

SB 579

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



ENROLLED

Committee Substitute for
SENATE BILL NO. 579

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



PASSED March 8, 1999
In Effect from Passage

FILED MAR 12 1999

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 579

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

[Passed March 8, 1999; in effect from passage.]

AN ACT to repeal section sixteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-a and nineteen, article four of said chapter; to amend and reenact sections two, five, five-d, thirteen, fourteen and fifteen, article two of said chapter; to further amend said article by adding thereto a new section, designated section five-b; to amend and reenact section four, article three of said chapter; to amend and reenact sections six, eight-a, nine and ten, article four of said chapter; to amend and reenact sections seven and nine, article five of said chapter; to amend article six of said chapter by adding thereto two new sections, designated sections two and three; and to amend

article three, chapter sixty-one of said code by adding thereto four new sections, designated sections twenty-four-e, twenty-four-f, twenty-four-g and twenty-four-h, all relating generally to workers' compensation and reform thereof; providing that information obtained from the state tax commissioner and the unemployment compensation division may be used to determine employment status; eliminating penalty premium tax; modifying the method of calculating penalties for late reporting and other improprieties; providing for premium tax settlements and relief from accrued interest and penalties; authorizing compensation programs performance council to review and approve write-off of uncollectible receivables; modifying interest rate on past-due payments; providing that certain deposits and disbursements are abandoned property and providing for the disposition thereof; modifying the method of compensating the interdisciplinary examining board and confirming the duties thereof; lowering the threshold for consideration of a permanent total disability award to forty percent medical impairment or thirty-five percent disability based on statutory schedule; clarifying appointment and compensation of the occupational pneumoconiosis board; restoring terminated provisions establishing physical and vocational rehabilitation program; restoring the one hundred four weeks benefit to dependents of deceased permanent total disability award recipients; authorizing lump sum or periodic payment of such benefits; providing that employers not be directly charged with the experience of such award; modifying compromise and settlement procedures of workers' compensation claims; providing for review of claim settlements by the office of judges; requiring the office of judges to provide written notice of settlement to parties, the appeal board or the supreme court of appeals; precluding the reopening of settlement issues; revising hearing procedures on objections to workers' compensation decisions; providing that objections be filed with the office of judges; requiring the office of judges to promulgate a rule establishing an adjudicatory process; eliminating reference to authorized hearing locations; providing for ten days' notice of hearings; eliminating requirement to hold hearing within thirty days; revising record requirements; removing requirement that office of judges' decisions be rendered within thirty days; setting forth

legislative intent that compensation programs performance council consider employer rate reductions commensurate with cost of employee benefits; establishing operative date of certain provisions; clarifying and strengthening criminal penalties for any person who knowingly and willfully fails to subscribe to the workers' compensation fund, fails to pay premium taxes, fails to file premium tax reports, fails to file other reports or makes a false report or statement under oath; providing that certain property is subject to forfeiture; imposing costs to accomplish forfeiture on person convicted; clarifying and strengthening criminal penalties for any person who knowingly and with fraudulent intent secures or attempts to secure workers' compensation to which they are not entitled or who knowingly and willfully makes a false report under oath; authorizing restitution and termination of benefits; clarifying and strengthening criminal penalties for knowingly and willfully committing certain fraudulent offenses in connection with the delivery of or payment for workers' compensation health care benefits, items or services; barring persons from providing future services; terminating payments for such services; providing that certain property is subject to forfeiture; imposing costs to accomplish forfeiture on person convicted; and establishing criminal penalties for any person who provides false information with the intent to defraud workers' compensation or who alters documents or certificates to indicate good standing with workers' compensation.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three-a and nineteen, article four of said chapter be repealed; that sections two, five, five-d, thirteen, fourteen and fifteen, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section five-b; that section four, article three of said chapter be amended and reenacted; that sections six, eight-a, nine and ten, article four of said chapter be amended and reenacted; that sections seven and nine, article five of said chapter be amended and reenacted; that article six of said chapter be amended and reenacted by adding thereto two new sections, designated sections two and three; and

that article three, chapter sixty-one of said code be amended by adding thereto four new sections, designated sections twenty-four-e, twenty-four-f, twenty-four-g and twenty-four-h, all to read as follows:

CHAPTER 23. WORKERS' COMPENSATION.

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

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

1 (a) Every employer shall furnish the commissioner, upon
2 request, all information required by him or her to carry
3 out the purposes of this chapter. The commissioner, or
4 any person employed by the commissioner for that pur-
5 pose, shall have the right to examine under oath any
6 employer or officer, agent or employee of any employer.

7 (b) Notwithstanding the provisions of any other statute,
8 specifically, but not exclusively, sections five and five-b,
9 article ten, chapter eleven of this code, and section eleven,
10 article ten, chapter twenty-one-a of this code the commis-
11 sioner of the bureau of employment programs may receive
12 the following information:

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

24 (2) Upon written application to the division of unem-
25 ployment compensation: In addition to the information
26 that may be released to the division of workers' compensa-

27 tion for the purposes of this chapter under the provisions
28 of chapter twenty-one-a of this code, the names, addresses
29 and other identifying information of all employing units
30 filing reports and information pursuant to section eleven,
31 article ten, chapter twenty-one-a of this code as well as
32 information contained in those reports regarding the
33 number and names, addresses and social security numbers
34 of employees employed and the gross quarterly wages paid
35 by each employing unit to each identified employee.

36 (c) All information acquired by the division of workers'
37 compensation pursuant to subsection (b) of this section
38 shall be used only for auditing premium payments, assist-
39 ing in the determination of employment status, and
40 registering businesses under the single point of registra-
41 tion program as defined in section two, article one, chapter
42 eleven of this code. The division of workers' compensa-
43 tion, upon receiving the business franchise registration
44 certificate information made available pursuant to subsec-
45 tion (b) of this section, shall contact all businesses receiv-
46 ing a business franchise registration certificate and
47 provide all necessary forms to register the business under
48 the provisions of this article. Any officer or employee of
49 this state who uses the aforementioned information in any
50 manner other than the one stated herein or elsewhere
51 authorized in this code, or who divulges or makes known
52 in any manner any of the aforementioned information
53 shall be guilty of a misdemeanor and, upon conviction
54 thereof, shall be fined not more than one thousand dollars
55 or imprisoned in the county jail for not more than one
56 year, or both, together with cost of prosecution.

57 (d) Reasonable costs of compilation and production of
58 any information made available pursuant to subsection (b)
59 of this section shall be charged to the division of workers'
60 compensation.

61 (e) Information acquired by the commissioner pursuant
62 to subsection (b) of this section shall not be subject to
63 disclosure under the provisions of chapter twenty-nine-b
64 of this code.

**§23-2-5. Application; payment of premium taxes; gross wages;
payroll report; deposits; delinquency; default;**

reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.

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

13 (1) Thereafter, premium taxes shall be paid quarterly on
14 or before the last day of the month following the end of the
15 quarter, and shall be the prescribed percentage of the
16 entire gross wages of all employees, from which net payroll
17 is calculated and paid, during the preceding quarter. The
18 division may permit employers who qualify under the
19 provisions of rules promulgated by the compensation
20 programs performance council to report gross wages and
21 pay premium taxes at other intervals.

22 (2) Every subscribing employer shall make a gross wages
23 payroll report to the division for the preceding reporting
24 period. The report shall be on the form or forms pre-
25 scribed by the division, and shall contain all information
26 required by the division.

27 (3) After subscribing to the fund, each employer shall
28 remit with each premium tax payment an amount calcu-
29 lated to be sufficient to maintain a premium deposit equal
30 to the premium payment for the previous reporting period.
31 The division may reduce the amount of the premium
32 deposit required from seasonal employers for those
33 quarters during which employment is significantly re-
34 duced. If the employer pays premium tax on a basis other
35 than quarterly, the division may require the deposit to be
36 based upon some other time period. The premium deposit
37 shall be credited to the employer's account on the books of
38 the division and used to pay premium taxes and any other

39 sums due the fund when an employer becomes delinquent
40 or in default as provided in this article.

41 (4) All premium taxes and premium deposits required by
42 this article to be paid shall be paid by the employers to the
43 division, which shall maintain a record of all sums so
44 received. Any such sum mailed to the division shall be
45 deemed to be received on the date the envelope transmit-
46 ting it is postmarked by the United States postal service.
47 All sums received by the division shall be deposited in the
48 state treasury to the credit of the workers' compensation
49 division in the manner now prescribed by law.

50 (5) The division may encourage employer efforts to
51 create and maintain safe workplaces, to encourage loss
52 prevention programs, and to encourage employer provided
53 wellness programs, through the normal operation of the
54 experience rating formula, seminars and other public
55 presentations, the development of model safety programs
56 and other initiatives as may be determined by the commis-
57 sioner and the compensation programs performance
58 council.

59 (b) Failure of an employer to timely pay premium taxes,
60 to timely file a payroll report or to maintain an adequate
61 premium deposit, shall cause the employer's account to
62 become delinquent. No employer will be declared delin-
63 quent or be assessed any penalty therefor if the division
64 determines that such delinquency has been caused by
65 delays in the administration of the fund. The division
66 shall, in writing, within sixty days of the end of each
67 quarter notify all delinquent employers of their failure to
68 timely pay premium taxes, to timely file a payroll report
69 or to maintain an adequate premium deposit. Each
70 employer who shall fail to timely file any quarterly payroll
71 report or timely pay the premium tax due with such
72 report, or both, for any quarter commencing on and after
73 the first day of July, one thousand nine hundred ninety-
74 five, shall pay a late reporting or payment penalty of the
75 greater of fifty dollars or a sum obtained by multiplying
76 the premium tax due with such report by the penalty rate
77 applicable to that quarter. The penalty rate to be used in
78 a workers' compensation division's fiscal year shall be

79 calculated annually on the first day of each fiscal year.
80 The penalty rate used to calculate the penalty for each
81 quarter in a fiscal year is the quotient, rounded to the
82 nearest higher whole number percentage rate, obtained by
83 dividing the sum of the prime rate plus four percent by
84 four. The prime rate shall be the rate published in the
85 *Wall Street Journal* on the last business day of the divi-
86 sion's prior fiscal year reflecting the base rate on corporate
87 loans posted by at least seventy-five percent of the nation's
88 thirty largest banks. Such late penalty shall be paid with
89 the most recent quarter's report and payment and is due
90 when that quarter's report and payment are filed. If such
91 late penalty is not paid when due, the same may be
92 charged to and collected by the division from the em-
93 ployer's premium deposit account or otherwise as provided
94 for by law. The notification shall demand the filing of the
95 delinquent payroll report and payment of delinquent
96 premium taxes, the penalty for late reporting or payment
97 of premium taxes or premium deposit, the interest penalty
98 and an amount sufficient to maintain the premium deposit,
99 before the end of the third month following the end of the
100 preceding quarter. Interest shall accrue and be charged on
101 the delinquent premium payment and premium deposit
102 pursuant to section thirteen of this article.

103 (c) Whenever the division notifies an employer of the
104 delinquent status of its account, the notification shall
105 explain the legal consequence of subsequent default by an
106 employer required to subscribe to the fund and the legal
107 consequences of termination of an electing employer's
108 account.

109 (d) Failure by the employer, who is required to subscribe
110 to the fund and who fails to resolve the delinquency within
111 the prescribed period, shall place the account in default
112 and shall deprive such default employer of the benefits
113 and protection afforded by this chapter, including section
114 six of this article, and the employer shall be liable as
115 provided in section eight of this article. The default
116 employer's liability under said sections shall be retroactive
117 to midnight of the last day of the month following the end
118 of the quarter for which the delinquency occurs. The
119 division shall notify the default employer of the method by

120 which the employer may be reinstated with the fund. The
121 division shall also notify the employees of such employer
122 by written notice as hereinafter provided for in this
123 section.

