WEST VIRGINIA LEGISLATURE
2nd Extraordinary Session, 2003

ENROLLED

SENATE BILL NO. ___2013____

(By Senator ___Kessner, LT. GO____)

PASSED ___July 1, 2003____

In Effect ___from____ Passage
AN ACT to repeal sections one, two, three, four, five, six and seven, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section five-b, article two, chapter twenty-three of said code; to repeal section seven, article four-a of said chapter; to amend and reenact section thirty-three-d, article three, chapter five-a of said code; to amend and reenact sections four and five, article three, chapter five-b of said code; to amend and reenact section one, article two, chapter five-f of said code; to amend and reenact section seven, article twelve, chapter eleven of said code; to amend and reenact section four, article one-a, chapter twelve of said code; to amend and reenact section six, article six of said chapter; to amend and reenact section ten, article two, chapter fifteen of said code; to amend and reenact section fifteen, article one, chapter sixteen of said code; to amend and reenact section three, article twenty-nine-d of said chapter; to amend and reenact section three, article thirty-
six of said chapter; to amend and reenact section twenty-six, article nine-a, chapter eighteen of said code; to amend and reenact section twelve-a, article ten-a of said chapter; to amend and reenact section two, article ten-k of said chapter; to amend and reenact section three, article three-a, chapter twenty-one of said code; to amend and reenact section four, article one, chapter twenty-one-a of said code; to amend and reenact sections six, six-c and thirteen, article two of said chapter; to amend and reenact section eleven, article ten of said chapter; to amend and reenact section eight, article three, chapter twenty-two of said code; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen and eighteen, article one, chapter twenty-three of said code; to further amend said article by adding thereto eight new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, four-a and nineteen; to amend and reenact sections one, one-c, one-d, two, three, four, five, five-a, five-c, five-d, six, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article two of said chapter; to amend and reenact section one, article two-a of said chapter; to amend and reenact sections one, two and three, article two-b of said chapter; to amend and reenact sections one, one-a, two, three and five, article three of said chapter; to further amend said article by adding thereto a new section, designated six; to amend and reenact sections one, one-b, one-c, one-d, one-e, two, three, three-b, three-c, four, five, six-a, six-b, six-d, seven, seven-a, seven-b, eight, eight-a, eight-b, eight-c, nine, nine-b, ten, eleven, twelve, fourteen, fifteen, fifteen-a, fifteen-b, sixteen, sixteen-a, seventeen, eighteen, twenty, twenty-two, twenty-three, twenty-four and twenty-five, article four of said chapter; to further amend said article by adding thereto a new section, designated section one-g; to amend and reenact sections one, three, five, six and eight, article four-a of said chapter; to amend and reenact sections two, five, six and seven, article four-b of said chapter; to further amend said article by adding thereto a new section, designated section eight-b; to
amend and reenact sections two, three, four and five, article four-c of said chapter; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fifteen, seventeen and eighteen, article five of said chapter; to amend and reenact section two, article eight, chapter twenty-six of said code; to amend and reenact sections one hundred twenty-five and one hundred thirty-one, article eighteen, chapter forty-eight of said code; and to amend and reenact sections twenty-four-e, twenty-four-f and twenty-four-g, article three, chapter sixty-one of said code, all relating to workers' compensation generally; repealing provisions relating to the compensation programs performance council; repealing provisions relating to default settlement; repealing provisions relating to employees and payment of salaries from the disabled workmen's relief fund; removing workers' compensation from the bureau of employment programs; directing certain reports to be filed quarterly; providing legislative findings; creating workers' compensation commission as an independent agency assuming all duties of division; creating the workers' compensation board of managers; establishing composition of board; establishing qualifications for membership; establishing appointment procedures for members; providing for compensation and travel expenses; setting forth the powers and duties of board; establishing position, powers and duties of executive director; establishing qualifications; establishing procedure for removal; providing violator system to prohibit certain persons from obtaining state licenses, certificates and permits in certain circumstances; providing for payment withholding and interception of moneys of certain employers; providing penalties for failure to withhold or intercept payments; authorizing interagency agreements for the bureau of employment programs and workers' compensation commission; providing for the adoption of workers' compensation rules by commission; transferring assets and contracts; establishing fraud and abuse investigation and prosecution unit; providing powers and duties of unit; providing for legislative oversight of commission; providing for salaries
and expenses of commission; requiring bond and insurance for the executive director and associate director; authorizing the executive director to hire an associate director and other employees; providing for associate director to assume authority in absence of executive director; authorizing certain commission employees to administer oaths; providing for issuance and enforcement of agency subpoenas; providing additional civil remedies for violations of law; allowing certain elected local officials not to participate in workers' compensation; providing that limited liability companies may elect to not provide workers' compensation coverage to certain members; clarifying that extraction of natural resources is provision of services; requiring promulgation of rule to prevent contractors from avoiding liability for workers' compensation premiums; creating ongoing duty to provide information to commission; authorizing rate reductions for safety and loss prevention and drug-free workplace initiatives; requiring rates, surcharges and assessments to be financially sound and sufficient to meet needs of the funds; establishing rate caps; authorizing the commission to require employers to pay premium taxes more often than quarterly; extending time for commission to collect from defaulting or delinquent employers; establishing statute of limitations; allowing specified groups of employers to self-insure their obligations to the commission; requiring self-insured employers to administer claims; requiring self-insured employers to comply with the law and commission rules; establishing components of self-insured premium tax; requiring employers that self-insure second injury benefits to continue to be responsible for the claims; providing that self-insured employers who fail to make benefit payments are in default in certain circumstances; authorizing the commission to determine self-insured rates; authorizing self-insured employers to obtain third-party insurance for catastrophic claims and requiring copy of policy; prohibiting self-insured employers from contracting with third-party administrators who have not been approved by the commission; allowing for subrogation of medical benefits and
authorizing reasonable attorney fees and reasonable portion of costs; eliminating second injury awards and the second injury reserve fund for certain claims; providing for management of the deficit; authorizing emergency fiscal measures; reporting requirements of self-insurers; requiring commission to adopt standards for evaluation of whole-body impairment with regard to certain occupational diseases; providing an expedited appeal to the office of judges where self-insured denies compensability; requiring assessment of claimant’s return-to-work potential; providing assistance in return-to-work efforts; authorizing repayment of overpayments from future benefits and providing for liability of attorney for certain fees and expenses; prohibiting a claimant from receiving certain workers’ compensation benefits and private benefits in certain circumstances; requiring award of permanent partial disability benefits be made as expeditiously as possible; requiring medical providers to submit timely requests for payment; authorizing certain employers with managed health care plans to require employees to use the plan for treatment of compensable injuries; exceptions; authorizing the commission to establish managed health care plans; providing for weighing of evidence; providing for suspension or termination of health care providers; requiring commission to set standards for medical management of claims; providing benefits for cemetery expenses; eliminating annual increases in benefits; reducing certain benefit rates; establishing new criteria for eligibility for benefits for certain injuries and diseases; increasing to fifty percent the percentage of whole body impairment for eligibility for consideration for a permanent total disability award; establishing internal operative dates; requiring the executive director to promulgate a rule to establish requirements for an application for permanent total disability benefits; specifying application required for claim for permanent total disability benefits; providing for the establishment of an onset date for permanent total disability benefits; providing for increase of minimum aggregation of percentages of permanent disability or medical impairment
prior to applying for permanent total disability award; providing for prior disability awards excluded from calculation; providing that ability to acquire skills may be considered in permanent total disability determination; providing that neither certain proximity of employment nor comparison of wages may be considered when determining permanent total disability; terminating permanent total disability benefits at age seventy in certain circumstances; eliminating the five-percent presumptive award of occupational pneumoconiosis; authorizing application for occupational pneumoconiosis benefits within three years of determination of impairment; providing that the commission may suspend benefits to a claimant for refusing, without good cause, treatment or examination by a physician; providing for a trial work period; modifying provisions for vocational rehabilitation services; authorizing reopening and review of claims; establishing duty to provide information to commission; expanding monitoring in injury claims; authorizing suspension or termination of benefits in certain circumstances; removing certain offset provisions; providing certain incentives for premium discounts; providing that certain portion of rate increase not be subject to collection; expanding sources from which overpayment of benefits and awards may be collected; providing for further examinations of certain disability benefit recipients; providing for transfer of certain funds from and to coal-workers' pneumoconiosis fund; permitting certain employers to self-insure certain obligations; providing for the settlement of claims; providing a statute of limitations on employer liability in certain circumstances; requiring certain security or bond from employers; administration of claims by self-insured employers; requiring certain additional amounts to be paid to the commission by employers; providing circumstances in which employers are in default in obligations to the commission; requiring commission approval of employer use of third-party administrator; requiring electronic transfer of funds; providing time limitation for certain payments; authorizing rule to permit employers to contract with certain providers
of services in certain circumstances; providing for payments of certain benefits during participation in certain rehabilitation plans; providing for the termination of or limitation on certain benefits in certain circumstances; requiring rules for certain administrative functions; requiring expedited hearings in certain circumstances; providing for finality of certain administrator decisions; providing standards of review; providing for mediation; providing for removal of chief administrative law judge; providing for appeals; establishing time frames for appeals; establishing standards for appeal; creating the workers' compensation board of review; authorizing salary for members; providing for appointment of members of board; establishing qualifications of members of the board; establishing position of chairman; authorizing rules of procedure; authorizing clerk and other employees; providing for remand of cases; providing for standards for appeals to the West Virginia supreme court of appeals; providing civil and criminal penalties and judgments for restitution; making technical corrections and removing archaic language throughout; and providing conforming amendments.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six and seven, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section five-b, article two, chapter twenty-three of said code be repealed; that section seven, article four-a of said chapter be repealed; that section seven, article four-a of said code be amended and reenacted; that sections four and five, article three, chapter five-b of said code be amended and reenacted; that section one, article two, chapter five-f of said code be amended and reenacted; that section seven, article twelve, chapter eleven of said code be amended and reenacted; that section four, article one-a, chapter twelve of said code be amended and reenacted; that section six, article six of said chapter be amended and reenacted; that section ten, article two, chapter fifteen of said code be amended and reenacted; that
section fifteen, article one, chapter sixteen of said code be amended and reenacted; that section three, article twenty-nine-d of said chapter be amended and reenacted; that section three, article thirty-six of said chapter be amended and reenacted; that section twenty-six, article nine-a, chapter eighteen of said code be amended and reenacted; that section twelve-a, article ten-a of said chapter be amended and reenacted; that section two, article ten-k of said chapter be amended and reenacted; that section three, article three-a, chapter twenty-one of said code be amended and reenacted; that section four, article one, chapter twenty-one of said code be amended and reenacted; that sections six, six-c and thirteen, article two of said chapter be amended and reenacted; that section eleven, article ten of said chapter be amended and reenacted; that section eight, article three, chapter twenty-two of said code be amended and reenacted; that sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen and eighteen, article one, chapter twenty-three of said code be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, four-a and nineteen; that sections one, one-c, one-d, two, three, four, five, five-a, five-c, five-d, six, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article two of said chapter be amended and reenacted; that section one, article two-a of said chapter be amended and reenacted; that sections one, two and three, article two-b of said chapter be amended and reenacted; that sections one, one-a, two, three and five, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six; that sections one, one-a, one-b, one-c, one-d, one-e, two, three, three-b, three-c, four, five, six, six-a, six-b, six-d, seven, seven-a, seven-b, eight, eight-a, eight-b, eight-c, nine, nine-b, ten, eleven, twelve, fourteen, fifteen, fifteen-a, fifteen-b, sixteen, sixteen-a, seventeen, eighteen, twenty, twenty-two, twenty-three, twenty-four and twenty-five, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-g; that sections
one, three, five, six and eight, article four-a of said chapter be amended and reenacted; that sections two, five, six and seven, article four-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight-b; that sections two, three, four and five, article four-c of said chapter be amended and reenacted; that sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fifteen, seventeen and eighteen, article five of said chapter be amended and reenacted; that section two, article eight, chapter twenty-six of said code be amended and reenacted; that sections one hundred twenty-five and one hundred thirty-one, article eighteen, chapter forty-eight of said code be amended and reenacted; and that sections twenty-four-e, twenty-four-f and twenty-four-g, article three, chapter sixty-one of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-33d. Grounds for debarment.

1. Grounds for debarment are:

2. (1) Conviction of an offense involving fraud or a felony offense in connection with obtaining or attempting to obtain a public contract or subcontract;

3. (2) Conviction of any federal or state antitrust statute relating to the submission of offers;

4. (3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property in connection with the performance of a contract;

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

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

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

(7) Violation of the terms of a public contract or subcontract for:

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

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

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

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

(E) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY: A VISION SHARED.

§5B-3-4. Commission review of procedural rules, interpretive rules and existing legislative rules.

(a) The joint commission on economic development may review any procedural rule, interpretive rule or existing legislative rule and make recommendations concerning the rules to the Legislature.

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

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

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

(1) The feasibility of establishing common regional configurations for such purposes as local workforce investment areas, regional educational service agencies and for all other purposes the commission considers feasible. The study should review the existing levels of cooperation between state and local economic developers, complete an analysis of possible regional configurations and outline examples of other successful regional systems or networks found throughout the world. If the study determines that the common regional configurations are feasible, the commission shall recommend legislation establishing common regional designations for all purposes the commission considers feasible. In making the designation of regional areas, the study shall take into consideration, but not be limited to, the following:

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

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

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

(D) The distance that individuals will need to travel to receive services provided in the local areas; and
(E) The resources of the local areas that are available to effectively administer the activities or programs;

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

(3) A comprehensive review of West Virginia's existing economic and community development resources and the recommendation of an organizational structure, including, but not limited to, the reorganization of the bureau of commerce and the development office that would allow the state to successfully compete in the new global economy.

(b) In order to effectuate in the most cost-effective and efficient manner the studies required in this article, it is necessary for the joint commission to assemble and compile a tremendous amount of information. The development office will assist the joint commission in the collection and analysis of this information. The tourism commission established pursuant to article two of this chapter, the economic development authority established pursuant to article fifteen, chapter thirty-one of this code, the bureau of employment programs established pursuant to article four, chapter twenty-one-a of this code, the workers' compensation commission established pursuant to article one, chapter twenty-three of this code, the workforce investment commission established pursuant to article two-c of this chapter, West Virginia jobs investment trust, regional planning and development councils, West Virginia rural development council, governor's office of technology and West Virginia clearinghouse for workforce education all shall provide a copy of the agency's annual report as submitted to the governor in accordance with the requirements set forth in section twenty, article one, chapter five of this code to the West Virginia development office. The development office shall review, analyze and summarize the data contained in the reports, including its own annual report, and annually submit its findings to the
joint commission on or before the thirty-first day of December.

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

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

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

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

(1) Building commission provided for in article six, chapter five of this code;

(2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;

(3) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;

(4) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(5) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of
this code and article six-a, chapter twenty-nine of this code;

(6) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(7) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(8) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(9) Division of personnel provided for in article six, chapter twenty-nine of this code;

(10) The West Virginia ethics commission provided for in article two, chapter six-b of this code; and

(11) Consolidated public retirement board provided for in article ten-d, chapter five of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities, are grouped under two bureaus and one commission as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which includes:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and

(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;
(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:

(i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;

(ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and

(iii) Mine inspectors' examining board provided for in article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in article two, chapter five-b of this code, which includes:

(i) Economic development authority provided for in article fifteen, chapter thirty-one of this code; and

(ii) Tourism commission provided for in article two, chapter five-b of this code and the office of the tourism commissioner;

(D) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett historical state park provided for in article eight, chapter twenty-nine of this code is under the division of natural resources;

(E) Division of forestry provided for in article one-a, chapter nineteen of this code;

(F) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(G) Water development authority and board provided for in article one, chapter twenty-two-c of this code;

(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code; and
(3) Workers' compensation commission provided for in article one, chapter twenty-three of this code.

(c) Bureau of environment is abolished and the following agencies and boards, including all allied, advisory and affiliated entities, are transferred to the department of environmental protection for purposes of administrative support and liaison with the office of the governor:

(1) Air quality board provided for in article two, chapter twenty-two-b of this code;

(2) Solid waste management board provided for in article three, chapter twenty-two-c of this code;

(3) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(4) Surface mine board provided for in article four, chapter twenty-two-b of this code;

(5) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code;

(6) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code; and

(7) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

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

(1) Library commission provided for in article one, chapter ten of this code;

(2) Educational broadcasting authority provided for in article five, chapter ten of this code;
(3) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;

(4) Division of culture and history provided for in article one, chapter twenty-nine of this code; and

(5) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.

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

(1) Human rights commission provided for in article eleven, chapter five of this code;

(2) Division of human services provided for in article two, chapter nine of this code;

(3) Bureau for public health provided for in article one, chapter sixteen of this code;

(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

(5) Health care authority provided for in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

(7) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

(8) The child support enforcement division provided for in chapter forty-eight of this code.

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

(1) Adjutant general’s department provided for in article
one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter
fifteen of this code;

(3) Military awards board provided for in article one-g,
chapter fifteen of this code;

(4) West Virginia state police provided for in article two,
chapter fifteen of this code;

(5) Office of emergency services and disaster recovery
board provided for in article five, chapter fifteen of this
code and emergency response commission provided for in
article five-a of said chapter;

(6) Sheriffs’ bureau provided for in article eight, chapter
fifteen of this code;

(7) Division of corrections provided for in chapter
twenty-five of this code;

(8) Fire commission provided for in article three, chapter
twenty-nine of this code;

(9) Regional jail and correctional facility authority
provided for in article twenty, chapter thirty-one of this
code;

(10) Board of probation and parole provided for in
article twelve, chapter sixty-two of this code; and

(11) Division of veterans’ affairs and veterans’ council
provided for in article one, chapter nine-a of this code.

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

(1) Tax division provided for in article one, chapter eleven of this code;

(2) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(3) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(4) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(5) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(7) Lending and credit rate board provided for in chapter forty-seven-a of this code; and

(8) Division of banking provided for in article two, chapter thirty-one-a of this code.

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

(1) Division of highways provided for in article two-a, chapter seventeen of this code;

(2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;
(4) Driver's licensing advisory board provided for in article two, chapter seventeen-b of this code;

(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(i) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(j) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decisionmakers will not have their appellate or independent decision-making status affected by the enactment of this chapter.

(k) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a depart-
ment so transferred and incorporated means a section of the appropriate division of the department.

(1) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four will be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

(m) The amendments to this section effected by the enactment of Enrolled Senate Bill No. 2013 in the year two thousand three shall become operative on the first day of October, two thousand three.

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-7. Display of registration certificate; injunction; public information, reciprocal exchange of information.

Any person to whom a certificate of registration has been issued under the provisions of section four of this article shall keep the certificate posted in a conspicuous position in the place where the privilege of the business is exercised. The certificate of registration shall be produced for inspection whenever required by the tax commissioner or by any law-enforcement officers of this state, county or municipality in which the privileges to conduct business are exercised.
No injunction shall issue from any court in the state enjoining the collection of any business registration certificate tax required in this section; and any person claiming that any business certificate is not due, for any reason, shall pay the tax under protest and petition the tax commissioner for a refund in accordance with the provisions of section fourteen, article ten of this chapter.

If any person engaging in or prosecuting any business, or trade, contrary to any other provisions of this article, whether without obtaining a business certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of the business certificate, the circuit court, or the judge thereof in vacation, of the county in which the violation occurred shall, upon proper application in the name of the state, and after ten days' written notice thereof to such person, grant an injunction prohibiting that person from continuing the business, activity or trade until he or she has fully complied with the provisions of this article. The remedy provided in this section is in addition to all other penalties and remedies provided by law.

The tax commissioner shall make available, when requested, information as to whether a person is registered to do business in the state of West Virginia.

The tax commissioner shall deliver to the commissioner of the bureau of employment programs and the executive director of the workers' compensation commission the information contained in the business franchise registration certificate when this information is used to implement and administer a single point of registration program for persons engaging in any business activity in the state of West Virginia. The single point of registration program shall provide that, once an individual has received a business franchise registration certificate, the tax commissioner shall notify the commissioner of the bureau of employment programs and the executive director of the workers' compensation commission of the names, ad-
dresses and other identifying information of that individual or entity. Upon receiving this information, the commissioner of the bureau of employment programs and the executive director of the workers' compensation commission shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms and paperwork to register a business within the bureau and commission pursuant to subsection (b), section six-b, article two, chapter twenty-one-a of this code and subsection (c), section two, article two, chapter twenty-three of this code.

Notwithstanding the provisions of section five, article ten of this chapter, the tax commissioner may enter into a reciprocal agreement with the governor's office of community and industrial development and other departments or agencies of this state for the exchange of information contained in the application for a business franchise registration certificate filed under section four of this article when the purpose for the exchange is to implement and administer a single-point of registration program for persons engaging in business in this state. The other departments and agencies may enter into a reciprocal exchange agreement for this purpose notwithstanding any provision of this code to the contrary.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-4. Applications for loan priority; loan package; counseling.

(a) An eligible lending institution that desires to participate in the linked deposit program shall accept and review loan applications from eligible small businesses that have been prepared with the advice of the small business development center. The lending institution shall apply all usual lending standards to determine the credit worthiness
of each eligible small business and whether the loan application meets the criteria established in this article.

(b) An eligible small business shall certify on its loan application that: (1) The small business is in good standing with the state tax division, the workers' compensation commission and the bureau of employment programs as of the date of the application; (2) the linked deposit loan will be used to create new jobs or preserve existing jobs and employment opportunities; and (3) the linked deposit loan shall not be used to refinance an existing debt.

c) In considering which eligible small businesses should receive linked deposit loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located, the number of jobs to be created and preserved by the receipt of the loan, the reasonable ability of the small business to repay the loan and other factors considered appropriate by the eligible financial institution.

d) A small business receiving a linked deposit loan shall receive supervision and counseling provided by the small business development center when applying for the loan. The services available from the small business development center include eligibility certification, business planning, quarterly financial statement review and loan application assistance. The state tax division, the bureau of employment programs and the workers' compensation commission shall provide the small business development center with information as to the standing of each small business loan applicant. The small business development center shall include these certifications with the loan application.

e) The eligible financial institution shall forward to the treasurer a linked deposit loan package in the form and manner prescribed by the treasurer. The treasurer shall forward notice of approval of the loan to the small busi-
ness development center at the same time it is furnished to
the eligible financial institution.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-6. Annual audits; reports and information to constitu­
tional and legislative officers, council of finance
and administration, consolidated public retirement
board, workers' compensation fund and coal-work­
ers' pneumoconiosis fund; statements and reports
open for inspection.

(a) The board shall cause an annual financial and
compliance audit of the assets managed by the board to be
made by a certified public accounting firm which has a
minimum staff of ten certified public accountants and
which is a member of the American institute of certified
public accountants and, if doing business in West Virginia,
a member of the West Virginia society of certified public
accountants. The financial and compliance audit shall be
made of the board's books, accounts and records with
respect to its receipts, disbursements, investments, con-
tracts and all other matters relating to its financial
operations. Copies of the audit report shall be furnished
to the governor, state treasurer, state auditor, president of
the Senate, speaker of the House of Delegates, council of
finance and administration and consolidated public
retirement board.

(b) The board shall produce monthly financial state-
ments for the assets managed by the board and cause them
to be delivered to each member of the board and the
executive secretary of the consolidated public retirement
board as established in sections one and two, article ten-d,
chapter five of this code and to the executive director of
the workers' compensation commission as administrator of
the workers' compensation fund and coal-workers' pneu-
moconiosis fund as provided in section one-b, article one,
chapter twenty-three of this code and section one, article
three of said chapter and section seven, article four-b of
said chapter.
(c) The board shall deliver in each quarter to the council of finance and administration and the consolidated public retirement board a report detailing the investment performance of the 401(a) plans.

(d) The board shall cause an annual audit of the reported returns of the assets managed by the board to be made by an investment consulting or a certified public accounting firm meeting the criteria set out in subsection (a) of this section. The board shall furnish copies of the audit report to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(e) The board shall provide any other information requested in writing by the council of finance and administration.

(f) All statements and reports with respect to participant plans required in this section shall be available for inspection by the members and beneficiaries and designated representatives of the participant plans.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

(a) The standard uniform to be used by the West Virginia state police after the effective date of this article shall be as follows: Forestry green blouse with West Virginia state police emblem on sleeve; black shoulder strap one-inch black stripe around sleeve, four inches from end of sleeve; forestry green breeches with one-inch black stripe down the side; trousers (slacks) with one-inch black stripe down
the side for officers and clerks regularly enlisted in the state police; forestry green shirts with West Virginia state police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia state police emblem on sleeve; black shoulder straps; one-inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; black Sam Browne belt with holster; black leggings and shoes; the officer's uniform will have one and one-quarter inch black stripe around the sleeve of blouse and mackinaw four inches from end of sleeve circumposed with one-half inch gold braid, also black collars on blouse, with two silver shoulder bars for captains, one silver shoulder bar for first lieutenant, one gold shoulder bar for second lieutenant. For noncommissioned officers the uniform blouse and shirt will have thereon black chevrons of the appropriate rank.

(b) The superintendent shall establish the weapons and enforcement equipment which are authorized for use by members of the state police and shall provide for periodic inspection of the weapons and equipment. He or she shall provide for the discipline of members using other than authorized weapons and enforcement equipment.

(c) The superintendent shall provide the members of the state police with suitable arms and weapons and, when he or she considers it necessary, with suitably equipped automobiles, motorcycles, watercraft, airplanes and other means of conveyance to be used by the West Virginia state police, the governor and other officers and executives in the discretion of the governor, in times of flood, disaster and other emergencies, for traffic study and control, criminal and safety work and in other matters of official business. He or she shall also provide the standard uniforms for all members of the state police, for officers, noncommissioned officers and troopers provided for in this section. All uniforms and all arms, weapons and other property furnished the members of the state police by the
state of West Virginia are and remain the property of the state.

(d) The superintendent may purchase and maintain on behalf of members group life insurance not to exceed the amount of five thousand dollars on behalf of each member.

(e) The superintendent may contract and furnish at state police expense medical and hospital services for treatment of illness or injury of a member which shall be determined by the superintendent to have been incurred by the member while engaged in the performance of duty and from causes beyond control of the members. Notwithstanding any other provision of this code, the superintendent has the right of subrogation in any civil action or settlement brought by or on behalf of a member in relation to any act by another which results in the illness, injury or death of a member. To this end, the superintendent may initiate an action on behalf of the state police in order to recover the costs incurred in providing medical and hospital services for the treatment of a member resulting from injury or illness originating in the performance of official duties. This subsection shall not affect the power of a court to apply ordinary equitable defenses to the right of subrogation.

The superintendent may also consult with the executive director of the workers' compensation commission in an effort to defray the cost of medical and hospital services. In no case will the compensation rendered to health care providers for medical and hospital services exceed the then current rate schedule in use by the workers' compensation commission.

Third-party reimbursements received by the superintendent after the expiration of the fiscal year in which the injury, illness or death occurred will be deposited to a nonexpiring special revenue account. Funds deposited to this account may be used solely for defraying the costs of medical or hospital services rendered to any sworn mem-
(f) The superintendent shall establish and maintain local headquarters at those places in West Virginia that are in his or her judgment suitable and proper to render the West Virginia state police most efficient for the purpose of preserving the peace, protecting property, preventing crime, apprehending criminals and carrying into effect all other provisions of this article. The superintendent shall provide, by acquisition, lease or otherwise, for local headquarters, for housing and quarters for the accommodation of the members of the West Virginia state police, and for any other facilities necessary or useful for the effective operation of the West Virginia state police and shall provide all equipment and supplies necessary for the members of the West Virginia state police to perform their duties.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-15. Investigations and hearings; power to administer oaths, subpoena witnesses, etc.; use of information and material acquired.

(a) The secretary, the commissioner, any officer or employee of the department designated by the secretary, or any other individual designated by the secretary may hold investigations, inquiries and hearings concerning matters covered by the laws of this state pertaining to public health and within the authority and the rules and orders of the secretary. Hearings shall be open to the public and shall be held upon any call or notice considered advisable by the secretary.

(b) Each individual designated to hold any inquiry, investigation or hearing may administer oaths and affirmations, certify to all official acts, issue subpoenas and order the attendance and testimony of witnesses in the
production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the secretary or his or her authorized representative may invoke the aid of any circuit court of this state. The court may thereupon order that person to comply with the requirements of the subpoena order or to give evidence as to the matter in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) Subject to the provisions of subsections (a) and (b) of this section, the secretary may in his or her discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigation and hearings: Provided, That information obtained from studies or from any investigation made or hearing held pursuant to the provisions of this article may not be admissible in evidence in any action at law to recover damages for personal injury or in any action under the workers' compensation act, but the information, if available, shall be furnished upon request to the executive director of the workers' compensation commission for the sole purpose of adjusting claims presented to the commission.

ARTICLE 29D. STATE HEALTH CARE.

§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.

(a) All departments and divisions of the state, including, but not limited to, the bureau of employment programs; the division of health and the division of human services within the department of health and human resources; the public employees insurance agency within the department of administration; the division of rehabilitation services; the workers' compensation commission; or the other department or division as shall supervise or provide rehabilitation; and the university of West Virginia board
of trustees, as the governing board for the state's medical
schools, are authorized and directed to cooperate in order,
among other things, to ensure the quality of the health
care services delivered to the beneficiaries of the depart-
ments and divisions and to ensure the containment of costs
in the payment for services.

(b) It is expressly recognized that no other entity may
interfere with the discretion and judgment given to the
single state agency which administers the state's medicaid
program. Thus, it is the intention of the Legislature that
nothing contained in this article shall be interpreted,
construed or applied to interfere with the powers and
actions of the single state agency which, in keeping with
applicable federal law, shall administer the state's
medicaid program as it perceives to be in the best interest
of that program and its beneficiaries.

(c) The departments and divisions shall develop a plan or
plans to ensure that a reasonable and appropriate level of
health care is provided to the beneficiaries of the various
programs including the public employees insurance agency
and the workers' compensation fund, the division of
rehabilitation services and, to the extent permissible, the
state medicaid program. The plan or plans may include,
among other things, and the departments and divisions are
hereby authorized to enter into:

(1) Utilization review and quality assurance programs;

(2) The establishment of a schedule or schedules of the
maximum reasonable amounts to be paid to health care
providers for the delivery of health care services covered
by the plan or plans. The schedule or schedules may be
either prospective in nature or cost reimbursement in
nature, or a mixture of both: Provided, That any payment
methods or schedules for institutions which provide
inpatient care shall be institution-specific and shall, at a
minimum, take into account a disproportionate share of
medicaid, charity care and medical education: Provided,
however, That in no event may any rate set in this article for an institutional health care provider be greater than the institution's current rate established and approved by the health care cost review authority pursuant to article twenty-nine-b of this chapter;

(3) Provisions for making payments in advance of the receipt of health care services by a beneficiary, or in advance of the receipt of specific charges for the services, or both;

(4) Provisions for the receipt or payment of charges by electronic transfers;

(5) Arrangements, including contracts, with preferred provider organizations; and

(6) Arrangements, including contracts, with particular health care providers to deliver health care services to the beneficiaries of the programs of the departments and divisions at agreed-upon rates in exchange for controlled access to the beneficiary populations.

(d) The director of the public employees insurance agency shall contract with an independent actuarial company for a review every four years of the claims experience of all governmental entities whose employees participate in the public employees insurance agency program, including, but not limited to, all branches of state government, all state departments or agencies (including those receiving funds from the federal government or a federal agency), all county and municipal governments or any other similar entity for the purpose of determining the cost of providing coverage under the program, including administrative cost, to each governmental entity.

(e) Nothing in this section shall be construed to give or reserve to the Legislature any further or greater power or jurisdiction over the operations or programs of the various departments and divisions affected by this article than
that already possessed by the Legislature in the absence of this article.

(f) For the purchase of health care or health care services by a health care provider participating in a plan under this section on or after the first day of September, one thousand nine hundred eighty-nine, by the public employees insurance agency, the division of rehabilitation services and the workers' compensation commission, a state check shall be issued in payment thereof within sixty-five days after a legitimate uncontested invoice is actually received by the division, commission or agency. Any state check issued after sixty-five days shall include interest at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code. The interest shall be calculated from the sixty-sixth day after the invoice was actually received by the commission or agency until the date on which the state check is mailed to the vendor.

ARTICLE 36. NEEDLESTICK INJURY PREVENTION.

§16-36-3. Needlestick injury prevention advisory committee.

(a) There is established a needlestick injury prevention advisory committee to advise the director in the development of rules required under this article.

(b) The committee shall meet at least four times a year for the initial two years after the effective date of this article and on the call of the director thereafter. The director shall serve as the chair and shall appoint thirteen members, one representing each of the following groups:

(1) A representative of the health insurance industry;

(2) The executive director of the workers' compensation commission, or his or her designee;

(3) Five nurses who work primarily providing direct patient care in a hospital or nursing home, at least one of which is employed in a state-operated facility;
(4) A phlebotomist employed in a hospital or nursing home;

(5) Two administrators of different hospitals operating within the state;

(6) A director of nursing employed in a nursing home within the state;

(7) A licensed physician practicing in the state; and

(8) An administrator of a nursing home operating within the state.

