) Each individual designated to hold any inquiry, investigation or hearing may administer oaths and affirmations, certify to all official acts, issue subpoenas and order the attendance and testimony of witnesses in the production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the secretary or his or her authorized representative may invoke the aid of any circuit court of this state. The court may thereupon order that person to comply with the requirements of the subpoena order or to give evidence as to the matter in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) Subject to the provisions of subsections (a) and (b) of this section, the secretary may in his or her discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigation and hearings: Provided, That information obtained from studies or from any investigation made or hearing held pursuant to the provisions of this article may not be admissible in evidence in any action at law to recover damages for personal injury or in any action under the workers' compensation act, but the information, if available, shall be furnished upon request to the executive director of the workers' compensation commission for the sole purpose of adjusting claims presented to the 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.
(a) All departments and divisions of the state, including, but not limited to, the bureau of employment programs; the division of health and the division of human services within the department of health and human resources; the public employees insurance agency within the department of administration; the division of rehabilitation services; the workers' compensation commission; or the other department or division as shall supervise or provide rehabilitation; and the university of West Virginia board of trustees, as the governing board for the state's medical schools, are authorized and directed to cooperate in order, among other things, to ensure the quality of the health care services delivered to the beneficiaries of the departments and divisions and to ensure the containment of costs in the payment for services.

(b) It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency which administers the state's medicaid program. Thus, it is the intention of the Legislature that nothing contained in this article shall be interpreted, construed or applied to interfere with the powers and actions of the single state agency which, in keeping with applicable federal law, shall administer the state's medicaid program as it perceives to be in the best interest of that program and its beneficiaries.

(c) The departments and divisions shall develop a plan or plans to ensure that a reasonable and appropriate level of health care is provided to the beneficiaries of the various programs including the public employees insurance agency and the workers' compensation fund, the division of rehabilitation services and, to the extent permissible, the state medicaid program. The plan or plans may include, among other things, and the departments and divisions are hereby authorized to enter into:

(1) Utilization review and quality assurance programs;
(2) The establishment of a schedule or schedules of the maximum reasonable amounts to be paid to health care providers for the delivery of health care services covered by the plan or plans. The schedule or schedules may be either prospective in nature or cost reimbursement in nature, or a mixture of both:

Provided, That any payment methods or schedules for institutions which provide inpatient care shall be institution-specific and shall, at a minimum, take into account a disproportionate share of medicaid, charity care and medical education: Provided, however, That in no event may any rate set in this article for an institutional health care provider be greater than the institution’s current rate established and approved by the health care cost review authority pursuant to article twenty-nine-b of this chapter;

(3) Provisions for making payments in advance of the receipt of health care services by a beneficiary, or in advance of the receipt of specific charges for the services, or both;

(4) Provisions for the receipt or payment of charges by electronic transfers;

(5) Arrangements, including contracts, with preferred provider organizations; and

(6) Arrangements, including contracts, with particular health care providers to deliver health care services to the beneficiaries of the programs of the departments and divisions at agreed-upon rates in exchange for controlled access to the beneficiary populations.

(d) The director of the public employees insurance agency shall contract with an independent actuarial company for a review every four years of the claims experience of all governmental entities whose employees participate in the public employees insurance agency program, including, but not
limited to, all branches of state government, all state departments or agencies (including those receiving funds from the federal government or a federal agency), all county and municipal governments or any other similar entity for the purpose of determining the cost of providing coverage under the program, including administrative cost, to each governmental entity.

(e) Nothing in this section shall be construed to give or reserve to the Legislature any further or greater power or jurisdiction over the operations or programs of the various departments and divisions affected by this article than that already possessed by the Legislature in the absence of this article.

(f) For the purchase of health care or health care services by a health care provider participating in a plan under this section on or after the first day of September, one thousand nine hundred eighty-nine, by the public employees insurance agency, the division of rehabilitation services and the workers' compensation commission, a state check shall be issued in payment thereof within sixty-five days after a legitimate uncontested invoice is actually received by the division, commission or agency. Any state check issued after sixty-five days shall include interest at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code. The interest shall be calculated from the sixty-sixth day after the invoice was actually received by the commission or agency until the date on which the state check is mailed to the vendor.

ARTICLE 36. NEEDLESTICK INJURY PREVENTION.

§16-36-3. Needlestick injury prevention advisory committee.
(a) There is established a needlestick injury prevention advisory committee to advise the director in the development of rules required under this article.

(b) The committee shall meet at least four times a year for the initial two years after the effective date of this article and on the call of the director thereafter. The director shall serve as the chair and shall appoint thirteen members, one representing each of the following groups:

(1) A representative of the health insurance industry;

(2) The executive director of the workers' compensation commission, or his or her designee;

(3) Five nurses who work primarily providing direct patient care in a hospital or nursing home, at least one of which is employed in a state-operated facility;

(4) A phlebotomist employed in a hospital or nursing home;

(5) Two administrators of different hospitals operating within the state;

(6) A director of nursing employed in a nursing home within the state;

(7) A licensed physician practicing in the state; and

(8) An administrator of a nursing home operating within the state.

(c) Members of the committee serve without compensation. Each member shall be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in 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.

§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.
(c) The base premium tax rate reported to the state department of education shall be that which was published by the workers' compensation commission prior to the first day of the immediately preceding July. The workers' compensation commission shall make no merit rate adjustment, as otherwise provided for in paragraph (A), subdivision (1), subsection (a), section four, article two, chapter twenty-three of this code for the members of the class required to be created by subsection (a) of this section.

(d) Notwithstanding anything to the contrary in any rules adopted to implement the provisions of section four, article two, chapter twenty-three of this code and for the sole purpose of this section, the workers' compensation commission shall permit any county board of education affected by this section to be classified in accordance with this section and to be also classified as otherwise required by any rules adopted to implement the provisions of section four, article two, chapter twenty-three of this code.

(e) Subject to an appropriation by the Legislature, funds shall be provided to the department of education to distribute to the county boards. If the appropriation is less than the total premium calculated, the county boards, individually, shall either reduce the number of students participating in work-based learning experiences off school premises or the county boards shall pay the difference between the amount of the premium calculated by the workers' compensation commission and the amount allocated to the county board by the department of education.

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-12a. Workers' compensation for clients participating in unpaid work-based training programs.
(a) The workers' compensation commission shall create a classification and calculate a base premium tax rate for clients of the division of rehabilitation services participating in unpaid work-based training programs within integrated community-based settings. The workers' compensation commission shall report to the division of rehabilitation services:

(1) The amount of the base premium tax rate for the class; and

(2) The hourly wages per client to be used to provide the minimum weekly benefits required by section six, article four, chapter twenty-three of this code.

(b) The base premium tax rate reported annually to the division of rehabilitation services by the workers' compensation commission shall not be effective until the first day of July and shall remain in effect through the last day of the next June.

(c) The division of rehabilitation services and the participating entity shall be considered the joint employers of record of the clients while the clients are participating in unpaid work-based training programs in integrated community-based settings: Provided, That the participating entity shall not be held responsible for any liability due the workers' compensation commission. The clients shall be considered to be paid the amount of wages sufficient to provide the minimum workers' compensation weekly benefits required by section six, article 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.

(a) There is hereby established the West Virginia traumatic brain and spinal cord injury rehabilitation fund board.
(b) The board shall consist of twenty-three members. The members shall include:

1. The secretary of the department of education and the arts, ex officio, or his or her designee;

2. The secretary of health and human resources, ex officio, or his or her designee;

3. The state superintendent of schools, ex officio, or his or her designee;

4. The secretary of the department of military affairs and public safety, ex officio, or his or her designee;

5. The director of the bureau of behavioral health within the department of health and human resources, ex officio, or his or her designee;

6. The director of the division of rehabilitation services, ex officio, or his or her designee;

7. The director of the bureau of medical services, ex officio, or his or her designee;

8. The director of the office of emergency services, ex officio, or his or her designee;

9. The executive director of the workers' compensation commission, ex officio, or his or her designee;

10. Seven members appointed by the governor to represent public and private health organizations or other disability coalitions or advisory groups; and

11. Seven members appointed by the governor who are either survivors of traumatic brain or spinal cord injury or
family members of persons with traumatic brain or spinal cord injury.

(c) The citizen members shall be appointed by the governor for terms of three years, except that of the members first appointed, two of the representatives of public and nonprofit private health organizations, disability coalitions or advisory groups and two of the representatives of survivors or family members of persons with traumatic brain or spinal cord injuries shall serve for terms of one year, two of the representatives of each of those respective groups shall serve for terms of two years and the remaining three representatives of each of those respective groups shall serve for terms of three years. All subsequent appointments shall be for three years. Members shall serve until the expiration of the term for which they have been appointed or until their successors have been appointed and qualified. In the event of a vacancy, the governor shall appoint a qualified person to serve for the unexpired term. No member may serve more than two consecutive three-year terms. State officers or employees may be appointed to the board unless otherwise prohibited by law.

(d) In the event a board member fails to attend more than twenty-five percent of the scheduled meetings in a twelve-month period, the board may, after written notification to that member and the secretary of education and the arts, request in writing that the governor remove the member and appoint a new member to serve his or her unexpired term.

(e) The board shall elect from its membership a chairperson, treasurer and secretary as well as any other officer as appropriate. The term of the chairperson is for two years in duration and he or she cannot serve more than two consecutive 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.

(a) There is continued in the labor department a division of occupational safety and health comprised of a subdivision for safety, a subdivision for health and the other subdivisions the commissioner considers necessary. This division shall administer all matters pertaining to occupational safety and occupational health.

(b) The labor commissioner may require the assistance of other state agencies and may enter into agreements with other state agencies and political subdivisions of the state for the administration of this chapter.

(c) The labor commissioner shall provide for coordination between the division of occupational safety and health and the workers' compensation commission including, but not limited 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.

ARTICLE I. UNEMPLOYMENT COMPENSATION.

§21A-1-4. Bureau of employment programs created; division; "bureau" defined.

There is continued an agency designated as the bureau of employment programs, composed of a division of unemploy-
ment compensation, a division of employment service, a
division of job training programs and any other divisions or
units that the commissioner determines are necessary.

Wherever within this chapter the term "department",
"bureau" or "fund" is used, it shall be taken to mean bureau of
employment programs unless otherwise indicated.

The bureau shall be administered pursuant to subsection
(b), section one, article two, chapter five-f of this code.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT
PROGRAMS.

§21A-2-6c. Payment withholding and interception.


The commissioner is the executive and administrative head
of the bureau and has the power and duty to:

(1) Exercise general supervision for the governance of the
bureau and propose rules for promulgation in accordance with
the provisions of article three, chapter twenty-nine-a of this
code to implement the requirements of this chapter;

(2) Prescribe uniform rules pertaining to investigations,
departmental hearings and propose rules for promulgation;

(3) Supervise fiscal affairs and responsibilities of the
bureau;

(4) Prescribe the qualifications of, appoint, remove and fix
the compensation of the officers and employees of the bureau,
subject to the provisions of section ten, article four of this
chapter, relating to the board of review;
(5) Organize and administer the bureau so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal law or regulation;

(6) Make reports in the form and containing information required by the United States department of labor and comply with any requirements that the United States department of labor finds necessary to assure the correctness and verification of the reports;

(7) Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation and a statement of the recipient’s rights to further compensation under this chapter;

(8) Keep an accurate and complete record of all bureau proceedings, record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the bureau;

(9) Sign and execute in the name of the state, by the “Bureau of Employment Programs”, any contract or agreement with the federal government, its agencies, other states, their subdivisions or private persons;

(10) Prescribe a salary scale to govern compensation of appointees and employees of the bureau;

(11) Make the original determination of right in claims for benefits;

(12) Make recommendations and an annual report to the governor concerning the condition, operation and functioning of the bureau;
(13) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(14) Exercise any other power necessary to standardize administration, expedite bureau business, assure the establishment of fair rules and promote the efficiency of the service;

(15) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state. The report shall be made available upon request to members of the public and press;

(16) Provide at bureau expense a program of continuing professional, technical and specialized instruction for the personnel of the bureau;

(17) (A) Propose for promulgation rules under which agencies of this state shall not grant, issue or renew any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit whose account is in default with the commissioner with regard to the administration of this chapter. The term “agency” includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations. An employing unit is not in default if it has entered into a repayment agreement with the unemployment compensation division of the bureau and remains in compliance with its obligations under the repayment agreement.

(B) The rules shall provide that, before granting, issuing or renewing any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit, the designated agencies shall review a list or lists provided by the bureau of employers that are in default. If the employing unit’s name is not on the list, the agency, unless it has actual knowledge that the employing unit is in
default with the bureau, may grant, issue or renew the contract, license, permit, certificate or other authority to conduct a trade, profession or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter. The rules provided for by this subdivision shall be promulgated pursuant to the provisions of article three, chapter twenty-nine-a of this code. The prohibition against granting, issuing or renewing any contract, license, permit, certificate or other authority under this subdivision shall continue in full force and effect until the revised rules are promulgated and are in effect.

(C) The rules may be promulgated or implemented in phases so that specific agencies or specific types of contracts, licenses, permits, certificates or other authority to conduct trades, professions or businesses will be subject to the rules beginning on different dates. The presumptions of ownership or control contained in the division of environmental protection’s surface mining reclamation regulations promulgated under the provisions of article three, chapter twenty-two of this code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision. The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition the bureau of employment programs to be exempt from the provisions of the rules. Rules subjecting all applicable agencies and contracts, licenses, permits, certificates or other authority to conduct trades, professions or businesses to the requirements of this subdivision that were promulgated prior to the first day of October, two thousand three, shall be revised and submitted for legislative review no later than the first day of June, two thousand four;
(18) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest and penalties thereon, and attorneys' fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the auditor or treasurer as part of the general revenue of the state; and

(19) Enter into interagency agreements to assist in exchanging information and fulfilling the provisions of this article.

§21A-2-6c. Payment withholding and interception.

(a) All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of contracts until the receipt of a certificate from the commissioner to the effect that all payments, interest and penalties thereon accrued against the contractor under this chapter have been paid or that provisions satisfactory to the commissioner have been made for payment. Any official violating this subsection is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than one thousand dollars or confined in a county or regional jail for not more than one year, or both fined and confined.

(b) Any agency of the state, for the limited purpose of intercepting, pursuant to section sixteen, article five of this chapter and pursuant to section five-a, article two, chapter twenty-three of this code, any payment by or through the state to an employer who is in default in payment of contributions, premiums, deposits, interest or penalties under the provisions of this chapter or of chapter twenty-three of this code, shall assist the commissioner in collecting the payment that is due. For this purpose, disclosure of joint delinquency and default
lists of employers with respect to unemployment compensation
and workers' compensation as provided in section one-c, article
one. chapter twenty-three of this code contributions, premiums,
interest, deposits or penalties is authorized. The bureau and the
workers' compensation commission may enter into an inter-
agency agreement to effect the provisions of this section. The
lists may be in the form of a computerized database to be
accessed by the auditor, the department of tax and revenue, the
department of administration, the division of highways or any
other appropriate state agency or officer.


For the original determination of claims under this chapter,
the commissioner shall appoint a necessary number of deputies
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.

(a) Each employer, including labor organizations as defined
in subsection (i) of this section, shall, quarterly, submit
certified reports on or before the last day of the month next
following the calendar quarter, on forms to be prescribed by the
commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation
registration number, the employer's name and the address at
which the employer's payroll records are maintained;

(2) Each employee's social security account number, name
and the gross wages paid to each employee, which shall include
the first eight thousand dollars of remuneration and all amounts
in excess of that amount, notwithstanding subdivision (1),
subsection (b), section twenty-eight, article one-a of this chapter;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, and shall include the first eight thousand dollars of remuneration paid to each employee and all amounts in excess of that amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter; and

(4) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States department of agriculture;

(2) The state agency responsible for enforcement of the medicaid program under Title XIX of the Social Security Act;

(3) The United States department of health and human services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; secondary, post-secondary and vocational education; vocational rehabilitation, employment and training, including, but not limited to, the
administration of the Perkins Act and the Job Training and Partnership Act;

(5) The tax division, but only for the purposes of collection and enforcement;

(6) The division of labor for purposes of enforcing the wage bond and the contractor licensing provisions of chapter twenty-one of this code;

(7) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(8) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(9) The workers' compensation commission for purposes of collection and enforcement: Provided, That the workers' compensation commission shall provide similar information to the bureau of employment programs.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse the bureau of employment programs for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization
making the request does not certify that it will comply with the
state and federal law protecting the confidentiality of the
information.

(g) A person who violates the confidentiality provisions of
this section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than twenty dollars nor more
than two hundred dollars or confined in a county or regional
jail not longer than ninety days, or both.

(h) No action for slander or libel, either criminal or civil,
shall be predicated upon information furnished by any em-
ployer or any employee to the commissioner in connection with
the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term
“labor organization” means any organization of any kind, or
any agency or employee representation committee or plan, in
which employees participate and which exists for the purpose,
in whole or in part, of dealing with employers concerning
grievances, labor disputes, wages, rates of pay, hours of
employment or conditions of work. It includes any entity, also
known as a hiring hall, which is used by the organization and an
employer to carry out requirements described in 29 U. S. C.
§158(f)(3) of an agreement between the organization and the
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.
No person may engage in surface mining operations unless he or she has first obtained a permit from the director in accordance with the following:

(1) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the director may extend a permit for a longer term: Provided, however, That subject to the prior approval of the director, with the approval being subject to the provisions of subsection (c), section eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a permit, within thirty days of succeeding to the interest, and who is able to obtain the bond coverage of the original permittee, may continue surface mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor’s permit application or application for transfer is granted or denied.

(2) Proof of insurance is required on an annual basis.

(3) A permit terminates if the permittee has not commenced the surface mining operations covered by the permit within three years of the date the permit was issued: Provided, That the director may grant reasonable extensions of time upon a timely showing that the extensions are necessary by reason of litigation precluding commencement, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided, however, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be considered to
have commenced surface mining operations at the time the
construction of the synthetic fuel or generating facility is
initiated.

(4) Each application for a new surface mining permit filed
pursuant to this article shall be accompanied by a fee of one
thousand dollars. All permit fees and renewal fees provided for
in this section or elsewhere in this article shall be collected by
the director and deposited with the treasurer of the state of West
Virginia to the credit of the operating permit fees fund and shall
be used, upon requisition of the director, for the administration
of this article.

(5) Prior to the issuance of any permit, the director shall
ascertain from the commissioner of the division of labor
whether the applicant is in compliance with section fourteen,
article five, chapter twenty-one of this code. Upon issuance of
the permit, the director shall forward a copy to the commis-
sioner of the division of labor, who shall assure continued
compliance under the permit.

(6) (A) Prior to the issuance of any permit the director shall
ascertain from the commissioner of the bureau of employment
programs and the executive director of the workers' compen-
sation commission whether the applicant is in compliance with
the provisions of section six-c, article two, chapter twenty-one-a
of this code and section five, article two, chapter twenty-three
of this code with regard to any required subscription to the
unemployment compensation fund or to the workers' compensa-
tion fund, the payment of premiums and other charges to the
fund, the timely filing of payroll reports and the maintenance of
adequate deposits. If the applicant is delinquent or defaulted, or
has been terminated by the bureau or the commission, the
permit shall not be issued until the applicant returns to compli-
ance or is restored by the bureau or the commission under a
reinstatement agreement: Provided, That in all inquiries the
commissioner of the bureau of employment programs and the executive director of the workers' compensation commission shall make response to the division of environmental protection within fifteen calendar days; otherwise, failure to respond timely is considered to indicate the applicant is in compliance and the failure will not be used to preclude issuance of the permit.

(B) It is a requirement of this article that each operator maintain continued compliance with the provisions of section five, article two, chapter twenty-three and section six-c, article two, chapter twenty-one-a of this code and provide proof of compliance to the director on a quarterly basis.

CHAPTER 23. WORKERS' COMPENSATION.

Article
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.
§23-1-1e. Transfer of assets and contracts.
§23-1-1f. Continuation.
§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.
§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.
§23-1-17. Annual report by commission and occupational pneumoconiosis board.

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

(a) The Legislature finds that a deficit exists in the workers’ compensation fund of such critical proportions that it constitutes an imminent threat to the immediate and long-term solvency of the fund. The Legislature further finds that addressing the workers’ compensation crisis requires the efforts of all persons and entities involved. Modification to the rate system, alteration of the benefit structure, improvement of current management practices and changes in perception must be merged into a unified effort to make the workers’ compensation system viable and solvent. It is the intent of the Legislature that the amendments to this chapter enacted in the year two thousand three be applied from the date upon which the enactment is made effective by the Legislature. The Legislature finds that an emergency exists as a result of the combined effect of this deficit, other state budgetary deficits and liabilities and other grave social and economic circumstances currently confronting the state and that unless the changes provided by the enactment of the amendments to this chapter, as well as other legislation
designed to address the problem are made effective immediately, the fiscal stability of this state will suffer irreparable harm. Accordingly, the Legislature finds that the need of the citizens of this state for the protection of the state treasury and the solvency of the workers' compensation funds requires the limitations on any expectations that may have arisen from prior enactments of this chapter.

(b) It is the further intent of the Legislature that this chapter be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits and that a rule of "liberal construction" based on any "remedial" basis of workers' compensation legislation shall not affect the weighing of evidence in resolving such cases. The workers' compensation system in this state is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Employees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the provisions of this chapter and employers' rights to raise common law defenses such as lack of negligence, contributory negligence on the part of the employee, and others, are curtailed as well. Accordingly, the Legislature hereby declares that any remedial component of the workers' compensation laws is not to cause the workers' compensation laws to receive liberal construction that alters in any way the proper weighing of evidence as required by section one-g, article four of this chapter.

(c) The "workers' compensation division of the bureau of employment programs" is, on or after the first day of October, two thousand three, reestablished, reconstituted and continued as the workers' compensation commission, an agency of the state. The purpose of the commission is to ensure the fair,
efficient and financially stable administration of the workers' compensation system of the state of West Virginia. The powers and duties heretofore imposed upon the workers' compensation division and the commissioner of the bureau of employment programs as they relate to workers' compensation are hereby transferred to and imposed upon the workers' compensation commission and its executive director in the manner prescribed by this chapter.

(d) It is the intent of the Legislature that the transfer of the administration of the workers' compensation system of this state from the workers' compensation division under the commissioner of the bureau of employment programs to the workers' compensation commission under its executive director and the workers' compensation board of managers is to become effective the first day of October, two thousand three. Any provisions of the enactment of Enrolled Senate Bill No. 2013 in the year two thousand three relating to the transfer of the administration of the workers' compensation system of this state that conflict with the intent of the Legislature as described in this subsection shall, to that extent, become operative on the first day of October, two thousand three, and until that date, prior enactments of this code in effect on the effective date of Enrolled Senate Bill No. 2013 relating to the administration of the workers' compensation system of this state, whether amended and reenacted or repealed by the passage of Enrolled Senate Bill No. 2013, have full force and effect. All provisions of the enactment of Enrolled Senate Bill No. 2013 in the year two thousand three relating to matters other than the transfer of the administration of the workers' compensation system of this state shall become operative on the effective date of that enactment, unless otherwise specifically provided for in that 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.

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

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

(A) The governor or his or her designee;

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

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

(D) Eight members appointed by the governor with the advice and consent of the Senate who meet the requirements and qualifications prescribed in subsections (c) and (d) of this section: Provided, That the members serving on the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code on the effective date of the enactment of this section in two thousand three are hereby appointed as members of the board of managers subject to the provisions of subdivision (1), subsection (c) of this section.
(2) Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory members of the board and are not voting members. The governor shall appoint the legislative members to the board. No more than three of the legislative members may be of the same political party.

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

(2) Eight members shall be appointed by the governor with the advice and consent of the Senate for terms that begin the first day of January, two thousand five, and expire as follows:

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

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

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

(3) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending the thirtieth day of June of the fourth year following the year the preceding term expired. In the event a vacancy occurs, it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the board may be removed from office by the governor except for official misconduct, incompetency, neglect of duty or gross immorality.
(4) No appointed member may be a candidate for or hold elected office. Members may be reappointed for no more than two full terms.

(d) Except for those initially appointed under the provisions of paragraph (D), subdivision (1), subsection (a) of this section, each of the appointed voting members of the board shall be appointed based upon his or her demonstrated knowledge and experience to effectively accomplish the purposes of this chapter. They shall meet the minimum qualifications as follows:

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

(2) Each shall have a minimum of ten years' experience in his or her field of expertise. The governor shall consider the following guidelines when determining whether potential candidates meet the qualifications of this subsection: Expertise in insurance claims management; expertise in insurance underwriting; expertise in the financial management of pensions or insurance plans; expertise as a trustee of pension or trust funds of more than two hundred beneficiaries or three hundred million dollars; expertise in workers' compensation management; expertise in loss prevention and rehabilitation; expertise in occupational medicine demonstrated by licensure as a medical doctor in West Virginia and experience, board certification or university affiliation; or expertise in similar areas of endeavor;
(3) At least one shall be a certified public accountant with financial management or pension or insurance audit expertise; at least one shall be an attorney with financial management experience; and one shall be an academician holding an advanced degree from an accredited college or university in business, finance, insurance or economics.

(e) Each member of the board shall have a fiduciary responsibility to the commission and all workers’ compensation funds and shall assure the proper administration of the funds in a fiscally responsible manner.

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

(g) Notwithstanding any provision of article seven, chapter six of this code to the contrary, the board shall establish the salary of the executive director. The board shall establish a set of performance measurements to evaluate the performance of the executive director in fulfilling his or her duties as prescribed in this chapter and shall annually rate the executive director’s performance according to the established measurements and may adjust his or her annual salary in accordance with that performance rating.
(h)(1) Each voting appointed member of the board shall receive compensation of not more than three hundred fifty dollars per day for each day during which he or she is required to and does attend a meeting of the board.

(2) Each voting appointed member of the board is entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(i) Each member of the board shall be provided appropriate liability insurance, including, but not limited to, errors and omissions coverage, without additional premium, by the state board of risk and insurance management established pursuant to article twelve, chapter twenty-nine of this code.

(j) The board of managers shall:

(1) Review and approve, reject or modify recommendations from the executive director for the development of overall policy for the administration of this chapter;

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

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

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

(5) Review and approve, reject or modify all classifications of occupations or industries, premium rates and taxes, administrative charges, rules and systems of rating, rating plans, rate revisions, deficit management and deficit reduction assessments and merit rating for employers covered by this chapter. The executive director shall provide all information required for the board’s review;

(6) In conjunction with the executive director initiate, oversee and review all independent financial and actuarial reviews of the commission. The board shall employ an internal auditor for the purpose of examining internal compliance with the provisions of this chapter. The internal auditor shall be employed directly by the board. The internal auditor shall submit copies of all reports prepared by the internal auditor for the board to the joint committee on government and finance within five days of submitting or making the report to the board, by filing the report with the legislative librarian;

(7) Approve the allocation of sufficient administrative resources and funding to efficiently operate the workers’ compensation system of West Virginia. To assure efficient operation, the board shall direct the development of a plan for the collections performed under section five-a, article two of this chapter. The plan for collections shall maximize ratio of dollars potentially realized by the collection proceeding to the dollars invested in collection activity;
(8) Review and approve, reject or modify the budget prepared by the executive director for the operation of the commission. The budget shall include estimates of the costs and necessary expenditures of the commission in the discharge of all duties imposed by this chapter as well as the cost of providing offices, furniture, equipment and supplies to all commission officers and employees;

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

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

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

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

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

(14) Appoint, if necessary, a temporary executive director;
(15) Employ sufficient professional and clerical staff to carry out the duties of the board. Employees of the board shall serve at the will and pleasure of the board. The board’s employees are exempt from the salary schedule or pay plan adopted by the division of personnel; and

(16) Study the feasibility of, provide a plan for and provide a proposal for a request for proposals from the private sector for, privatizing the workers’ compensation system of this state, including, but not limited to, a plan for privatizing the administration of the workers’ compensation system of this state and a plan for allowing employers to obtain private insurance to insure their obligations under the workers’ compensation system of this state; study the effect, if any, of attorneys fees on the cost of administering the workers’ compensation system; study the extent to which fraud or abuse on the part of employees, providers and others have an effect on the cost of administering the workers’ compensation system; study the extent, if any, that the rates and amounts of disability awards exceed the rates and amounts of such awards in other states; study the comparative desirability of alternative permanent disability administration in those other states, and alternative deficit management strategies, including nontraditional funding; study the feasibility of authorizing a plan of multiple rate classifications by individual employers for employers who have different or seasonally diverse job classifications and duties: Provided, That no such plan may be implemented until adopted by the Legislature; and, in consultation with the director of the division of personnel, study the feasibility of establishing a work incentive program to place unemployed qualified recipients of workers’ compensation benefits in state or local government employment. On or before the first day of January, two thousand six, the commission shall report the findings and conclusions of each study, the plans and proposals, and any recommendations the commission may have as a result of the study to the joint committee on government and finance.
§23-1-1b. Executive director; qualifications; oath; seal; removal; powers and duties.

(a) The executive director shall be hired by the board of managers for a term not to exceed five years and may be retained based on overall performance for additional terms: Provided, That the executive director of the division of workers' compensation on the date of the enactment of this section in the year two thousand three shall serve as the initial executive director of the commission and shall receive the same salary and benefits as received as the executive director of the division of workers' compensation through and until the board of managers establishes his or her salary and benefits as the executive director of the commission. The position of executive director shall be full-time employment. Except for the initial executive director, candidates for the position of executive director shall have a minimum of a bachelor of arts or science degree from an accredited four-year college or university in one or more of the following disciplines: Finance; economics; insurance administration; law; public administration; accounting; or business administration. Candidates for the position of executive director will be considered based on their demonstrated education, knowledge and a minimum of ten years' experience in the areas of workers' compensation, insurance company management, administrative and management experience with an organization comparable in size to the workers' compensation commission or any relevant experience which demonstrates an ability to effectively accomplish the purposes of this chapter.

(b) The executive director shall not be a candidate for or hold any other public office or trust, nor shall he or she be a member of a political committee. If he or she becomes a candidate for a public office or becomes a member of a political committee, his or her office as executive director shall be immediately vacated.
(c) The executive director, before entering upon the duties of his or her office, shall take and subscribe to the oath prescribed by section five, article IV of the state constitution. The oath shall be filed with the secretary of state.

(d) The executive director shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Workers' Compensation Commission" and any other design prescribed by the board of managers. The courts in this state shall take judicial notice of the seal of the commission and in all cases copies of orders, proceedings or records in the office of the West Virginia workers' compensation commission are equal to the original in evidence.