124 (e) Failure by any employer, who voluntarily elects to
125 subscribe, to resolve the delinquency within the prescribed
126 period shall place the account in default and shall auto-
127 matically terminate the election of such employer to pay
128 into the workers' compensation fund and shall deprive
129 such employer and the employees of the default elective
130 employer of the benefits and protection afforded by this
131 chapter, including section six of this article, and such
132 employer shall be liable as provided in section eight of this
133 article. The default employer's liability under said section
134 shall be retroactive to midnight of the last day of the
135 month following the end of the quarter for which the
136 delinquency occurs. Employees who were the subject of
137 the default employer's voluntary election to provide them
138 the benefits afforded by this chapter shall have such
139 protection terminated at the time of their employer's
140 default.

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

156 The division shall not have the authority to waive either
157 premium or accrued interest. The provisions of section
158 seventeen of this article apply to any action or decision of
159 the division under this section.

160 (2) The division shall have the authority to restore a
161 defaulted or terminated employer through a reinstatement
162 agreement. Such reinstatement agreement shall require
163 the payment in full of all premium taxes, premium depos-
164 its, the penalty for late reporting and payment, past
165 accrued interest and future interest calculated pursuant to
166 the provisions of section thirteen of this article. Notwith-
167 standing the filing of a reinstatement application or the
168 entering into of a reinstatement agreement, the division is
169 authorized to file a lien against the employer as provided
170 by section five-a of this article. In addition, entry into a
171 reinstatement agreement is discretionary with the division.
172 Such discretion shall be exercised in keeping with the
173 fiduciary obligations owed to the workers' compensation
174 fund. Should the division decline to enter into a reinstate-
175 ment agreement and should the employer not comply with
176 the provisions of subdivision (1) of this subsection, then
177 the division may proceed with any of the collection efforts
178 provided for by section five-a of this article or as other-
179 wise provided for by this code. Applications for reinstate-
180 ment shall: (A) Be made upon forms prescribed by the
181 division; (B) include a report of the gross wages payroll of
182 the employer which had not been reported to the division
183 during the entire period of delinquency and default, which
184 gross wages information shall be certified by the employer
185 or its authorized agent; and (C) include a payment of a
186 portion of the liability equal to one half of one percent of
187 the gross payroll during the period of delinquency and
188 default or equal to another portion of the liability as may
189 be determined from time to time by rule but not to exceed
190 the amount of the entire liability due and owing for the
191 period of delinquency and default. An employer who
192 applies for reinstatement shall be entitled to the benefits
193 and protection of this chapter on the day a properly
194 completed and acceptable application which is accompa-
195 nied by the application payment is received by the divi-
196 sion: *Provided*, That if the division reinstates an employer
197 subject to the terms of a reinstatement agreement, the
198 subsequent failure of the employer to make scheduled
199 payments or to pay accrued or future interest in accor-
200 dance with the reinstatement agreement or to timely file
201 current quarterly reports and to pay current quarterly

202 premiums within the month following the end of the
203 quarter for which the report and payment are due, or to
204 otherwise maintain its account in good standing or, if the
205 reinstatement agreement does not require earlier restora-
206 tion of the premium deposit, to restore the premium
207 deposit to the required amount by the end of the repay-
208 ment period shall cause the reinstatement application and
209 the reinstatement agreement to be null, void and of no
210 effect, and the employer shall be denied the benefits and
211 protection of this chapter effective from the date that such
212 employer's account originally became delinquent.

213 (3) Any employer who fails to maintain its account in
214 good standing with regard to subsequent premium taxes
215 and premium deposits after filing an application for
216 reinstatement and prior to the final resolution of an
217 application for reinstatement by entering into a reinstate-
218 ment agreement or by payment of the liability in full as
219 provided for in subdivision (1) of this subsection shall
220 cause the reinstatement application to be null, void and of
221 no effect, and the employer shall be denied the benefits
222 and protection of this chapter effective from the date that
223 such employer's account originally became delinquent.

224 (4) Following any failure of an employer to comply with
225 the provisions of a reinstatement agreement, the division
226 may then make and continue with any of the collection
227 efforts provided for by this chapter or elsewhere in this
228 code even if the employer files another reinstatement
229 application.

230 (g) With the exception noted in subsection (h), section
231 one of this article, no employee of an employer required by
232 this chapter to subscribe to the workers' compensation
233 fund shall be denied benefits provided by this chapter
234 because the employer failed to subscribe or because the
235 employer's account is either delinquent or in default.

236 (h) (1) The provisions of this section shall not deprive any
237 individual of any cause of action which has accrued as a
238 result of an injury or death which occurred during any
239 period of delinquency not resolved in accordance with the
240 provisions of this article, or subsequent failure to comply
241 with the terms of the repayment agreement.

242 (2) Upon withdrawal from the fund or termination of
243 election of any employer, the employer shall be refunded
244 the balance due the employer of its deposit, after deduct-
245 ing all amounts owed by the employer to the workers'
246 compensation fund and other agencies of this state, and
247 the division shall notify the employees of such employer of
248 said termination in such manner as the division may deem
249 best and sufficient.

250 (3) Notice to employees in this section provided for shall
251 be given by posting written notice that the employer is
252 defaulted under the compensation law of West Virginia,
253 and in the case of employers required by this chapter to
254 subscribe and pay premiums to the fund, that the de-
255 faulted employer is liable to its employees for injury or
256 death, both in workers' compensation benefits and in
257 damages at common law or by statute; and in the case of
258 employers not required by this chapter to subscribe and
259 pay premiums to the fund, but voluntarily electing to do so
260 as herein provided, that neither the employer nor the
261 employees of such employer are protected by said laws as
262 to any injury or death sustained after the date specified in
263 said notice. Such notice shall be in the form prescribed by
264 the division and shall be posted in a conspicuous place at
265 the chief works of the employer, as the same appear in
266 records of the division. If said chief works of the employer
267 cannot be found or identified, then said notices shall be
268 posted at the front door of the courthouse of the county in
269 which said chief works are located, according to the
270 division's records. Any person who shall, prior to the
271 reinstatement of said employer, as hereinbefore provided
272 for, or prior to sixty days after the posting of said notice,
273 whichever shall first occur, remove, deface or render
274 illegible said notice, shall be guilty of a misdemeanor and,
275 upon conviction thereof, shall be fined one thousand
276 dollars, and said notice shall state this provision upon its
277 face. The division may require any sheriff, deputy sheriff,
278 constable or other official of the state of West Virginia,
279 who may be authorized to serve civil process, to post such
280 notice and to make return thereof of the fact of such
281 posting to the division, and any failure of such officer to
282 post any notice within ten days after he or she shall have

283 received the same from the division, without just cause or
 284 excuse, shall constitute a willful failure or refusal to
 285 perform a duty required of him or her by law within the
 286 meaning of section twenty-eight, article five, chapter
 287 sixty-one of this code. Any person actually injured by
 288 reason of such failure shall have an action against said
 289 official, and upon any official bond he or she may have
 290 given, for such damages as such person may actually have
 291 incurred, but not to exceed, in the case of any surety upon
 292 said bond, the amount of the penalty of said bond. Any
 293 official posting said notice as herein required shall be
 294 entitled to the same fee as is now or may hereafter be
 295 provided for the service of process in suits instituted in
 296 courts of record in the state of West Virginia, which fee
 297 shall be paid by the division out of any funds at its dis-
 298 posal, but shall be charged by the division against the
 299 account of the employer to whose delinquency such notice
 300 relates.

**§23-2-5b. Premium tax default settlements; relief from liability
 for accrued interest and penalties; repayment terms
 and conditions; reinstatement to good standing;
 voided reinstatement agreements.**

1 The Legislature hereby declares that it is the purpose of
 2 this section to provide any employer who is in default as of
 3 the effective date of this section in any payment due
 4 pursuant to the provisions of this article an opportunity to
 5 settle the amount of the default in accordance with the
 6 provisions hereinafter set forth. For the purposes of this
 7 section, the term "default" applies to any failure by an
 8 employer to subscribe to or pay premium taxes that are
 9 attributable to the quarter ended on the thirty-first day of
 10 December, one thousand nine hundred ninety-eight or
 11 quarters ended before that date. In addition, for the
 12 purposes of this section, "employer" means any corpora-
 13 tion, partnership, limited liability company, sole propri-
 14 etor, person or other legal entity which is liable or which
 15 directly or indirectly may be held liable as a responsible
 16 party for the nonpayment of premium taxes.

17 (a) An employer who qualifies under this section will
 18 have six months from the first day of July, one thousand

19 nine hundred ninety-nine, to apply to the commissioner for
20 a settlement of the amount of premium taxes, accrued
21 interest and penalties and any award of attorney's fees
22 made pursuant to subdivision (17), section six, article two,
23 chapter twenty-one-a of this code, owed to the workers'
24 compensation fund as a result of the employer's default on
25 premium tax payments to the division. Such application
26 shall be made on a form prescribed by the commissioner
27 and may impose on the employer such obligations and
28 constraints concerning the time and manner of payment as
29 the commissioner deems necessary to effectuate the
30 purpose of this section.

31 (b) Notwithstanding provisions in this article to the
32 contrary, the employer shall be relieved of liability for the
33 payment of the interest and penalties which have accrued
34 by operation of other provisions in this article and shall
35 further be relieved of liability for payment of any award of
36 attorney's fees made pursuant to subdivision (17), section
37 six, article two, chapter twenty-one-a of this code, by
38 tendering payment in full of all past-due premium taxes
39 within thirty days from the date that the commissioner
40 notifies the employer in writing that the application has
41 been approved: *Provided*, That in the alternative, an
42 employer shall be relieved of liability for the payment of
43 the interest and penalties which have accrued by operation
44 of other provisions in this article by fulfilling the terms of
45 a written agreement with the division to pay, within three
46 hundred sixty-five days from the date upon which the
47 agreement is executed, all past-due premium taxes in
48 monthly installments which shall include interest on such
49 past-due premium taxes calculated at the annual percent-
50 age rate of nine percent.

51 (c) Notwithstanding any provisions in this article to the
52 contrary, an employer which is remitting payments to the
53 division pursuant to the terms of an agreement entered
54 into prior to the effective date of this section may apply to
55 the commissioner in accordance with subsection (a) of this
56 section to discharge the remaining balance of its indebted-
57 ness to the division by tendering, within thirty days from
58 the date upon which the commissioner notifies the em-

59 ployer in writing that the application has been approved,
60 payment in full for that portion of the balance which
61 consists of unpaid premium taxes that are attributable to
62 the quarter ended on the thirty-first day of December, one
63 thousand nine hundred ninety-eight, or quarters ended
64 before that date: *Provided*, That in the alternative, an
65 employer which is remitting payments to the division
66 pursuant to the terms of an agreement entered into prior
67 to the effective date of this section may apply to the
68 commissioner in accordance with subsection (a) of this
69 section to discharge the balance of its indebtedness to the
70 division by fulfilling the terms of a written agreement with
71 the division to pay, within three hundred sixty-five days
72 from the date upon which the agreement is executed, all
73 past-due premium taxes in monthly installments which
74 shall include interest on such past-due premium taxes
75 calculated at an annual percentage rate of nine percent.

76 (d) An employer with which the commissioner is, as of
77 the effective date of this section, engaged in litigation
78 concerning the extent to which that employer is liable to
79 the division for past-due premium taxes, accrued interest
80 and penalties may in settlement: (1) Tender payment in
81 full for the past-due premium taxes; or (2) fulfill the terms
82 of a written agreement with the division to pay, within
83 three hundred sixty-five days from the date that the
84 agreement is executed, all past-due premium taxes in
85 monthly installments which shall include interest on such
86 past-due premium taxes calculated at an annual percent-
87 age rate of nine percent.