(c) Members of the committee serve without compensation. Each member shall be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties, in a manner consistent with guidelines of the travel management office of the department of administration.

(d) A majority of all members constitutes a quorum for the transaction of all business. Members serve for two-year terms and may not serve for more than two consecutive terms.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


(a) The workers' compensation commission shall create a classification and calculate a base premium tax rate for students participating in an unpaid work-based learning experience off school premises as a part of the school curriculum with employers other than the county board of education. The workers' compensation commission shall report to the state department of education:

(1) The amount of the base premium tax rate for the class; and
(2) The amount of wages per student to be used to provide the minimum weekly benefits required by section six, article four, chapter twenty-three of this code.

(b) The state department of education shall communicate the amount of the premium to the governor and Legislature by the first day of December of each year.

(c) The base premium tax rate reported to the state department of education shall be that which was published by the workers' compensation commission prior to the first day of the immediately preceding July. The workers' compensation commission shall make no merit rate adjustment, as otherwise provided for in paragraph (A), subdivision (1), subsection (a), section four, article two, chapter twenty-three of this code for the members of the class required to be created by subsection (a) of this section.

(d) Notwithstanding anything to the contrary in any rules adopted to implement the provisions of section four, article two, chapter twenty-three of this code and for the sole purpose of this section, the workers' compensation commission shall permit any county board of education affected by this section to be classified in accordance with this section and to be also classified as otherwise required by any rules adopted to implement the provisions of section four, article two, chapter twenty-three of this code.

(e) Subject to an appropriation by the Legislature, funds shall be provided to the department of education to distribute to the county boards. If the appropriation is less than the total premium calculated, the county boards, individually, shall either reduce the number of students participating in work-based learning experiences off school premises or the county boards shall pay the difference between the amount of the premium calculated by the workers' compensation commission and the amount allocated to the county board by the department of education.
ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-12a. Workers' compensation for clients participating in unpaid work-based training programs.

(a) The workers' compensation commission shall create a classification and calculate a base premium tax rate for clients of the division of rehabilitation services participating in unpaid work-based training programs within integrated community-based settings. The workers' compensation commission shall report to the division of rehabilitation services:

(1) The amount of the base premium tax rate for the class; and

(2) The hourly wages per client to be used to provide the minimum weekly benefits required by section six, article four, chapter twenty-three of this code.

(b) The base premium tax rate reported annually to the division of rehabilitation services by the workers' compensation commission shall not be effective until the first day of July and shall remain in effect through the last day of the next June.

(c) The division of rehabilitation services and the participating entity shall be considered the joint employers of record of the clients while the clients are participating in unpaid work-based training programs in integrated community-based settings: Provided, That the participating entity shall not be held responsible for any liability due the workers' compensation commission. The clients shall be considered to be paid the amount of wages sufficient to provide the minimum workers' compensation weekly benefits required by section six, article four, chapter twenty-three of this code.

ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND ACT.

§18-10K-2. Board created, membership, terms, officers and staff.
(a) There is hereby established the West Virginia traumatic brain and spinal cord injury rehabilitation fund board.

(b) The board shall consist of twenty-three members. The members shall include:

1. The secretary of the department of education and the arts, ex officio, or his or her designee;
2. The secretary of health and human resources, ex officio, or his or her designee;
3. The state superintendent of schools, ex officio, or his or her designee;
4. The secretary of the department of military affairs and public safety, ex officio, or his or her designee;
5. The director of the bureau of behavioral health within the department of health and human resources, ex officio, or his or her designee;
6. The director of the division of rehabilitation services, ex officio, or his or her designee;
7. The director of the bureau of medical services, ex officio, or his or her designee;
8. The director of the office of emergency services, ex officio, or his or her designee;
9. The executive director of the workers' compensation commission, ex officio, or his or her designee;
10. Seven members appointed by the governor to represent public and private health organizations or other disability coalitions or advisory groups; and
11. Seven members appointed by the governor who are either survivors of traumatic brain or spinal cord injury or family members of persons with traumatic brain or spinal cord injury.
(c) The citizen members shall be appointed by the governor for terms of three years, except that of the members first appointed, two of the representatives of public and nonprofit private health organizations, disability coalitions or advisory groups and two of the representatives of survivors or family members of persons with traumatic brain or spinal cord injuries shall serve for terms of one year, two of the representatives of each of those respective groups shall serve for terms of two years and the remaining three representatives of each of those respective groups shall serve for terms of three years. All subsequent appointments shall be for three years. Members shall serve until the expiration of the term for which they have been appointed or until their successors have been appointed and qualified. In the event of a vacancy, the governor shall appoint a qualified person to serve for the unexpired term. No member may serve more than two consecutive three-year terms. State officers or employees may be appointed to the board unless otherwise prohibited by law.

(d) In the event a board member fails to attend more than twenty-five percent of the scheduled meetings in a twelve-month period, the board may, after written notification to that member and the secretary of education and the arts, request in writing that the governor remove the member and appoint a new member to serve his or her unexpired term.

(e) The board shall elect from its membership a chairperson, treasurer and secretary as well as any other officer as appropriate. The term of the chairperson is for two years in duration and he or she cannot serve more than two consecutive terms.

CHAPTER 21. LABOR.

ARTICLE 3A. OCCUPATIONAL SAFETY AND HEALTH ACT.

§21-3A-3. Division of occupational safety and health; coordination of activities with workers' compensation commission.
(a) There is continued in the labor department a division of occupational safety and health comprised of a subdivision for safety, a subdivision for health and the other subdivisions the commissioner considers necessary. This division shall administer all matters pertaining to occupational safety and occupational health.

(b) The labor commissioner may require the assistance of other state agencies and may enter into agreements with other state agencies and political subdivisions of the state for the administration of this chapter.

(c) The labor commissioner shall provide for coordination between the division of occupational safety and health and the workers' compensation commission including, but not limited to, the establishment of standardized procedures and reportings.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§21A-1-4. Bureau of employment programs created; division; "bureau" defined.

There is continued an agency designated as the bureau of employment programs, composed of a division of unemployment compensation, a division of employment service, a division of job training programs and any other divisions or units that the commissioner determines are necessary.

Wherever within this chapter the term "department", "bureau" or "fund" is used, it shall be taken to mean bureau of employment programs unless otherwise indicated.

The bureau shall be administered pursuant to subsection (b), section one, article two, chapter five-f of this code.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

1 The commissioner is the executive and administrative head of the bureau and has the power and duty to:

3 (1) Exercise general supervision for the governance of the bureau and propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this chapter;

8 (2) Prescribe uniform rules pertaining to investigations, departmental hearings and propose rules for promulgation;

11 (3) Supervise fiscal affairs and responsibilities of the bureau;

13 (4) Prescribe the qualifications of, appoint, remove and fix the compensation of the officers and employees of the bureau, subject to the provisions of section ten, article four of this chapter, relating to the board of review;

17 (5) Organize and administer the bureau so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal law or regulation;

21 (6) Make reports in the form and containing information required by the United States department of labor and comply with any requirements that the United States department of labor finds necessary to assure the correctness and verification of the reports;

26 (7) Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation and a statement of the recipient’s rights to further compensation under this chapter;
33  (8) Keep an accurate and complete record of all bureau proceedings, record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the bureau;

37  (9) Sign and execute in the name of the state, by the "Bureau of Employment Programs", any contract or agreement with the federal government, its agencies, other states, their subdivisions or private persons;

41  (10) Prescribe a salary scale to govern compensation of appointees and employees of the bureau;

43  (11) Make the original determination of right in claims for benefits;

45  (12) Make recommendations and an annual report to the governor concerning the condition, operation and functioning of the bureau;

48  (13) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

50  (14) Exercise any other power necessary to standardize administration, expedite bureau business, assure the establishment of fair rules and promote the efficiency of the service;

54  (15) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state. The report shall be made available upon request to members of the public and press;

58  (16) Provide at bureau expense a program of continuing professional, technical and specialized instruction for the personnel of the bureau;

61  (17) (A) Propose for promulgation rules under which agencies of this state shall not grant, issue or renew any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit whose account is in default with the
commissioner with regard to the administration of this chapter. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations. An employing unit is not in default if it has entered into a repayment agreement with the unemployment compensation division of the bureau and remains in compliance with its obligations under the repayment agreement.

(B) The rules shall provide that, before granting, issuing or renewing any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit, the designated agencies shall review a list or lists provided by the bureau of employers that are in default. If the employing unit's name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with the bureau, may grant, issue or renew the contract, license, permit, certificate or other authority to conduct a trade, profession or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter. The rules provided for by this subdivision shall be promulgated pursuant to the provisions of article three, chapter twenty-nine-a of this code. The prohibition against granting, issuing or renewing any contract, license, permit, certificate or other authority under this subdivision shall continue in full force and effect until the revised rules are promulgated and are in effect.

(C) The rules may be promulgated or implemented in phases so that specific agencies or specific types of contracts, licenses, permits, certificates or other authority to conduct trades, professions or businesses will be subject to the rules beginning on different dates. The presumptions of ownership or control contained in the division of
103 environmental protection's surface mining reclamation
104 regulations promulgated under the provisions of article
105 three, chapter twenty-two of this code are not applicable
106 or controlling in determining the identity of employing
107 units who are in default for the purposes of this subdivi-
108 sion. The rules shall also provide a procedure allowing
109 any agency or interested person, after being covered under
110 the rules for at least one year, to petition the bureau of
111 employment programs to be exempt from the provisions of
112 the rules. Rules subjecting all applicable agencies and
113 contracts, licenses, permits, certificates or other authority
114 to conduct trades, professions or businesses to the require-
115 ments of this subdivision that were promulgated prior to
116 the first day of October, two thousand three, shall be
117 revised and submitted for legislative review no later than
118 the first day of June, two thousand four;
119 (18) Deposit to the credit of the appropriate special
120 revenue account or fund, notwithstanding any other
121 provision of this code and to the extent allowed by federal
122 law, all amounts of delinquent payments or overpayments,
123 interest and penalties thereon, and attorneys' fees and
124 costs collected under the provisions of this chapter. The
125 amounts collected shall not be treated by the auditor or
126 treasurer as part of the general revenue of the state; and
127 (19) Enter into interagency agreements to assist in
128 exchanging information and fulfilling the provisions of
129 this article.

§21A-2-6c. Payment withholding and interception.

1 (a) All state, county, district and municipal officers and
2 agents making contracts on behalf of the state of West
3 Virginia or any political subdivision thereof shall withold
4 payment in the final settlement of contracts until the
5 receipt of a certificate from the commissioner to the effect
6 that all payments, interest and penalties thereon accrued
7 against the contractor under this chapter have been paid
8 or that provisions satisfactory to the commissioner have
been made for payment. Any official violating this
subsection is guilty of a misdemeanor and, on conviction
thereof, shall be fined not more than one thousand dollars
or confined in a county or regional jail for not more than
one year, or both fined and confined.

(b) Any agency of the state, for the limited purpose of
intercepting, pursuant to section sixteen, article five of
this chapter and pursuant to section five-a, article two,
chapter twenty-three of this code, any payment by or
through the state to an employer who is in default in
payment of contributions, premiums, deposits, interest or
penalties under the provisions of this chapter or of chapter
twenty-three of this code, shall assist the commissioner in
collecting the payment that is due. For this purpose,
disclosure of joint delinquency and default lists of employ-
ers with respect to unemployment compensation and
workers' compensation as provided in section one-c,
article one, chapter twenty-three of this code contribu-
tions, premiums, interest, deposits or penalties is autho-
rized. The bureau and the workers' compensation commis-
sion may enter into an interagency agreement to effect the
provisions of this section. The lists may be in the form of
a computerized database to be accessed by the auditor, the
department of tax and revenue, the department of admin-
istration, the division of highways or any other appropri-
ate state agency or officer.


For the original determination of claims under this
chapter, the commissioner shall appoint a necessary
number of deputies as his or her representatives.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information;
use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as
defined in subsection (i) of this section, shall, quarterly,
submit certified reports on or before the last day of the
month next following the calendar quarter, on forms to be
prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensa-
tion registration number, the employer's name and the
address at which the employer's payroll records are
maintained;

(2) Each employee's social security account number,
name and the gross wages paid to each employee, which
shall include the first eight thousand dollars of remunera-
tion and all amounts in excess of that amount, notwith-
standing subdivision (1), subsection (b), section twenty-
eight, article one-a of this chapter;

(3) The total gross wages paid within the quarter for
employment, which includes money wages and the cash
value of other remuneration, and shall include the first
eight thousand dollars of remuneration paid to each
employee and all amounts in excess of that amount,
notwithstanding subdivision (1), subsection (b), section
twenty-eight, article one-a of this chapter; and

(4) Other information that is reasonably connected with
the administration of this chapter.

(b) Information obtained may not be published or be
open to public inspection to reveal the identity of the
employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of
this section, the commissioner may provide information
obtained to the following governmental entities for
purposes consistent with state and federal laws:

(1) The United States department of agriculture;

(2) The state agency responsible for enforcement of the
medicaid program under Title XIX of the Social Security
Act;
(3) The United States department of health and human services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; secondary, post-secondary and vocational education; vocational rehabilitation, employment and training, including, but not limited to, the administration of the Perkins Act and the Job Training and Partnership Act;

(5) The tax division, but only for the purposes of collection and enforcement;

(6) The division of labor for purposes of enforcing the wage bond and the contractor licensing provisions of chapter twenty-one of this code;

(7) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(8) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(9) The workers' compensation commission for purposes of collection and enforcement: Provided, That the workers' compensation commission shall provide similar information to the bureau of employment programs.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse the bureau of
employment programs for any cost associated for furnish-
ing the information.

(f) The commissioner may refuse to provide any informa-
tion requested under this section if the agency or organiza-
tion making the request does not certify that it will comply
with the state and federal law protecting the confidential-
ity of the information.

(g) A person who violates the confidentiality provisions
of this section is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than twenty
dollars nor more than two hundred dollars or confined in
a county or regional jail not longer than ninety days, or
both.

(h) No action for slander or libel, either criminal or civil,
shall be predicated upon information furnished by any
employer or any employee to the commissioner in connec-
tion with the administration of any of the provisions of
this chapter.

(i) For purposes of subsection (a) of this section, the term
"labor organization" means any organization of any kind,
or any agency or employee representation committee or
plan, in which employees participate and which exists for
the purpose, in whole or in part, of dealing with employers
concerning grievances, labor disputes, wages, rates of pay,
hours of employment or conditions of work. It includes
any entity, also known as a hiring hall, which is used by
the organization and an employer to carry out require-
ments described in 29 U. S. C. §158(f)(3) of an agreement
between the organization and the employer.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-8. Prohibition of surface mining without a permit; permit
requirements; successor in interest; duration of
permits; proof of insurance; termination of permits; permit fees.

No person may engage in surface mining operations unless he or she has first obtained a permit from the director in accordance with the following:

(1) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the director may extend a permit for a longer term: Provided, however, That subject to the prior approval of the director, with the approval being subject to the provisions of subsection (c), section eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a permit, within thirty days of succeeding to the interest, and who is able to obtain the bond coverage of the original permittee, may continue surface mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's permit application or application for transfer is granted or denied.

(2) Proof of insurance is required on an annual basis.

(3) A permit terminates if the permittee has not commenced the surface mining operations covered by the permit within three years of the date the permit was issued: Provided, That the director may grant reasonable extensions of time upon a timely showing that the extensions are necessary by reason of litigation precluding commencement, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided, however, That with respect to coal to be mined for use in a synthetic fuel facility or specific
major electric generating facility, the permittee shall be considered to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.

(4) Each application for a new surface mining permit filed pursuant to this article shall be accompanied by a fee of one thousand dollars. All permit fees and renewal fees provided for in this section or elsewhere in this article shall be collected by the director and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the director, for the administration of this article.

(5) Prior to the issuance of any permit, the director shall ascertain from the commissioner of the division of labor whether the applicant is in compliance with section fourteen, article five, chapter twenty-one of this code. Upon issuance of the permit, the director shall forward a copy to the commissioner of the division of labor, who shall assure continued compliance under the permit.

(6) (A) Prior to the issuance of any permit the director shall ascertain from the commissioner of the bureau of employment programs and the executive director of the workers' compensation commission whether the applicant is in compliance with the provisions of section six-c, article two, chapter twenty-one-a of this code and section five, article two, chapter twenty-three of this code with regard to any required subscription to the unemployment compensation fund or to the workers' compensation fund, the payment of premiums and other charges to the fund, the timely filing of payroll reports and the maintenance of adequate deposits. If the applicant is delinquent or defaulted, or has been terminated by the bureau or the commission, the permit shall not be issued until the applicant returns to compliance or is restored by the bureau or the commission under a reinstatement agreement: Provided, That in all inquiries the commissioner of the bureau of employment programs and the executive
director of the workers' compensation commission shall make response to the division of environmental protection within fifteen calendar days; otherwise, failure to respond timely is considered to indicate the applicant is in compliance and the failure will not be used to preclude issuance of the permit.

(B) It is a requirement of this article that each operator maintain continued compliance with the provisions of section five, article two, chapter twenty-three and section six-c, article two, chapter twenty-one-a of this code and provide proof of compliance to the director on a quarterly basis.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

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

(a) The Legislature finds that a deficit exists in the workers' compensation fund of such critical proportions that it constitutes an imminent threat to the immediate and long-term solvency of the fund. The Legislature further finds that addressing the workers' compensation crisis requires the efforts of all persons and entities involved. Modification to the rate system, alteration of the benefit structure, improvement of current management practices and changes in perception must be merged into a unified effort to make the workers' compensation system viable and solvent. It is the intent of the Legislature that the amendments to this chapter enacted in the year two thousand three be applied from the date upon which the enactment is made effective by the Legislature. The Legislature finds that an emergency exists as a result of the combined effect of this deficit, other state budgetary deficits and liabilities and other grave social and economic circumstances currently confronting the state and that unless the changes provided by the enactment of the amendments to this chapter, as well as other legislation designed to address the problem are made effective
immediately, the fiscal stability of this state will suffer irreparable harm. Accordingly, the Legislature finds that the need of the citizens of this state for the protection of the state treasury and the solvency of the workers' compensation funds requires the limitations on any expectations that may have arisen from prior enactments of this chapter.

(b) It is the further intent of the Legislature that this chapter be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits and that a rule of "liberal construction" based on any "remedial" basis of workers' compensation legislation shall not affect the weighing of evidence in resolving such cases. The workers' compensation system in this state is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Employees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the provisions of this chapter and employers' rights to raise common law defenses such as lack of negligence, contributory negligence on the part of the employee, and others, are curtailed as well. Accordingly, the Legislature hereby declares that any remedial component of the workers' compensation laws is not to cause the workers' compensation laws to receive liberal construction that alters in any way the proper weighing of evidence as required by section one-g, article four of this chapter.

(c) The "workers' compensation division of the bureau of employment programs" is, on or after the first day of October, two thousand three, reestablished, reconstituted and continued as the workers' compensation commission, an agency of the state. The purpose of the commission is to ensure the fair, efficient and financially stable adminis-
W. Va. Code Ann. §23-1-la. Workers' compensation board of managers; appointment; composition; qualifications; terms; chairperson; meetings and quorum; compensation and travel expenses; powers and duties.
(a) On the first day of October, two thousand three, the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code is hereby abolished and there is hereby created the "workers' compensation board of managers", which may also be referred to as "the board of managers" or "the board".

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

(A) The governor or his or her designee;

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

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

(D) Eight members appointed by the governor with the advice and consent of the Senate who meet the requirements and qualifications prescribed in subsections (c) and (d) of this section: Provided, That the members serving on the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code on the effective date of the enactment of this section in two thousand three are hereby appointed as members of the board of managers subject to the provisions of subdivision (1), subsection (c) of this section.

(2) Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory members of the board and are not voting members. The governor shall appoint the legislative members to the board. No more than three of the legislative members may be of the same political party.
(c)(1) The initial eight appointed voting members of the board of managers shall consist of the members appointed under the provisions of paragraph (D), subdivision (1), subsection (a) of this section and the remaining members appointed pursuant to the provisions of subsection (d) of this section. The term of each of the initial appointed members shall expire on the thirty-first day of December, two thousand four.

(2) Eight members shall be appointed by the governor with the advice and consent of the Senate for terms that begin the first day of January, two thousand five, and expire as follows:

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

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

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

(3) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending the thirtieth day of June of the fourth year following the year the preceding term expired. In the event a vacancy occurs, it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified.

No member of the board may be removed from office by the governor except for official misconduct, incompetency, neglect of duty or gross immorality.

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

(d) Except for those initially appointed under the provisions of paragraph (D), subdivision (1), subsection (a) of this section, each of the appointed voting members of
the board shall be appointed based upon his or her demonstrated knowledge and experience to effectively accomplish the purposes of this chapter. They shall meet the minimum qualifications as follows:

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

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

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

(e) Each member of the board shall have a fiduciary responsibility to the commission and all workers' compensation funds and shall assure the proper administration of the funds in a fiscally responsible manner.
(f) The board shall elect one member to serve as chairperson. The chairperson shall serve for a one-year term and may serve more than one consecutive term. The board shall hold meetings at the request of the chairperson or at the request of at least three of the members of the board, but no less frequently than once every three months. The chairperson shall determine the date and time of each meeting. Six members of the board constitute a quorum for the conduct of the business of the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. No action shall be taken by the board except upon the affirmative vote of six members of the board.

(g) Notwithstanding any provision of article seven, chapter six of this code to the contrary, the board shall establish the salary of the executive director. The board shall establish a set of performance measurements to evaluate the performance of the executive director in fulfilling his or her duties as prescribed in this chapter and shall annually rate the executive director’s performance according to the established measurements and may adjust his or her annual salary in accordance with that performance rating.

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

(2) Each voting appointed member of the board is entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(i) Each member of the board shall be provided appropriate liability insurance, including, but not limited to, errors and omissions coverage, without additional pre-
(j) The board of managers shall:

(1) Review and approve, reject or modify recommendations from the executive director for the development of overall policy for the administration of this chapter;

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

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

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

(5) Review and approve, reject or modify all classifications of occupations or industries, premium rates and taxes, administrative charges, rules and systems of rating, rating plans, rate revisions, deficit management and deficit reduction assessments and merit rating for employers covered by this chapter. The executive director shall provide all information required for the board's review;

(6) In conjunction with the executive director initiate, oversee and review all independent financial and actuarial
reviews of the commission. The board shall employ an internal auditor for the purpose of examining internal compliance with the provisions of this chapter. The internal auditor shall be employed directly by the board. The internal auditor shall submit copies of all reports prepared by the internal auditor for the board to the joint committee on government and finance within five days of submitting or making the report to the board, by filing the report with the legislative librarian;

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

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

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

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

(11) Require the workers' compensation commission to develop, maintain and use thorough and efficient claims management procedures and processes and fund management in accordance with the generally accepted practices of the workers' compensation insurance industry;
(12) Consider such other matters regarding the workers' compensation system as the governor, executive director or any member of the board may desire;

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

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

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

(16) Study the feasibility of, provide a plan for and provide a proposal for a request for proposals from the private sector for, privatizing the workers' compensation system of this state, including, but not limited to, a plan for privatizing the administration of the workers' compensation system of this state and a plan for allowing employers to obtain private insurance to insure their obligations under the workers' compensation system of this state; study the effect, if any, of attorneys fees on the cost of administering the workers' compensation system; study the extent to which fraud or abuse on the part of employers, providers and others have an effect on the cost of administering the workers' compensation system; study the extent, if any, that the rates and amounts of disability awards exceed the rates and amounts of such awards in other states; study the comparative desirability of alternative permanent disability administration in those other states, and alternative deficit management strategies, including nontraditional funding; study the feasibility of
authorizing a plan of multiple rate classifications by individual employers for employers who have different or seasonally diverse job classifications and duties: Provided,

That no such plan may be implemented until adopted by the Legislature; and, in consultation with the director of the division of personnel, study the feasibility of establishing a work incentive program to place unemployed qualified recipients of workers' compensation benefits in state or local government employment. On or before the first day of January, two thousand six, the commission shall report the findings and conclusions of each study, the plans and proposals, and any recommendations the commission may have as a result of the study to the joint committee on government and finance.

§23-1-1b. Executive director; qualifications; oath; seal; removal; powers and duties.

(a) The executive director shall be hired by the board of managers for a term not to exceed five years and may be retained based on overall performance for additional terms: Provided, That the executive director of the division of workers' compensation on the date of the enactment of this section in the year two thousand three shall serve as the initial executive director of the commission and shall receive the same salary and benefits as received as the executive director of the division of workers' compensation through and until the board of managers establishes his or her salary and benefits as the executive director of the commission. The position of executive director shall be full-time employment. Except for the initial executive director, candidates for the position of executive director shall have a minimum of a bachelor of arts or science degree from an accredited four-year college or university in one or more of the following disciplines: Finance; economics; insurance administration; law; public administration; accounting; or business administration. Candidates for the position of executive director will be considered based on their demonstrated education, knowledge
and a minimum of ten years' experience in the areas of workers' compensation, insurance company management, administrative and management experience with an organization comparable in size to the workers' compensation commission or any relevant experience which demonstrates an ability to effectively accomplish the purposes of this chapter.

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

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

(d) The executive director shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Workers' Compensation Commission" and any other design prescribed by the board of managers. The courts in this state shall take judicial notice of the seal of the commission and in all cases copies of orders, proceedings or records in the office of the West Virginia workers' compensation commission are equal to the original in evidence.

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

(f) The executive director shall serve until the expiration of his or her term, resignation or until removed by a two thirds vote of the full board of managers. The board of managers and the executive director may, by agreement, terminate the term of employment at any time.
(g) The executive director shall have overall management responsibility and administrative control and supervision within the workers' compensation commission and has the power and duty to:

1. Establish, with the approval of the board of managers, the overall administrative policy of the commission for the purposes of this chapter;

2. Employ, direct and supervise all employees required in the connection with the performance of the duties assigned to the commission by this chapter and fix the compensation of the employees in accordance with the provisions of article six, chapter twenty-nine of this code. Provided, That the executive director shall identify which members of the staff of the workers' compensation commission shall be exempted from the salary schedules or pay plan adopted by the state personnel board and further identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation and shall file this information with the director of the division of personnel no later than the thirty-first day of December, two thousand three, and thereafter as changes are made or at least annually;

3. Reorganize the work of the commission, its divisions, sections and offices to the extent necessary to achieve the most efficient performance of its functions. All persons employed by the workers' compensation division in positions that were formerly supervised and directed by the commissioner of the bureau of employment programs under chapter twenty-one-a of this code are hereby assigned and transferred in their respective classifications to the workers' compensation commission effective the first day of October, two thousand three. Further, the executive director may select persons that are employed by the bureau of employment programs on the effective date of the enactment of this section in the year two thousand three to be assigned and transferred to the workers'
compensation commission in their respective classifications, such assignment and transfer to take effect no later than the thirty-first day of December, two thousand three. Employees in the classified service who have gained permanent status as of the effective date of this article will not be subject to further qualifying examination in their respective classifications by reason of any transfer required by the provisions of this subdivision. Due to the emergency currently existing at the commission and the urgent need to develop fast, efficient claims processing, management and administration, the executive director is hereby granted authority to reorganize internal functions and operations and to delegate, assign, transfer, combine, establish, eliminate and consolidate responsibilities and duties to and among the positions transferred under the authority of this subdivision. The division of personnel shall cooperate fully by assisting in all personnel activities necessary to expedite all changes for the commission. Nothing contained in this subdivision shall be construed to either abridge the rights of employees within the classified service of the state to the procedures and protections set forth in article six, chapter twenty-nine of this code or to preclude the reclassification or reallocation of positions in accordance with procedures set forth in article six, chapter twenty-nine of this code;

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

(5) With the advice and approval of the board of managers, propose operating guidelines and policies to standardize administration, expedite commission business and
promote the efficiency of the services provided by the commission;

(6) Prepare and submit to the board of managers information the board requires for classifications of occupations or industries; the basis for premium rates, taxes, surcharges and assessment for administrative charges, for assessments related to loss experience, for assessments of prospective risk exposure, for assessments of deficit management and deficit reduction costs incurred, for other deficit management and deficit reduction assessments, for rules and systems of rating, rate revisions and merit rating for employers covered by this chapter; and information regarding the extent, degree and amount of subsidization between the classifications. The executive director shall obtain, prepare and submit any other information the board of managers requires for the prompt and efficient discharge of its duties;

(7) Keep accurate and complete accounts and records necessary to the collection, administration and distribution of the workers' compensation funds;

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

(9) Make recommendations and an annual report to the governor concerning the condition, operation and functioning of the commission;

(10) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(11) Prepare and submit for approval to the board of managers a budget for each fiscal year, including estimates of the costs and necessary expenditures of the commission in the discharge of all duties imposed by this chapter as well as the costs of furnishing office space to the officers and employees of the commission;
(12) Ensure that all employees of the commission follow the orders, operating guidelines and policies of the commission as they relate to the commission's overall policy-making, management and adjudicatory duties under this chapter;

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

(14) Provide at commission expense a program of continuing professional, technical and specialized instruction for the personnel of the commission. The executive director shall consult with and report at least annually to the legislative oversight commission on workforce investment for economic development to obtain the most appropriate training using all available resources;

(15) (A) Contract or employ counsel to perform all legal services for the commission including, but not limited to, representing the executive director, board of managers and commission in any administrative proceeding and in any state or federal court. Additionally, the commission may, but shall not be required to, call upon the attorney general for legal assistance and representation as provided by law. The attorney general shall not approve or exercise authority over in-house counsel or contract counsel hired pursuant to this section;

(B) In addition to the authority granted by this section to the executive director and notwithstanding any provision to the contrary elsewhere in this code, use any attorney regularly employed by the commission or the office of the attorney general to represent the commission, the executive director or the board of managers in any matter arising from the performance of its duties or the execution of its powers under this chapter. In addition, the executive director, with the approval of the board of managers, may retain counsel for any purpose in the administration of this chapter relating to the collection of any amounts due from
employers to the commission: Provided, That the allocation of resources for the purpose of any collections shall be pursuant to the plan developed by the board of managers. The board of managers shall solicit proposals from counsel who are interested in representing the commission under the terms of this subdivision. Thereafter, the board of managers shall select any attorneys it determines necessary to pursue the collection objectives of this subdivision:

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

(ii) In the event that any collections action, other than a collections action against a claimant, initiated either by retained counsel or other counsel on behalf of the commission results in a judgment or settlement in favor of the commission, the court or, if there was no judicial component to the action, the administrative law judge, shall determine the amount of attorneys' fees that shall be paid by the defendants or respondents to the retained or other counsel representing the commission. If the court is to determine the amount of attorneys' fees, it shall include in its determination the amount of fee that should be paid for the representation of the commission in pursuing the administrative component, if any, of the action. The amount so paid shall be fixed by the court or the administrative law judge in an amount no less than twenty percent of its recovery. Any additional amount of attorneys' fees shall be determined by use of the following factors:

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

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

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

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

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

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

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

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

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

(A) The rules shall provide that, before granting, issuing or renewing any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit, the designated agencies shall review a list or lists provided by the commission of employers that are in default. If the employing unit’s name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with the commission, may grant, issue or renew the contract, license, permit, certificate or other authority to conduct a trade, profession or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter. The prohibition against granting, issuing or renewing any contract, license, permit, certificate or other authority under this subdivision shall remain in full force and effect as promulgated under section six, article two, chapter twenty-one-a of this code until the rules required by this subsection are promulgated and in effect;

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

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

(18) Recommend for approval of the board of managers
rules for the administration of claims management by self-
insured employers and third-party administrators includ-
ing regulation and sanctions for the rejection of claims and
for maintaining claim records and ensuring access to all
claim records by interested claimants, claimant represen-
tatives, the commission and the office of judges;

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

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

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

(22) Establish and maintain a fraud and abuse investiga-
tion and prosecution unit. This unit has the responsibility
and authority for investigating and controlling fraud and
abuse of the workers' compensation system of the state of
West Virginia. The fraud and abuse unit shall be under the
supervision of an inspector general, who shall be ap-
pointed by the executive director of the workers' compen-
sation commission;

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

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

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

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

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

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

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

(vi) The fraud and abuse unit, is expressly authorized to initiate investigations and participate in the development of, and if necessary, the prosecution of any health care provider, including a provider of rehabilitation services, alleged to have violated the provisions of section three-c, article four of this chapter;

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

(D) Notwithstanding any provision of this code to the contrary, specific personnel designated by the inspector general may carry handguns in the course of their official duties after meeting specialized qualifications established by the governor's committee on crime, delinquency and correction, which qualifications shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia state police:
Provided, That nothing in this subsection shall be construed to include the personnel so designated by the inspector general to carry handguns within the meaning of the term law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

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

(F) In the event that a final judicial decision adjudges that the statewide prosecutorial powers vested by this subdivision in the fraud and abuse unit may only be exercised by a public official other than an employee of the fraud and abuse unit, then to that extent the provisions of this subdivision vesting statewide prosecutorial power shall henceforth be of no force and effect, the remaining provisions of this subdivision shall continue in full force and effect and prosecutions hereunder may only be exercised by the prosecuting attorneys of this state and their assistants or special assistant prosecuting attorneys appointed as provided by law;

(23) Enter into interagency agreements to assist in exchanging information and fulfilling the default provisions of this chapter;

(24) Notwithstanding any provision of this code to the contrary, the executive director, under emergency authorization:

(A) May expend up to fifty thousand dollars for purchases of and may contract for goods and services without securing competitive bids. This emergency spending authority expires on the first day of July, two thousand five; and
(B) May expend such sums as the executive director determines are necessary for professional services, contracts for the purchase of an automated claims administration system and associated computer hardware and software in the administration of claims for benefits made under provisions of this chapter and contracts for technical services and related services necessary to develop, implement and maintain the system and associated computer hardware and software. The provisions of article three, chapter five-a of this code relating to the purchasing division of the department administration shall not apply to these contracts. The director shall award the contract or contracts on a competitive basis. This emergency spending authority expires on the thirty-first day of December, two thousand six;

(25) Establish an employer violator system to identify individuals and employers who are in default or are delinquent on any premium, assessment, surcharge, tax or penalty owed to the commission. The employer violator system shall prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the commission, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the commission or has entered into and remains in compliance with a repayment agreement;

(26) Propose the designation of health care providers to make decisions for the commission regarding appropriateness of medical services; and

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

§23-1-1c. Payment withholding; interception; penalty.
(a) All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of contracts until the receipt of a certificate from the commission to the effect that all payments, interest and penalties thereon accrued against the contractor under this chapter have been paid or that provisions satisfactory to the commission have been made for payment. Any official violating this subsection is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for not more than one year, or both fined and confined.