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

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

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

(1) Establish, with the approval of the board of managers, the overall administrative policy of the commission for the purposes of this chapter;

(2) Employ, direct and supervise all employees required in the connection with the performance of the duties assigned to the commission by this chapter and fix the compensation of the employees in accordance with the provisions of article six,
chapter twenty-nine of this code: Provided, That the executive
director shall identify which members of the staff of the
workers’ compensation commission shall be exempted from the
salary schedules or pay plan adopted by the state personnel
board and further identify such staff members by job classifica-
tion or designation, together with the salary or salary ranges for
each such job classification or designation and shall file this
information with the director of the division of personnel no
later than the thirty-first day of December, two thousand three,
and thereafter as changes are made or at least annually;

(3) Reorganize the work of the commission, its divisions,
sections and offices to the extent necessary to achieve the most
efficient performance of its functions. All persons employed by
the workers’ compensation division in positions that were
formerly supervised and directed by the commissioner of the
bureau of employment programs under chapter twenty-one-a of
this code are hereby assigned and transferred in their respective
classifications to the workers’ compensation commission
effective the first day of October, two thousand three. Further,
the executive director may select persons that are employed by
the bureau of employment programs on the effective date of the
enactment of this section in the year two thousand three to be
assigned and transferred to the workers’ compensation commis-
sion in their respective classifications, such assignment and
transfer to take effect no later than the thirty-first day of
December, two thousand three. Employees in the classified
service who have gained permanent status as of the effective
date of this article will not be subject to further qualifying
examination in their respective classifications by reason of any
transfer required by the provisions of this subdivision. Due to
the emergency currently existing at the commission and the
urgent need to develop fast, efficient claims processing,
management and administration, the executive director is
hereby granted authority to reorganize internal functions and
operations and to delegate, assign, transfer, combine, establish,
eliminate and consolidate responsibilities and duties to and among the positions transferred under the authority of this subdivision. The division of personnel shall cooperate fully by assisting in all personnel activities necessary to expedite all changes for the commission. Nothing contained in this subdivision shall be construed to either abridge the rights of employees within the classified service of the state to the procedures and protections set forth in article six, chapter twenty-nine of this code or to preclude the reclassification or reallocation of positions in accordance with procedures set forth in article six, chapter twenty-nine of this code;

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

(5) With the advice and approval of the board of managers, propose operating guidelines and policies to standardize administration, expedite commission business and promote the efficiency of the services provided by the commission;

(6) Prepare and submit to the board of managers information the board requires for classifications of occupations or industries; the basis for premium rates, taxes, surcharges and assessment for administrative charges, for assessments related to loss experience, for assessments of prospective risk exposure, for assessments of deficit management and deficit reduction costs incurred, for other deficit management and deficit reduction assessments, for rules and systems of rating, rate revisions and merit rating for employers covered by this chapter; and information regarding the extent, degree and
amount of subsidization between the classifications. The 
executive director shall obtain, prepare and submit any other 
information the board of managers requires for the prompt and 
efficient discharge of its duties;

(7) Keep accurate and complete accounts and records 
necessary to the collection, administration and distribution of 
the workers’ compensation funds;

(8) Sign and execute in the name of the state, by “The 
Workers’ Compensation Commission”, any contract or agree- 
ment;

(9) Make recommendations and an annual report to the 
governor concerning the condition, operation and functioning 
of the commission;

(10) Invoke any legal or special remedy for the enforcement 
of orders or the provisions of this chapter;

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

(12) Ensure that all employees of the commission follow 
the orders, operating guidelines and policies of the commission 
as they relate to the commission’s overall policy-making, 
management and adjudicatory duties under this chapter;

(13) Delegate all powers and duties vested in the executive 
director to his or her appointees and employees; but the 
executive director is responsible for their acts;
(14) Provide at commission expense a program of continuing professional, technical and specialized instruction for the personnel of the commission. The executive director shall consult with and report at least annually to the legislative oversight commission on workforce investment for economic development to obtain the most appropriate training using all available resources;

(15) (A) Contract or employ counsel to perform all legal services for the commission including, but not limited to, representing the executive director, board of managers and commission in any administrative proceeding and in any state or federal court. Additionally, the commission may, but shall not be required to, call upon the attorney general for legal assistance and representation as provided by law. The attorney general shall not approve or exercise authority over in-house counsel or contract counsel hired pursuant to this section;

(B) In addition to the authority granted by this section to the executive director and notwithstanding any provision to the contrary elsewhere in this code, use any attorney regularly employed by the commission or the office of the attorney general to represent the commission, the executive director or the board of managers in any matter arising from the performance of its duties or the execution of its powers under this chapter. In addition, the executive director, with the approval of the board of managers, may retain counsel for any purpose in the administration of this chapter relating to the collection of any amounts due from employers to the commission: Provided, That the allocation of resources for the purpose of any collections shall be pursuant to the plan developed by the board of managers. The board of managers shall solicit proposals from counsel who are interested in representing the commission under the terms of this subdivision. Thereafter, the board of managers shall select any attorneys it determines necessary to pursue the collection objectives of this subdivision:
(i) Payment to retained counsel may either be hourly or by other fixed fee, or as determined by the court or administrative law judge as provided for in this section. A contingency fee payable from the amount recovered by judgment or settlement for the commission is only permitted, to the extent not prohibited by federal law, when the assets of a defendant or respondent are depleted so that a full recovery plus attorneys’ fees is not possible;

(ii) In the event that any collections action, other than a collections action against a claimant, initiated either by retained counsel or other counsel on behalf of the commission results in a judgment or settlement in favor of the commission, the court or, if there was no judicial component to the action, the administrative law judge, shall determine the amount of attorneys’ fees that shall be paid by the defendants or respondents to the retained or other counsel representing the commission. If the court is to determine the amount of attorneys’ fees, it shall include in its determination the amount of fee that should be paid for the representation of the commission in pursuing the administrative component, if any, of the action. The amount so paid shall be fixed by the court or the administrative law judge in an amount no less than twenty percent of its recovery. Any additional amount of attorneys’ fees shall be determined by use of the following factors:

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

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

(III) The complexity of the issues involved in the action;
(IV) The degree of risk involved in the case with regard to the probability of success or failure;

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

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

(iii) Notwithstanding the provisions of paragraph (B) of this subdivision, if the commission and the defendants or respondents to any administrative or judicial action settle the action, the parties may negotiate a separate settlement of attorneys’ fees to be paid by the defendants or respondents above and beyond the amount recovered by the commission. In the event that a settlement of attorneys’ fees is made, it must be submitted to the court or administrative law judge for approval;

(iv) Any attorney regularly employed by the commission or by the office of the attorney general may not receive any remuneration for his or her services other than the attorney’s regular salary. Any attorneys’ fees awarded for an employed attorney are payable to the commission;

(16) Propose rules for promulgation by the board of managers under which agencies of this state shall revoke or refuse to grant, issue or renew any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit whose account is in default with the commission with regard to the administration of this chapter. The term “agency” includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations. An employing unit is not in default if it has entered into a repay-
ment agreement with the commission and remains in compli-
ance with its obligations under the repayment agreements;

(A) The rules shall provide that, before granting, issuing or
renewing any contract, license, permit, certificate or other
authority to conduct a trade, profession or business to or with
any employing unit, the designated agencies shall review a list
or lists provided by the commission of employers that are in
default. If the employing unit’s name is not on the list, the
agency, unless it has actual knowledge that the employing unit
is in default with the commission, may grant, issue or renew the
contract, license, permit, certificate or other authority to
conduct a trade, profession or business. The list may be
provided to the agency in the form of a computerized database
or databases that the agency can access. Any objections to the
refusal to issue or renew shall be reviewed under the appropri-
ate provisions of this chapter. The prohibition against granting,
issuing or renewing any contract, license, permit, certificate or
other authority under this subdivision shall remain in full force
and effect as promulgated under section six, article two, chapter
twenty-one-a of this code until the rules required by this
subsection are promulgated and in effect;

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

(17) Deposit to the credit of the appropriate special revenue
account or fund, notwithstanding any other provision of this
code and to the extent allowed by federal law, all amounts of
delinquent payments or overpayments, interest and penalties
thereon and attorneys’ fees and costs collected under the
provisions of this chapter. The amounts collected shall not be
treated by the auditor or treasurer as part of the general revenue
of the state;
(18) Recommend for approval of the board of managers rules for the administration of claims management by self-insured employers and third-party administrators including regulation and sanctions for the rejection of claims and for maintaining claim records and ensuring access to all claim records by interested claimants, claimant representatives, the commission and the office of judges;

(19) Recommend for approval of the board of managers, rules to eliminate the ability of an employer to avoid an experience modification factor by virtue of a reorganization of a business;

(20) Submit for approval of the board of managers rules setting forth procedures for auditing and investigating employers, including employer premium audits and including auditing and investigating programs of self-insured employers and third-party administrators, employees, health care providers and medical and vocational rehabilitation service providers;

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

(22) Establish and maintain a fraud and abuse investigation and prosecution unit. This unit has the responsibility and authority for investigating and controlling fraud and abuse of the workers’ compensation system of the state of West Virginia. The fraud and abuse unit shall be under the supervision of an inspector general, who shall be appointed by the executive director of the workers’ compensation commission;

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

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

333 (i) The fraud and abuse unit shall propose for promulgation
by the board of managers rules for determining the existence of
fraud and abuse as it relates to the workers' compensation
system in West Virginia;

337 (ii) The fraud and abuse unit will be responsible for the
initiation, development, review, and proposal for promulgation
by the board of managers of rules regarding the existence of
fraud and abuse as it relates to the workers' compensation
system in West Virginia;

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

344 (iv) The fraud and abuse unit, in cases of criminal fraud,
has the authority to review and prosecute those cases for
violations of sections twenty-four-e, twenty-four-f, twenty-four-
g and twenty-four-h, article three, chapter sixty-one of this
code, as well as any other criminal statutes that may be applica-
able. In addition the fraud and abuse unit not only has the
authority to prosecute and refer cases involving criminal fraud
to appropriate state authorities for prosecution, but it also has
the authority, and is encouraged, to cooperate with the appropri-
ate federal authorities for review and possible prosecution, by
either state or federal agencies, of cases involving criminal
fraud concerning the workers' compensation system in West
Virginia;

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

(vi) The fraud and abuse unit, is expressly authorized to
initiate investigations and participate in the development of, and
if necessary, the prosecution of any health care provider,
including a provider of rehabilitation services, alleged to have
violated the provisions of section three-c, article four of this
chapter;

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

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

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

(F) In the event that a final judicial decision adjudges that the statewide prosecutorial powers vested by this subdivision in the fraud and abuse unit may only be exercised by a public official other than an employee of the fraud and abuse unit, then to that extent the provisions of this subdivision vesting statewide prosecutorial power shall thenceforth be of no force and effect, the remaining provisions of this subdivision shall continue in full force and effect and prosecutions hereunder may only be exercised by the prosecuting attorneys of this state and their assistants or special assistant prosecuting attorneys appointed as provided by law;

(23) Enter into interagency agreements to assist in exchanging information and fulfilling the default provisions of this chapter;

(24) Notwithstanding any provision of this code to the contrary, the executive director, under emergency authorization:

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

(B) May expend such sums as the executive director determines are necessary for professional services, contracts for the purchase of an automated claims administration system and associated computer hardware and software in the administration of claims for benefits made under provisions of this chapter and contracts for technical services and related services necessary to develop, implement and maintain the system and associated computer hardware and software. The provisions of article three, chapter five-a of this code relating to the purchasing division of the department administration shall not apply to these contracts. The director shall award the contract or contracts on a competitive basis. This emergency spending authority expires on the thirty-first day of December, two thousand six;

(25) Establish an employer violator system to identify individuals and employers who are in default or are delinquent on any premium, assessment, surcharge, tax or penalty owed to the commission. The employer violator system shall prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the commission, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the commission or has entered into and remains in compliance with a repayment agreement;

(26) Propose the designation of health care providers to make decisions for the commission regarding appropriateness of medical services; and

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

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

(a) All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of contracts until the receipt of a certificate from the commission to the effect that all payments, interest and penalties thereon accrued against the contractor under this chapter have been paid or that provisions satisfactory to the commission have been made for payment. Any official violating this subsection is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for not more than one year, or both fined and confined.

(b) Any agency of the state, for the limited purpose of intercepting, pursuant to section five-a, article two of this chapter, any payment by or through the state to an employer who is in default in payment of contributions, premiums, deposits, interest or penalties under the provisions of this chapter, shall assist the commission in collecting the payment that is due. For this purpose, disclosure of joint delinquency and default lists of employers with respect to unemployment compensation as provided in section six-c, article one, chapter twenty-one-a of this code and workers’ compensation contributions, premiums, interest, deposits or penalties is authorized. The commission and the bureau of employment programs may enter into an interagency agreement to effect the provisions of this section. The lists may be in the form of a computerized database to be accessed by the auditor, the department of tax and revenue, the department of administration, the division of highways or other appropriate state agency or officer.

Except as otherwise provided for in this chapter, all rules applicable to the former workers’ compensation division of the bureau of employment programs are hereby adopted and made effective as to the operation of the workers’ compensation commission under this chapter to the extent that they are not in conflict with the current law. The board of managers shall review and approve, modify or replace all existing rules no later than the first day of July, two thousand six.

§23-1-1e. Transfer of assets and contracts.

With the establishment of the workers’ compensation commission, all assets and contracts, along with rights and obligations thereunder, obtained or signed on behalf of the workers’ compensation division of the bureau of employment programs in furtherance of the purposes of this chapter, are hereby transferred and assigned to the workers’ compensation commission.

§23-1-1f. Continuation.

The workers’ compensation division shall continue to exist pursuant to article ten, chapter four of this code through the thirtieth day of September, two thousand three, at which time all powers and duties are transferred to the workers’ compensation commission. The workers’ compensation commission shall continue to exist, pursuant to said article until the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.


(a) In addition to any other oversight of the commission exercised by the Legislature, the commission shall report at least quarterly to the joint committee on government and
 finance and the joint commission on economic development. The commission shall collect data and report on claims and injuries and on the costs and outcomes of injuries by standard codes for medical treatment, vocation rehabilitation services, return-to-work services, other benefits payable to or on behalf of employees, efforts to eliminate fraud and abuse and the impact of judicial and quasijudicial rulings on the administration of the workers' compensation system and the solvency of the fund. The workers' compensation commission shall provide to the joint committee on government and finance and the joint commission on economic development an action plan for improving the workers' compensation system. This plan shall include detail on any administrative changes undertaken by the commission, a report on the anticipated outcome of the changes, a cost-benefit analysis of the changes and time frames for commencement and completion of these changes. Subsequent reports to the joint committee on government and finance and the joint commission on economic development shall report on the progress of these changes. The administrative changes shall include, but are not limited to, claims processing, reorganization, staff development and training, return-to-work programs, workplace alternatives for injured workers, safety programs and medical and vocational services.

(b) The commission shall also report on the current status of the workers’ compensation fund and the coal-workers’ pneumoconiosis fund. This analysis shall include the current balances in the fund and revenue generated and expended in relationship to the liabilities and assets of the funds and estimates of any debt reduction relative to the fund over the next reporting period.

(c) The commission shall further report on the impact on the workers’ compensation system of the amendments to subdivision (2), subsection (n), section six, article four of this chapter enacted during the year two thousand three, including,
but not limited to, an analysis of any litigation resulting from
the amendments and the availability of health care to injured
workers resulting from the amendments.

(d) The commission shall further report on methodologies
used to establish all types of assessments and rates.

(e) The commission shall further report on legislative action
that may be required to further improve the operation of the
commission.

(f) The commission shall further report on efforts to
eliminate fraud and abuse including a statistical breakdown of
investigations being conducted and their outcomes. The
commission shall report to the joint committee on government
and finance on a monthly basis until the first day of July, two
thousand four, on fraud and abuse and quarterly thereafter.

§23-1-3. Payment of salaries and expenses generally; manner;
limitation.

(a) All expenses peculiar to the administration of this
chapter and, when on official business, the travel and incidental
expenses of the executive director and salaries or othercompensa-
tion, traveling and other expenses of all officers or employees
of the commission and all expenses for furniture, books, maps,
stationery, appliances, property of all kinds and dues for
membership in all organizations pertaining to workers’ com-
ensation, safety maintenance or professional designation in
which the executive director considers it advisable to maintain
membership shall be paid out of the workers’ compensation
fund.

(b) All payments of salaries and expenses in the administra-
tion of this chapter shall be made by the state treasurer upon
requisition signed by the executive director, directed to the
auditor of the state, who shall draw his or her warrant therefor,
and the payment shall be charged to the workers' compensation fund: Provided, That the total charges against the fund under this section for any one fiscal year shall not exceed the amount appropriated for the administration of this chapter.

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

(a) The offices of the workers' compensation commission shall be open for the transaction of business between the hours of eight-thirty o'clock a.m. and five o'clock p.m. of each and every day, excepting Saturdays, Sundays and legal holidays, and be open upon any additional days and at any additional times elected by the commission. The executive director is the chief executive officer of the workers' compensation commission.

(b) Except as expressly provided for in this subsection, information obtained regarding employers and claimants pursuant to this chapter for the purposes of its administration is not subject to the provisions of chapter twenty-nine-b of this code unless the provisions are hereafter specifically made applicable, in whole or in part. The information that is reasonably necessary may be released in formal orders or opinions of any tribunal or court which is presented with an issue arising under this chapter as well as in the presentations of the parties before the tribunal or court. Similarly, claimants or other interested parties to an issue arising under this chapter may, upon request, obtain information from the commission's records to the extent necessary for the proper presentation or defense of a claim or other matter. Information may be released pursuant to the provisions of chapter twenty-nine-b of this code only if all identifying information has first been eliminated from the records. Nothing in this subsection shall prevent the release of information to another agency of the state or of the federal government for the legitimate purposes of those agencies: Provided, That the agency shall guarantee the
confidentiality of the information provided to the fullest extent possible in keeping with its own statutory and regulatory mandates. Nothing in this section shall prevent the commission from complying with any subpoena duces tecum: Provided, however, That the issuing tribunal or court shall take such actions as proper to maintain the confidentiality of the information.

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

(1) The base premium tax rate for a specific employer;

(2) Whether or not a specific employer has obtained coverage under the provisions of this chapter;

(3) Whether or not a specific employer is in good standing or is delinquent or in default according to the commission’s records and the time periods thereof; and

(4) If a specific employer is delinquent or in default, what the payments due the commission are and what the components of that payment are, including the time periods affected.

§23-1-4a. Bond for executive director and associate director.

(a) The executive director and associate director of the workers’ compensation commission shall give bond in an amount determined by the board of managers conditioned for the faithful management of the fund and performance of their duties. The bond shall be approved by the attorney general as to form. The surety of the bond may be a bonding or surety company, in which case the premium shall be paid out of the workers’ compensation fund.
§23-1-5. Office of executive director; hearings.

The executive director shall keep and maintain his or her office at the seat of government and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals, maps and other equipment. After due notice, showing the time and place, the executive director may hold hearings anywhere within the state, or elsewhere by agreement of claimant and employer, with the approval of the executive director.

§23-1-6. Employment of associate director and other assistants; compensation and travel expenses.

(a) The executive director may employ an associate director, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation, which shall be paid as provided in section three of this article. The associate director shall be hired with the approval of the board of managers and serves at the will and pleasure of the executive director.

(b) The associate director, supervisory officers, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants who may be employed are entitled to receive from the workers' compensation fund their necessary expense while traveling on business of the commission. Travel reimbursement shall be paid in accordance with the travel guidelines established by the department of administration. All expenses shall be itemized and sworn to by the person who incurred the expense, and are subject to the approval of the
executive director: *Provided*, That the expenses of the executive
director shall be subject to the approval of the board of manag-
ers.

§23-1-7. Associate director to act during executive director’s
absence or inability to act and in case of vacancy;
 bonded of associate director.

Whenever it appears that the executive director will be
absent or unable to act for one week or more, the associate
director of the commission may be designated by the executive
director to act during his or her absence or inability to act, and
during that period he or she shall have all the duties and powers
of the executive director. In the event a vacancy occurs in the
office of executive director, the associate director shall have all
the duties and powers of the executive director until an execu-
tive director or a temporary executive director is hired by the
board of managers. The board of managers may determine the
amount of additional compensation the associate director may
receive as acting executive director.

§23-1-8. Authority of executive director and employees as to
oaths and evidence.

The executive director, associate director and other
employees appointed by the executive director may, for the
purpose contemplated by this chapter, administer oaths, certify
official acts, take depositions, issue subpoenas and compel the
attendance of witnesses and the production of pertinent books,
accounts, papers, records, documents and testimony.

§23-1-9. Compelling compliance with order or subpoena.

In case of failure or refusal of any person to comply with
the order of the executive director, or subpoena issued by him
or her, the associate director, or duly appointed employee, or on
the refusal of a witness to testify to any matter regarding which
he or she may be lawfully interrogated, or refusal to permit an
inspection as aforesaid, the circuit judge of the county in which
the person resides, on application of the executive director,
associate director or any duly appointed employee, shall compel
obedience by attachment proceedings as for contempt, as in the
case of disobedience of the requirements of a subpoena issued
from the court on a refusal to testify in the court.

§23-1-10. Fee of officer serving subpoena; fees and mileage of
witnesses.

Each officer who serves subpoenas on behalf of the
commission shall receive the same fee as a sheriff and each
witness who appears in obedience to a subpoena before the
executive director, associate director or duly appointed em-
ployee shall receive for his or her attendance the fees and
mileage provided for witnesses in civil cases in the circuit
court, which shall be audited and paid out of the workers’
compensation fund in the same manner as other expenses are
audited and paid, if the witness was subpoenaed without the
request of either claimant or employer at the instance of the
executive director, associate director or duly appointed em-
ployee. The witness fees and mileage of any witness subpoe-
naed by, or at the instance of, either claimant or employer shall
be paid by the party who subpoenas the witness.


(a) In an investigation into any matter arising under articles
one through five, inclusive, of this chapter, the commission may
cause depositions of witnesses residing within or without the
state to be taken in the manner prescribed by law for like
depositions in the circuit court, but the depositions shall be
upon reasonable notice to claimant and employer or other
affected persons or their respective attorneys. The commission
shall designate the person to represent it for the taking of the deposition.

(b) The commission also has discretion to accept and consider depositions taken within or without the state by either the claimant or employer or other affected person, provided due and reasonable notice of the taking of the depositions was given to the other parties or their attorneys, if any: Provided, That the commission, upon due notice to the parties, has authority to refuse or permit the taking of depositions or to reject the depositions after they are taken, if they were taken at a place or under circumstances which imposed an undue burden or hardship upon the other parties. The commission’s discretion to accept, refuse to approve or reject the depositions is binding in the absence of abuse of the discretion.


A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation or hearing, taken by a stenographer appointed by the executive director and certified and sworn to by the stenographer to be a true and correct transcript of the testimony in the investigation or hearing, or of a particular witness, or of a specific part thereof, or to be a correct transcript of the proceedings had on the investigation or hearing purporting to be taken and subscribed, may be received in evidence by the executive director with the same effect as if the stenographer were present and testified to the facts certified. A copy of the transcript shall be furnished on demand to any party upon payment of the fee prescribed in the rules and policies of the commission. The fee shall not exceed that 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.
(a) The workers' compensation commission shall adopt reasonable and proper rules of procedure, regulate and provide for the kind and character of notices, and the service of the notices, in cases of accident and injury to employees, the nature and extent of the proofs and evidence, the method of taking and furnishing of evidence to establish the rights to benefits or compensation from the fund hereinafter provided for, or directly from employers as hereinafter provided, as the case may require, and the method of making investigations, physical examinations and inspections and prescribe the time within which adjudications and awards shall be made.

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

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

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

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

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

1. By an attorney duly licensed and admitted to the practice of law in this state;

2. By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of rule 8.0—admission pro hac vice, West Virginia supreme court rules for admission to the practice of law, as amended;

3. By a member of the board of directors of a corporation or by an officer of the corporation for purposes of representing the interest of the corporation in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to the facts and figures; or

4. By a representative from an employer service company who has been recognized by the commission as being qualified to represent an employer or who is an individual otherwise found to be qualified by the commission to act as a representative. The representative shall participate in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to the facts and figures.

(d) The commission or its representative may require an individual appearing on behalf of a natural person or corporation to produce satisfactory evidence that he or she is properly qualified and authorized to appear pursuant to this section.
Subsections (b), (c) and (d) of this section shall not be construed as being applicable to proceedings before the office of judges pursuant to the provisions of article five of this chapter.

At the direction of a treating or evaluating psychiatrist or clinical doctoral-level psychologist, a psychiatric or psychological report concerning a claimant who is receiving treatment or is being evaluated for psychiatric or psychological problems may be withheld from the claimant. In that event, a summary of the report shall be compiled by the reporting psychiatrist or clinical doctoral-level psychologist. The summary shall be provided to the claimant upon his or her request. Any representative or attorney of the claimant must agree to provide the claimant with only the summary before the full report is provided to the representative or attorney for his or her use in preparing the claimant’s case. The report shall only be withheld from the claimant in those instances where the treating or evaluating psychiatrist or clinical doctoral-level psychologist certifies that exposure to the contents of the full report is likely to cause serious harm to the claimant or is likely to cause the claimant to pose a serious threat of harm to a third party.

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


The commission shall prepare and furnish free of cost forms (and provide in his or her rules for their distribution so that they may be readily available) of applications for benefits for compensation from the workers’ compensation fund, or directly from employers, as the case may be, notices to employ-
ers, proofs of injury or death, of medical attendance, of employment and wage earnings, and any other forms considered proper and advisable. It is the duty of employers to constantly keep on hand a sufficient supply of the forms.


The commission is not bound by the usual common-law or statutory rules of evidence, but shall adopt formal rules of practice and procedure as herein provided, and may make investigations in a manner that in his or her judgment is best calculated to ascertain the substantial rights of the parties and to carry out the provisions of this chapter.

§23-1-17. Annual report by commission and occupational pneumoconiosis board.

Annually, on or about the fifteenth day of September in each year, the executive director and the occupational pneumoconiosis board shall make a report as of the thirtieth day of June addressed to the governor, which shall include a statement of the causes of the injuries for which the awards were made, an explanation of the diagnostic techniques used by the occupational pneumoconiosis board and all examining physicians to determine the presence of disease, the extent of impairment attributable thereto, a description of the scientific support for the diagnostic techniques and a summary of public and private research relating to problems and prevention of occupational diseases. The report shall include a detailed statement of all disbursements, and the condition of the fund, together with any specific recommendations for improvements in the workers' compensation law and for more efficient and responsive administration of the workers' compensation law, which the executive director considers appropriate. Copies of all annual reports shall be filed with the secretary of state and shall be made available to the Legislature and to the public at large.

No employee of the workers' compensation commission shall be compelled to testify as to the basis, findings or reasons for any decision or order rendered by the employee under this chapter in any hearing conducted pursuant to article five of this chapter.


(a) Any person, firm, corporation or other entity which willfully, by means of false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device or artifice on behalf of himself, itself or others, obtains or attempts to obtain benefits, payments, allowances or reduced premium costs or other charges, including workers' compensation coverage under the programs of the workers' compensation commission to which he or it is not entitled, or in a greater amount than that to which he or it is entitled, shall be liable to the workers' compensation commission in an amount equal to three times the amount of such benefits, payments or allowances to which he or it is not entitled and shall be liable for the payment of reasonable attorney fees and all other fees and costs of litigation.

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

(c) A civil action under this section may be prosecuted and maintained on behalf of the workers' compensation commission by the attorney general and his assistants or by any attorney in contract with or employed by the workers' compensation commission to provide such representation.
(d) Venue for a civil action under this section shall be either in the county in which the defendant resides or in Kanawha County, as selected by the commission.

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

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

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


§23-2-4. 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.


§23-2-9. 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.


§23-2-12. Effect of repeal or invalidity of chapter on action for damages.

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

(a) The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are required to subscribe to and pay premium taxes into the workers' compensation fund for the protection of their employees and are subject to all requirements of this chapter and all rules prescribed by the workers' compensation commission with reference to rate, classification and premium payment: Provided, That rates will be adjusted by the commission to reflect the demand on the compensation fund by the covered employer.

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

(1) Employers of employees in domestic services;

(2) Employers of five or fewer full-time employees in agricultural service;
(3) Employers of employees while the employees are employed without the state except in cases of temporary employment without the state;

(4) Casual employers. An employer is a casual employer when the number of his or her employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter;

(5) Churches;

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

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

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

(d) Employers who are not required to subscribe to the workers' compensation fund may voluntarily choose to subscribe to and pay premiums into the fund for the protection of their employees and in that case are subject to all requirements of this chapter and all rules and regulations prescribed by the commission with reference to rates, classifications and premium payments and shall afford to them the protection of this chapter, including section six of this article, but the failure of the employers to choose to subscribe to and to pay premiums into the fund shall not impose any liability upon them other than any liability that would exist notwithstanding the provisions of this chapter.

(e) Any foreign corporation employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this section may choose to pay into the workers' compensation fund the premiums provided for in this section, and at the time of making application to the workers' compensation commission, the employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the commission. At the time of making application the employer shall deposit with the commission to the credit of the workers' compensation fund the amount required by section five of this article. That amount shall be returned to the employer if the employer's application is rejected by the commission. Upon notice to the employer of the acceptance of his or her application by the commission, he or she is an employer within the meaning of this chapter and subject to all of its provisions.
(f) Any foreign corporation employer choosing to comply with the provisions of this chapter and to receive the benefits under this chapter shall, at the time of making application to the commission in addition to other requirements of this chapter, furnish the commission with a certificate from the secretary of state, where the certificate is necessary, showing that it has complied with all the requirements necessary to enable it legally to do business in this state and no application of a foreign corporation employer shall be accepted by the commission until the certificate is filed.

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

(1) Any political subdivision of the state including county commissions and municipalities, boards of education, or emergency services organizations organized under the auspices of a county commission may elect not to provide coverage to any elected official. The election not to provide coverage does not apply to individuals in appointed positions or to any other employees of the political subdivision;

(2) If an employer is a partnership, sole proprietorship, association or corporation, the employer may elect not to include as an “employee” within this chapter, any member of the partnership, the owner of the sole proprietorship or any corporate officer or member of the board of directors of the association or corporation. The officers of a corporation or an association shall consist of a president, a vice president, a secretary and a treasurer, each of whom is elected by the board of directors at the time and in the manner prescribed by the bylaws. Other officers and assistant officers that are considered necessary may be elected or appointed by the board of directors or chosen in any other manner prescribed by the bylaws and, if elected, appointed or chosen, the employer may elect not to
include the officer or assistant officer as an "employee" within
the meaning of this chapter: Provided, That except for those
persons who are members of the board of directors or who are
the corporation's or association's president, vice president,
secretary and treasurer and who may be excluded by reason of
their positions from the benefits of this chapter even though
their duties, responsibilities, activities or actions may have a
dual capacity of work which is ordinarily performed by an
officer and also of work which is ordinarily performed by a
worker, an administrator or an employee who is not an officer,
no other officer or assistant officer who is elected or appointed
shall be excluded by election from coverage or be denied the
benefits of this chapter merely because he or she is an officer or
assistant officer if, as a matter of fact:

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

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

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

(3) If an employer is a limited liability company, the
employer may elect not to include as an "employee" within this
chapter a total of no more than four persons, each of whom are
acting in the capacity of manager, officer or member of the
company.
(h) In the event of election under subsection (g) of this section, the employer shall serve upon the commission written notice naming the positions not to be covered and shall not include the "employee's" remuneration for premium purposes in all future payroll reports, and the partner, proprietor or corporate or executive officer is not considered an employee within the meaning of this chapter after the notice has been served. Notwithstanding the provisions of subsection (g), section five of this article, if an employer is delinquent or in default or has not subscribed to the fund even though it is obligated to do so under the provisions of this article, any partner, proprietor or corporate or executive officer shall not be covered and shall not receive the benefits of this chapter.

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

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

(a) Whenever, with respect to an employee of an employer who is a subscriber in good standing to the workers' compensation fund or an employer who has elected to pay compensation directly, as provided in section nine of this article, there is a possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is performed or is to be performed in a state or states other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of any other state in which all or some portion of the work of the employee is to be performed: Provided, That the executive director may review and accept or reject the agreement. The review shall be conducted in keeping with the executive director's fiduciary obligations to the workers' compensation fund which may include, among other
things, the nexus of the employer and the employee to the state:

Provided, however, That nothing in this section shall be construed as to require an agreement in those instances where subdivision (3), subsection (b), section one of this article or subdivision (1), subsection (a), section one-a of this article are applicable. All agreements shall be in writing and filed with the executive director within ten days after execution of the agreement but shall not become effective until approved by the executive director and shall, thereafter, remain in effect until terminated or modified by agreement of the parties similarly filed or by order of the executive director. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter is entitled to benefits under this chapter regardless of the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights of the employee and his or her dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and as a result of the employment.

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

(c) If the employee is a resident of a state other than this state and is subject to the terms and provisions of the workers’ compensation law or similar laws of a state other than this state, the employee and his or her dependents are not entitled to the benefits payable under this chapter on account of injury, disease or death in the course of and as a result of employment temporarily within this state, and the rights of the employee and his or
her dependents under the laws of the other state shall be the
exclusive remedy against the employer on account of any
injury, disease or death.

(d) If any employee or his or her dependents are awarded
workers' compensation benefits or recover damages from the
employer under the laws of another state for an injury received
in the course of and resulting from the employment, the amount
awarded or recovered, whether paid or to be paid in future
installments, shall be credited against the amount of any
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.

(a) For the exclusive purposes of this section, the term
"employer" as defined in section one of this article includes any
primary contractor who regularly subcontracts with other
employers for the performance of any work arising from or as
a result of the primary contractor's own contract: Provided,
That a subcontractor does not include one providing goods
rather than services. For purposes of this subsection, extraction
of natural resources is a provision of services. In the event that
a subcontracting employer defaults on its obligations to make
payments to the commission, then the primary contractor is
liable for the payments. However, nothing contained in this
section shall extend or except to a primary contractor or
subcontractors the provisions of section six, six-a or eight of
this article. This section is applicable only with regard to
subcontractors with whom the primary contractor has a contract
for any work or services for a period longer than thirty days:
Provided, however, That this section is also applicable to
contracts for consecutive periods of work that total more than
thirty days. It is not applicable to the primary contractor with
regard to sub-subcontractors. However, a subcontractor for the purposes of a contract with the primary contractor can itself become a primary contractor with regard to other employers with whom it subcontracts. It is the intent of the Legislature that no contractor, whether a primary contractor, subcontractor or sub-subcontractor, escape or avoid liability for any workers' compensation premium, assessment or tax. The executive director shall propose for promulgation a rule to effect this purpose on or before the thirty-first day of December, two thousand three.

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

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

(2) In order to continue avoiding liability under this section, the primary contractor shall request that the commission inform the primary contractor of any subsequent default by the subcontractor. In the event that the subcontractor does default, the commission shall notify the primary contractor of the default by placing a notice in the first-class United States mail, postage prepaid, and addressed to the primary contractor at the
address furnished to the commission by the primary contractor. The mailing is good and sufficient notice to the primary contractor of the subcontractor’s default. However, the primary contractor is not liable under this section until the first day of the calendar quarter following the calendar quarter in which the notice is given and then the liability is only for that following calendar quarter and thereafter and only if the subcontract has not been terminated: Provided, That the commission is entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the commission may impose other penalties on the primary contractor or on the subcontractor, or both.

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

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

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

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

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

(1) Upon written request to the state tax commissioner: The names, addresses, places of business and other identifying information of all businesses receiving a business franchise registration certificate and the dates thereof; and the names and social security numbers or other tax identification numbers of the businesses and of the businesses' workers and employees, if otherwise collected, and the quarterly and annual gross wages or other compensation paid to the workers and employees of businesses reported pursuant to the requirement of withholding of tax on income.

(2) Upon written application to the division of unemployment compensation: In addition to the information that may be released to the workers' compensation commission for the purposes of this chapter under the provisions of chapter twenty-one-a of this code, the names, addresses and other identifying information of all employing units filing reports and information pursuant to section eleven, article ten, chapter twenty-one-a of this code as well as information contained in those reports regarding the number and names, addresses and social security
numbers of employees employed and the gross quarterly wages
paid by each employing unit to each identified employee.

(c) All information acquired by the workers’ compensation
commission pursuant to subsection (b) of this section shall be
used only for auditing premium payments, assisting in a wage
determination, assisting in the determination of employment
status and registering businesses under the single point of
registration program as defined in section two, article one,
chapter eleven of this code. The workers’ compensation
commission, upon receiving the business franchise registration
certificate information made available pursuant to subsection
(b) of this section, shall contact all businesses receiving a
business franchise registration certificate and provide all
necessary forms to register the business under the provisions of
this article. Any officer or employee of this state who uses the
information obtained under this section in any manner other
than the one stated in this section or elsewhere authorized in
this code, or who divulges or makes known in any manner any
of the information obtained under this section, is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
more than one thousand dollars or incarcerated in the county or
regional jail for not more than one year, or both, together with
cost of prosecution.