88 (e) An employer shall be reinstated to good standing as
89 of the date that the employer tenders payment in full for
90 all past-due premium taxes. An employer who enters into
91 a written agreement with the division to pay past-due
92 premium taxes in monthly installments shall be reinstated
93 to good standing as of the date on which the agreement is
94 executed: *Provided*, That the failure of the employer to
95 make scheduled payments in accordance with a repayment
96 agreement entered into under this section may at the
97 discretion of the commissioner cause the repayment
98 agreement to be voided and the employer shall be denied

99 the benefits and protections of this chapter effective from
100 the date of the employer's initial default. In addition, the
101 employer shall be subject to all remedies available to the
102 division pursuant to the provisions of this chapter.

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

1 Notwithstanding any other provision to the contrary, the
2 division, with the approval of the compensation programs
3 performance council, may write-off any uncollected
4 receivable due under the provisions of this article which
5 the division and the compensation programs performance
6 council deem to be uncollectible.

§23-2-13. Interest on past-due payments; reinstatement agreements.

1 Effective the first day of July, one thousand nine hun-
2 dred ninety-nine, payments unpaid on the date on which
3 due and payable shall immediately begin bearing interest
4 as specified hereinafter. The interest rate per annum for
5 each fiscal year shall be calculated as the greater of the
6 division's current discount rate or the prime rate plus four
7 percent, each rounded to the nearest whole percent. The
8 discount rate shall be determined by the compensation
9 programs performance council on an annual basis. The
10 prime rate shall be the rate published in the *Wall Street*
11 *Journal* on the last business day of the division's prior
12 fiscal year reflecting the base rate on corporate loans
13 posted by at least seventy-five percent of the nation's
14 thirty largest banks. This same rate of interest shall be
15 applicable to all reinstatement agreements entered into by
16 the commissioner pursuant to section five of this article on
17 and after the effective date of this section: *Provided*, That
18 if an employer enters into a subsequent reinstatement
19 agreement within seven years of the date of the first
20 agreement, the interest rate shall be eighteen percent per
21 annum. Interest shall be compounded quarterly until
22 payment plus accrued interest is received by the commis-
23 sioner: *Provided, however*, That on and after the date of
24 execution of a reinstatement agreement, for determining
25 future interest on any past-due premium, premium
26 deposit, and past compounded interest thereon, any
27 reinstatement agreement entered into by the commissioner

28 shall provide for a simple rate of interest, determined in
29 accordance with the provisions of this section which shall
30 not be subject to change during the life of the reinstate-
31 ment agreement for such future interest. Interest collected
32 pursuant to this section shall be paid into the workers'
33 compensation fund: *Provided further*, That in no event
34 shall the rate of interest charged a political subdivision of
35 the state or a volunteer fire department pursuant to this
36 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 elimina-
tion of lien; enforcement of lien; successor liability.**

1 (a) If any employer shall sell or otherwise transfer
2 substantially all of the employer's assets, so as to give up
3 substantially all of the employer's capacity and ability to
4 continue in the business in which the employer has
5 previously engaged, then:

6 (1) Such employer's premium taxes, premium deposits,
7 interest and other payments owed to the division shall be
8 due and owing to the division upon the execution of the
9 agreement of sale or other transfer;

10 (2) Any repayment agreement entered into by the
11 employer with the division pursuant to section five of this
12 article shall terminate upon the execution of the aforesaid
13 agreement of sale or other transfer and all amounts owed
14 to the division but not yet paid shall become due; and

15 (3) Upon execution of an agreement of sale or other
16 transfer, as aforesaid, the division shall continue to have
17 a lien, as provided for in section five-a of this article,
18 against all of the remaining property of the employer as
19 well as all of the sold or transferred assets, which lien shall
20 constitute a personal obligation of the employer.

21 (b) Notwithstanding any provisions of section five-a of
22 this article to the contrary, in the event that a new em-
23 ployer acquires by sale or other transfer or assumes all or
24 substantially all of a predecessor employer's assets, then:

25 (1) Any liens for payments owed to the division for
26 premium taxes, premium deposits, interest or other
27 payments owed to the division by the predecessor em-
28 ployer shall be extended to the successor employer;

29 (2) Any liens held by the division against the predecessor
30 employer's property shall be extended to all of the assets
31 of the successor employer; and

32 (3) Liens acquired in the manner described in subdivi-
33 sions (1) and (2) of this subsection shall be enforceable by
34 the division to the same extent as provided for the enforce-
35 ment of liens against the predecessor employer in section
36 five-a of this article.

37 (c) Notwithstanding the provisions of section five-a of
38 this article to the contrary, if any employer as described in
39 subsection (a) of this section shall sell or otherwise trans-
40 fer a portion of the employer's assets so as to affect the
41 employer's capacity to do business, then:

42 (1) Such employer's premium taxes, premium deposits,
43 interest, and other payments owed to the division shall be
44 due and owing to the division upon the execution of the
45 agreement of sale or other transfer;

46 (2) Any repayment agreement entered into by the
47 employer with the division pursuant to section five of the
48 article shall terminate upon the execution of the aforesaid
49 agreement of sale or other transfer and all amounts owed
50 to the division but not yet paid shall become due; and

51 (3) Upon execution of an agreement of sale or other
52 transfer, as aforesaid, the division shall continue to have
53 a lien, as provided for in section five-a of this article,
54 against all of the remaining property of the employer as
55 well as all the sold or transferred assets, which lien shall
56 constitute a personal obligation of the employer.

57 (d) If an employer subject to subsection (a), (b) or (c) of
58 this section pays to the division, prior to the execution of
59 an agreement of sale or other transfer, a sum sufficient to
60 retire all of the indebtedness that the employer would owe
61 at the time of the execution, then the division shall issue a
62 certificate to the employer stating that the employer's

63 account is in good standing with the division and that the
64 assets may be sold or otherwise transferred without the
65 attachment of the division's lien. An agreement of sale or
66 other transfer may provide for the creation of an escrow
67 account into which the employers shall pay the full
68 amount owed to the division. The subsequent timely
69 payment of that full amount to the division shall operate
70 to place both employers in good standing with the division
71 to the extent of the predecessor employer's liabilities
72 retroactive to the date of sale or other transfer. In the
73 event that the employer would not owe any sum to the
74 division on the aforesaid date of execution, then a certifi-
75 cate shall also be issued to the employer upon the em-
76 ployer's request stating that the employer's account is in
77 good standing with the division and that the assets may be
78 sold or otherwise transferred without the attachment of
79 the division's lien.

80 (e) As used in this article, the term "assets" means all
81 property of whatever type in which the employer has an
82 interest including, but not limited to, good will, business
83 assets, customers, clients, contracts, access to leases such
84 as the right to sublease, assignment of contracts for the
85 sale of products, operations, stock of goods or inventory,
86 accounts receivable, equipment or transfer of substantially
87 all of its employees.

88 (f) The transfer of any assets of the employer shall be
89 presumed to be a transfer of all or substantially all of the
90 assets if the transfer affects the employer's capacity to do
91 business. The presumption can be overcome upon petition
92 presented and an administrative hearing in accordance
93 with section fifteen of this article and in consideration of
94 the factors thereunder.

95 (g) The foregoing provisions are expressly intended to
96 impose upon such successor employers the duty of obtain-
97 ing from the division or predecessor employer, prior to the
98 date of such acquisition, a valid "certificate of good
99 standing to transfer a business or business assets" to verify
100 that the predecessor employer's account with the division
101 is in good standing.

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

1 (a) At any time prior to or following the acquisition
2 described in subsection (a), (b) or (c), section fourteen of
3 this article, the buyer or other recipient may file a certified
4 petition with the division requesting that the division
5 waive the payment by the buyer or other recipient of
6 premiums, premium deposits, interest and imposition of
7 the modified rate of premiums attributable to the prede-
8 cessor employer or other penalty, or any combination
9 thereof. The division shall review the petition by consider-
10 ing the seven factors set forth below:

11 (1) The exact nature of the default;

12 (2) The amount owed to the division;

13 (3) The solvency of the fund;

14 (4) The financial condition of the buyer or other recipi-
15 ent;

16 (5) The equities exhibited towards the fund by the buyer
17 or other recipient during the acquisition process;

18 (6) The potential economic impact upon the state and the
19 specific geographic area in which the buyer or other
20 recipient is to be or is located, if the acquisition were not
21 to occur; and

22 (7) Whether the assets are purchased in an arms-length
23 transaction.

24 Unless requested by a party or by the division, no
25 hearing need be held on the petition. However, any
26 decision made by the division on the petition shall be in
27 writing and shall include appropriate findings of fact and
28 conclusions of law. Such decision shall be effective ten
29 days following notice to the public of the decision unless
30 an objection is filed in the manner herein provided. Such
31 notice shall be given by the division's filing with the
32 secretary of state, for publication in the state register, of
33 a notice of the decision. At the time of filing the notice of
34 its decision, the division shall also file with the secretary

35 of state a true copy of the decision. The publication shall
36 include a statement advising that any person objecting to
37 the decision must file, within ten days after publication of
38 the notice, a verified response with the division setting
39 forth the objection and the basis therefor. If any such
40 objection is filed, the division shall hold an administrative
41 hearing, conducted pursuant to article five, chapter
42 twenty-nine-a of this code, within fifteen days of receiving
43 the response unless the buyer or other recipient consents
44 to a later hearing. Nothing in this subsection shall be
45 construed to be applicable to the seller or other transferor
46 or to affect in any way a proceeding under sections five
47 and five-a of this article.

48 (b) In the factual situations set forth in subsection (a), (b)
49 or (c), section fourteen of this article, if the predecessor's
50 modified rate of premium tax, as calculated in accordance
51 with section four of this article, is greater than the manual
52 rate of premium tax, as calculated in accordance with said
53 section, for other employers in the same class or group,
54 then, if the new employer does not already have a modified
55 rate of premium, it shall also assume the predecessor
56 employer's modified rates for the payment of premiums as
57 determined under sections four and five of this article
58 until sufficient time has elapsed for the new employer's
59 experience record to be combined with the experience
60 record of the predecessor employer so as to calculate the
61 new employer's own modified rate of premium tax.

ARTICLE 3. WORKERS' COMPENSATION FUND.

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

1 (a) All disbursements from the workers' compensation
2 fund and the other funds created pursuant to this chapter
3 including the advance deposits by employers where there
4 has been no activity for a period of five years, are pre-
5 sumed abandoned and subject to the custody of the state
6 as unclaimed property under the provisions of article
7 eight, chapter thirty-six of this code. The funds shall be
8 kept in a separate account by the state treasurer, apart
9 from other unclaimed property funds. Ninety days after

10 the state treasurer has advertised the accounts and paid
11 any claims, he or she shall remit the balance of those funds
12 held in the account to the credit of the workers' compensa-
13 tion fund or to other affected funds. Such property shall
14 become the property of and owned exclusively by the
15 workers' compensation fund.

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

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

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

4 (a) The expressions "average weekly wage earnings,
5 wherever earned, of the injured employee, at the date of
6 injury" and "average weekly wage in West Virginia", as
7 used in this chapter, shall have the meaning and shall be
8 computed as set forth in section fourteen of this article
9 except for the purpose of computing temporary total
10 disability benefits for part-time employees pursuant to the
11 provisions of section six-d of this article.