(b) Any agency of the state, for the limited purpose of intercepting, pursuant to section five-a, article two of this chapter, any payment by or through the state to an employer who is in default in payment of contributions, premiums, deposits, interest or penalties under the provisions of this chapter, shall assist the commission in collecting the payment that is due. For this purpose, disclosure of joint delinquency and default lists of employers with respect to unemployment compensation as provided in section six-c, article one, chapter twenty-one-a of this code and workers’ compensation contributions, premiums, interest, deposits or penalties is authorized. The commission and the bureau of employment programs may enter into an interagency agreement to effect the provisions of this section. The lists may be in the form of a computerized database to be accessed by the auditor, the department of tax and revenue, the department of administration, the division of highways or other appropriate state agency or officer.


Except as otherwise provided for in this chapter, all rules applicable to the former workers’ compensation division of the bureau of employment programs are hereby adopted and made effective as to the operation of the
workers' compensation commission under this chapter to
the extent that they are not in conflict with the current
law. The board of managers shall review and approve,
modify or replace all existing rules no later than the first
day of July, two thousand six.

§23-1-le. Transfer of assets and contracts.

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

§23-1-lf. Continuation.

The workers' compensation division shall continue to
exist pursuant to article ten, chapter four of this code
through the thirtieth day of September, two thousand
three, at which time all powers and duties are transferred
to the workers' compensation commission. The workers'
compensation commission shall continue to exist, pursuant
to said article until the first day of July, two thousand six,
unless sooner terminated, continued or reestablished
pursuant to the provisions of that article.


(a) In addition to any other oversight of the commission
exercised by the Legislature, the commission shall report
at least quarterly to the joint committee on government
and finance and the joint commission on economic devel-
opment. The commission shall collect data and report on
claims and injuries and on the costs and outcomes of
injuries by standard codes for medical treatment, vocation
rehabilitation services, return-to-work services, other
benefits payable to or on behalf of employees, efforts to
eliminate fraud and abuse and the impact of judicial and
quasijudicial rulings on the administration of the workers'
compensation system and the solvency of the fund. The workers' compensation commission shall provide to the joint committee on government and finance and the joint commission on economic development an action plan for improving the workers' compensation system. This plan shall include detail on any administrative changes undertaken by the commission, a report on the anticipated outcome of the changes, a cost-benefit analysis of the changes and time frames for commencement and completion of these changes. Subsequent reports to the joint committee on government and finance and the joint commission on economic development shall report on the progress of these changes. The administrative changes shall include, but are not limited to, claims processing, reorganization, staff development and training, return-to-work programs, workplace alternatives for injured workers, safety programs and medical and vocational services.

(b) The commission shall also report on the current status of the workers' compensation fund and the coal-workers' pneumoconiosis fund. This analysis shall include the current balances in the fund and revenue generated and expended in relationship to the liabilities and assets of the funds and estimates of any debt reduction relative to the fund over the next reporting period.

c) The commission shall further report on the impact on the workers' compensation system of the amendments to subdivision (2), subsection (n), section six, article four of this chapter enacted during the year two thousand three, including, but not limited to, an analysis of any litigation resulting from the amendments and the availability of health care to injured workers resulting from the amendments.

d) The commission shall further report on methodologies used to establish all types of assessments and rates.

e) The commission shall further report on legislative action that may be required to further improve the operation of the commission.
(f) The commission shall further report on efforts to eliminate fraud and abuse including a statistical breakdown of investigations being conducted and their outcomes. The commission shall report to the joint committee on government and finance on a monthly basis until the first day of July, two thousand four on fraud and abuse and quarterly thereafter.

§23-1-3. Payment of salaries and expenses generally; manner; limitation.

(a) All expenses peculiar to the administration of this chapter and, when on official business, the travel and incidental expenses of the executive director and salaries or other compensation, traveling and other expenses of all officers or employees of the commission and all expenses for furniture, books, maps, stationery, appliances, property of all kinds and dues for membership in all organizations pertaining to workers' compensation, safety maintenance or professional designation in which the executive director considers it advisable to maintain membership shall be paid out of the workers' compensation fund.

(b) All payments of salaries and expenses in the administration of this chapter shall be made by the state treasurer upon requisition signed by the executive director, directed to the auditor of the state, who shall draw his or her warrant therefor, and the payment shall be charged to the workers' compensation fund: Provided, That the total charges against the fund under this section for any one fiscal year shall not exceed the amount appropriated for the administration of this chapter.

§23-1-4. Office hours; records; confidentiality; exceptions.

(a) The offices of the workers' compensation commission shall be open for the transaction of business between the hours of eight-thirty o'clock a.m. and five o'clock p.m. of each and every day, excepting Saturdays, Sundays and legal holidays, and be open upon any additional days and
(b) Except as expressly provided for in this subsection, information obtained regarding employers and claimants pursuant to this chapter for the purposes of its administration is not subject to the provisions of chapter twenty-nine-b of this code unless the provisions are hereafter specifically made applicable, in whole or in part. The information that is reasonably necessary may be released in formal orders or opinions of any tribunal or court which is presented with an issue arising under this chapter as well as in the presentations of the parties before the tribunal or court. Similarly, claimants or other interested parties to an issue arising under this chapter may, upon request, obtain information from the commission's records to the extent necessary for the proper presentation or defense of a claim or other matter. Information may be released pursuant to the provisions of chapter twenty-nine-b of this code only if all identifying information has first been eliminated from the records. Nothing in this subsection shall prevent the release of information to another agency of the state or of the federal government for the legitimate purposes of those agencies: Provided, That the agency shall guarantee the confidentiality of the information provided to the fullest extent possible in keeping with its own statutory and regulatory mandates. Nothing in this section shall prevent the commission from complying with any subpoena duces tecum: Provided, however, That the issuing tribunal or court shall take such actions as proper to maintain the confidentiality of the information.

The commission may release, pursuant to a proper request under the provisions of chapter twenty-nine-b of this code, the following information:

(1) The base premium tax rate for a specific employer;
(2) Whether or not a specific employer has obtained coverage under the provisions of this chapter;

(3) Whether or not a specific employer is in good standing or is delinquent or in default according to the commission's records and the time periods thereof; and

(4) If a specific employer is delinquent or in default, what the payments due the commission are and what the components of that payment are, including the time periods affected.

§23-1-4a. Bond for executive director and associate director.

(a) The executive director and associate director of the workers' compensation commission shall give bond in an amount determined by the board of managers conditioned for the faithful management of the fund and performance of their duties. The bond shall be approved by the attorney general as to form. The surety of the bond may be a bonding or surety company, in which case the premium shall be paid out of the workers' compensation fund.

(b) The executive director and associate director shall be provided appropriate insurance, including, but not limited to, errors and omission coverage, without additional premium, by the state board of risk and insurance management established pursuant to article twelve, chapter twenty-nine of this code.

§23-1-5. Office of executive director; hearings.

The executive director shall keep and maintain his or her office at the seat of government and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals, maps and other equipment. After due notice, showing the time and place, the executive director may hold hearings anywhere within the state, or elsewhere by agreement of claimant and employer, with the approval of the executive director.
§23-1-6. Employment of associate director and other assistants; compensation and travel expenses.

(a) The executive director may employ an associate director, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation, which shall be paid as provided in section three of this article. The associate director shall be hired with the approval of the board of managers and serves at the will and pleasure of the executive director.

(b) The associate director, supervisory officers, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants who may be employed are entitled to receive from the workers' compensation fund their necessary expense while traveling on business of the commission. Travel reimbursement shall be paid in accordance with the travel guidelines established by the department of administration. All expenses shall be itemized and sworn to by the person who incurred the expense, and are subject to the approval of the executive director: Provided, That the expenses of the executive director shall be subject to the approval of the board of managers.

§23-1-7. Associate director to act during executive director's absence or inability to act and in case of vacancy; bond of associate director.

Whenever it appears that the executive director will be absent or unable to act for one week or more, the associate director of the commission may be designated by the executive director to act during his or her absence or inability to act, and during that period he or she shall have all the duties and powers of the executive director. In the event a vacancy occurs in the office of executive director, the associate director shall have all the duties and powers of the executive director until an executive director or a temporary executive director is hired by the board of managers. The board of managers may determine the
§23-1-8. Authority of executive director and employees as to oaths and evidence.

The executive director, associate director and other employees appointed by the executive director may, for the purpose contemplated by this chapter, administer oaths, certify official acts, take depositions, issue subpoenas and compel the attendance of witnesses and the production of pertinent books, accounts, papers, records, documents and testimony.

§23-1-9. Compelling compliance with order or subpoena.

In case of failure or refusal of any person to comply with the order of the executive director, or subpoena issued by him or her, the associate director, or duly appointed employee, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, or refusal to permit an inspection as aforesaid, the circuit judge of the county in which the person resides, on application of the executive director, associate director or any duly appointed employee, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court on a refusal to testify in the court.

§23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.

Each officer who serves subpoenas on behalf of the commission shall receive the same fee as a sheriff and each witness who appears in obedience to a subpoena before the executive director, associate director or duly appointed employee shall receive for his or her attendance the fees and mileage provided for witnesses in civil cases in the circuit court, which shall be audited and paid out of the workers' compensation fund in the same manner as other expenses are audited and paid, if the witness was subpoe-
naed without the request of either claimant or employer at
the instance of the executive director, associate director or
duly appointed employee. The witness fees and mileage of
any witness subpoenaed by, or at the instance of, either
claimant or employer shall be paid by the party who
subpoenas the witness.


(a) In an investigation into any matter arising under
articles one through five, inclusive, of this chapter, the
commission may cause depositions of witnesses residing
within or without the state to be taken in the manner
prescribed by law for like depositions in the circuit court,
but the depositions shall be upon reasonable notice to
claimant and employer or other affected persons or their
respective attorneys. The commission shall designate the
person to represent it for the taking of the deposition.

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


A transcribed copy of the evidence and proceedings, or
any specific part thereof, on any investigation or hearing,
taken by a stenographer appointed by the executive
director and certified and sworn to by the stenographer to
be a true and correct transcript of the testimony in the
§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.

(a) The workers' compensation commission shall adopt reasonable and proper rules of procedure, regulate and provide for the kind and character of notices, and the service of the notices, in cases of accident and injury to employees, the nature and extent of the proofs and evidence, the method of taking and furnishing of evidence to establish the rights to benefits or compensation from the fund hereinafter provided for, or directly from employers as hereinafter provided, as the case may require, and the method of making investigations, physical examinations and inspections and prescribe the time within which adjudications and awards shall be made.

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

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

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

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

(4) Pro se.

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

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

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

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

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

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

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

(f) At the direction of a treating or evaluating psychiatrist or clinical doctoral-level psychologist, a psychiatric or psychological report concerning a claimant who is receiving treatment or is being evaluated for psychiatric or psychological problems may be withheld from the claimant. In that event, a summary of the report shall be compiled by the reporting psychiatrist or clinical doctoral-level psychologist. The summary shall be provided to the claimant upon his or her request. Any representative or attorney of the claimant must agree to provide the claimant with only the summary before the full report is provided to the representative or attorney for his or her use in preparing the claimant's case. The report shall only be withheld from the claimant in those instances where the treating or evaluating psychiatrist or clinical doctoral-level psychologist certifies that exposure to the contents of the full report is likely to cause serious harm to the claimant or is likely to cause the claimant to pose a serious threat of harm to a third party.

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


The commission shall prepare and furnish free of cost
forms (and provide in his or her rules for their distribution
so that they may be readily available) of applications for
benefits for compensation from the workers' compensation
fund, or directly from employers, as the case may be,
notices to employers, proofs of injury or death, of medical
attendance, of employment and wage earnings, and any
other forms considered proper and advisable. It is the
duty of employers to constantly keep on hand a sufficient
supply of the forms.


The commission is not bound by the usual common-law
or statutory rules of evidence, but shall adopt formal rules
of practice and procedure as herein provided, and may
make investigations in a manner that in his or her judg-
ment is best calculated to ascertain the substantial rights
of the parties and to carry out the provisions of this
chapter.

§23-1-17. Annual report by commission and occupational
pneumoconiosis board.

Annually, on or about the fifteenth day of September in
each year, the executive director and the occupational
pneumoconiosis board shall make a report as of the
thirtieth day of June addressed to the governor, which
shall include a statement of the causes of the injuries for
which the awards were made, an explanation of the
diagnostic techniques used by the occupational pneumoco-
niosis board and all examining physicians to determine the
presence of disease, the extent of impairment attributable
thereto, a description of the scientific support for the
diagnostic techniques and a summary of public and
private research relating to problems and prevention of occupational diseases. The report shall include a detailed statement of all disbursements, and the condition of the fund, together with any specific recommendations for improvements in the workers' compensation law and for more efficient and responsive administration of the workers' compensation law, which the executive director considers appropriate. Copies of all annual reports shall be filed with the secretary of state and shall be made available to the Legislature and to the public at large.


No employee of the workers' compensation commission shall be compelled to testify as to the basis, findings or reasons for any decision or order rendered by the employee under this chapter in any hearing conducted pursuant to article five of this chapter.


(a) Any person, firm, corporation or other entity which willfully, by means of false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device or artifice on behalf of himself, itself or others, obtains or attempts to obtain benefits, payments, allowances or reduced premium costs or other charges, including workers' compensation coverage under the programs of the workers' compensation commission to which he or it is not entitled, or in a greater amount than that to which he or it is entitled, shall be liable to the workers' compensation commission in an amount equal to three times the amount of such benefits, payments or allowances to which he or it is not entitled and shall be liable for the payment of reasonable attorney fees and all other fees and costs of litigation.

(b) No criminal action or indictment need be brought against any person, firm, corporation or other entity as a condition for establishing civil liability hereunder.
(c) A civil action under this section may be prosecuted and maintained on behalf of the workers' compensation commission by the attorney general and his assistants or by any attorney in contract with or employed by the workers' compensation commission to provide such representation.

(d) Venue for a civil action under this section shall be either in the county in which the defendant resides or in Kanawha County, as selected by the commission.

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

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

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

(a) The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company and other emergency service organizations as defined by article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are required to subscribe to and pay premium taxes into the workers' compensation fund for the protection of their employees and are subject to all requirements of this chapter and all rules prescribed by the workers' compensation commission with reference to rate, classification and premium payment: Provided, That rates will be adjusted by the commission to reflect the demand on the compensation fund by the covered employer.
(b) The following employers are not required to subscribe to the fund, but may elect to do so:

1. Employers of employees in domestic services;

2. Employers of five or fewer full-time employees in agricultural service;

3. Employers of employees while the employees are employed without the state except in cases of temporary employment without the state;

4. Casual employers. An employer is a casual employer when the number of his or her employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter;

5. Churches;

6. Employers engaged in organized professional sports activities, including employers of trainers and jockeys engaged in thoroughbred horse racing; or

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

(c) Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments
(d) Employers who are not required to subscribe to the workers' compensation fund may voluntarily choose to subscribe to and pay premiums into the fund for the protection of their employees and in that case are subject to all requirements of this chapter and all rules and regulations prescribed by the commission with reference to rates, classifications and premium payments and shall afford to them the protection of this chapter, including section six of this article, but the failure of the employers to choose to subscribe to and to pay premiums into the fund shall not impose any liability upon them other than any liability that would exist notwithstanding the provisions of this chapter.

(e) Any foreign corporation employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this section may choose to pay into the workers' compensation fund the premiums provided for in this section, and at the time of making application to the workers' compensation commission, the employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the commission. At the time of making application the employer shall deposit with the commission to the credit of the workers' compensation fund the amount required by section five of this article. That amount shall be returned to the employer if the employer's application is rejected by the commission. Upon notice to the employer of the acceptance of his or her application by the commission, he or she is an employer within the meaning of this chapter and subject to all of its provisions.
Any foreign corporation employer choosing to comply with the provisions of this chapter and to receive the benefits under this chapter shall, at the time of making application to the commission in addition to other requirements of this chapter, furnish the commission with a certificate from the secretary of state, where the certificate is necessary, showing that it has complied with all the requirements necessary to enable it legally to do business in this state and no application of a foreign corporation employer shall be accepted by the commission until the certificate is filed.

The following employers may elect not to provide coverage to certain of their employees under the provisions of this chapter:

(1) Any political subdivision of the state including county commissions and municipalities, boards of education, or emergency services organizations organized under the auspices of a county commission may elect not to provide coverage to any elected official. The election not to provide coverage does not apply to individuals in appointed positions or to any other employees of the political subdivision;

(2) If an employer is a partnership, sole proprietorship, association or corporation, the employer may elect not to include as an “employee” within this chapter, any member of the partnership, the owner of the sole proprietorship or any corporate officer or member of the board of directors of the association or corporation. The officers of a corporation or an association shall consist of a president, a vice president, a secretary and a treasurer, each of whom is elected by the board of directors at the time and in the manner prescribed by the bylaws. Other officers and assistant officers that are considered necessary may be elected or appointed by the board of directors or chosen in any other manner prescribed by the bylaws and, if elected, appointed or chosen, the employer may elect not to include the officer or assistant officer as an “employee” within the
Provided, That except for those persons who are members of the board of directors or who are the corporation's or association's president, vice president, secretary and treasurer and who may be excluded by reason of their positions from the benefits of this chapter even though their duties, responsibilities, activities or actions may have a dual capacity of work which is ordinarily performed by an officer and also of work which is ordinarily performed by a worker, an administrator or an employee who is not an officer, no other officer or assistant officer who is elected or appointed shall be excluded by election from coverage or be denied the benefits of this chapter merely because he or she is an officer or assistant officer if, as a matter of fact:

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

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

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

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

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

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

§23-2-lc. Extraterritorial coverage; approval and change of
agreements.

(a) Whenever, with respect to an employee of an em-
ployer who is a subscriber in good standing to the workers'
compensation fund or an employer who has elected to pay
compensation directly, as provided in section nine of this
article, there is a possibility of conflict with respect to the
application of workers' compensation laws because the
contract of employment is entered into and all or some
portion of the work is performed or is to be performed in
a state or states other than this state, the employer and the
employee may agree to be bound by the laws of this state
or by the laws of any other state in which all or some
portion of the work of the employee is to be performed:
Provided, That the executive director may review and
accept or reject the agreement. The review shall be
conducted in keeping with the executive director's fidu-
ciary obligations to the workers' compensation fund which
may include, among other things, the nexus of the em-
ployer and the employee to the state: Provided, however,
That nothing in this section shall be construed as to
require an agreement in those instances where subdivision
(3), subsection (b), section one of this article or subdivision
(1), subsection (a), section one-a of this article are applica-
All agreements shall be in writing and filed with the executive director within ten days after execution of the agreement but shall not become effective until approved by the executive director and shall, thereafter, remain in effect until terminated or modified by agreement of the parties similarly filed or by order of the executive director. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter is entitled to benefits under this chapter regardless of the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights of the employee and his or her dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and as a result of the employment.

(b) If the parties agree to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his or her dependents under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and as a result of the employment without regard to the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease.

(c) If the employee is a resident of a state other than this state and is subject to the terms and provisions of the workers' compensation law or similar laws of a state other than this state, the employee and his or her dependents are not entitled to the benefits payable under this chapter on account of injury, disease or death in the course of and as a result of employment temporarily within this state, and the rights of the employee and his or her dependents under the laws of the other state shall be the exclusive remedy against the employer on account of any injury, disease or death.

(d) If any employee or his or her dependents are awarded workers' compensation benefits or recover damages from
the employer under the laws of another state for an injury received in the course of and resulting from the employment, the amount awarded or recovered, whether paid or to be paid in future installments, shall be credited against the amount of any benefits payable under this chapter for the same injury.

§23-2-1d. Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.

(a) For the exclusive purposes of this section, the term "employer" as defined in section one of this article includes any primary contractor who regularly subcontracts with other employers for the performance of any work arising from or as a result of the primary contractor's own contract: Provided, That a subcontractor does not include one providing goods rather than services. For purposes of this subsection, extraction of natural resources is a provision of services. In the event that a subcontracting employer defaults on its obligations to make payments to the commission, then the primary contractor is liable for the payments. However, nothing contained in this section shall extend or except to a primary contractor or subcontractors the provisions of section six, six-a or eight of this article. This section is applicable only with regard to subcontractors with whom the primary contractor has a contract for any work or services for a period longer than thirty days: Provided, however, That this section is also applicable to contracts for consecutive periods of work that total more than thirty days. It is not applicable to the primary contractor with regard to sub-subcontractors. However, a subcontractor for the purposes of a contract with the primary contractor can itself become a primary contractor with regard to other employers with whom it subcontracts. It is the intent of the Legislature that no contractor, whether a primary contractor, subcontractor or sub-subcontractor, escape or avoid liability for any
workers’ compensation premium, assessment or tax. The
executive director shall propose for promulgation a rule to
effect this purpose on or before the thirty-first day of
December, two thousand three.

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

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

(2) In order to continue avoiding liability under this
section, the primary contractor shall request that the
commission inform the primary contractor of any subse-
quent default by the subcontractor. In the event that the
subcontractor does default, the commission shall notify the
primary contractor of the default by placing a notice in the
first-class United States mail, postage prepaid, and
addressed to the primary contractor at the address fur-
nished to the commission by the primary contractor. The
mailing is good and sufficient notice to the primary
contractor of the subcontractor’s default. However, the
primary contractor is not liable under this section until the
first day of the calendar quarter following the calendar
quarter in which the notice is given and then the liability
is only for that following calendar quarter and thereafter
and only if the subcontract has not been terminated:

Provided, That the commission is entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the commission may impose other penalties on the primary contractor or on the subcontractor, or both.

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

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

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

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

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

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

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

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

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

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

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


The commission shall prepare and furnish report forms for the use of employers subject to this chapter. Every employer receiving from the commission any form or forms with direction for completion and returning to the commission shall return the form, within the period fixed by the commission, completed as to answer fully and correctly all pertinent questions in the form, and if unable to do so, shall give good and sufficient reasons for the
failure. Every employer subject to the provisions of this chapter shall make application to the commission on the forms prescribed by the commission for that purpose; and any employer who terminates his or her business or for any other reason is no longer subject to this chapter shall immediately notify the commission on forms to be furnished by the commission for that purpose.

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

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

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

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

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

(C) Chargeability of claims; and

(D) Any further matters that are necessary and consistent with the goals of this chapter;

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

(A) Have not incurred a compensable injury for one year or more and who maintain an employee safety committee
or similar organization and make periodic safety inspections of the workplace;

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

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

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

(5) The rule shall be consistent with classification and rate-making methodologies found in the insurance industry; and

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

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

(c) Prospective rates set in accordance with the provisions of this article shall at all times be financially sound in accordance with generally accepted accounting princi-
places and fully fund the prospective claim obligations for the year in which the rates were made. Rates, surcharges or assessments for deficit management and deficit reduction purposes shall be fair and equitable, financially sound in accordance with generally accepted accounting principles and sufficient to meet the payment obligations of the fund.

(d) Notwithstanding any provision of subsection (c) of this section to the contrary, except for those increases made effective for fiscal year two thousand four by action of the compensation programs performance council heretofore established in article three, chapter twenty-one-a of this code taken prior to the effective date of the amendment and reenactment of this section, base rates, assessments and surcharges, except for individual employer merit rate adjustments, shall not be increased during fiscal years two thousand four, two thousand five and two thousand six: Provided, That the portion of the rate increase attributable to claims management incentive adjustments, as determined by the compensation programs performance council for fiscal year two thousand four prior to the effective date of the amendment and reenactment of this section by the Legislature in the year two thousand three, shall not be considered a part of the employer's premium taxes and shall not be subject to collection by the commission.

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

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

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

(1) Thereafter, the premium taxes shall be paid quarterly
on or before the last day of the month following the end of
the quarter, and shall be the prescribed percentage of the
entire gross wages of all employees, from which net payroll
is calculated and paid, during the preceding quarter. The
commission may require employers, in accordance with the
provisions of rules proposed by the executive director and
promulgated by the board of managers, to report gross
wages and pay premium taxes monthly or at other inter-
vals.

(2) Every subscribing employer shall make a gross wages
payroll report to the commission for the preceding report-
ing period. The report shall be on the form or forms
prescribed by the commission and shall contain all infor-
mation required by the commission.

(3) After subscribing to the fund, each employer shall
remit with each premium tax payment an amount calcu-
lated to be sufficient to maintain a premium deposit equal
to the premium payment for the previous reporting period.
The commission may reduce the amount of the premium
deposit required from seasonal employers for those
quarters during which employment is significantly re-
duced. If the employer pays premium tax on a basis other
than quarterly, the commission may require the deposit to
be based upon some other time period. The premium
deposit shall be credited to the employer's account on the
books of the commission and used to pay premium taxes
and any other sums due the fund when an employer
becomes delinquent or in default as provided in this
article.

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

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

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

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

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

(e) Failure by any employer, who voluntarily elects to
subscribe, to resolve the delinquency within the prescribed
period shall place the account in default and shall auto-
matically terminate the election of the employer to pay
into the workers’ compensation fund and shall deprive the
employer and the employees of the default elective em-
ployer of the benefits and protection afforded by this
chapter, including section six of this article, and the
employer is liable as provided in section eight of this
article. The default employer’s liability under that section
is retroactive to midnight of the last day of the month
following the end of the quarter for which the delinquency
occurs. Employees who were the subject of the default
employer’s voluntary election to provide them the benefits
afforded by this chapter shall have the protection termi-
nated 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 commission and payment into the fund of all unpaid premiums, an adequate premium deposit, accrued interest and the penalty for late reporting and payment. Interest is calculated as provided for by section thirteen of this article.

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

(2) The commission may restore a defaulted or terminated employer through a reinstatement agreement. The reinstatement agreement shall require the payment in full of all premium taxes, premium deposits, the penalty for late reporting and payment, past accrued interest and future interest calculated pursuant to the provisions of section thirteen of this article. Notwithstanding the filing of a reinstatement application or the entering into of a reinstatement agreement, the commission is authorized to file a lien against the employer as provided by section five-a of this article. In addition, entry into a reinstatement agreement is discretionary with the commission. Its discretion shall be exercised in keeping with the fiduciary obligations owed to the workers' compensation fund. If the commission declines to enter into a reinstatement agreement and if the employer does not comply with the provisions of subdivision (1) of this subsection, the commission may proceed with any of the collection efforts provided for by section five-a of this article or as otherwise provided for by this code. Applications for reinstatement shall: (A) Be made upon forms prescribed by the commission; (B) include a report of the gross wages payroll of the employer which had not been reported to the commission during the entire period of delinquency and default. The gross wages information shall be certified by the employer or its authorized agent; and (C) include a payment of a portion of the liability equal to one half of one percent of the gross payroll during the period of
190 delinquency and default or equal to another portion of the
191 liability determined by rule but not to exceed the amount
192 of the entire liability due and owing for the period of
193 delinquency and default. An employer who applies for
194 reinstatement is entitled to the benefits and protection of
195 this chapter on the day a properly completed and accept-
196 able application which is accompanied by the application
197 payment is received by the commission: Provided, That if
198 the commission reinstates an employer subject to the terms
199 of a reinstatement agreement, the subsequent failure of the
200 employer to make scheduled payments or to pay accrued
201 or future interest in accordance with the reinstatement
202 agreement or to timely file current reports and to pay
203 current premiums within the month following the end of
204 the period for which the report and payment are due, or to
205 otherwise maintain its account in good standing or, if the
206 reinstatement agreement does not require earlier restora-
207 tion of the premium deposit, to restore the premium
208 deposit to the required amount by the end of the repay-
209 ment period shall cause the reinstatement application and
210 the reinstatement agreement to be null, void and of no
211 effect, and the employer is denied the benefits and protec-
212 tion of this chapter effective from the date that the em-
213 ployer's account originally became delinquent.

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

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

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

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

(2) Upon withdrawal from the fund or termination of election of any employer, the employer shall be refunded the balance due the employer of its deposit, after deducting all amounts owed by the employer to the workers' compensation fund and other agencies of this state, and the commission shall notify the employees of the employer of the termination in the manner as the commission may consider best and sufficient.

(3) Notice to employees provided for in this section shall be given by posting written notice that the employer is defaulted under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay premiums to the fund, that the defaulted employer is liable to its employees for injury or death, both in workers' compensation benefits and in damages at common law or by statute; and in the case of employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily electing to do so as provided in this article, that neither the employer nor the employees are protected by the law as to any injury or death sustained after the date specified in the notice. The
notice shall be in the form prescribed by the commission and shall be posted in a conspicuous place at the chief works of the employer, as it appears in records of the commission. If the chief works of the employer cannot be found or identified, the notices shall be posted at the front door of the courthouse of the county in which the chief works are located, according to the commission's records.

Any person who shall, prior to the reinstatement of the employer, as provided for in this section, or prior to sixty days after the posting of the notice, whichever shall first occur, remove, deface or render illegible the notice, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined one thousand dollars. The notice shall state this provision upon its face. The commission may require any sheriff, deputy sheriff, constable or other official of the state of West Virginia, authorized to serve civil process, to post the notice and to make return thereof of the fact of the posting to the commission. Any failure of the officer to post any notice within ten days after he or she has received the notice from the commission, without just cause or excuse, constitutes a willful failure or refusal to perform a duty required of him or her by law within the meaning of section twenty-eight, article five, chapter sixty-one of this code. Any person actually injured by reason of the failure has an action against the official, and upon any official bond he or she may have given, for the damages as the person may actually have incurred, but not to exceed, in the case of any surety upon the bond, the amount of the penalty of the bond. Any official posting the notice as required in this subdivision is entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the state of West Virginia. The fee shall be paid by the commission out of any funds at its disposal, but shall be charged by the commission against the account of the employer to whose delinquency the notice relates.

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

(a) The workers' compensation commission in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer, the employer shall pay the costs of the action. A civil action under this section shall be given preference on the calendar of the court over all other civil actions. Upon prevailing in a civil action, the commission is entitled to recover its attorneys' fees and costs of action from the employer.

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

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

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

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

(f) In any case when an employer required to subscribe
to the fund defaults in payments of premium, premium
deposits, penalty or interest thereon, for as many as two
calendar quarters, which quarters need not be consecutive,
and remains in default after due notice, the commission
may bring action in the circuit court of Kanawha County
to enjoin the employer from continuing to carry on the
business in which the liability was incurred: Provided,
That the commission may as an alternative to this action
require the delinquent employer to file a bond in the form
prescribed by the commission with satisfactory surety in
an amount not less than fifty percent more than the
payments, interest and penalties due.

§23-2-5c. Statute of limitations; effective date for new pay-
ments; previous payments due not affected.

For payments due after the effective date of the amend-
ment and reenactment of this section during the year one
thousand nine hundred ninety-three, every action or
process to collect any premium, premium deposit, interest
or penalty due from an employer pursuant to this article
by the executive director shall be brought or issued within
five years next after the date on which the employer is
required by the section imposing the premium, premium
deposit, interest or penalty to file a report and pay the
amount due thereunder. The limitation provided by this
section shall also apply to enforcement of the lien, if any,
securing the payment of the premium, premium deposit,
interest or penalty, but shall not apply in the event of
fraud or in the event the employer wholly fails to file the
report required by the section imposing the premium,
premium deposit, interest or penalty. For payments that
were due prior to the effective date of this section, there
continues to be no limitation on when actions or processes
may be brought or issued. For every debt collectible under
this section which first becomes due and owing after the
effective date of the amendment and reenactment of this
section during the year two thousand three, every action or
process to collect the debt shall be brought or issued
within ten years after the date on which the employer is
required to file a report and pay the amount assessed or
owed to the commission.