(d) Reasonable costs of compilation and production of any
information made available pursuant to subsection (b) of this
section shall be charged to the workers’ compensation commis-

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

The commission shall prepare and furnish report forms for the use of employers subject to this chapter. Every employer receiving from the commission any form or forms with direction for completion and returning to the commission shall return the form, within the period fixed by the commission, completed as to answer fully and correctly all pertinent questions in the form, and if unable to do so, shall give good and sufficient reasons for the failure. Every employer subject to the provisions of this chapter shall make application to the commission on the forms prescribed by the commission for that purpose; and any employer who terminates his or her business or for any other reason is no longer subject to this chapter shall immediately notify the commission on forms to be furnished by the commission for that purpose.

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

(a) The executive director with approval of the board of managers is authorized to establish by rule a system for determining the classification and distribution into classes of employers subject to this chapter, a system for determining rates of premium taxes applicable to employers subject to this chapter, a system of multiple policy options with criteria for subscription and criteria for an annual employer’s statement providing both benefits liability information and rate determination information.

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

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

(B) Notification regarding rate adjustments prior to the quarter in which the rate adjustments will be in effect;
(C) Chargeability of claims; and

(D) Any further matters that are necessary and consistent with the goals of this chapter;

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

(A) Have not incurred a compensable injury for one year or more and who maintain an employee safety committee or similar organization and make periodic safety inspections of the workplace;

(B) Successfully complete a loss prevention program, including establishment of a drug-free workplace, prescribed by the commission’s safety and loss control office and conducted by the commission or by any other person approved by the commission;

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

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

(5) The rule shall be consistent with classification and rate-making methodologies found in the insurance industry; and

(6) The rule shall be consistent with the principles of promoting more effective workplace health and safety programs as contained in article two-b of this chapter.
(b) In accordance with generally accepted accounting principles, the workers' compensation commission shall keep an accurate accounting of all money or moneys earned, due and received by the workers' compensation fund and of the liability incurred and disbursements made against the fund; and an accurate account of all money or moneys earned, due and received from each individual subscriber and of the liability incurred and disbursements made against the same.

(c) Prospective rates set in accordance with the provisions of this article shall at all times be financially sound in accordance with generally accepted accounting principles and fully fund the prospective claim obligations for the year in which the rates were made. Rates, surcharges or assessments for deficit management and deficit reduction purposes shall be fair and equitable, financially sound in accordance with generally accepted accounting principles and sufficient to meet the payment obligations of the fund.

(d) Notwithstanding any provision of subsection (c) of this section to the contrary, except for those increases made effective for fiscal year two thousand four by action of the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code taken prior to the effective date of the amendment and reenactment of this section, base rates, assessments and surcharges, except for individual employer merit rate adjustments, shall not be increased during fiscal years two thousand four, two thousand five and two thousand six: Provided, That the portion of the rate increase attributable to claims management incentive adjustments, as determined by the compensation programs performance council for fiscal year two thousand four prior to the effective date of the amendment and reenactment of this section by the Legislature in the year two thousand three, shall not be considered a part of the employer's premium taxes and shall not be subject to collection by the commission.
(e) Claims management incentive adjustments, whether imposed in a manner that would result in either a debit or a credit to any employer’s account, shall not be considered by the board of managers in its future rate determinations.

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

(a) For the purpose of creating a workers’ compensation fund, each employer who is required to subscribe to the fund or who elects to subscribe to the fund shall pay premium taxes calculated as a percentage of the employer’s gross wages payroll as defined by the commission at the rate determined by the commission and then in effect plus any additional premium taxes developed from rates, surcharges or assessments as determined by the commission. At the time each employer subscribes to the fund, the application required by the commission shall be filed and a premium deposit equal to the first quarter’s estimated premium tax payment shall be remitted. The minimum quarterly premium to be paid by any employer is twenty-five dollars.

(1) Thereafter, the premium taxes shall be paid quarterly on or before the last day of the month following the end of the quarter, and shall be the prescribed percentage of the entire gross wages of all employees, from which net payroll is calculated and paid, during the preceding quarter. The commission may require employers, in accordance with the provisions of rules proposed by the executive director and promulgated by the board of managers, to report gross wages and pay premium taxes monthly or at other intervals.

(2) Every subscribing employer shall make a gross wages payroll report to the commission for the preceding reporting
period. The report shall be on the form or forms prescribed by the commission and shall contain all information required by the commission.

(3) After subscribing to the fund, each employer shall remit with each premium tax payment an amount calculated to be sufficient to maintain a premium deposit equal to the premium payment for the previous reporting period. The commission may reduce the amount of the premium deposit required from seasonal employers for those quarters during which employment is significantly reduced. If the employer pays premium tax on a basis other than quarterly, the commission may require the deposit to be based upon some other time period. The premium deposit shall be credited to the employer’s account on the books of the commission and used to pay premium taxes and any other sums due the fund when an employer becomes delinquent or in default as provided in this article.

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

(5) The commission shall encourage employer efforts to create and maintain safe workplaces, to encourage loss prevention programs and to encourage employer-provided wellness programs, through the normal operation of the experience rating formula, seminars and other public presentations, the development of model safety programs and other initiatives as may be determined by the executive director and the board of managers.
(b) Failure of an employer to timely pay premium taxes as provided for in subsection (a) of this section, to timely file a payroll report or to maintain an adequate premium deposit shall cause the employer's account to become delinquent. No employer will be declared delinquent or be assessed any penalty for the delinquency if the commission determines that the delinquency has been caused by delays in the administration of the fund. The commission shall, in writing, within sixty days of the end of each quarter notify all delinquent employers of their failure to timely pay premium taxes, to timely file a payroll report or to maintain an adequate premium deposit. Each employer who fails to timely file any payroll report or timely pay the premium tax due with the report, or both, for any quarter commencing on and after the first day of July, one thousand nine hundred ninety-five, shall pay a late reporting or payment penalty of the greater of fifty dollars or a sum obtained by multiplying the premium tax due with the report by the penalty rate applicable to that quarter. The penalty rate to be used in a workers' compensation commission's fiscal year is calculated annually on the first day of each fiscal year. The penalty rate used to calculate the penalty for each quarter in a fiscal year is the quotient, rounded to the nearest higher whole number percentage rate, obtained by dividing the sum of the prime rate plus four percent by four. The prime rate is the rate published in the *Wall Street Journal* on the last business day of the commission's prior fiscal year reflecting the base rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks. The late penalty shall be paid with the most recent quarter's report and payment and is due when that quarter's report and payment are filed. If the late penalty is not paid when due, it may be charged to and collected by the commission from the employer's premium deposit account or otherwise as provided for by law. The notification shall demand the filing of the delinquent payroll report and payment of delinquent premium taxes, the penalty for late reporting or
payment of premium taxes or premium deposit, the interest
penalty and an amount sufficient to maintain the premium
deposit before the end of the third month following the end of
the preceding quarter. Interest shall accrue and be charged on
the delinquent premium payment and premium deposit pursuant
to section thirteen of this article.

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

(d) Failure by the employer, who is required to subscribe to
the fund and who fails to resolve the delinquency within the
prescribed period, shall place the account in default and shall
deprive the default employer of the benefits and protection
afforded by this chapter, including section six of this article,
and the employer is liable as provided in section eight of this
article. The default employer’s liability under these sections is
retroactive to midnight of the last day of the month following
the end of the quarter for which the delinquency occurs. The
commission shall notify the default employer of the method by
which the employer may be reinstated with the fund. The
commission shall also notify the employees of the employer by
written notice as hereinafter provided for in this section.

(e) Failure by any employer, who voluntarily elects to
subscribe, to resolve the delinquency within the prescribed
period shall place the account in default and shall automatically
terminate the election of the employer to pay into the workers’
compensation fund and shall deprive the employer and the
employees of the default elective employer of the benefits and
protection afforded by this chapter, including section six of this
article, and the employer is liable as provided in section eight
of this article. The default employer’s liability under that
section is retroactive to midnight of the last day of the month following the end of the quarter for which the delinquency occurs. Employees who were the subject of the default employer’s voluntary election to provide them the benefits afforded by this chapter shall have the protection terminated at the time of their employer’s default.

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

The commission shall not have the authority to waive either premium or accrued interest. The provisions of section seventeen of this article apply to any action or decision of the commission under this section.

(2) The commission may restore a defaulted or terminated employer through a reinstatement agreement. The reinstatement agreement shall require the payment in full of all premium taxes, premium deposits, the penalty for late reporting and payment, past accrued interest and future interest calculated pursuant to the provisions of section thirteen of this article. Notwithstanding the filing of a reinstatement application or the entering into of a reinstatement agreement, the commission is authorized to file a lien against the employer as provided by section five-a of this article. In addition, entry into a reinstatements...
ment agreement is discretionary with the commission. Its discretion shall be exercised in keeping with the fiduciary obligations owed to the workers' compensation fund. If the commission declines to enter into a reinstatement agreement and if the employer does not comply with the provisions of subdivision (I) of this subsection, the commission may proceed with any of the collection efforts provided for by section five-a of this article or as otherwise provided for by this code. Applications for reinstatement shall: (A) Be made upon forms prescribed by the commission; (B) include a report of the gross wages payroll of the employer which had not been reported to the commission during the entire period of delinquency and default. The gross wages information shall be certified by the employer or its authorized agent; and (C) include a payment of a portion of the liability equal to one half of one percent of the gross payroll during the period of delinquency and default or equal to another portion of the liability determined by rule but not to exceed the amount of the entire liability due and owing for the period of delinquency and default. An employer who applies for reinstatement is entitled to the benefits and protection of this chapter on the day a properly completed and acceptable application which is accompanied by the application payment is received by the commission: Provided, That if the commission reinstates an employer subject to the terms of a reinstatement agreement, the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with the reinstatement agreement or to timely file current reports and to pay current premiums within the month following the end of the period for which the report and payment are due, or to otherwise maintain its account in good standing or, if the reinstatement agreement does not require earlier restoration of the premium deposit, to restore the premium deposit to the required amount by the end of the repayment period shall cause the reinstatement application and the reinstatement agreement to be null, void and of no effect,
and the employer is denied the benefits and protection of this chapter effective from the date that the employer’s account originally became delinquent.

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

(4) Following any failure of an employer to comply with the provisions of a reinstatement agreement, the commission may make and continue with any of the collection efforts provided for by this chapter or elsewhere in this code even if the employer files another reinstatement application.

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

(h)(1) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during any period of delinquency not resolved in accordance with the provisions of this article, or subsequent failure to comply with the terms of the repayment agreement.
(2) Upon withdrawal from the fund or termination of election of any employer, the employer shall be refunded the balance due the employer of its deposit, after deducting all amounts owed by the employer to the workers' compensation fund and other agencies of this state, and the commission shall notify the employees of the employer of the termination in the manner as the commission may consider best and sufficient.

(3) Notice to employees provided for in this section shall be given by posting written notice that the employer is defaulted under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay premiums to the fund, that the defaulted employer is liable to its employees for injury or death, both in workers' compensation benefits and in damages at common law or by statute; and in the case of employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily electing to do so as provided in this article, that neither the employer nor the employees are protected by the law as to any injury or death sustained after the date specified in the notice. The notice shall be in the form prescribed by the commission and shall be posted in a conspicuous place at the chief works of the employer, as it appears in records of the commission. If the chief works of the employer cannot be found or identified, the notices shall be posted at the front door of the courthouse of the county in which the chief works are located, according to the commission's records. Any person who shall, prior to the reinstatement of the employer, as provided for in this section, or prior to sixty days after the posting of the notice, whichever shall first occur, remove, deface or render illegible the notice, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined one thousand dollars. The notice shall state this provision upon its face. The commission may require any sheriff, deputy sheriff, constable or other official of the state of West Virginia, authorized to serve civil process, to post the notice and to make return thereof of the fact of the posting to the commission. Any
failure of the officer to post any notice within ten days after he or she has received the notice from the commission, without just cause or excuse, constitutes a willful failure or refusal to perform a duty required of him or her by law within the meaning of section twenty-eight, article five, chapter sixty-one of this code. Any person actually injured by reason of the failure has an action against the official, and upon any official bond he or she may have given, for the damages as the person may actually have incurred, but not to exceed, in the case of any surety upon the bond, the amount of the penalty of the bond. Any official posting the notice as required in this subdivision is entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the state of West Virginia. The fee shall be paid by the commission out of any funds at its disposal, but shall be charged by the commission against the account of the employer to whose delinquency the notice relates.

§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and 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.

(a) The workers’ compensation commission in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer, the employer shall pay the costs of the action. A civil action under this section shall be given preference on the calendar of the court over all other civil actions. Upon prevailing in a civil action, the commission is entitled to recover its attorneys’ fees and costs of action from the employer.
(b) In addition to the provisions of subsection (a) of this section, any payment, interest and penalty due and unpaid under this chapter is a personal obligation of the employer immediately due and owing to the commission and shall, in addition, be a lien enforceable against all the property of the employer: 

Provided, That the lien shall not be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in section one, article ten-c, chapter thirty-eight of this code: Provided, however, That the lien may be enforced as other judgment liens are enforced through the provisions of said chapter and the same is considered deemed by the circuit court to be a judgment lien for this purpose.

(c) In addition to all other civil remedies prescribed, the commission may in the name of the state, after giving appropriate notice as required by due process, distraint upon any personal property, including intangible property, of any employer delinquent for any payment, interest and penalty thereon. If the commission has good reason to believe that the property or a substantial portion of the property is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, the commission may likewise distraint in the name of the state before the delinquency occurs. For that purpose, the commission may require the services of a sheriff of any county in the state in levying the distress in the county in which the sheriff is an officer and in which the personal property is situated. A sheriff collecting any payment, interest and penalty thereon is entitled to the compensation as provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the commission is entitled to recover its attorneys’ fees and costs of action from the employer.
(d) In case a business subject to the payments, interest and penalties thereon imposed under this chapter is operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction the business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of the payments, interest and penalties as they become due.

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

(f) In any case when an employer required to subscribe to the fund defaults in payments of premium, premium deposits, penalty or interest thereon, for as many as two calendar quarters, which quarters need not be consecutive, and remains in default after due notice, the commission may bring action in the circuit court of Kanawha County to enjoin the employer from continuing to carry on the business in which the liability was incurred: Provided, That the commission may as an alternative to this action require the delinquent employer to file a bond in the form prescribed by the commission with satisfactory surety in an amount not less than fifty percent more than the payments, interest and penalties due.

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

For payments due after the effective date of the amendment and reenactment of this section during the year one thousand
nine hundred ninety-three, every action or process to collect any
premium, premium deposit, interest or penalty due from an
employer pursuant to this article by the executive director shall
be brought or issued within five years next after the date on
which the employer is required by the section imposing the
premium, premium deposit, interest or penalty to file a report
and pay the amount due thereunder. The limitation provided by
this section shall also apply to enforcement of the lien, if any,
securing the payment of the premium, premium deposit, interest
or penalty, but shall not apply in the event of fraud or in the
event the employer wholly fails to file the report required by the
section imposing the premium, premium deposit, interest or
penalty. For payments that were due prior to the effective date
of this section, there continues to be no limitation on when
actions or processes may be brought or issued. For every debt
collectible under this section which first becomes due and
owing after the effective date of the amendment and
reenactment of this section during the year two thousand three,
every action or process to collect the debt shall be brought or
issued within ten years after the date on which the employer is
required to file a report and pay the amount assessed or owed to
the commission.

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

Notwithstanding any other provision to the contrary, the
executive director, with the approval of the board of managers,
may write-off any uncollected receivable due under the
provisions of this article or article four of this chapter which the
executive director and the board of managers determine
uncollectible.


Any employer subject to this chapter who subscribes and
pays into the workers’ compensation fund the premiums
provided by this chapter or who elects to make direct payments of compensation as provided in this section is not liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after so subscribing or electing, and during any period in which the employer is not in default in the payment of the premiums or direct payments and has complied fully with all other provisions of this chapter. Continuation in the service of the employer shall be considered a waiver by the employee and by the parents of any minor employee of the right of action as aforesaid, which the employee or his or her parents would otherwise have: Provided, That in case of employers not required by this chapter to subscribe and pay premiums into the workers' compensation fund, the injured employee has remained in the employer's service with notice that his or her employer has elected to pay into the workers' compensation fund the premiums provided by this chapter, or has elected to make direct payments as aforesaid.

§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.

(a) Notwithstanding any provisions of this chapter to the contrary, the following types of employers or employers' groups may apply for permission to self-insure their workers' compensation risk including their risk of catastrophic injuries.

(1) The types of employers are:

(A) Any employer who is of sufficient capability and financial responsibility to ensure the payment to injured employees and the dependents of fatally injured employees of benefits provided for in this chapter at least equal in value to the compensation provided for in this chapter;
(B) Any employer of such capability and financial responsibility who maintains its own benefit fund or system of compensation to which its employees are not required or permitted to contribute and whose benefits are at least equal in value to those provided for in this chapter; or

(C) Any group of employers who are subject to the same collective bargaining agreement or who are in a collective bargaining group may apply to the commission to collectively self-insure their obligations under this chapter. The employers' group must individually and collectively meet the conditions set forth in paragraph (A) or (B) of this subdivision. There shall be joint and several liability for all groups of employers who choose to self-insure under the provisions of this article.

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

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

(B) Provide security or bond in an amount and form determined by the executive director with the approval of the board of managers which shall balance the employer's financial condition based upon an analysis of its audited financial statements and the full accrued value of current liability for future claim payments based upon generally accepted actuarial and accounting principles of the employer's existing and expected liability.

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

(4) Upon a finding that the employer has met all of the requirements of this section, the employer may be permitted self-insurance status. An annual review of each self-insurer's continuing ability to meet its obligations and the requirements of this section shall be made by the workers' compensation commission. This review shall include a redetermination of the amount of security or bond which shall be provided by the employer. Failure to provide any new amount or form of security or bond may cause the employer's self-insurance status to be terminated by the workers' compensation commission. The security or bond provided by employers prior to the second day of February, one thousand nine hundred ninety-five, shall continue in full force and effect until the performance of the employer's annual review and the entry of any appropriate decision on the amount or form of the employer's security or bond.

(5) Whenever a self-insured employer furnishes security or bond, including replacement and amended bonds and other securities, as surety to ensure the employer's or guarantor's payment of all obligations under this chapter for which the security or bond was furnished, the security or bond shall be in the most current form or forms approved and authorized by the commission for use by the employer or its guarantors, surety companies, banks, financial institutions or others in its behalf for that purpose.

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

(2) An employer or employers' group who self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the commission in this chapter and provide notices of action taken to effect the purposes of this chapter to provide benefits to persons who have suffered injuries or diseases covered by this chapter. An employer or employers' group granted permission to self-insure and self-administer its obligations under this chapter shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in article four of this chapter pertaining to disability and death benefits are binding on and shall be strictly adhered to by the self-insured employer in its administration of claims presented by employees of the self-insured employer. Violations of the provisions of this chapter and such rules relating to this chapter as may be approved by the board of managers may constitute sufficient grounds for the termination of the authority for any employer to self-insure its obligations under this chapter. Claim notices currently generated by the commission on behalf of self-insured employers must be generated and sent by the self-insured employer or its third-party administrator.

(c) Each self-insured employer shall, on or before the last day of the first month of each quarter, file with the commission a certified statement of the total gross wages and earnings of all of the employer's employees subject to this chapter for the
preceeding quarter. Each self-insured employer shall pay into the
workers' compensation fund as portions of its self-insured
premium tax:

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

(2) A sum sufficient to pay the employer's proper portion
of the expense of claims for those employers who are in default
in the payment of premium taxes or other obligations;

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

(4) A sum sufficient to maintain as an advance deposit an
amount equal to the previous quarter's payment of each of the
foregoing three sums;

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

(6) A sum as determined by the commission to pay the
employer's portion of self-insured catastrophic injury benefits,
and second injury payments on all self-insured second injury
claims other than second injury claims for those employers self-
insured for second injury. Any employer previously self-insured
for second injury benefits shall continue to be responsible for
payment of those benefits.

(d) The required payments to the employer's injured
employees or dependents of fatally injured employees as
benefits provided for by this chapter including second injury
benefits and catastrophic injury benefits, if applicable, shall
constitute the remaining portion of the self-insurer's premium
tax.
(e) Notwithstanding any provision of subsection (d) of this section to the contrary, except for those increases made effective for fiscal year two thousand four by action of the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code taken prior to the effective date of the amendment and reenactment of this section, the portion of the premium taxes for each self-insured employer as determined under subdivisions (1) through (6), inclusive, subsection (c) of this section shall not be increased during fiscal years two thousand four, two thousand five and two thousand six.

(f)(1) If an employer defaults in the payment of any portion of its self-insured premium taxes, surcharges or assessments, the commission shall, in an appropriate case, determine the full accrued value based upon generally accepted actuarial and accounting principles of the employer’s liability including the costs of all awarded claims and of all incurred but not reported claims. The amount determined may, in an appropriate case, be assessed against the employer. The commission may demand and collect the present value of the defaulted tax liability. Interest shall accrue upon the demanded amount as provided for in section thirteen of this article until the premium tax is fully paid. Payment of all amounts then due to the commission and to the employer’s employees is a sufficient basis for reinstating the employer to good standing with the fund. In addition, any self-insured employer who, without good cause, ceases to make required payments to the employer’s injured employees or dependents of fatally injured employees as benefits provided for by this chapter including second injury benefits and catastrophic injury benefits, if applicable, is in default. The board of managers shall establish by rule the procedures by which the existence or nonexistence of good cause is to be determined by the commission.
(2) Premium tax assessments are special revenue taxes under and according to the provisions of state workers' compensation law and are considered to be tax claims, as priority claims or administrative expense claims according to those provisions under the law provided in the United States bankruptcy code, Title 11 of the United States Code. In addition, as the same was previously intended by the prior provisions of this section, this amendment and reenactment is for the purpose of clarification of the taxing authority of the workers' compensation commission.

(g) Each self-insured employer shall elect whether or not to self-insure its catastrophic injury risk as defined in subsection (c), section one, article three of this chapter. A self-insured employer who elects to insure its catastrophic risk through a policy of excess insurance obtained through a private insurance carrier approved by the commission shall provide a copy of the policy to the commission.

(1) If the employer does not elect to self-insure its catastrophic risk, the employer shall pay premium taxes for this coverage in the same manner as is provided for in section four of this article and in rules adopted to implement that section. If the employees of that employer suffer injury or death from a catastrophe, the payment of the resulting benefits shall be made from the catastrophe reserve of the surplus fund provided for in subsection (b), section one, article three of this chapter. Any portion of an employer's catastrophic liability insured and paid under a policy of insurance purchased by the employer shall not be included in the liabilities upon which the employer's security or bond is determined in subsection (a) of this section.

(2) If an otherwise self-insured employer elects to self-insure its catastrophic risk, the security or bond required in subsection (a) of this section shall include the liability for the catastrophic risk.
(h) For those employers previously permitted to self-insure their second injury risks, the amount of the security or bond required in subsection (a) of this section shall include the liability for that risk. All benefits provided for by this chapter which are awarded to the employer's employees which constitute second injury life awards shall be paid by the employer and not the commission.

(i) The commission may create, implement, establish and administer a perpetual self-insurance security risk pool of funds, sureties, securities, insurance provided by private insurance carriers or other states' programs, and other property, of both real and personal properties, to secure the payment of obligations of self-insured employers. If a pool is created, the board of managers shall adopt rules for the organizational plan, participation, contributions and other payments which may be required of self-insured employers under this section. The board of managers may adopt a rule authorizing the commission to assess each self-insured employer in proportion according to each employer's portion of the unsecured obligation and liability or to assess according to some other method provided for by rule which shall properly create and fund the risk pool to serve the needs of employees, employers and the workers' compensation fund by providing adequate security. The board of managers, in establishing a security risk pool, may authorize the executive director to use any assessments, premium taxes and revenues and appropriations as may be made available to the commission.

(j) Any self-insured employer which has had a period of inactivity due to the nonemployment of employees which results in its reporting of no wages on reports to the commission for a period of four or more consecutive quarters shall have its status at the commission inactivated and shall apply for reactivation to status as a self-insured employer prior to its reemployment of employees. Despite the inactivation, the self-
insured employer shall continue to make payments on all
awards for which it is responsible. Upon application for
reactivation of its status as an operating self-insured employer,
the employer shall document that it meets the eligibility
requirements needed to maintain self-insured status under this
section and any rules adopted to implement it. If the employer
is unable to requalify and obtain approval for reactivation, the
employer shall, effective with the date of employment of any
employee, become a subscriber to the workers' compensation
fund, but shall continue to be a self-insurer as to the prior
period of active status and to furnish security or bond and meet
its prior self-insurance obligations.

(k) In any case under the provisions of this section that
require the payment of compensation or benefits by an em-
ployer in periodical payments and the nature of the case makes
it possible to compute the present value of all future payments,
the commission may, in its discretion, at any time compute and
permit to be paid into the workers' compensation fund an
amount equal to the present value of all unpaid future payments
on the award or awards for which liability exists in trust.
Thereafter, the employer shall be discharged from any further
portion of premium tax liability upon the award or awards and
payment of the award or awards shall be assumed by the
commission.

(l) Any employer subject to this chapter, who elects to carry
the employer's own risk by being self-insured and who has
complied with the requirements of this section and of any
applicable rules, shall not be liable to respond in damages at
common law or by statute for the injury or death of any
employee, however occurring, after the election's approval and
during the period that the employer is allowed to carry the
employer's own risk.
(m) An employer may not hire any person or group to self-administer claims under this chapter as a third-party administrator unless the person or group has been determined to be qualified to be a third-party administrator by the commission pursuant to rules adopted by the board of managers. Any person or group whose status as a third-party administrator has been revoked, suspended or terminated by the commission shall immediately cease administration of claims and shall not administer claims unless subsequently authorized by the commission.

§23-2-10. Application of chapter to interstate commerce.

(a) In case any employer within the meaning of this chapter is also engaged in interstate or foreign commerce, and for whom a rule of liability or method of compensation has been established by the Congress of the United States, this chapter applies to him or her only to the extent that his or her mutual connection with work in this state is clearly separable and distinguishable from his or her interstate work, and to the extent that the work in this state is clearly separable and distinguishable from his or her interstate work, the employer is subject to the terms and provisions of this chapter in like manner as all other employers under this chapter. Payments of premiums shall be on the basis of the payroll of those employees who perform work in this state only.

(b) Unless and until the Congress of the United States has by appropriate legislation established a rule of liability or method of compensation governing employers and employees engaged in commerce within the purview of the commerce clause of the United States Constitution (article I, section 8), section one of this article applies without regard to the interstate or intrastate character or nature of the work or business engaged in.

If any employer is adjudicated to be outside the lawful scope of this chapter, the chapter shall not apply to him or her or his or her employee; or if any employee is adjudicated to be outside the lawful scope of this chapter, because of remoteness of his or her work from the hazard of his or her employer's work, the adjudication shall not impair the validity of this chapter in other respects and in every case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of this chapter for the creation of the workers' compensation fund, or the provisions of this chapter making the compensation to the employee provided in it exclusive of any other remedy on the part of the employee, is held invalid, the entire chapter shall be invalidated and an accounting according to the justice of the case shall be had of money received. In other respects an adjudication of invalidity of any part of this chapter shall not affect the validity of the chapter as a whole or any part of this chapter.

§23-2-12. Effect of repeal or invalidity of chapter on action for damages.

If the provisions of this chapter relating to compensation for injuries to, or death of, workers are repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of any injury or death and the repeal, or the final adjudication of invalidity or unconstitutionality, shall not be computed as a part of the time limited by law for the commencement of any action relating to the injuries or death, but the amount of any compensation which may have been paid on account of injury or death shall be deducted from any judgment for damages recovered on account of the injury or death.

Effective the first day of July, one thousand nine hundred ninety-nine, payments unpaid on the date on which due and payable shall immediately begin bearing interest as specified in this section. The interest rate per annum for each fiscal year shall be calculated as the greater of the commission’s current discount rate or the prime rate plus four percent, each rounded to the nearest whole percent. The discount rate shall be determined by the board of managers on an annual basis. The prime rate shall be the rate published in the *Wall Street Journal* on the last business day of the commission’s prior fiscal year reflecting the base rate on corporate loans posted by at least seventy-five percent of the nation’s thirty largest banks. This same rate of interest shall be applicable to all reinstatement agreements entered into by the commission pursuant to section five of this article on and after the effective date of this section: *Provided,* That if an employer enters into a subsequent reinstatement agreement within seven years of the date of the first agreement, the interest rate shall be eighteen percent per annum. Interest shall be compounded quarterly until payment plus accrued interest is received by the commission: *Provided, however,* That on and after the date of execution of a reinstatement agreement, for determining future interest on any past-due premium, premium deposit, and past compounded interest thereon, any reinstatement agreement entered into by the commission shall provide for a simple rate of interest, determined in accordance with the provisions of this section which is not subject to change during the life of the reinstatement agreement for the future interest. Interest collected pursuant to this section shall be paid into the workers’ compensation fund: *Provided further,* That in no event shall the rate of interest charged a political subdivision of the state or a volunteer fire department pursuant 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.

(a) If any employer sells or otherwise transfers substantially all of the employer’s assets, so as to give up substantially all of the employer’s capacity and ability to continue in the business in which the employer has previously engaged:

(1) The employer’s premium taxes, premium deposits, interest and other payments owed to the commission are due and owing to the commission upon the execution of the agreement of sale or other transfer;

(2) Any repayment agreement entered into by the employer with the commission pursuant to section five of this article terminates upon the execution of the agreement of sale or other transfer and all amounts owed to the commission but not yet paid become due; and

(3) Upon execution of an agreement of sale or other transfer, as aforesaid, the commission shall continue to have a lien, as provided for in section five-a of this article, against all of the remaining property of the employer as well as all of the sold or transferred assets. The lien constitutes a personal obligation of the employer.

(b) Notwithstanding any provisions of section five-a of this article to the contrary, in the event that a new employer acquires by sale or other transfer or assumes all or substantially all of a predecessor employer’s assets:

(1) Any liens for payments owed to the commission for premium taxes, premium deposits, interest or other payments owed to the commission by the predecessor employer shall be extended to the successor employer;
(2) Any liens held by the commission against the predecessor employer’s property shall be extended to all of the assets of the successor employer; and

(3) Liens acquired in the manner described in subdivisions (1) and (2) of this subsection are enforceable by the commission to the same extent as provided for the enforcement of liens against the predecessor employer in section five-a of this article.

(c) Notwithstanding the provisions of section five-a of this article to the contrary, if any employer as described in subsection (a) of this section sells or otherwise transfers a portion of the employer’s assets so as to affect the employer’s capacity to do business:

(1) The employer’s premium taxes, premium deposits, interest and other payments owed to the commission are due and owing to the commission upon the execution of the agreement of sale or other transfer;

(2) Any repayment agreement entered into by the employer with the commission pursuant to section five of this article terminates upon the execution of the aforesaid agreement of sale or other transfer and all amounts owed to the commission but not yet paid shall become due; and

(3) Upon execution of an agreement of sale or other transfer, as aforesaid, the commission shall continue to have a lien, as provided for in section five-a of this article, against all of the remaining property of the employer as well as all the sold or transferred assets. The lien constitutes a personal obligation of the employer.

(d) If an employer subject to subsection (a), (b) or (c) of this section pays to the commission, prior to the execution of an agreement of sale or other transfer, a sum sufficient to retire all
of the indebtedness that the employer would owe at the time of
the execution, the commission shall issue a certificate to the
employer stating that the employer’s account is in good
standing with the commission and that the assets may be sold
or otherwise transferred without the attachment of the commis-
sion’s lien. An agreement of sale or other transfer may provide
for the creation of an escrow account into which the employers
shall pay the full amount owed to the commission. The subse-
quent timely payment of that full amount to the commission
operates to place both employers in good standing with the
commission to the extent of the predecessor employer’s
liabilities retroactive to the date of sale or other transfer. In the
event that the employer would not owe any sum to the commis-
sion on the aforesaid date of execution, a certificate shall also
be issued to the employer upon the employer’s request stating
that the employer’s account is in good standing with the
commission and that the assets may be sold or otherwise
transferred without the attachment of the commission’s lien.

(e) As used in this article, the term “assets” means all
property of whatever type in which the employer has an interest
including, but not limited to, goodwill, business assets, custom-
ers, clients, contracts, access to leases such as the right to
sublease, assignment of contracts for the sale of products,
operations, stock of goods or inventory, accounts receivable,
equipment or transfer of substantially all of its employees.

(f) The transfer of any assets of the employer is presumed
to be a transfer of all or substantially all of the assets if the
transfer affects the employer’s capacity to do business. The
presumption can be overcome upon petition presented and an
administrative hearing in accordance with section seventeen of
this article.

(g) The provisions of this section are expressly intended to
impose upon successor employers the duty of obtaining from
the commission or predecessor employer, prior to the date of
the acquisition, a valid “certificate of good standing to transfer
a business or business assets” to verify that the predecessor
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.

