WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

ENROLLED

Committee Substitute for

SENATE BILL NO. 579

(By Senators Franklin, M. President and)

Apprao, 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.

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

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

(1) Upon written request to the state tax commissioner: The names, addresses, places of business and other identifying information of all businesses receiving a business franchise registration certificate and the dates thereof; and the names and social security numbers or other tax identification numbers of the businesses and of the businesses' workers and employees, if otherwise collected, and the quarterly and annual gross wages or other compensation paid to the workers and employees of such businesses reported pursuant to the requirement of withholding of tax on income.

(2) Upon written application to the division of unemployment compensation: In addition to the information that may be released to the division of workers' compensa-
tion for the purposes of this chapter under the provisions of chapter twenty-one-a of this code, the names, addresses and other identifying information of all employing units filing reports and information pursuant to section eleven, article ten, chapter twenty-one-a of this code as well as information contained in those reports regarding the number and names, addresses and social security numbers of employees employed and the gross quarterly wages paid by each employing unit to each identified employee.

(c) All information acquired by the division of workers' compensation pursuant to subsection (b) of this section shall be used only for auditing premium payments, assisting in the determination of employment status, and registering businesses under the single point of registration program as defined in section two, article one, chapter eleven of this code. The division of workers' compensation, upon receiving the business franchise registration certificate information made available pursuant to subsection (b) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to register the business under the provisions of this article. Any officer or employee of this state who uses the aforementioned information in any manner other than the one stated herein or elsewhere authorized in this code, or who divulges or makes known in any manner any of the aforementioned information shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail for not more than one year, or both, together with cost of prosecution.

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

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

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

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

(2) Every subscribing employer shall make a gross wages payroll report to the division for the preceding reporting period. The report shall be on the form or forms prescribed by the division, and shall contain all information required by the division.

(3) After subscribing to the fund, each employer shall remit with each premium tax payment an amount calculated to be sufficient to maintain a premium deposit equal to the premium payment for the previous reporting period. The division may reduce the amount of the premium deposit required from seasonal employers for those quarters during which employment is significantly reduced. If the employer pays premium tax on a basis other than quarterly, the division may require the deposit to be based upon some other time period. The premium deposit shall be credited to the employer's account on the books of the division and used to pay premium taxes and any other
(4) All premium taxes and premium deposits required by this article to be paid shall be paid by the employers to the division, which shall maintain a record of all sums so received. Any such sum mailed to the division shall be deemed to be received on the date the envelope transmitting it is postmarked by the United States postal service. All sums received by the division shall be deposited in the state treasury to the credit of the workers' compensation division in the manner now prescribed by law.

(5) The division may encourage employer efforts to create and maintain safe workplaces, to encourage loss prevention programs, and to encourage employer provided wellness programs, through the normal operation of the experience rating formula, seminars and other public presentations, the development of model safety programs and other initiatives as may be determined by the commissioner and the compensation programs performance council.

(b) Failure of an employer to timely pay premium taxes, to timely file a payroll report or to maintain an adequate premium deposit, shall cause the employer's account to become delinquent. No employer will be declared delinquent or be assessed any penalty therefor if the division determines that such delinquency has been caused by delays in the administration of the fund. The division shall, in writing, within sixty days of the end of each quarter notify all delinquent employers of their failure to timely pay premium taxes, to timely file a payroll report or to maintain an adequate premium deposit. Each employer who shall fail to timely file any quarterly payroll report or timely pay the premium tax due with such report, or both, for any quarter commencing on and after the first day of July, one thousand nine hundred ninety-five, shall pay a late reporting or payment penalty of the greater of fifty dollars or a sum obtained by multiplying the premium tax due with such report by the penalty rate applicable to that quarter. The penalty rate to be used in a workers' compensation division's fiscal year shall be
calculated annually on the first day of each fiscal year. The penalty rate used to calculate the penalty for each quarter in a fiscal year is the quotient, rounded to the nearest higher whole number percentage rate, obtained by dividing the sum of the prime rate plus four percent by four. The prime rate shall be the rate published in the *Wall Street Journal* on the last business day of the division's prior fiscal year reflecting the base rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks. Such late penalty shall be paid with the most recent quarter's report and payment and is due when that quarter's report and payment are filed. If such late penalty is not paid when due, the same may be charged to and collected by the division from the employer's premium deposit account or otherwise as provided for by law. The notification shall demand the filing of the delinquent payroll report and payment of delinquent premium taxes, the penalty for late reporting or payment of premium taxes or premium deposit, the interest penalty and an amount sufficient to maintain the premium deposit, before the end of the third month following the end of the preceding quarter. Interest shall accrue and be charged on the delinquent premium payment and premium deposit pursuant to section thirteen of this article.

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

(d) Failure by the employer, who is required to subscribe to the fund and who fails to resolve the delinquency within the prescribed period, shall place the account in default and shall deprive such default employer of the benefits and protection afforded by this chapter, including section six of this article, and the employer shall be liable as provided in section eight of this article. The default employer's liability under said sections shall be retroactive to midnight of the last day of the month following the end of the quarter for which the delinquency occurs. The division shall notify the default employer of the method by
which the employer may be reinstated with the fund. The
division shall also notify the employees of such employer
by written notice as hereinafter provided for in this
section.