12 (b) If the injury causes temporary total disability, the
13 employee shall receive during the continuance thereof a
14 maximum weekly benefit to be computed on the basis of
15 seventy percent of the average weekly wage earnings,
16 wherever earned, of the injured employee, at the date of
17 injury, not to exceed one hundred percent of the average
18 weekly wage in West Virginia: *Provided*, That in the case
19 of a claimant whose injury occurred prior to the second
20 day of February, one thousand nine hundred ninety-five,
21 the maximum benefit rate shall be the rate applied under
22 the prior enactment of this subsection which was in effect
23 at the time the injury occurred, and the rate shall not be
24 affected by the amendment and reenactment of this

25 section during the regular session of the Legislature in the
26 year one thousand nine hundred ninety-five. The mini-
27 mum weekly benefits paid hereunder shall not be less than
28 thirty-three and one-third percent of the average weekly
29 wage in West Virginia, except as provided in section six-d
30 and section nine of this article. In no event, however, shall
31 such minimum weekly benefits exceed the level of benefits
32 determined by use of the then applicable federal minimum
33 hourly wage: *Provided, however,* That any claimant
34 receiving permanent total disability benefits, permanent
35 partial disability benefits or dependents' benefits prior to
36 the first day of July, one thousand nine hundred ninety-
37 four, shall not have his or her benefits reduced based upon
38 the requirement herein that the minimum weekly benefit
39 shall not exceed the applicable federal minimum hourly
40 wage.

41 (c) Subdivision (b) of this section shall be limited as
42 follows: Aggregate award for a single injury causing
43 temporary disability shall be for a period not exceeding
44 two hundred eight weeks.

45 (d) For all awards of permanent total disability benefits
46 that are made on or after the second day of February, one
47 thousand nine hundred ninety-five, including those claims
48 in which a request for an award was pending before the
49 division or which were in litigation but not yet submitted
50 for a decision, then benefits shall be payable until the
51 claimant attains the age necessary to receive federal old
52 age retirement benefits under the provisions of the Social
53 Security Act, 42 U. S. C. 401 and 402, in effect on the
54 effective date of this section. Such a claimant shall be
55 paid benefits so as not to exceed a maximum benefit of
56 sixty-six and two-thirds percent of the claimant's average
57 weekly wage earnings, wherever earned, at the time of the
58 date of injury not to exceed one hundred percent of the
59 average weekly wage in West Virginia. The minimum
60 weekly benefits paid hereunder shall be as is provided for
61 in subdivision (b) of this section. In all claims in which an
62 award for permanent total disability benefits was made
63 prior to the second day of February, one thousand nine
64 hundred ninety-five, such awards shall continue to be paid

65 at the rate in effect prior to the said date, subject to annual
66 adjustments for changes in the average weekly wage in
67 West Virginia: *Provided*, That the provisions of sections
68 one through eight, article four-a of this chapter shall be
69 applied thereafter to all such prior awards that were
70 previously subject to its provisions. A single or aggregate
71 permanent disability of eighty-five percent or more shall
72 entitle the employee to a rebuttable presumption of a
73 permanent total disability for the purpose of paragraph
74 (2), subdivision (n) of this section: *Provided, however*,
75 That the claimant must also be at least forty percent
76 medically impaired upon a whole body basis or has
77 sustained a thirty-five percent statutory disability pursu-
78 ant to the provisions of subdivision (f) of this section. The
79 presumption may be rebutted if the evidence establishes
80 that the claimant is not permanently and totally disabled
81 pursuant to subdivision (n) of this section. Under no
82 circumstances shall the division grant an additional
83 permanent disability award to a claimant receiving a
84 permanent total disability award: *Provided further*, That
85 if any claimant thereafter sustains another compensable
86 injury and has permanent partial disability resulting
87 therefrom, the total permanent disability award benefit
88 rate shall be computed at the highest benefit rate justified
89 by any of the compensable injuries, and the cost of any
90 increase in the permanent total disability benefit rate shall
91 be paid from the second injury reserve created by section
92 one, article three of this chapter.

93 (e)(1) For all awards made on or after the second day of
94 February, one thousand nine hundred ninety-five, if the
95 injury causes permanent disability less than permanent
96 total disability, the percentage of disability to total
97 disability shall be determined and the award computed on
98 the basis of four weeks' compensation for each percent of
99 disability determined, at the maximum or minimum
100 benefit rates provided for in subdivision (d) of this section:
101 *Provided*, That in the case of a claimant whose injury
102 occurred prior to the second day of February, one thou-
103 sand nine hundred ninety-five, the maximum benefit rate
104 shall be the rate applied under the prior enactment of this
105 section which was in effect at the time the injury occurred,

106 and the rate shall not be affected by the amendment and
107 reenactment of this section during the regular session of
108 the Legislature in the year one thousand nine hundred
109 ninety-five.

110 (2) If a claimant is released by his or her treating physi-
111 cian to return to work at the job he or she held before the
112 occupational injury occurred and if the claimant's
113 preinjury employer does not offer the preinjury job or a
114 comparable job to the employee when such a position is
115 available to be offered, then the award for the percentage
116 of partial disability shall be computed on the basis of six
117 weeks of compensation for each percent of disability.

118 (3) The minimum weekly benefit under this subdivision
119 shall be as provided in subdivision (b) of this section for
120 temporary total disability.

121 (f) If the injury results in the total loss by severance of
122 any of the members named in this subdivision, the per-
123 centage of disability shall be determined by the percentage
124 of disability, specified in the following table:

125 The loss of a great toe shall be considered a ten percent
126 disability.

127 The loss of a great toe (one phalanx) shall be considered
128 a five percent disability.

129 The loss of other toes shall be considered a four percent
130 disability.

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

133 The loss of all toes shall be considered a twenty-five
134 percent disability.

135 The loss of forepart of foot shall be considered a thirty
136 percent disability.

137 The loss of a foot shall be considered a thirty-five
138 percent disability.

139 The loss of a leg shall be considered a forty-five percent
140 disability.

141 The loss of thigh shall be considered a fifty percent
142 disability.

143 The loss of thigh at hip joint shall be considered a sixty
144 percent disability.

145 The loss of a little or fourth finger (one phalanx) shall be
146 considered a three percent disability.

147 The loss of a little or fourth finger shall be considered a
148 five percent disability.

149 The loss of ring or third finger (one phalanx) shall be
150 considered a three percent disability.

151 The loss of ring or third finger shall be considered a five
152 percent disability.

153 The loss of middle or second finger (one phalanx) shall
154 be considered a three percent disability.

155 The loss of middle or second finger shall be considered
156 a seven percent disability.

157 The loss of index or first finger (one phalanx) shall be
158 considered a six percent disability.

159 The loss of index or first finger shall be considered a ten
160 percent disability.

161 The loss of thumb (one phalanx) shall be considered a
162 twelve percent disability.

163 The loss of thumb shall be considered a twenty percent
164 disability.

165 The loss of thumb and index finger shall be considered
166 a thirty-two percent disability.

167 The loss of index and middle finger shall be considered
168 a twenty percent disability.

169 The loss of middle and ring finger shall be considered a
170 fifteen percent disability.

171 The loss of ring and little finger shall be considered a ten
172 percent disability.

173 The loss of thumb, index and middle finger shall be
174 considered a forty percent disability.

175 The loss of index, middle and ring finger shall be consid-
176 ered a thirty percent disability.

177 The loss of middle, ring and little finger shall be consid-
178 ered a twenty percent disability.

179 The loss of four fingers shall be considered a thirty-two
180 percent disability.

181 The loss of hand shall be considered a fifty percent
182 disability.

183 The loss of forearm shall be considered a fifty-five
184 percent disability.

185 The loss of arm shall be considered a sixty percent
186 disability.

187 The total and irrecoverable loss of the sight of one eye
188 shall be considered a thirty-three percent disability. For
189 the partial loss of vision in one, or both eyes, the percent-
190 ages of disability shall be determined by the division,
191 using as a basis the total loss of one eye.

192 The total and irrecoverable loss of the hearing of one ear
193 shall be considered a twenty-two and one-half percent
194 disability. The total and irrecoverable loss of hearing of
195 both ears shall be considered a fifty-five percent disability.

196 For the partial loss of hearing in one, or both ears, the
197 percentage of disability shall be determined by the divi-
198 sion, using as a basis the total loss of hearing in both ears.

199 Should a claimant sustain a compensable injury which
200 results in the total loss by severance of any of the bodily
201 members named in this subdivision, die from sickness or
202 noncompensable injury before the division makes the
203 proper award for such injury, the division shall make such
204 award to claimant's dependents as defined in this chapter,
205 if any; such payment to be made in the same installments
206 that would have been paid to claimant if living: *Provided*,
207 That no payment shall be made to any surviving spouse of
208 such claimant after his or her remarriage, and that this

209 liability shall not accrue to the estate of such claimant and
210 shall not be subject to any debts of, or charges against,
211 such estate.

212 (g) Should a claimant to whom has been made a perma-
213 nent partial award die from sickness or noncompensable
214 injury, the unpaid balance of such award shall be paid to
215 claimant's dependents as defined in this chapter, if any;
216 such payment to be made in the same installments that
217 would have been paid to claimant if living: *Provided*, That
218 no payment shall be made to any surviving spouse of such
219 claimant after his or her remarriage, and that this liability
220 shall not accrue to the estate of such claimant and shall
221 not be subject to any debts of, or charges against, such
222 estate.

223 (h) For the purposes of this chapter, a finding of the
224 occupational pneumoconiosis board shall have the force
225 and effect of an award.

226 (i) For the purposes of this chapter, with the exception of
227 those injuries provided for in subdivision (f) of this section
228 and in section six-b of this article, the degree of permanent
229 disability other than permanent total disability shall be
230 determined exclusively by the degree of whole body
231 medical impairment that a claimant has suffered. For
232 those injuries provided for in subdivision (f) of this section
233 and section six-b of this article, the degree of disability
234 shall be determined exclusively by the provisions of said
235 subdivision and said section. The occupational pneumoco-
236 niosis board created pursuant to section eight-a of this
237 article shall premise its decisions on the degree of pulmo-
238 nary function impairment that claimants suffer solely
239 upon whole body medical impairment. The workers'
240 compensation division shall adopt standards for the
241 evaluation of claimants and the determination of a claim-
242 ant's degree of whole body medical impairment. Once the
243 degree of medical impairment has been determined, that
244 degree of impairment shall be the degree of permanent
245 partial disability that shall be awarded to the claimant.
246 This subdivision shall be applicable to all injuries incurred
247 and diseases with a date of last exposure on or after the
248 second day of February, one thousand nine hundred

249 ninety-five, to all applications for an award of permanent
250 partial disability made on and after such date, and to all
251 applications for an award of permanent partial disability
252 that were pending before the division or pending in
253 litigation but not yet submitted for decision on and after
254 such date. The prior provisions of this subdivision shall
255 remain in effect for all other claims.

256 (j) From a list of names of seven persons submitted to the
257 commissioner by the health care advisory panel, the
258 commissioner shall appoint an interdisciplinary examining
259 board consisting of five members to evaluate claimants,
260 including by examination if the board so elects. The board
261 shall be composed of three qualified physicians with
262 specialties and expertise qualifying them to evaluate
263 medical impairment and two vocational rehabilitation
264 specialists who are qualified to evaluate the ability of a
265 claimant to perform gainful employment with or without
266 retraining. One member of the board shall be designated
267 annually as chairperson by the commissioner. The term of
268 office of each member of the board shall be six years and
269 until his or her successor has been appointed and has
270 qualified: *Provided*, That two of the persons initially
271 appointed shall serve a term of six years, two of the
272 remaining persons shall serve a term of four years and the
273 remaining member shall serve a term of two years. Any
274 member of the board may be appointed to any number of
275 terms. Any two physician members and one vocational
276 rehabilitation specialist members shall constitute a quorum
277 for the transaction of business. The commissioner, from
278 time to time, shall fix the compensation to be paid to each
279 member of the board, and the members shall also be
280 entitled to reasonable and necessary traveling and other
281 expenses incurred while actually engaged in the perfor-
282 mance of their duties. The board shall perform the duties
283 and responsibilities as assigned by the provisions of this
284 chapter, consistent with the administrative policies
285 developed by the commissioner with the assistance of the
286 compensation programs performance council.