(a) At any time prior to or following the acquisition
described in subsection (a), (b) or (c), section fourteen of this
article, the buyer or other recipient may file a certified petition
with the commission requesting that the commission waive the
payment by the buyer or other recipient of premiums, premium
deposits, interest and imposition of the modified rate of
premiums attributable to the predecessor employer or other
penalty, or any combination thereof. The commission shall
review the petition by considering the following seven factors:

(1) The exact nature of the default;

(2) The amount owed to the commission;

(3) The solvency of the fund;

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

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

(6) The potential economic impact upon the state and the
specific geographic area in which the buyer or other recipient
is to be or is located, if the acquisition were not to occur; and

(7) Whether the assets are purchased in an arms-length
transaction.
Unless requested by a party or by the commission, no hearing need be held on the petition. However, any decision made by the commission on the petition shall be in writing and shall include appropriate findings of fact and conclusions of law. The decision shall be effective ten days following notice to the public of the decision unless an objection is filed in the manner provided in this section. Notice shall be given by the commission’s filing with the secretary of state, for publication in the state register, of a notice of the decision. At the time of filing the notice of its decision, the commission shall also file with the secretary of state a true copy of the decision. The publication shall include a statement advising that any person objection to the decision must file, within ten days after publication of the notice, a verified response with the commission setting forth the objection and the basis for the objection. If any objection is filed, the commission shall hold an administrative hearing, conducted pursuant to article five, chapter twenty-nine-a of this code, within fifteen days of receiving the response unless the buyer or other recipient consents to a later hearing. Nothing in this subsection shall be construed to be applicable to the seller or other transferor or to affect in any way a proceeding under sections five and five-a of this article.

(b) In the factual situations set forth in subsection (a), (b) or (c), section fourteen of this article, if the predecessor’s modified rate of premium tax, as calculated in accordance with section four of this article, is greater than the manual rate of premium tax, as calculated in accordance with that section, for other employers in the same class or group, and if the new employer does not already have a modified rate of premium, it shall also assume the predecessor employer’s modified rates for the payment of premiums as determined under sections four and five of this article until sufficient time has elapsed for the new employer’s experience record to be combined with the experience record of the predecessor employer so as to calculate the new employer’s own modified rate of premium tax.
§23-2-16. Acceptance or assignment of premium rate.

(a) If a new corporate employer which is not subject to the provisions of section fifteen of this article is created by the officers or shareholders of a preexisting corporate employer and if the new corporate employer and the preexisting corporate employer: (1) Are managed by the same, or substantially the same, management personnel; (2) have a common ownership by at least forty percent of each corporation’s shareholders; (3) are in the same class or group as determined by the executive director under the provisions of section four of this article; and (4) if the preexisting corporate employer’s account is in good standing with the commission, at the time the new corporate employer registers with the commission, the new corporate employer may request that the commission assign to it the same rate of payment of premiums as that assigned to the preexisting corporate employer. If the executive director decides that the granting of the request is in keeping with his or her fiduciary obligations to the workers’ compensation fund, the executive director may grant the request of the employer.

(b) If a new corporate employer which is not subject to the provisions of section fifteen of this article is created by the officers or shareholders of a preexisting corporate employer and if the new corporate employer and the preexisting corporate employer: (1) Are managed by the same, or substantially the same, management personnel; (2) have a common ownership by at least forty percent of each corporation’s shareholders; and (3) are in the same class or group as determined by the executive director under the provisions of section four of this article, at any time within one year of the new corporate employer’s registration with the commission, the executive director may decide that, in keeping with his or her fiduciary obligations to the workers’ compensation fund, the new corporate employer shall be assigned the same rate of payment of premiums as that assigned to the preexisting corporate employer at any time
within the aforesaid one-year period: Provided, That if the new
corporate employer fails to reveal to the commission on the
forms provided by the commission that its situation meets the
factual requirements of this section, the commission may
demand payment from the new corporate employer in an
amount sufficient to eliminate the deficiency in payments by
the new corporate employer from the date of registration to the
date of discovery plus interest thereon as provided for by
section thirteen of this article. The commission may use its
powers pursuant to section five-a of this article to collect the
amount due.

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

Notwithstanding any provision in this chapter to the
contrary and notwithstanding any provision in section five,
article five, chapter twenty-nine-a of this code to the contrary,
in any situation where an employer objects to a decision or
action of the executive director made under the provisions of
this article, the employer is entitled to file a petition demanding
a hearing upon the decision or action. The petition must be filed
within thirty days of the employer's receipt of notice of the
disputed executive director's decision or action or, in the
absence of such receipt, within sixty days of the date of the
executive director's making the disputed decision or taking the
disputed action, the time limitations being hereby declared to be
a condition of the right to litigate the decision or action and
therefore jurisdictional.

The employer's petition shall clearly identify the decision
or action disputed and the bases upon which the employer
disputes the decision or action. Upon receipt of a petition, the
executive director shall schedule a hearing which shall be
conducted in accordance with the provisions of article five,
chapter twenty-nine-a of this code. An appeal from a final
decision of the executive director shall be taken in accord with
the provisions of articles five and six of said chapter: Provided,
That all appeals shall be taken to the circuit court of Kanawha County.

ARTICLE 2A. SUBROGATION.

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

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

(b) Notwithstanding the provisions of subsection (a) of this section, if an injured worker, his or her dependents or his or her personal representative makes a claim against the third party and recovers any sum for the claim, the commission or a self-insured employer shall be allowed statutory subrogation with regard to medical benefits paid as of the date of the recovery. The commission or self-insured employer shall permit the deduction from the amount received a reasonable attorney’s fee and a reasonable portion of costs. It is the duty of the injured worker, his or her dependents, his or her personal representative, or his or her attorney to notify the commission and the employer when the claim is filed against the third party.

(c) In the event that an injured worker, his or her dependents or personal representative makes a claim against a third party, there shall be, and there is hereby created, a statutory subrogation lien upon the moneys received which shall exist in favor of the commission or self-insured employer. Any injured worker, his or her dependents or personal representative who receives moneys in settlement in any manner of a claim against a third party remains subject to the subrogation lien until
(d) The right of subrogation granted by the provisions of this section shall not attach to any claim arising from a right of action which arose or accrued, in whole or in part, prior to the effective date of the amendment and reenactment of this section during the year two thousand three.

ARTICLE 2B. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS.

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

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

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

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

In order to carry out the purposes of this chapter and to encourage voluntary compliance with occupational safety and health laws, regulations, rules and standards and to promote more effective workplace health and safety programs, the executive director acting in conjunction with the board of managers shall:

(a) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

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

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

(3) The publication and distribution of training and accident prevention materials, including audio and visual aids;
(b) Provide consultative services for employers on safety and health matters and prescribe procedures which will permit any employer to request a special inspection or investigation, focused on specific problems or hazards in the place of employ-ment of the employer or to request assistance in developing a plan to correct such problems or hazards, which will not directly result in a citation and civil penalty; and

(c) Place emphasis, in the research, education and consulta-tion program, on development of a model for providing services to groups of small employers in particular industries and their employees and for all employers whose experience modification factor for rate-setting purposes is in excess of the criteria established by the board of managers.

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

(a) Based upon and to the extent authorized by criteria established by the executive director, the commission is authorized to conduct special inspections or investigations focused on specific problems or hazards in the workplace with or without the agreement of the employer. The executive director shall issue a report on his or her findings and shall furnish a copy of the report to the employer and to any bargain-ing unit representing the employees of the employer. The executive director may share information obtained or developed pursuant to this article with other governmental agencies.

(b) For any employer whose experience modification factor exceeds the criteria established by the board of managers, the executive director may require the employer to establish a safety committee composed of representatives of the employer and the employees of the employer.
(c) In carrying out the provisions of this article, the executive director shall propose rules for promulgation which shall include, but are not limited to, the following provisions:

1. Prescribing the membership of the committees, training, frequency of meetings, recordkeeping and compensation of employee representatives on safety committees; and

2. Prescribing the duties and functions of safety committees which include, but are not limited to:

   A. Establishing procedures for workplace safety inspections and for investigating job-related accidents, illnesses and deaths; and

   B. Evaluating accident and illness prevention programs.

(d) An employer that is a member of a multiemployer group operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this section is considered to have met the requirements of this section.

(e) It is not the purpose of this article to either supersede the federal Occupational Health and Safety Act program, federal Mine Safety and Health Act program or to create a state counterpart to these programs.

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

(a) The executive director may establish by rule a premium credit program for certain employers. The program is applicable solely to regular subscribers to the workers’ compensation fund and not to self-insurers. Participation in any premium credit program is voluntary and no employer is required to participate.
(b) The program applies a prospective credit to the premium rate of a subscribing employer who participates in a qualified loss management program. The prospective credit is given for a period of up to three years: Provided, That the employer remains in the program for a corresponding period of time.

(c) The rule shall specify the requirements of a qualified loss management program and shall include a requirement that a recognized loss management firm participate in the program. A loss management firm shall be recognized if it has demonstrated an ability to significantly reduce workers' compensation losses for its client employers by implementing a loss control management program. The amount of credit against premium rates that may be allowed by the executive director shall vary from firm to firm and shall be primarily determined by the loss reduction success experienced by all of the subscribing employers of the sponsoring loss management firm over a period of time to be determined by the executive director.

(d) A credit is applied to the employer's premium rate for up to three years. The amount of the credit applied to the first year is based on the credit factor assigned to the loss management firm on the date the employer subscribes to the program. The amount of the credit applied to the second and third years shall be based on the credit factor assigned to the loss management firm and in effect on each first day of July of the pertinent year: Provided, That the applicable credit is halved in the third year.

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

(f) An employer who has subscribed to an existing program of a qualified loss management firm prior to the effective date of this section is subject to a reduction in credit as follows:
(1) Participation for one year or less shall result in credit for the full three years;

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

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

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

(g) This section shall not become effective until the board of managers promulgates an appropriate rule to implement this section’s provisions.

ARTICLE 3. WORKERS’ COMPENSATION FUND.

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

(a) The commission shall establish a workers’ compensation fund from the premiums and other funds paid thereto by employers, as provided in this section, for the benefit of employees of employers who have paid the premiums applicable to the employers and have otherwise complied fully with the provisions of section five, article two of this chapter, and for the benefit, to the extent elsewhere in this chapter set out, of employees of employers who have elected, under section nine, article two of this chapter, to make payments into the workers’
compensation fund as provided for in this section, and for the
benefit of the dependents of all the employees, and for the
payment of the administration expenses of this chapter.

(b) A portion of all premiums that are paid into the work-
ers' compensation fund by subscribers not electing to carry
their own risk under section nine, article two of this chapter that
is set aside to create and maintain a reserve of the fund to cover
the catastrophe hazard and all losses not otherwise specifically
provided for in this chapter. The percentage to be set aside is
determined pursuant to the rules adopted to implement section
four, article two of this chapter and shall be in an amount
sufficient to maintain a solvent fund. All interest earned on
investments by the workers' compensation fund, which is
attributable to the reserve, shall be credited to the fund.

(c) A catastrophe is hereby defined as an accident in which
three or more employees are killed or receive injuries, which,
in the case of each individual, consist of: Loss of both eyes or
the sight thereof; loss of both hands or the use thereof; loss of
both feet or the use thereof; or loss of one hand and one foot or
the use thereof. The aggregate of all medical and hospital bills
and other costs and all benefits payable on account of a cata-
trophe is defined as "catastrophe payment". In case of a
catastrophe to the employees of an employer who is an ordinary
premium-paying subscriber to the fund, or to the employees of
an employer who, having elected to carry the employer's own
risk under section nine, article two of this chapter, has previ-
ously elected, or may later elect, to pay into the catastrophe
reserve of the fund under the provisions of said section, the
catastrophe payment arising from the catastrophe shall not be
charged against, or paid by, the employer but shall be paid from
the catastrophe reserve of the fund.

(d) For all awards made on or after the effective date of the
amendments to this section enacted during the year two
thousand three, the following provisions relating to second
injury are not applicable. For awards made before the date
specified in this subsection, if an employee who has a definitely
ascertainable physical impairment, caused by a previous
occupational injury, occupational pneumoconiosis or occupa-
tional disease, irrespective of its compensability, becomes
permanently and totally disabled through the combined effect
of the previous injury and a second injury received in the course
of and as a result of his or her employment, the employer shall
be chargeable only for the compensation payable for the second
injury: Provided, That in addition to the compensation, and
after the completion of the payments therefor, the employee
shall be paid the remainder of the compensation that would be
due for permanent total disability out of the workers' compen-
sation fund. The procedure by which the claimant's request for
a permanent total disability award under this section is ruled
upon shall require that the issue of the claimant's degree of
permanent disability first be determined. Thereafter, by means
of a separate order, a decision shall be made as to whether the
award is a second injury award under this subsection or a
permanent total disability award to be charged to the em-
ployer's account or to be paid directly by the employer if the
employer has elected to be self-insured under the provisions of
section nine, article two of this chapter.

(e) Employers electing, as provided in this chapter, to
compensate individually and directly their injured employees
and their fatally injured employees' dependents shall do so in
the manner prescribed by the commission and shall make all
reports and execute all blanks, forms and papers as directed by
the commission, and as provided in this chapter.

§23-3-1a. Transfer of silicosis fund to workers' compensation
fund; claims under former article six.
Ten percent of the funds collected and held as the workers’ compensation silicosis fund under the provisions of former article six of this chapter shall be transferred to and made a part of the workers’ compensation fund provided for in the preceding section, and the balance of the silicosis fund shall be refunded to the subscribers to the fund in proportion to their contributions to the fund under the provisions of former article six; and all awards previously made under the provisions of article six shall be paid from the workers’ compensation fund, or directly by the employer, under order of the executive director, if the employer has elected to carry his or her own risk under the provisions of section nine, article two of this chapter: Provided, That notwithstanding the repeal of article six, the provisions of the article are applicable in all cases of the disease or death, because of silicosis, or an employee whose last exposure to silicon dioxide dust has occurred prior to the effective date of this section, whose claim or application for compensation benefits for silicosis, or that of his or her dependent, has not been filed prior to that date, and whose employer, at the time of the exposure, was subject to the provisions of article six of this chapter.

§23-3-2. Custody, investment and disbursement of funds.

The state treasurer is the custodian of the workers’ compensation fund and all premiums, deposits or other moneys payable to each fund shall be deposited in the state treasury to the credit of the fund for which it was assessed, transferred or collected in the manner prescribed in this chapter. The workers’ compensation fund shall consist of the premiums and deposits provided by this chapter and any other moneys or funds given, appropriated or otherwise designated or accruing to it and all earnings. The fund shall be a separate and distinct fund upon the books and records of the auditor and treasurer. Disbursements therefrom shall be made upon requisitions signed by the executive director.
The workers’ compensation fund is a participant plan as defined in section two, article six, chapter twelve of this code and is subject to the provisions of section nine-a of said article. The fund shall be invested by the investment management board in accordance with said article.

§23-3-3. Investment of surplus funds required.

Whenever there is in the state treasury any funds belonging to the workers’ compensation fund not likely, in the opinion of the commission, to be required for immediate use, it is the duty of the investment management board to invest the funds as prescribed in section two of this article. Whenever it becomes necessary or expedient to use any of the invested funds, the investment management board, at the direction of the commission, shall collect, sell or otherwise realize upon any investment to the amount considered necessary or expedient to use.

§23-3-5. Authorization to require the electronic invoices and transfers.

(a) The workers’ compensation commission shall on or before the thirty-first day of December, two thousand five, establish a program to require the acceptance of disbursements by electronic transfer from the workers’ compensation fund to employers, vendors and all others lawfully entitled to receive such disbursements: Provided, That until the thirty-first day of December, two thousand five, claimants may not be required to accept the transfers but may elect to do so.

(b) The commission may establish a program to require payments of deposits, premiums and other funds into the workers’ compensation fund by electronic transfer of funds.

(c) The commission may establish a program that invoices and other charges against the workers’ compensation fund may be submitted to the commission by electronic means.
(d) Any program authorized by this section must be implemented through a rule promulgated by the board of managers.

§23-3-6. Emergency fiscal measures.

(a) In addition to other measures intended by the Legislature to address the imminent threat to the fiscal solvency of the workers' compensation fund, the Legislature finds that the prudent use of available moneys may be necessary to supplement ongoing efforts to reduce and eliminate that threat. The provisions of this section are enacted for those purposes.

(b) The following measures are authorized for the purposes described in subsection (a) of this section:

(1) Upon meeting the conditions and requirements of subsection (a), section eight-b, article four-b of this chapter, the commission may expend the assets described in said subsection and any income earned thereon to satisfy the obligations of the workers' compensation fund.

(2) Upon meeting the conditions and requirements of subsection (b), section eight-b, article four-b of this chapter, the commission may expend the assets described in said subsection and any income earned thereon to satisfy the obligations of the workers' compensation fund.

(3) In each fiscal year beginning after the thirtieth day of June, two thousand three, it is the intent of the Legislature that, pursuant to appropriation in the budget bill for each respective fiscal year, five million dollars of general revenue funds be transferred to the workers' compensation fund and that the amounts transferred be expended to satisfy the obligations of the workers' compensation fund.
(4) (A) If in any year expenditures from the workers' compensation fund are expected to exceed assets in that fund, the executive director may under the following conditions request a transfer of moneys from the principal of the West Virginia tobacco settlement medical trust fund created in section two, article eleven-a, chapter four of this code. Prior to requesting the transfer the executive director shall obtain an opinion from the commission's actuary as to the amount of the deficit in the workers' compensation fund. Upon meeting the requirements of this subdivision, the executive director shall, upon approval of the board of managers, submit a written request to the joint committee on government and finance that an amount determined by the Legislature be transferred by appropriation from the principal of the West Virginia tobacco settlement medical trust fund to the workers' compensation fund. Upon appropriation of the Legislature, the commission may expend the assets transferred and any income earned thereon to satisfy the obligations of the workers' compensation fund.

(B) Upon any exercise of the authority granted by this subdivision, the executive director shall not increase benefit rates during the year as provided in section fourteen, article four of this chapter and shall conduct an investigation into the causes of the deficit and determine the best course of action to alleviate the shortfall.

(5) It is the intent of the Legislature that, pursuant to legislative appropriation, fourteen million dollars of funds made available to the state pursuant to the federal Jobs and Growth Tax Relief Reconciliation Act of 2003, PL 108-27, be transferred to the workers' compensation fund and that the amounts transferred be expended to satisfy the obligations of the workers' compensation fund.
(6) It is the intent of the Legislature that, pursuant to legislative appropriation, one million dollars will be expired from the alcohol beverage control administration’s general administrative fund and transferred to the workers’ compensation fund and that the amounts transferred be expended to satisfy the obligations of the workers’ compensation fund.

(7) It is the intent of the Legislature that, pursuant to legislative appropriation, four million dollars will be transferred from the unappropriated balance of the state excess lottery reserve fund to the workers’ compensation fund and that the amounts transferred be expended to satisfy the obligations of the workers’ compensation fund.

(8) Funds transferred to the workers’ compensation fund pursuant to the provisions of this subsection are anticipated to generate income of at least six million dollars over the course of the three-year period following the enactment of this section in the year two thousand three. The commission may expend any income earned on these transferred funds to satisfy the 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.


§23-4-1b. 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.

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§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.

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§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

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§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; 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.

(a) Subject to the provisions and limitations elsewhere in this chapter, the commission shall disburse the workers' compensation fund to the employees of employers subject to this chapter who have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of the employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter: Provided, That in the case of any employees of the state and its political subdivisions, including: Counties; municipalities; cities; towns; any separate corporation or instrumentality established by one or more counties, cities or towns as permitted by law; any corporation or instrumentality supported in most part by counties, cities or
tions and which is supported, in whole or in part, by state, county or municipal funds; board, agency, commission, department or spending unit, including any agency created by rule of the supreme court of appeals, who have received personal injuries in the course of and resulting from their covered employment, the employees are ineligible to receive compensation while the employees are at the same time and for the same reason drawing sick leave benefits. The state employees may only use sick leave for nonjob-related absences consistent with sick leave use and may draw workers' compensation benefits only where there is a job-related injury. This proviso shall not apply to permanent benefits: Provided, however, That the employees may collect sick leave benefits until receiving temporary total disability benefits. The division of personnel shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code relating to use of sick leave benefits by employees receiving personal injuries in the course of and resulting from covered employment: Provided further, That in the event an employee is injured in the course of and resulting from covered employment and the injury results in lost time from work, and the employee for whatever reason uses or obtains sick leave benefits and subsequently receives temporary total disability benefits for the same time period, the employee may be restored sick leave time taken by him or her as a result of the compensable injury by paying to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received.
The employee shall be restored sick leave time on a day-for-day basis which corresponds to temporary total disability benefits paid to the employer: And provided further, That since the
intent of this subsection is to prevent an employee of the state or any of its political subdivisions from collecting both temporary total disability benefits and sick leave benefits for the same time period, nothing in this subsection prevents an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary total disability benefits but not both.

(b) For the purposes of this chapter, the terms "injury" and "personal injury" includes occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and the commission shall also disburse the workers' compensation fund to the employees of the employers in whose employment the employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and in this state have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in case death has ensued, according to the provisions hereinafter made: Provided, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting from the disease, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the state of West Virginia over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure to such hazards, or for any five of the fifteen years immediately preceding the date of his or her last exposure. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as sixty days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumoconiosis.
The allocation shall be based upon the time and degree of exposure with each employer.

(c) For the purposes of this chapter, disability or death resulting from occupational pneumoconiosis, as defined in subsection (d) of this section shall be treated and compensated as an injury by accident.

(d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment. The term “occupational pneumoconiosis” includes, but is not limited to, such diseases as silicosis, anthracosilicosis, coal worker’s pneumoconiosis, commonly known as black lung or miner’s asthma, silicotuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker’s pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated in this section meeting the definition of occupational pneumoconiosis set forth in this subsection.

(e) In determining the presence of occupational pneumoconiosis, X-ray evidence may be considered but shall not be accorded greater weight than any other type of evidence demonstrating occupational pneumoconiosis.

(f) For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease shall be considered to have been incurred in the course of or to have resulted from the emplo-
ment only if it is apparent to the rational mind, upon consider-
ation of all the circumstances: (1) That there is a direct causal
connection between the conditions under which work is
performed and the occupational disease; (2) that it can be seen
to have followed as a natural incident of the work as a result of
the exposure occasioned by the nature of the employment; (3)
that it can be fairly traced to the employment as the proximate
cause; (4) that it does not come from a hazard to which work-
men would have been equally exposed outside of the employ-
ment; (5) that it is incidental to the character of the business and
not independent of the relation of employer and employee; and
(6) that it appears to have had its origin in a risk connected with
the employment and to have flowed from that source as a
natural consequence, though it need not have been foreseen or
expected before its contraction: Provided, That compensation
shall not be payable for an occupational disease or death
resulting from the disease unless the employee has been
exposed to the hazards of the disease in the state of West
Virginia over a continuous period that is determined to be
sufficient, by rule of the board of managers, for the disease to
have occurred in the course of and resulting from the em-
ployee's employment. An application for benefits on account of
an occupational disease shall set forth the name of the employer
or employers and the time worked for each. The commission
may allocate to and divide any charges resulting from such
claim among the employers by whom the claimant was em-
ployed. The allocation shall be based upon the time and degree
of exposure with each employer.

(g) No award shall be made under the provisions of this
chapter for any occupational disease contracted prior to the first
day of July, one thousand nine hundred forty-nine. An em-
ployee shall be considered to have contracted an occupational
disease within the meaning of this subsection if the disease or
condition has developed to such an extent that it can be diag-
nosed as an occupational disease.
(h) Claims for occupational disease as defined in subsection (f) of this section, except occupational pneumoconiosis, shall be processed in like manner as claims for all other personal injuries.

(i) On or before the first day of January, two thousand four, workers' compensation commission shall adopt standards for the evaluation of claimants and the determination of a claimant's degree of whole body medical impairment in claims of carpal tunnel syndrome.


Every employee who sustains an injury subject to this chapter, or his or her representative, shall immediately on the occurrence of the injury or as soon thereafter as practicable give or cause to be given to the employer or any of the employer's agents a written notice of the occurrence of the injury, with like notice or a copy of the notice to the workers' compensation commission stating in ordinary language the name and address of the employer, the name and address of the employee, the time, place, nature and cause of the injury, and whether temporary total disability has resulted from the injury. The notice shall be given personally to the employer or any of the employer's agents, or may be sent by certified mail addressed to the employer at the employer's last known residence or place of business. The notice may be given to the workers' compensation commission by mail.

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

It is the duty of every employer to report to the commission every injury sustained by any person in his or her employ. The report shall be on forms prescribed by the commission and shall be made within five days of the employer's receipt of the employee's notice of injury, required by section one-a of this
article, or within five days after the employer has been notified by the commission that a claim for benefits has been filed on account of such injury, whichever is sooner, and, notwithstanding any other provision of this chapter to the contrary, the five-day period may not be extended by the commission, but the employer has the right to file a supplemental report at a later date. The employer’s report of injury shall include a statement as to whether or not, on the basis of the information available, the employer disputes the compensability of the injury or objects to the payment of temporary total disability benefits in connection with the injury. The statements by the employer shall not prejudice the employer’s right thereafter to contest the compensability of the injury, or to object to any subsequent finding or award, in accordance with article five of this chapter; but an employer’s failure to make timely report of an injury as required in this section, or statements in the report to the effect that the employer does not dispute the compensability of the injury or object to the payment of temporary total disability benefits for the injury, shall be considered to be a waiver of the employer’s right to object to any interim payment of temporary total disability benefits paid by the commission with respect to any period from the date of injury to the date of the commission’s receipt of any objection made to the interim payments by the employer.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission to collect payments improperly made.

(a) In any claim for benefits under this chapter, the workers’ compensation commission shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article and enter an order giving all parties immediate notice of the decision.
(1) The commission may enter an order conditionally approving the claimant’s application if the commission finds that obtaining additional medical evidence or evaluations or other evidence related to the issue of compensability would aid the commission in making a correct final decision. Benefits shall be paid during the period of conditional approval; however, if the final decision is one that rejects the claim, the payments shall be considered an overpayment. The commission or self-insured employer may only recover the amount of the overpayment as provided for in subsection (h) of this section.

(2) In making a determination regarding the compensability of a newly filed claim or upon a filing for the reopening of a prior claim pursuant to the provisions of section sixteen of this article based upon an allegation of recurrence, reinjury, aggravation or progression of the previous compensable injury or in the case of a filing of a request for any other benefits under the provisions of this chapter, the commission shall consider the date of the filing of the claim for benefits for a determination of the following:

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

(B) Whether the claimant received notice within sixty days of the filing that his or her employment position was to be eliminated, including, but not limited to, the claimant’s worksite, a layoff or the elimination of the claimant’s employment position;

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

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

(3) Any party may object to the order of the commission and obtain an evidentiary hearing as provided in section one, article five of this chapter: Provided, That if the claimant files a timely protest to the ruling of a self-insured employer denying the compensability of the claim, the office of judges shall provide a hearing on the protest on an expedited basis as determined by rule of the office of judges.

(b) Where it appears from the employer’s report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in section five of this article, the commission may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and the payment of the expenses provided for in subsection (a), section three of this article, relating to the injury, without waiting for the expiration of the thirty-day period during which objections may be filed to the findings as provided in section one, article five of this chapter. The commission shall enter an order commencing the payment of temporary total disability or medical benefits within fifteen days of receipt of either the employee’s or employer’s report of injury, whichever is received sooner, and also upon receipt of either a proper physician’s report or any other information necessary for a determination. The commission shall give to the parties immediate notice of any order granting temporary total disability or medical benefits. When an order granting temporary total disability benefits is made, the claimant’s return-to-work potential shall be assessed. The commission may schedule medical and vocational evaluation of
the claimant and assign appropriate personnel to expedite the
claimant's return to work as soon as reasonably possible.

(c) The commission may enter orders granting temporary
total disability benefits upon receipt of medical evidence
justifying the payment of the benefits. The commission may not
enter an order granting prospective temporary total disability
benefits for a period of more than ninety days: Provided, That
when the commission determines that the claimant remains
disabled beyond the period specified in the prior order granting
temporary total disability benefits, the commission shall enter
an order continuing the payment of temporary total disability
benefits for an additional period not to exceed ninety days and
shall give immediate notice to all parties of the decision.

(d) Upon receipt of the first report of injury in claim, the
commission shall request from the employer or employers any
wage information necessary for determining the rate of benefits
to which the employee is entitled. If an employer does not
furnish the commission with this information within fifteen
days from the date the commission received the first report of
injury in the case, the employee shall be paid temporary total
disability benefits for lost time at the rate the commission
obtains from reports made pursuant to subsection (b), section
two, article two of this chapter. If no wages have been reported,
the commission shall make the payments at the rate the com-
mission finds would be justified by the usual rate of pay for the
occupation of the injured employee. The commission shall
adjust the rate of benefits both retroactively and prospectively
upon receipt of proper wage information. The commission shall
have access to all wage information in the possession of any
state agency.

(e) Subject to the limitations set forth in section sixteen of
this article, upon a finding of the commission or a self-insured
employer that a claimant who has sustained a previous compen-
sable injury which has been closed by order, or by the claim-
ant's return to work, suffers further temporary total disability or
requires further medical or hospital treatment resulting from the
compensable injury, the commission or the self-insured
employer shall immediately commence the payment of tempo-
rary total disability benefits to the claimant in the amount
provided for in sections six and fourteen of this article, and the
expenses provided for in subsection (a), section three of this
article, relating to the disability, without waiting for the
expiration of the thirty-day period during which objections may
be filed. The commission or self-insured employer shall give
immediate notice to the parties of its decision.

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

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

(h) In the event that an employer files a timely objection to
any order of the division with respect to compensability, or any
order denying an application for modification with respect to
temporary total disability benefits, or with respect to those
expenses outlined in subsection (a), section three of this article,
the division shall continue to pay to the claimant such benefits
and expenses during the period of such disability. Where it is
subsequently found by the division that the claimant was not
entitled to receive such temporary total disability benefits or
expenses, or any part thereof, so paid, the division shall, when
the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment. When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in that case determines that the claimant was not entitled to the benefits or expenses, the amount of benefits or expenses is considered overpaid. For all awards made or nonawarded partial benefits paid the commission or self-insured employer may only recover the amount of overpaid benefits or expenses by withholding, in whole or in part, future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(i) In the event that the commission finds that, based upon the employer's report of injury, the claim is not compensable, the commission shall provide a copy of the employer's report to the claimant in addition to the order denying the claim.

(j) If a claimant is receiving benefits paid through a wage replacement plan, salary continuation plan or other benefit plan provided by the employer to which the employee has not contributed, and that plan does not provide an offset for temporary total disability benefits to which the claimant is also entitled under this chapter as a result of the same injury or disease, the employer shall notify the commission of the duplication of the benefits paid to the claimant. Upon receipt of the notice, the commission shall reduce the temporary total disability benefits provided under this chapter by an amount sufficient to ensure that the claimant does not receive monthly benefits in excess of the amount provided by the employer's plan or the temporary total disability benefit, whichever is greater: Provided, That this subsection does not apply to benefits being paid under the terms and conditions of a collective bargaining agreement.
§23-4-1d. Method and time of payments for permanent disability.

(a) If the commission makes an award for permanent partial or permanent total disability, the commission or self-insured employer shall start payment of benefits by mailing or delivering the amount due directly to the employee within fifteen days from the date of the award: Provided, That the commission may withhold payment of the portion of the award that is the subject of subsection (b) of this section until seventy-seven days have expired without an objection being filed.

(b) When the commission, self-insured employer, the office of judges or the workers' compensation board of review enters an order or provides notice granting the claimant a permanent total disability award and an objection or petition for appeal is filed by the employer or the commission, the commission or self-insured employer shall begin the payment of monthly permanent total disability benefits. However, any payment for a back period of benefits from the onset date of total permanent disability to the date of the award shall be limited to a period of twelve months of benefits. If, after all litigation is completed and the time for the filing of any further objections or appeals to the award has expired and the award of permanent total disability benefits is upheld, the claimant shall receive the remainder of benefits due to him or her based upon the onset date of permanent total disability that was finally determined.

(c) If the claimant is owed any additional payment of back permanent total disability benefits, the commission or self-insured employer shall not only pay the claimant the sum owed but shall also add thereto interest at the simple rate of six percent per annum from the date of the initial award granting the total permanent disability to the date of the final order upholding the award. In the event that an intermediate order directed an earlier onset date of permanent total disability than was found in the initial award, the interest-earning period for
that additional period shall begin upon the date of the intermediate award. Any interest payable shall be charged to the account of the employer or shall be paid by the employer if it has elected to carry its own risk.

(d) If a timely protest to the award is filed, as provided in section one or nine, article five of this chapter, the commission or self-insured employer shall continue to pay to the claimant benefits during the period of the disability unless it is subsequently found that the claimant was not entitled to receive the benefits, or any part thereof, in which event the commission shall, where the employer is a subscriber to the fund, credit the employer’s account with the amount of the overpayment. If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, the amount of benefit paid shall be considered overpaid. For all awards made or nonawarded partial benefits paid the commission or self-insured employer may only recover that amount by withholding, in whole or in part, as determined by the commission, future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(e) An award for permanent partial disability shall be made as expeditiously as possible and in accordance with the time frame requirements promulgated by the board of managers.

(f) If a claimant is receiving benefits paid through a retirement plan, wage replacement plan, salary continuation plan or other benefit plan provided by the employer to which the employee has not contributed, and that plan does not provide an offset for permanent total disability benefits to which the claimant is also entitled under this chapter as a result of the same injury or disease, the employer shall notify the commission of the duplication of the benefits paid to the claimant. Upon receipt of the notice, the commission shall
reduce the permanent total disability benefits provided under
this chapter by an amount sufficient to ensure that the claimant
does not receive monthly benefits in excess of the amount
provided by the employer's plan or the permanent total disabil-
ity benefit, whichever is greater: Provided, That this subsection
does not apply to benefits being paid under the terms and
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.