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

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

The division shall not have the authority to waive either
premium or accrued interest. The provisions of section
seventeen of this article apply to any action or decision of
the division under this section.
(2) The division shall have the authority to restore a defaulted or terminated employer through a reinstatement agreement. Such reinstatement agreement shall require the payment in full of all premium taxes, premium deposits, the penalty for late reporting and payment, past accrued interest and future interest calculated pursuant to the provisions of section thirteen of this article. Notwithstanding the filing of a reinstatement application or the entering into of a reinstatement agreement, the division is authorized to file a lien against the employer as provided by section five-a of this article. In addition, entry into a reinstatement agreement is discretionary with the division. Such discretion shall be exercised in keeping with the fiduciary obligations owed to the workers' compensation fund. Should the division decline to enter into a reinstatement agreement and should the employer not comply with the provisions of subdivision (1) of this subsection, then the division may proceed with any of the collection efforts provided for by section five-a of this article or as otherwise provided for by this code. Applications for reinstatement shall: (A) Be made upon forms prescribed by the division; (B) include a report of the gross wages payroll of the employer which had not been reported to the division during the entire period of delinquency and default, which gross wages information shall be certified by the employer or its authorized agent; and (C) include a payment of a portion of the liability equal to one half of one percent of the gross payroll during the period of delinquency and default or equal to another portion of the liability as may be determined from time to time by rule but not to exceed the amount of the entire liability due and owing for the period of delinquency and default. An employer who applies for reinstatement shall be entitled to the benefits and protection of this chapter on the day a properly completed and acceptable application which is accompanied by the application payment is received by the division: Provided, That if the division reinstates an employer subject to the terms of a reinstatement agreement, the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with the reinstatement agreement or to timely file current quarterly reports and to pay current quarterly
 premiums within the month following the end of the 
 quarter for which the report and payment are due, or to 
 otherwise maintain its account in good standing or, if the 
 reinstatement agreement does not require earlier restora-
 tion of the premium deposit, to restore the premium 
 deposit to the required amount by the end of the repay-
 ment period shall cause the reinstatement application and 
 the reinstatement agreement to be null, void and of no 
 effect, and the employer shall be denied the benefits and 
 protection of this chapter effective from the date that such 
 employer's account originally became delinquent.

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

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

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

 (h) (1) The provisions of this section shall not deprive any 
 individual of any cause of action which has accrued as a 
 result of an injury or death which occurred during any 
 period of delinquency not resolved in accordance with the 
 provisions of this article, or subsequent failure to comply 
 with the terms of the repayment agreement.
(2) Upon withdrawal from the fund or termination of election of any employer, the employer shall be refunded the balance due the employer of its deposit, after deducting all amounts owed by the employer to the workers’ compensation fund and other agencies of this state, and the division shall notify the employees of such employer of said termination in such manner as the division may deem best and sufficient.

(3) Notice to employees in this section provided for shall be given by posting written notice that the employer is defaulted under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay premiums to the fund, that the defaulted employer is liable to its employees for injury or death, both in workers’ compensation benefits and in damages at common law or by statute; and in the case of employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily electing to do so as herein provided, that neither the employer nor the employees of such employer are protected by said laws as to any injury or death sustained after the date specified in said notice. Such notice shall be in the form prescribed by the division and shall be posted in a conspicuous place at the chief works of the employer, as the same appear in records of the division. If said chief works of the employer cannot be found or identified, then said notices shall be posted at the front door of the courthouse of the county in which said chief works are located, according to the division’s records. Any person who shall, prior to the reinstatement of said employer, as hereinbefore provided for, or prior to sixty days after the posting of said notice, whichever shall first occur, remove, deface or render illegible said notice, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined one thousand dollars, and said notice shall state this provision upon its face. The division may require any sheriff, deputy sheriff, constable or other official of the state of West Virginia, who may be authorized to serve civil process, to post such notice and to make return thereof of the fact of such posting to the division, and any failure of such officer to post any notice within ten days after he or she shall have
received the same from the division, without just cause or
excuse, shall constitute a willful failure or refusal to
perform a duty required of him or her by law within the
meaning of section twenty-eight, article five, chapter
sixty-one of this code. Any person actually injured by
reason of such failure shall have an action against said
official, and upon any official bond he or she may have
given, for such damages as such person may actually have
incurred, but not to exceed, in the case of any surety upon
said bond, the amount of the penalty of said bond. Any
official posting said notice as herein required shall be
titled to the same fee as is now or may hereafter be
provided for the service of process in suits instituted in
courts of record in the state of West Virginia, which fee
shall be paid by the division out of any funds at its dis-
posal, but shall be charged by the division against the
account of the employer to whose delinquency such notice
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.

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

(a) An employer who qualifies under this section will
have six months from the first day of July, one thousand
nine hundred ninety-nine, to apply to the commissioner for
a settlement of the amount of premium taxes, accrued
interest and penalties and any award of attorney's fees
made pursuant to subdivision (17), section six, article two,
chapter twenty-one-a of this code, owed to the workers'
compensation fund as a result of the employer's default on
premium tax payments to the division. Such application
shall be made on a form prescribed by the commissioner
and may impose on the employer such obligations and
constraints concerning the time and manner of payment as
the commissioner deems necessary to effectuate the
purpose of this section.

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

(c) Notwithstanding any provisions in this article to the
contrary, an employer which is remitting payments to the
division pursuant to the terms of an agreement entered
into prior to the effective date of this section may apply to
the commissioner in accordance with subsection (a) of this
section to discharge the remaining balance of its indebted-
ness to the division by tendering, within thirty days from
the date upon which the commissioner notifies the em-
ployer in writing that the application has been approved, payment in full for that portion of the balance which consists of unpaid premium taxes that are attributable to the quarter ended on the thirty-first day of December, one thousand nine hundred ninety-eight, or quarters ended before that date: Provided, That in the alternative, an employer which is remitting payments to the division pursuant to the terms of an agreement entered into prior to the effective date of this section may apply to the commissioner in accordance with subsection (a) of this section to discharge the balance of its indebtedness to the division by fulfilling the terms of a written agreement with the division to pay, within three hundred sixty-five days from the date upon which the agreement is executed, all past-due premium taxes in monthly installments which shall include interest on such past-due premium taxes calculated at an annual percentage rate of nine percent.

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

(e) An employer shall be reinstated to good standing as of the date that the employer tenders payment in full for all past-due premium taxes. An employer who enters into a written agreement with the division to pay past-due premium taxes in monthly installments shall be reinstated to good standing as of the date on which the agreement is executed: Provided, That the failure of the employer to make scheduled payments in accordance with a repayment agreement entered into under this section may at the discretion of the commissioner cause the repayment agreement to be voided and the employer shall be denied
the benefits and protections of this chapter effective from
the date of the employer's initial default. In addition, the
employer shall be subject to all remedies available to the
division pursuant to the provisions of this chapter.