287 (1) Prior to the referral of any issue to the interdisciplin-
288 ary examining board, the division shall conduct such
289 examinations of the claimant as it finds necessary and

290 obtain all pertinent records concerning the claimant's
291 medical history and reports of examinations and forward
292 them to the board at the time of the referral. The division
293 shall provide adequate notice to the employer of the filing
294 of the request for a permanent total disability award and
295 the employer shall be granted an appropriate period in
296 which to respond to the request. The claimant and the
297 employer may furnish all pertinent information to the
298 board and shall furnish to the board any information
299 requested by the board. The claimant and the employer
300 may each submit no more than one report and opinion
301 regarding each issue present in a given claim. The em-
302 ployer shall be entitled to have the claimant examined by
303 medical specialists and vocational rehabilitation special-
304 ists: *Provided*, That the employer is entitled to only one
305 such examination on each issue present in a given claim.
306 Any additional examinations must be approved by the
307 division and shall be granted only upon a showing of good
308 cause. The reports from all employer-conducted examina-
309 tions must be filed with the board and served upon the
310 claimant. The board may request that those persons who
311 have furnished reports and opinions regarding a claimant
312 provide it with such additional information as the board
313 may deem necessary. Both the claimant and the employer,
314 as well as the division, may submit reports from experts
315 challenging or supporting the other reports in the record
316 regardless of whether or not such an expert examined the
317 claimant or relied solely upon the evidence of record.

318 (2) If the board or a quorum thereof elects to examine a
319 claimant, the individual members shall conduct such
320 examinations as are pertinent to each of their specialties.
321 If a claim presents an issue beyond the expertise of the
322 board, the board may obtain advice or evaluations by
323 other specialists. In addition, if the compensation pro-
324 grams performance council determines that the number of
325 applications pending before the board has exceeded the
326 level at which the board can review and make recommen-
327 dations within a reasonable time, then the council may
328 authorize the commissioner to appoint such additional
329 members to the board as may be necessary to reduce the
330 backlog of applications. Such additional members shall be

331 recommended by the health care advisory panel and the
332 commissioner may make such appointments as he or she
333 chooses from the recommendations. The additional board
334 members shall not serve a set term but shall serve until the
335 council determines that the number of pending applica-
336 tions has been reduced to an acceptable level.

337 (3) Referrals to the board shall be limited to matters
338 related to the determination of permanent total disability
339 under the provisions of subdivision (n) of this section and
340 to questions related to medical cost containment, utiliza-
341 tion review decisions and managed care decisions arising
342 under section three of this article.

343 (4) In the event the board members elect to examine a
344 claimant, the board shall prepare a report stating the tests,
345 examinations, procedures and other observations that
346 were made, the manner in which each was conducted, and
347 the results of each. The report shall state the findings
348 made by the board and the reasons therefor. Copies of the
349 reports of all such examinations shall be served upon the
350 parties and the division and each shall be given an oppor-
351 tunity to respond in writing to the findings and conclu-
352 sions stated in the reports.

353 (5) The board shall state its initial recommendations to
354 the division in writing with an explanation for each such
355 recommendation setting forth the reasons for each. The
356 recommendations shall be served upon the parties and the
357 division and each shall be afforded a thirty-day opportu-
358 nity to respond in writing to the board regarding the
359 board's recommendations. The board shall then review
360 any such responses and issue its final recommendations.
361 The final recommendations shall then be effectuated by
362 the entry of an appropriate order by the division.

363 (6) Except as noted below, objections pursuant to section
364 one, article five of this chapter to any such order shall be
365 limited in scope to matters within the record developed
366 before the workers' compensation division and the board
367 and shall further be limited to the issue of whether the
368 board properly applied the standards for determining
369 medical impairment, if applicable, and the issue of
370 whether the board's findings are clearly wrong in view of

371 the reliable, probative and substantial evidence on the
372 whole record. Should either party contend that the claim-
373 ant's condition has changed significantly since the review
374 conducted by the board, the party may file a motion with
375 the administrative law judge, together with a report
376 supporting that assertion. Upon the filing of such motion,
377 the administrative law judge shall cause a copy of the
378 report to be sent to the examining board asking, the board
379 to review the report and provide such comments as the
380 board chooses within sixty days of the board's receipt of
381 the report: The board may then either supply such com-
382 ments or, at the board's discretion, request that the claim
383 be remanded to the board for further review by the board.
384 If remanded, the claimant is not required to submit to
385 further examination by the employer's medical specialists
386 or vocational rehabilitation specialists. Following any
387 such remand, the board shall file its recommendations
388 with the administrative law judge for his or her review. If
389 the board elects to respond with comments, such com-
390 ments shall be filed with the administrative law judge for
391 his or her review. Following the receipt of either the
392 board's recommendations or comment, the administrative
393 law judge shall then issue a written decision ruling upon
394 the asserted change in the claimant's condition. No
395 additional evidence may be introduced during the review
396 of the objection before the office of judges or elsewhere on
397 appeal: *Provided*, That each party and the division may
398 submit one written opinion on each issue pertinent to a
399 given claim based upon a review of the evidence of record
400 either challenging or defending the board's findings and
401 conclusions. Thereafter, based upon the evidence then of
402 record, the administrative law judge shall issue a written
403 decision containing his or her findings of fact and conclu-
404 sions of law regarding each issue involved in the objection.

405 (k) Compensation payable under any subdivision of this
406 section shall not exceed the maximum nor be less than the
407 weekly benefits specified in subdivision (b) of this section.

408 (1) Except as otherwise specifically provided in this
409 chapter, temporary total disability benefits payable under
410 subdivision (b) of this section shall not be deductible from
411 permanent partial disability awards payable under

412 subdivision (e) or (f) of this section. Compensation, either
413 temporary total or permanent partial, under this section
414 shall be payable only to the injured employee and the right
415 thereto shall not vest in his or her estate, except that any
416 unpaid compensation which would have been paid or
417 payable to the employee up to the time of his or her death,
418 if he or she had lived, shall be paid to the dependents of
419 such injured employee if there be such dependents at the
420 time of death.

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

423 Loss of both eyes or the sight thereof.

424 Loss of both hands or the use thereof.

425 Loss of both feet or the use thereof.

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

427 (n) (1) Other than for those injuries specified in subdivi-
428 sion (m) of this section, in order to be eligible to apply for
429 an award of permanent total disability benefits for all
430 injuries incurred and all diseases, including occupational
431 pneumoconiosis, with a date of last exposure on and after
432 the second day of February, one thousand nine hundred
433 ninety-five, and for all requests for such an award pending
434 before the division on and after the second day of Febru-
435 ary, one thousand nine hundred ninety-five, a claimant
436 must have been awarded the sum of forty percent in prior
437 permanent partial disability awards, have suffered an
438 occupational injury or disease which results in a finding
439 that the claimant has suffered a medical impairment of
440 forty percent or has sustained a thirty-five percent statu-
441 tory disability pursuant to the provisions of subdivision (f)
442 of this section. Upon filing such an application, the claim
443 will be reevaluated by the examining board pursuant to
444 subdivision (i) of this section to determine if he or she has
445 suffered a whole body medical impairment of forty percent
446 or more resulting from either a single occupational injury
447 or occupational disease or a combination of occupational
448 injuries and occupational diseases or has sustained a
449 thirty-five percent statutory disability pursuant to the

450 provisions of subdivision (f) of this section. A claimant
451 whose prior permanent partial disability awards total
452 eighty-five percent or more shall also be examined by the
453 board and must be found to have suffered a whole body
454 medical impairment of forty percent in order for his or her
455 request to be eligible for further review. The examining
456 board shall review the claim as provided for in subdivision
457 (j) of this section. If the claimant has not suffered whole
458 body medical impairment of at least forty percent or has
459 sustained a thirty-five percent statutory disability pursu-
460 ant to the provisions of subdivision (f) of this section, then
461 the request shall be denied. Upon a finding that the
462 claimant does have a forty percent whole body medical
463 impairment or has sustained a thirty-five percent statutory
464 disability pursuant to the provisions of subdivision (f) of
465 this section, then the review of the application shall
466 continue as provided for in the following paragraph of this
467 subdivision. Those claimants whose prior permanent
468 partial disability awards total eighty-five percent or more
469 and who have been found to have a whole body medical
470 impairment of at least forty percent or have sustained a
471 thirty-five percent statutory disability pursuant to the
472 provisions of subdivision (f) of this section shall then be
473 entitled to the rebuttable presumption created pursuant to
474 subdivision (d) for the remaining issues in the request. For
475 the purposes of determining whether the claimant should
476 be awarded permanent total disability benefits under the
477 second injury provisions of subsection (d), section one,
478 article three of this chapter, only a combination of occupa-
479 tional injuries and occupational diseases, including
480 occupational pneumoconiosis, shall be considered.

481 (2) A disability which renders the injured employee
482 unable to engage in substantial gainful activity requiring
483 skills or abilities comparable to those of any gainful
484 activity in which he or she has previously engaged with
485 some regularity and over a substantial period of time shall
486 be considered in determining the issue of total disability.
487 In addition, the vocational standards adopted pursuant to
488 subsection (m), section seven, article three, chapter
489 twenty-one-a of this code shall be considered once they are
490 effective.

491 (3) In the event that a claimant, who has been found to
492 have at least a forty percent whole body medical impair-
493 ment or has sustained a thirty-five percent statutory
494 disability pursuant to the provisions of subdivision (f) of
495 this section, is denied an award of permanent total disabili-
496 ty benefits pursuant to this subdivision and then accepts
497 and continues to work at a lesser paying job than he or she
498 previously held, then such a claimant shall be eligible,
499 notwithstanding the provisions of section nine of this
500 article, to receive temporary partial rehabilitation benefits
501 for a period of four years. Such benefits shall be paid at
502 the level necessary to ensure the claimant's receipt of the
503 following percentages of the average weekly wage earn-
504 ings of the claimant at the time of injury calculated as
505 provided in this section and sections six-d and fourteen of
506 this article:

507 (A) Eighty percent for the first year;

508 (B) Seventy percent for the second year;

509 (C) Sixty percent for the third year; and

510 (D) Fifty percent for the fourth year: *Provided*, That in
511 no event shall such benefits exceed one hundred percent of
512 the average weekly wage in West Virginia. In no event
513 shall such benefits be subject to the minimum benefit
514 amounts required by the provisions of subdivision (b) of
515 this section.

516 (4) It is the intent of the Legislature that the amend-
517 ments to this section enacted during the regular session of
518 the Legislature in the year one thousand nine hundred
519 ninety-nine which change criteria for an award of perma-
520 nent total disability benefits be applied retroactively to all
521 injuries incurred and all occupational diseases, including
522 occupational pneumoconiosis, with a date of last exposure
523 on and after the second day of February, one thousand
524 nine hundred ninety-five, and for all requests for such an
525 award pending before the division on and after the second
526 day of February, one thousand nine hundred ninety-five:
527 *Provided*, That any claimant whose application for
528 permanent total disability benefits was rejected on or after
529 the second day of February, one thousand nine hundred

530 ninety-five, based on a finding that the claimant: (1) Was
531 not awarded the sum of fifty percent in prior permanent
532 partial disability awards; or (2) did not suffer an occupa-
533 tional injury or occupational disease which resulted in a
534 finding that the claimant has suffered a medical impair-
535 ment of fifty percent; or (3) did not suffer whole body
536 medical impairment of at least fifty percent, then such
537 claimant may, during the period beginning on the first day
538 of July, one thousand nine hundred ninety-nine, and
539 ending on the thirtieth day of September, one thousand
540 nine hundred ninety-nine, file with the division a petition
541 for reconsideration of the denial of permanent total
542 disability benefits. After review of the petition by the
543 division and the examining board, the division shall enter
544 an appropriate order on the claimant's petition for recon-
545 sideration.