§23-2-5d. Uncollectible receivables; write-offs.
Notwithstanding any other provision to the contrary, the executive director, with the approval of the board of managers, may write-off any uncollected receivable due under the provisions of this article or article four of this chapter which the executive director and the board of managers determine uncollectible.


Any employer subject to this chapter who subscribes and pays into the workers' compensation fund the premiums provided by this chapter or who elects to make direct payments of compensation as provided in this section is not liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after so subscribing or electing, and during any period in which the employer is not in default in the payment of the premiums or direct payments and has complied fully with all other provisions of this chapter. Continuation in the service of the employer shall be considered a waiver by the employee and by the parents of any minor employee of the right of action as aforesaid, which the employee or his or her parents would otherwise have: Provided, That in case of employers not required by this chapter to subscribe and pay premiums into the workers' compensation fund, the injured employee has remained in the employer's service with notice that his or her employer has elected to pay into the workers' compensation fund the premiums provided by this chapter, or has elected to make direct payments as aforesaid.

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

(a) Notwithstanding any provisions of this chapter to the contrary, the following types of employers or employers' groups may apply for permission to self-insure their
(1) The types of employers are:

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

(B) Any employer of such capability and financial responsibility who maintains its own benefit fund or system of compensation to which its employees are not required or permitted to contribute and whose benefits are at least equal in value to those provided for in this chapter; or

(C) Any group of employers who are subject to the same collective bargaining agreement or who are in a collective bargaining group may apply to the commission to collectively self-insure their obligations under this chapter. The employers' group must individually and collectively meet the conditions set forth in paragraph (A) or (B) of this subdivision. There shall be joint and several liability for all groups of employers who choose to self-insure under the provisions of this article.

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

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

(B) Provide security or bond in an amount and form determined by the executive director with the approval of the board of managers which shall balance the employer's financial condition based upon an analysis of its audited financial statements and the full accrued value of current liability for future claim payments based upon generally
accepted actuarial and accounting principles of the em-
ployer's existing and expected liability.

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

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

(5) Whenever a self-insured employer furnishes security
or bond, including replacement and amended bonds and
other securities, as surety to ensure the employer's or
guarantor's payment of all obligations under this chapter
for which the security or bond was furnished, the security
or bond shall be in the most current form or forms approved and authorized by the commission for use by the employer or its guarantors, surety companies, banks, financial institutions or others in its behalf for that purpose.

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

(2) An employer or employers' group who self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the commission in this chapter and provide notices of action taken to effect the purposes of this chapter to provide benefits to persons who have suffered injuries or diseases covered by this chapter. An employer or employers' group granted permission to self-insure and self-administer its obligations under this chapter shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in article four of this chapter pertaining to disability and death benefits are binding on and shall be strictly adhered to by the self-insured employer in its administration of claims presented by employees of the self-insured employer. Violations of the provisions of this chapter and such rules relating to this chapter as may be approved by the board of managers may constitute sufficient grounds for the termination of the authority for any employer to self-insure its obligations under this chapter. Claim notices
currently generated by the commission on behalf of self-
insured employers must be generated and sent by the self-
insured employer or its third-party administrator.

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

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

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

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

(4) A sum sufficient to maintain as an advance deposit an
amount equal to the previous quarter's payment of each of
the foregoing three sums;

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

(6) A sum as determined by the commission to pay the
employer's portion of self-insured catastrophic injury
benefits, and second injury payments on all self-insured
second injury claims other than second injury claims for
those employers self-insured for second injury. Any
employer previously self-insured for second injury benefits
shall continue to be responsible for payment of those
benefits.

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

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

(f)(1) If an employer defaults in the payment of any portion of its self-insured premium taxes, surcharges or assessments, the commission shall, in an appropriate case, determine the full accrued value based upon generally accepted actuarial and accounting principles of the employer's liability including the costs of all awarded claims and of all incurred but not reported claims. The amount determined may, in an appropriate case, be assessed against the employer. The commission may demand and collect the present value of the defaulted tax liability. Interest shall accrue upon the demanded amount as provided for in section thirteen of this article until the premium tax is fully paid. Payment of all amounts then due to the commission and to the employer's employees is a sufficient basis for reinstating the employer to good standing with the fund. In addition, any self-insured employer who, without good cause, ceases to make required payments to the employer's injured employees or dependents of fatally injured employees as benefits provided for by this chapter including second injury benefits and catastrophic injury benefits, if applicable, is in default. The board of managers shall establish by rule
the procedures by which the existence or nonexistence of
good cause is to be determined by the commission.

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

(g) Each self-insured employer shall elect whether or not
to self-insure its catastrophic injury risk as defined in
subsection (c), section one, article three of this chapter. A
self-insured employer who elects to insure its catastrophic
risk through a policy of excess insurance obtained through
a private insurance carrier approved by the commission
shall provide a copy of the policy to the commission.

(1) If the employer does not elect to self-insure its
catastrophic risk, the employer shall pay premium taxes
for this coverage in the same manner as is provided for in
section four of this article and in rules adopted to imple-
ment that section. If the employees of that employer suffer
injury or death from a catastrophe, the payment of the
resulting benefits shall be made from the catastrophe
reserve of the surplus fund provided for in subsection (b),
section one, article three of this chapter. Any portion of an
employer’s catastrophic liability insured and paid under a
policy of insurance purchased by the employer shall not be
included in the liabilities upon which the employer’s
security or bond is determined in subsection (a) of this
section.

(2) If an otherwise self-insured employer elects to self-
insure its catastrophic risk, the security or bond required
(h) For those employers previously permitted to self-insure their second injury risks, the amount of the security or bond required in subsection (a) of this section shall include the liability for that risk. All benefits provided for by this chapter which are awarded to the employer's employees which constitute second injury life awards shall be paid by the employer and not the commission.

(i) The commission may create, implement, establish and administer a perpetual self-insurance security risk pool of funds, sureties, securities, insurance provided by private insurance carriers or other states' programs, and other property, of both real and personal properties, to secure the payment of obligations of self-insured employers. If a pool is created, the board of managers shall adopt rules for the organizational plan, participation, contributions and other payments which may be required of self-insured employers under this section. The board of managers may adopt a rule authorizing the commission to assess each self-insured employer in proportion according to each employer's portion of the unsecured obligation and liability or to assess according to some other method provided for by rule which shall properly create and fund the risk pool to serve the needs of employees, employers and the workers' compensation fund by providing adequate security. The board of managers, in establishing a security risk pool, may authorize the executive director to use any assessments, premium taxes and revenues and appropriations as may be made available to the commission.

(j) Any self-insured employer which has had a period of inactivity due to the nonemployment of employees which results in its reporting of no wages on reports to the commission for a period of four or more consecutive quarters shall have its status at the commission inactivated and shall apply for reactivation to status as a self-
insured employer prior to its reemployment of employees. Despite the inactivation, the self-insured employer shall continue to make payments on all awards for which it is responsible. Upon application for reactivation of its status as an operating self-insured employer, the employer shall document that it meets the eligibility requirements needed to maintain self-insured status under this section and any rules adopted to implement it. If the employer is unable to requalify and obtain approval for reactivation, the employer shall, effective with the date of employment of any employee, become a subscriber to the workers' compensation fund, but shall continue to be a self-insurer as to the prior period of active status and to furnish security or bond and meet its prior self-insurance obligations.

(k) In any case under the provisions of this section that require the payment of compensation or benefits by an employer in periodical payments and the nature of the case makes it possible to compute the present value of all future payments, the commission may, in its discretion, at any time compute and permit to be paid into the workers' compensation fund an amount equal to the present value of all unpaid future payments on the award or awards for which liability exists in trust. Thereafter, the employer shall be discharged from any further portion of premium tax liability upon the award or awards and payment of the award or awards shall be assumed by the commission.

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

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

§23-2-10. Application of chapter to interstate commerce.

(a) In case any employer within the meaning of this
chapter is also engaged in interstate or foreign commerce,
and for whom a rule of liability or method of compensa-
tion has been established by the Congress of the United
States, this chapter applies to him or her only to the extent
that his or her mutual connection with work in this state
is clearly separable and distinguishable from his or her
interstate work, and to the extent that the work in this
state is clearly separable and distinguishable from his or
her interstate work, the employer is subject to the terms
and provisions of this chapter in like manner as all other
employers under this chapter. Payments of premiums
shall be on the basis of the payroll of those employees who
perform work in this state only.

(b) Unless and until the Congress of the United States
has by appropriate legislation established a rule of liabil-
ity or method of compensation governing employers and
employees engaged in commerce within the purview of the
commerce clause of the United States Constitution (article
I, section 8), section one of this article applies without
regard to the interstate or intrastate character or nature of
the work or business engaged in.


If any employer is adjudicated to be outside the lawful
scope of this chapter, the chapter shall not apply to him or
her or his or her employee; or if any employee is adjudi-
cated to be outside the lawful scope of this chapter,
because of remoteness of his or her work from the hazard of his or her employer's work, the adjudication shall not impair the validity of this chapter in other respects and in every case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of this chapter for the creation of the workers' compensation fund, or the provisions of this chapter making the compensation to the employee provided in it exclusive of any other remedy on the part of the employee, is held invalid, the entire chapter shall be invalidated and an accounting according to the justice of the case shall be had of money received. In other respects an adjudication of invalidity of any part of this chapter shall not affect the validity of the chapter as a whole or any part of this chapter.

§23-2-12. Effect of repeal or invalidity of chapter on action for damages.

If the provisions of this chapter relating to compensation for injuries to, or death of, workers are repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of any injury or death and the repeal, or the final adjudication of invalidity or unconstitutionality, shall not be computed as a part of the time limited by law for the commencement of any action relating to the injuries or death, but the amount of any compensation which may have been paid on account of injury or death shall be deducted from any judgment for damages recovered on account of the injury or death.


Effective the first day of July, one thousand nine hundred ninety-nine, payments unpaid on the date on which due and payable shall immediately begin bearing interest as specified in this section. The interest rate per annum for each fiscal year shall be calculated as the greater of the commission's current discount rate or the prime rate plus
four percent, each rounded to the nearest whole percent. The discount rate shall be determined by the board of managers on an annual basis. The prime rate shall be the rate published in the \textit{Wall Street Journal} on the last business day of the commission's prior fiscal year reflecting the base rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks. This same rate of interest shall be applicable to all reinstatement agreements entered into by the commission pursuant to section five of this article on and after the effective date of this section: \textit{Provided}, That if an employer enters into a subsequent reinstatement agreement within seven years of the date of the first agreement, the interest rate shall be eighteen percent per annum. Interest shall be compounded quarterly until payment plus accrued interest is received by the commission: \textit{Provided, however,} That on and after the date of execution of a reinstatement agreement, for determining future interest on any past-due premium, premium deposit, and past compounded interest thereon, any reinstatement agreement entered into by the commission shall provide for a simple rate of interest, determined in accordance with the provisions of this section which is not subject to change during the life of the reinstatement agreement for the future interest. Interest collected pursuant to this section shall be paid into the workers' compensation fund: \textit{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.

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

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

(1) The employer's premium taxes, premium deposits, interest and other payments owed to the commission are due and owing to the commission upon the execution of the agreement of sale or other transfer;

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

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

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

(1) Any liens for payments owed to the commission for premium taxes, premium deposits, interest or other payments owed to the commission by the predecessor employer shall be extended to the successor employer;

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

(3) Liens acquired in the manner described in subdivisions (1) and (2) of this subsection are enforceable by the commission to the same extent as provided for the enforcement of liens against the predecessor employer in section five-a of this article.
(c) Notwithstanding the provisions of section five-a of this article to the contrary, if any employer as described in subsection (a) of this section sells or otherwise transfers a portion of the employer's assets so as to affect the employer's capacity to do business:

1. The employer's premium taxes, premium deposits, interest and other payments owed to the commission are due and owing to the commission upon the execution of the agreement of sale or other transfer;

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

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

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

(e) As used in this article, the term “assets” means all
property of whatever type in which the employer has an
interest including, but not limited to, goodwill, business
assets, 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 is presumed
to be a transfer of all or substantially all of the assets if the
transfer affects the employer's capacity to do business.
The presumption can be overcome upon petition presented
and an administrative hearing in accordance with section
seventeen of this article.

(g) The provisions of this section are expressly intended
to impose upon successor employers the duty of obtaining
from the commission or predecessor employer, prior to the
date of the acquisition, a valid “certificate of good stand-
ing to transfer a business or business assets” to verify that
the predecessor employer's account with the commission
is in good standing.

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

(a) At any time prior to or following the acquisition
described in subsection (a), (b) or (c), section fourteen of
this article, the buyer or other recipient may file a certified
petition with the commission requesting that the commis-
tion 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 prede-
cessor employer or other penalty, or any combination
thereof. The commission shall review the petition by
considering the following seven factors:

(1) The exact nature of the default;

(2) The amount owed to the commission;

(3) The solvency of the fund;

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

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

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

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

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

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

§23-2-16. Acceptance or assignment of premium rate.

(a) If a new corporate employer which is not subject to the provisions of section fifteen of this article is created by the officers or shareholders of a preexisting corporate employer and if the new corporate employer and the preexisting corporate employer: (1) Are managed by the same, or substantially the same, management personnel; (2) have a common ownership by at least forty percent of each corporation's shareholders; (3) are in the same class or group as determined by the executive director under the provisions of section four of this article; and (4) if the preexisting corporate employer's account is in good standing with the commission, at the time the new corporate employer registers with the commission, the new
corporate employer may request that the commission assign to it the same rate of payment of premiums as that assigned to the preexisting corporate employer. If the executive director decides that the granting of the request is in keeping with his or her fiduciary obligations to the workers' compensation fund, the executive director may grant the request of the employer.

(b) If a new corporate employer which is not subject to the provisions of section fifteen of this article is created by the officers or shareholders of a preexisting corporate employer and if the new corporate employer and the preexisting corporate employer: (1) Are managed by the same, or substantially the same, management personnel; (2) have a common ownership by at least forty percent of each corporation's shareholders; and (3) are in the same class or group as determined by the executive director under the provisions of section four of this article, at any time within one year of the new corporate employer's registration with the commission, the executive director may decide that, in keeping with his or her fiduciary obligations to the workers' compensation fund, the new corporate employer shall be assigned the same rate of payment of premiums as that assigned to the preexisting corporate employer at any time within the aforesaid one-year period: Provided, That if the new corporate employer fails to reveal to the commission on the forms provided by the commission that its situation meets the factual requirements of this section, the commission may demand payment from the new corporate employer in an amount sufficient to eliminate the deficiency in payments by the new corporate employer from the date of registration to the date of discovery plus interest thereon as provided for by section thirteen of this article. The commission may use its powers pursuant to section five-a of this article to collect the amount due.

§23-2-17. Employer right to hearing; content of petition; appeal.
Notwithstanding any provision in this chapter to the contrary and notwithstanding any provision in section five, article five, chapter twenty-nine-a of this code to the contrary, in any situation where an employer objects to a decision or action of the executive director made under the provisions of this article, the employer is entitled to file a petition demanding a hearing upon the decision or action. The petition must be filed within thirty days of the employer's receipt of notice of the disputed executive director's decision or action or, in the absence of such receipt, within sixty days of the date of the executive director's making the disputed decision or taking the disputed action, the time limitations being hereby declared to be a condition of the right to litigate the decision or action and therefore jurisdictional.

The employer's petition shall clearly identify the decision or action disputed and the bases upon which the employer disputes the decision or action. Upon receipt of a petition, the executive director shall schedule a hearing which shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code.

An appeal from a final decision of the executive director shall be taken in accord with the provisions of articles five and six of said chapter: Provided, That all appeals shall be taken to the circuit court of Kanawha County.

ARTICLE 2A. SUBROGATION.

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

(a) Where a compensable injury or death is caused, in whole or in part, by the act or omission of a third party, the injured worker or, if he or she is deceased or physically or mentally incompetent, his or her dependents or personal representative are entitled to compensation under the provisions of this chapter and shall not by having received compensation be precluded from making claim against the third party.
(b) Notwithstanding the provisions of subsection (a) of this section, if an injured worker, his or her dependents or his or her personal representative makes a claim against the third party and recovers any sum for the claim, the commission or a self-insured employer shall be allowed statutory subrogation with regard to medical benefits paid as of the date of the recovery. The commission or self-insured employer shall permit the deduction from the amount received a reasonable attorney's fee and a reasonable portion of costs. It is the duty of the injured worker, his or her dependents, his or her personal representative, or his or her attorney to notify the commission and the employer when the claim is filed against the third party.

(c) In the event that an injured worker, his or her dependents or personal representative makes a claim against a third party, there shall be, and there is hereby created, a statutory subrogation lien upon the moneys received which shall exist in favor of the commission or self-insured employer. Any injured worker, his or her dependents or personal representative who receives moneys in settlement in any manner of a claim against a third party remains subject to the subrogation lien until payment in full of the amount permitted to be subrogated under subsection (b) of this section is paid.

(d) The right of subrogation granted by the provisions of this section shall not attach to any claim arising from a right of action which arose or accrued, in whole or in part, prior to the effective date of the amendment and reenactment of this section during the year two thousand three.

ARTICLE 2B. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS.

§23-2B-1. Occupational safety and health activities; voluntary compliance; consultative services.

In order to carry out the purposes of this chapter and to encourage voluntary compliance with occupational safety and health laws, regulations, rules and standards and to
promote more effective workplace health and safety programs, the executive director acting in conjunction with the board of managers shall:

(a) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(1) Research, conferences, lectures and the use of public communications media;

(2) The collection and dissemination of accident and disease statistics; and

(3) The publication and distribution of training and accident prevention materials, including audio and visual aids;

(b) Provide consultative services for employers on safety and health matters and prescribe procedures which will permit any employer to request a special inspection or investigation, focused on specific problems or hazards in the place of employment of the employer or to request assistance in developing a plan to correct such problems or hazards, which will not directly result in a citation and civil penalty; and

(c) Place emphasis, in the research, education and consultation program, on development of a model for providing services to groups of small employers in particular industries and their employees and for all employers whose experience modification factor for rate-setting purposes is in excess of the criteria established by the board of managers.

§23-2B-2. Mandatory programs; safety committees; requirements; rules; exceptions.

(a) Based upon and to the extent authorized by criteria established by the executive director, the commission is authorized to conduct special inspections or investigations focused on specific problems or hazards in the workplace
with or without the agreement of the employer. The executive director shall issue a report on his or her findings and shall furnish a copy of the report to the employer and to any bargaining unit representing the employees of the employer. The executive director may share information obtained or developed pursuant to this article with other governmental agencies.

(b) For any employer whose experience modification factor exceeds the criteria established by the board of managers, the executive director may require the employer to establish a safety committee composed of representatives of the employer and the employees of the employer.

(c) In carrying out the provisions of this article, the executive director shall propose rules for promulgation which shall include, but are not limited to, the following provisions:

1. Prescribing the membership of the committees, training, frequency of meetings, recordkeeping and compensation of employee representatives on safety committees; and

2. Prescribing the duties and functions of safety committees which include, but are not limited to:

(A) Establishing procedures for workplace safety inspections and for investigating job-related accidents, illnesses and deaths; and

(B) Evaluating accident and illness prevention programs.

(d) An employer that is a member of a multiemployer group operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this section is considered to have met the requirements of this section.

(e) It is not the purpose of this article to either supersede the federal Occupational Health and Safety Act program,
§23-2B-3. **Premium rate credits; qualified loss management program; loss management firms; penalties; rules.**

(a) The executive director may establish by rule a premium credit program for certain employers. The program is applicable solely to regular subscribers to the workers' compensation fund and not to self-insurers. Participation in any premium credit program is voluntary and no employer is required to participate.

(b) The program applies a prospective credit to the premium rate of a subscribing employer who participates in a qualified loss management program. The prospective credit is given for a period of up to three years: Provided, that the employer remains in the program for a corresponding period of time.

(c) The rule shall specify the requirements of a qualified loss management program and shall include a requirement that a recognized loss management firm participate in the program. A loss management firm shall be recognized if it has demonstrated an ability to significantly reduce workers' compensation losses for its client employers by implementing a loss control management program. The amount of credit against premium rates that may be allowed by the executive director shall vary from firm to firm and shall be primarily determined by the loss reduction success experienced by all of the subscribing employers of the sponsoring loss management firm over a period of time to be determined by the executive director.

(d) A credit is applied to the employer's premium rate for up to three years. The amount of the credit applied to the first year is based on the credit factor assigned to the loss management firm on the date the employer subscribes to the program. The amount of the credit applied to the second and third years shall be based on the credit factor...
assigned to the loss management firm and in effect on each first day of July of the pertinent year. Provided, That the applicable credit is halved in the third year.

(e) The employer may terminate participation in the program upon three years of continuous participation in the program without penalty. Sooner termination may result in a penalty being applied to the employer's premium rate.

(f) An employer who has subscribed to an existing program of a qualified loss management firm prior to the effective date of this section is subject to a reduction in credit as follows:

1. Participation for one year or less shall result in credit for the full three years;
2. Participation for more than one year but less than two years shall result in a credit for two years;
3. Participation for two years or more but less than three years shall result in a credit for one year; and
4. Participation for three years or more shall result in no credit.

(g) This section shall not become effective until the board of managers promulgates an appropriate rule to implement this section's provisions.

ARTICLE 3. WORKERS' COMPENSATION FUND.

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

(a) The commission shall establish a workers' compensation fund from the premiums and other funds paid thereto by employers, as provided in this section, for the benefit of employees of employers who have paid the premiums applicable to the employers and have otherwise complied fully with the provisions of section five, article two of this chapter, and for the benefit, to the extent elsewhere in this


chapter set out, of employees of employers who have
elected, under section nine, article two of this chapter, to
make payments into the workers' compensation fund as
provided for in this section, and for the benefit of the
dependents of all the employees, and for the payment of
the administration expenses of this chapter.

(b) A portion of all premiums that are paid into the
workers' compensation fund by subscribers not electing to
carry their own risk under section nine, article two of this
chapter that is set aside to create and maintain a reserve
of the fund to cover the catastrophe hazard and all losses
not otherwise specifically provided for in this chapter.
The percentage to be set aside is determined pursuant to
the rules adopted to implement section four, article two of
this chapter and shall be in an amount sufficient to
maintain a solvent fund. All interest earned on invest-
ments by the workers' compensation fund, which is
attributable to the reserve, shall be credited to the fund.

(c) A catastrophe is hereby defined as an accident in
which three or more employees are killed or receive
injuries, which, in the case of each individual, consist of:
Loss of both eyes or the sight thereof; loss of both hands or
the use thereof; loss of both feet or the use thereof; or loss
of one hand and one foot or the use thereof. The aggregate
of all medical and hospital bills and other costs and all
benefits payable on account of a catastrophe is defined as
"catastrophe payment". In case of a catastrophe to the
employees of an employer who is an ordinary premium-
paying subscriber to the fund, or to the employees of an
employer who, having elected to carry the employer's own
risk under section nine, article two of this chapter, has
previously elected, or may later elect, to pay into the
catastrophe reserve of the fund under the provisions of
said section, the catastrophe payment arising from the
catastrophe shall not be charged against, or paid by, the
employer but shall be paid from the catastrophe reserve of
the fund.
(d) For all awards made on or after the effective date of the amendments to this section enacted during the year two thousand three, the following provisions relating to second injury are not applicable. For awards made before the date specified in this subsection, if an employee who has a definitely ascertainable physical impairment, caused by a previous occupational injury, occupational pneumoconiosis or occupational disease, irrespective of its compensability, becomes permanently and totally disabled through the combined effect of the previous injury and a second injury received in the course of and as a result of his or her employment, the employer shall be chargeable only for the compensation payable for the second injury: Provided, That in addition to the compensation, and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total disability out of the workers' compensation fund. The procedure by which the claimant's request for a permanent total disability award under this section is ruled upon shall require that the issue of the claimant’s degree of permanent disability first be determined. Thereafter, by means of a separate order, a decision shall be made as to whether the award is a second injury award under this subsection or a permanent total disability award to be charged to the employer's account or to be paid directly by the employer if the employer has elected to be self-insured under the provisions of section nine, article two of this chapter.

(e) Employers electing, as provided in this chapter, to compensate individually and directly their injured employees and their fatally injured employees’ dependents shall do so in the manner prescribed by the commission and shall make all reports and execute all blanks, forms and papers as directed by the commission, and as provided in this chapter.

§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.
Ten percent of the funds collected and held as the workers' compensation silicosis fund under the provisions of former article six of this chapter shall be transferred to and made a part of the workers' compensation fund provided for in the preceding section, and the balance of the silicosis fund shall be refunded to the subscribers to the fund in proportion to their contributions to the fund under the provisions of former article six; and all awards previously made under the provisions of article six shall be paid from the workers' compensation fund, or directly by the employer, under order of the executive director, if the employer has elected to carry his or her own risk under the provisions of section nine, article two of this chapter.

Provided, That notwithstanding the repeal of article six, the provisions of the article are applicable in all cases of the disease or death, because of silicosis, or an employee whose last exposure to silicon dioxide dust has occurred prior to the effective date of this section, whose claim or application for compensation benefits for silicosis, or that of his or her dependent, has not been filed prior to that date, and whose employer, at the time of the exposure, was subject to the provisions of article six of this chapter.

§23-3-2. Custody, investment and disbursement of funds.

The state treasurer is the custodian of the workers' compensation fund and all premiums, deposits or other moneys payable to each fund shall be deposited in the state treasury to the credit of the fund for which it was assessed, transferred or collected in the manner prescribed in this chapter. The workers' compensation fund shall consist of the premiums and deposits provided by this chapter and any other moneys or funds given, appropriated or otherwise designated or accruing to it and all earnings. The fund shall be a separate and distinct fund upon the books and records of the auditor and treasurer. Disbursements therefrom shall be made upon requisitions signed by the executive director.
The workers' compensation fund is a participant plan as defined in section two, article six, chapter twelve of this code and is subject to the provisions of section nine-a of said article. The fund shall be invested by the investment management board in accordance with said article.

§ 23-3-3. Investment of surplus funds required.

Whenever there is in the state treasury any funds belonging to the workers' compensation fund not likely, in the opinion of the commission, to be required for immediate use, it is the duty of the investment management board to invest the funds as prescribed in section two of this article. Whenever it becomes necessary or expedient to use any of the invested funds, the investment management board, at the direction of the commission, shall collect, sell or otherwise realize upon any investment to the amount considered necessary or expedient to use.

§ 23-3-5. Authorization to require the electronic invoices and transfers.

(a) The workers' compensation commission shall on or before the thirty-first day of December, two thousand five, establish a program to require the acceptance of disbursements by electronic transfer from the workers' compensation fund to employers, vendors and all others lawfully entitled to receive such disbursements: Provided, That until the thirty-first day of December, two thousand five, claimants may not be required to accept the transfers but may elect to do so.

(b) The commission may establish a program to require payments of deposits, premiums and other funds into the workers' compensation fund by electronic transfer of funds.

(c) The commission may establish a program that invoices and other charges against the workers' compensation fund may be submitted to the commission by electronic means.
(d) Any program authorized by this section must be implemented through a rule promulgated by the board of managers.

§ 23-3-6. Emergency fiscal measures.

(a) In addition to other measures intended by the Legislature to address the imminent threat to the fiscal solvency of the workers' compensation fund, the Legislature finds that the prudent use of available moneys may be necessary to supplement ongoing efforts to reduce and eliminate that threat. The provisions of this section are enacted for those purposes.

(b) The following measures are authorized for the purposes described in subsection (a) of this section:

1. Upon meeting the conditions and requirements of subsection (a), section eight-b, article four-b of this chapter, the commission may expend the assets described in said subsection and any income earned thereon to satisfy the obligations of the workers' compensation fund.

2. Upon meeting the conditions and requirements of subsection (b), section eight-b, article four-b of this chapter, the commission may expend the assets described in said subsection and any income earned thereon to satisfy the obligations of the workers' compensation fund.

3. In each fiscal year beginning after the thirtieth day of June, two thousand thirteen, it is the intent of the Legislature that, pursuant to appropriation in the budget bill for each respective fiscal year, five million dollars of general revenue funds be transferred to the workers' compensation fund and that the amounts transferred be expended to satisfy the obligations of the workers' compensation fund.

4. (A) If in any year expenditures from the workers' compensation fund are expected to exceed assets in that fund, the executive director may under the following conditions request a transfer of moneys from the principal
31 of the West Virginia tobacco settlement medical trust fund
32 created in section two, article eleven-a, chapter four of this
33 code. Prior to requesting the transfer the executive
34 director shall obtain an opinion from the commission's
35 actuary as to the amount of the deficit in the workers'
36 compensation fund. Upon meeting the requirements of
37 this subdivision, the executive director shall, upon ap-
38 proval of the board of managers, submit a written request
39 to the joint committee on government and finance that an
40 amount determined by the Legislature be transferred by
41 appropriation from the principal of the West Virginia
42 tobacco settlement medical trust fund to the workers' compensation fund. Upon appropriation of the Legisla-
43 ture, the commission may expend the assets transferred
44 and any income earned thereon to satisfy the obligations
45 of the workers' compensation fund.

47 (B) Upon any exercise of the authority granted by this
48 subdivision, the executive director shall not increase
49 benefit rates during the year as provided in section
50 fourteen, article four of this chapter and shall conduct an
51 investigation into the causes of the deficit and determine
52 the best course of action to alleviate the shortfall.

53 (5) It is the intent of the Legislature that, pursuant to
54 legislative appropriation, fourteen million dollars of funds
55 made available to the state pursuant to the federal Jobs
56 and Growth Tax Relief Reconciliation Act of 2003, PL
57 108-27, be transferred to the workers' compensation fund
58 and that the amounts transferred be expended to satisfy
59 the obligations of the workers' compensation fund.

60 (6) It is the intent of the Legislature that, pursuant to
61 legislative appropriation, one million dollars will be
62 expired from the alcohol beverage control administration's
63 general administrative fund and transferred to the work-
64 ers' compensation fund and that the amounts transferred
65 be expended to satisfy the obligations of the workers' compensation fund.
(7) It is the intent of the Legislature that, pursuant to legislative appropriation, four million dollars will be transferred from the unappropriated balance of the state excess lottery reserve fund to the workers' compensation fund and that the amounts transferred be expended to satisfy the obligations of the workers' compensation fund.

(8) Funds transferred to the workers' compensation fund pursuant to the provisions of this subsection are anticipated to generate income of at least six million dollars over the course of the three-year period following the enactment of this section in the year two thousand three. The commission may expend any income earned on these transferred funds to satisfy the obligations of the workers' compensation fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.

(a) Subject to the provisions and limitations elsewhere in this chapter, the commission shall disburse the workers' compensation fund to the employees of employers subject to this chapter who have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of the employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter: Provided, That in the case of any employees of the state and its political subdivisions, including: Counties; municipalities; cities; towns; any separate corporation or instrumentality established by one or more counties, cities or towns as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the
performance of a governmental function and whose
jurisdiction is coextensive with one or more counties, cities
or towns; any agency or organization established by the
department of mental health for the provision of commu-
nity health or mental retardation services and which is
supported, in whole or in part, by state, county or munici-
pal funds; board, agency, commission, department or
spending unit, including any agency created by rule of the
supreme court of appeals, who have received personal
injuries in the course of and resulting from their covered
employment, the employees are ineligible to receive
compensation while the employees are at the same time
and for the same reason drawing sick leave benefits. The
state employees may only use sick leave for nonjob-related
absences consistent with sick leave use and may draw
workers' compensation benefits only where there is a job-
related injury. This proviso shall not apply to permanent
benefits: Provided, however, That the employees may
collect sick leave benefits until receiving temporary total
disability benefits. The division of personnel shall pro-
mulgate rules pursuant to article three, chapter twenty-
nine-a of this code relating to use of sick leave benefits by
employees receiving personal injuries in the course of and
resulting from covered employment: Provided further,
That in the event an employee is injured in the course of
and resulting from covered employment and the injury
results in lost time from work, and the employee for
whatever reason uses or obtains sick leave benefits and
subsequently receives temporary total disability benefits
for the same time period, the employee may be restored
sick leave time taken by him or her as a result of the
compensable injury by paying to his or her employer the
temporary total disability benefits received or an amount
equal to the temporary total disability benefits received.
The employee shall be restored sick leave time on a day-
for-day basis which corresponds to temporary total
disability benefits paid to the employer: And provided
further, That since the intent of this subsection is to
prevent an employee of the state or any of its political subdivisions from collecting both temporary total disability benefits and sick leave benefits for the same time period, nothing in this subsection prevents an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary total disability benefits but not both.