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

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

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

Effective the first day of July, one thousand nine hun­
dred ninety-nine, payments unpaid on the date on which
due and payable shall immediately begin bearing interest
as specified hereinafter. The interest rate per annum for
each fiscal year shall be calculated as the greater of the
division's current discount rate or the prime rate plus four
percent, each rounded to the nearest whole percent. The
discount rate shall be determined by the compensation
programs performance council on an annual basis. The
prime rate shall be the rate published in the Wall Street
Journal on the last business day of the division's prior
decimal reflecting the base rate on corporate loans
posted by at least seventy-five percent of the nation's
thirty largest banks. This same rate of interest shall be
applicable to all reinstatement agreements entered into by
the commissioner pursuant to section five of this article on
and after the effective date of this section: Provided, That
if an employer enters into a subsequent reinstatement
agreement within seven years of the date of the first
agreement, the interest rate shall be eighteen percent per
annum. Interest shall be compounded quarterly until
payment plus accrued interest is received by the commis­
sonian: Provided, however, That on and after the date of
execution of a reinstatement agreement, for determining
future interest on any past-due premium, premium
deposit, and past compounded interest thereon, any
reinstatement agreement entered into by the commissioner
shall provide for a simple rate of interest, determined in accordance with the provisions of this section which shall not be subject to change during the life of the reinstatement agreement for such future interest. Interest collected pursuant to this section shall be paid into the workers' compensation fund. Provided further, That in no event shall the rate of interest charged a political subdivision of the state or a volunteer fire department pursuant to this section exceed ten percent per annum.

§23-2-14. Sale or transfer of business; attachment of lien for premium, etc., payments due; criminal penalties for failure to pay; creation and avoidance or elimination of lien; enforcement of lien; successor liability.

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

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

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

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

(b) Notwithstanding any provisions of section five-a of this article to the contrary, in the event that a new employer acquires by sale or other transfer or assumes all or substantially all of a predecessor employer's assets, then:
(1) Any liens for payments owed to the division for premium taxes, premium deposits, interest or other payments owed to the division by the predecessor employer shall be extended to the successor employer;

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

(3) Liens acquired in the manner described in subdivisions (1) and (2) of this subsection shall be enforceable by the division to the same extent as provided for the enforcement of liens against the predecessor employer in section five-a of this article.

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

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

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

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

(d) If an employer subject to subsection (a), (b) or (c) of this section pays to the division, prior to the execution of an agreement of sale or other transfer, a sum sufficient to retire all of the indebtedness that the employer would owe at the time of the execution, then the division shall issue a certificate to the employer stating that the employer's
account is in good standing with the division and that the
assets may be sold or otherwise transferred without the
attachment of the division's lien. An agreement of sale or
other transfer may provide for the creation of an escrow
account into which the employers shall pay the full
amount owed to the division. The subsequent timely
payment of that full amount to the division shall operate
to place both employers in good standing with the division
to the extent of the predecessor employer's liabilities
retroactive to the date of sale or other transfer. In the
event that the employer would not owe any sum to the
division on the aforesaid date of execution, then a certifi-
cate shall also be issued to the employer upon the em-
ployer's request stating that the employer's account is in
good standing with the division and that the assets may be
sold or otherwise transferred without the attachment of
the division's lien.

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

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

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

(a) At any time prior to or following the acquisition described in subsection (a), (b) or (c), section fourteen of this article, the buyer or other recipient may file a certified petition with the division requesting that the division waive the payment by the buyer or other recipient of premiums, premium deposits, interest and imposition of the modified rate of premiums attributable to the predecessor employer or other penalty, or any combination thereof. The division shall review the petition by considering the seven factors set forth below:

1. The exact nature of the default;
2. The amount owed to the division;
3. The solvency of the fund;
4. The financial condition of the buyer or other recipient;
5. The equities exhibited towards the fund by the buyer or other recipient during the acquisition process;
6. The potential economic impact upon the state and the specific geographic area in which the buyer or other recipient is to be or is located, if the acquisition were not to occur; and
7. Whether the assets are purchased in an arms-length transaction.

Unless requested by a party or by the division, no hearing need be held on the petition. However, any decision made by the division on the petition shall be in writing and shall include appropriate findings of fact and conclusions of law. Such decision shall be effective ten days following notice to the public of the decision unless an objection is filed in the manner herein provided. Such notice shall be given by the division’s filing with the secretary of state, for publication in the state register, of a notice of the decision. At the time of filing the notice of its decision, the division shall also file with the secretary
of state a true copy of the decision. The publication shall
include a statement advising that any person objecting to
the decision must file, within ten days after publication of
the notice, a verified response with the division setting
forth the objection and the basis therefor. If any such
objection is filed, the division shall hold an administrative
hearing, conducted pursuant to article five, chapter
twenty-nine-a of this code, within fifteen days of receiving
the response unless the buyer or other recipient consents
to a later hearing. Nothing in this subsection shall be
construed to be applicable to the seller or other transferor
or to affect in any way a proceeding under sections five
and five-a of this article.

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

ARTICLE 3. WORKERS' COMPENSATION FUND.

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

(a) All disbursements from the workers' compensation
fund and the other funds created pursuant to this chapter
including the advance deposits by employers where there
has been no activity for a period of five years, are pre-
sumed abandoned and subject to the custody of the state
as unclaimed property under the provisions of article
eight, chapter thirty-six of this code. The funds shall be
kept in a separate account by the state treasurer, apart
from other unclaimed property funds. Ninety days after
the state treasurer has advertised the accounts and paid any claims, he or she shall remit the balance of those funds held in the account to the credit of the workers' compensation fund or to other affected funds. Such property shall become the property of and owned exclusively by the workers' compensation fund.