**§23-4-8a. Occupational pneumoconiosis board – Composition;
term of office; duties; quorum; remuneration.**

1 The occupational pneumoconiosis board shall consist of
2 five licensed physicians, who shall be appointed by the
3 commissioner. No person shall be appointed as a member
4 of the board, or as a consultant thereto, who has not by
5 special study or experience, or both, acquired special
6 knowledge of pulmonary diseases. All members of the
7 occupational pneumoconiosis board shall be physicians of
8 good professional standing, admitted to practice medicine
9 and surgery in this state, and two of them shall be roent-
10 genologists. One of the board shall be designated annually
11 as chairman by the commissioner. The term of office of
12 each member of the board shall be six years. The five
13 members of the existing board in office on the effective
14 date of this section shall continue to serve until their terms
15 expire and until their successors have been appointed and
16 have qualified. Any member of the board may be ap-
17 pointed to any number of terms. The function of the board
18 is to determine all medical questions relating to cases of
19 compensation for occupational pneumoconiosis under the
20 direction and supervision of the commissioner. Any three
21 members of the board constitute a quorum for the transac-
22 tion of its business, if at least one of the members present
23 is a roentgenologist. The commissioner shall from time to

24 time fix the compensation to be paid each member of the
25 board, and members are also entitled to reasonable and
26 necessary traveling and other expenses incurred while
27 actually engaged in the performance of their duties. In
28 fixing the compensation of board members, the commis-
29 sioner shall take into consideration the number of claim-
30 ants a member of the board actually examines, the actual
31 time spent by members in discharging their duties and the
32 recommendation of the compensation programs perfor-
33 mance council as to reasonable reimbursement per unit of
34 time expended based on comparative data for physicians
35 within the state in the same medical specialties.

§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 workers to return
3 to suitable gainful employment after an injury. In order to
4 encourage workers to return to employment and to
5 encourage and assist employers in providing suitable
6 employment to injured employees, it shall be a priority of
7 the commissioner to achieve early identification of indi-
8 viduals likely to need rehabilitation services and to assess
9 the rehabilitation needs of these injured employees. It
10 shall be the goal of rehabilitation to return injured work-
11 ers to employment which shall be comparable in work and
12 pay to that which the individual performed prior to the
13 injury. If a return to comparable work is not possible, the
14 goal of rehabilitation shall be to return the individual to
15 alternative suitable employment, using all possible
16 alternatives of job modification, restructuring, reassign-
17 ment and training, so that the individual will return to
18 productivity with his or her employer or, if necessary, with
19 another employer. The Legislature further finds that it is
20 the shared responsibility of the employer, the employee,
21 the physician and the commissioner to cooperate in the
22 development of a rehabilitation process designed to
23 promote reemployment for the injured employee.

24 (b) In cases where an employee has sustained a perma-
25 nent disability, or has sustained an injury likely to result
26 in temporary disability in excess of one hundred twenty

27 days, and such fact has been determined by the commis-
28 sioner, the commissioner shall at the earliest possible time
29 determine whether the employee would be assisted in
30 returning to remunerative employment with the provision
31 of rehabilitation services and if the commissioner deter-
32 mines that the employee can be physically and vocation-
33 ally rehabilitated and returned to remunerative employ-
34 ment by the provision of rehabilitation services including,
35 but not limited to, vocational or on-the-job training,
36 counseling, assistance in obtaining appropriate temporary
37 or permanent work site, work duties or work hours
38 modification, by the provision of crutches, artificial limbs,
39 or other approved mechanical appliances, or medicines,
40 medical, surgical, dental or hospital treatment, the com-
41 missioner shall forthwith develop a rehabilitation plan for
42 the employee and, after due notice to the employer, expend
43 such an amount as may be necessary for the aforesaid
44 purposes: *Provided*, That such expenditure for vocational
45 rehabilitation shall not exceed ten thousand dollars for
46 any one injured employee: *Provided, however*, That no
47 payment shall be made for such vocational rehabilitation
48 purposes as provided in this section unless authorized by
49 the commissioner prior to the rendering of such physical
50 or vocational rehabilitation, except that payments shall be
51 made for reasonable medical expenses without prior
52 authorization if sufficient evidence exists which would
53 relate the treatment to the injury and the attending
54 physician or physicians have requested authorization prior
55 to the rendering of such treatment: *Provided further*, That
56 payment for physical rehabilitation, including the pur-
57 chase of prosthetic devices and other equipment and
58 training in use of such devices and equipment, shall be
59 considered expenses within the meaning of section three of
60 this article and shall be subject to the provisions of
61 sections three, three-a, three-b and three-c of this article.
62 The provision of any rehabilitation services shall be
63 pursuant to a rehabilitation plan to be developed and
64 monitored by a rehabilitation professional for each injured
65 employee.

66 (c) In every case in which the commissioner shall order
67 physical or vocational rehabilitation of a claimant as

68 provided herein, the claimant shall, during the time he or
69 she is receiving any vocational rehabilitation or rehabilita-
70 tive treatment that renders him or her totally disabled
71 during the period thereof, be compensated on a temporary
72 total disability basis for such period.

73 (d) In every case in which the claimant returns to gainful
74 employment as part of a rehabilitation plan, and the
75 employee's average weekly wage earnings are less than the
76 average weekly wage earnings earned by the injured
77 employee at the time of the injury, he or she shall receive
78 temporary partial rehabilitation benefits calculated as
79 follows: The temporary partial rehabilitation benefit shall
80 be seventy percent of the difference between the average
81 weekly wage earnings earned at the time of the injury and
82 the average weekly wage earnings earned at the new
83 employment, both to be calculated as provided in sections
84 six, six-d and fourteen of this article as such calculation is
85 performed for temporary total disability benefits, subject
86 to the following limitations: In no event shall such
87 benefits be subject to the minimum benefit amounts
88 required by the provisions of subdivision (b), section six of
89 this article, nor shall such benefits exceed the temporary
90 total disability benefits to which the injured employee
91 would be entitled pursuant to sections six, six-d and
92 fourteen of this article during any period of temporary
93 total disability resulting from the injury in the claim:
94 *Provided*, That no temporary total disability benefits shall
95 be paid for any period for which temporary partial reha-
96 bilitation benefits are paid. The amount of temporary
97 partial rehabilitation benefits payable under this subsec-
98 tion shall be reviewed every ninety days to determine
99 whether the injured employee's average weekly wage in
100 the new employment has changed and, if such change has
101 occurred, the amount of benefits payable hereunder shall
102 be adjusted prospectively. Temporary partial rehabilita-
103 tion benefits shall only be payable when the injured
104 employee is receiving vocational rehabilitation services in
105 accordance with a rehabilitation plan developed under this
106 section.

107 (e) The commissioner shall promulgate rules for the
108 purpose of developing a comprehensive rehabilitation

109 program which will assist injured workers to return to
110 suitable gainful employment after an injury in a manner
111 consistent with the provisions and findings of this section.
112 Such rules shall provide definitions for rehabilitation
113 facilities and rehabilitation services pursuant to this
114 section.

115 (f) The reenactment of the provisions of this section
116 during the regular session of the Legislature in the year
117 one thousand nine hundred ninety-nine is for the purpose
118 of reestablishing the rehabilitation program heretofore
119 created by virtue of the provisions of this section and the
120 rules promulgated pursuant thereto for all injured employ-
121 ees who sustained injuries on or after the first day of July,
122 one thousand nine hundred ninety-eight. To this end, the
123 performance council is directed to reenact the rules
124 promulgated under the prior enactment of this section
125 within fifteen days of the effective date hereof and the
126 commissioner shall promulgate any revisions to the rules
127 for review by the performance council on or before the
128 first day of July, one thousand nine hundred ninety-nine.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational
2 pneumoconiosis or other occupational disease, suffered by
3 an employee in the course of and resulting from his or her
4 employment, causes death, and disability is continuous
5 from date of such injury until date of death, or if death
6 results from occupational pneumoconiosis or from any
7 other occupational disease, the benefits shall be in the
8 amounts and to the persons as follows:

9 (a) If there be no dependents, the disbursements shall be
10 limited to the expense provided for in sections three and
11 four of this article.

12 (b) If there be dependents as defined in subdivision (d) of
13 this section, such dependents shall be paid for as long as
14 their dependency shall continue in the same amount as
15 was paid or would have been paid the deceased employee
16 for total disability had he or she lived. The order of
17 preference of payment and length of dependence shall be
18 as follows:

19 (1) A dependent widow or widower until death or
20 remarriage of such widow or widower, and any child or
21 children dependent upon the decedent until each such
22 child shall reach eighteen years of age or where such child
23 after reaching eighteen years of age continues as a full-
24 time student in an accredited high school, college, univer-
25 sity, business or trade school, until such child reaches the
26 age of twenty-five years or if an invalid child to continue
27 as long as such child remains an invalid. All such persons
28 shall be jointly entitled to the amount of benefits payable
29 as a result of employee's death.

30 (2) A wholly dependent father or mother until death.

31 (3) Any other wholly dependent person for a period of
32 six years after the death of the deceased employee.

33 (c) If the deceased employee leaves no wholly dependent
34 person, but there are partially dependent persons at the
35 time of death, the payment shall be fifty dollars a month,
36 to continue for such portion of the period of six years after
37 the death, as the division may determine, but no such
38 partially dependent person shall receive compensation
39 payments as a result of the death of more than one em-
40 ployee.

41 Compensation under subdivisions (b) and (c) hereof
42 shall, except as may be specifically provided to the con-
43 trary therein, cease upon the death of the dependent, and
44 the right thereto shall not vest in his or her estate.

45 (d) "Dependent", as used in this chapter, shall mean a
46 widow, widower, child under eighteen years of age, or
47 under twenty-five years of age when a full-time student as
48 provided herein, invalid child or posthumous child, who,
49 at the time of the injury causing death, is dependent in
50 whole or part for his or her support upon the earnings of
51 the employee, stepchild under eighteen years of age, or
52 under twenty-five years of age when a full-time student as
53 provided herein, child under eighteen years of age legally
54 adopted prior to the injury causing death, or under
55 twenty-five years of age when a full-time student as
56 provided herein, father, mother, grandfather or grand-
57 mother, who at the time of the injury causing death, is

58 dependent in whole or in part for his or her support upon
59 the earnings of the employee; and invalid brother or sister
60 wholly dependent for his or her support upon the earnings
61 of the employee at the time of the injury causing death.

62 (e) If a person receiving permanent total disability
63 benefits dies from a cause other than a disabling injury
64 leaving any dependents as defined in subdivision (d) of this
65 section, an award shall be made to such dependents in an
66 amount equal to one hundred four times the weekly
67 benefit the worker was receiving at the time of his or her
68 death and be paid either as a lump sum or in periodic
69 payments, at the option of the dependent or dependents.
70 Direct premium rating experience charges for the payment
71 of such benefits granted as a result of a second injury
72 award of permanent total disability shall not be made to
73 the employee's employer. It is the intent of the Legislature
74 that the amendments to this subsection enacted during the
75 regular session of the Legislature in the year one thousand
76 nine hundred ninety-nine be construed so as to make
77 dependents eligible for benefits under this subsection
78 retroactive to the second day of February, one thousand
79 nine hundred ninety-five.

ARTICLE 5. REVIEW.

§23-5-7. Compromise and settlement.