(b) For the purposes of this chapter, the terms "injury" and "personal injury" includes occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and the commission shall also disburse the workers' compensation fund to the employees of the employers in whose employment the employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and in this state have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in case death has ensued, according to the provisions hereinafter made:

Provided, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting from the disease, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the state of West Virginia over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure to such hazards, or for any five of the fifteen years immediately preceding the date of his or her last exposure. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as sixty days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure with each employer.
(c) For the purposes of this chapter, disability or death resulting from occupational pneumoconiosis, as defined in subsection (d) of this section shall be treated and compensated as an injury by accident.

(d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment. The term “occupational pneumoconiosis” includes, but is not limited to, such diseases as silicosis, anthracosilicosis, coal worker’s pneumoconiosis, commonly known as black lung or miner’s asthma, silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker’s pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated in this section meeting the definition of occupational pneumoconiosis set forth in this subsection.

(e) In determining the presence of occupational pneumoconiosis, X-ray evidence may be considered but shall not be accorded greater weight than any other type of evidence demonstrating occupational pneumoconiosis.

(f) For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease shall be considered to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances: (1) That there is a direct causal connection between the conditions under which work is performed and the occupational disease; (2) that it can be seen to have followed as a natural incident of the work as a result of the
exposure occasioned by the nature of the employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment; (5) that it is incidental to the character of the business and not independent of the relation of employer and employee; and (6) that it appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction: Provided, That compensation shall not be payable for an occupational disease or death resulting from the disease unless the employee has been exposed to the hazards of the disease in the state of West Virginia over a continuous period that is determined to be sufficient, by rule of the board of managers, for the disease to have occurred in the course of and resulting from the employee's employment. An application for benefits on account of an occupational disease shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed. The allocation shall be based upon the time and degree of exposure with each employer.

(g) No award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be considered to have contracted an occupational disease within the meaning of this subsection if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

(h) Claims for occupational disease as defined in subsection (f) of this section, except occupational pneumoconiosis, shall be processed in like manner as claims for all other personal injuries.
(i) On or before the first day of January, two thousand four, workers' compensation commission shall adopt standards for the evaluation of claimants and the determination of a claimant's degree of whole body medical impairment in claims of carpal tunnel syndrome.


Every employee who sustains an injury subject to this chapter, or his or her representative, shall immediately on the occurrence of the injury or as soon thereafter as practicable give or cause to be given to the employer or any of the employer's agents a written notice of the occurrence of the injury, with like notice or a copy of the notice to the workers' compensation commission stating in ordinary language the name and address of the employer, the name and address of the employee, the time, place, nature and cause of the injury, and whether temporary total disability has resulted from the injury. The notice shall be given personally to the employer or any of the employer's agents, or may be sent by certified mail addressed to the employer at the employer's last known residence or place of business. The notice may be given to the workers' compensation commission by mail.


It is the duty of every employer to report to the commission every injury sustained by any person in his or her employ. The report shall be on forms prescribed by the commission and shall be made within five days of the employer's receipt of the employee's notice of injury, required by section one-a of this article, or within five days after the employer has been notified by the commission that a claim for benefits has been filed on account of such injury, whichever is sooner, and, notwithstanding any other provision of this chapter to the contrary, the five-day period may not be extended by the commission, but the employer has the right to file a supplemental report at a later date. The employer's report of injury shall include a
statement as to whether or not, on the basis of the information available, the employer disputes the compensability of the injury or objects to the payment of temporary total disability benefits in connection with the injury. The statements by the employer shall not prejudice the employer's right thereafter to contest the compensability of the injury, or to object to any subsequent finding or award, in accordance with article five of this chapter; but an employer's failure to make timely report of an injury as required in this section, or statements in the report to the effect that the employer does not dispute the compensability of the injury or object to the payment of temporary total disability benefits for the injury, shall be considered to be a waiver of the employer's right to object to any interim payment of temporary total disability benefits paid by the commission with respect to any period from the date of injury to the date of the commission's receipt of any objection made to the interim payments by the employer.

§23-4-lc. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission to collect payments improperly made.

(a) In any claim for benefits under this chapter, the workers' compensation commission shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article and enter an order giving all parties immediate notice of the decision.

(1) The commission may enter an order conditionally approving the claimant's application if the commission finds that obtaining additional medical evidence or evaluations or other evidence related to the issue of compensability would aid the commission in making a correct final decision. Benefits shall be paid during the period of conditional approval; however, if the final decision is one that rejects the claim, the payments shall be
considered an overpayment. The commission or self-
insured employer may only recover the amount of the
overpayment as provided for in subsection (h) of this
section.

(2) In making a determination regarding the compensa-
bility of a newly filed claim or upon a filing for the
reopening of a prior claim pursuant to the provisions of
section sixteen of this article based upon an allegation of
recurrence, reinjury, aggravation or progression of the
previous compensable injury or in the case of a filing of a
request for any other benefits under the provisions of this
chapter, the commission shall consider the date of the
filing of the claim for benefits for a determination of the
following:

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

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

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

(D) Whether the claimant has received unemployment
compensation benefits within sixty days of the filing.

In the event of an affirmative finding upon any of these
four factors, the finding shall be given probative weight in
the overall determination of the compensability of the
claim or of the merits of the reopening request.

(3) Any party may object to the order of the commission
and obtain an evidentiary hearing as provided in section
one, article five of this chapter. Provided, that if the
claimant files a timely protest to the ruling of a self-
insured employer denying the compensability of the claim,
the office of judges shall provide a hearing on the protest
on an expedited basis as determined by rule of the office
of judges.

(b) Where it appears from the employer’s report, or from
proper medical evidence, that a compensable injury will
result in a disability which will last longer than three days
as provided in section five of this article, the commission
may immediately enter an order commencing the payment
of temporary total disability benefits to the claimant in the
amounts provided for in sections six and fourteen of this
article, and the payment of the expenses provided for in
subsection (a), section three of this article, relating to the
injury, without waiting for the expiration of the thirty-day
period during which objections may be filed to the find-
ings as provided in section one, article five of this chapter.
The commission shall enter an order commencing the
payment of temporary total disability or medical benefits
within fifteen days of receipt of either the employee’s or
employer’s report of injury, whichever is received sooner,
and also upon receipt of either a proper physician’s report
or any other information necessary for a determination.
The commission shall give to the parties immediate notice
of any order granting temporary total disability or medical
benefits. When an order granting temporary total disabil-
ity benefits is made, the claimant’s return-to-work poten-
tial shall be assessed. The commission may schedule
medical and vocational evaluation of the claimant and
assign appropriate personnel to expedite the claimant’s
return to work as soon as reasonably possible.

(c) The commission may enter orders granting temporary
total disability benefits upon receipt of medical evidence
justifying the payment of the benefits. The commission
may not enter an order granting prospective temporary
total disability benefits for a period of more than ninety
days: Provided, That when the commission determines that
the claimant remains disabled beyond the period specified
in the prior order granting temporary total disability
benefits, the commission shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed ninety days and shall give immediate notice to all parties of the decision.

(d) Upon receipt of the first report of injury in claim, the commission shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the commission with this information within fifteen days from the date the commission received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the commission obtains from reports made pursuant to subsection (b), section two, article two of this chapter. If no wages have been reported, the commission shall make the payments at the rate the commission finds would be justified by the usual rate of pay for the occupation of the injured employee. The commission shall adjust the rate of benefits both retroactively and prospectively upon receipt of proper wage information. The commission shall have access to all wage information in the possession of any state agency.

(e) Subject to the limitations set forth in section sixteen of this article, upon a finding of the commission or a self-insured employer that a claimant who has sustained a previous compensable injury which has been closed by order, or by the claimant's return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, the commission or the self-insured employer shall immediately commence the payment of temporary total disability benefits to the claimant in the amount provided for in sections six and fourteen of this article, and the expenses provided for in subsection (a), section three of this article, relating to the disability, without waiting for the expiration of the thirty-day period during which objections may
be filed. The commission or self-insured employer shall
give immediate notice to the parties of its decision.

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

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

(h) In the event that an employer files a timely objection
to any order of the division with respect to compensability,
or any order denying an application for modification with
respect to temporary total disability benefits, or with
respect to those expenses outlined in subsection (a), section
three of this article, the division shall continue to pay to
the claimant such benefits and expenses during the period
of such disability. Where it is subsequently found by the
division that the claimant was not entitled to receive such
temporary total disability benefits or expenses, or any part
thereof, so paid, the division shall, when the employer is a
subscriber to the fund, credit said employer's account with
the amount of the overpayment. When the employer has
protested the compensability or applied for modification
of a temporary total disability benefit award or expenses
and the final decision in that case determines that the
claimant was not entitled to the benefits or expenses, the
amount of benefits or expenses is considered overpaid.
For all awards made or nonawarded partial benefits paid
the commission or self-insured employer may only recover
the amount of overpaid benefits or expenses by withhold-
ing, in whole or in part, future disability benefits payable
to the individual in the same or other claims and credit the
amount against the overpayment until it is repaid in full.

(i) In the event that the commission finds that, based
upon the employer's report of injury, the claim is not
compensable, the commission shall provide a copy of the
employer's report to the claimant in addition to the order
denying the claim.

(j) If a claimant is receiving benefits paid through a wage
replacement plan, salary continuation plan or other
benefit plan provided by the employer to which the
employee has not contributed, and that plan does not
provide an offset for temporary total disability benefits to
which the claimant is also entitled under this chapter as a
result of the same injury or disease, the employer shall
notify the commission of the duplication of the benefits
paid to the claimant. Upon receipt of the notice, the
commission shall reduce the temporary total disability
benefits provided under this chapter by an amount suffi-
cient to ensure that the claimant does not receive monthly
benefits in excess of the amount provided by the em-
ployer's plan or the temporary total disability benefit,
whichever is greater: Provided, That this subsection does
not apply to benefits being paid under the terms and
conditions of a collective bargaining agreement.

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

(a) If the commission makes an award for permanent
partial or permanent total disability, the commission or
self-insured employer shall start payment of benefits by
mailing or delivering the amount due directly to the
employee within fifteen days from the date of the award:
Provided, That the commission may withhold payment of
the portion of the award that is the subject of subsection
(b) of this section until seventy-seven days have expired
without an objection being filed.
(b) When the commission, self-insured employer, the office of judges or the workers' compensation board of review enters an order or provides notice granting the claimant a permanent total disability award and an objection or petition for appeal is filed by the employer or the commission, the commission or self-insured employer shall begin the payment of monthly permanent total disability benefits. However, any payment for a back period of benefits from the onset date of total permanent disability to the date of the award shall be limited to a period of twelve months of benefits. If, after all litigation is completed and the time for the filing of any further objections or appeals to the award has expired and the award of permanent total disability benefits is upheld, the claimant shall receive the remainder of benefits due to him or her based upon the onset date of permanent total disability that was finally determined.

(c) If the claimant is owed any additional payment of back permanent total disability benefits, the commission or self-insured employer shall not only pay the claimant the sum owed but shall also add thereto interest at the simple rate of six percent per annum from the date of the initial award granting the total permanent disability to the date of the final order upholding the award. In the event that an intermediate order directed an earlier onset date of permanent total disability than was found in the initial award, the interest-earning period for that additional period shall begin upon the date of the intermediate award. Any interest payable shall be charged to the account of the employer or shall be paid by the employer if it has elected to carry its own risk.

(d) If a timely protest to the award is filed, as provided in section one or nine, article five of this chapter, the commission or self-insured employer shall continue to pay to the claimant benefits during the period of the disability unless it is subsequently found that the claimant was not entitled to receive the benefits, or any part thereof, in
which event the commission shall, where the employer is
a subscriber to the fund, credit the employer's account
with the amount of the overpayment. If the final decision
in any case determines that a claimant was not lawfully
entitled to benefits paid to him or her pursuant to a prior
decision, the amount of benefit paid shall be considered
overpaid. For all awards made or nonawarded partial
benefits paid the commission or self-insured employer may
only recover that amount by withholding, in whole or in
part, as determined by the commission, future disability
benefits payable to the individual in the same or other
claims and credit the amount against the overpayment
until it is repaid in full.

(e) An award for permanent partial disability shall be
made as expeditiously as possible and in accordance with
the time frame requirements promulgated by the board of
managers.

(f) If a claimant is receiving benefits paid through a
retirement plan, wage replacement plan, salary continua-
tion plan or other benefit plan provided by the employer
to which the employee has not contributed, and that plan
does not provide an offset for permanent total disability
benefits to which the claimant is also entitled under this
chapter as a result of the same injury or disease, the
employer shall notify the commission of the duplication of
the benefits paid to the claimant. Upon receipt of the
notice, the commission shall reduce the permanent total
disability benefits provided under this chapter by an
amount sufficient to ensure that the claimant does not
receive monthly benefits in excess of the amount provided
by the employer's plan or the permanent total disability
benefit, whichever is greater: Provided, That this subsec-
tion does not apply to benefits being paid under the terms
and conditions of a collective bargaining agreement.

§23-4-1e. Temporary total disability benefits not to be paid for
periods of correctional center or jail confinement;
denial of workers' compensation benefits for injuries or disease incurred while confined.

(a) Notwithstanding any provision of this code to the contrary, no person shall be jurisdictionally entitled to temporary total disability benefits for that period of time in excess of three days during which that person is confined in a state correctional facility or a county or regional jail: Provided, That confinement shall not affect the claimant's eligibility for payment of expenses: Provided, however, That this subsection is applicable only to injuries and diseases incurred prior to any period of confinement. Upon release from confinement, the payment of benefits for the remaining period of temporary total disability shall be made if justified by the evidence and authorized by order of the commission.

(b) Notwithstanding any provision of this code to the contrary, no person confined in a state correctional facility or a county or regional jail who suffers injury or a disease in the course of and resulting from his or her work during the period of confinement which work is imposed by the administration of the state correctional facility or the county or regional jail and is not suffered during the person's usual employment with his or her usual employer when not confined shall receive benefits under the provisions of this chapter for the injury or disease.

§23-4-1g. Weighing of evidence.

(a) For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, resolution of any issue raised in administering this chapter shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented.
Under no circumstances will an issue be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted.

(b) Except as provided in subsection (a) of this section, a claim for compensation filed pursuant to this chapter must be decided on its merit and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. No such principle may be used in the application of law to the facts of a case arising out of this chapter or in determining the constitutionality of this chapter.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; “deliberate intention” defined.

(a) Notwithstanding anything contained in this chapter, no employee or dependent of any employee is entitled to receive any sum from the workers' compensation fund, from a self-insured employer, or otherwise under the provisions of this chapter, on account of any personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of the employee. Upon the occurrence of an injury which the employee asserts, or which reasonably appears to have, occurred in the course of and resulting from the employee's employment, the employer may require the employee to undergo a blood test for the purpose of determining the existence or nonexistence of evidence of intoxication pursuant to rules for the administration of the test promulgated by the board of managers: Provided, That the employer must have a reasonable and good faith objective suspicion of the
employee's intoxication and may only test for the purpose
of determining whether the person is intoxicated.

(b) For the purpose of this chapter, the commission may
cooperate with the office of miners' health, safety and
training and the state division of labor in promoting
general safety programs and in formulating rules to govern
hazardous employments.

(c) If injury or death result to any employee from the
deliberate intention of his or her employer to produce the
injury or death, the employee, the widow, widower, child
or dependent of the employee has the privilege to take
under this chapter and has a cause of action against the
employer, as if this chapter had not been enacted, for any
excess of damages over the amount received or receivable
under this chapter.

(d) (1) It is declared that enactment of this chapter and
the establishment of the workers' compensation system in
this chapter was and is intended to remove from the
common law tort system all disputes between or among
employers and employees regarding the compensation to
be received for injury or death to an employee except as
expressly provided in this chapter and to establish a
system which compensates even though the injury or death
of an employee may be caused by his or her own fault or
the fault of a coemployee; that the immunity established
in sections six and six-a, article two of this chapter is an
essential aspect of this workers' compensation system; that
the intent of the Legislature in providing immunity from
common lawsuit was and is to protect those immunized
from litigation outside the workers' compensation system
except as expressly provided in this chapter; that, in
enacting the immunity provisions of this chapter, the
Legislature intended to create a legislative standard for
loss of that immunity of more narrow application and
containing more specific mandatory elements than the
common law tort system concept and standard of willful,
wanton and reckless misconduct; and that it was and is the
(2) The immunity from suit provided under this section and under section six-a, article two of this chapter may be lost only if the employer or person against whom liability is asserted acted with "deliberate intention". This requirement may be satisfied only if:

(i) It is proved that the employer or person against whom liability is asserted acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. This standard requires a showing of an actual, specific intent and may not be satisfied by allegation or proof of: (A) Conduct which produces a result that was not specifically intended; (B) conduct which constitutes negligence, no matter how gross or aggravated; or (C) willful, wanton or reckless misconduct; or

(ii) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(A) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(B) That the employer had a subjective realization and an appreciation of the existence of the specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by the specific unsafe working condition;

(C) That the specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the indus-
try or business of the employer, which statute, rule, regulation or standard was specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;

(D) That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C), inclusive, of this paragraph, the employer nevertheless thereafter exposed an employee to the specific unsafe working condition intentionally; and

(E) That the employee exposed suffered serious injury or death as a direct and proximate result of the specific unsafe working condition.

(iii) In cases alleging liability under the provisions of paragraph (ii) of this subdivision:

(A) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;

(B) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the court shall dismiss the action upon motion for summary judgment if it finds, pursuant to rule 56 of the rules of civil procedure that one or more of the facts required to be proved by the provisions of subparagraphs (A) through (E), inclusive, paragraph (ii) of this subdivision do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs
(A) through (E), inclusive, paragraph (ii) of this subdivision; and

(C) The provisions of this paragraph and of each subparagraph thereof are severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of this act and this code remain valid.

(e) The reenactment of this section in the regular session of the Legislature during the year one thousand nine hundred eighty-three does not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or accrued prior to the effective date of the reenactment.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.

(a) The workers' compensation commission shall establish and alter from time to time, as the commission determines appropriate, a schedule of the maximum reasonable amounts to be paid to health care providers, providers of rehabilitation services, providers of durable medical and other goods and providers of other supplies and medically related items or other persons, firms or corporations for the rendering of treatment or services to injured employees under this chapter. The commission also, on the first day
of each regular session and also from time to time, as the commission may consider appropriate, shall submit the schedule, with any changes thereto, to the Legislature.

The commission shall disburse and pay from the fund for personal injuries to the employees who are entitled to the benefits under this chapter as follows:

(1) Sums for health care services, rehabilitation services, durable medical and other goods and other medically related items as may be reasonably required. The commission shall determine that which is reasonably required within the meaning of this section in accordance with the guidelines developed by the health care advisory panel pursuant to section three-b of this article: Provided, That nothing in this section shall prevent the implementation of guidelines applicable to a particular type of treatment or service or to a particular type of injury before guidelines have been developed for other types of treatment or services or injuries: Provided, however, That any guidelines for utilization review which are developed in addition to the guidelines provided for in section three-b of this article may be used by the commission until superseded by guidelines developed by the health care advisory panel pursuant to said section. Each health care provider who seeks to provide services or treatment which are not within any guideline shall submit to the commission specific justification for the need for the additional services in the particular case and the commission shall have the justification reviewed by a health care professional before authorizing the additional services. The commission may enter into preferred provider and managed care agreements.

(2) Payment for health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items authorized under this subsection may be made to the injured employee or to the person, firm or corporation who or which has rendered the treatment or furnished health care services, rehabilitation
services, durable medical or other goods or other supplies
and items, or who has advanced payment for them, as the
commission considers proper, but no payments or dis-
bursements shall be made or awarded by the commission
unless duly verified statements on forms prescribed by the
commission have been filed with the commission within
six months after the rendering of the treatment or the
delivery of such goods, supplies or items or within ninety
days of a subsequent compensability ruling if a claim is
initially rejected: Provided, That no payment under this
section shall be made unless a verified statement shows no
charge for or with respect to the treatment or for or with
respect to any of the items specified in this subdivision has
been or will be made against the injured employee or any
other person, firm or corporation. When an employee
covered under the provisions of this chapter is injured in
the course of and as a result of his or her employment and
is accepted for health care services, rehabilitation services,
or the provision of durable medical or other goods or other
supplies or medically related items, the person, firm or
corporation rendering the treatment may not make any
charge or charges for the treatment or with respect to the
treatment against the injured employee or any other
person, firm or corporation which would result in a total
charge for the treatment rendered in excess of the maxi-
mum amount set forth therefor in the commission's
schedule.

(3) Any pharmacist filling a prescription for medication
for a workers' compensation claimant shall dispense a
generic brand of the prescribed medication if a generic
brand exists. If a generic brand does not exist, the phar-
macist may dispense the name brand. In the event that a
claimant wishes to receive the name brand medication in
lieu of the generic brand, the claimant may receive the
name brand medication but, in that event, the claimant is
personally liable for the difference in costs between the
generic brand medication and the brand name medication.
(4) In the event that a claimant elects to receive health care services from a health care provider from outside of the state of West Virginia and if that health care provider refuses to abide by and accept as full payment the reimbursement made by the workers' compensation commission pursuant to the schedule of maximum reasonable amounts of fees authorized by subsection (a) of this section, with the exceptions noted below, the claimant is personally liable for the difference between the scheduled fee and the amount demanded by the out-of-state health care provider.

(A) In the event of an emergency where there is an urgent need for immediate medical attention in order to prevent the death of a claimant or to prevent serious and permanent harm to the claimant, if the claimant receives the emergency care from an out-of-state health care provider who refuses to accept as full payment the scheduled amount, the claimant is not personally liable for the difference between the amount scheduled and the amount demanded by the health care provider. Upon the claimant's attaining a stable medical condition and being able to be transferred to either a West Virginia health care provider or an out-of-state health care provider who has agreed to accept the scheduled amount of fees as payment in full, if the claimant refuses to seek the specified alternative health care providers, he or she is personally liable for the difference in costs between the scheduled amount and the amount demanded by the health care provider for services provided after attaining stability and being able to be transferred.

(B) In the event that there is no health care provider reasonably near to the claimant's home who is qualified to provide the claimant's needed medical services who is either located in the state of West Virginia or who has agreed to accept as payment in full the scheduled amounts of fees, the commission, upon application by the claimant, may authorize the claimant to receive medical services
from another health care provider. The claimant is not personally liable for the difference in costs between the scheduled amount and the amount demanded by the health care provider.

(b) (1) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental or hospital service within such hospital for the compensable injury. Any employer violating this subsection is liable in damages to the employee's employees as provided in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than one hundred dollars nor more than one thousand dollars or by imprisonment not exceeding one year, or both.

(2) The provisions of this subsection shall not prohibit an employer from participating in a managed health care plan, including, but not limited to, a preferred provider organization or program or a health maintenance organization or managed care organization or other medical cost containment relationship with the providers of medical, hospital or other health care. An employer that provides a managed health care plan approved by the commission for its employees may require an injured employee to use health care providers authorized by the managed health care plan for care and treatment of his or her compensable injuries. If the employer does not provide a managed health care plan or program, the claimant may select his or her initial health care provider for treatment of a compensable injury or disease, except as provided under subdivision (3) of this subsection. If a claimant wishes to change
his or her health care provider and if his or her employer has established and maintains a managed health care plan, the claimant shall select a new health care provider through the managed health care plan. A claimant who has used the providers under the employer's managed health care plan may select a health care provider outside the employer's plan for treatment of the compensable injury or disease if the employee receives written approval from the commission to do so and the approval is given pursuant to criteria established by rule of the commission.

(3) If the commission enters into an agreement which has been approved by the board of managers with a managed health care plan, including, but not limited to, a preferred provider organization or program, a health maintenance organization or managed care organization or other health care delivery organization or organizations or other medical cost containment relationship with the providers of medical, hospital or other health care, then:

(A) If an injured employee's employer does not provide a managed health care plan approved by the commission for its employees as described in subdivision (2) of this subsection, the commission may require the employee to use health care providers authorized by the commission's managed health care plan for care and treatment of his or her compensable injuries; and

(B) If a claimant seeks to change his or her initial choice of health care provider where neither the employer or the commission had an approved health care management plan at the time the initial choice was made, and if the claimant's employer does not provide access to such a plan as part of the employer's general health insurance benefit, then the claimant shall be provided with a new health care provider from the commission's managed health care plan available to him or her.

(c) When an injury has been reported to the commission by the employer without protest, the commission or self-
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194 insured employer may pay, within the maximum amount
195 provided by schedule established under this section, bills
196 for health care services without requiring the injured
197 employee to file an application for benefits.

198 (d) The commission or self-insured employer shall
199 provide for the replacement of artificial limbs, crutches,
200 hearing aids, eyeglasses and all other mechanical appli-
201 cianes provided in accordance with this section which later
202 wear out, or which later need to be refitted because of the
203 progression of the injury which caused the devices to be
204 originally furnished, or which are broken in the course of
205 and as a result of the employee's employment. The com-
206 mission or self-insured employer shall pay for these
207 devices, when needed, notwithstanding any time limits
208 provided by law.

209 (e) No payment shall be made to a health care provider
210 who is suspended or terminated under the terms of section
211 three-c of this article except as provided in subsection (c)
212 of said section.

213 (f) The commission may engage in and contract for
214 medical cost containment programs, pharmacy benefits
215 management programs, medical case management pro-
216 grams and utilization review programs. Payments for
217 these programs shall be made from the workers' compen-
218 sation fund. Any order issued pursuant to the program
219 shall be interlocutory in nature until an objecting party
220 has exhausted all review processes provided for by the
221 commission.

222 (g) Notwithstanding the provisions of this section, the
223 commission may establish fee schedules, make payments
224 and take other actions required or allowed pursuant to
225 article twenty-nine-d, chapter sixteen of this code.

§23-4-3b. Creation of health care advisory panel.

1 (a) The commission shall establish a health care advisory
2 panel consisting of representatives of the various branches
and specialties among health care providers in this state.
There shall be a minimum of five members of the health
care advisory panel who shall receive reasonable compens-
sation for their services and reimbursement for reasonable
actual expenses. Each member of this panel shall be
provided appropriate professional or other liability
insurance, without additional premium, by the state board
of risk and insurance management created pursuant to
article twelve, chapter twenty-nine of this code. The panel
shall:

(1) Establish guidelines for the health care which is
reasonably required for the treatment of the various types
of injuries and occupational diseases within the meaning
of section three of this article;

(2) Establish protocols and procedures for the perfor-
mane of examinations or evaluations performed by
physicians or medical examiners pursuant to sections
seven-a and eight of this article;

(3) Assist the commission in establishing guidelines for
the evaluation of the care provided by health care provid-
ers to injured employees for purposes of section three-c of
this article;

(4) Assist the commission in establishing guidelines
regarding the anticipated period of disability for the
various types of injuries pursuant to subsection (b), section
seven-a of this article; and

(5) Assist the commission in establishing appropriate
professional review of requests by health care providers to
exceed the
guidelines for treatment of injuries and occupational
diseases established pursuant to subdivision (1) of this
section.

(b) In addition to the requirements of subsection (a) of
this section, on or before the thirty-first day of December,
two thousand three, the board of managers shall promul-
gate a rule establishing the process for the medical man-
age of claims and awards of disability which includes,
but is not limited to, reasonable and standardized guide-
lines and parameters for appropriate treatment, expected
period of time to reach maximum medical improvement
and range of permanent partial disability awards for
common injuries and diseases or, in the alternative, which
incorporates by reference the medical and disability
management guidelines, plan or program being utilized by
the commission for the medical and disability management
of claims, with the requirements, standards, parameters
and limitations of such guidelines, plan or program having
the same force and effect as the rule promulgated in
compliance herewith.

§23-4-3c. Suspension or termination of providers of health care.

(a) The commission may suspend for up to three years or
permanently terminate the right of any health care
provider, including a provider of rehabilitation services
within the meaning of section nine of this article, to obtain
payment for services rendered to injured employees:

(1) If the commission finds that the health care provider
is regularly providing to injured employees health care
that is excessive, medically unreasonable or unethical,
which shall include abusing the workers' compensation
system in the treatment provided to injured employees or
in its billing practices;

(2) If the commission finds that a health care provider is
attempting to make any charge or charges against the
injured employee or any other person, firm or corporation
which would result in a total charge for any treatment
rendered in excess of the maximum amount set by the
commission, in violation of section three of this article;

(3) If the commission determines that the health care
provider has had his or her license to practice suspended
or terminated by the appropriate authority in this state or in another state;

(4) If the commission determines that the health care provider has been convicted of any crime in relation to his or her practice, or any felony; or

(5) If the commission determines that the health care provider has made medically unsupported recommendations regarding a percentage of disability or has prescribed medically unsupported treatment including medication. The rules promulgated under this section shall establish criteria for determining whether recommendations or treatment are medically unsupported.

The executive director shall consult with medical experts, including the health care advisory panel established pursuant to section three-b of this article, for purposes of determining whether a health care provider should be suspended or terminated pursuant to this section.

(b) Upon the determination by the executive director that there is probable cause to believe that a health care provider should be suspended or terminated pursuant to this section, the executive director shall provide the health care provider with written notice stating the nature of the charges against the health care provider and the time and place of a hearing. Upon issuance of the notice and due consideration of the executive director’s fiduciary duties, the executive director may immediately suspend payment to the health care provider pending the final order of suspension or termination. The health care provider shall appear to show cause why the health care provider’s right to receive payment under this chapter should not be suspended or terminated. At the hearing the health care provider shall be afforded an opportunity to review the evidence, to cross-examine the witnesses, and present testimony and enter evidence in support of its position. The hearing shall be conducted in accordance with the
provisions of article five, chapter twenty-nine-a of this code. The hearing may be conducted by the executive director or a hearing officer appointed by the executive director. The executive director or hearing officer has the power to subpoena witnesses, papers, records, documents and other data and things in connection with the proceeding under this subsection and to administer oaths or affirmations in the hearing. If, after reviewing the record of the hearing, the executive director determines that the right of the health care provider to obtain payment under this article should be suspended for a specified period of time or should be permanently terminated, the executive director shall issue a final order suspending or terminating the right of the health care provider to obtain payment for services under this article. The order shall set forth findings of fact and conclusions of law in support of the decision. The order shall be mailed to the health care provider by certified mail, return receipt requested. Any appeal by the health care provider shall be brought in the circuit court of Kanawha County or in the county in which the provider's principal place of business is located. The scope of the court's review of the final order shall be as provided in section four, article five, chapter twenty-nine-a of this code. The provider may be suspended or terminated, based upon the final order of the executive director or hearing officer, pending final disposition of any appeal. The final order may be stayed by the circuit court after hearing, but shall not be stayed in or as a result of any ex parte proceeding. If the health care provider does not appeal the final order within thirty days, it is final.

(c) No payment shall be made to a health care provider or to an injured employee for services provided by a health care provider after the effective date of a final order terminating or suspending the health care provider: Provided, That nothing in this subsection shall prohibit payment by the executive director or self-insured employer to a suspended or terminated health care provider for medical services rendered where the medical services
were rendered to an injured employee in an emergency situation. The suspended or terminated provider may not make any charge or charges for any services provided against the injured employee unless the injured employee, before any services are rendered, is given notice by the provider in writing that the provider does not participate in the workers' compensation program and that the injured employee will be solely responsible for all payments to the provider and unless the injured employee also signs a written consent, before any services are rendered, to make payment directly and to waive any right to reimbursement from the executive director or the self-insured employer. The written consent and waiver signed by the injured employee shall be filed by the provider with the executive director and shall be made a part of the claim file.

(d) The executive director shall notify each claimant, whose duly authorized treating physician or other health care provider has been suspended or terminated pursuant to this section, of the suspension or termination of the provider's rights to obtain payment under this chapter and shall assist the claimant in arranging for transfer of his or her care to another physician or provider.

(e) Each suspended or terminated provider shall post in the provider's public waiting area or areas a written notice, in the form required by the executive director, of the suspension or termination of the provider's rights to obtain payment under this chapter.

(f) A suspended provider may apply for reinstatement at the end of the term of suspension.

(g) The board of managers shall promulgate rules for the purpose of implementing this section.

§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.
(a) In case the personal injury causes death, reasonable funeral or cemetery expense, in an amount to be fixed, from time to time, by the commission shall be paid from the fund, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for the services and supplies, as the commission may determine proper, in addition to any award made to the employee's dependents.

(b) A funeral director or cemeterian, or any person who furnished the services and supplies associated with the funeral or cemetery expenses, or a person who has advanced payment for the services and supplies, is prohibited from making any charge or charges against the employee's dependents for funeral expenses which would result in a total charge for funeral expenses in excess of the amount fixed by the commission unless:

1. The person seeking funeral expenses notifies, in writing and prior to the rendering of any service, the employee's dependent as to the exact cost of the service and the exact amount the employee's dependent would be responsible for paying in excess of the amount fixed by the commission; and

2. The person seeking funeral expenses secures, in writing and prior to the rendering of any service, consent from the employee's dependent that he or she will be responsible to make payment for the amount in excess of the amount fixed by the commission.