(b) Notwithstanding any provision of law to the contrary, all interest and other earnings accruing to the investments and deposits of the workers' compensation fund and of the other funds created pursuant to this chapter are credited only to the account of the workers' compensation fund or to such other affected fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

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

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

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

(b) If the injury causes temporary total disability, the employee shall receive during the continuance thereof a maximum weekly benefit to be computed on the basis of seventy percent of the average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, not to exceed one hundred percent of the average weekly wage in West Virginia: Provided, That in the case of a claimant whose injury occurred prior to the second day of February, one thousand nine hundred ninety-five, the maximum benefit rate shall be the rate applied under the prior enactment of this subsection which was in effect at the time the injury occurred, and the rate shall not be affected by the amendment and reenactment of this
section during the regular session of the Legislature in the year one thousand nine hundred ninety-five. The minimum weekly benefits paid hereunder shall not be less than thirty-three and one-third percent of the average weekly wage in West Virginia, except as provided in section six-d and section nine of this article. In no event, however, shall such minimum weekly benefits exceed the level of benefits determined by use of the then applicable federal minimum hourly wage: Provided, however, That any claimant receiving permanent total disability benefits, permanent partial disability benefits or dependents' benefits prior to the first day of July, one thousand nine hundred ninety-four, shall not have his or her benefits reduced based upon the requirement herein that the minimum weekly benefit shall not exceed the applicable federal minimum hourly wage.

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

(d) For all awards of permanent total disability benefits that are made on or after the second day of February, one thousand nine hundred ninety-five, including those claims in which a request for an award was pending before the division or which were in litigation but not yet submitted for a decision, then benefits shall be payable until the claimant attains the age necessary to receive federal old age retirement benefits under the provisions of the Social Security Act, 42 U. S. C. 401 and 402, in effect on the effective date of this section. Such a claimant shall be paid benefits so as not to exceed a maximum benefit of sixty-six and two-thirds percent of the claimant's average weekly wage earnings, wherever earned, at the time of the date of injury not to exceed one hundred percent of the average weekly wage in West Virginia. The minimum weekly benefits paid hereunder shall be as is provided for in subdivision (b) of this section. In all claims in which an award for permanent total disability benefits was made prior to the second day of February, one thousand nine hundred ninety-five, such awards shall continue to be paid
at the rate in effect prior to the said date, subject to annual
adjustments for changes in the average weekly wage in
West Virginia: Provided, That the provisions of sections
one through eight, article four-a of this chapter shall be
applied thereafter to all such prior awards that were
previously subject to its provisions. A single or aggregate
permanent disability of eighty-five percent or more shall
entitle the employee to a rebuttable presumption of a
permanent total disability for the purpose of paragraph
(2), subdivision (n) of this section: Provided, however,
That the claimant must also be at least forty percent
medically impaired upon a whole body basis or has
sustained a thirty-five percent statutory disability pursu-
ant to the provisions of subdivision (f) of this section. The
presumption may be rebutted if the evidence establishes
that the claimant is not permanently and totally disabled
pursuant to subdivision (n) of this section. Under no
circumstances shall the division grant an additional
permanent disability award to a claimant receiving a
permanent total disability award: Provided further, That
if any claimant thereafter sustains another compensable
injury and has permanent partial disability resulting
therefrom, the total permanent disability award benefit
rate shall be computed at the highest benefit rate justified
by any of the compensable injuries, and the cost of any
increase in the permanent total disability benefit rate shall
be paid from the second injury reserve created by section
one, article three of this chapter.

(e)(1) For all awards made on or after the second day of
February, one thousand nine hundred ninety-five, if the
injury causes permanent disability less than permanent
total disability, the percentage of disability to total
disability shall be determined and the award computed on
the basis of four weeks’ compensation for each percent of
disability determined, at the maximum or minimum
benefit rates provided for in subdivision (d) of this section:
Provided, That in the case of a claimant whose injury
occurred prior to the second day of February, one thou-
sand nine hundred ninety-five, the maximum benefit rate
shall be the rate applied under the prior enactment of this
section which was in effect at the time the injury occurred,
and the rate shall not be affected by the amendment and reenactment of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-five.

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

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

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

<table>
<thead>
<tr>
<th>Loss Description</th>
<th>Disability Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>The loss of a great toe</td>
<td>10%</td>
</tr>
<tr>
<td>The loss of a great toe (one phalanx)</td>
<td>5%</td>
</tr>
<tr>
<td>The loss of other toes</td>
<td>4%</td>
</tr>
<tr>
<td>The loss of other toes (one phalanx)</td>
<td>2%</td>
</tr>
<tr>
<td>The loss of all toes</td>
<td>25%</td>
</tr>
<tr>
<td>The loss of forepart of foot</td>
<td>30%</td>
</tr>
<tr>
<td>The loss of a foot</td>
<td>35%</td>
</tr>
<tr>
<td>The loss of a leg</td>
<td>45%</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

171 The loss of ring and little finger shall be considered a ten percent disability.
The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

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

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

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

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

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

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

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

Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the division makes the proper award for such injury, the division shall make such award to claimant’s dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any surviving spouse of such claimant after his or her remarriage, and that this
liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

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

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

(i) For the purposes of this chapter, with the exception of those injuries provided for in subdivision (f) of this section and in section six-b of this article, the degree of permanent disability other than permanent total disability shall be determined exclusively by the degree of whole body medical impairment that a claimant has suffered. For those injuries provided for in subdivision (f) of this section and section six-b of this article, the decree of disability shall be determined exclusively by the provisions of said subdivision and said section. The occupational pneumoconiosis board created pursuant to section eight-a of this article shall premise its decisions on the degree of pulmonary function impairment that claimants suffer solely upon whole body medical impairment. The workers' compensation division shall adopt standards for the evaluation of claimants and the determination of a claimant's degree of whole body medical impairment. Once the degree of medical impairment has been determined, that degree of impairment shall be the degree of permanent partial disability that shall be awarded to the claimant. This subdivision shall be applicable to all injuries incurred and diseases with a date of last exposure on or after the second day of February, one thousand nine hundred
ninety-five, to all applications for an award of permanent partial disability made on and after such date, and to all applications for an award of permanent partial disability that were pending before the division or pending in litigation but not yet submitted for decision on and after such date. The prior provisions of this subdivision shall remain in effect for all other claims.