1 With the exception of medical benefits, the claimant, the
2 employer and the workers' compensation division, may
3 negotiate a final settlement of any and all issues in a claim
4 wherever the claim may then be in the review or appellate
5 processes. Upon entering into an agreement, the parties
6 shall file the written and executed agreement with the
7 office of judges. The office of judges shall review the
8 proposed agreement to determine if it is fair and reason-
9 able to the parties and shall ensure that each of the parties
10 are fully aware of the effects of the agreement including
11 what each party is conceding in exchange for the agree-
12 ment. If the office of judges concludes that the agreement
13 is not fair or is not reasonable or that one of the parties is
14 not fully informed, then the agreement will not be ap-
15 proved, which decision shall not be reviewable. If the
16 employer is not active in the claim, then the division may

17 negotiate a final settlement of any and all issues in a claim
18 except for medical benefits with the claimant. Upon
19 approval of the settlement, it shall be made a part of the
20 claim record and the office of judges shall send written
21 notice of the settlement to all parties and, where appropriate,
22 to the appeal board or the supreme court of appeals.
23 Except in cases of fraud, no issue that is the subject of an
24 approved settlement agreement may be reopened by any
25 party including the division. Any settlement agreement
26 may provide for a lump sum payment or a structured
27 payment plan, or any combination thereof, or such other
28 basis as the parties may agree. If such self-insured
29 employer later fails to make the agreed upon payment, the
30 division shall assume the obligation to make the payments
31 and shall be entitled to recover the amounts paid or to be
32 paid from the self-insured employer and its sureties or
33 guarantors or both as provided for in sections five and
34 five-a, article two of this chapter.

35 The amendments to this section enacted during the
36 regular session of the Legislature in the year one thousand
37 nine hundred ninety-nine shall apply to all settlement
38 agreements executed after such effective date.

**§23-5-9. Hearings on objections to division decisions by office
of judges.**

1 (a) Objections to a workers' compensation division
2 decision made pursuant to the provisions of section one of
3 this article shall be filed with the office of judges. Upon
4 receipt of an objection, the office of judges shall notify the
5 division and all other parties of the filing of the objection.
6 The office of judges shall establish by rule promulgated in
7 accordance with the provisions of subsection (e), section
8 eight of this article an adjudicatory process that enables
9 parties to present evidence in support of their positions
10 and provides an expeditious resolution of the objection.
11 The employer, the claimant and the division shall be
12 notified of any hearing at least ten days in advance.

13 (b) The office of judges shall keep full and complete
14 records of all proceedings concerning a disputed claim.
15 Subject to the rules of practice and procedure promulgated

16 pursuant to section eight of this article, the record upon
17 which the matter shall be decided shall include any
18 evidence submitted by a party to the office of judges,
19 evidence taken at hearings conducted by the office of
20 judges and any documents in the division's claim files
21 which relate to the matter objected to. The record may
22 include evidence or documents submitted in electronic
23 form or other appropriate medium in accordance with the
24 rules of practice and procedure referred to herein. The
25 office of judges shall not be bound by the usual common
26 law or statutory rules of evidence.

27 (c) All hearings shall be conducted as determined by the
28 chief administrative law judge pursuant to the rules of
29 practice and procedure promulgated pursuant to section
30 eight of this article. Upon consideration of the entire
31 record, the chief administrative law judge or other autho-
32 rized adjudicator within the office of judges shall render
33 a decision affirming, reversing or modifying the division's
34 action. Said decision shall contain findings of fact and
35 conclusions of law and shall be mailed to all parties.

36 (d) The rule authorized by subsection (a) of this section
37 shall be promulgated on or before the first day of July, one
38 thousand nine hundred ninety-nine. Until the rule is
39 finally promulgated, the prior provisions of this section as
40 found in chapter two hundred fifty-three of the acts of the
41 Legislature, one thousand nine hundred ninety-five shall
42 remain in effect.

ARTICLE 6. SEVERABILITY; LEGISLATIVE INTENT; OPERATIVE DATE.

§23-6-2. Legislative intent.

1 It is the intent of the Legislature in enacting the amend-
2 ments to this chapter during the regular session of the
3 Legislature in the year one thousand nine hundred ninety-
4 nine relating to employee benefits that the compensation
5 programs performance council consider employer rate
6 reductions commensurate with the cost of such employee
7 benefits.

§23-6-3. Operative date for particular enactment.

1 The amendments to this chapter effected by the enact-
2 ment of Enrolled Committee Substitute for Senate Bill No.
3 579 during the regular session of the Legislature, one
4 thousand nine hundred ninety-nine become operative on
5 the first day of July, one thousand nine hundred ninety-
6 nine.

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.

1 (1) Failure to subscribe:

2 (A) Responsible person. Any person who individually or
3 as owner, partner, president, other officer, or manager of
4 a sole proprietorship, firm, partnership, company, corpo-
5 ration or association, who, as a person who is responsible
6 for and who is required by specific assignment, duty or
7 legal duty, which is either expressed or inherent in laws
8 which require the employer's principals to be informed
9 and to know the facts and laws affecting the business
10 organization and to make internal policy and decisions
11 which ensure that the individual and organization comply
12 with the general laws and provisions of chapter twenty-
13 three of this code, knowingly and willfully fails to sub-
14 scribe to the workers' compensation fund shall be guilty of
15 a felony and, upon conviction, shall be imprisoned in the
16 penitentiary not less than one nor more than ten years, or
17 in the discretion of the court, be confined in jail not more
18 than one year and shall be fined not more than two
19 thousand five hundred dollars.

20 (B) Any corporation, association or partnership who, as
21 an employer as defined in chapter twenty-three of this
22 code, knowingly and willfully fails to subscribe to the
23 workers' compensation fund shall be guilty of a felony
24 and, upon conviction, shall be fined not less than two
25 thousand five hundred dollars nor more than ten thousand
26 dollars.

27 (2) Failure to pay:

28 (A) Any person who individually or as owner, partner,
29 president, other officer or manager of a sole proprietor-
30 ship, firm, partnership, company, corporation or associa-
31 tion, who, as a responsible person as defined in section
32 twenty-four-e of this article, knowingly and willfully fails
33 to make premium tax payments to the workers' compensa-
34 tion fund as required by chapter twenty-three this code,
35 shall be guilty of the larceny of the premium owed and, if
36 the amount is one thousand dollars or more, such person
37 shall be guilty of a felony and, upon conviction thereof,
38 shall be imprisoned in the penitentiary not less than one
39 nor more than ten years or, in the discretion of the court,
40 be confined in jail not more than one year and shall be
41 fined not more than two thousand five hundred dollars. If
42 the amount is less than one thousand dollars, such person
43 shall be guilty of a misdemeanor and, upon conviction
44 thereof, shall be confined in jail for a term not to exceed
45 one year or fined an amount not to exceed two thousand
46 five hundred dollars, or both, in the discretion of the court.

47 (B) Any corporation, association, company or partner-
48 ship which, as an employer as defined in chapter twenty-
49 three of this code, knowingly and willfully fails to make
50 premium tax payments to the workers' compensation fund
51 as required by chapter twenty-three of this code shall be
52 guilty of the larceny of the premium owed, and, if the
53 amount is one thousand dollars or more, such corporation,
54 association, company or partnership shall be guilty of a
55 felony and, upon conviction thereof, shall be fined not less
56 than two thousand five hundred dollars nor more than ten
57 thousand dollars. If the amount is less than one thousand
58 dollars, such corporation, association, company or part-
59 nership shall be guilty of a misdemeanor and, upon
60 conviction thereof, shall be fined an amount not to exceed
61 two thousand five hundred dollars.

62 (C) Any person who individually or as owner, partner,
63 president, other officer, or manager of a sole proprietor-
64 ship, firm, partnership, company, corporation or associa-
65 tion, who, as a responsible person, as defined in section
66 twenty-four-e of this article, knowingly and willfully and

67 with fraudulent intent sells, transfers or otherwise dis-
68 poses of substantially all of the employer's assets for the
69 purpose of evading the payment of workers' compensation
70 premium taxes to the workers' compensation fund as
71 required by chapter twenty-three of this code, shall be
72 guilty of the larceny of the premium owed and, if the
73 amount is one thousand dollars or more, such person shall
74 be guilty of a felony and, upon conviction thereof, shall be
75 imprisoned in a state correctional facility not less than one
76 nor more than ten years or, in the discretion of the court,
77 be confined in jail not more than one year and shall be
78 fined not more than two thousand five hundred dollars. If
79 the amount is less than one thousand dollars, such person
80 shall be guilty of a misdemeanor and, upon conviction
81 thereof, shall be confined in jail for a term not to exceed
82 one year or fined an amount not to exceed two thousand
83 five hundred dollars, or both, in the discretion of the court.

84 (D) Any corporation, association, company or partner-
85 ship which, as an employer as defined in chapter twenty-
86 three of this code, knowingly and willfully and with
87 fraudulent intent sells, transfers or otherwise disposes of
88 substantially all of the employer's assets for the purpose of
89 evading the payment of workers' compensation premium
90 taxes to the workers' compensation fund as required by
91 chapter twenty-three of this code shall be guilty of the
92 larceny of the premium owed, and, if the amount is one
93 thousand dollars or more, such corporation, association,
94 company or partnership shall be guilty of a felony and,
95 upon conviction thereof, shall be fined not less than two
96 thousand five hundred dollars nor more than ten thousand
97 dollars. If the amount is less than one thousand dollars,
98 such corporation, association, company or partnership
99 shall be guilty of a misdemeanor and, upon conviction
100 thereof, shall be fined an amount not to exceed two
101 thousand five hundred dollars.

102 (3) Failure to file premium tax reports:

103 (A) Any person who individually or as owner, partner,
104 president, other officer, or manager of a sole proprietor-
105 ship, firm, partnership, company, corporation or associa-
106 tion, who, as a responsible person as defined in section

107 twenty-four-e of this article, knowingly and willfully fails
108 to file a premium tax report with the workers' compensa-
109 tion fund as required by chapter twenty-three of this code,
110 shall be guilty of a felony and, upon conviction thereof,
111 shall be imprisoned in the penitentiary not less than one
112 nor more than ten years, or in the discretion of the court,
113 be confined in jail for a term not to exceed one year and
114 shall be fined not more than two thousand five hundred
115 dollars.

116 (B) Any corporation, association, company or partner-
117 ship which, as an employer as defined in chapter twenty-
118 three of this code, knowingly and willfully fails to file a
119 premium tax report with the workers' compensation fund
120 as required by chapter twenty-three of this code, shall be
121 guilty of a felony and, upon conviction thereof, shall be
122 fined not less than two thousand five hundred dollars nor
123 more than ten thousand dollars.

124 (4) Failure to file other reports:

125 (A) Any person, individually or as owner, partner,
126 president or other officer, or manager of a sole proprietor-
127 ship, firm, partnership, company, corporation or associa-
128 tion who, as a responsible person as defined in section
129 twenty-four-e of this article, knowingly and willfully fails
130 to file any report, other than a premium tax report,
131 required by such chapter shall be guilty of a misdemeanor
132 and, upon conviction thereof, shall be confined in jail for
133 a term not to exceed one year or fined an amount not to
134 exceed two thousand five hundred dollars, or both, in the
135 discretion of the court.

136 (B) Any corporation, association, company or partner-
137 ship which, as an employer as defined in chapter twenty-
138 three of this code, knowingly and willfully fails to file any
139 report, other than a premium tax report, with the workers'
140 compensation fund as required by chapter twenty-three of
141 this code, shall be guilty of a misdemeanor and, upon
142 conviction thereof, shall be fined an amount not to exceed
143 two thousand five hundred dollars.

144 (5) False testimony or statements:

145 Any person, individually or as owner, partner, president,
146 other officer, or manager of a sole proprietorship, firm,
147 partnership, company, corporation or association who, as
148 a responsible person as defined in section twenty-four-e of
149 this article, knowingly and willfully makes a false report
150 or statement under oath, affidavit, certification or by any
151 other means respecting any information required to be
152 provided under chapter twenty-three of this code shall be
153 guilty of a felony and, upon conviction thereof, shall be
154 confined in the penitentiary for a definite term of impris-
155 onment which is not less than one year nor more than
156 three years or fined not less than one thousand dollars nor
157 more than ten thousand dollars, or both, in the discretion
158 of the court.