(c) Any person who knowingly and willfully seeks or receives payment of funeral expenses in excess of the amount fixed by the commission without satisfying both of the requirements of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined three thousand dollars or confined in a county or regional jail for a definite term of confinement of twelve months, or both.
§23-4-5. Benefits for first three days after injury.
1 If the period of disability does not last longer than three
days from the day the employee leaves work as the result
of the injury, no award shall be allowed, except the
disbursements provided for in the two next preceding
sections, but if the period of disability lasts longer than
seven days from the day the employee leaves work as a
result of the injury, an award shall be allowed for the first
three days of such disability.

§23-4-6. Classification of and criteria for disability benefits.
1 Where compensation is due an employee under the
provisions of this chapter for personal injury, the compen-
sation shall be as provided in the following schedule:

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

12 (b) For all awards made on and after the effective date of
the amendment and reenactment of this section during the
year two thousand three, if the injury causes temporary
total disability, the employee shall receive during the
continuance of the disability a maximum weekly benefit to
be computed on the basis of sixty-six and two-thirds
percent of the average weekly wage earnings, wherever
earned, of the injured employee, at the date of injury, not
to exceed one hundred percent of the average weekly wage
in West Virginia: Provided, That in no event shall an
award for temporary total disability be subject to annual
adjustments resulting from changes in the average weekly
wage in West Virginia: Provided, however, in the case of a
claimant whose award was granted prior to the effective
date of the amendment and reenactment of this section during the year two thousand three, the maximum benefit rate shall be the rate applied under the prior enactment of this subsection which was in effect at the time the injury occurred. The minimum weekly benefits paid under this subdivision shall not be less than thirty-three and one-third percent of the average weekly wage in West Virginia, except as provided in sections six-d and nine of this article. In no event, however, shall the minimum weekly benefits exceed the level of benefits determined by use of the applicable federal minimum hourly wage: Provided further, That any claimant receiving permanent total disability benefits, permanent partial disability benefits or dependents' benefits prior to the first day of July, one thousand nine hundred ninety-four, shall not have his or her benefits reduced based upon the requirement in this subdivision that the minimum weekly benefit shall not exceed the applicable federal minimum hourly wage.

(c) Subdivision (b) of this section is limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks; aggregate award for a single injury for which an award of temporary total disability benefits is made on or after the effective date of the amendment and reenactment of this section in the year two thousand three shall be for a period not exceeding one hundred four weeks. Notwithstanding any other provision of this subdivision to the contrary, no person may receive temporary total disability benefits under an award for a single injury for a period exceeding one hundred four weeks from the effective date of the amendment and reenactment of this section in the year two thousand three.

(d) For all awards of permanent total disability benefits that are made on or after the second day of February, one thousand nine hundred ninety-five, including those claims in which a request for an award was pending before the division or which were in litigation but not yet submitted
for a decision, then benefits shall be payable until the claimant attains the age necessary to receive federal old age retirement benefits under the provisions of the Social Security Act, 42 U. S. C. §401 and 402, in effect on the effective date of this section. The claimant shall be paid benefits so as not to exceed a maximum benefit of sixty-six and two-thirds percent of the claimant’s average weekly wage earnings, wherever earned, at the time of the date of injury not to exceed one hundred percent of the average weekly wage in West Virginia. The minimum weekly benefits paid under this section shall be as is provided for in subdivision (b) of this section. In all claims in which an award for permanent total disability benefits was made prior to the second day of February, one thousand nine hundred ninety-five, the awards shall continue to be paid at the rate in effect prior to the effective date of the amendment and reenactment of this section in the year two thousand three: 
Provided,

That the provisions of sections one through eight, inclusive, article four-a of this chapter shall be applied thereafter to all prior awards that were previously subject to its provisions. A single or aggregate permanent disability of eighty-five percent or more entitles the employee to a rebuttable presumption of a permanent total disability for the purpose of paragraph (2), subdivision (n) of this section: 
Provided, however, That the claimant must also be at least fifty percent medically impaired upon a whole body basis or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. The presumption may be rebutted if the evidence establishes that the claimant is not permanently and totally disabled pursuant to subdivision (n) of this section. Under no circumstances may the commission grant an additional permanent disability award to a claimant receiving a permanent total disability award: 
Provided further, That if any claimant thereafter sustains another compensable injury and has permanent partial disability resulting from the injury, the total permanent disability award benefit rate shall be
computed at the highest benefit rate justified by any of the compensable injuries.

(e) (1) For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, if the injury causes permanent disability less than permanent total disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks' compensation for each percent of disability determined at the maximum or minimum benefit rates as follows: Sixty-six and two-thirds percent of the average weekly wage earnings, wherever earned, of the injured employee at the date of injury, not to exceed seventy percent of the average weekly wage in West Virginia: Provided, That in no event shall an award for permanent partial disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia: Provided, however, That in the case of a claimant whose award was granted prior to the effective date of the amendment and reenactment of this section during the year two thousand three the maximum benefit rate shall be the rate applied under the prior enactment of this section which was in effect at the time the injury occurred.

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

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

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

- The loss of a great toe shall be considered a ten percent disability.
- The loss of a great toe (one phalanx) shall be considered a five percent disability.
- The loss of other toes shall be considered a four percent disability.
- The loss of other toes (one phalanx) shall be considered a two percent disability.
- The loss of all toes shall be considered a twenty-five percent disability.
- The loss of forepart of foot shall be considered a thirty percent disability.
- The loss of a foot shall be considered a thirty-five percent disability.
- The loss of a leg shall be considered a forty-five percent disability.
- The loss of thigh shall be considered a fifty percent disability.
- The loss of thigh at hip joint shall be considered a sixty percent disability.
- The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.
- The loss of a little or fourth finger shall be considered a five percent disability.
- The loss of ring or third finger (one phalanx) shall be considered a three percent disability.
- The loss of ring or third finger shall be considered a five percent disability.
The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

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

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

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

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

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

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

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

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

The loss of ring and little fingers shall be considered a ten percent disability.

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

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

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

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

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

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

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

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

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

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

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

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

(i) For the purposes of this chapter, with the exception of those injuries provided for in subdivision (f) of this section and in section six-b of this article, the degree of permanent disability other than permanent total disability shall be determined exclusively by the degree of whole body medical impairment that a claimant has suffered. For those injuries provided for in subdivision (f) of this section and section six-b of this article, the degree of disability shall be determined exclusively by the provisions of said subdivision and said section. The occupational pneumoconiosis board created pursuant to section eight-a of this article shall premise its decisions on the degree of pulmonary function impairment that claimants suffer solely upon whole body medical impairment. The workers' compensation commission shall adopt standards for the evaluation of claimants and the determination of a claimant's degree of whole body medical impairment. Once the degree of medical impairment has been determined, that degree of impairment shall be the degree of permanent partial disability that shall be awarded to the claimant.

This subdivision is applicable to all injuries incurred and diseases with a date of last exposure on or after the second day of February, one thousand nine hundred ninety-five, to all applications for an award of permanent partial disability made on and after that date and to all applications for an award of permanent partial disability that were pending before the commission or pending in litigation but not yet submitted for decision on and after that
date. The prior provisions of this subdivision remain in effect for all other claims.

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

(1) The executive director shall establish requirements for the proper completion and support for an application for permanent total disability benefits within an existing or a new rule no later than the first day of January, two thousand four. Upon adoption of the rule by the board of managers, no issue of permanent total disability may be referred to the interdisciplinary examining board unless a properly completed and supported application for perma-
Recent total disability benefits has been first filed with the commission. Prior to the referral of any issue to the interdisciplinary examining board, the commission shall conduct examinations of the claimant that it finds necessary and obtain all pertinent records concerning the claimant's medical history and reports of examinations and forward them to the board at the time of the referral. The commission shall provide adequate notice to the employer of the filing of the request for a permanent total disability award and the employer shall be granted an appropriate period in which to respond to the request. The claimant and the employer may furnish all pertinent information to the board and shall furnish to the board any information requested by the board. The claimant and the employer may each submit no more than one report and opinion regarding each issue present in a given claim. The employer may have the claimant examined by medical specialists and vocational rehabilitation specialists: Provided, That the employer is entitled to only one examination on each issue present in a given claim. Any additional examinations must be approved by the commission and shall be granted only upon a showing of good cause. The reports from all employer-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 additional information considered necessary by the board. Both the claimant and the employer, as well as the commission, may submit reports from experts challenging or supporting the other reports in the record regardless of whether or not the expert examined the claimant or relied solely upon the evidence of record.

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

(3) Referrals to the board shall be limited to matters related to the determination of permanent total disability under the provisions of subdivision (n) of this section and to questions related to medical cost containment, utilization review 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 for the findings. Copies of the reports of all examinations made by the board shall be served upon the parties and the commission. Each shall be given an opportunity to respond in writing to the findings and conclusions stated in the reports.

(5) The board shall state its initial recommendations to the commission in writing with an explanation for each recommendation setting forth the reasons for each. The recommendations shall be served upon the parties and the commission and each shall be afforded a thirty-day opportunity to respond in writing to the board regarding the board's recommendations. The board shall review any
responses and issue its final recommendations. The final recommendations shall be effectuated by the entry of an appropriate order by the commission. For all awards for permanent total disability where the claim was filed on or after the effective date of the amendment and reenactment of this section in the year two thousand three, the commission shall establish the date of onset of the claimant's permanent total disability as the date when a properly completed and supported application for permanent total disability benefits as prescribed in subdivision (1) of this subsection that results in a finding of permanent total disability was filed with the commission: Provided, That upon notification of the commission by a claimant or his or her representative that the claimant seeks to be evaluated for permanent total disability, the commission shall send the claimant or his or her representative the proper application form. The commission shall set time limits for the return of the application. A properly completed and supported application returned within the time limits set by the commission shall be treated as if received on the date the commission was notified the claimant was seeking evaluation for permanent total disability: Provided, however, That notwithstanding any other provision of this section to the contrary, the onset date may not be sooner than the date upon which the claimant meets the percentage thresholds of prior permanent partial disability that are established by subsection (n) of this section as a prerequisite to the claimant's qualification for consideration for a permanent total disability award.

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

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

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

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

Loss of both eyes or the sight thereof.
Loss of both hands or the use thereof.
Loss of both feet or the use thereof.
Loss of one hand and one foot or the use thereof.

(n) (1) Other than for those injuries specified in subdivision (m) of this section, in order to be eligible to apply for an award of permanent total disability benefits for all injuries incurred and all diseases, including occupational pneumoconiosis, regardless of the date of last exposure, on and after the effective date of the amendment and reenactment of this section during the year two thousand three a claimant: (A) Must have been awarded the sum of fifty percent in prior permanent partial disability awards; (B) must have suffered a single occupational injury or disease which results in a finding by the commission that the claimant has suffered a medical impairment of fifty percent; or (C) has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. Upon filing an application, the claim will be reevaluated by the examining board pursuant to subdivision (i) of this section to determine if the claimant has suffered a whole body medical impairment of fifty percent
or more resulting from either a single occupational injury or occupational disease or a combination of occupational injuries and occupational diseases or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section. A claimant whose prior permanent partial disability awards total eighty-five percent or more shall also be examined by the board and must be found to have suffered a whole body medical impairment of fifty percent in order for his or her request to be eligible for further review. The examining board shall review the claim as provided for in subdivision (j) of this section. If the claimant has not suffered whole body medical impairment of at least fifty percent or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, the request shall be denied. Upon a finding that the claimant has a fifty percent whole body medical impairment or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, the review of the application continues as provided for in the following paragraph of this subdivision. Those claimants whose prior permanent partial disability awards total eighty-five percent or more and who have been found to have a whole body medical impairment of at least fifty percent or have sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section are entitled to the rebuttable presumption created pursuant to subdivision (d) of this section for the remaining issues in the request.

(2) For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities which can be acquired or which are comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. The
Comparability of preinjury income to post-disability income will not be a factor in determining permanent total disability. Geographic availability of gainful employment within a driving distance of seventy-five miles from the residence of the employee or within the distance from the residence of the employee to his or her preinjury employment, whichever is greater, will be a factor in determining permanent total disability. For any permanent total disability award made after the amendment and reenactment of this section in the year two thousand three, permanent total disability benefits shall cease at age seventy years. In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three of this chapter shall be considered once they are effective.

In the event that a claimant, who has been found to have at least a fifty percent whole body medical impairment or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, is denied an award of permanent total disability benefits pursuant to this subdivision and accepts and continues to work at a lesser paying job than he or she previously held, the claimant is eligible, notwithstanding the provisions of section nine of this article, to receive temporary partial rehabilitation benefits for a period of four years. The benefits shall be paid at the level necessary to ensure the claimant's receipt of the following percentages of the average weekly wage earnings of the claimant at the time of injury calculated as provided in this section and sections six-d and fourteen of this article:

(A) Eighty percent for the first year;
(B) Seventy percent for the second year;
(C) Sixty percent for the third year; and
(D) Fifty percent for the fourth year. Provided, That in no event shall the benefits exceed one hundred percent of
the average weekly wage in West Virginia. In no event
shall the benefits be subject to the minimum benefit
amounts required by the provisions of subdivision (b) of
this section.

(4) Notwithstanding any provision of this subsection,
subsection (d) of this section or any other provision of this
code to the contrary, on any claim filed on or after the
effective date of the amendment and reenactment of this
section in the year two thousand three:

(A) No percent of whole body medical impairment
existing as the result of carpal tunnel syndrome for which
a claim has been made under this chapter may be included
in the aggregation of permanent disability under the
provisions of this subsection or subsection (d) of this
section; and

(B) No percent of whole body medical impairment
existing as the result of any occupational disease, the
diagnosis of which is based solely upon symptoms rather
than specific, objective and measurable medical findings,
and for which a claim has been made under this chapter
may be included in the aggregation of permanent disabil-
ity under the provisions of this subsection or subsection (d)
of this section.

(o) To confirm the ongoing permanent total disability
status of the claimant, the commission may elect to have
any recipient of a permanent total disability award
undergo one independent medical examination during
each of the first five years that the permanent total
disability award is paid and one independent medical
examination during each three-year period thereafter until
the claimant reaches the age of seventy years: Provided,
That the commission may elect to have any recipient of a
permanent total disability award under the age of fifty
years undergo one independent medical examination
during each year that the permanent total disability award
is paid until the recipient reaches the age of fifty years,
and thereafter one independent medical examination during each three-year period thereafter until the claimant reaches the age of seventy years.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability is determined by the degree of medical impairment that is found by the occupational pneumoconiosis board. The commission shall enter an order setting forth the findings of the occupational pneumoconiosis board with regard to whether the claimant has occupational pneumoconiosis and the degree of medical impairment, if any, resulting therefrom. That order is the final decision of the commission for purposes of section one, article five of this chapter. If a decision is objected to, the office of judges shall affirm the decision of the occupational pneumoconiosis board made following hearing unless the decision is clearly wrong in view of the reliable, probative and substantial evidence on the whole record. Compensation is paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n), section six of this article: Provided, That for any employee who applies for occupational pneumoconiosis benefits whose award was granted on or after the effective date of the amendment and reenactment of this section during the year two thousand three, there shall be no permanent partial disability awarded based solely upon a diagnosis of occupational pneumoconiosis, it being the intent of the Legislature to eliminate any permanent partial disability awards for occupational pneumoconiosis without a specific finding of measurable impairment.
If the employee dies from occupational pneumoconiosis, the benefits shall be as provided for in section ten of this article; as to the benefits sections eleven to fourteen, inclusive, of this article apply.

In cases of permanent disability or death due to occupational pneumoconiosis, as defined in section one of this article, accompanied by active tuberculosis of the lungs, compensation shall be payable as for disability or death due to occupational pneumoconiosis alone.

The provisions of section sixteen, article four of this chapter and sections two, three, four and five, article five of this chapter providing for the further adjustment of claims are applicable to the claim of any claimant who receives a permanent partial disability award for occupational pneumoconiosis.

§23-4-6b. Occupational hearing loss claims.

(a) In all claims for occupational hearing loss caused by either a single incident of trauma or by exposure to hazardous noise in the course of and resulting from employment, the degree of permanent partial disability, if any, shall be determined in accordance with the provisions of this section and awards made in accordance with the provisions of section six of this article.

(b) The percent of permanent partial disability for a monaural hearing loss shall be computed in the following manner:

1. The measured decibel loss of hearing due to injury at the sound frequencies of five hundred, one thousand, two thousand and three thousand hertz shall be determined for the injured ear and the total shall be divided by four to ascertain the average decibel loss;

2. The percent of monaural hearing impairment for the injured ear shall be calculated by multiplying by one and six-tenths percent the difference by which the aforemen-
tioned average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels; and

(3) The percent of monaural hearing impairment obtained shall be multiplied by twenty-two and one-half to ascertain the degree of permanent partial disability.

(c) The percent of permanent partial disability for a binaural hearing loss shall be computed in the following manner:

(1) The measured decibel loss of hearing due to injury at the sound frequencies of five hundred, one thousand, two thousand and three thousand hertz is determined for each ear and the total for each ear shall be divided by four to ascertain the average decibel loss for each ear;

(2) The percent of hearing impairment for each ear is calculated by multiplying by one and six-tenths percent the difference by which the aforementioned average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels;

(3) The percent of binaural hearing impairment shall be calculated by multiplying the smaller percentage (better ear) by five, adding this figure to the larger percentage (poorer ear) and dividing the sum by six; and

(4) The percent of binaural hearing impairment obtained shall be multiplied by fifty-five to ascertain the degree of permanent partial disability.

(d) No permanent partial disability benefits shall be granted for tinnitus, psychogenic hearing loss, recruitment or hearing loss above three thousand hertz.

(e) An additional amount of permanent partial disability shall be granted for impairment of speech discrimination, if any, to determine the additional amount for binaural
impairment, the percentage of speech discrimination in each ear shall be added together and the result divided by two to calculate the average percentage of speech discrimination, and the permanent partial disability shall be ascertained by reference to the percentage of permanent partial disability in the table below on the line with the percentage of speech discrimination obtained. To determine the additional amount for monaural impairment, the permanent partial disability shall be ascertained by reference to the percentage of permanent partial disability in the table below on the line with the percentage of speech discrimination in the injured ear.

<table>
<thead>
<tr>
<th>TABLE</th>
<th>% of Permanent Partial Disability</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of Speech Discrimination</td>
<td>% of Permanent Partial Disability</td>
</tr>
<tr>
<td>90% and up to and including 100%</td>
<td>0%</td>
</tr>
<tr>
<td>80% and up to but not including 90%</td>
<td>1%</td>
</tr>
<tr>
<td>70% and up to but not including 80%</td>
<td>3%</td>
</tr>
<tr>
<td>60% and up to but not including 70%</td>
<td>4%</td>
</tr>
<tr>
<td>0% and up to but not including 60%</td>
<td>5%</td>
</tr>
</tbody>
</table>

(f) No temporary total disability benefits shall be granted for noise-induced hearing loss.

(g) An application for benefits alleging a noise-induced hearing loss shall set forth the name of the employer or employers and the time worked for each. The commission shall allocate to and divide any charges resulting from the claim among the employers with whom the claimant sustained exposure to hazardous noise for as much as sixty days during the period of three years immediately preceding the date of last exposure. The allocation is based upon the time of exposure with each employer. In determining the allocation, the commission shall consider all the time of employment by each employer during which the claimant was exposed and not just the time within the three-year period, under the same allocation as is applied in occupational pneumoconiosis cases.
(h) The commission shall provide, consistent with current
practice, for prompt referral the claims for evaluation, for
all medical reimbursement and for prompt authorization
of hearing enhancement devices.

(i) The provisions of this section and the amendments to
section six of this article insofar as applicable to perma-
nent partial disabilities for hearing loss are operative as to
any claim filed after thirty days from the effective date of
this section.

§23-4-6d. Benefits payable to part-time employees.

(a) For purposes of this section, a part-time employee
means an employee who, at the date of injury, is custom-
arily employed twenty-five hours per week or less on a
regular basis and is classified by the employer as a part-
time employee: Provided, That the term "part-time
employee" shall not include an employee who regularly
works more than twenty-five hours per week for the
employer, nor shall it include an employee who regularly
works for more than one employer and whose regular
combined working hours total more than twenty-five
hours per week when that employee is rendered unable to
perform the duties of his or her employment as a result of
the injury, nor shall it include any employee in the con-
struction industry who works less than twenty-five hours
per week.

(b) For purposes of establishing temporary total disabil-
ity weekly benefits pursuant to subdivision (b), section six
of this article for part-time employees, the "average
weekly wage earnings, wherever earned, of the injured
person at the date of injury" shall be computed based upon
the best average weekly gross pay, wherever earned, which
is received by the employee during the best quarter of
wages out of the preceding four quarters of wages as
reported to the commission pursuant to subsection (b),
section two, article two of this chapter: Provided, That for
part-time employees who have been employed less than
two months but more than one week prior to the date of
injury or any employee whose wages have not yet been
reported to the commission, the average weekly wage
earnings shall be calculated based upon the average gross
earnings in the weeks actually worked: Provided, however,
That for part-time employees who have been employed one
week or less, the average weekly wage earnings shall be
calculated based upon the average weekly wage prevailing
for the same or similar part-time employment at the time
of injury except that when an employer has agreed to pay
a certain hourly wage to a part-time employee, the average
weekly wage shall be computed by multiplying the hourly
wage by the regular numbers of hours contracted to be
worked each week: Provided further, That notwithstanding
any provision of this article to the contrary, no part-
time employee shall receive temporary total disability
benefits greater than his or her average weekly wage
earnings as so calculated.

(c) Notwithstanding any other provisions of this article
to the contrary, benefits payable to a part-time injured
employee for any permanent disability shall be computed
and paid on the same basis as if the injured employee is
not a part-time employee within the meaning of this
section.

§23-4-7. Release of medical information to employer; legislative
findings; effect of application for benefits; duty of
employer.

(a) The Legislature hereby finds and declares that two of
the primary objectives of the workers' compensation
system established by this chapter are to provide benefits
to an injured claimant promptly and to effectuate his or
her return to work at the earliest possible time; that the
prompt dissemination of medical information to the
commission and employer as to diagnosis, treatment and
recovery is essential if these two objectives are to be
achieved; that claimants are increasingly burdened with
the task of contacting their treating physicians to request
11 the furnishing of detailed medical information to the
12 commission and their employers; that the commission is
13 increasingly burdened with the administrative responsibil-
14 ity of providing copies of medical reports to the employer
15 involved, whereas in other states the employer can obtain
16 the necessary medical information direct from the treating
17 physician; that much litigation is occasioned in this state
18 because of a lack of medical information having been
19 received by the employer as to the continuing disability of
20 a claimant; and that detailed narrative reports from the
21 treating physician are often necessary in order for the
22 commission, the claimant's representatives and the
23 employer to evaluate a claim and determine whether
24 additional or different treatment is indicated.

25 (b) In view of the foregoing findings, a claimant irrevoca-
26 bly agrees by the filing of his or her application for
27 benefits that any physician may release to and orally
28 discuss with the claimant's employer, or its representative,
29 or with a representative of the commission, from time to
time, the claimant's medical history and any medical
30 reports pertaining to the occupational injury or disease
31 and to any prior injury or disease of the portion of the
32 claimant's body to which a medical impairment is alleged
33 containing detailed information as to the claimant's
34 condition, treatment, prognosis and anticipated period of
35 disability and dates as to when the claimant will reach or
36 has reached his or her maximum degree of improvement or
37 will be or was released to return to work. For the exclu-
38 sive purposes of this chapter, the patient-physician
39 privilege of confidentiality is waived with regard to the
40 physician's providing this medical information to the
41 commission, the employer or to the employer's representa-
42 tive. Whenever a copy of any medical report is obtained
43 by the employer or its representative and the physician has
44 not also forwarded a copy of the medical report to the
45 commission, the employer shall forward a copy of the
46 medical report to the commission within ten days from the
47 date the employer received the medical report from the
48 physician.
§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority; suspension of benefits.

(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives it is essential that the commission establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.

(b) In view of the foregoing findings, the commission, in consultation with the health care advisory panel, shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability established for the injury involved shall be reviewed by the commission. If satisfied, after reviewing the medical evidence, that the claimant would not benefit by an independent medical evaluation, the commission shall mark the claim file accordingly and shall diary the claim file as to the next date for required review which shall not exceed sixty days. If the commission concludes that the claimant might benefit by an independent medical evaluation, the commission shall proceed as specified in subsections (d) and (e) of this section.

(c) When the authorized treating physician concludes that the claimant has either reached his or her maximum degree of improvement or is ready for disability evaluation, or when the claimant has returned to work, the authorized treating physician may recommend a perma-
ent partial disability award for residual impairment relating to and resulting from the compensable injury, and the following provisions govern and control:

(1) If the authorized treating physician recommends a permanent partial disability award of fifteen percent or less, the commission shall enter an award of permanent partial disability benefits based upon the recommendation and all other available information. The claimant’s entitlement to temporary total disability benefits ceases upon the entry of the award unless previously terminated under the provisions of subsection (e) of this section.

(2) If, however, the authorized treating physician recommends a permanent partial disability award in excess of fifteen percent, or recommends a permanent total disability award, the claimant’s entitlement to temporary total disability benefits ceases upon the receipt by the commission of the medical report. The commission shall refer the claimant to a physician or physicians of the commission’s selection for independent evaluation prior to the entry of a permanent disability award: Provided, That unless the claimant has returned to work, the claimant shall thereupon receive benefits which shall be at the permanent partial disability rate as provided in subdivision (e), section six of this article until the entry of a permanent disability award or until the claimant returns to work. The amount of benefits paid prior to the receipt of the independent evaluation report shall be considered and determined to be payment of the permanent disability award granted, if any. In the event that benefits actually paid exceed the amount granted by the permanent partial disability award, the claimant is entitled to no further benefits by the award and the excess paid shall be an overpayment. For all awards made or nonawarded partial benefits paid the commission or self-insured employer may only recover the amount of overpaid benefits or expenses by withholding, in whole or in part, future disability benefits payable to the individual in the same or other
claims and credit the amount against the overpayment until it is repaid in full.

(d) When the commission concludes that an independent medical evaluation is indicated, or that a claimant may be ready for disability evaluation in accordance with other provisions of this chapter, the commission shall refer the claimant to a physician or physicians of the commission’s selection for examination and evaluation. If the physician or physicians selected recommend continued, additional or different treatment, the recommendation shall be relayed to the claimant and the claimant’s treating physician and the recommended treatment may be authorized by the commission.

(e) Notwithstanding any provision in subsection (c) of this section, the commission shall enter a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits when:

1. The physician or physicians selected by the commission conclude that the claimant has reached his or her maximum degree of improvement;

2. When the authorized treating physician advises the commission that the claimant has reached his or her maximum degree of improvement or that he or she is ready for disability evaluation and when the authorized treating physician has not made any recommendation with respect to a permanent disability award as provided in subsection (c) of this section;

3. When other evidence submitted to the commission justifies a finding that the claimant has reached his or her maximum degree of improvement; or

4. When other evidence submitted or otherwise obtained justifies a finding that the claimant has engaged or is engaging in abuse, including, but not limited to, physical
In all cases, a finding by the commission that the claimant has reached his or her maximum degree of improvement terminates the claimant's entitlement to temporary total disability benefits regardless of whether the claimant has been released to return to work. Under no circumstances shall a claimant be entitled to receive temporary total disability benefits either beyond the date the claimant is released to return to work or beyond the date he or she actually returns to work.

In the event that the medical or other evidence indicates that claimant has a permanent disability, unless he or she has returned to work, the claimant shall thereupon receive benefits which shall be at the permanent partial disability rate as provided in subdivision (e), section six of this article until entry of a permanent disability award, pursuant to an evaluation by a physician or physicians selected by the commission, or until the claimant returns to work. The amount of benefits shall be considered and determined to be payment of the permanent disability award granted, if any. In the event that benefits actually paid exceed the amount granted under the permanent disability award, the claimant is entitled to no further benefits by the order.

(f) Notwithstanding the anticipated period of disability established pursuant to the provisions of subsection (b) of this section, whenever in any claim temporary total disability continues longer than one hundred twenty days from the date of injury (or from the date of the last preceding examination and evaluation pursuant to the provisions of this subsection or pursuant to the directions of the commission under other provisions of this chapter), the commission shall refer the claimant to a physician or physicians of the commission's selection for examination and evaluation in accordance with the provisions of subsection (d) of this section and the provisions of subsec-
tion (e) of this section are fully applicable: Provided, That the requirement of mandatory examinations and evaluations pursuant to the provisions of this subsection shall not apply to any claimant who sustained a brain stem or spinal cord injury with resultant paralysis or an injury which resulted in an amputation necessitating a prosthetic appliance.

(g) The provisions of this section are in addition to and in no way in derogation of the power and authority vested in the commission by other provisions of this chapter or vested in the employer to have a claimant examined by a physician or physicians of the employer's selection and at the employer's expense, or vested in the claimant or employer to file a protest, under other provisions of this chapter.

(h) All evaluations and examinations performed by physicians shall be performed in accordance with the protocols and procedures established by the health care advisory panel pursuant to section three-b of this article: Provided, That the physician may exceed these protocols when additional evaluation is medically necessary.

(i) The commission may suspend benefits being paid to a claimant if the claimant refuses, without good cause, to undergo the examinations or needed treatments provided for in this section until the claimant submits to the examination or needed treatments. The executive director shall propose rules for approval by the commission to implement the provisions of this subsection.

§23-4-7b. Trial return to work.

(a) The Legislature hereby finds and declares that it is in the interest of employees, employers and the commission that injured employees be encouraged to return to work as quickly as possible after an injury and that appropriate protections be afforded to injured employees who return to work on a trial basis.
(b) Notwithstanding any other provisions of this chapter to the contrary, the injured employee shall not have his or her eligibility to receive temporary total disability benefits terminated when he or she returns to work on a trial basis as set forth in this section. An employee is eligible to return to work on a trial basis when he or she is released to work on a trial basis by the treating physician.

(c) When an injured employee returns to work on a trial basis, the employer shall provide a trial return-to-work notification to the commission. Upon receipt of the notification, the commission shall note the date of the first day of work pursuant to the trial return and shall continue the claimant’s eligibility for temporary total disability benefits, but shall temporarily suspend the payment of temporary total disability benefits during the period actually worked by the injured employee. The claim shall be closed on a temporary total disability basis either when the injured employee or the authorized treating physician notifies the commission that the injured employee is able to perform his or her job or automatically at the end of a period of three months from the date of the first day of work unless the employee notifies the commission that he or she is unable to perform the duties of the job, whichever occurs first. If the injured employee is unable to continue working due to the compensable injury for a three-month period, the injured employee shall notify the commission and temporary total disability benefits shall be reinstated immediately and he or she shall be referred for a rehabilitation evaluation as provided in section nine of this article. No provision of this section shall be construed to prohibit the commission from referring the injured employee for any permanent disability evaluation required or permitted by any other provision of this article.

(d) Nothing in this section shall prevent the employee from returning to work without a trial return-to-work period.
Nothing in this section shall be construed to require an injured employee to return to work on a trial basis.

(f) The provisions of this section shall be terminated and be of no further force and effect on the first day of July, two thousand seven.

§23-4-8. Physical examination of claimant.

The commission may, after due notice to the employer and claimant, whenever in the commission's opinion it is necessary, order a claimant of compensation for a personal injury other than occupational pneumoconiosis to appear for examination before a medical examiner or examiners selected by the commission; and the claimant and employer, respectively, each have the right to select a physician of the claimant's or the employer's own choosing and at the claimant's or the employer's own expense to participate in the examination. All examinations shall be performed in accordance with the protocols and procedures established by the health care advisory panel pursuant to section three-b of this article: Provided, That the physician may exceed these protocols when additional evaluation is medically necessary. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner or examiners selected by the commission. The respective physicians selected by the claimant and employer have the right to concur in any report made by the medical examiner or examiners selected by the commission, or each may file with the commission a separate report, which separate report shall be considered by the commission in passing upon the claim. If the compensation claimed is for occupational pneumoconiosis, the commission may, after due notice to the employer, and whenever in the commission's opinion it is necessary, order a claimant to appear for examination before the occupational pneumoconiosis board provided for in section eight-a of this article. In any case the claimant is entitled to reimbursement for loss of
wages, and to reasonable traveling and other expenses necessarily incurred by him or her in obeying the order.

Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, as aforesaid or in connection with any claim which is in litigation, the employer shall reimburse the claimant for loss of wages, and reasonable traveling and other expenses in connection with the examination or examinations, not to exceed the expenses paid when a claimant is examined by a physician or physicians selected by the commission.

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

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

§23-4-8b. Occupational pneumoconiosis board; procedure; autopsy.