(j) From a list of names of seven persons submitted to the commissioner by the health care advisory panel, the commissioner shall appoint an interdisciplinary examining board consisting of five members to evaluate claimants, including by examination if the board so elects. The board shall be composed of three qualified physicians with specialties and expertise qualifying them to evaluate medical impairment and two vocational rehabilitation specialists who are qualified to evaluate the ability of a claimant to perform gainful employment with or without retraining. One member of the board shall be designated annually as chairperson by the commissioner. The term of office of each member of the board shall be six years and until his or her successor has been appointed and has qualified: Provided, That two of the persons initially appointed shall serve a term of six years, two of the remaining persons shall serve a term of four years and the remaining member shall serve a term of two years. Any member of the board may be appointed to any number of terms. Any two physician members and one vocational rehabilitation specialist members shall constitute a quorum for the transaction of business. The commissioner, from time to time, shall fix the compensation to be paid to each member of the board, and the members shall also be entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. The board shall perform the duties and responsibilities as assigned by the provisions of this chapter, consistent with the administrative policies developed by the commissioner with the assistance of the compensation programs performance council.

(1) Prior to the referral of any issue to the interdisciplinary examining board, the division shall conduct such examinations of the claimant as it finds necessary and
obtain all pertinent records concerning the claimant's medical history and reports of examinations and forward them to the board at the time of the referral. The division shall provide adequate notice to the employer of the filing of the request for a permanent total disability award and the employer shall be granted an appropriate period in which to respond to the request. The claimant and the employer may furnish all pertinent information to the board and shall furnish to the board any information requested by the board. The claimant and the employer may each submit no more than one report and opinion regarding each issue present in a given claim. The employer shall be entitled to have the claimant examined by medical specialists and vocational rehabilitation specialists: Provided, That the employer is entitled to only one such examination on each issue present in a given claim. Any additional examinations must be approved by the division and shall be granted only upon a showing of good cause. The reports from all employer-conducted examinations must be filed with the board and served upon the claimant. The board may request that those persons who have furnished reports and opinions regarding a claimant provide it with such additional information as the board may deem necessary. Both the claimant and the employer, as well as the division, may submit reports from experts challenging or supporting the other reports in the record regardless of whether or not such an expert examined the claimant or relied solely upon the evidence of record.

(2) If the board or a quorum thereof elects to examine a claimant, the individual members shall conduct such examinations as are pertinent to each of their specialties. If a claim presents an issue beyond the expertise of the board, the board may obtain advice or evaluations by other specialists. In addition, if the compensation programs performance council determines that the number of applications pending before the board has exceeded the level at which the board can review and make recommendations within a reasonable time, then the council may authorize the commissioner to appoint such additional members to the board as may be necessary to reduce the backlog of applications. Such additional members shall be
recommended by the health care advisory panel and the
commissioner may make such appointments as he or she
chooses from the recommendations. The additional board
members shall not serve a set term but shall serve until the
council determines that the number of pending applica-
tions has been reduced to an acceptable level.

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

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

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

(6) Except as noted below, objections pursuant to section
one, article five of this chapter to any such order shall be
limited in scope to matters within the record developed
before the workers' compensation division and the board
and shall further be limited to the issue of whether the
board properly applied the standards for determining
medical impairment, if applicable, and the issue of
whether the board's findings are clearly wrong in view of
the reliable, probative and substantial evidence on the whole record. Should either party contend that the claimant’s condition has changed significantly since the review conducted by the board, the party may file a motion with the administrative law judge, together with a report supporting that assertion. Upon the filing of such motion, the administrative law judge shall cause a copy of the report to be sent to the examining board asking, the board to review the report and provide such comments as the board chooses within sixty days of the board’s receipt of the report: The board may then either supply such comments or, at the board’s discretion, request that the claim be remanded to the board for further review by the board. If remanded, the claimant is not required to submit to further examination by the employer’s medical specialists or vocational rehabilitation specialists. Following any such remand, the board shall file its recommendations with the administrative law judge for his or her review. If the board elects to respond with comments, such comments shall be filed with the administrative law judge for his or her review. Following the receipt of either the board’s recommendations or comment, the administrative law judge shall then issue a written decision ruling upon the asserted change in the claimant’s condition. No additional evidence may be introduced during the review of the objection before the office of judges or elsewhere on appeal: Provided, That each party and the division may submit one written opinion on each issue pertinent to a given claim based upon a review of the evidence of record either challenging or defending the board’s findings and conclusions. Thereafter, based upon the evidence then of record, the administrative law judge shall issue a written decision containing his or her findings of fact and conclusions of law regarding each issue involved in the objection.

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

(1) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under
subdivision (e) or (f) of this section. Compensation, either
temporary total or permanent partial, under this section
shall be payable only to the injured employee and the right
thereof shall not vest in his or her estate, except that any
unpaid compensation which would have been paid or
payable to the employee up to the time of his or her death,
if he or she had lived, shall be paid to the dependents of
such injured employee if there be such dependents at the
time of death.

(m) The following permanent disabilities shall be
conclusively presumed to be total in character:
Loss of both eyes or the sight thereof.
Loss of both hands or the use thereof.
Loss of both feet or the use thereof.
Loss of one hand and one foot or the use thereof.