(a) Notwithstanding any provision of this code to the
contrary, no person shall be jurisdictionally entitled to tempo-
yrary total disability benefits for that period of time in excess of
three days during which that person is confined in a state
correctional facility or a county or regional jail: Provided, That
confinement shall not affect the claimant’s eligibility for
payment of expenses: Provided, however, That this subsection
is applicable only to injuries and diseases incurred prior to any
period of confinement. Upon release from confinement, the
payment of benefits for the remaining period of temporary total
disability shall be made if justified by the evidence and autho-
ized by order of the commission.

(b) Notwithstanding any provision of this code to the
contrary, no person confined in a state correctional facility or a
county or regional jail who suffers injury or a disease in the
course of and resulting from his or her work during the period
of confinement which work is imposed by the administration of
the state correctional facility or the county or regional jail and
is not suffered during the person’s usual employment with his
or her usual employer when not confined shall receive benefits
under the provisions of this chapter for the injury or disease.
§23-4-1g. Weighing of evidence.

(a) For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, resolution of any issue raised in administering this chapter shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. Under no circumstances will an issue be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party’s interests or position. If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant’s position will be adopted.

(b) Except as provided in subsection (a) of this section, a claim for compensation filed pursuant to this chapter must be decided on its merit and not according to any principle that requires statutes governing workers’ compensation to be liberally construed because they are remedial in nature. No such principle may be used in the application of law to the facts of a case arising out of this chapter or in determining the constitutionality of this chapter.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; “deliberate intention” defined.

(a) Notwithstanding anything contained in this chapter, no employee or dependent of any employee is entitled to receive any sum from the workers’ compensation fund, from a self-
insured employer, or otherwise under the provisions of this chapter, on account of any personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of the employee. Upon the occurrence of an injury which the employee asserts, or which reasonably appears to have, occurred in the course of and resulting from the employee’s employment, the employer may require the employee to undergo a blood test for the purpose of determining the existence or nonexistence of evidence of intoxication pursuant to rules for the administration of the test promulgated by the board of managers: Provided, That the employer must have a reasonable and good faith objective suspicion of the employee’s intoxication and may only test for the purpose of determining whether the person is intoxicated.

(b) For the purpose of this chapter, the commission may cooperate with the office of miners’ health, safety and training and the state division of labor in promoting general safety programs and in formulating rules to govern hazardous employments.

(c) If injury or death result to any employee from the deliberate intention of his or her employer to produce the injury or death, the employee, the widow, widower, child or dependent of the employee has the privilege to take under this chapter and has a cause of action against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable under this chapter.

(d) (1) It is declared that enactment of this chapter and the establishment of the workers’ compensation system in this chapter was and is intended to remove from the common law tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as expressly provided in this chapter and to establish a system which compensates even
though the injury or death of an employee may be caused by his
or her own fault or the fault of a coemployee; that the immunity
established in sections six and six-a, article two of this chapter
is an essential aspect of this workers' compensation system;
that the intent of the Legislature in providing immunity from
common lawsuit was and is to protect those immunized from
litigation outside the workers' compensation system except as
expressly provided in this chapter; that, in enacting the immu-
nity provisions of this chapter, the Legislature intended to
create a legislative standard for loss of that immunity of more
narrow application and containing more specific mandatory
elements than the common law tort system concept and
standard of willful, wanton and reckless misconduct; and that
it was and is the legislative intent to promote prompt judicial
resolution of the question of whether a suit prosecuted under the
asserted authority of this section is or is not prohibited by the
immunity granted under this chapter.

(2) The immunity from suit provided under this section and
under section six-a, article two of this chapter may be lost only
if the employer or person against whom liability is asserted
acted with "deliberate intention". This requirement may be
satisfied only if:

(i) It is proved that the employer or person against whom
liability is asserted acted with a consciously, subjectively and
deliberately formed intention to produce the specific result of
injury or death to an employee. This standard requires a
showing of an actual, specific intent and may not be satisfied by
allegation or proof of: (A) Conduct which produces a result that
was not specifically intended; (B) conduct which constitutes
negligence, no matter how gross or aggravated; or (C) willful,
wanton or reckless misconduct; or

(ii) The trier of fact determines, either through specific
findings of fact made by the court in a trial without a jury, or
through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(A) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(B) That the employer had a subjective realization and an appreciation of the existence of the specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by the specific unsafe working condition;

(C) That the specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of the employer, which statute, rule, regulation or standard was specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;

(D) That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C), inclusive, of this paragraph, the employer nevertheless thereafter exposed an employee to the specific unsafe working condition intentionally; and

(E) That the employee exposed suffered serious injury or death as a direct and proximate result of the specific unsafe working condition.

(iii) In cases alleging liability under the provisions of paragraph (ii) of this subdivision:

(A) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;
(B) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the court shall dismiss the action upon motion for summary judgment if it finds, pursuant to rule 56 of the rules of civil procedure that one or more of the facts required to be proved by the provisions of subparagraphs (A) through (E), inclusive, paragraph (ii) of this subdivision do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (A) through (E), inclusive, paragraph (ii) of this subdivision; and

(C) The provisions of this paragraph and of each subparagraph thereof are severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of this act and this code remain valid.

(e) The reenactment of this section in the regular session of the Legislature during the year one thousand nine hundred eighty-three does not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or accrued prior to the effective date of the 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.

(a) The workers' compensation commission shall establish and alter from time to time, as the commission determines appropriate, a schedule of the maximum reasonable amounts to be paid to health care providers, providers of rehabilitation services, providers of durable medical and other goods and providers of other supplies and medically related items or other persons, firms or corporations for the rendering of treatment or services to injured employees under this chapter. The commission also, on the first day of each regular session and also from time to time, as the commission may consider appropriate, shall submit the schedule, with any changes thereto, to the Legislature.

The commission shall disburse and pay from the fund for personal injuries to the employees who are entitled to the benefits under this chapter as follows:

(1) Sums for health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items as may be reasonably required. The commission shall determine that which is reasonably required within the meaning of this section in accordance with the guidelines developed by the health care advisory panel pursuant to section three-b of this article: Provided, That nothing in this section shall prevent the implementation of guidelines applicable to a particular type of treatment or service or to a particular type of injury before guidelines have been developed for other types of treatment or services or injuries: Provided, however, That any guidelines for utilization review which are developed
in addition to the guidelines provided for in section three-b of this article may be used by the commission until superseded by guidelines developed by the health care advisory panel pursuant to said section. Each health care provider who seeks to provide services or treatment which are not within any guideline shall submit to the commission specific justification for the need for the additional services in the particular case and the commission shall have the justification reviewed by a health care professional before authorizing the additional services. The commission may enter into preferred provider and managed care agreements.

(2) Payment for health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items authorized under this subsection may be made to the injured employee or to the person, firm or corporation who or which has rendered the treatment or furnished health care services, rehabilitation services, durable medical or other goods or other supplies and items, or who has advanced payment for them, as the commission considers proper, but no payments or disbursements shall be made or awarded by the commission unless duly verified statements on forms prescribed by the commission have been filed with the commission within six months after the rendering of the treatment or the delivery of such goods, supplies or items or within ninety days of a subsequent compensability ruling if a claim is initially rejected: Provided, That no payment under this section shall be made unless a verified statement shows no charge for or with respect to the treatment or for or with respect to any of the items specified in this subdivision has been or will be made against the injured employee or any other person, firm or corporation. When an employee covered under the provisions of this chapter is injured in the course of and as a result of his or her employment and is accepted for health care services, rehabilitation services, or the provision of durable medical or other goods or other supplies or medically related items, the person, firm or
corporation rendering the treatment may not make any charge or charges for the treatment or with respect to the treatment against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commission’s schedule.

(3) Any pharmacist filling a prescription for medication for a workers’ compensation claimant shall dispense a generic brand of the prescribed medication if a generic brand exists. If a generic brand does not exist, the pharmacist may dispense the name brand. In the event that a claimant wishes to receive the name brand medication in lieu of the generic brand, the claimant may receive the name brand medication but, in that event, the claimant is personally liable for the difference in costs between the generic brand medication and the brand name medication.

(4) In the event that a claimant elects to receive health care services from a health care provider from outside of the state of West Virginia and if that health care provider refuses to abide by and accept as full payment the reimbursement made by the workers’ compensation commission pursuant to the schedule of maximum reasonable amounts of fees authorized by subsection (a) of this section, with the exceptions noted below, the claimant is personally liable for the difference between the scheduled fee and the amount demanded by the out-of-state health care provider.

(A) In the event of an emergency where there is an urgent need for immediate medical attention in order to prevent the death of a claimant or to prevent serious and permanent harm to the claimant, if the claimant receives the emergency care from an out-of-state health care provider who refuses to accept as full payment the scheduled amount, the claimant is not personally liable for the difference between the amount
scheduled and the amount demanded by the health care provider. Upon the claimant’s attaining a stable medical condition and being able to be transferred to either a West Virginia health care provider or an out-of-state health care provider who has agreed to accept the scheduled amount of fees as payment in full, if the claimant refuses to seek the specified alternative health care providers, he or she is personally liable for the difference in costs between the scheduled amount and the amount demanded by the health care provider for services provided after attaining stability and being able to be transferred.

(B) In the event that there is no health care provider reasonably near to the claimant’s home who is qualified to provide the claimant’s needed medical services who is either located in the state of West Virginia or who has agreed to accept as payment in full the scheduled amounts of fees, the commission, upon application by the claimant, may authorize the claimant to receive medical services from another health care provider. The claimant is not personally liable for the difference in costs between the scheduled amount and the amount demanded by the health care provider.

(b) (1) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental or hospital service within such hospital for the compensable injury. Any employer violating this subsection is liable in damages to the employer’s employees as provided in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
punished by a fine not less than one hundred dollars nor more
than one thousand dollars or by imprisonment not exceeding
one year, or both.

(2) The provisions of this subsection shall not prohibit an
employer from participating in a managed health care plan,
including, but not limited to, a preferred provider organization
or program or a health maintenance organization or managed
care organization or other medical cost containment relation-
ship with the providers of medical, hospital or other health care.
An employer that provides a managed health care plan ap-
proved by the commission for its employees may require an
injured employee to use health care providers authorized by the
managed health care plan for care and treatment of his or her
compensable injuries. If the employer does not provide a
managed health care plan or program, the claimant may select
his or her initial health care provider for treatment of a compen-
sable injury or disease, except as provided under subdivision (3)
of this subsection. If a claimant wishes to change his or her
health care provider and if his or her employer has established
and maintains a managed health care plan, the claimant shall
select a new health care provider through the managed health
care plan. A claimant who has used the providers under the
employer's managed health care plan may select a health care
provider outside the employer's plan for treatment of the
compensable injury or disease if the employee receives written
approval from the commission to do so and the approval is
given pursuant to criteria established by rule of the commission.

(3) If the commission enters into an agreement which has
been approved by the board of managers with a managed health
care plan, including, but not limited to, a preferred provider
organization or program, a health maintenance organization or
managed care organization or other health care delivery
organization or organizations or other medical cost containment
relationship with the providers of medical, hospital or other health care, then:

(A) If an injured employee’s employer does not provide a managed health care plan approved by the commission for its employees as described in subdivision (2) of this subsection, the commission may require the employee to use health care providers authorized by the commission’s managed health care plan for care and treatment of his or her compensable injuries; and

(B) If a claimant seeks to change his or her initial choice of health care provider where neither the employer or the commission had an approved health care management plan at the time the initial choice was made, and if the claimant’s employer does not provide access to such a plan as part of the employer’s general health insurance benefit, then the claimant shall be provided with a new health care provider from the commission’s managed health care plan available to him or her.

(c) When an injury has been reported to the commission by the employer without protest, the commission or self-insured employer may pay, within the maximum amount provided by schedule established under this section, bills for health care services without requiring the injured employee to file an application for benefits.

(d) The commission or self-insured employer shall provide for the replacement of artificial limbs, crutches, hearing aids, eyeglasses and all other mechanical appliances provided in accordance with this section which later wear out, or which later need to be refitted because of the progression of the injury which caused the devices to be originally furnished, or which are broken in the course of and as a result of the employee’s employment. The commission or self-insured employer shall
pay for these devices, when needed, notwithstanding any time
limits provided by law.

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

(f) The commission may engage in and contract for medical
cost containment programs, pharmacy benefits management
programs, medical case management programs and utilization
review programs. Payments for these programs shall be made
from the workers' compensation fund. Any order issued
pursuant to the program shall be interlocutory in nature until an
objecting party has exhausted all review processes provided for
by the commission.

(g) Notwithstanding the provisions of this section, the
commission may establish fee schedules, make payments and
take other actions required or allowed pursuant to article
twenty-nine-d, chapter sixteen of this code.

§23-4-3b. Creation of health care advisory panel.

(a) The commission shall establish a health care advisory
panel consisting of representatives of the various branches and
specialties among health care providers in this state. There shall
be a minimum of five members of the health care advisory
panel who shall receive reasonable compensation for their
services and reimbursement for reasonable actual expenses.
Each member of this panel shall be provided appropriate
professional or other liability insurance, without additional
premium, by the state board of risk and insurance management
created pursuant to article twelve, chapter twenty-nine of this
code. The panel shall:

(1) Establish guidelines for the health care which is
reasonably required for the treatment of the various types of
injuries and occupational diseases within the meaning of section
three of this article;

(2) Establish protocols and procedures for the performance
of examinations or evaluations performed by physicians or
medical examiners pursuant to sections seven-a and eight of
this article;

(3) Assist the commission in establishing guidelines for the
evaluation of the care provided by health care providers to
injured employees for purposes of section three-c of this article;

(4) Assist the commission in establishing guidelines
regarding the anticipated period of disability for the various
types of injuries pursuant to subsection (b), section seven-a of
this article; and

(5) Assist the commission in establishing appropriate
professional review of requests by health care providers to
exceed the guidelines for treatment of injuries and occupational
diseases established pursuant to subdivision (1) of this section.

(b) In addition to the requirements of subsection (a) of this
section, on or before the thirty-first day of December, two
thousand three, the board of managers shall promulgate a rule
establishing the process for the medical management of claims
and awards of disability which includes, but is not limited to,
reasonable and standardized guidelines and parameters for
appropriate treatment, expected period of time to reach maxi-
mum medical improvement and range of permanent partial
disability awards for common injuries and diseases or, in the
alternative, which incorporates by reference the medical and
disability management guidelines, plan or program being
utilized by the commission for the medical and disability
management of claims, with the requirements, standards,
parameters and limitations of such guidelines, plan or program
§23-4-3c. Suspension or termination of providers of health care.

(a) The commission may suspend for up to three years or permanently terminate the right of any health care provider, including a provider of rehabilitation services within the meaning of section nine of this article, to obtain payment for services rendered to injured employees:

(1) If the commission finds that the health care provider is regularly providing to injured employees health care that is excessive, medically unreasonable or unethical, which shall include abusing the workers’ compensation system in the treatment provided to injured employees or in its billing practices;

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

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

(4) If the commission determines that the health care provider has been convicted of any crime in relation to his or her practice, or any felony; or

(5) If the commission determines that the health care provider has made medically unsupported recommendations regarding a percentage of disability or has prescribed medically
unsupported treatment including medication. The rules promulgated under this section shall establish criteria for determining whether recommendations or treatment are medically unsupported.

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

(b) Upon the determination by the executive director that there is probable cause to believe that a health care provider should be suspended or terminated pursuant to this section, the executive director shall provide the health care provider with written notice stating the nature of the charges against the health care provider and the time and place of a hearing. Upon issuance of the notice and due consideration of the executive director's fiduciary duties, the executive director may immediately suspend payment to the health care provider pending the final order of suspension or termination. The health care provider shall appear to show cause why the health care provider's right to receive payment under this chapter should not be suspended or terminated. At the hearing the health care provider shall be afforded an opportunity to review the evidence, to cross-examine the witnesses, and present testimony and enter evidence in support of its position. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. The hearing may be conducted by the executive director or a hearing officer appointed by the executive director. The executive director or hearing officer has the power to subpoena witnesses, papers, records, documents and other data and things in connection with the proceeding under this subsection and to administer oaths or affirmations in the hearing. If, after reviewing the record of the hearing, the executive director determines that the
right of the health care provider to obtain payment under this article should be suspended for a specified period of time or should be permanently terminated, the executive director shall issue a final order suspending or terminating the right of the health care provider to obtain payment for services under this article. The order shall set forth findings of fact and conclusions of law in support of the decision. The order shall be mailed to the health care provider by certified mail, return receipt requested. Any appeal by the health care provider shall be brought in the circuit court of Kanawha County or in the county in which the provider's principal place of business is located. The scope of the court's review of the final order shall be as provided in section four, article five, chapter twenty-nine-a of this code. The provider may be suspended or terminated, based upon the final order of the executive director or hearing officer, pending final disposition of any appeal. The final order may be stayed by the circuit court after hearing, but shall not be stayed in or as a result of any ex parte proceeding. If the health care provider does not appeal the final order within thirty days, it is final.

(c) No payment shall be made to a health care provider or to an injured employee for services provided by a health care provider after the effective date of a final order terminating or suspending the health care provider: Provided, That nothing in this subsection shall prohibit payment by the executive director or self-insured employer to a suspended or terminated health care provider for medical services rendered where the medical services were rendered to an injured employee in an emergency situation. The suspended or terminated provider may not make any charge or charges for any services provided against the injured employee unless the injured employee, before any services are rendered, is given notice by the provider in writing that the provider does not participate in the workers' compensation program and that the injured employee will be solely responsible for all payments to the provider and unless the
injured employee also signs a written consent, before any
services are rendered, to make payment directly and to waive
any right to reimbursement from the executive director or the
self-insured employer. The written consent and waiver signed
by the injured employee shall be filed by the provider with the
executive director and shall be made a part of the claim file.

(d) The executive director shall notify each claimant, whose
duly authorized treating physician or other health care provider
has been suspended or terminated pursuant to this section, of
the suspension or termination of the provider’s rights to obtain
payment under this chapter and shall assist the claimant in
arranging for transfer of his or her care to another physician or
provider.

(e) Each suspended or terminated provider shall post in the
provider’s public waiting area or areas a written notice, in the
form required by the executive director, of the suspension or
termination of the provider’s rights to obtain payment under
this chapter.

(f) A suspended provider may apply for reinstatement at the
end of the term of suspension.

(g) The board of managers shall promulgate rules for the
purpose of implementing this section.

§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.

(a) In case the personal injury causes death, reasonable
funeral or cemetery expense, in an amount to be fixed, from
time to time, by the commission shall be paid from the fund,
payment to be made to the persons who have furnished the
services and supplies, or to the persons who have advanced
payment for the services and supplies, as the commission may
determine proper, in addition to any award made to the em-
ployee’s dependents.

(b) A funeral director or cemeterian, or any person who
furnished the services and supplies associated with the funeral
or cemetery expenses, or a person who has advanced payment
for the services and supplies, is prohibited from making any
charge or charges against the employee’s dependents for funeral
expenses which would result in a total charge for funeral
expenses in excess of the amount fixed by the commission
unless:

(1) The person seeking funeral expenses notifies, in writing
and prior to the rendering of any service, the employee’s
dependent as to the exact cost of the service and the exact
amount the employee’s dependent would be responsible for
paying in excess of the amount fixed by the commission; and

(2) The person seeking funeral expenses secures, in writing
and prior to the rendering of any service, consent from the
employee’s dependent that he or she will be responsible to
make payment for the amount in excess of the amount fixed by
the commission.

(c) Any person who knowingly and willfully seeks or
receives payment of funeral expenses in excess of the amount
fixed by the commission without satisfying both of the require-
ments of subsection (b) of this section is guilty of a misde-
meanor and, upon conviction thereof, shall be fined three
thousand dollars or confined in a county or regional jail for a
definite term of confinement of twelve months, or both.

§23-4-5. Benefits for first three days after injury.

If the period of disability does not last longer than three
days from the day the employee leaves work as the result of the
injury, no award shall be allowed, except the disbursements
provided for in the two next preceding sections, but if the period of disability lasts longer than seven days from the day the employee leaves work as a result of the injury, an award shall be allowed for the first three days of such disability.

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

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

(a) The terms “average weekly wage earnings, wherever earned, of the injured employee, at the date of injury” and “average weekly wage in West Virginia”, as used in this chapter, have the meaning and shall be computed as set forth in section fourteen of this article except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(b) For all awards made on and after the effective date of the amendment and reenactment of this section during the year two thousand three, if the injury causes temporary total disability, the employee shall receive during the continuance of the disability a maximum weekly benefit to be computed on the basis of sixty-six and two-thirds percent of the average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, not to exceed one hundred percent of the average weekly wage in West Virginia: Provided, That in no event shall an award for temporary total disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia: Provided, however, in the case of a claimant whose award was granted prior to the effective date of the amendment and reenactment of this section during the year two thousand three, the maximum benefit rate shall be the rate applied under the prior enactment of this subsection which was
in effect at the time the injury occurred. The minimum weekly
benefits paid under this subdivision shall not be less than thirty-
three and one-third percent of the average weekly wage in West
Virginia, except as provided in sections six-d and nine of this
article. In no event, however, shall the minimum weekly
benefits exceed the level of benefits determined by use of the
applicable federal minimum hourly wage: Provided further,
That any claimant receiving permanent total disability benefits,
permanent partial disability benefits or dependents’ benefits
prior to the first day of July, one thousand nine hundred ninety-
four, shall not have his or her benefits reduced based upon the
requirement in this subdivision that the minimum weekly
benefit shall not exceed the applicable federal minimum hourly
wage.

(c) Subdivision (b) of this section is limited as follows:
Aggregate award for a single injury causing temporary disabil-
ity shall be for a period not exceeding two hundred eight weeks;
aggregate award for a single injury for which an award of
temporary total disability benefits is made on or after the
effective date of the amendment and reenactment of this section
in the year two thousand three shall be for a period not exceed-
ing one hundred four weeks. Notwithstanding any other
provision of this subdivision to the contrary, no person may
receive temporary total disability benefits under an award for a
single injury for a period exceeding one hundred four weeks
from the effective date of the amendment and reenactment of
this section in the year two thousand three.

(d) For all awards of permanent total disability benefits that
are made on or after the second day of February, one thousand
nine hundred ninety-five, including those claims in which a
request for an award was pending before the division or which
were in litigation but not yet submitted for a decision, then
benefits shall be payable until the claimant attains the age
necessary to receive federal old age retirement benefits under
the provisions of the Social Security Act, 42 U. S. C. §401 and
402, in effect on the effective date of this section. The claimant
shall be paid benefits so as not to exceed a maximum benefit of
sixty-six and two-thirds percent of the claimant’s average
weekly wage earnings, wherever earned, at the time of the date
of injury not to exceed one hundred percent of the average
weekly wage in West Virginia. The minimum weekly benefits
paid under this section shall be as is provided for in subdivision
(b) of this section. In all claims in which an award for perma-
nent total disability benefits was made prior to the second day
of February, one thousand nine hundred ninety-five, the awards
shall continue to be paid at the rate in effect prior to the
effective date of the amendment and reenactment of this section
in the year two thousand three: Provided, That the provisions of
sections one through eight, inclusive, article four-a of this
chapter shall be applied thereafter to all prior awards that were
previously subject to its provisions. A single or aggregate
permanent disability of eighty-five percent or more entitles the
employee to a rebuttable presumption of a permanent total
disability for the purpose of paragraph (2), subdivision (n) of
this section: Provided, however, That the claimant must also be
at least fifty percent medically impaired upon a whole body
basis or has sustained a thirty-five percent statutory disability
pursuant to the provisions of subdivision (f) of this section. The
presumption may be rebutted if the evidence establishes that the
claimant is not permanently and totally disabled pursuant to
subdivision (n) of this section. Under no circumstances may the
commission grant an additional permanent disability award to
a claimant receiving a permanent total disability award:
Provided further, That if any claimant thereafter sustains
another compensable injury and has permanent partial disability
resulting from the injury, the total permanent disability award
benefit rate shall be computed at the highest benefit rate
justified by any of the compensable injuries.

(e) (1) For all awards made on or after the effective date of
the amendment and reenactment of this section during the year
two thousand three, if the injury causes permanent disability
less than permanent total disability, the percentage of disability
to total disability shall be determined and the award computed on the basis of four weeks' compensation for each percent of disability determined at the maximum or minimum benefit rates as follows: Sixty-six and two-thirds percent of the average weekly wage earnings, wherever earned, of the injured employee at the date of injury, not to exceed seventy percent of the average weekly wage in West Virginia: Provided, That in no event shall an award for permanent partial disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia: Provided, however, That in the case of a claimant whose award was granted prior to the effective date of the amendment and reenactment of this section during the year two thousand three the maximum benefit rate shall be the rate applied under the prior enactment of this section which was in effect at the time the injury occurred.

(2) If a claimant is released by his or her treating physician to return to work at the job he or she held before the occupational injury occurred and if the claimant's preinjury employer does not offer the preinjury job or a comparable job to the employee when a position is available to be offered, the award for the percentage of partial disability shall be computed on the basis of six weeks of compensation for each percent of disability.

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

(f) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined by the percentage of disability, specified in the following table:

The loss of a great toe shall be considered a ten percent disability.
The loss of a great toe (one phalanx) shall be considered a five percent disability.

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

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

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

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

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

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

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

The loss of thigh at hip joint shall be considered a sixty percent disability.

The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of a little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.
The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index fingers shall be considered a thirty-two percent disability.

The loss of index and middle fingers shall be considered a twenty percent disability.

The loss of middle and ring fingers shall be considered a fifteen percent disability.

The loss of ring and little fingers shall be considered a ten percent disability.

The loss of thumb, index and middle fingers shall be considered a forty percent disability.

The loss of index, middle and ring fingers shall be considered a thirty percent disability.

The loss of middle, ring and little fingers shall be considered a twenty percent disability.
The loss of four fingers shall be considered a thirty-two percent disability.

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

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

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

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

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

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

If a claimant sustains a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision or dies from sickness or noncompensable injury before the commission makes the proper award for the injury, the commission shall make the award to the claimant's dependents as defined in this chapter, if any; the payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any surviving spouse of the claimant after his or her remarriage and that this liability shall not accrue to the estate of the
claimant and is not subject to any debts of, or charges against, the estate.

(g) If a claimant to whom has been made a permanent partial award dies from sickness or noncompensable injury, the unpaid balance of the award shall be paid to claimant’s dependents as defined in this chapter, if any; the payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any surviving spouse of the claimant after his or her remarriage, and that this liability shall not accrue to the estate of the claimant and is not subject to any debts of, or charges against, such estate.

(h) For the purposes of this chapter, a finding of the occupational pneumoconiosis board has the force and effect of an award.

(i) For the purposes of this chapter, with the exception of those injuries provided for in subdivision (f) of this section and in section six-b of this article, the degree of permanent disability other than permanent total disability shall be determined exclusively by the degree of whole body medical impairment that a claimant has suffered. For those injuries provided for in subdivision (f) of this section and section six-b of this article, the degree of disability shall be determined exclusively by the provisions of said subdivision and said section. The occupational pneumoconiosis board created pursuant to section eight-a of this article shall premise its decisions on the degree of pulmonary function impairment that claimants suffer solely upon whole body medical impairment. The workers’ compensation commission shall adopt standards for the evaluation of claimants and the determination of a claimant’s degree of whole body medical impairment. Once the degree of medical impairment has been determined, that degree of impairment shall be the degree of permanent partial disability that shall be awarded
to the claimant. This subdivision is applicable to all injuries incurred and diseases with a date of last exposure on or after the second day of February, one thousand nine hundred ninety-five, to all applications for an award of permanent partial disability made on and after that date and to all applications for an award of permanent partial disability that were pending before the commission or pending in litigation but not yet submitted for decision on and after that date. The prior provisions of this subdivision remain in effect for all other claims.

(j) From a list of names of seven persons submitted to the executive director by the health care advisory panel, the executive director shall appoint an interdisciplinary examining board consisting of five members to evaluate claimants, including by examination if the board elects. The board shall be composed of three qualified physicians with specialties and expertise qualifying them to evaluate medical impairment and two vocational rehabilitation specialists who are qualified to evaluate the ability of a claimant to perform gainful employment with or without retraining. One member of the board shall be designated annually as chairperson by the executive director. The term of office of each member of the board shall be six years and until his or her successor has been appointed and has qualified. Any member of the board may be appointed to any number of terms. Any two physician members and one vocational rehabilitation specialist member shall constitute a quorum for the transaction of business. The executive director, from time to time, shall fix the compensation to be paid to each member of the board, and the members are also entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. The board shall perform the duties and responsibilities assigned by the provisions of this chapter, consistent with the administrative policies developed by the executive director with the approval of the board of managers.
(1) The executive director shall establish requirements for the proper completion and support for an application for permanent total disability benefits within an existing or a new rule no later than the first day of January, two thousand four. Upon adoption of the rule by the board of managers, no issue of permanent total disability may be referred to the interdisciplin- ary examining board unless a properly completed and supported application for permanent total disability benefits has been first filed with the commission. Prior to the referral of any issue to the interdisciplinary examining board, the commission shall conduct examinations of the claimant that it finds necessary and obtain all pertinent records concerning the claimant’s medical history and reports of examinations and forward them to the board at the time of the referral. The commission shall provide adequate notice to the employer of the filing of the request for a permanent total disability award and the employer shall be granted an appropriate period in which to respond to the request. The claimant and the employer may furnish all pertinent information to the board and shall furnish to the board any information requested by the board. The claimant and the employer may each submit no more than one report and opinion regarding each issue present in a given claim. The employer may have the claimant examined by medical specialists and vocational rehabilitation specialists. Provided, That the employer is entitled to only one examination on each issue present in a given claim. Any additional examinations must be approved by the commission and shall be granted only upon a showing of good cause. The reports from all employer-con- ducted examinations must be filed with the board and served upon the claimant. The board may request that those persons who have furnished reports and opinions regarding a claimant provide it with additional information considered necessary by the board. Both the claimant and the employer, as well as the commission, may submit reports from experts challenging or supporting the other reports in the record regardless of whether
or not the expert examined the claimant or relied solely upon
the evidence of record.

(2) If the board or a quorum of the board elects to examine
a claimant, the individual members shall conduct any examina-
tions that are pertinent to each of their specialties. If a claim
presents an issue beyond the expertise of the board, the board
may obtain advice or evaluations by other specialists. In
addition, if the board of managers determines that the number
of applications pending before the interdisciplinary examining
board has exceeded the level at which the board can review and
make recommendations within a reasonable time, the board of
managers may authorize the executive director to appoint any
additional members to the board that are necessary to reduce the
backlog of applications. The additional members shall be
recommended by the health care advisory panel. The executive
director may make any appointments he or she chooses from
the recommendations. The additional board members shall not
serve a set term but shall serve until the board of managers
determines that the number of pending applications has been
reduced to an acceptable level.

(3) Referrals to the board shall be limited to matters related
to the determination of permanent total disability under the
provisions of subdivision (n) of this section and to questions
related to medical cost containment, utilization review deci-
sions and managed care decisions arising under section three of
this article.

(4) In the event the board members elect to examine a
claimant, the board shall prepare a report stating the tests,
examinations, procedures and other observations that were
made, the manner in which each was conducted and the results
of each. The report shall state the findings made by the board
and the reasons for the findings. Copies of the reports of all
examinations made by the board shall be served upon the
parties and the commission. Each shall be given an opportunity to respond in writing to the findings and conclusions stated in the reports.

(5) The board shall state its initial recommendations to the commission in writing with an explanation for each recommendation setting forth the reasons for each. The recommendations shall be served upon the parties and the commission and each shall be afforded a thirty-day opportunity to respond in writing to the board regarding the board’s recommendations. The board shall review any responses and issue its final recommendations. The final recommendations shall be effectuated by the entry of an appropriate order by the commission. For all awards for permanent total disability where the claim was filed on or after the effective date of the amendment and reenactment of this section in the year two thousand three, the commission shall establish the date of onset of the claimant’s permanent total disability as the date when a properly completed and supported application for permanent total disability benefits as prescribed in subdivision (1) of this subsection that results in a finding of permanent total disability was filed with the commission: Provided, That upon notification of the commission by a claimant or his or her representative that the claimant seeks to be evaluated for permanent total disability, the commission shall send the claimant or his or her representative the proper application form. The commission shall set time limits for the return of the application. A properly completed and supported application returned within the time limits set by the commission shall be treated as if received on the date the commission was notified the claimant was seeking evaluation for permanent total disability: Provided, however, That notwithstanding any other provision of this section to the contrary, the onset date may not be sooner than the date upon which the claimant meets the percentage thresholds of prior permanent partial disability that are established by subsection (n) of this section as a
prerequisite to the claimant’s qualification for consideration for a permanent total disability award.

(6) Except as noted below, objections pursuant to section one, article five of this chapter to any order shall be limited in scope to matters within the record developed before the workers’ compensation commission and the board and shall further be limited to the issue of whether the board properly applied the standards for determining medical impairment, if applicable, and the issue of whether the board’s findings are clearly wrong in view of the reliable, probative and substantial evidence on the whole record. If either party contends that the claimant’s condition has changed significantly since the review conducted by the board, the party may file a motion with the administrative law judge, together with a report supporting that assertion. Upon the filing of the motion, the administrative law judge shall cause a copy of the report to be sent to the examining board asking the board to review the report and provide comments if the board chooses within sixty days of the board’s receipt of the report. The board may either supply comments or, at the board’s discretion, request that the claim be remanded to the board for further review. If remanded, the claimant is not required to submit to further examination by the employer’s medical specialists or vocational rehabilitation specialists. Following the remand, the board shall file its recommendations with the administrative law judge for his or her review. If the board elects to respond with comments, the comments shall be filed with the administrative law judge for his or her review. Following the receipt of either the board’s recommendations or comments, the administrative law judge shall issue a written decision ruling upon the asserted change in the claimant’s condition. No additional evidence may be introduced during the review of the objection before the office of judges or elsewhere on appeal: Provided, That each party and the commission may submit one written opinion on each issue pertinent to a given claim based upon a review of the evidence of record either
challenging or defending the board's findings and conclusions. Thereafter, based upon the evidence of record, the administrative law judge shall issue a written decision containing his or her findings of fact and conclusions of law regarding each issue involved in the objection.