1 The occupational pneumoconiosis board, upon reference to it by the commission of a case of occupational pneumoconiosis, shall notify the employee, or in case he or she is dead, the claimant, and the employer to appear before the board at a time and place stated in the notice. If the employee is living, he or she shall appear before the board at the time and place specified and submit to the examination, including clinical and X-ray examinations, required by the board. If a physician licensed to practice medicine in the state makes an affidavit that the employee is physically unable to appear at the time and place designated by the board, the board shall, on notice to the proper parties, change the place and time as may reasonably facilitate the hearing or examination of the employee or may appoint a qualified specialist in the field of respiratory disease to examine the claimant on behalf of the board. The employee, or in case he or she is dead, the claimant, and employer shall also produce as evidence to the board all reports of medical and X-ray examinations which may be in their respective possession or control, showing the past or present condition of the employee. If the employee is dead, the notice of the board shall further require that the claimant produce necessary consents and permits so that an autopsy may be performed, if the board
so directs. When in the opinion of the board an autopsy is considered necessary accurately and scientifically to ascertain and determine the cause of death, the autopsy examination shall be ordered by the board, which shall designate a duly licensed physician, a pathologist or any other specialists determined necessary by the board, to make the examination and tests to determine the cause of death and certify his or her or their written findings, in triplicate, to the board. The findings shall be public records. In the event that a claimant for compensation for the death refuses to consent and permit the autopsy to be made, all rights for compensation are forfeited.

The employee, or if he or she be dead, the claimant, and the employer, shall be entitled to be present at all examinations conducted by the board and to be represented by attorneys and physicians.

§23-4-8c. Occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

1 (a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commission of its findings and conclusions on every medical question in controversy and the commission shall send one copy of the report to the employee or claimant and one copy to the employer. The board shall also return to and file with the commission all the evidence as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from
his or her employment for a period of ten years during the
fifteen years immediately preceding the date of his or her
last exposure to such hazard and that the claimant or
deceased employee has sustained a chronic respiratory
disability, it shall be presumed that the claimant is
suffering or the deceased employee was suffering at the
time of his or her death from occupational pneumoconiosis
which arose out of and in the course of his or her employ-
ment. This presumption is not conclusive.

(c) The findings and conclusions of the board shall set
forth, among other things, the following:

(1) Whether or not the claimant or the deceased em-
ployee has contracted occupational pneumoconiosis and,
if so, the percentage of permanent disability resulting
therefrom;

(2) Whether or not the exposure in the employment was
sufficient to have caused the claimant’s or deceased
employee’s occupational pneumoconiosis or to have
perceptibly aggravated an existing occupational pneumo-
coniosis or other occupational disease; and

(3) What, if any, physician appeared before the board on
behalf of the claimant or employer and what, if any,
medical evidence was produced by or on behalf of the
claimant or employer.

(d) If either party objects to the whole or any part of the
findings and conclusions of the board, the party shall file
with the commission or, on or after the first day of July,
one thousand nine hundred ninety-one, with the office of
judges, within thirty days from receipt of the copy to that
party, unless for good cause shown the commission or chief
administrative law judge extends the time, the party’s
objections to the findings and conclusions of the board in
writing, specifying the particular statements of the board’s
findings and conclusions to which such party objects. The
filing of an objection within the time specified is a condi-
tion of the right to litigate the findings and therefore jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the board, the commission or administrative law judge shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions stated in the report. If objection has been filed to the findings and conclusions of the board, notice of the objection shall be given to the board, and the members of the board joining in the findings and conclusions shall appear at the time fixed by the commission or office of judges for the hearing to submit to examination and cross-examination in respect to the findings and conclusions. At the hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board and to the taking of testimony of other qualified physicians and roentgenologists.

(e) In the event that a claimant receives a final decision that he or she has no evidence of occupational pneumoconiosis, the claimant is barred for a period of three years from the date of the occupational pneumoconiosis board's decision or until his or her employment with the employer who employed the claimant at the time designated as the claimant's last date of exposure in the denied claim has terminated, whichever is sooner, from filing a new claim or pursuing a previously filed, but unrulled upon, claim for occupational pneumoconiosis or requesting a modification of any prior ruling finding him or her not to be suffering from occupational pneumoconiosis. For the purposes of this subsection, a claimant's employment shall be considered to be terminated if, for any reason, he or she has not worked for that employer for a period in excess of ninety days. Any previously filed, but unrulled upon, claim shall
be consolidated with the claim in which the board's
decision is made and shall be denied together with the
decided claim. The provisions of this subsection shall not
be applied in any claim where doing so would, in and of
itself, later cause a claimant's claim to be forever barred
by the provisions of section fifteen of this article.

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

(a) The Legislature hereby finds that it is a goal of the
workers' compensation program to assist employees 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 is a priority of the
commission to achieve early identification of individuals
likely to need rehabilitation services and to assess the
rehabilitation needs of these injured employees. It is the
goal of rehabilitation to return injured employees to
employment which is 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 is 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
commission to cooperate in the development of a rehabili-
tation process designed to promote reemployment for the
injured employee.

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

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

(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be seventy percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in sections six, six-d and fourteen of this article as the calculation is performed for temporary total disability benefits, subject to the following limitations: In no event are the benefits subject to the minimum benefit amounts required by the provisions of subdivision (b), section six of this article, nor may the benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to sections six, six-d and fourteen of this article during any period of temporary total disability resulting from the injury in the claim. Provided, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid. Provided, however, That the aggregate award of temporary total rehabilitation or temporary partial rehabilitation benefits for a single injury for which an award of temporary total rehabilitation or temporary partial rehabilitation benefits is made on or after the effective
date of the amendment and reenactment of this section in
the year two thousand three shall be for a period not
exceeding fifty-two weeks unless the payment of tempo-
rary total rehabilitation disability benefits is in conjunc-
tion with an approved vocational rehabilitation plan for
retraining, in which event the payment period of tempo-
rary total rehabilitation disability benefits may be ex-
tended for a period not to exceed a total of one hundred
four weeks. The amount of temporary partial rehabilita-
tion benefits payable under this subsection shall be
reviewed every ninety days to determine whether the
injured employee’s average weekly wage in the new
employment has changed and, if the change has occurred,
the amount of benefits payable under this subsection shall
be adjusted prospectively. Temporary partial rehabilita-
tion benefits shall only be payable when the injured
employee is receiving vocational rehabilitation services in
accordance with a rehabilitation plan developed under this
section and no payment of temporary partial rehabilita-
tion benefits shall be made after the claimant has received
the vocational training provided under the rehabilitation
plan.

(e) The executive director, in consultation with the board
of managers, shall propose for promulgation rules for the
purpose of developing a comprehensive rehabilitation
program which will assist injured workers to return to
suitable gainful employment after an injury in a manner
consistent with the provisions and findings of this section.
The rules shall provide definitions for rehabilitation
facilities and rehabilitation services pursuant to this
section. Notwithstanding any other provision of this
chapter to the contrary, and in addition to the provisions
of section three of this article authorizing employers to
participate in a managed health care plan, including a
managed health care plan that provide physical and
vocational rehabilitation services, an employer may
contract directly with one or more providers of vocational
rehabilitation services to be the employer's preferred
provider of vocational rehabilitation services for its employees who receive injuries compensable under the provisions of this chapter and the rules promulgated under this section may require those employees to use the preferred providers.

§23-4-9b. Preexisting impairments not considered in fixing amount of compensation.

Where an employee has a definitely ascertainable impairment resulting from an occupational or a nonoccupational injury, disease or any other cause, whether or not disabling, and the employee thereafter receives an injury in the course of and resulting from his or her employment, unless the subsequent injury results in total permanent disability within the meaning of section one, article three of this chapter, the prior injury, and the effect of the prior injury, and an aggravation, shall not be taken into consideration in fixing the amount of compensation allowed by reason of the subsequent injury. Compensation shall be awarded only in the amount that would have been allowable had the employee not had the preexisting impairment. Nothing in this section requires that the degree of the preexisting impairment be definitely ascertained or rated prior to the injury received in the course of and resulting from the employee's employment or that benefits must have been granted or paid for the preexisting impairment. The degree of the preexisting impairment may be established at any time by competent medical or other evidence. Notwithstanding the foregoing provisions of this section, if the definitely ascertainable preexisting impairment resulted from an injury or disease previously held compensable and the impairment had not been rated, benefits for the impairment shall be payable to the claimant by or charged to the employer in whose employ the injury or disease occurred. The employee shall also receive the difference, if any, in the benefit rate applicable in the more recent claim and the prior claim.

§23-4-10. Classification of death benefits; "dependent" defined.
In case a personal injury, other than occupational 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 the date of the injury until the 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 are no dependents, the disbursements shall be limited to the expense provided for in sections three and four of this article;

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

(1) A dependent widow or widower until death or remarriage of the widow or widower, and any child or children dependent upon the decedent until each child reaches eighteen years of age or where the child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school, until the child reaches the age of twenty-five years, or if an invalid child, to continue as long as the child remains an invalid. All persons are jointly entitled to the amount of benefits payable as a result of employee's death;

(2) A wholly dependent father or mother until death; and

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

(c) If the deceased employee leaves no wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be fifty dollars a month
to continue for the portion of the period of six years after
the death, determined by the commission, but no partially
dependent person shall receive compensation payments as
a result of the death of more than one employee.
Compensation under subdivisions (b) and (c) of this
section shall, except as may be specifically provided to the
contrary in those subdivisions, cease upon the death of the
dependent, and the right to the compensation shall not
vest in his or her estate.
(d) "Dependent", as used in this chapter, means a widow,
widower, child under eighteen years of age, or under
twenty-five years of age when a full-time student as
provided in this section, invalid child or posthumous child,
who, at the time of the injury causing death, is dependent,
in whole or in part, for his or her support upon the earn-
ings of the employee, stepchild under eighteen years of
age, or under twenty-five years of age when a full-time
student as provided in this section, child under eighteen
years of age legally adopted prior to the injury causing
death, or under twenty-five years of age when a full-time
student as provided in this section, father, mother, grand-
father 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; and
(e) If a person receiving permanent total disability
benefits dies from a cause other than a disabling injury
leaving any dependents as defined in subdivision (d) of this
section, an award shall be made to the dependents in an
amount equal to one hundred four times the weekly
benefit the worker was receiving at the time of his or her
death and be paid either as a lump sum or in periodic
payments, at the option of the dependent or dependents.

§23-4-11. To whom death benefits paid.
The benefits, in case of death, shall be paid to one or more dependents of the decedent, or to any other persons, for the benefit of all of the dependents, as may be determined by the commission, who may apportion the benefits among the dependents in the manner as they consider just and equitable. Payment to a dependent subsequent in right may be made if the commission considers proper and it operates to discharge all other claims for the benefits.


The dependent or person to whom benefits are paid shall apply the benefits to the use of the several beneficiaries of the benefits according to their respective claims upon the decedent for support, in compliance with the finding and direction of the commission.


(a) The average weekly wage earnings, wherever earned, of the injured person at the date of injury and the average weekly wage in West Virginia as determined by the commission, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

(1) In cases involving occupational pneumoconiosis or other occupational diseases, the "date of injury" is the date of the last exposure to the hazards of occupational pneumoconiosis or other occupational diseases.

(2) In computing benefits payable on account of occupational pneumoconiosis, the commission shall deduct the amount of all prior workers' compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

(b) (1) Until the first day of July, one thousand nine hundred ninety-four, the expression "average weekly wage earnings, wherever earned, of the injured person, at the
20 date of injury", within the meaning of this chapter, shall
21 be computed based upon the daily rate of pay at the time
22 of the injury or upon the average pay received during the
23 two months, six months or twelve months immediately
24 preceding the date of the injury, whichever is most favor-
25 able to the injured employee, except for the purpose of
26 computing temporary total disability benefits for part-
27 time employees pursuant to the provisions of section six-d
28 of this article.

29 (2) On and after the first day of July, one thousand nine
30 hundred ninety-four, the expression "average weekly wage
31 earnings, wherever earned, of the injured person, at the
32 date of injury", within the meaning of this chapter, shall
33 be computed based upon the daily rate of pay at the time
34 of the injury or upon the weekly average derived from the
35 best quarter of wages out of the preceding four quarters of
36 wages as reported to the commission pursuant to subsec-
37 tion (b), section two, article two of this chapter, whichever
38 is most favorable to the injured employee, except for the
39 purpose of computing temporary total disability benefits
40 for part-time employees pursuant to the provisions of
41 section six-d of this article.

42 (c) The expression "average weekly wage in West
43 Virginia", within the meaning of this chapter, is the
44 average weekly wage in West Virginia as determined by
45 the commissioner of the bureau of employment programs
46 in accordance with the provisions of sections ten and
47 eleven, article six, chapter twenty-one-a of this code and
48 other applicable provisions of said chapter.

49 (d) In any claim for injuries, including occupational
50 pneumoconiosis and other occupational diseases, occurring
51 on or after the first day of July, one thousand nine hun-
52 dred seventy-one, any award for temporary total, perma-
53 nent partial or permanent total disability benefits or for
54 dependent benefits shall be paid at the weekly rates or in
55 the monthly amount in the case of dependent benefits
56 applicable to the claimant in effect on the date of the

(a) To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application for compensation shall be made on the form or forms prescribed by the commission and filed with the commission within six months from and after the injury or death, as the case may be, and unless filed within the six months period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, and all proofs of dependency in fatal cases must also be filed with the commission within six months from and after the death. In case the employee is mentally or physically incapable of filing the application, it may be filed by his or her attorney or by a member of his or her family.

(b) To entitle any employee to compensation for occupational pneumoconiosis under the provisions of this subsection, the application for compensation shall be made on the form or forms prescribed by the commission and filed with the commission within three years from and after the last day of the last continuous period of sixty days or more during which the employee was exposed to the hazards of occupational pneumoconiosis or within three years from and after a diagnosed impairment due to occupational pneumoconiosis was made known to the employee by a physician and unless filed within the three-year period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, or, in the case of death, the application shall be filed by the dependent of the employee within one year from and after the em-
ployee's death, and such time limitation is a condition of
the right and hence jurisdictional.

(c) To entitle any employee to compensation for occupa-
tional disease other than occupational pneumoconiosis
under the provisions of this section, the application for
compensation shall be made on the form or forms pre-
scribed by the commission and filed with the commission
within three years from and after the day on which the
employee was last exposed to the particular occupational
hazard involved or within three years from and after the
employee's occupational disease was made known to him
or her by a physician or which he or she should reasonably
have known, whichever last occurs, and unless filed within
the three-year period, the right to compensation under this
chapter shall be forever barred, such time limitation being
hereby declared to be a condition of the right and there-ore jurisdictional, or, in case of death, the application
shall be filed as aforesaid by the dependent of the em-
ployee within one year from and after the employee's
death, and such time limitation is a condition of the right
and hence jurisdictional.

§23-4-15a. Nonresident alien beneficiaries.

Notwithstanding any other provisions of this chapter,
nonresident alien beneficiaries are entitled to the same
benefits as citizens of the United States: Provided, That
the commission in its discretion may make, and the
beneficiary shall accept, commutation of the benefits into
a lump sum settlement and payment. Nonresident alien
beneficiaries within the meaning of this section means
persons not citizens of the United States residing outside
of the territorial limits of the United States at the time of
the injury with respect to which benefits are awarded.

§23-4-15b. Determination of nonmedical questions by commis-
sion; claims for occupational pneumoconiosis; hearing.
If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the last day of the last continuous period of sixty days' exposure to the hazards of occupational pneumoconiosis, the commission shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his or her claim, whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by an employee by a physician, the commission shall determine whether the claimant filed his or her application within that period and whether in the state of West Virginia the claimant was exposed to the hazard over a continuous period of not less than two years during the ten years immediately preceding the date of last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by a dependent of a deceased employee, the commission shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within ten years prior to the filing of the claim, whether in the state of West Virginia the deceased employee was exposed to the hazard over a continuous period of not less than two years during the ten years
immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure to the hazard. The commission shall also determine other nonmedical facts that, in the commission’s opinion, are pertinent to a decision on the validity of the claim.

The commission shall enter an order with respect to nonmedical findings within ninety days following receipt by the commission of both the claimant’s application for occupational pneumoconiosis benefits and the physician’s report filed in connection with the claimant’s application and shall give each interested party notice in writing of these findings with respect to all the nonmedical facts. The findings and actions of the commission are final unless the employer, employee, claimant or dependent, within thirty days after receipt of the notice, objects to the findings, and unless an objection is filed within the thirty-day period, the findings are forever final, the time limitation is a condition of the right to litigate the findings and therefor jurisdictional. Upon receipt of an objection, the chief administrative law judge shall set a hearing as provided in section nine, article five of this chapter. In the event of an objection to the findings by the employer, the claim shall, notwithstanding the fact that one or more hearings may be held with respect to the objection, mature for reference to the occupational pneumoconiosis board with like effect as if the objection had not been filed. If the administrative law judge concludes after the protest hearings that the claim should be dismissed, a final order of dismissal shall be entered. The final order is subject to appeal in accordance with the provisions of sections ten and twelve, article five of this chapter. If the administrative law judge concludes after the protest hearings that the claim should be referred to the occupational pneumoconiosis board for its review, the order entered shall be interlocutory only and may be appealed only in conjunction with
§23-4-16. Commission's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

(a) The power and jurisdiction of the commission over each case is continuing and the commission may, in accordance with the provisions of this section and after due notice to the employer, make modifications or changes with respect to former findings or orders that are justified. Upon and after the second day of February, one thousand nine hundred ninety-five, the period in which a claimant may request a modification, change or reopening of a prior award that was entered either prior to or after that date shall be determined by the following subdivisions of this subsection. Any request that is made beyond that period shall be refused.

(1) Except as provided in section twenty-two of this article, in any claim which was closed without the entry of an order regarding the degree, if any, of permanent disability that a claimant has suffered, or in any case in which no award has been made, any request must be made within five years of the closure. During that time period, only two requests may be filed.

(2) Except as stated below, in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award. During that time period, only two requests may be filed. With regard to those occupational diseases, including occupational pneumoconiosis, which are medically recognized as progressive in nature, if any such request is granted by the commission, a new five-year period begins upon the date of the subsequent award. With the advice of the health care advisory panel, the executive director and
the board of managers shall by rule designate those
progressive diseases which are customarily the subject of
claims.

(3) No further award may be made in fatal cases except
within two years after the death of the employee.

(4) With the exception of the items set forth in subsection
(d), section three of this article, in any claim in which
medical or any type of rehabilitation service has not been
rendered or durable medical goods or other supplies have
not been received for a period of five years, no request for
additional medical or any type of rehabilitation benefits
shall be granted nor shall any medical or any type of
rehabilitation benefits or any type of goods or supplies be
paid for by the commission if they were provided without
a prior request. For the exclusive purposes of this subdivi-
sion, medical services and rehabilitation services shall not
include any encounter in which significant treatment was
not performed.

(b) In any claim in which an injured employee makes
application for a further period of temporary total disabil-
ity, if the application is in writing and filed within the
applicable time limit stated above, the commission shall
pass upon the request within thirty days of the receipt of
the request. If the decision is to grant the request, the
order shall provide for the receipt of temporary total
disability benefits. In any case in which an injured
employee makes application for a further award of
permanent partial disability benefits or for an award of
permanent total disability benefits, if the application is in
writing and filed within the applicable time limit as stated
above, the commission shall pass upon the request within
thirty days of its receipt and, if the commission determines
that the claimant may be entitled to an award, the com-
mission shall refer the claimant for further examinations
that are necessary.
(c) If the application is based on a report of any medical examination made of the claimant and submitted by the claimant to the commission in support of his or her application and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of the examination. The reimbursement shall be made by the commission to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished the commission by the claimant, but shall in no case exceed the sum fixed pursuant to the commission's schedule of maximum reasonable fees established under the provisions of section three of this article.

(d) The commission has continuing power and jurisdiction over claims in which permanent total disability awards have been made after the eighth day of April, one thousand nine hundred ninety-three.

(1) The commission shall continuously monitor permanent total disability awards and may, from time to time, after due notice to the claimant, reopen a claim for reevaluation of the continuing nature of the disability and possible modification of the award. At such times as the commission may determine, the commission may require the claimant to provide documents and other information to the commission, including, but not limited to, tax returns, financial records and affidavits demonstrating level of income, recreational activities, work activities, medications used and physicians or other medical or rehabilitation providers treating or prescribing medication or other services for the claimant; require the claimant to appear under oath before the commission or its duly authorized representative and answer questions; and suspend or terminate any benefits of a claimant who willfully fails to provide the information or appear as required: Provided, That the commission shall develop, implement and complete a program as soon as reasonably possible that requires each person receiving permanent
total disability benefits on the effective date of the amend-ment and reenactment of this section in the year two thousand three, and each person who is awarded those benefits thereafter, to submit the tax returns and the affidavit described herein at least once: Provided, however, That this requirement does not restrict the commis-sion's authority to require the information that may be required herein at such other times as the commission may determine. The commission may reopen a claim for reevaluation when, in the commission's sole discretion, it concludes that there exists good cause to believe that the claimant no longer meets the eligibility requirements under subdivision (n), section six of this article. The eligibility requirements, including any vocational stan-dards, shall be applied as those requirements are stated at the time of a claim's reopening.

(2) Upon reopening a claim under this subsection, the commission may take evidence, have the claimant evaluated, make findings of fact and conclusions of law and shall vacate, modify or affirm the original permanent total disability award as the record requires. The claimant's former employer shall not be a party to the reevaluation, but shall be notified of the reevaluation and may submit any information to the commission as the employer may elect. In the event the claimant retains his or her award following the reevaluation, the claimant's reasonable attorneys' fees incurred in defending the award shall be paid by the workers' compensation commission from the workers' compensation fund. In addition, the workers' compensation commission shall reimburse a prevailing claimant for his or her costs in obtaining one evaluation on each issue during the course of the reevaluation with the reimbursement being made from the fund. The board of managers shall adopt criteria for the determination of reasonable attorneys' fees.

(3) This subsection shall not be applied to awards made under the provisions of subdivision (m), section six of this
article. The claimant may seek review of the commission's final order as otherwise provided for in article five of this chapter for review of orders granting or denying permanent disability awards.

(4) The commission shall establish by rule criteria for review, reopening and reevaluating a claim under this subsection. The commission shall at least quarterly provide a report of the exercise of its authority to continually monitor permanent total disability awards under this section to the joint committee on government and finance and the joint commission on economic development.

(e) A claimant may have only one active request for a permanent disability award pending in a claim at any one time. Any new request that is made while another is pending shall be consolidated into the former request.

§23-4-16a. Interest on benefits.

Whenever any award of temporary total, permanent partial or permanent total disability benefits or dependent benefits is made on or after the first day of July, one thousand nine hundred seventy-one, and a protest is filed to the award or an appeal is taken from the award by an employer only and not by the claimant or dependent and the award is not ultimately denied or reduced following the protest or appeal, the commission shall add interest to the award at the simple rate of six percent per annum from the date the award would have been payable had the protest or appeal not been filed or taken, exclusive of any period for which a continuance was granted upon motion of any party other than the protesting or appealing employer. Any interest payable shall be charged to the account of the protesting or appealing employer to the extent that the benefits upon which such interest is computed are charged to the account of the employer.

§23-4-17. Commutation of periodical benefits.
The commission, under special circumstances and when it is considered advisable, may commute periodical benefits to one or more lump-sum payments. Upon the application of any claimant who has received an award of partial or total disability, who is not a citizen of the United States and desires to reside permanently beyond the territorial limits of the United States, or upon the application of an alien dependent of a deceased employee with respect of whose death award of compensation has been made, the dependent residing in the territorial limits of the United States at the time of the decedent's death, and desiring to reside permanently beyond the territorial limits of the United States, the commission may commute into one lump-sum payment the periodical payments to which the claimant or dependent would be entitled, but at the rate of one-half the amount that would be payable to a citizen of the United States under like circumstances. The lump-sum payment at the rate specified in this section discharges all liability with respect to the award, but in no event shall the award be paid until the claimant or dependent has actually arrived and domiciled himself or herself outside the territorial limits of the United States, except a sufficient portion of the award to pay transportation and other necessary expenses.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

Except as provided by this section, compensation shall be paid only to the employees or their dependents and is exempt from all claims of creditors and from any attachment, execution or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in section sixteen, article five of this chapter, and other than for the enforcement of orders for child or spousal support entered pursuant to the provisions of chapter forty-eight of this code. Payments may be made in the periodic installments determined by the commission in each case, but in no
event less frequently than semimonthly for any temporary
award and monthly for any permanent award. Payments
for permanent disability shall be paid on or before the
third day of the month in which they are due. In all cases
where compensation is awarded or increased, the amount
of compensation shall be calculated and paid from the date
of disability.

§23-4-20. Postmortem examinations.

The commission may, after due notice to the employer
and claimant, whenever it considers it necessary, order an
autopsy and may designate a duly licensed physician to
make the postmortem examination or examinations that
are necessary to determine the cause of the deceased
employee's death. The physician shall file with the
commission a written report of his or her findings. The
claimant and the employer, respectively, have the right to
select a physician of his, her or its own choosing and, at
his, her or its own expense, to participate in the postmor-
tem examination. The respective physicians selected by
the claimant and the employer have the right to concur in
any report made by the physician selected by the commis-
sion, or each may file with the commission a separate
report. In any case, including silicosis cases, in which
either the employer or a claimant requests that an autopsy
be performed, the autopsy shall be directed as provided in
this section. In the event that a claimant for compensation
for the death refuses to consent and permit the autopsy to
be made all rights to compensation shall be forfeited.

§23-4-22. Permanent disability evaluations; limitations; notice.

Notwithstanding any provision in this chapter to the
contrary, any claim which was closed for the receipt of
temporary total disability benefits or which was closed on
a no-lost-time basis and which was more than five years
prior to the effective date of this section shall not be
considered to still be open or the subject for an evaluation
of the claimant for permanent disability merely because an
Provided, That if a request for an evaluation was made in a claim prior to the twenty-ninth day of March, one thousand nine hundred ninety-three, the commission shall have the evaluation performed. In every instance, a claim shall be a case in which no award has been made for the purposes of section sixteen of this article. In every claim closed after the effective date of this section, the commission shall give notice to the parties of the claimant's right to a permanent disability evaluation.

§23-4-23. Permanent total disability benefits; reduction of disability benefits; reduction of benefits; application of section; severability.

(a) This section is applicable whenever benefits are being paid for permanent total disability benefits arising under subdivision (d), (m) or (n), section six of this article or under section eight-c of this article. This section is not applicable to the receipt of temporary total disability benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons or to the receipt of benefits pursuant to the provisions of subsection (e), section ten of this article. This section is not applicable to the receipt of medical benefits or the payment for medical benefits.

(b) Whenever applicable benefits are paid to a beneficiary with respect to the same time period for which payments under a self-insurance plan, a wage continuation plan or a disability insurance policy provided by an employer are also received or being received by the beneficiary, the applicable benefits shall be reduced by these amounts:

(1) The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan or under a disability insurance policy provided by an employer if the employee did not contribute directly
to the plan or to the payment of premiums regarding the disability insurance policy; or

(2) The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by an employer if the employee did contribute directly to the payment of premiums regarding the disability insurance policy. Provided, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided for in subdivisions (b) and (d), section six of this article.

(c) This section applies to awards of permanent total disability made after the effective date of this section.

(d) The board of managers shall promulgate the appropriate rules for the interpretation, processing and enforcement of this section.

(e) If any portion of this section or any application of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this section or the applications of the section that are not unconstitutional or in violation.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

(a) Notwithstanding any provision of this chapter to the contrary, except as stated below, no claimant shall be awarded permanent total disability benefits arising under subdivision (a) or (n), section six of this article or section eight-c of this article who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act, 42 U. S. C. §401 and 402. Any claimant shall be evaluated only for the purposes of receiving a
permanent partial disability award premised solely upon
the claimant's impairments. This subsection is not appli-
cable in any claim in which the claimant has completed
the submission of his or her evidence on the issue of
permanent total disability prior to the later of the follow-
ing: Termination of active employment or the initial
receipt of full old-age retirement benefits under the Social
Security Act. Once the claimant has terminated active
employment and has begun to receive full old-age social
security retirement benefits, the claimant may not produce
additional evidence of permanent total disability before
the commission or the office of judges nor shall the claim
be remanded for the production of the evidence.

(b) The workers' compensation commission has the sole
and exclusive jurisdiction to initially hear and decide any
claim or request pertaining, in whole or in part, to subdi-
vision (d) or (n), section six of this article. Any claim or
request for permanent total disability benefits arising
under said subdivisions shall first be presented to the
commission as part of the initial claim filing or by way of
an application for modification or adjustment pursuant to
section sixteen of this article. The office of judges may
consider a claim only after the commission has entered an
appropriate order.

§23-4-25. Permanent total disability benefits; reduction of
disability benefits for wages earned by claimant.

(a) After the eighth day of April, one thousand nine
hundred ninety-three, a reduction in the amount of
benefits as specified in subsection (b) of this section shall
be made whenever benefits are being paid for a permanent
total disability award regardless of when the benefits were
awarded. This section is not applicable to the receipt of
medical benefits or the payment for medical benefits, the
receipt of permanent partial disability benefits, the receipt
of benefits by partially or wholly dependent persons, or to
the receipt of benefits pursuant to the provisions of
subsection (e), section ten of this article. Prior to the
application of this section to any claimant, the commission
shall give the claimant notice of the effect of this section
upon a claimant’s award if and when the claimant later
earns wages.

(b) Whenever applicable benefits are paid to a claimant
with respect to the same time period in which the claimant
has earned wages as a result of his or her employment, the
following reduction in applicable benefits shall be made.
The claimant’s applicable monthly benefits and monthly
net wages received from the current employment shall be
added together. If the total exceeds by more than one
hundred twenty percent of the amount of the claimant’s
monthly net wages earned during his or her last employ-
ment prior to the award of permanent total disability
benefits, the excess shall be reduced by one dollar for each
two dollars that the claimant’s monthly benefits and
monthly net wages exceed the one hundred twenty percent
level: Provided, That in no event shall applicable benefits
be reduced below the minimum weekly benefits as pro-
vided for in subdivisions (b) and (d), section six of this
article.

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-1. Disabled workers’ relief fund created.

For the relief of persons who are receiving benefits
pursuant to a permanent total disability award in amounts
less than thirty-three and one-third percent of the average
weekly wage for the state of West Virginia per month, and
for the relief of widows who are receiving benefits on
account of the death of an employee in amounts less than
thirty-three and one-third percent of the average weekly
wage in the state of West Virginia per month, and for the
relief of children of employees deceased before one thou-
sand nine hundred sixty-seven, who are under the age of
twenty-three and who are full-time students, and for the
relief of other persons who are receiving dependents’
benefits on account of the death of an employee in
amounts less than the specific monetary amounts set forth in section ten, article four of this chapter and in effect as of the first day of July, one thousand nine hundred seventy-three, there is continued a separate fund, heretofore known as the “Disabled Workmen's Relief Fund”, and which shall hereafter be known as the “Disabled Workers' Relief Fund”, which shall consist of any sums that are, from time to time, made available to carry out the objects and purposes of this article. The fund shall be in the custody of the state treasurer and disbursements from the fund shall be made upon requisition signed by the executive director to those persons entitled to participate in the fund and in such amounts to each participant that are provided in section three of this article.


Each individual entitled to participate in the disabled workers' relief fund is entitled to receive payments without application (except that an application shall be required under section five of this article) from the fund of an amount equal to the difference between the amounts set forth in section one of this article and the amount the individual is in fact receiving by virtue of and under the laws of this state. The first payment shall be made concurrently with the payment to him or her of workers' compensation on the first day of August, one thousand nine hundred seventy-six, and subsequent payments shall be made during the period thereafter in which the participant is entitled to workers' compensation benefits by virtue of and under the laws of this state.

§23-4A-5. Employers providing own system of compensation.

The executive director shall promptly require of each employer who has elected to pay direct compensation under the provisions of section nine, article two of this chapter a verified list of the names and addresses of all persons to whom the employer is paying workers' compensation on account of permanent total disability or because
7 of the death of an employee and any evidence respecting
8 those persons as the executive director may reasonably
9 consider necessary to determine the eligibility of any
10 person to participate in the disabled workers' relief fund.
11 Any person claiming the right to participate in the fund
12 under the provisions of this section may file his or her
13 application for participation with the executive director
14 and shall be accorded a hearing on the application.

§23-4A-6. Powers of commission over disabled workers' relief
fund.

1 In the investigation and determination of the right of
2 persons to participate in the disabled workers' relief fund,
3 the executive director has and may exercise all the powers
4 which he or she possesses under the other articles of this
5 chapter. His or her powers and jurisdiction over each case
6 is continuing, but there shall be no appeal from the com-
7 mission's decisions to any other body or tribunal. No
8 attorney, representative or agent of any claimant or
9 participant is entitled to charge or receive a fee or com-
10 pensation or gratuity in any form for representing or
11 assisting or pretending to represent or assist any person to
12 become a participant in the disabled workers' relief fund.

§23-4A-8. Disabled workers' relief fund; how funded.

1 For the purpose of carrying out the provisions of this
2 article, the board of managers shall transfer annually, out
3 of the interest earned during the previous year on invest-
4 ments held by the workers' compensation fund, and out of
5 the amount assessed against self-insured employers
6 pursuant to the provisions of section nine, article two of
7 this chapter an amount estimated by the executive director
8 to be necessary to carry out the provisions of this article
9 for one year.