(n) (1) Other than for those injuries specified in subdivi-
sion (m) of this section, in order to be eligible to apply for
an award of permanent total disability benefits for all
injuries incurred and all diseases, including occupational
pneumoconiosis, with a date of last exposure on and after
the second day of February, one thousand nine hundred
ninety-five, and for all requests for such an award pending
before the division on and after the second day of Febru-
ary, one thousand nine hundred ninety-five, a claimant
must have been awarded the sum of forty percent in prior
permanent partial disability awards, have suffered an
occupational injury or disease which results in a finding
that the claimant has suffered a medical impairment of
forty percent or has sustained a thirty-five percent statu-

tory disability pursuant to the provisions of subdivision (f)
of this section. Upon filing such an application, the claim
will be reevaluated by the examining board pursuant to
subdivision (i) of this section to determine if he or she has
suffered a whole body medical impairment of forty percent
or more resulting from either a single occupational injury
or occupational disease or a combination of occupational
injuries and occupational diseases or has sustained a
thirty-five percent statutory disability pursuant to the
provisions of subdivision (f) of this section. A claimant whose prior permanent partial disability awards total eighty-five percent or more shall also be examined by the board and must be found to have suffered a whole body medical impairment of forty percent in order for his or her request to be eligible for further review. The examining board shall review the claim as provided for in subdivision (j) of this section. If the claimant has not suffered whole body medical impairment of at least forty percent or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, then the request shall be denied. Upon a finding that the claimant does have a forty percent whole body medical impairment or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, then the review of the application shall continue as provided for in the following paragraph of this subdivision. Those claimants whose prior permanent partial disability awards total eighty-five percent or more and who have been found to have a whole body medical impairment of at least forty percent or have sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section shall then be entitled to the rebuttable presumption created pursuant to subdivision (d) for the remaining issues in the request. For the purposes of determining whether the claimant should be awarded permanent total disability benefits under the second injury provisions of subsection (d), section one, article three of this chapter, only a combination of occupational injuries and occupational diseases, including occupational pneumoconiosis, shall be considered.

(2) A disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three, chapter twenty-one-a of this code shall be considered once they are effective.
(3) In the event that a claimant, who has been found to have at least a forty percent whole body medical impairment or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, is denied an award of permanent total disability benefits pursuant to this subdivision and then accepts and continues to work at a lesser paying job than he or she previously held, then such a claimant shall be eligible, notwithstanding the provisions of section nine of this article, to receive temporary partial rehabilitation benefits for a period of four years. Such benefits shall be paid at the level necessary to ensure the claimant's receipt of the following percentages of the average weekly wage earnings of the claimant at the time of injury calculated as provided in this section and sections six-d and fourteen of this article:

(A) Eighty percent for the first year;

(B) Seventy percent for the second year;

(C) Sixty percent for the third year; and

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

(4) It is the intent of the Legislature that the amendments to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-nine which change criteria for an award of permanent total disability benefits be applied retroactively to all injuries incurred and all occupational diseases, including occupational pneumoconiosis, with a date of last exposure on and after the second day of February, one thousand nine hundred ninety-five, and for all requests for such an award pending before the division on and after the second day of February, one thousand nine hundred ninety-five: Provided, That any claimant whose application for permanent total disability benefits was rejected on or after the second day of February, one thousand nine hundred
ninetysve, based on a finding that the claimant: (1) Was
not awarded the sum of fifty percent in prior permanent
partial disability awards; or (2) did not suffer an occupa-
tional injury or occupational disease which resulted in a
finding that the claimant has suffered a medical impair-
ment of fifty percent; or (3) did not suffer whole body
medical impairment of at least fifty percent, then such
claimant may, during the period beginning on the first day
of July, one thousand nine hundred ninety-nine, and
ending on the thirtieth day of September, one thousand
nine hundred ninety-nine, file with the division a petition
for reconsideration of the denial of permanent total
disability benefits. After review of the petition by the
division and the examining board, the division shall enter
an appropriate order on the claimant's petition for recon-
sideration.

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

The occupational pneumoconiosis board shall consist of
five licensed physicians, who shall be appointed by the
commissioner. No person shall be appointed as a member
of the board, or as a consultant thereto, who has not by
special study or experience, or both, acquired special
knowledge of pulmonary diseases. All members of the
occupational pneumoconiosis board shall be physicians of
good professional standing, admitted to practice medicine
and surgery in this state, and two of them shall be roent-
genologists. One of the board shall be designated annually
as chairman by the commissioner. The term of office of
each member of the board shall be six years. The five
members of the existing board in office on the effective
date of this section shall continue to serve until their terms
expire and until their successors have been appointed and
have qualified. Any member of the board may be ap-
pointed to any number of terms. The function of the board
is to determine all medical questions relating to cases of
compensation for occupational pneumoconiosis under the
direction and supervision of the commissioner. Any three
members of the board constitute a quorum for the transac-
tion of its business, if at least one of the members present
is a roentgenologist. The commissioner shall from time to
time fix the compensation to be paid each member of the board, and members are also entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. In fixing the compensation of board members, the commissioner shall take into consideration the number of claimants a member of the board actually examines, the actual time spent by members in discharging their duties and the recommendation of the compensation programs performance council as to reasonable reimbursement per unit of time expended based on comparative data for physicians within the state in the same medical specialties.

§23-4-9. Physical and vocational rehabilitation.

(a) The Legislature hereby finds that it is a goal of the workers' compensation program to assist workers to return to suitable gainful employment after an injury. In order to encourage workers to return to employment and to encourage and assist employers in providing suitable employment to injured employees, it shall be a priority of the commissioner to achieve early identification of individuals likely to need rehabilitation services and to assess the rehabilitation needs of these injured employees. It shall be the goal of rehabilitation to return injured workers to employment which shall be comparable in work and pay to that which the individual performed prior to the injury. If a return to comparable work is not possible, the goal of rehabilitation shall be to return the individual to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment, and training, so that the individual will return to productivity with his or her employer or, if necessary, with another employer. The Legislature further finds that it is the shared responsibility of the employer, the employee, the physician and the commissioner to cooperate in the development of a rehabilitation process designed to promote reemployment for the injured employee.