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

(l) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either temporary total or permanent partial, under this section shall be payable only to the injured employee and the right to the compensation shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his or her death, if he or she had lived, shall be paid to the dependents of the injured employee if there are any dependents at the time of death.

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

Loss of both eyes or the sight thereof.

Loss of both hands or the use thereof.

Loss of both feet or the use thereof.

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

(n) (1) Other than for those injuries specified in subdivision (m) of this section, in order to be eligible to apply for an award of permanent total disability benefits for all injuries incurred
and all diseases, including occupational pneumoconioses, regardless of the date of last exposure, on and after the effective date of the amendment and reenactment of this section during the year two thousand three a claimant: (A) Must have been awarded the sum of fifty percent in prior permanent partial disability awards; (B) must have suffered a single occupational injury or disease which results in a finding by the commission that the claimant has suffered a medical impairment of fifty percent; or (C) has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. Upon filing an application, the claim will be reevaluated by the examining board pursuant to subdivision (i) of this section to determine if the claimant has suffered a whole body medical impairment of fifty percent or more resulting from either a single occupational injury or occupational disease or a combination of occupational injuries and occupational diseases or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. A claimant whose prior permanent partial disability awards total eighty-five percent or more shall also be examined by the board and must be found to have suffered a whole body medical impairment of fifty percent in order for his or her request to be eligible for further review. The examining board shall review the claim as provided for in subdivision (j) of this section. If the claimant has not suffered whole body medical impairment of at least fifty percent or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, the request shall be denied. Upon a finding that the claimant has a fifty percent whole body medical impairment or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, the review of the application continues as provided for in the following paragraph of this subdivision. Those claimants whose prior permanent partial disability awards total eighty-five percent or more and who have been found to have a whole body medical
impairment of at least fifty percent or have sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section are entitled to the rebuttable presumption created pursuant to subdivision (d) of this section for the remaining issues in the request.

(2) For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities which can be acquired or which are comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. The comparability of preinjury income to post-disability income will not be a factor in determining permanent total disability. Geographic availability of gainful employment within a driving distance of seventy-five miles from the residence of the employee or within the distance from the residence of the employee to his or her preinjury employment, whichever is greater, will be a factor in determining permanent total disability. For any permanent total disability award made after the amendment and reenactment of this section in the year two thousand three, permanent total disability benefits shall cease at age seventy years. In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three of this chapter shall be considered once they are effective.

(3) In the event that a claimant, who has been found to have at least a fifty percent whole body medical impairment or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, is denied an award of permanent total disability benefits pursuant to this subdivision and accepts and continues to work at a lesser paying job than he or she previously held, the claimant is
eligible, notwithstanding the provisions of section nine of this article, to receive temporary partial rehabilitation benefits for a period of four years. The benefits shall be paid at the level necessary to ensure the claimant's receipt of the following percentages of the average weekly wage earnings of the claimant at the time of injury calculated as provided in this section and sections six-d and fourteen of this article:

(A) Eighty percent for the first year;

(B) Seventy percent for the second year;

(C) Sixty percent for the third year; and

(D) Fifty percent for the fourth year: Provided, That in no event shall the benefits exceed one hundred percent of the average weekly wage in West Virginia. In no event shall the benefits be subject to the minimum benefit amounts required by the provisions of subdivision (b) of this section.

(4) Notwithstanding any provision of this subsection, subsection (d) of this section or any other provision of this code to the contrary, on any claim filed on or after the effective date of the amendment and reenactment of this section in the year two thousand three:

(A) No percent of whole body medical impairment existing as the result of carpal tunnel syndrome for which a claim has been made under this chapter may be included in the aggregation of permanent disability under the provisions of this subsection or subsection (d) of this section; and

(B) No percent of whole body medical impairment existing as the result of any occupational disease, the diagnosis of which is based solely upon symptoms rather than specific, objective and measurable medical findings, and for which a claim has been made under this chapter may be included in the aggrega-
§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability is determined by the degree of medical impairment that is found by the occupational pneumoconiosis board. The commission shall enter an order setting forth the findings of the occupational pneumoconiosis board with regard to whether the claimant has occupational pneumoconiosis and the degree of medical impairment, if any, resulting therefrom. That order is the final decision of the commission for purposes of section one, article five of this chapter. If a decision is objected to, the office of judges shall affirm the decision of the occupational pneumoconiosis board made following hearing unless the decision is clearly wrong in
view of the reliable, probative and substantial evidence on the whole record. Compensation is paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n), section six of this article: Provided, That for any employee who applies for occupational pneumoconiosis benefits whose award was granted on or after the effective date of the amendment and reenactment of this section during the year two thousand three, there shall be no permanent partial disability awarded based solely upon a diagnosis of occupational pneumoconiosis, it being the intent of the Legislature to eliminate any permanent partial disability awards for occupational pneumoconiosis without a specific finding of measurable impairment.

If the employee dies from occupational pneumoconiosis, the benefits shall be as provided for in section ten of this article; as to the benefits sections eleven to fourteen, inclusive, of this article apply.

In cases of permanent disability or death due to occupational pneumoconiosis, as defined in section one of this article, accompanied by active tuberculosis of the lungs, compensation shall be payable as for disability or death due to occupational pneumoconiosis alone.

The provisions of section sixteen, article four of this chapter and sections two, three, four and five, article five of this chapter providing for the further adjustment of claims are applicable to the claim of any claimant who receives a permanent partial disability award for occupational pneumoconiosis.

§23-4-6b. Occupational hearing loss claims.

(a) In all claims for occupational hearing loss caused by either a single incident of trauma or by exposure to hazardous
noise in the course of and resulting from employment, the
degree of permanent partial disability, if any, shall be deter-
mined in accordance with the provisions of this section and
awards made in accordance with the provisions of section six of
this article.

(b) The percent of permanent partial disability for a
monaural hearing loss shall be computed in the following
manner:

(1) The measured decibel loss of hearing due to injury at
the sound frequencies of five hundred, one thousand, two
thousand and three thousand hertz shall be determined for the
injured ear and the total shall be divided by four to ascertain the
average decibel loss;

(2) The percent of monaural hearing impairment for the
injured ear shall be calculated by multiplying by one and six-
tenths percent the difference by which the aforementioned
average decibel loss exceeds twenty-seven and one-half
decibels, up to a maximum of one hundred percent hearing
impairment, which maximum is reached at ninety decibels; and

(3) The percent of monaural hearing impairment obtained
shall be multiplied by twenty-two and one-half to ascertain the
degree of permanent partial disability.

(c) The percent of permanent partial disability for a binaural
hearing loss shall be computed in the following manner:

(1) The measured decibel loss of hearing due to injury at
the sound frequencies of five hundred, one thousand, two
thousand and three thousand hertz is determined for each ear
and the total for each ear shall be divided by four to ascertain
the average decibel loss for each ear;
(2) The percent of hearing impairment for each ear is calculated by multiplying by one and six-tenths percent the difference by which the aforementioned average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels;

(3) The percent of binaural hearing impairment shall be calculated by multiplying the smaller percentage (better ear) by five, adding this figure to the larger percentage (poorer ear) and dividing the sum by six; and

(4) The percent of binaural hearing impairment obtained shall be multiplied by fifty-five to ascertain the degree of permanent partial disability.

(d) No permanent partial disability benefits shall be granted for tinnitus, psychogenic hearing loss, recruitment or hearing loss above three thousand hertz.

(e) An additional amount of permanent partial disability shall be granted for impairment of speech discrimination, if any, to determine the additional amount for binaural impairment, the percentage of speech discrimination in each ear shall be added together and the result divided by two to calculate the average percentage of speech discrimination, and the permanent partial disability shall be ascertained by reference to the percentage of permanent partial disability in the table below on the line with the percentage of speech discrimination obtained. To determine the additional amount for monaural impairment, the permanent partial disability shall be ascertained by reference to the percentage of permanent partial disability in the table below on the line with the percentage of speech discrimination in the injured ear.
TABLE

% of Speech Discrimination | % of Permanent Partial Disability
---|---
90% and up to and including 100% | 0%
80% and up to but not including 90% | 1%
70% and up to but not including 80% | 3%
60% and up to but not including 70% | 4%
0% and up to but not including 60% | 5%

(f) No temporary total disability benefits shall be granted for noise-induced hearing loss.

(g) An application for benefits alleging a noise-induced hearing loss shall set forth the name of the employer or employers and the time worked for each. The commission shall allocate to and divide any charges resulting from the claim among the employers with whom the claimant sustained exposure to hazardous noise for as much as sixty days during the period of three years immediately preceding the date of last exposure. The allocation is based upon the time of exposure with each employer. In determining the allocation, the commission shall consider all the time of employment by each employer during which the claimant was exposed and not just the time within the three-year period, under the same allocation as is applied in occupational pneumoconiosis cases.

(h) The commission shall provide, consistent with current practice, for prompt referral the claims for evaluation, for all medical reimbursement and for prompt authorization of hearing enhancement devices.

(i) The provisions of this section and the amendments to section six of this article insofar as applicable to permanent partial disabilities for hearing loss are operative as to any claim filed after thirty days from the effective date of this section.
§23-4-6d. Benefits payable to part-time employees.

(a) For purposes of this section, a part-time employee means an employee who, at the date of injury, is customarily employed twenty-five hours per week or less on a regular basis and is classified by the employer as a part-time employee: Provided, That the term “part-time employee” shall not include an employee who regularly works more than twenty-five hours per week for the employer, nor shall it include an employee who regularly works for more than one employer and whose regular combined working hours total more than twenty-five hours per week when that employee is rendered unable to perform the duties of his or her employment as a result of the injury, nor shall it include any employee in the construction industry who works less than twenty-five hours per week.

(b) For purposes of establishing temporary total disability weekly benefits pursuant to subdivision (b), section six of this article for part-time employees, the “average weekly wage earnings, wherever earned, of the injured person at the date of injury” shall be computed based upon the best average weekly gross pay, wherever earned, which is received by the employee during the best quarter of wages out of the preceding four quarters of wages as reported to the commission pursuant to subsection (b), section two, article two of this chapter: Provided, That for part-time employees who have been employed less than two months but more than one week prior to the date of injury or any employee whose wages have not yet been reported to the commission, the average weekly wage earnings shall be calculated based upon the average gross earnings in the weeks actually worked: Provided, however, That for part-time employees who have been employed one week or less, the average weekly wage earnings shall be calculated based upon the average weekly wage prevailing for the same or similar part-time employment at the time of injury except that when an employer has agreed to pay a certain hourly wage to a part-time
employee. the average weekly wage shall be computed by multiplying the hourly wage by the regular numbers of hours contracted to be worked each week: Provided further, That notwithstanding any provision of this article to the contrary, no part-time employee shall receive temporary total disability benefits greater than his or her average weekly wage earnings as so calculated.

(c) Notwithstanding any other provisions of this article to the contrary, benefits payable to a part-time injured employee for any permanent disability shall be computed and paid on the same basis as if the injured employee is not a part-time employee 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.

(a) The Legislature hereby finds and declares that two of the primary objectives of the workers' compensation system established by this chapter are to provide benefits to an injured claimant promptly and to effectuate his or her return to work at the earliest possible time; that the prompt dissemination of medical information to the commission and employer as to diagnosis, treatment and recovery is essential if these two objectives are to be achieved; that claimants are increasingly burdened with the task of contacting their treating physicians to request the furnishing of detailed medical information to the commission and their employers; that the commission is increasingly burdened with the administrative responsibility of providing copies of medical reports to the employer involved, whereas in other states the employer can obtain the necessary medical information direct from the treating physician; that much litigation is occasioned in this state because of a lack of medical information having been received by the employer as to the continuing disability of a claimant; and that detailed
narrative reports from the treating physician are often necessary in order for the commission, the claimant’s representatives and the employer to evaluate a claim and determine whether additional or different treatment is indicated.

(b) In view of the foregoing findings, a claimant irrevocably agrees by the filing of his or her application for benefits that any physician may release to and orally discuss with the claimant’s employer, or its representative, or with a representative of the commission, from time to time, the claimant’s medical history and any medical reports pertaining to the occupational injury or disease and to any prior injury or disease of the portion of the claimant’s body to which a medical impairment is alleged containing detailed information as to the claimant’s condition, treatment, prognosis and anticipated period of disability and dates as to when the claimant will reach or has reached his or her maximum degree of improvement or will be or was released to return to work. For the exclusive purposes of this chapter, the patient-physician privilege of confidentiality is waived with regard to the physician’s providing this medical information to the commission, the employer or to the employer’s representative. Whenever a copy of any medical report is obtained by the employer or its representative and the physician has not also forwarded a copy of the medical report to the commission, the employer shall forward a copy of the medical report to the commission within ten days from the date the employer received the medical report from the physician.

§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.
(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives it is essential that the commission establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.

(b) In view of the foregoing findings, the commission, in consultation with the health care advisory panel, shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability established for the injury involved shall be reviewed by the commission. If satisfied, after reviewing the medical evidence, that the claimant would not benefit by an independent medical evaluation, the commission shall mark the claim file accordingly and shall diary the claim file as to the next date for required review which shall not exceed sixty days. If the commission concludes that the claimant might benefit by an independent medical evaluation, the commission shall proceed as specified in subsections (d) and (e) of this section.

(c) When the authorized treating physician concludes that the claimant has either reached his or her maximum degree of improvement or is ready for disability evaluation, or when the claimant has returned to work, the authorized treating physician may recommend a permanent partial disability award for residual impairment relating to and resulting from the compensable injury, and the following provisions govern and control:

(1) If the authorized treating physician recommends a permanent partial disability award of fifteen percent or less, the commission shall enter an award of permanent partial disability
benefits based upon the recommendation and all other available
information. The claimant’s entitlement to temporary total
disability benefits ceases upon the entry of the award unless
previously terminated under the provisions of subsection (e) of
this section.

(2) If, however, the authorized treating physician recom-
mends a permanent partial disability award in excess of fifteen
percent, or recommends a permanent total disability award, the
claimant’s entitlement to temporary total disability benefits
ceases upon the receipt by the commission of the medical
report. The commission shall refer the claimant to a physician
or physicians of the commission’s selection for independent
evaluation prior to the entry of a permanent disability award:
Provided, That unless the claimant has returned to work, the
claimant shall thereupon receive benefits which shall be at the
permanent partial disability rate as provided in subdivision (e),
section six of this article until the entry of a permanent disabil-
ity award or until the claimant returns to work. The amount of
benefits paid prior to the receipt of the independent evaluation
report shall be considered and determined to be payment of the
permanent disability award granted, if any. In the event that
benefits actually paid exceed the amount granted by the
permanent partial disability award, the claimant is entitled to no
further benefits by the award and the excess paid shall be an
overpayment. For all awards made or nonawarded partial
benefits paid the commission or self-insured employer may
only recover the amount of overpaid benefits or expenses by
withholding, in whole or in part, future disability benefits
payable to the individual in the same or other claims and credit
the amount against the overpayment until it is repaid in full.

(d) When the commission concludes that an independent
medical evaluation is indicated, or that a claimant may be ready
for disability evaluation in accordance with other provisions of
this chapter, the commission shall refer the claimant to a
physician or physicians of the commission’s selection for examination and evaluation. If the physician or physicians selected recommend continued, additional or different treatment, the recommendation shall be relayed to the claimant and the claimant’s treating physician and the recommended treatment may be authorized by the commission.

(e) Notwithstanding any provision in subsection (c) of this section, the commission shall enter a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits when:

1. The physician or physicians selected by the commission conclude that the claimant has reached his or her maximum degree of improvement;

2. When the authorized treating physician advises the commission that the claimant has reached his or her maximum degree of improvement or that he or she is ready for disability evaluation and when the authorized treating physician has not made any recommendation with respect to a permanent disability award as provided in subsection (c) of this section;

3. When other evidence submitted to the commission justifies a finding that the claimant has reached his or her maximum degree of improvement; or

4. When other evidence submitted or otherwise obtained justifies a finding that the claimant has engaged or is engaging in abuse, including, but not limited to, physical activities inconsistent with his or her compensable workers’ compensation injury.

In all cases, a finding by the commission that the claimant has reached his or her maximum degree of improvement
terminates the claimant’s entitlement to temporary total
disability benefits regardless of whether the claimant has been
released to return to work. Under no circumstances shall a
claimant be entitled to receive temporary total disability
benefits either beyond the date the claimant is released to return
to work or beyond the date he or she actually returns to work.

In the event that the medical or other evidence indicates
that claimant has a permanent disability, unless he or she has
returned to work, the claimant shall thereupon receive benefits
which shall be at the permanent partial disability rate as
provided in subdivision (e), section six of this article until entry
of a permanent disability award, pursuant to an evaluation by a
physician or physicians selected by the commission, or until the
claimant returns to work. The amount of benefits shall be
considered and determined to be payment of the permanent
disability award granted, if any. In the event that benefits
actually paid exceed the amount granted under the permanent
disability award, the claimant is entitled to no further benefits
by the order.

(f) Notwithstanding the anticipated period of disability
established pursuant to the provisions of subsection (b) of this
section, whenever in any claim temporary total disability
continues longer than one hundred twenty days from the date of
injury (or from the date of the last preceding examination and
evaluation pursuant to the provisions of this subsection or
pursuant to the directions of the commission under other
provisions of this chapter), the commission shall refer the
claimant to a physician or physicians of the commission’s
selection for examination and evaluation in accordance with the
provisions of subsection (d) of this section and the provisions
of subsection (e) of this section are fully applicable: Provided,
That the requirement of mandatory examinations and evalua-
tions pursuant to the provisions of this subsection shall not
apply to any claimant who sustained a brain stem or spinal cord
injury with resultant paralysis or an injury which resulted in an
amputation necessitating a prosthetic appliance.

(g) The provisions of this section are in addition to and in
no way in derogation of the power and authority vested in the
commission by other provisions of this chapter or vested in the
employer to have a claimant examined by a physician or
physicians of the employer’s selection and at the employer’s
expense, or vested in the claimant or employer to file a protest,
under other provisions of this chapter.

(h) All evaluations and examinations performed by physi-
cians shall be performed in accordance with the protocols and
procedures established by the health care advisory panel
pursuant to section three-b of this article: Provided, That the
physician may exceed these protocols when additional evalua-
tion is medically necessary.

(i) The commission may suspend benefits being paid to a
claimant if the claimant refuses, without good cause, to undergo
the examinations or needed treatments provided for in this
section until the claimant submits to the examination or needed
treatments. The executive director shall propose rules for
approval by the commission to implement the provisions of this
subsection.

§23-4-7b. Trial return to work.

(a) The Legislature hereby finds and declares that it is in the
interest of employees, employers and the commission that
injured employees be encouraged to return to work as quickly
as possible after an injury and that appropriate protections be
afforded to injured employees who return to work on a trial
basis.

(b) Notwithstanding any other provisions of this chapter to
the contrary, the injured employee shall not have his or her
eligibility to receive temporary total disability benefits terminated when he or she returns to work on a trial basis as set forth in this section. An employee is eligible to return to work on a trial basis when he or she is released to work on a trial basis by the treating physician.

(c) When an injured employee returns to work on a trial basis, the employer shall provide a trial return-to-work notification to the commission. Upon receipt of the notification, the commission shall note the date of the first day of work pursuant to the trial return and shall continue the claimant’s eligibility for temporary total disability benefits, but shall temporarily suspend the payment of temporary total disability benefits during the period actually worked by the injured employee. The claim shall be closed on a temporary total disability basis either when the injured employee or the authorized treating physician notifies the commission that the injured employee is able to perform his or her job or automatically at the end of a period of three months from the date of the first day of work unless the employee notifies the commission that he or she is unable to perform the duties of the job, whichever occurs first. If the injured employee is unable to continue working due to the compensable injury for a three-month period, the injured employee shall notify the commission and temporary total disability benefits shall be reinstated immediately and he or she shall be referred for a rehabilitation evaluation as provided in section nine of this article. No provision of this section shall be construed to prohibit the commission from referring the injured employee for any permanent disability evaluation required or permitted by any other provision of this article.

(d) Nothing in this section shall prevent the employee from returning to work without a trial return-to-work period.

(e) Nothing in this section shall be construed to require an injured employee to return to work on a trial basis.
(f) The provisions of this section shall be terminated and be of no further force and effect on the first day of July, two thousand seven.

§23-4-8. Physical examination of claimant.

The commission may, after due notice to the employer and claimant, whenever in the commission’s opinion it is necessary, order a claimant of compensation for a personal injury other than occupational pneumoconiosis to appear for examination before a medical examiner or examiners selected by the commission; and the claimant and employer, respectively, each have the right to select a physician of the claimant’s or the employer’s own choosing and at the claimant’s or the employer’s own expense to participate in the examination. All examinations shall be performed in accordance with the protocols and procedures established by the health care advisory panel pursuant to section three-b of this article: Provided, That the physician may exceed these protocols when additional evaluation is medically necessary. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner or examiners selected by the commission. The respective physicians selected by the claimant and employer have the right to concur in any report made by the medical examiner or examiners selected by the commission, or each may file with the commission a separate report, which separate report shall be considered by the commission in passing upon the claim. If the compensation claimed is for occupational pneumoconiosis, the commission may, after due notice to the employer, and whenever in the commission’s opinion it is necessary, order a claimant to appear for examination before the occupational pneumoconiosis board provided for in section eight-a of this article. In any case the claimant is entitled to reimbursement for loss of wages, and to reasonable traveling and other expenses necessarily incurred by him or her in obeying the order.
Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, as aforesaid or in connection with any claim which is in litigation, the employer shall reimburse the claimant for loss of wages, and reasonable traveling and other expenses in connection with the examination or examinations, not to exceed the expenses paid when a claimant is examined by a physician or physicians selected by the commission.

§23-4-8a. Occupational pneumoconiosis board; composition; term of office; duties; quorum; remuneration.

The occupational pneumoconiosis board shall consist of five licensed physicians who shall be appointed by the executive director. No person shall be appointed as a member of the board, or as a consultant thereto, who has not by special study or experience, or both, acquired special knowledge of pulmonary diseases. All members of the occupational pneumoconiosis board shall be physicians of good professional standing admitted to practice medicine and surgery in this state. Two members shall be roentgenologists. One member of the board shall be designated annually as chairman by the executive director. The term of office of each member of the board shall be six years. The five members of the existing board in office on the effective date of this section shall continue to serve until their terms expire and until their successors have been appointed and have qualified. Any member of the board may be appointed to any number of terms. The function of the board is to determine all medical questions relating to cases of compensation for occupational pneumoconiosis under the direction and supervision of the executive director. Any three members of the board constitute a quorum for the transaction of its business if at least one of the members present is a roentgenologist. The executive director shall, from time to time, fix the compensation to be paid each member of the board. Members are also entitled to reasonable and necessary traveling and other
expenses incurred while actually engaged in the performance of their duties. In fixing the compensation of board members, the executive director shall take into consideration the number of claimants a member of the board actually examines, the actual time spent by members in discharging their duties and the recommendation of the board of managers as to reasonable reimbursement per unit of time expended based on comparative data for physicians within the state in the same medical specialties.

§23-4-8b. Occupational pneumoconiosis board; procedure; autopsy.

The occupational pneumoconiosis board, upon reference to it by the commission of a case of occupational pneumoconiosis, shall notify the employee, or in case he or she is dead, the claimant, and the employer to appear before the board at a time and place stated in the notice. If the employee is living, he or she shall appear before the board at the time and place specified and submit to the examination, including clinical and X-ray examinations, required by the board. If a physician licensed to practice medicine in the state makes an affidavit that the employee is physically unable to appear at the time and place designated by the board, the board shall, on notice to the proper parties, change the place and time as may reasonably facilitate the hearing or examination of the employee or may appoint a qualified specialist in the field of respiratory disease to examine the claimant on behalf of the board. The employee, or in case he or she is dead, the claimant, and employer shall also produce as evidence to the board all reports of medical and X-ray examinations which may be in their respective possession or control, showing the past or present condition of the employee. If the employee is dead, the notice of the board shall further require that the claimant produce necessary consents and permits so that an autopsy may be performed, if the board so directs. When in the opinion of the board an autopsy is considered necessary
accurately and scientifically to ascertain and determine the cause of death, the autopsy examination shall be ordered by the board, which shall designate a duly licensed physician, a pathologist or any other specialists determined necessary by the board, to make the examination and tests to determine the cause of death and certify his or her or their written findings, in triplicate, to the board. The findings shall be public records. In the event that a claimant for compensation for the death refuses to consent and permit the autopsy to be made, all rights for compensation are forfeited.

The employee, or if he or she be dead, the claimant, and the employer, shall be entitled to be present at all examinations conducted by the board and to be represented by attorneys and physicians.

§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.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commission of its findings and conclusions on every medical question in controversy and the commission shall send one copy of the report to the employee or claimant and one copy to the employer. The board shall also return to and file with the commission all the evidence as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

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

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

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

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant’s or deceased employee’s occupational pneumoconiosis or to have perceptibly aggravated an existing occupational pneumoconiosis or other occupational disease; and

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

(d) If either party objects to the whole or any part of the findings and conclusions of the board, the party shall file with the commission or, on or after the first day of July, one thousand nine hundred ninety-one, with the office of judges, within thirty days from receipt of the copy to that party, unless for good cause shown the commission or chief administrative law judge extends the time, the party’s objections to the findings and conclusions of the board in writing, specifying the particu-
lar statements of the board's findings and conclusions to which such party objects. The filing of an objection within the time specified is a condition of the right to litigate the findings and therefore jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the board, the commission or administrative law judge shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions stated in the report. If objection has been filed to the findings and conclusions of the board, notice of the objection shall be given to the board, and the members of the board joining in the findings and conclusions shall appear at the time fixed by the commission or office of judges for the hearing to submit to examination and cross-examination in respect to the findings and conclusions. At the hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board and to the taking of testimony of other qualified physicians and roentgenologists.

(e) In the event that a claimant receives a final decision that he or she has no evidence of occupational pneumoconiosis, the claimant is barred for a period of three years from the date of the occupational pneumoconiosis board's decision or until his or her employment with the employer who employed the claimant at the time designated as the claimant's last date of exposure in the denied claim has terminated, whichever is sooner, from filing a new claim or pursuing a previously filed, but unruled upon, claim for occupational pneumoconiosis or requesting a modification of any prior ruling finding him or her not to be suffering from occupational pneumoconiosis. For the purposes of this subsection, a claimant's employment shall be 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
employee would be assisted in returning to remunerative employment with the provision of rehabilitation services and if the commission determines that the employee can be physically and vocationally rehabilitated and returned to remunerative employment by the provision of rehabilitation services including, but not limited to, vocational or on-the-job training, counseling, assistance in obtaining appropriate temporary or permanent work site, work duties or work hours modification, by the provision of crutches, artificial limbs or other approved mechanical appliances, or medicines, medical, surgical, dental or hospital treatment or other services which the commission in its sole discretion determines will directly assist the employee's return to employment, the commission shall immediately develop a rehabilitation plan for the employee and, after due notice to the employer, expend an amount necessary for that purpose: Provided, That the expenditure for vocational rehabilitation shall not exceed twenty thousand dollars for any one injured employee: Provided, however, That no payment shall be made for such vocational rehabilitation purposes as provided in this section unless authorized by the commission prior to the rendering of the physical or vocational rehabilitation, except that payments shall be made for reasonable medical expenses without prior authorization if sufficient evidence exists which would relate the treatment to the injury and the attending physician or physicians have requested authorization prior to the rendering of the treatment: Provided further, That payment for physical rehabilitation, including the purchase of prosthetic devices and other equipment and training in use of the devices and equipment, are considered expenses within the meaning of section three of this article and are subject to the provisions of sections three, three-b and three-c of this article. The provision of any rehabilitation services may be pursuant to a rehabilitation plan to be developed and monitored by a rehabilitation professional for each injured employee or by such other provider as determined by the commission. Notwithstanding
any other provision of this section to the contrary, the commission may determine under rules promulgated by the board of managers that a rehabilitation plan or any component thereof is not appropriate for an injured employee.

(c) In every case in which the commission orders physical or vocational rehabilitation of a claimant as provided in this section, the claimant shall, during the time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him or her totally disabled during the period of rehabilitation, be compensated on a temporary total disability basis for that period.

(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be seventy percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in sections six, six-d and fourteen of this article as the calculation is performed for temporary total disability benefits, subject to the following limitations: In no event are the benefits subject to the minimum benefit amounts required by the provisions of subdivision (b), section six of this article, nor may the benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to sections six, six-d and fourteen of this article during any period of temporary total disability resulting from the injury in the claim: Provided, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid: Provided, however, That the aggregate award of temporary total rehabilitation or temporary partial rehabilitation
benefits for a single injury for which an award of temporary total rehabilitation or temporary partial rehabilitation benefits is made on or after the effective date of the amendment and reenactment of this section in the year two thousand three shall be for a period not exceeding fifty-two weeks unless the payment of temporary total rehabilitation disability benefits is in conjunction with an approved vocational rehabilitation plan for retraining, in which event the payment period of temporary total rehabilitation disability benefits may be extended for a period not to exceed a total of one hundred four weeks. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every ninety days to determine whether the injured employee’s average weekly wage in the new employment has changed and, if the change has occurred, the amount of benefits payable under this subsection shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section and no payment of temporary partial rehabilitation benefits shall be made after the claimant has received the vocational training provided under the rehabilitation plan.

(e) The executive director, in consultation with the board of managers, shall propose for promulgation rules for the purpose of developing a comprehensive rehabilitation program which will assist injured workers to return to suitable gainful employment after an injury in a manner consistent with the provisions and findings of this section. The rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to this section. Notwithstanding any other provision of this chapter to the contrary, and in addition to the provisions of section three of this article authorizing employers to participate in a managed health care plan, including a managed health care plan that provide physical and vocational rehabilitation services, an employer may contract directly with one or more
providers of vocational rehabilitation services to be the employer’s preferred provider of vocational rehabilitation services for its employees who receive injuries compensable under the provisions of this chapter and the rules promulgated under this section may require those employees to use the preferred providers.

§23-4-9b. Preexisting impairments not considered in fixing amount of compensation.

Where an employee has a definitely ascertainable impairment resulting from an occupational or a nonoccupational injury, disease or any other cause, whether or not disabling, and the employee thereafter receives an injury in the course of and resulting from his or her employment, unless the subsequent injury results in total permanent disability within the meaning of section one, article three of this chapter, the prior injury, and the effect of the prior injury, and an aggravation, shall not be taken into consideration in fixing the amount of compensation allowed by reason of the subsequent injury. Compensation shall be awarded only in the amount that would have been allowable had the employee not had the preexisting impairment. Nothing in this section requires that the degree of the preexisting impairment be definitely ascertained or rated prior to the injury received in the course of and resulting from the employee’s employment or that benefits must have been granted or paid for the preexisting impairment. The degree of the preexisting impairment may be established at any time by competent medical or other evidence. Notwithstanding the foregoing provisions of this section, if the definitely ascertainable preexisting impairment resulted from an injury or disease previously held compensable and the impairment had not been rated, benefits for the impairment shall be payable to the claimant by or charged to the employer in whose employ the injury or disease occurred. The employee shall also receive the
difference, if any, in the benefit rate applicable in the more
recent claim and the prior claim.

§23-4-10. Classification of death benefits; “dependent” defined.

In case a personal injury, other than occupational pneumo-
coniosis or other occupational disease, suffered by an employee
in the course of and resulting from his or her employment,
causes death, and disability is continuous from the date of the
injury until the date of death, or if death results from occupa-
tional pneumoconiosis or from any other occupational disease,
the benefits shall be in the amounts and to the persons as
follows:

(a) If there are no dependents, the disbursements shall be
limited to the expense provided for in sections three and four of
this article;

(b) If there are dependents as defined in subdivision (d) of
this section, the dependents shall be paid for as long as their
dependency continues in the same amount that was paid or
would have been paid the deceased employee for total disability
had he or she lived. The order of preference of payment and
length of dependence shall be as follows:

(1) A dependent widow or widower until death or remar-
riage of the widow or widower, and any child or children
dependent upon the decedent until each child reaches eighteen
years of age or where the child after reaching eighteen years of
age continues as a full-time student in an accredited high
school, college, university, business or trade school, until the
child reaches the age of twenty-five years, or if an invalid child,
to continue as long as the child remains an invalid. All persons
are jointly entitled to the amount of benefits payable as a result
of employee’s death;

(2) A wholly dependent father or mother until death; and
(3) Any other wholly dependent person for a period of six years after the death of the deceased employee;

(c) If the deceased employee leaves no wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be fifty dollars a month to continue for the portion of the period of six years after the death, determined by the commission, but no partially dependent person shall receive compensation payments as a result of the death of more than one employee.

Compensation under subdivisions (b) and (c) of this section shall, except as may be specifically provided to the contrary in those subdivisions, cease upon the death of the dependent, and the right to the compensation shall not vest in his or her estate.