159 (6) Asset forfeiture:

160 (A) The court, in imposing sentence on a person or entity
161 convicted of an offense under this section, shall order the
162 person or entity to forfeit property, real or personal, that
163 constitutes or is derived, directly or indirectly, from gross
164 proceeds traceable to the commission of the offense. Any
165 person or entity convicted under this section shall pay the
166 costs of asset forfeiture.

167 (B) For purposes of paragraph (6) (A), the term "payment
168 of the costs of asset forfeiture" means:

169 (i) The payment of any expenses necessary to seize,
170 detain, inventory, safeguard, maintain, advertise, sell, or
171 dispose of property under seizure, detention, or forfeiture,
172 or of any other necessary expenses incident to the seizure,
173 detention, forfeiture, or disposal of such property, includ-
174 ing payment for:

175 (a) Contract services;

176 (b) The employment of outside contractors to operate
177 and manage properties or provide other specialized
178 services necessary to dispose of such properties in an effort
179 to maximize the return from such properties; and

180 (c) Reimbursement of any state or local agency for any
181 expenditures made to perform the functions described in
182 this subparagraph:

183 (ii) The compromise and payment of valid liens and
184 mortgages against property that has been forfeited, subject
185 to the discretion of the workers' compensation fund to
186 determine the validity of any such lien or mortgage and
187 the amount of payment to be made, and the employment
188 of attorneys and other personnel skilled in state real estate
189 law as necessary:

190 (iii) Payment authorized in connection with remission or
191 mitigation procedures relating to property forfeited: and

192 (iv) The payment of state and local property taxes on
193 forfeited real property that accrued between the date of
194 the violation giving rise to the forfeiture and the date of
195 the forfeiture order.

196 (7) Venue:

197 Venue for prosecution of any violation of this section
198 shall be either the county in which the defendant's princi-
199 pal business operations are located or in Kanawha County
200 where the workers' compensation fund is located.

**§61-3-24f. Wrongfully seeking workers' compensation; false
testimony or statements; penalties; venue.**

1 (1) Any person who shall knowingly and with fraudulent
2 intent secure or attempt to secure compensation from the
3 workers' compensation fund or from a self-insured em-
4 ployer:

5 (A) That is larger in amount than that to which he or she
6 is entitled; or

7 (B) That is longer in term than that to which he or she is
8 entitled; or

9 (C) To which he or she is not entitled, shall be guilty of
10 a larceny and, if the amount is one thousand dollars or
11 more, such person shall be guilty of a felony and, upon
12 conviction thereof, shall be imprisoned in the penitentiary
13 not less than one nor more than ten years or, in the discre-
14 tion of the court, be confined in jail not more than one year
15 and shall be fined not more than two thousand five
16 hundred dollars. If the amount is less than one thousand
17 dollars, such person shall be guilty of a misdemeanor and,

18 upon conviction thereof, shall be confined in jail for a term
19 not to exceed one year or fined an amount not to exceed
20 two thousand five hundred dollars, or both, in the discre-
21 tion of the court.

22 (2) Any person who shall knowingly and willfully make
23 a false report or statement under oath, affidavit, certifica-
24 tion or by any other means respecting any information
25 required to be provided under chapter twenty-three of this
26 code shall be guilty of a felony and, upon conviction
27 thereof, shall be confined in the penitentiary for a definite
28 term of imprisonment which is not less than one year nor
29 more than three years or fined not less than one thousand
30 dollars nor more than ten thousand dollars, or both, in the
31 discretion of the court.

32 (3) In addition to any other penalty imposed, the court
33 shall order any person convicted under this section to
34 make full restitution of all moneys paid by the workers'
35 compensation fund or self-insured employer as the result
36 of a violation of this section.

37 (4) If the person so convicted is receiving compensation
38 from such fund or employer, he or she shall, from and after
39 such conviction, cease to receive such compensation as a
40 result of that alleged injury or disease.

41 (5) Venue for prosecution of any violation of this section
42 shall either be the county in which the claimant resides,
43 the county in which the claimant is employed or working,
44 or in Kanawha County where the workers' compensation
45 fund is located.

**§61-3-24g. Workers' compensation health care offenses; fraud;
theft or embezzlement; false statements; penal-
ties; notice; prohibition against providing future
services; penalties; asset forfeiture; venue.**

1 (1) Any person who knowingly and willfully executes, or
2 attempts to execute, a scheme or artifice:

3 (A) To defraud the workers' compensation fund or a self-
4 insured employer in connection with the delivery of or
5 payment for workers' compensation health care benefits,
6 items or services; or

7 (B) To obtain, by means of false or fraudulent pretenses,
8 representations, or promises any of the money or property
9 owned by or under the custody or control of the workers'
10 compensation fund or a self-insured employer in connec-
11 tion with the delivery of or payment for workers' compen-
12 sation health care benefits, items or services; or

13 (C) To make any charge or charges against any injured
14 employee or any other person, firm or corporation which
15 would result in a total charge for the treatment or service
16 rendered in excess of the maximum amount set forth
17 therefore in the workers' compensation division's schedule
18 of maximum reasonable amounts to be paid for such
19 treatment or services issued pursuant to subsection (a),
20 section three, article four, chapter twenty-three of this
21 code shall be guilty of a felony and, upon conviction
22 thereof, shall be imprisoned in the penitentiary not less
23 than one nor more than ten years or, in the discretion of
24 the court, be confined in jail not more than one year and
25 shall be fined not more than two thousand five hundred
26 dollars.

27 (2) Any person who, in any matter involving a health
28 care program related to the workers' compensation fund,
29 knowingly and willfully:

30 (A) Falsifies, conceals or covers up by any trick, scheme,
31 or device a material fact; or

32 (B) Makes any materially false, fictitious or fraudulent
33 statement or representation, or makes or uses any materi-
34 ally false writing or document knowing the same to
35 contain any materially false, fictitious, or fraudulent
36 statement or entry, shall be guilty of a felony and, upon
37 conviction thereof, shall be confined in the penitentiary for
38 a definite term of imprisonment which is not less than one
39 year nor more than three years or fined not less than one
40 thousand dollars nor more than ten thousand dollars, or
41 both, in the discretion of the court.

42 (3) Any person who willfully embezzles, steals or other-
43 wise unlawfully converts to the use of any person other
44 than the rightful owner, or intentionally misapplies any of
45 the moneys, funds, securities, premiums, credits, property

46 or other assets of a health care program related to the
47 workers' compensation fund, shall be guilty of a felony
48 and, upon conviction thereof, shall be imprisoned in the
49 penitentiary for not less than one nor more than ten years
50 or fined not less than ten thousand dollars, or both, in the
51 discretion of the court.

52 (4) Any health care provider who fails, in violation of
53 subsection five of section twenty-four-g of this article to
54 post a notice, in the form required by the workers' com-
55 pensation division, in the provider's public waiting area
56 that the provider cannot accept any patient whose treat-
57 ment or other services or supplies would ordinarily be paid
58 for from the workers' compensation fund or by a self-
59 insured employer unless such patient consents, in writing,
60 prior to the provision of such treatment or other services
61 or supplies, to make payment for that treatment or other
62 services or supplies himself or herself, shall be guilty of a
63 misdemeanor and, upon conviction thereof, shall be fined
64 one thousand dollars.

65 (5) Any person convicted under the provisions of this
66 section shall, from and after such conviction, be barred
67 from providing future services or supplies to injured
68 employees for the purposes of workers' compensation and
69 shall cease to receive payment for such services or sup-
70 plies.

71 (6) (A) The court, in imposing sentence on a person
72 convicted of an offense under this section, shall order the
73 person to forfeit property, real or personal, that constitutes
74 or is derived, directly or indirectly, from gross proceeds
75 traceable to the commission of the offense. Any person
76 convicted under this section shall pay the costs of asset
77 forfeiture.

78 (B) For purposes of paragraph (6) (A), the term "pay-
79 ment of the costs of asset forfeiture" means:

80 (i) The payment of any expenses necessary to seize,
81 detain, inventory, safeguard, maintain, advertise, sell or
82 dispose of property under seizure, detention or forfeiture,
83 or of any other necessary expenses incident to the seizure,

84 detention, forfeiture or disposal of such property, includ-
85 ing payment for:

86 (a) Contract services;

87 (b) The employment of outside contractors to operate
88 and manage properties or provide other specialized
89 services necessary to dispose of such properties in an effort
90 to maximize the return from such properties; and

91 (c) Reimbursement of any state or local agency for any
92 expenditures made to perform the functions described in
93 this subparagraph:

94 (ii) The compromise and payment of valid liens and
95 mortgages against property that has been forfeited, subject
96 to the discretion of the workers' compensation fund to
97 determine the validity of any such lien or mortgage and
98 the amount of payment to be made, and the employment
99 of attorneys and other personnel skilled in state real estate
100 law as necessary:

101 (iii) Payment authorized in connection with remission or
102 mitigation procedures relating to property forfeited: and

103 (iv) The payment of state and local property taxes on
104 forfeited real property that accrued between the date of
105 the violation giving rise to the forfeiture and the date of
106 the forfeiture order.

107 (7) Venue for prosecution of any violation of this subsec-
108 tion shall be either the county in which the defendant's
109 principal business operations are located or in Kanawha
110 County where the workers' compensation fund is located.

**§61-3-24h. Providing false documentation to workers' compen-
sation; altering documents or certificates from
workers' compensation; penalties; venue.**


1 (1) Any person, firm, partnership, company, corporation
2 association or medical provider who submits false docu-
3 mentation to workers' compensation with the intent to
4 defraud workers' compensation shall be guilty of a misde-
5 meanor and, upon conviction thereof, shall be confined in
6 jail for a term not to exceed one year or fined an amount

7 not to exceed two thousand five hundred dollars, or both,
8 in the discretion of the court.

9 (2) Any person, firm, partnership, company, corporation,
10 association or medical provider who alters, falsifies,
11 defaces, changes or modifies any certificate or other
12 document which would indicate good standing with
13 workers' compensation or endorsement by workers'
14 compensation for medical services shall be guilty of a
15 misdemeanor and, upon conviction thereof, shall be
16 confined in jail for a term not to exceed one year or fined
17 an amount not to exceed two thousand five hundred
18 dollars, or both, in the discretion of the court.

19 (3) Venue for prosecution of any violation of this section
20 shall be either the county in which the claimant resides, a
21 defendant's principal business operations are located, or in
22 Kanawha County where the workers' compensation fund
23 is located.

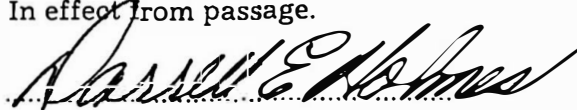
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

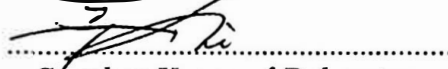
Originating in the Senate.

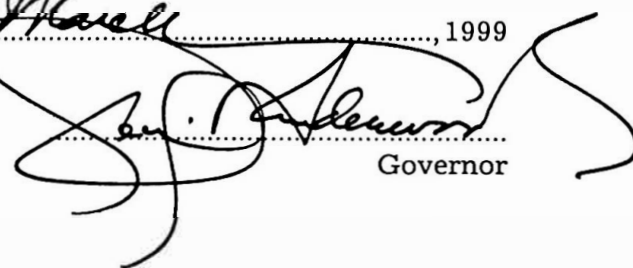
In effect from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within..... *approved* this the *12th*
Day of *March* 1999

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/99

Time 11:10 am