(b) In cases where an employee has sustained a permanent disability, or has sustained an injury likely to result in temporary disability in excess of one hundred twenty
days, and such fact has been determined by the commissioner, the commissioner shall at the earliest possible time determine whether the employee would be assisted in returning to remunerative employment with the provision of rehabilitation services and if the commissioner determines that the employee can be physically and vocationally rehabilitated and returned to remunerative employment by the provision of rehabilitation services including, but not limited to, vocational or on-the-job training, counseling, assistance in obtaining appropriate temporary or permanent work site, work duties or work hours modification, by the provision of crutches, artificial limbs, or other approved mechanical appliances, or medicines, medical, surgical, dental or hospital treatment, the commissioner shall forthwith develop a rehabilitation plan for the employee and, after due notice to the employer, expend such an amount as may be necessary for the aforesaid purposes: Provided, That such expenditure for vocational rehabilitation shall not exceed ten thousand dollars for any one injured employee: Provided, however, That no payment shall be made for such vocational rehabilitation purposes as provided in this section unless authorized by the commissioner prior to the rendering of such physical or vocational rehabilitation, except that payments shall be made for reasonable medical expenses without prior authorization if sufficient evidence exists which would relate the treatment to the injury and the attending physician or physicians have requested authorization prior to the rendering of such treatment: Provided further, That payment for physical rehabilitation, including the purchase of prosthetic devices and other equipment and training in use of such devices and equipment, shall be considered expenses within the meaning of section three of this article and shall be subject to the provisions of sections three, three-a, three-b and three-c of this article. The provision of any rehabilitation services shall be pursuant to a rehabilitation plan to be developed and monitored by a rehabilitation professional for each injured employee.

(c) In every case in which the commissioner shall order physical or vocational rehabilitation of a claimant as
provided herein, the claimant shall, during the time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him or her totally disabled during the period thereof, be compensated on a temporary total disability basis for such period.

(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be seventy percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in sections six, six-d and fourteen of this article as such calculation is performed for temporary total disability benefits, subject to the following limitations: In no event shall such benefits be subject to the minimum benefit amounts required by the provisions of subdivision (b), section six of this article, nor shall such benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to sections six, six-d and fourteen of this article during any period of temporary total disability resulting from the injury in the claim: Provided, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every ninety days to determine whether the injured employee's average weekly wage in the new employment has changed and, if such change has occurred, the amount of benefits payable hereunder shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section.

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

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

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

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

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

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

(b) If there be dependents as defined in subdivision (d) of
this section, such dependents shall be paid for as long as
their dependency shall continue in the same amount as
was paid or would have been paid the deceased employee
for total disability had he or she lived. The order of
preference of payment and length of dependence shall be
as follows:
(1) A dependent widow or widower until death or remarriage of such widow or widower, and any child or children dependent upon the decedent until each such child shall reach eighteen years of age or where such child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school, until such child reaches the age of twenty-five years or if an invalid child to continue as long as such child remains an invalid. All such persons shall be jointly entitled to the amount of benefits payable as a result of employee’s death.

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

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

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

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

(d) “Dependent”, as used in this chapter, shall mean a widow, widower, child under eighteen years of age, or under twenty-five years of age when a full-time student as provided herein, invalid child or posthumous child, who, at the time of the injury causing death, is dependent in whole or part for his or her support upon the earnings of the employee, stepchild under eighteen years of age, or under twenty-five years of age when a full-time student as provided herein, child under eighteen years of age legally adopted prior to the injury causing death, or under twenty-five years of age when a full-time student as provided herein, father, mother, grandfather or grandmother, who at the time of the injury causing death, is
dependent in whole or in part for his or her support upon 
the earnings of the employee; and invalid brother or sister 
wholly dependent for his or her support upon the earnings 
of the employee at the time of the injury causing death.

(e) If a person receiving permanent total disability 
benefits dies from a cause other than a disabling injury 
leaving any dependents as defined in subdivision (d) of this 
section, an award shall be made to such dependents in an 
amount equal to one hundred four times the weekly 
benefit the worker was receiving at the time of his or her 
death and be paid either as a lump sum or in periodic 
payments, at the option of the dependent or dependents.

Direct premium rating experience charges for the payment 
of such benefits granted as a result of a second injury 
award of permanent total disability shall not be made to 
the employee's employer. It is the intent of the Legislature 
that the amendments to this subsection enacted during the 
regular session of the Legislature in the year one thousand 
nine hundred ninety-nine be construed so as to make 
dependents eligible for benefits under this subsection 
retroactive to the second day of February, one thousand 
nine hundred ninety-five.

ARTICLE 5. REVIEW.


With the exception of medical benefits, the claimant, the 
employer and the workers' compensation division, may 
negotiate a final settlement of any and all issues in a claim 
wherever the claim may then be in the review or appellate 
processes. Upon entering into an agreement, the parties 
shall file the written and executed agreement with the 
office of judges. The office of judges shall review the 
proposed agreement to determine if it is fair and reason-
able to the parties and shall ensure that each of the parties 
are fully aware of the effects of the agreement including 
what each party is conceding in exchange for the agree-
ment. If the office of judges concludes that the agreement 
is not fair or is not reasonable or that one of the parties is 
not fully informed, then the agreement will not be ap-
proved, which decision shall not be reviewable. If the 
employer is not active in the claim, then the division may
negotiate a final settlement of any and all issues in a claim except for medical benefits with the claimant. Upon approval of the settlement, it shall be made a part of the claim record and the office of judges shall send written notice of the settlement to all parties and, where appropriate, to the appeal board or the supreme court of appeals. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party including the division. Any settlement agreement may provide for a lump sum payment or a structured payment plan, or any combination thereof, or such other basis as the parties may agree. If such self-insured employer later fails to make the agreed upon payment, the division shall assume the obligation to make the payments and shall be entitled to recover the amounts paid or to be paid from the self-insured employer and its sureties or guarantors or both as provided for in sections five and five-a, article two of this chapter.