(d) "Dependent", as used in this chapter, means a widow, widower, child under eighteen years of age, or under twenty-five years of age when a full-time student as provided in this section, invalid child or posthumous child, who, at the time of the injury causing death, is dependent, in whole or in part, for his or her support upon the earnings of the employee, stepchild under eighteen years of age, or under twenty-five years of age when a full-time student as provided in this section, child under eighteen years of age legally adopted prior to the injury causing death, or under twenty-five years of age when a full-time student as provided in this section, child under eight years of age legally adopted prior to the injury causing death, and any child under twenty-five years of age when a full-time student as provided in this section, child under eighteen years of age legally adopt prior to the injury causing death, invalid brother or sister wholly dependent for his or her support upon the earnings of the employee; and

(e) If a person receiving permanent total disability benefits dies from a cause other than a disabling injury leaving any dependents as defined in subdivision (d) of this section, an
award shall be made to the dependents in an amount equal to
one hundred four times the weekly benefit the worker was
receiving at the time of his or her death and be paid either as a
lump sum or in periodic payments, at the option of the depend-
ent or dependents.

§23-4-11. To whom death benefits paid.

The benefits, in case of death, shall be paid to one or more
dependents of the decedent, or to any other persons, for the
benefit of all of the dependents, as may be determined by the
commission, who may apportion the benefits among the
dependents in the manner as they consider just and equitable.
Payment to a dependent subsequent in right may be made if the
commission considers proper and it operates to discharge all
other claims for the benefits.


The dependent or person to whom benefits are paid shall
apply the benefits to the use of the several beneficiaries of the
benefits according to their respective claims upon the decedent
for support, in compliance with the finding and direction of the
commission.


(a) The average weekly wage earnings, wherever earned, of
the injured person at the date of injury and the average weekly
wage in West Virginia as determined by the commission, in
effect at the date of injury, shall be taken as the basis upon
which to compute the benefits.

(1) In cases involving occupational pneumoconiosis or
other occupational diseases, the "date of injury" is the date of
the last exposure to the hazards of occupational pneumoconiosis
or other occupational diseases.
(2) In computing benefits payable on account of occupational pneumoconiosis, the commission shall deduct the amount of all prior workers' compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

(b) (1) Until the first day of July, one thousand nine hundred ninety-four, the expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury", within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(2) On and after the first day of July, one thousand nine hundred ninety-four, the expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury", within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the weekly average derived from the best quarter of wages out of the preceding four quarters of wages as reported to the commission pursuant to subsection (b), section two, article two of this chapter, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(c) The expression "average weekly wage in West Virginia", within the meaning of this chapter, is the average weekly wage in West Virginia as determined by the commissioner of the bureau of employment programs in accordance
with the provisions of sections ten and eleven, article six, chapter twenty-one-a of this code and other applicable provisions of said chapter.

(d) In any claim for injuries, including occupational pneumoconiosis and other occupational diseases, occurring on or after the first day of July, one thousand nine hundred seventy-one, any award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits shall be paid at the weekly rates or in the monthly amount in the case of dependent benefits applicable to the claimant in effect on the date of the injury. In no event shall an award for permanent total disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia.


(a) To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application for compensation shall be made on the form or forms prescribed by the commission and filed with the commission within six months from and after the injury or death, as the case may be, and unless filed within the six months period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, and all proofs of dependency in fatal cases must also be filed with the commission within six months from and after the death. In case the employee is mentally or physically incapable of filing the application, it may be filed by his or her attorney or by a member of his or her family.

(b) To entitle any employee to compensation for occupational pneumoconiosis under the provisions of this subsection, the application for compensation shall be made on the form or
forms prescribed by the commission and filed with the commission within three years from and after the last day of the last continuous period of sixty days or more during which the employee was exposed to the hazards of occupational pneumoconiosis or within three years from and after a diagnosed impairment due to occupational pneumoconiosis was made known to the employee by a physician and unless filed within the three-year period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, or, in the case of death, the application shall be filed by the dependent of the employee within one year from and after the employee's death, and such time limitation is a condition of the right and hence jurisdictional.

(c) To entitle any employee to compensation for occupational disease other than occupational pneumoconiosis under the provisions of this section, the application for compensation shall be made on the form or forms prescribed by the commission and filed with the commission within three years from and after the day on which the employee was last exposed to the particular occupational hazard involved or within three years from and after the employee's occupational disease was made known to him or her by a physician or which he or she should reasonably have known, whichever last occurs, and unless filed within the three-year period, the right to compensation under this chapter shall be forever barred, such time limitation being hereby declared to be a condition of the right and therefore jurisdictional, or, in case of death, the application shall be filed as aforesaid by the dependent of the employee within one year from and after the employee's death, and such time limitation is a condition of the right and hence jurisdictional.

§23-4-15a. Nonresident alien beneficiaries.
Notwithstanding any other provisions of this chapter, nonresident alien beneficiaries are entitled to the same benefits as citizens of the United States: Provided, That the commission in its discretion may make, and the beneficiary shall accept, commutation of the benefits into a lump sum settlement and payment. Nonresident alien beneficiaries within the meaning of this section means persons not citizens of the United States residing outside of the territorial limits of the United States at the time of the injury with respect to which benefits are awarded.

§23-4-15b. Determination of nonmedical questions by commission; claims for occupational pneumoconiosis; hearing.

If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the last day of the last continuous period of sixty days' exposure to the hazards of occupational pneumoconiosis, the commission shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his or her claim, whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to the employee by a physician, the commission shall determine whether the claimant filed his or her application within that period and whether in the state of West Virginia the claimant was exposed to the hazard over a continuous period of
not less than two years during the ten years immediately preceding the date of last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by a dependent of a deceased employee, the commission shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within ten years prior to the filing of the claim, whether in the state of West Virginia the deceased employee was exposed to the hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure to the hazard. The commission shall also determine other nonmedical facts that, in the commission's opinion, are pertinent to a decision on the validity of the claim.

The commission shall enter an order with respect to nonmedical findings within ninety days following receipt by the commission of both the claimant's application for occupational pneumoconiosis benefits and the physician's report filed in connection with the claimant's application and shall give each interested party notice in writing of these findings with respect to all the nonmedical facts. The findings and actions of the commission are final unless the employer, employee, claimant or dependent, within thirty days after receipt of the notice, objects to the findings, and unless an objection is filed within the thirty-day period, the findings are forever final, the time limitation is a condition of the right to litigate the findings and therefor jurisdictional. Upon receipt of an objection, the chief administrative law judge shall set a hearing as provided in section nine, article five of this chapter. In the event of an
objection to the findings by the employer, the claim shall, notwithstanding the fact that one or more hearings may be held with respect to the objection, mature for reference to the occupational pneumoconiosis board with like effect as if the objection had not been filed. If the administrative law judge concludes after the protest hearings that the claim should be dismissed, a final order of dismissal shall be entered. The final order is subject to appeal in accordance with the provisions of sections ten and twelve, article five of this chapter. If the administrative law judge concludes after the protest hearings that the claim should be referred to the occupational pneumoconiosis board for its review, the order entered shall be interlocutory only and may be appealed only in conjunction with an appeal from a final order with respect to the findings of the 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.

(a) The power and jurisdiction of the commission over each case is continuing and the commission may, in accordance with the provisions of this section and after due notice to the employer, make modifications or changes with respect to former findings or orders that are justified. Upon and after the second day of February, one thousand nine hundred ninety-five, the period in which a claimant may request a modification, change or reopening of a prior award that was entered either prior to or after that date shall be determined by the following subdivisions of this subsection. Any request that is made beyond that period shall be refused.

(1) Except as provided in section twenty-two of this article, in any claim which was closed without the entry of an order
regarding the degree, if any, of permanent disability that a claimant has suffered, or in any case in which no award has been made, any request must be made within five years of the closure. During that time period, only two requests may be filed.

(2) Except as stated below, in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award. During that time period, only two requests may be filed. With regard to those occupational diseases, including occupational pneumoconiosis, which are medically recognized as progressive in nature, if any such request is granted by the commission, a new five-year period begins upon the date of the subsequent award. With the advice of the health care advisory panel, the executive director and the board of managers shall by rule designate those progressive diseases which are customarily the subject of claims.

(3) No further award may be made in fatal cases except within two years after the death of the employee.

(4) With the exception of the items set forth in subsection (d), section three of this article, in any claim in which medical or any type of rehabilitation service has not been rendered or durable medical goods or other supplies have not been received for a period of five years, no request for additional medical or any type of rehabilitation benefits shall be granted nor shall any medical or any type of rehabilitation benefits or any type of goods or supplies be paid for by the commission if they were provided without a prior request. For the exclusive purposes of this subdivision, medical services and rehabilitation services shall not include any encounter in which significant treatment was not performed.
(b) In any claim in which an injured employee makes application for a further period of temporary total disability, if the application is in writing and filed within the applicable time limit stated above, the commission shall pass upon the request within thirty days of the receipt of the request. If the decision is to grant the request, the order shall provide for the receipt of temporary total disability benefits. In any case in which an injured employee makes application for a further award of permanent partial disability benefits or for an award of permanent total disability benefits, if the application is in writing and filed within the applicable time limit as stated above, the commission shall pass upon the request within thirty days of its receipt and, if the commission determines that the claimant may be entitled to an award, the commission shall refer the claimant for further examinations that are necessary.

(c) If the application is based on a report of any medical examination made of the claimant and submitted by the claimant to the commission in support of his or her application and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of the examination. The reimbursement shall be made by the commission to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished the commission by the claimant, but shall in no case exceed the sum fixed pursuant to the commission's schedule of maximum reasonable fees established under the provisions of section three of this article.

(d) The commission has continuing power and jurisdiction over claims in which permanent total disability awards have been made after the eighth day of April, one thousand nine hundred ninety-three.

(1) The commission shall continuously monitor permanent total disability awards and may, from time to time, after due
notice to the claimant, reopen a claim for reevaluation of the continuing nature of the disability and possible modification of the award. At such times as the commission may determine, the commission may require the claimant to provide documents and other information to the commission, including, but not limited to, tax returns, financial records and affidavits demonstrating level of income, recreational activities, work activities, medications used and physicians or other medical or rehabilitation providers treating or prescribing medication or other services for the claimant; require the claimant to appear under oath before the commission or its duly authorized representative and answer questions; and suspend or terminate any benefits of a claimant who willfully fails to provide the information or appear as required: Provided, That the commission shall develop, implement and complete a program as soon as reasonably possible that requires each person receiving permanent total disability benefits on the effective date of the amendment and reenactment of this section in the year two thousand three, and each person who is awarded those benefits thereafter, to submit the tax returns and the affidavit described herein at least once: Provided, however, That this requirement does not restrict the commission’s authority to require the information that may be required herein at such other times as the commission may determine. The commission may reopen a claim for reevaluation when, in the commission’s sole discretion, it concludes that there exists good cause to believe that the claimant no longer meets the eligibility requirements under subdivision (n), section six of this article. The eligibility requirements, including any vocational standards, shall be applied as those requirements are stated at the time of a claim’s reopening.

(2) Upon reopening a claim under this subsection, the commission may take evidence, have the claimant evaluated, make findings of fact and conclusions of law and shall vacate, modify or affirm the original permanent total disability award.
as the record requires. The claimant’s former employer shall
not be a party to the reevaluation, but shall be notified of the
reevaluation and may submit any information to the commis-
sion as the employer may elect. In the event the claimant retains
his or her award following the reevaluation, the claimant’s
reasonable attorneys’ fees incurred in defending the award shall
be paid by the workers’ compensation commission from the
workers’ compensation fund. In addition, the workers’ compens-
sation commission shall reimburse a prevailing claimant for his
or her costs in obtaining one evaluation on each issue during the
course of the reevaluation with the reimbursement being made
from the fund. The board of managers shall adopt criteria for
the determination of reasonable attorneys’ fees.

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

(4) The commission shall establish by rule criteria for
review, reopening and reevaluating a claim under this subsec-
tion. The commission shall at least quarterly provide a report of
the exercise of its authority to continuously monitor permanent
total disability awards under this section to the joint committee
on government and finance and the joint commission on
economic development.

(e) A claimant may have only one active request for a
permanent disability award pending in a claim at any one time.
Any new request that is made while another is pending shall be
consolidated into the former request.

§23-4-16a. Interest on benefits.
Whenever any award of temporary total, permanent partial or permanent total disability benefits or dependent benefits is made on or after the first day of July, one thousand nine hundred seventy-one, and a protest is filed to the award or an appeal is taken from the award by an employer only and not by the claimant or dependent and the award is not ultimately denied or reduced following the protest or appeal, the commission shall add interest to the award at the simple rate of six percent per annum from the date the award would have been payable had the protest or appeal not been filed or taken, exclusive of any period for which a continuance was granted upon motion of any party other than the protesting or appealing employer. Any interest payable shall be charged to the account of the protesting or appealing employer to the extent that the benefits upon which such interest is computed are charged to the account of the employer.

§23-4-17. Commutation of periodical benefits.

The commission, under special circumstances and when it is considered advisable, may commute periodical benefits to one or more lump-sum payments. Upon the application of any claimant who has received an award of partial or total disability, who is not a citizen of the United States and desires to reside permanently beyond the territorial limits of the United States, or upon the application of an alien dependent of a deceased employee with respect of whose death award of compensation has been made, the dependent residing in the territorial limits of the United States at the time of the decedent’s death, and desiring to reside permanently beyond the territorial limits of the United States, the commission may commute into one lump-sum payment the periodical payments to which the claimant or dependent would be entitled, but at the rate of one-half the amount that would be payable to a citizen of the United States under like circumstances. The lump-sum payment at the rate specified in this section discharges all
liability with respect to the award, but in no event shall the
award be paid until the claimant or dependent has actually
arrived and domiciled himself or herself outside the territorial
limits of the United States, except a sufficient portion of the
award to pay transportation and other necessary expenses.

§23-4-18. Mode of paying benefits generally; exemptions of
compensation from legal process.

Except as provided by this section, compensation shall be
paid only to the employees or their dependents and is exempt
from all claims of creditors and from any attachment, execution
or assignment other than compensation to counsel for legal
services, under the provisions of, and subject to the limitations
contained in section sixteen, article five of this chapter, and
other than for the enforcement of orders for child or spousal
support entered pursuant to the provisions of chapter forty-eight
of this code. Payments may be made in the periodic install-
ments determined by the commission in each case, but in no
event less frequently than semimonthly for any temporary
award and monthly for any permanent award. Payments for
permanent disability shall be paid on or before the third day of
the month in which they are due. In all cases where compensa-
tion is awarded or increased, the amount of compensation shall
be calculated and paid from the date of disability.

§23-4-20. Postmortem examinations.

The commission may, after due notice to the employer and
claimant, whenever it considers it necessary, order an autopsy
and may designate a duly licensed physician to make the
postmortem examination or examinations that are necessary to
determine the cause of the deceased employee’s death. The
physician shall file with the commission a written report of his
or her findings. The claimant and the employer, respectively,
have the right to select a physician of his, her or its own
choosing and, at his, her or its own expense, to participate in the
postmortem examination. The respective physicians selected by
the claimant and the employer have the right to concur in any
report made by the physician selected by the commission, or
each may file with the commission a separate report. In any
case, including silicosis cases, in which either the employer or
a claimant requests that an autopsy be performed, the autopsy
shall be directed as provided in this section. In the event that a
claimant for compensation for the death refuses to consent and
permit the autopsy to be made all rights to compensation shall
be forfeited.

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

Notwithstanding any provision in this chapter to the
contrary, any claim which was closed for the receipt of tempo-
rary total disability benefits or which was closed on a no-lost-
time basis and which was more than five years prior to the
effective date of this section shall not be considered to still be
open or the subject for an evaluation of the claimant for
permanent disability merely because an evaluation has not
previously been conducted and a decision on permanent
disability has not been made: Provided, That if a request for an
evaluation was made in a claim prior to the twenty-ninth day of
March, one thousand nine hundred ninety-three, the commis-
sion shall have the evaluation performed. In every instance, a
claim shall be a case in which no award has been made for the
purposes of section sixteen of this article. In every claim closed
after the effective date of this section, the commission shall
give notice to the parties of the claimant's right to a permanent
disability evaluation.

§23-4-23. Permanent total disability benefits; reduction of dis-
ability benefits; reduction of benefits; application
of section; severability.
(a) This section is applicable whenever benefits are being paid for permanent total disability benefits arising under subdivision (d), (m) or (n), section six of this article or under section eight-c of this article. This section is not applicable to the receipt of temporary total disability benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons or to the receipt of benefits pursuant to the provisions of subsection (e), section ten of this article. This section is not applicable to the receipt of medical benefits or the payment for medical benefits.

(b) Whenever applicable benefits are paid to a beneficiary with respect to the same time period for which payments under a self-insurance plan, a wage continuation plan or a disability insurance policy provided by an employer are also received or being received by the beneficiary, the applicable benefits shall be reduced by these amounts:

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

(2) The proportional amount, based on the ratio of the employer’s contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by an employer if the employee did contribute directly to the payment of premiums regarding the disability insurance policy: Provided, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided for in subdivisions (b) and (d), section six of this article.
(c) This section applies to awards of permanent total disability made after the effective date of this section.

(d) The board of managers shall promulgate the appropriate rules for the interpretation, processing and enforcement of this section.

(e) If any portion of this section or any application of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this section or the applications of the section that 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; procedures; requests for awards; jurisdiction.

(a) Notwithstanding any provision of this chapter to the contrary, except as stated below, no claimant shall be awarded permanent total disability benefits arising under subdivision (d) or (n), section six of this article or section eight-c of this article who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act, 42 U. S. C. §401 and 402. Any claimant shall be evaluated only for the purposes of receiving a permanent partial disability award premised solely upon the claimant’s impairments. This subsection is not applicable in any claim in which the claimant has completed the submission of his or her evidence on the issue of permanent total disability prior to the later of the following: Termination of active employment or the initial receipt of full old-age retirement benefits under the Social Security Act. Once the claimant has terminated active employment and has begun to receive full old-age social security retirement benefits, the claimant may not produce additional evidence of permanent total disability before the commission or the office of judges nor shall the claim be remanded for the production of the evidence.
(b) The workers’ compensation commission has the sole and exclusive jurisdiction to initially hear and decide any claim or request pertaining, in whole or in part, to subdivision (d) or (n), section six of this article. Any claim or request for permanent total disability benefits arising under said subdivisions shall first be presented to the commission as part of the initial claim filing or by way of an application for modification or adjustment pursuant to section sixteen of this article. The office of judges may consider a claim only after the commission has entered an appropriate order.

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

(a) After the eighth day of April, one thousand nine hundred ninety-three, a reduction in the amount of benefits as specified in subsection (b) of this section shall be made whenever benefits are being paid for a permanent total disability award regardless of when the benefits were awarded. This section is not applicable to the receipt of medical benefits or the payment for medical benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons, or to the receipt of benefits pursuant to the provisions of subsection (e), section ten of this article. Prior to the application of this section to any claimant, the commission shall give the claimant notice of the effect of this section upon a claimant’s award if and when the claimant later earns wages.

(b) Whenever applicable benefits are paid to a claimant with respect to the same time period in which the claimant has earned wages as a result of his or her employment, the following reduction in applicable benefits shall be made. The claimant’s applicable monthly benefits and monthly net wages received from the current employment shall be added together. If the total exceeds by more than one hundred twenty percent of the amount of the claimant’s monthly net wages earned during
his or her last employment prior to the award of permanent total
disability benefits, the excess shall be reduced by one dollar for
each two dollars that the claimant’s monthly benefits and
monthly net wages exceed the one hundred twenty percent
level: Provided, That in no event shall applicable benefits be
reduced below the minimum weekly benefits as provided for in
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-5. Employers providing own system of compensation.
§23-4A-8. Disabled workers’ relief fund; how funded.

§23-4A-1. Disabled workers’ relief fund created.

For the relief of persons who are receiving benefits pursu-
ant to a permanent total disability award in amounts less than
thirty-three and one-third percent of the average weekly wage
for the state of West Virginia per month, and for the relief of
widows who are receiving benefits on account of the death of
an employee in amounts less than thirty-three and one-third
percent of the average weekly wage in the state of West
Virginia per month, and for the relief of children of employees
deceased before one thousand nine hundred sixty-seven, who
are under the age of twenty-three and who are full-time
students, and for the relief of other persons who are receiving
dependents’ benefits on account of the death of an employee in
amounts less than the specific monetary amounts set forth in
section ten, article four of this chapter and in effect as of the
first day of July, one thousand nine hundred seventy-three,
there is continued a separate fund, heretofore known as the
“Disabled Workmen’s Relief Fund”, and which shall hereafter
be known as the “Disabled Workers’ Relief Fund”, which shall
consist of any sums that are, from time to time, made available
to carry out the objects and purposes of this article. The fund
shall be in the custody of the state treasurer and disbursements from the fund shall be made upon requisition signed by the executive director to those persons entitled to participate in the fund and in such amounts to each participant that are provided in section three of this article.


1 Each individual entitled to participate in the disabled workers’ relief fund is entitled to receive payments without application (except that an application shall be required under section five of this article) from the fund of an amount equal to the difference between the amounts set forth in section one of this article and the amount the individual is in fact receiving by virtue of and under the laws of this state. The first payment shall be made concurrently with the payment to him or her of workers’ compensation on the first day of August, one thousand nine hundred seventy-six, and subsequent payments shall be made during the period thereafter in which the participant is entitled to workers’ compensation benefits by virtue of and under the laws of this state.

§23-4A-5. Employers providing own system of compensation.

1 The executive director shall promptly require of each employer who has elected to pay direct compensation under the provisions of section nine, article two of this chapter a verified list of the names and addresses of all persons to whom the employer is paying workers’ compensation on account of permanent total disability or because of the death of an employee and any evidence respecting those persons as the executive director may reasonably consider necessary to determine the eligibility of any person to participate in the disabled workers’ relief fund. Any person claiming the right to participate in the fund under the provisions of this section may
file his or her application for participation with the executive
director and shall be accorded a hearing on the application.

§23-4A-6. Powers of commission over disabled workers’ relief
fund.

In the investigation and determination of the right of
persons to participate in the disabled workers’ relief fund, the
executive director has and may exercise all the powers which he
or she possesses under the other articles of this chapter. His or
her powers and jurisdiction over each case is continuing, but
there shall be no appeal from the commission’s decisions to any
other body or tribunal. No attorney, representative or agent of
any claimant or participant is entitled to charge or receive a fee
or compensation or gratuity in any form for representing or
assisting or pretending to represent or assist any person to
become a participant in the disabled workers’ relief fund.

§23-4A-8. Disabled workers’ relief fund; how funded.

For the purpose of carrying out the provisions of this
article, the board of managers shall transfer annually, out of the
interest earned during the previous year on investments held by
the workers’ compensation fund, and out of the amount
assessed against self-insured employers pursuant to the provi-
sions of section nine, article two of this chapter an amount
estimated by the executive director to be necessary to carry out
the provisions of this article for one year.

The money shall be deposited by the board of managers in
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.

For the relief of persons who are entitled to receive benefits by virtue of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, there is continued a fund to be known as the coal-workers' pneumoconiosis fund, which fund shall be separate from the workers' compensation fund. The coal-workers' pneumoconiosis fund shall consist of premiums and other funds paid to the fund by employers, subject to the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, who shall elect to subscribe to the fund to ensure the payment of benefits required by the act.

The state treasurer shall be the custodian of the coal-workers' pneumoconiosis fund, and all premiums, deposits or other moneys paid to the fund shall be deposited in the state treasury to the credit of the coal-workers' pneumoconiosis fund. Disbursements from the fund shall be made upon requisition signed by the executive director of the workers' compensation commission to those persons entitled to participate in the fund. The West Virginia state board of investments may invest any surplus, reserve or other moneys belonging to the coal-workers' pneumoconiosis fund in accordance with article six, chapter twelve of this code.

§23-4B-5. Payment of benefits.

Upon receipt of an order of compensation issued pursuant to a claim for benefits filed under the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, the executive director shall disburse the coal-workers' pneumoconiosis fund in the amounts and to the persons as directed by the order.

§23-4B-6. Coal-workers' pneumoconiosis fund; how funded.
For the purpose of creating the coal-workers' pneumoconiosis fund, each employer, who elects to subscribe to the fund, shall pay premiums based upon and being a percentage of the payroll of the employer determined by the board of managers. It is the duty of the board of managers to fix and maintain the lowest possible rates of premiums consistent with the maintenance of a solvent fund and the creation and maintenance of a reasonable surplus after providing for payment to maturity of all liability insured pursuant to Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended. The rates shall be adjusted annually or more often as may, in the opinion of the board of managers, be necessary.

The board of managers may by rule classify subscribers into groups or classes according to the nature of the hazards incident to the business of the subscribers and assign premium rates to the subscribers. In addition, the board of managers may by rule prescribe procedures for subscription, payroll reporting, premium payment, termination of subscription, reinstatement and other matters pertinent to the subscribers’ continuing participation in the coal-workers’ pneumoconiosis fund.

§23-4B-7. Administration.

The coal-workers’ pneumoconiosis fund shall be administered by the executive director of the workers’ compensation commission, who shall employ any employees necessary to discharge his or her duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the state treasurer from the coal-workers’ pneumoconiosis fund upon requisitions signed by the executive director.

§23-4B-8b. Transfer of funds to workers’ compensation fund.
(a) Notwithstanding any provision of section eight of this article to the contrary, the assets which were previously transferred from the coal-workers’ pneumoconiosis fund and held in a separate account may, on or after the first day of July, two thousand three, be expended for workers’ compensation fund liabilities.

(b) The Legislature hereby finds and declares that there is a substantial actuarial surplus in the coal-workers’ pneumoconiosis fund in excess of one hundred seventy million dollars. The Legislature further finds and declares that there is a substantial actuarial deficit in the workers’ compensation fund. The executive director shall conduct an actuarial audit to determine the amount of the actuarial surplus in the coal-workers’ pneumoconiosis fund as of the thirtieth day of June, two thousand three, and certify the amount, as of that date, in a written order which together with the results of the audit shall be a public record. The executive director shall also obtain a statement from the commission’s actuary that a distributable surplus exists in the coal-workers’ pneumoconiosis fund. When the actuary provides the statement, and notwithstanding any provision of this article to the contrary, the executive director shall, by written order, transfer an amount not to exceed one hundred seventy million dollars from the coal-workers’ pneumoconiosis fund to the workers’ compensation fund, which assets shall thereupon become merged into and consolidated with the workers’ compensation fund and expended for workers’ compensation fund liabilities: Provided, That a level of reserve shall be retained in the coal-workers’ pneumoconiosis fund sufficient within a seventy percent confidence level, on an actuarial basis, to satisfy the payment of all claims incurred, including claims which were incurred but not reported, on or before the thirtieth day of June, two thousand three. In the event the commission’s actuary or an actuary employed by the board of managers determines prior to the thirtieth day of June, two
thousand six, that the assets of the coal-workers' pneumoconiosis fund are not adequate to enable the coal-workers' pneumoconiosis fund to meet its claim obligations under Title IV of the federal Coal Mine Health and Safety Act of 1996, as amended, the executive director shall, upon appropriation of the Legislature, transfer an amount not to exceed fifty million dollars from the workers' compensation fund to the coal-workers' pneumoconiosis 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.

(a) To provide insurance coverage for employers subject to this chapter who may be subjected to liability for any excess of damages over the amount received or receivable under this chapter, the commission may continue the fund known as the employers' excess liability fund, which fund shall be separate from the workers' compensation fund. The employers' excess liability fund shall consist of premiums paid to it by employers who may voluntarily elect to subscribe to the fund for coverage of potential liability to any person who may be entitled to any excess of damages over the amount received or receivable under this chapter.

(b) The board of managers may provide for, by the promulgation of a rule pursuant to section one-a, article one of this chapter, the continuance, abolition or sale of the employers' excess liability fund established by section one of this article. In the event that the fund is to be sold, the sale shall be conducted through the solicitation of competitive bids. Any funds that remain after the sale or abolition of the employers' excess liability fund shall be paid into and become a part of the
workers' compensation fund to be used for the purposes of that fund. In the event that the employers' excess liability fund program is abolished and the remaining liabilities of that program exceed the amount retained in the employers' excess liability fund, the excess liability including the costs of administration shall be paid for from the workers' compensation fund.

§23-4C-3. Payment of excess damages from fund.

Upon receipt of a final order of a court determining the liability under section two, article four of this chapter of a subscribing employer and the amount of the excess of damages over the amount received or receivable under this chapter, the executive director shall make disbursements from the employers' excess liability fund in the amounts and to the persons as directed by the final order. In the event of a proposed settlement of a disputed claim against a subscribing employer, the executive director, upon approving the settlement upon petition by the subscribing employer, shall make disbursements from the employers' excess liability fund in the amounts and to the persons specified in the approved settlement. In the event of the settlement of any disputed claim in which one or more of the persons entitled to the proceeds to be paid pursuant to the settlement is under a legal disability by reason of age, mental incapacity or other reason, the settlement, if required by other provisions of law to be approved by a circuit court, shall be approved by the circuit court of the county in which the person under disability is a resident or in which a civil action could be brought and maintained upon the claim, in addition to being approved by the commission as required by this section. The executive director shall by rule establish criteria and procedures for the settlement of all disputed claims.

§23-4C-4. Employers' excess liability fund; how funded.
For the purpose of creating the employers' excess liability fund, each employer who elects to subscribe to the fund shall pay premiums based upon and being a percentage of the payroll of the employer determined by the board of managers. It is the duty of the board of managers to fix and maintain the lowest possible rates or premiums consistent with the maintenance of a solvent fund. The premium rates shall be adjusted annually or more often as may, in the opinion of the board of managers, be necessary.

The board of managers shall initially classify subscribers into groups or classes according to the nature of the unusual hazards incident to the business of the subscribers as contemplated by section four, article two of this chapter and assign premium rates to the subscribers. The fixing, maintaining and adjusting of premium rates and the initial classification of subscribers into groups or classes pursuant to this section are findings or determinations of fact and not a legislative rule. In addition, the board of managers shall by rule prescribe procedures for subscription, payroll reporting, premium payment, termination of subscription, reinstatement, reclassification of groups, classes or subscribers, the increase or decrease of premiums based upon incidence of liability and amounts awarded, and other matters pertinent to the subscribers' continuing participation in the employers' excess liability fund.

§23-4C-5. Administration.

The employers' excess liability fund shall be administered by the executive director, who shall employ any employees that are necessary to discharge his or her duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the state treasurer from the employers' excess liability fund upon requisitions signed by the 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.


§23-5-8. 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.


§23-5-12. Appeal to board; procedure; remand and supplemental hearing.

§23-5-13. Appeals from final decisions of board to supreme court of appeals; procedure; costs.


§23-5-1. Notice by commission or self-insured of decision; procedures on claims; objections and hearing.

(a) The workers' compensation commission may hear and determine all questions within its jurisdiction. In matters arising under articles three and four of this chapter, the commission shall promptly review and investigate all claims. The parties to a claim shall file the information in support of their respective positions as they consider proper. In addition, the commission may develop additional information that it considers to be necessary in the interests of fairness to the parties and in keeping with the fiduciary obligations owed to the fund. With regard to any issue which is ready for a decision, the commission shall explain the basis of its decisions.

(b) Except with regard to interlocutory matters and those matters set forth in subsection (d) of this section, upon making
any decision, upon making or refusing to make any award or
upon making any modification or change with respect to former
findings or orders, as provided by section sixteen, article four
of this chapter, the commission shall give notice, in writing, to
the employer, employee, claimant or dependant as the case may
be, of its action. The notice shall state the time allowed for
filing an objection to the finding. The action of the commission
is final unless the employer, employee, claimant or dependant
shall, within thirty days after the receipt of the notice, object in
writing, to the finding. Unless an objection is filed within the
thirty-day period, the finding or action is final. This time
limitation is a condition of the right to litigate the finding or
action and hence jurisdictional. Any objection shall be filed
with the office of judges with a copy served upon the commis-
sion and other parties in accordance with the procedures set
forth in sections eight and nine of this article. In all instances
where a self-insured employer or a third-party administrator has
made claims decisions as authorized in this chapter, they shall
provide claimants and the commission notice of all claims
decisions as provided for by rules for self-administration
promulgated by the board of managers and shall be bound by
each requirement imposed upon the commission by this article.

(c) Where a finding or determination of the commission is
protested only by the employer, and the employer does not
prevail in its protest, and in the event the claimant is required
to attend a hearing by subpoena or agreement of counsel or at
the express direction of the commission or office of judges,
then the claimant in addition to reasonable traveling and other
expenses shall be reimbursed for loss of wages incurred by the
claimant in attending the hearing.

(d) The commission or self-insured employer may amend,
correct or set aside any order or decision on any issue entered
by it which, at the time of issuance or any time thereafter, is
discovered to be defective or clearly erroneous or the result of
mistake, clerical error or fraud, or otherwise not supported by
the evidence. Jurisdiction to take this action continues until the
expiration of two years from the date of entry of an order unless
the order is sooner affected by appellate action: Provided, That
corrective actions in the case of fraud may be taken at any time.

(e) All objections to orders of the commission or self-
insured employers shall be styled in the name of the workers’
compensation commission. All appeals prosecuted from the
office of judges shall either be in the name of the workers’
compensation commission or shall be against the workers’
compensation commission unless the parties to the appeal are
limited to a claimant and a self-insured employer. In all actions
under this article, the workers’ compensation commission shall
be the party in interest unless the parties to the appeal are
limited to a claimant and a self-insured employer.

§23-5-2. Application by employee for further adjustment of
claim; objection to modification; hearing.

In any case where an injured employee makes application
in writing for a further adjustment of his or her claim under the
provisions of section sixteen, article four of this chapter and the
application discloses cause for a further adjustment, the
commission shall, after due notice to the employer, make the
modifications, or changes with respect to former findings or
orders in the claim that are justified. Any party dissatisfied with
any modification or change made by the commission is, upon
proper and timely objection, entitled to a hearing, as provided
in section nine of this article.

§23-5-3. Refusal to reopen claim; notice; objection.