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

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

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

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

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

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

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

ARTICLE 6. SEVERABILITY; LEGISLATIVE INTENT; OPERATIVE DATE.
§23-6-2. Legislative intent.

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

§23-6-3. Operative date for particular enactment.
The amendments to this chapter effected by the enactment of Enrolled Committee Substitute for Senate Bill No. 579 during the regular session of the Legislature, one thousand nine hundred ninety-nine become operative on the first day of July, one thousand nine hundred ninety-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 as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a person who is responsible for and who is required by specific assignment, duty or legal duty, which is either expressed or inherent in laws which require the employer's principals to be informed and to know the facts and laws affecting the business organization and to make internal policy and decisions which ensure that the individual and organization comply with the general laws and provisions of chapter twenty-three of this code, knowingly and willfully fails to subscribe to the workers' compensation fund shall be guilty of a felony and, upon conviction, shall be imprisoned in the penitentiary not less than one nor more than ten years, or in the discretion of the court, be confined in jail not more than one year and shall be fined not more than two thousand five hundred dollars.

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

(A) Any person who individually or as owner, partner, president, other officer or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in section twenty-four-e of this article, knowingly and willfully fails to make premium tax payments to the workers' compensation fund as required by chapter twenty-three this code, shall be guilty of the larceny of the premium owed and, if the amount is one thousand dollars or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the amount is less than one thousand dollars, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to make premium tax payments to the workers' compensation fund as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed, and, if the amount is one thousand dollars or more, such corporation, association, company or partnership shall be guilty of a felony and, upon conviction thereof, shall be fined not less than two thousand five hundred dollars nor more than ten thousand dollars. If the amount is less than one thousand dollars, such corporation, association, company or partnership shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed two thousand five hundred dollars.

(C) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person, as defined in section twenty-four-e of this article, knowingly and willfully and
with fraudulent intent sells, transfers or otherwise dis-
poses of substantially all of the employer's assets for the
purpose of evading the payment of workers' compensation
premium taxes to the workers' compensation fund as
required by chapter twenty-three of this code, shall be
guilty of the larceny of the premium owed and, if the
amount is one thousand dollars or more, such person shall
be guilty of a felony and, upon conviction thereof, shall be
imprisoned in a state correctional facility not less than one
nor more than ten years or, in the discretion of the court,
be confined in jail not more than one year and shall be
fined not more than two thousand five hundred dollars. If
the amount is less than one thousand dollars, such person
shall be guilty of a misdemeanor and, upon conviction
thereof, shall be confined in jail for a term not to exceed
one year or fined an amount not to exceed two thousand
five hundred dollars, or both, in the discretion of the court.

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

(3) Failure to file premium tax reports:

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

to file a premium tax report with the workers' compensation
fund as required by chapter twenty-three of this code,

shall be guilty of a felony and, upon conviction thereof,

shall be imprisoned in the penitentiary not less than one

nor more than ten years, or in the discretion of the court,

be confined in jail for a term not to exceed one year and

shall be fined not more than two thousand five hundred

dollars.

(B) Any corporation, association, company or partnership

which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file a

premium tax report with the workers' compensation fund

as required by chapter twenty-three of this code, shall be

guilty of a felony and, upon conviction thereof, shall be

fined not less than two thousand five hundred dollars nor

more than ten thousand dollars.

(4) Failure to file other reports:

(A) Any person, individually or as owner, partner,

president or other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in section twenty-four-e of this article, knowingly and willfully fails

to file any report, other than a premium tax report, required by such chapter shall be guilty of a misdemeanor

and, upon conviction thereof, shall be confined in jail for

a term not to exceed one year or fined an amount not to

exceed two thousand five hundred dollars, or both, in the
discretion of the court.

(B) Any corporation, association, company or partnership

which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file any

report, other than a premium tax report, with the workers' compensation fund as required by chapter twenty-three of

this code, shall be guilty of a misdemeanor and, upon

conviction thereof, shall be fined an amount not to exceed

two thousand five hundred dollars.

(5) False testimony or statements:
Any person, individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in section twenty-four-e of this article, knowingly and willfully makes a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be confined in the penitentiary for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than one thousand dollars nor more than ten thousand dollars, or both, in the discretion of the court.

(6) Asset forfeiture:

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

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

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detention, or forfeiture, or of any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for:

(a) Contract services;

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

(c) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph:
(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the workers' compensation fund to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary:

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

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

(7) Venue:

Venue for prosecution of any violation of this section shall be either the county in which the defendant's principal business operations are located or in Kanawha County where the workers' compensation fund is located.

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

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

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

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

(C) To which he or she is not entitled, shall be guilty of a larceny and, if the amount is one thousand dollars or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the amount is less than one thousand dollars, such person shall be guilty of a misdemeanor and,
upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

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

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

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

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

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

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

(A) To defraud the workers' compensation fund or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services; or
(B) To obtain, by means of false or fraudulent pretenses, representations, or promises any of the money or property owned by or under the custody or control of the workers' compensation fund or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services; or

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

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

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

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

(3) Any person who willfully embezzles, steals or otherwise unlawfully converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property
or other assets of a health care program related to the workers' compensation fund, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than ten years or fined not less than ten thousand dollars, or both, in the discretion of the court.

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

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

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

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

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention or forfeiture, or of any other necessary expenses incident to the seizure,
detention, forfeiture or disposal of such property, including payment for:

(a) Contract services;
(b) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and
(c) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph:

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

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

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

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

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

(1) Any person, firm, partnership, company, corporation association or medical provider who submits false documentation to workers' compensation with the intent to defraud workers' compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount
not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

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

(3) Venue for prosecution of any violation of this section shall be either the county in which the claimant resides, a defendant's principal business operations are located, or in Kanawha County where the workers' compensation fund 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................. this the 12th
Day of ..................... 1999

Governor
PRESENTED TO THE
GOVERNOR
Date 3/1/65
Time 11:10 AM