If it appears to the commission that an application filed
under section two of this article fails to disclose a progression
or aggravation in the claimant’s condition, or some other fact or
facts which were not previously considered by the commission in its former findings and which would entitle the claimant to greater benefits than the claimant has already received, the commission shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within thirty days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the thirty-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the office of judges shall afford the claimant an evidentiary hearing as provided in section nine of this article.

§23-5-4. Application by employer for modification of award; objection to modification; hearing.

In any case in which an employer makes application in writing for a modification of any award previously made to an employee of the employer, the commission shall make a decision upon the application. If the application discloses cause for a further adjustment, the commission shall, after due notice to the employee, make the modifications or changes with respect to former findings or orders that are justified. Any party dissatisfied with any modification or change made by the commission or by the denial of an application for modification is, upon proper and timely objection, entitled to a hearing as provided in section nine of this article.

§23-5-5. Refusal of modification; notice; objection.

If in any case it appears to the commission that the application filed pursuant to section four of this article fails to disclose some fact or facts which were not previously considered by the
commission in its former findings, and which would entitle the
employer to any modification of the previous award, the
commission shall, within sixty days from the receipt of the
application, notify the claimant and employer that the applica-
tion fails to establish a just cause for modification of the award.
The notice shall be in writing stating the reasons for denial and
the time allowed for objection to the decision of the commis-
sion. The employer may, within thirty days after receipt of the
notice, object in writing to the decision. Unless the objection is
filed within the thirty-day period, no objection shall be allowed.
This time limitation is a condition of the right to objection and
hence jurisdictional. Upon receipt of the objection, the office of
judges shall afford the employer an evidentiary hearing as
provided in section nine of this article.

§23-5-6. Time periods for objections and appeals; extensions.

Notwithstanding the fact that the time periods set forth for
objections, protests and appeals to or from the workers’
compensation office of judges are jurisdictional, the periods
may be extended or excused upon application of either party
within a period of time equal to the applicable period by
requesting an extension of the time period showing good cause
or excusable neglect, accompanied by the objection or appeal
petition. In exercising discretion the administrative law judge,
appeal board or court, as the case may be, shall consider
whether the applicant was represented by counsel and whether
timely and proper notice was actually received by the applicant
or the applicant’s representative.


With the exception of medical benefits for nonorthopedic
occupational disease claims, the claimant, the employer and the
workers’ compensation commission may negotiate a final
settlement of any and all issues in a claim wherever the claim
is in the administrative or appellate processes. Upon entering
into an agreement, the parties shall file the written and executed
agreement with the office of judges. The office of judges shall
review the proposed agreement to determine if it is fair and
reasonable to the parties and shall ensure that each of the parties
is fully aware of the effects of the agreement including what
each party is conceeding in exchange for the agreement. If the
office of judges concludes that the agreement is not fair or is
not reasonable or that one of the parties is not fully informed,
the agreement will not be approved. The decision on this
question is not reviewable. If the employer is not active in the
claim, the commission may negotiate a final settlement of any
and all issues in a claim except for medical benefits for
nonorthopedic occupational disease claims with the claimant.
Upon approval of the settlement, it shall be made a part of the
claim record. The office of judges shall send written notice of
the settlement to all parties and, where appropriate, to the
appeal board or the supreme court of appeals. Except in cases
of fraud, no issue that is the subject of an approved settlement
agreement may be reopened by any party, including the
commission. Any settlement agreement may provide for a
lump-sum payment or a structured payment plan, or any
combination thereof, or any other basis as the parties may
agree. If a self-insured employer later fails to make the agreed-
upon payment, the commission shall assume the obligation to
make the payments and shall recover the amounts paid or to be
paid from the self-insured employer and its sureties or guaran-
tors or both as provided for in sections five and five-a, article
two of this chapter.

The amendments to this section enacted during the regular
session of the Legislature in the year one thousand nine hundred
ninety-nine shall apply to all settlement agreements executed
after the effective date.
§23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge.

(a) The workers' compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the Legislature, one thousand nine hundred ninety, second extraordinary session, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The office of judges shall be under the supervision of a chief administrative law judge who shall be appointed by the governor, with the advice and consent of the Senate.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the workers' compensation board of managers. The salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six, chapter twenty-nine of this code. The chief administrative law judge may only be removed by a vote of two thirds of the members of the workers' compensation board of managers and shall not be removed except for cause and then only after he or she has been presented in writing with the reasons for his or her removal and is given opportunity to respond and to present evidence. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee is applicable to the chief administrative law judge.

(c) The chief administrative law judge shall employ administrative law judges and other personnel that are necessary for the proper conduct of a system of administrative review of orders issued by the workers' compensation commission which orders have been objected to by a party. The employees
shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of this code and rules of the classified service pursuant to article six, chapter twenty-nine of this code. All additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the office of judges.

(d) The administrative expense of the office of judges shall be included within the annual budget of the workers' compensation commission.

(e) The office of judges shall, from time to time, promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the workers' compensation commission. The office of judges shall not have the power to initiate or to promulgate legislative rules as that phrase is defined in article three, chapter twenty-nine-a of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The office of judges shall follow the remaining provisions of said chapter for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(f) The chief administrative law judge has the power to hear and determine all disputed claims in accordance with the provisions of this article, establish a procedure for the hearing of disputed claims, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records
and make reports that are necessary for disputed claims and exercise any additional powers, including the delegation of powers to administrative law judges or hearing examiners that are necessary for the proper conduct of a system of administrative review of disputed claims. The chief administrative law judge shall make reports that are requested of him or her by the workers' compensation board of managers.

§23-5-9. Hearings on objections to commission or self-insured employer decisions; mediation; remand.

(a) Objections to a decision of the workers' compensation commission or of a self-insured employer made pursuant to the provisions of section one of this article shall be filed with the office of judges. Upon receipt of an objection, the office of judges shall notify the commission and all other parties of the filing of the objection. The office of judges shall establish by rule promulgated in accordance with the provisions of subsection (e), section eight of this article an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant and the commission shall be notified of any hearing at least ten days in advance.

(b) The office of judges shall establish a program for mediation to be conducted in accordance with the requirements of rule twenty-five of the West Virginia trial court rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the administrative law judge on his or her own motion, on motion of a party or by agreement of the parties. Upon issuance of an order for mediation, the office of judges shall assign a mediator from a list of qualified mediators maintained by the West Virginia state bar.

(c) The office of judges shall keep full and complete records of all proceedings concerning a disputed claim. Subject
to the rules of practice and procedure promulgated pursuant to section eight of this article, the record upon which the matter shall be decided shall include any evidence submitted by a party to the office of judges, evidence taken at hearings conducted by the office of judges and any documents in the commission’s claim files which relate to the subject matter of the objection. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The office of judges is not bound by the usual common law or statutory rules of evidence.

(d) All hearings shall be conducted as determined by the chief administrative law judge pursuant to the rules of practice and procedure promulgated pursuant to section eight of this article. Upon consideration of the designated record, the chief administrative law judge or other authorized adjudicator within the office of judges shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing or modifying the commission’s action. The decision shall contain findings of fact and conclusions of law and shall be mailed to all parties.

(e) The rule authorized by subsection (a) of this section shall be promulgated on or before the first day of October, two thousand three. Until the rule is promulgated, any rules previously promulgated shall remain in full force and effect.

(f) The office of judges may remand a claim to the commission for further development of the facts or administrative matters as, in the opinion of the administrative law judge, may be necessary for a full and complete disposition of the case. The administrative law judge shall establish a time within which the commission must report back to the administrative law judge.

(g) The decision of the workers’ compensation office of judges regarding any objections to a decision of the workers’
compensation commission or a self-insured employer is final and benefits shall be paid or denied in accordance with the decision unless the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article.

§23-5-10. Appeal from administrative law judge decision to appeal board.

The employer, claimant or workers' compensation commission may appeal to the appeal board created in section eleven of this article for a review of a decision by an administrative law judge. No appeal or review shall lie unless application therefor be made within thirty days of receipt of notice of the administrative law judge's final action or in any event within sixty days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right to such appeal or review and hence jurisdictional.


(a) On the thirty-first day of January, two thousand four, the workers' compensation appeal board heretofore established in this section is hereby abolished.

(b) There is hereby created the "workers' compensation board of review", which may also be referred to as "the board of review" or "the board". Effective the first day of February, two thousand four, the board of review shall exercise exclusive jurisdiction over all appeals from the workers' compensation office judges including any and all appeals pending with the board of appeals on the thirty-first day of January, two thousand four.

(c) The board shall consist of three members.
(d) The governor shall appoint, from names submitted by the "workers' compensation board of review nominating committee", with the advice and consent of the Senate, three qualified attorneys to serve as members of the board of review. If the governor does not select a nominee for any vacant position from the names provided by the nominating committee, he shall notify the nominating committee of that circumstance and the committee shall provide additional names for consideration by the governor. A member of the board of review may be removed by the governor for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance and then only after notice and opportunity to respond and present evidence. No more than two of the members of the board may be of the same political party. The members of the board of review shall be paid an annual salary of eighty-five thousand dollars. Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the travel management office of the department of administration.

(e) The nominating committee shall consist of the following members: (1) The president of the West Virginia state bar who will serve as the chairperson of the committee; (2) an active member of the West Virginia state bar workers' compensation committee selected by the major trade association representing employers in this state; (3) an active member of the West Virginia state bar workers' compensation committee selected by the highest ranking officer of the major employee organization representing workers in this state; (4) the dean of the West Virginia university school of law; and (5) the chairman of the judicial investigation committee.

(f) The nominating committee is responsible for reviewing and evaluating candidates for possible appointment to the board of review by the governor. In reviewing candidates, the
nominating committee may accept comments from and request
information from any person or source.

(g) Each member of the nominating committee may submit
up to three names of qualified candidates for each position on
the board of review: Provided, That the member of the nomin-
ating committee selected by the major trade organization
representing employers of this state shall submit at least one
name of a qualified candidate for each position on the board
who either is, or who represents, small business employers of
this state. After careful review of the candidates, the committee
shall select a minimum of one candidate for each position on
the board.

(h) No later than the first day of November, two thousand
three, the nominating committee shall present to the governor
its list of candidates for the initial board of review. The gover-
nor shall appoint the initial board no later than the thirty-first
day of December, two thousand three: Provided, That upon the
thirty-first day of December, two thousand three, the deadline
for filling all positions of the board of review will be extended,
as necessary, if on or before that date the governor has timely
requested additional names from the nominating committee.
Thereafter, the nominating committee shall meet at the request
of the governor in order to make timely recommendations to the
governor for appointees to the board as the initial and subse-
quent terms expire or become vacant. The recommendations
shall be submitted no later than thirty days prior to the expira-
tion of any term.

(i) Of the initial appointments, one member shall be
appointed for a term ending the thirty-first day of December,
two thousand six; one member shall be appointed for a term
ending the thirty-first day of December, two thousand eight;
and one member shall be appointed for a term ending the thirty-
first day of December, two thousand ten. Thereafter, the
appointments shall be for six-year terms.

(j) A member of the board of review must, at the time he or
she takes office and thereafter during his or her continuance in
office, be a resident of this state, be a member in good standing
of the West Virginia state bar, have a minimum of ten years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies or courts of record at the federal, state or local level.

(k) No member of the board of review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the board of review may engage in the practice of law during his or her term of office.

(l) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(m) The board shall designate one of its members in rotation to be chairman of the board for as long as the board may determine by order made and entered of record. In the absence of the chairman, any other member designated by the members present shall act as chairman.

(n) The board of review shall meet as often as necessary to hold review hearings, at such times and places as the chairman may determine. Two members shall be present in order to conduct review hearings or other business. All decisions of the
board shall be determined by a majority of the members of the board.

(o) The board of review shall make general rules regarding the pleading, including the form of the petition and any responsive pleadings, practice and procedure to be used by the board.

(p) The board of review may hire a clerk and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the board of review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board shall serve at the will and pleasure of the board. The board’s employees are exempt from the salary schedule or pay plan adopted by the division of personnel. All personnel of the board of review shall be under the supervision of the chairman of the board of review.

(q) If deemed necessary by the board, the board may, through staffing or other resources, procure assistance in review of medical portions of decisions.

(r) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the member shall promptly determine the matter and make an award in accordance with his or her determination.

(s) The award shall become a part of the commission file. A copy of the award shall be sent forthwith by mail to all parties in interest.

(t) The award is final when entered. The award shall contain a statement explaining the rights of the parties to an
appeal to the board of review and the applicable time limita-
tions involved.

(u) The board shall submit a budget to the executive
director for inclusion in the budget for the workers’ compen-
sation commission sufficient to adequately provide for the
administrative and other operating expenses of the board.

(v) The board shall report monthly to the board of managers
on the status of all claims on appeal.

§23-5-12. Appeal to board; procedure; remand and supplemental
hearing.

(a) Any employer, employee, claimant or dependent, who
shall feel aggrieved at any final action of the administrative law
judge taken after a hearing held in accordance with the provi-
sions of section nine of this article, shall have the right to
appeal to the board created in section eleven of this article for
a review of such action. The workers’ compensation commis-
sion shall likewise have the right to appeal to the board any
final action taken by the administrative law judge. The ag-
grieved party shall file a written notice of appeal with the office
of judges directed to the board, within thirty days after receipt
of notice of the action complained of, or in any event, regard-
less of notice, within sixty days after the date of the action
complained of, and unless the notice of appeal is filed within
the time specified, no appeal shall be allowed, the time limita-
tion is a condition of the right to appeal and hence jurisdic-
tional. The office of judges shall notify the other parties
immediately upon the filing of a notice of appeal. The notice of
appeal shall state the ground for review and whether oral
argument is requested. The office of judges shall forthwith
make up a transcript of the proceedings before the office of
judges and certify and transmit it to the board. The certificate
shall incorporate a brief recital of the proceedings in the case
and recite each order entered and the date thereof.
(b) The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board shall be based upon the record submitted to it and such oral argument as may be requested and received. The board may affirm, reverse, modify or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:

1. In violation of statutory provisions; or
2. In excess of the statutory authority or jurisdiction of the administrative law judge; or
3. Made upon unlawful procedures; or
4. Affected by other error of law; or
5. Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the board shall issue a written decision to be filed with the commission and a copy thereof sent by mail to the parties.

1. All decisions, findings of fact and conclusions of law of the board of review shall be in writing and state with specificity
the laws and facts relied upon to sustain, reverse or modify the administrative law judge's decision.

(2) Decisions of the board of review shall be made by a majority vote of the board of review.

(3) A decision of the board of review is binding upon the executive director and the commission with respect to the parties involved in the particular appeal. The executive director shall have the right to seek judicial review of a board of review decision irrespective of whether or not he appeared or participated in the appeal to the board of review.

(d) Instead of affirming, reversing or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the chief administrative law judge for the taking of further evidence, the administrative law judge shall proceed to take new, additional or further evidence in accordance with any instruction given by the board within thirty days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least ten days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within sixty days, render his or her decision affirming, reversing or modifying the former action of the administrative law judge. The decision shall be appealable to, and proceeded with by the board of review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand
the case to the workers' compensation commission for further
development. Any decision made by the commission following
a remand shall be subject to objection to the office of judges
and not to the board. The board may remand any case as often
as in its opinion is necessary for a full development and just
decision of the case.

(e) All appeals from the action of the administrative law
judge shall be decided by the board at the same session at which
they are heard, unless good cause for delay thereof be shown
and entered of record.

(f) In all proceedings before the board, any party may be
represented by counsel.

§23-5-15. Appeals from final decisions of board to supreme court
of appeals; procedure; costs.

(a) Review of any final decision of the board, including any
order of remand, may be prosecuted by either party or by the
workers' compensation commission to the supreme court of
appeals within thirty days from the date of the final order by
filing a petition therefor with the court against the board and the
adverse party or parties as respondents. Unless the petition for
review is filed within the thirty-day period, no appeal or review
shall be allowed, such time limitation is a condition of the right
to such appeal or review and hence jurisdictional. The clerk of
the supreme court of appeals shall notify each of the respon-
dents and the workers' compensation commission of the filing
of such petition. The board shall, within ten days after receipt
of the notice, file with the clerk of the court the record of the
proceedings had before it, including all the evidence. The court
or any judge thereof in vacation may thereupon determine
whether or not a review shall be granted. If review is granted to
a nonresident of this state, he or she shall be required to execute
and file with the clerk before an order or review shall become
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19 effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review is granted or the certified question is docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the workers' compensation commission of that fact by mail. If a review is granted or the certified question docketed, the case shall be heard by the court in the same manner as in other cases, except that neither the record nor briefs need be printed. Every review granted or certified question docketed prior to thirty days before the beginning of the term, shall be placed upon the docket for that term. The attorney general shall, without extra compensation, represent the board in such cases. The court shall determine the matter brought before it and certify its decision to the board and to the commission. The cost of the proceedings on petition, including a reasonable attorney's fee, not exceeding thirty dollars to the claimant's attorney, shall be fixed by the court and taxed against the employer if the latter is unsuccessful. If the claimant, or the commission (in case the latter is the applicant for review) is unsuccessful, the costs, not including attorney's fees, shall be taxed against the commission, payable out of the workers' compensation fund, or shall be taxed against the claimant, in the discretion of the court. But there shall be no cost taxed upon a certified question.

(b) In reviewing a decision of the board of review, the supreme court of appeals shall consider the record provided by the board and give deference to the board's findings, reasoning and conclusions, in accordance with subsections (c) and (d) of this section.
(c) If the decision of the board represents an affirmation of a prior ruling by both the commission and the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the supreme court of appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board’s material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the board’s material misstatement or mischaracterization of particular components of the evidentiary record.

(d) If the decision of the board effectively represents a reversal of a prior ruling of either the commission or the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the supreme court of appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board’s findings, reasoning and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record that even when all inferences are resolved in
§23-5-17. Termination of office of judges.

The office of judges terminates on the first day of July, two thousand nine, pursuant to the provisions of article ten, chapter four of this code unless sooner terminated, continued or reestablished pursuant to the provisions of said article.


After the thirty-first day of December, two thousand three, the workers’ compensation appeal board shall be terminated and all matters pending before the appeal board on the thirty-first day of December, two thousand three, shall be transferred to the board of review.

Pursuant to the provisions of article ten, chapter four of this code, the workers’ compensation board of review shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-2. Patients; expenses; disposition of receipts.

The department of health and human resources shall admit to the hospitals, under its rules, persons requiring hospital care and shall treat free of charge persons accidentally injured in this state while engaged in their usual employment, but preference at all times shall be given to persons accidentally injured: Provided, That the executive director of the workers’ compen-
sation commission shall pay to the hospitals for the treatment of anyone entitled to benefits or aid out of the workers’ compensation fund the same fee or expenses that would be paid to a private hospital for similar treatment. All moneys collected under this section shall be paid into the state treasury through the state commissioner of public institutions as required in 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.

§48-18-125. Employment and income reporting.

(a) For purposes of this section:

(1) “Employee” means an individual who is an “employee” for purposes of federal income tax withholding, as defined in 26 U. S. C. §3401;

(2) “Employer” means the person or entity for whom an individual performs or performed any service of whatever nature and who has control of the payment of the individual’s wages for performance of the service or services, as defined in 26 U. S. C. §3401;

(3) An individual is considered a “new hire” on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the bureau for child support enforcement:
(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(2) The rehiring or return to work of any employee who resides or works in this state.

c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

d) An employer that has employees in states other than this state and that transmits reports magnetically or electronically is not required to report to the bureau for child support enforcement the hiring, rehiring or return to work of any employee if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written designation of another state in which it has employees as the reporting state.

(e) Employers shall report by mailing to the bureau for child support enforcement a copy of the employee's W-4 form; however, an employer may transmit the information through another means if approved in writing by the bureau for child support enforcement prior to the transmittal. The report shall include the employee's name, address and social security number, the employer's name and address, any different address of the payroll office and the employer's federal tax identification number. The employer may report other information, such as date of birth or income information, if desired.

(f) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee. However, if the employer transmits the reports magnetically or electronically by two monthly submissions, the reports
shall be submitted not less than twelve days nor more than
sixteen days apart.

(g) An employer shall provide to the bureau for child
support enforcement, upon its written request, information
regarding an obligor’s employment, wages or salary, medical
insurance, start date and location of employment.

(h) Any employer who fails to report in accordance with the
provisions of this section shall be assessed a civil penalty of no
more than twenty-five dollars per failure. If the failure to report
is the result of a conspiracy between the employer and the
employee not to supply the required report or to supply a false
or incomplete report, the employer shall be assessed a civil
penalty of no more than five hundred dollars.

(i) Employers required to report under this section may
assess each employee reported one dollar for the administrative
costs of reporting.

(j) Uses for the new hire information include, but are not
limited to, the following:

(1) The state directory of new hires shall furnish the
information to the national directory of new hires;

(2) The bureau for child support enforcement shall use
information received pursuant to this section to locate individu-
als for purposes of establishing paternity and of establishing,
modifying and enforcing child support obligations and may
disclose the information to any agent of the agency that is under
contract with the bureau to carry out those purposes;

(3) State agencies responsible for administering a program
specified in 42 U. S. C. §1320b-7(b) shall have access to
information reported by employers for purposes of verifying
eligibility for the program; and
(4) The bureau of employment programs and the workers’ compensation commission shall have access to information reported by employers for purposes of administering employment security and workers’ compensation programs.


(a) All records in the possession of the bureau for child support enforcement, including records concerning an individual case of child or spousal support, are confidential and shall not be released except as follows:

(1) Records shall be disclosed or withheld as required by federal law or regulations promulgated thereunder notwithstanding other provisions of this section.

(2) Information as to the whereabouts of a party or the child shall not be released to a person against whom a protective order has been entered with respect to that party or child or where the state has reason to believe that the release of the information to the person making the request may result in physical or emotional harm to the party or the child.

(3) The phone number, address, employer and other information regarding the location of the obligor, the obligee and the child shall only be disclosed: (A) Upon his or her written consent, to the person whom the consent designates; or (B) notwithstanding subdivision (4) of this subsection, to the obligee, the obligor, the child or the caretaker or representative of the child, upon order of a court if the court finds that the disclosure is for a bona fide purpose, is not contrary to the best interest of a child and does not compromise the safety of any party: Provided, That the identity and location of the employer may be disclosed on the letters, notices and pleadings of the bureau as necessary and convenient for the determination of support amounts and the establishment, investigation, modification, enforcement, collection and distribution of support.
(4) Information and records other than the phone number, address, employer and information regarding the location of the obligor, the obligee and the child shall be disclosed to the obligor, the obligee, the child or the caretaker of the child or his or her duly authorized representative, upon his or her written request: Provided, That when the obligor requests records other than collection and distribution records, financial records relevant to the determination of the amount of support pursuant to the guidelines, or records the obligor has supplied, the bureau shall mail a notice by first-class mail to the last known address of the obligee notifying him or her of the request. The notice shall advise the obligee of his or her right to object to the release of records on the grounds that the records are not relevant to the determination of the amount of support or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the obligee of his or her right to disclosure of records provided in this section in order to determine what records the bureau for child support enforcement may have. In the event of any objection, the bureau shall determine whether or not the information shall be released.

(5) Information in specific cases may be released as necessary to determine the identity, location, employment, income and assets of an obligor.

(6) Information and records may be disclosed to the bureau of vital statistics, bureau of employment programs, the workers’ compensation commission, state tax department and the internal revenue service, or other state or federal agencies or departments that are necessary or desirable in obtaining any address, employment, wage or benefit information for the purpose of determining the amount of support or establishing, enforcing, collecting and distributing support.
(b) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in the county or regional jail not more than 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) Failure to subscribe:

(A) Responsible person. Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a person who is responsible for and who is required by specific assignment, duty or legal duty, which is either expressed or inherent in laws which require the employer’s principals to be informed and to know the facts and laws affecting the business organization and to make internal policy and decisions which ensure that the individual and organization comply with the general laws and provisions of chapter twenty-three of this code, knowingly and willfully fails to subscribe to the workers’ compensation fund shall be guilty
of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars.

(B) Any corporation, association or partnership who, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to subscribe to the workers’ compensation fund shall be guilty of a felony and, upon conviction, shall be fined not less than two thousand five hundred dollars nor more than ten thousand dollars.

(2) Failure to pay:

(A) Any person who individually or as owner, partner, president, other officer or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to make premium tax payments to the workers’ compensation fund as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed and, if the amount is one thousand dollars or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the amount is less than one thousand dollars, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.
(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to make premium tax payments to the workers' compensation fund as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed, and, if the amount is one thousand dollars or more, such corporation, association, company or partnership shall be guilty of a felony and, upon conviction thereof, shall be fined not less than two thousand five hundred dollars nor more than ten thousand dollars. If the amount is less than one thousand dollars, such corporation, association, company or partnership shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed two thousand five hundred dollars.

(C) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person, as defined in this section, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the payment of workers' compensation premium taxes to the workers' compensation fund as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed and, if the amount is one thousand dollars or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the amount is less than one thousand dollars, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.
(D) Any corporation, association, company or partnership
which, as an employer as defined in chapter twenty-three of this
code, knowingly and willfully and with fraudulent intent sells,
transfers or otherwise disposes of substantially all of the
employer's assets for the purpose of evading the payment of
workers' compensation premium taxes to the workers' compen-
sation fund as required by chapter twenty-three of this code
shall be guilty of the larceny of the premium owed, and, if the
amount is one thousand dollars or more, such corporation,
association, company or partnership shall be guilty of a felony
and, upon conviction thereof, shall be fined not less than two
thousand five hundred dollars nor more than ten thousand
dollars. If the amount is less than one thousand dollars, such
corporation, association, company or partnership shall be guilty
of a misdemeanor and, upon conviction thereof, shall be fined
an amount not to exceed two thousand five hundred dollars.

(3) Failure to file premium tax reports:

(A) Any person who individually or as owner, partner,
president, other officer, or manager of a sole proprietorship,
firm, partnership, company, corporation or association, who, as
a responsible person as defined in this section, knowingly and
willfully fails to file a premium tax report with the workers'
compensation fund as required by chapter twenty-three of this
code, shall be guilty of a felony and, upon conviction thereof,
shall be imprisoned in a state correctional facility not less than
one nor more than ten years, or in the discretion of the court, be
confined in a county or regional jail for a term not to exceed
one year and shall be fined not more than two thousand five
hundred dollars.

(B) Any corporation, association, company or partnership
which, as an employer as defined in chapter twenty-three of this
code, knowingly and willfully fails to file a premium tax report
with the workers' compensation fund as required by chapter
twentys-three of this code, shall be guilty of a felony and, upon
conviction thereof, shall be fined not less than two thousand
five hundred dollars nor more than ten thousand dollars.

(4) Failure to file other reports:

(A) Any person, individually or as owner, partner, president
or other officer, or manager of a sole proprietorship, firm,
partnership, company, corporation or association who, as a
responsible person as defined in this section, knowingly and
willfully fails to file any report, other than a premium tax
report, required by such chapter shall be guilty of a misde-
meanor and, upon conviction thereof, shall be confined in a
county or regional jail for a term not to exceed one year or fined
an amount not to exceed two thousand five hundred dollars, or
both, in the discretion of the court.

(B) Any corporation, association, company or partnership
which, as an employer as defined in chapter twenty-three of this
code, knowingly and willfully fails to file any report, other than
a premium tax report, with the workers’ compensation fund as
required by chapter twenty-three of this code, shall be guilty of
a misdemeanor and, upon conviction thereof, shall be fined an
amount not to exceed two thousand five hundred dollars.

(5) False testimony or statements:

Any person, individually or as owner, partner, president,
other officer, or manager of a sole proprietorship, firm, partner-
ship, company, corporation or association who, as a responsible
person as defined in this section, knowingly and willfully
makes a false report or statement under oath, affidavit, certifica-
tion or by any other means respecting any information required
to be provided under chapter twenty-three of this code shall be
guilty of a felony and, upon conviction thereof, shall be
confined in a state correctional facility for a definite term of
imprisonment which is not less than one year nor more than
three years or fined not less than one thousand dollars nor more
than ten thousand dollars, or both, in the discretion of the court.
In addition to any other penalty imposed, the court shall order
any defendant convicted under this section to make full
restitution of all moneys paid by or due to the workers' com-
pensation fund as the result of a violation of this section. The
restitution ordered shall constitute a judgment against the
defendant and in favor of the state of West Virginia workers'
compensation commission.

(6) Asset forfeiture:

(A) The court, in imposing sentence on a person or entity
convicted of an offense under this section, shall order the
person or entity to forfeit property, real or personal, that
constitutes or is derived, directly or indirectly, from gross
proceeds traceable to the commission of the offense. Any
person or entity convicted under this section shall pay the costs
of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the
term “payment of the costs of asset forfeiture” means:

(i) The payment of any expenses necessary to seize, detain,
inventory, safeguard, maintain, advertise, sell or dispose of
property under seizure, detention, forfeiture or of any other
necessary expenses incident to the seizure, detention, forfeiture,
or disposal of such property, including payment for:

(I) Contract services;

(II) The employment of outside contractors to operate and
manage properties or provide other specialized services
necessary to dispose of such properties in an effort to maximize
the return from such properties; and
(III) Reimbursement of any state or local agency for any
expenditures made to perform the functions described in this
subparagraph;

(ii) The compromise and payment of valid liens and
mortgages against property that has been forfeited, subject to
the discretion of the workers' compensation fund to determine
the validity of any such lien or mortgage and the amount of
payment to be made, and the employment of attorneys and
other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or
mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on
forfeited real property that accrued between the date of the
violation giving rise to the forfeiture and the date of the
forfeiture order.

(7) Venue:

Venue for prosecution of any violation of this section shall
be either the county in which the defendant's principal business
operations are located or in Kanawha County where the work-
ners' compensation fund is located.

§61-3-24f. Wrongfully seeking workers' compensation; false
testimony or statements; penalties; venue.

(1) Any person who shall knowingly and with fraudulent
intent secure or attempt to secure compensation from the
workers' compensation fund or from a self-insured employer:

(A) That is larger in amount than that to which he or she is
entitled; or

(B) That is longer in term than that to which he or she is
entitled; or
(C) To which he or she is not entitled, shall be guilty of a larceny and, if the amount is one thousand dollars or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the amount is less than one thousand dollars, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(2) Any person who shall knowingly and willfully make a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than one thousand dollars nor more than ten thousand dollars, or both, in the discretion of the court.

(3) In addition to any other penalty imposed, the court shall order any person convicted under this section to make full restitution of all moneys paid by the workers’ compensation fund or self-insured employer as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the state of West Virginia workers’ compensation commission or self-insured employer.

(4) If the person so convicted is receiving compensation from such fund or employer, he or she shall, from and after such conviction, cease to receive such compensation as a result of any alleged injury or disease.
(5) Venue for prosecution of any violation of this section shall either be the county in which the claimant resides, the county in which the claimant is employed or working, or in Kanawha County where the workers' compensation fund is 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) Any person who knowingly and willfully executes, or attempts to execute, a scheme or artifice:

(A) To defraud the workers' compensation fund or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services;

(B) To obtain, by means of false or fraudulent pretenses, representations, or promises any of the money or property owned by or under the custody or control of the workers' compensation fund or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services; or

(C) To make any charge or charges against any injured employee or any other person, firm or corporation which would result in a total charge for the treatment or service rendered in excess of the maximum amount set forth in the workers' compensation commission 's schedule of maximum reasonable amounts to be paid for the treatment or services issued pursuant to subsection (a), section three, article four, chapter twenty-three of this code is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more
than one year and shall be fined not more than two thousand
five hundred dollars.

(2) Any person who, in any matter involving a health care
program related to the workers' compensation fund, knowingly
and willfully:

(A) Falsifies, conceals or covers up by any trick, scheme or
device a material fact; or

(B) Makes any materially false, fictitious or fraudulent
statement or representation, or makes or uses any materially
false writing or document knowing the same to contain any
materially false, fictitious or fraudulent statement or entry, is
guilty of a felony and, upon conviction thereof, shall be
confined in a state correctional facility for a definite term of
imprisonment which is not less than one year nor more than
three years or fined not less than one thousand dollars nor more
than ten thousand dollars, or both, in the discretion of the court.

(3) Any person who willfully embezzles, steals or otherwise
unlawfully converts to the use of any person other than the
rightful owner, or intentionally misapplies any of the moneys,
funds, securities, premiums, credits, property or other assets of
a health care program related to the workers' compensation
fund, is guilty of a felony and, upon conviction thereof, shall be
imprisoned in a state correctional facility for not less than one
year nor more than ten years or fined not less than ten thousand
dollars, or both, in the discretion of the court.

(4) Any health care provider who fails, in violation of
subsection (5) of this section to post a notice, in the form
required by the workers' compensation commission, in the
provider's public waiting area that the provider cannot accept
any patient whose treatment or other services or supplies would
ordinarily be paid for from the workers' compensation fund or
by a self-insured employer unless the patient consents, in writing, prior to the provision of the treatment or other services or supplies, to make payment for that treatment or other services or supplies himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be fined one thousand dollars.

(5) Any person convicted under the provisions of this section shall, after such conviction, be barred from providing future services or supplies to injured employees for the purposes of workers’ compensation and shall cease to receive payment for services or supplies. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the workers’ compensation fund as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the state of West Virginia workers’ compensation commission.

(6)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense. Any person convicted under this section shall pay the costs of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the term “payment of the costs of asset forfeiture” means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention or forfeiture, or of any other necessary expenses incident to the seizure, detention, forfeiture or disposal of the property, including payment for:

(I) Contract services;
(II) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of the properties in an effort to maximize the return from the properties; and

(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the workers' compensation fund to determine the validity of the lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

(7) Venue for prosecution of any violation of this section shall be either the county in which the defendant's principal business operations are located or in Kanawha County where the workers' compensation fund is located.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2003

HOUSE BILLS

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Senate Bills = 4 Digits
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