10 The money shall be deposited by the board of managers
11 in the disabled workers' relief fund, as required by this
12 article.
ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.

1 For the relief of persons who are entitled to receive
2 benefits by virtue of Title IV of the federal Coal Mine
3 Health and Safety Act of 1969, as amended, there is
4 continued a fund to be known as the coal-workers' pneu-
5 moconiosis fund, which fund shall be separate from the
6 workers' compensation fund. The coal-workers' pneumo-
7 coniosis fund shall consist of premiums and other funds
8 paid to the fund by employers, subject to the provisions of
9 Title IV of the federal Coal Mine Health and Safety Act of
10 1969, as amended, who shall elect to subscribe to the fund
11 to ensure the payment of benefits required by the act.
12
13 The state treasurer shall be the custodian of the coal-
14 workers' pneumoconiosis fund, and all premiums, deposits
15 or other moneys paid to the fund shall be deposited in the
16 state treasury to the credit of the coal-workers' pneumoco-
17 niosis fund. Disbursements from the fund shall be made
18 upon requisition signed by the executive director of the
19 workers' compensation commission to those persons
20 entitled to participate in the fund. The West Virginia state
21 board of investments may invest any surplus, reserve or
22 other moneys belonging to the coal-workers' pneumoconi-
23 osis fund in accordance with article six, chapter twelve of
24 this code.

§23-4B-5. Payment of benefits.
1 Upon receipt of an order of compensation issued pursu-
2 ant to a claim for benefits filed under the provisions of
3 Title IV of the federal Coal Mine Health and Safety Act of
4 1969, as amended, the executive director shall disburse the
5 coal-workers' pneumoconiosis fund in the amounts and to
6 the persons as directed by the order.

§23-4B-6. Coal-workers' pneumoconiosis fund; how funded.
1 For the purpose of creating the coal-workers' pneumoco-
2 niosis fund, each employer, who elects to subscribe to the
fund, shall pay premiums based upon and being a percentage of the payroll of the employer determined by the board of managers. It is the duty of the board of managers to fix and maintain the lowest possible rates of premiums consistent with the maintenance of a solvent fund and the creation and maintenance of a reasonable surplus after providing for payment to maturity of all liability insured pursuant to Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended. The rates shall be adjusted annually or more often as may, in the opinion of the board of managers, be necessary.

The board of managers may by rule classify subscribers into groups or classes according to the nature of the hazards incident to the business of the subscribers and assign premium rates to the subscribers. In addition, the board of managers may by rule prescribe procedures for subscription, payroll reporting, premium payment, termination of subscription, reinstatement and other matters pertinent to the subscribers' continuing participation in the coal-workers' pneumoconiosis fund.

§23-4B-7. Administration.

The coal-workers' pneumoconiosis fund shall be administered by the executive director of the workers' compensation commission, who shall employ any employees necessary to discharge his or her duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the state treasurer from the coal-workers' pneumoconiosis fund upon requisitions signed by the executive director.

§23-4B-8b. Transfer of funds to workers' compensation fund.

(a) Notwithstanding any provision of section eight of this article to the contrary, the assets which were previously transferred from the coal-workers' pneumoconiosis fund and held in a separate account may, on or after the first
day of July, two thousand three, be expended for workers' compensation fund liabilities.

(b) The Legislature hereby finds and declares that there is a substantial actuarial surplus in the coal-workers' pneumoconiosis fund in excess of one hundred seventy million dollars. The Legislature further finds and declares that there is a substantial actuarial deficit in the workers' compensation fund. The executive director shall conduct an actuarial audit to determine the amount of the actuarial surplus in the coal-workers' pneumoconiosis fund as of the thirtieth day of June, two thousand three, and certify the amount, as of that date, in a written order which together with the results of the audit shall be a public record. The executive director shall also obtain a statement from the commission's actuary that a distributable surplus exists in the coal-workers' pneumoconiosis fund. When the actuary provides the statement, and notwithstanding any provision of this article to the contrary, the executive director shall, by written order, transfer an amount not to exceed one hundred seventy million dollars from the coal-workers' pneumoconiosis fund to the workers' compensation fund, which assets shall thereupon become merged into and consolidated with the workers' compensation fund and expended for workers' compensation fund liabilities: Provided, That a level of reserve shall be retained in the coal-workers' pneumoconiosis fund sufficient within a seventy percent confidence level, on an actuarial basis, to satisfy the payment of all claims incurred, including claims which were incurred but not reported, on or before the thirtieth day of June, two thousand three. In the event the commission's actuary or an actuary employed by the board of managers determines prior to the thirtieth day of June, two thousand six, that the assets of the coal-workers' pneumoconiosis fund are not adequate to enable the coal-workers' pneumoconiosis fund to meet its claim obligations under Title IV of the federal Coal Mine Health and Safety Act of 1996, as amended, the executive director shall, upon appropriation
of the Legislature, transfer an amount not to exceed fifty
million dollars from the workers' compensation fund to the
coal-workers' pneumoconiosis fund for expenditure to
meet those obligations.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-2. Employers' excess liability fund established.
(a) To provide insurance coverage for employers subject
to this chapter who may be subjected to liability for any
excess of damages over the amount received or receivable
under this chapter, the commission may continue the fund
known as the employers' excess liability fund, which fund
shall be separate from the workers' compensation fund.
The employers' excess liability fund shall consist of
premiums paid to it by employers who may voluntarily
elect to subscribe to the fund for coverage of potential
liability to any person who may be entitled to any excess
of damages over the amount received or receivable under
this chapter.
(b) The board of managers may provide for, by the
promulgation of a rule pursuant to section one-a, article
one of this chapter, the continuance, abolition or sale of
the employers' excess liability fund established by section
one of this article. In the event that the fund is to be sold,
the sale shall be conducted through the solicitation of
competitive bids. Any funds that remain after the sale or
abolition of the employers' excess liability fund shall be
paid into and become a part of the workers' compensation
fund to be used for the purposes of that fund. In the event
that the employers' excess liability fund program is
abolished and the remaining liabilities of that program
exceed the amount retained in the employers' excess
liability fund, the excess liability including the costs of
administration shall be paid for from the workers' com-
pensation fund.

§23-4C-3. Payment of excess damages from fund.
Upon receipt of a final order of a court determining the liability under section two, article four of this chapter of a subscribing employer and the amount of the excess of damages over the amount received or receivable under this chapter, the executive director shall make disbursements from the employers' excess liability fund in the amounts and to the persons as directed by the final order. In the event of a proposed settlement of a disputed claim against a subscribing employer, the executive director, upon approving the settlement upon petition by the subscribing employer, shall make disbursements from the employers' excess liability fund in the amounts and to the persons specified in the approved settlement. In the event of the settlement of any disputed claim in which one or more of the persons entitled to the proceeds to be paid pursuant to the settlement is under a legal disability by reason of age, mental incapacity or other reason, the settlement, if required by other provisions of law to be approved by a circuit court, shall be approved by the circuit court of the county in which the person under disability is a resident or in which a civil action could be brought and maintained upon the claim, in addition to being approved by the commission as required by this section. The executive director shall by rule establish criteria and procedures for the settlement of all disputed claims.

§23-4C-4. Employers' excess liability fund; how funded.

For the purpose of creating the employers' excess liability fund, each employer who elects to subscribe to the fund shall pay premiums based upon and being a percentage of the payroll of the employer determined by the board of managers. It is the duty of the board of managers to fix and maintain the lowest possible rates or premiums consistent with the maintenance of a solvent fund. The premium rates shall be adjusted annually or more often as may, in the opinion of the board of managers, be necessary.

The board of managers shall initially classify subscribers into groups or classes according to the nature of the
unusual hazards incident to the business of the subscribers as contemplated by section four, article two of this chapter and assign premium rates to the subscribers. The fixing, maintaining and adjusting of premium rates and the initial classification of subscribers into groups or classes pursuant to this section are findings or determinations of fact and not a legislative rule. In addition, the board of managers shall by rule prescribe procedures for subscription, payroll reporting, premium payment, termination of subscription, reinstatement, reclassification of groups, classes or subscribers, the increase or decrease of premiums based upon incidence of liability and amounts awarded, and other matters pertinent to the subscribers' continuing participation in the employers' excess liability fund.

§23-4C-5. Administration.

The employers' excess liability fund shall be administered by the executive director, who shall employ any employees that are necessary to discharge his or her duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the state treasurer from the employers' excess liability fund upon requisitions signed by the executive director.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured of decision; procedures on claims; objections and hearing.

(a) The workers' compensation commission may hear and determine all questions within its jurisdiction. In matters arising under articles three and four of this chapter, the commission shall promptly review and investigate all claims. The parties to a claim shall file the information in support of their respective positions as they consider proper. In addition, the commission may develop additional information that it considers to be necessary in the interests of fairness to the parties and in keeping with the
fiduciary obligations owed to the fund. With regard to any
issue which is ready for a decision, the commission shall
explain the basis of its decisions.

(b) Except with regard to interlocutory matters and
those matters set forth in subsection (d) of this section,
upon making any decision, upon making or refusing to
make any award or upon making any modification or
change with respect to former findings or orders, as
provided by section sixteen, article four of this chapter,
the commission shall give notice, in writing, to the em-
ployer, employee, claimant or dependant as the case may
be, of its action. The notice shall state the time allowed for
filing an objection to the finding. The action of the
commission is final unless the employer, employee, claim-
ant or dependant shall, within thirty days after the receipt
of the notice, object in writing, to the finding. Unless an
objection is filed within the thirty-day period, the finding
or action is final. This time limitation is a condition of the
right to litigate the finding or action and hence jurisdic-
tional. Any objection shall be filed with the office of
judges with a copy served upon the commission and other
parties in accordance with the procedures set forth in
sections eight and nine of this article. In all instances
where a self-insured employer or a third-party administra-
tor has made claims decisions as authorized in this chap-
ter, they shall provide claimants and the commission
notice of all claims decisions as provided for by rules for
self-administration promulgated by the board of managers
and shall be bound by each requirement imposed upon the
commission by this article.

(c) Where a finding or determination of the commission
is protested only by the employer, and the employer does
not prevail in its protest, and in the event the claimant is
required to attend a hearing by subpoena or agreement of
counsel or at the express direction of the commission or
office of judges, then the claimant in addition to reason-
able traveling and other expenses shall be reimbursed for
loss of wages incurred by the claimant in attending the
hearing.

(d) The commission or self-insured employer may amend,
correct or set aside any order or decision on any issue
entered by it which, at the time of issuance or any time
thereafter, is discovered to be defective or clearly errone-
ous or the result of mistake, clerical error or fraud, or
otherwise not supported by the evidence. Jurisdiction to
take this action continues until the expiration of two years
from the date of entry of an order unless the order is
sooner affected by appellate action: Provided, That
corrective actions in the case of fraud may be taken at any
time.

(e) All objections to orders of the commission or self-
insured employers shall be styled in the name of the
workers' compensation commission. All appeals prose-
cuted from the office of judges shall either be in the name
of the workers' compensation commission or shall be
against the workers' compensation commission unless the
parties to the appeal are limited to a claimant and a self-
insured employer. In all actions under this article, the
workers' compensation commission shall be the party in
interest unless the parties to the appeal are limited to a
claimant and a self-insured employer.

§23-5-2. Application by employee for further adjustment of
claim; objection to modification; hearing.

In any case where an injured employee makes applica-
tion in writing for a further adjustment of his or her claim
under the provisions of section sixteen, article four of this
chapter and the application discloses cause for a further
adjustment, the commission shall, after due notice to the
employer, make the modifications, or changes with respect
to former findings or orders in the claim that are justified.
Any party dissatisfied with any modification or change
made by the commission is, upon proper and timely
§23-5-3. Refusal to reopen claim; notice; objection.

If it appears to the commission that an application filed under section two of this article fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered by the commission in its former findings and which would entitle the claimant to greater benefits than the claimant has already received, the commission shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within thirty days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the thirty-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the office of judges shall afford the claimant an evidentiary hearing as provided in section nine of this article.

§23-5-4. Application by employer for modification of award; objection to modification; hearing.

In any case in which an employer makes application in writing for a modification of any award previously made to an employee of the employer, the commission shall make a decision upon the application. If the application discloses cause for a further adjustment, the commission shall, after due notice to the employee, make the modifications or changes with respect to former findings or orders that are justified. Any party dissatisfied with any modification or change made by the commission or by the denial of an application for modification is, upon proper and timely objection, entitled to a hearing as provided in section nine of this article.
§23-5-5. Refusal of modification; notice; objection.

1 If in any case it appears to the commission that the application filed pursuant to section four of this article fails to disclose some fact or facts which were not previously considered by the commission in its former findings, and which would entitle the employer to any modification of the previous award, the commission shall, within sixty days from the receipt of the application, notify the claimant and employer that the application fails to establish a just cause for modification of the award. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The employer may, within thirty days after receipt of the notice, object in writing to the decision. Unless the objection is filed within the thirty-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the office of judges shall afford the employer an evidentiary hearing as provided in section nine of this article.

§23-5-6. Time periods for objections and appeals; extensions.

1 Notwithstanding the fact that the time periods set forth for objections, protests and appeals to or from the workers' compensation office of judges are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion the administrative law judge, appeal board or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.


1 With the exception of medical benefits for nonorthopedic occupational disease claims, the claimant, the employer
and the workers’ compensation commission may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or appellate processes. Upon entering into an agreement, the parties shall file the written and executed agreement with the office of judges. The office of judges shall review the proposed agreement to determine if it is fair and reasonable to the parties and shall ensure that each of the parties is fully aware of the effects of the agreement including what each party is conceding in exchange for the agreement. If the office of judges concludes that the agreement is not fair or is not reasonable or that one of the parties is not fully informed, the agreement will not be approved. The decision on this question is not reviewable. If the employer is not active in the claim, the commission may negotiate a final settlement of any and all issues in a claim except for medical benefits for nonorthopedic occupational disease claims with the claimant. Upon approval of the settlement, it shall be made a part of the claim record. The office of judges shall send written notice of the settlement to all parties and, where appropriate, to the appeal board or the supreme court of appeals. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the commission. Any settlement agreement may provide for a lump-sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. If a self-insured employer later fails to make the agreed-upon payment, the commission shall assume the obligation to make the payments and shall recover the amounts paid or to be paid from the self-insured employer and its sureties or 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 the effective date.

§23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge.
(a) The workers' compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the Legislature, one thousand nine hundred ninety, second extraordinary session, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The office of judges shall be under the supervision of a chief administrative law judge who shall be appointed by the governor, with the advice and consent of the Senate.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the workers' compensation board of managers. The salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six, chapter twenty-nine of this code. The chief administrative law judge may only be removed by a vote of two thirds of the members of the workers' compensation board of managers and shall not be removed except for cause and then only after he or she has been presented in writing with the reasons for his or her removal and is given opportunity to respond and to present evidence. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee is applicable to the chief administrative law judge.

(c) The chief administrative law judge shall employ administrative law judges and other personnel that are necessary for the proper conduct of a system of administrative review of orders issued by the workers' compensation commission which orders have been objected to by a party. The employees shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be
governed by the provisions of this code and rules of the
classified service pursuant to article six, chapter
twenty-nine of this code. All additional administrative
law judges shall be persons who have been admitted to the
practice of law in this state and shall also have had at least
two years of experience as an attorney. The chief adminis-
trative law judge shall supervise the other administrative
law judges and other personnel which collectively shall be
referred to in this chapter as the office of judges.

(d) The administrative expense of the office of judges
shall be included within the annual budget of the workers'
compensation commission.

(e) The office of judges shall, from time to time, promul-
gate rules of practice and procedure for the hearing and
determination of all objections to findings or orders of the
workers' compensation commission. The office of judges
shall not have the power to initiate or to promulgate
legislative rules as that phrase is defined in article three,
chapter twenty-nine-a of this code. Any rules adopted
pursuant to this section which are applicable to the
provisions of this article are not subject to sections nine
through sixteen, inclusive, article three, chapter twenty-
nine-a of this code. The office of judges shall follow the
remaining provisions of said chapter for giving notice to
the public of its actions and the holding of hearings or
receiving of comments on the rules.

(f) The chief administrative law judge has the power to
hear and determine all disputed claims in accordance with
the provisions of this article, establish a procedure for the
hearing of disputed claims, take oaths, examine witnesses,
issue subpoenas, establish the amount of witness fees, keep
records and make reports that are necessary for disputed
claims and exercise any additional powers, including the
delegation of powers to administrative law judges or
hearing examiners that are necessary for the proper
conduct of a system of administrative review of disputed
claims. The chief administrative law judge shall make
§23-5-9. Hearings on objections to commission or self-insured employer decisions; mediation; remand.

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

(b) The office of judges shall establish a program for mediation to be conducted in accordance with the requirements of rule twenty-five of the West Virginia trial court rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the administrative law judge on his or her own motion, on motion of a party or by agreement of the parties. Upon issuance of an order for mediation, the office of judges shall assign a mediator from a list of qualified mediators maintained by the West Virginia state bar.

(c) The office of judges shall keep full and complete records of all proceedings concerning a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to section eight of this article, the record upon which the matter shall be decided shall include any evidence submitted by a party to the office of judges, evidence taken at hearings conducted by the office of judges and any documents in the commission's claim files which relate to the subject matter of the objection. The
record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The office of judges is not bound by the usual common law or statutory rules of evidence.

(d) All hearings shall be conducted as determined by the chief administrative law judge pursuant to the rules of practice and procedure promulgated pursuant to section eight of this article. Upon consideration of the designated record, the chief administrative law judge or other authorized adjudicator within the office of judges shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing or modifying the commission's action. The decision shall contain findings of fact and conclusions of law and shall be mailed to all parties.

(e) The rule authorized by subsection (a) of this section shall be promulgated on or before the first day of October, two thousand three. Until the rule is promulgated, any rules previously promulgated shall remain in full force and effect.

(f) The office of judges may remand a claim to the commission for further development of the facts or administrative matters as, in the opinion of the administrative law judge, may be necessary for a full and complete disposition of the case. The administrative law judge shall establish a time within which the commission must report back to the administrative law judge.

(g) The decision of the workers' compensation office of judges regarding any objections to a decision of the workers' compensation commission or a self-insured employer is final and benefits shall be paid or denied in accordance with the decision unless the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article.
§23-5-10. Appeal from administrative law judge decision to appeal board.

The employer, claimant or workers' compensation commission may appeal to the appeal board created in section eleven of this article for a review of a decision by an administrative law judge. No appeal or review shall lie unless application therefor be made within thirty days of receipt of notice of the administrative law judge's final action or in any event within sixty days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.


(a) On the thirty-first day of January, two thousand four, the workers' compensation appeal board heretofore established in section eleven, article five of this chapter is hereby abolished.

(b) There is hereby created the "workers' compensation board of review", which may also be referred to as "the board of review" or "the board". Effective the first day of February, two thousand four, the board of review shall exercise exclusive jurisdiction over all appeals from the workers' compensation office judges including any and all appeals pending with the board of appeals on the thirty-first day of January, two thousand four.

(c) The board shall consist of three members.

(d) The governor shall appoint, from names submitted by the "workers' compensation board of review nominating committee", with the advice and consent of the Senate, three qualified attorneys to serve as members of the board of review. If the governor does not select a nominee for any vacant position from the names provided by the nominating committee, he shall notify the nominating
committee of that circumstance and the committee shall
provide additional names for consideration by the gover-
nor. A member of the board of review may be removed by
the governor for official misconduct, incompetence,
egregate of duty, gross immorality or malfeasance and then
only after notice and opportunity to respond and present
evidence. No more than two of the members of the board
may be of the same political party. The members of the
board of review shall be paid an annual salary of eighty-
five thousand dollars. Members are entitled to be reim-
bursed for actual and necessary travel expenses incurred
in the discharge of official duties in a manner consistent
with the guidelines of the travel management office of the
department of administration.

(e) The nominating committee shall consist of the
following members: (1) The president of the West Virginia
state bar who will serve as the chairperson of the commit-
tee; (2) an active member of the West Virginia state bar
workers' compensation committee selected by the major
trade association representing employers in this state; (3)
an active member of the West Virginia state bar workers'
compensation committee selected by the highest ranking
officer of the major employee organization representing
workers in this state; (4) the dean of the West Virginia
university school of law; and (5) the chairman of the
judicial investigation committee.

(f) The nominating committee is responsible for review-
ing and evaluating candidates for possible appointment to
the board of review by the governor. In reviewing candi-
dates, the nominating committee may accept comments
from and request information from any person or source.

(g) Each member of the nominating committee may
submit up to three names of qualified candidates for each
position on the board of review: Provided, That the
member of the nominating committee selected by the
major trade organization representing employers of this
state shall submit at least one name of a qualified candi-
date for each position on the board who either is, or who represents, small business employers of this state. After careful review of the candidates, the committee shall select a minimum of one candidate for each position on the board.

(h) No later than the first day of November, two thousand three, the nominating committee shall present to the governor its list of candidates for the initial board of review. The governor shall appoint the initial board no later than the thirty-first day of December, two thousand three: Provided, That upon the thirty-first day of December, two thousand three, the deadline for filling all positions of the board of review will be extended, as necessary, if on or before that date the governor has timely requested additional names from the nominating committee. Thereafter, the nominating committee shall meet at the request of the governor in order to make timely recommendations to the governor for appointees to the board as the initial and subsequent terms expire or become vacant. The recommendations shall be submitted no later than thirty days prior to the expiration of any term.

(i) Of the initial appointments, one member shall be appointed for a term ending the thirty-first day of December, two thousand six; one member shall be appointed for a term ending the thirty-first day of December, two thousand eight; and one member shall be appointed for a term ending the thirty-first day of December, two thousand ten. Thereafter, the appointments shall be for six-year terms.

(j) A member of the board of review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia state bar, have a minimum of ten years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions
on the basis of the record of those hearings before administrative agencies, regulatory bodies or courts of record at the federal, state or local level.

(k) No member of the board of review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the board of review may engage in the practice of law during his or her term of office.

(l) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(m) The board shall designate one of its members in rotation to be chairman of the board for as long as the board may determine by order made and entered of record. In the absence of the chairman, any other member designated by the members present shall act as chairman.

(n) The board of review shall meet as often as necessary to hold review hearings, at such times and places as the chairman may determine. Two members shall be present in order to conduct review hearings or other business. All decisions of the board shall be determined by a majority of the members of the board.

(o) The board of review shall make general rules regarding the pleading, including the form of the petition and any responsive pleadings, practice and procedure to be used by the board.

(p) The board of review may hire a clerk and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the board of review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the
purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board shall serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the division of personnel. All personnel of the board of review shall be under the supervision of the chairman of the board of review.

(q) If deemed necessary by the board, the board may, through staffing or other resources, procure assistance in review of medical portions of decisions.

(r) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the member shall promptly determine the matter and make an award in accordance with his or her determination.

(s) The award shall become a part of the commission file. A copy of the award shall be sent forthwith by mail to all parties in interest.

(t) The award is final when entered. The award shall contain a statement explaining the rights of the parties to an appeal to the board of review and the applicable time limitations involved.

(u) The board shall submit a budget to the executive director for inclusion in the budget for the workers' compensation commission sufficient to adequately provide for the administrative and other operating expenses of the board.

(v) The board shall report monthly to the board of managers on the status of all claims on appeal.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing.

(a) Any employer, employee, claimant or dependent, who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance
with the provisions of section nine of this article, shall have the right to appeal to the board created in section eleven of this article for a review of such action. The workers' compensation commission shall likewise have the right to appeal to the board any final action taken by the administrative law judge. The aggrieved party shall file a written notice of appeal with the office of judges directed to the board, within thirty days after receipt of notice of the action complained of, or in any event, regardless of notice, within sixty days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the time limitation is a condition of the right to appeal and hence jurisdictional. The office of judges shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the ground for review and whether oral argument is requested. The office of judges shall forthwith make up a transcript of the proceedings before the office of judges and certify and transmit it to the board. The certificate shall incorporate a brief recital of the proceedings in the case and recite each order entered and the date thereof.

(b) The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board shall be based upon the record submitted to it and such oral argument as may be requested and received. The board may affirm, reverse, modify or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:
(1) In violation of statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the administrative law judge; or

(3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the board shall issue a written decision to be filed with the commission and a copy thereof sent by mail to the parties.

(1) All decisions, findings of fact and conclusions of law of the board of review shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse or modify the administrative law judge's decision.

(2) Decisions of the board of review shall be made by a majority vote of the board of review.

(3) A decision of the board of review is binding upon the executive director and the commission with respect to the parties involved in the particular appeal. The executive director shall have the right to seek judicial review of a board of review decision irrespective of whether or not he appeared or participated in the appeal to the board of review.

(d) Instead of affirming, reversing or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional or further evidence as in the opinion of the board may be necessary for a full and
complete development of the facts of the case. In the event
the board shall remand the case to the chief administrative
law judge for the taking of further evidence, the adminis-
trative law judge shall proceed to take new, additional or
further evidence in accordance with any instruction given
by the board within thirty days after receipt of the order
remanding the case. The chief administrative law judge
shall give to the interested parties at least ten days'
written notice of the supplemental hearing, unless the
taking of evidence is postponed by agreement of parties, or
by the administrative law judge for good cause. After the
completion of a supplemental hearing, the administrative
law judge shall, within sixty days, render his or her
decision affirming, reversing or modifying the former
action of the administrative law judge. The decision shall
be appealable to, and proceeded with by the board of
review in the same manner as other appeals. In addition,
upon a finding of good cause, the board may remand the
case to the workers' compensation commission for further
development. Any decision made by the commission
following a remand shall be subject to objection to the
office of judges and not to the board. The board may
remand any case as often as in its opinion is necessary for
a full development and just decision of the case.

(e) All appeals from the action of the administrative law
judge shall be decided by the board at the same session at
which they are heard, unless good cause for delay thereof
be shown and entered of record.

(f) In all proceedings before the board, any party may be
represented by counsel.

§23-5-15. Appeals from final decisions of board to supreme
court of appeals; procedure; costs.

(a) Review of any final decision of the board, including
any order of remand, may be prosecuted by either party or
by the workers' compensation commission to the supreme
court of appeals within thirty days from the date of the
final order by filing a petition therefor with the court
against the board and the adverse party or parties as
respondents. Unless the petition for review is filed within
the thirty-day period, no appeal or review shall be al-
lowed, such time limitation is a condition of the right to
such appeal or review and hence jurisdictional. The clerk
of the supreme court of appeals shall notify each of the
respondents and the workers' compensation commission of
the filing of such petition. The board shall, within ten
days after receipt of the notice, file with the clerk of the
court the record of the proceedings had before it, including
all the evidence. The court or any judge thereof in vaca-
tion may thereupon determine whether or not a review
shall be granted. If review is granted to a nonresident of
this state, he or she shall be required to execute and file
with the clerk before an order or review shall become
effective, a bond, with security to be approved by the
clerk, conditioned to perform any judgment which may be
awarded against him or her. The board may certify to the
court and request its decision of any question of law
arising upon the record, and withhold its further proceed-
ing in the case, pending the decision of court on the
certified question, or until notice that the court has
declined to docket the same. If a review is granted or the
certified question is docketed for hearing, the clerk shall
notify the board and the parties litigant or their attorneys
and the workers' compensation commission of that fact by
mail. If a review is granted or the certified question
docketed, the case shall be heard by the court in the same
manner as in other cases, except that neither the record
nor briefs need be printed. Every review granted or
certified question docketed prior to thirty days before the
beginning of the term, shall be placed upon the docket for
that term. The attorney general shall, without extra
compensation, represent the board in such cases. The
court shall determine the matter brought before it and
certify its decision to the board and to the commission.
The cost of the proceedings on petition, including a
reasonable attorney's fee, not exceeding thirty dollars to
the claimant's attorney, shall be fixed by the court and
taxed against the employer if the latter is unsuccessful. If
the claimant, or the commission (in case the latter is the
applicant for review) is unsuccessful, the costs, not includ-
ing attorney's fees, shall be taxed against the commission,
payable out of the workers' compensation fund, or shall be
taxed against the claimant, in the discretion of the court.
But there shall be no cost taxed upon a certified question.

(b) In reviewing a decision of the board of review, the
supreme court of appeals shall consider the record pro-
vided by the board and give deference to the board's
findings, reasoning and conclusions, in accordance with
subsections (c) and (d) of this section.

(c) If the decision of the board represents an affirmation
of a prior ruling by both the commission and the office of
judges that was entered on the same issue in the same
claim, the decision of the board may be reversed or
modified by the supreme court of appeals only if the
decision is in clear violation of constitutional or statutory
provision, is clearly the result of erroneous conclusions of
law, or is based upon the board's material misstatement or
mischaracterization of particular components of the
evidentiary record. The court may not conduct a de novo
re-weighing of the evidentiary record. If the court reverses
or modifies a decision of the board pursuant to this
subsection, it shall state with specificity the basis for the
reversal or modification and the manner in which the
decision of the board clearly violated constitutional or
statutory provisions, resulted from erroneous conclusions
of law, or was based upon the board's material misstate-
ment or mischaracterization of particular components of
the evidentiary record.

(d) If the decision of the board effectively represents a
reversal of a prior ruling of either the commission or the
office of judges that was entered on the same issue in the
same claim, the decision of the board may be reversed or
modified by the supreme court of appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board’s findings, reasoning and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board’s findings, reasoning and conclusions, there is insufficient support to sustain the decision.

§23-5-17. Termination of office of judges.

The office of judges terminates on the first day of July, two thousand nine, pursuant to the provisions of article ten, chapter four of this code unless sooner terminated, continued or reestablished pursuant to the provisions of said article.


After the thirty-first day of December, two thousand three, the workers’ compensation appeal board shall be terminated and all matters pending before the appeal board on the thirty-first day of December, two thousand three, shall be transferred to the board of review. Pursuant to the provisions of article ten, chapter four of this code, the workers’ compensation board of review shall continue to exist until the first day of July, two thousand
nine, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-2. Patients; expenses; disposition of receipts.

1 The department of health and human resources shall admit to the hospitals, under its rules, persons requiring hospital care and shall treat free of charge persons accidentally injured in this state while engaged in their usual employment, but preference at all times shall be given to persons accidentally injured: Provided, That the executive director of the workers' compensation commission shall pay to the hospitals for the treatment of anyone entitled to benefits or aid out of the workers' compensation fund the same fee or expenses that would be paid to a private hospital for similar treatment. All moneys collected under this section shall be paid into the state treasury through the state commissioner of public institutions as required in section thirteen, article one, chapter twenty-five of this code.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-125. Employment and income reporting.

1 (a) For purposes of this section:

2 (1) “Employee” means an individual who is an “employee” for purposes of federal income tax withholding, as defined in 26 U. S. C. §3401;

5 (2) “Employer” means the person or entity for whom an individual performs or performed any service of whatever nature and who has control of the payment of the individual’s wages for performance of the service or services, as defined in 26 U. S. C. §3401;
(3) An individual is considered a "new hire" on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the bureau for child support enforcement:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(2) The rehiring or return to work of any employee who resides or works in this state.

(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) An employer that has employees in states other than this state and that transmits reports magnetically or electronically is not required to report to the bureau for child support enforcement the hiring, rehiring or return to work of any employee if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U. S. C. §653A, a written designation of another state in which it has employees as the reporting state.

(e) Employers shall report by mailing to the bureau for child support enforcement a copy of the employee’s W-4 form; however, an employer may transmit the information through another means if approved in writing by the bureau for child support enforcement prior to the transmittal. The report shall include the employee’s name, address and social security number, the employer’s name
and address, any different address of the payroll office and
the employer's federal tax identification number. The
employer may report other information, such as date of
birth or income information, if desired.

(f) Employers shall submit a report within fourteen days
of the date of the hiring, rehiring or return to work of the
employee. However, if the employer transmits the reports
magnetically or electronically by two monthly submis-
sions, the reports shall be submitted not less than twelve
days nor more than sixteen days apart.

(g) An employer shall provide to the bureau for child
support enforcement, upon its written request, information
regarding an obligor's employment, wages or salary,
medical insurance, start date and location of employment.

(h) Any employer who fails to report in accordance with
the provisions of this section shall be assessed a civil
penalty of no more than twenty-five dollars per failure. If
the failure to report is the result of a conspiracy between
the employer and the employee not to supply the required
report or to supply a false or incomplete report, the
employer shall be assessed a civil penalty of no more than
five hundred dollars.

(i) Employers required to report under this section may
assess each employee reported one dollar for the adminis-
trative costs of reporting.

(j) Uses for the new hire information include, but are not
limited to, the following:

(1) The state directory of new hires shall furnish the
information to the national directory of new hires;

(2) The bureau for child support enforcement shall use
information received pursuant to this section to locate
individuals for purposes of establishing paternity and of
establishing, modifying and enforcing child support
obligations and may disclose the information to any agent
section. The restitution ordered shall constitute a judgment against the defendant and in favor of the state of West Virginia workers' compensation commission.

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

(B) For purposes of subdivision (A) of this subsection, the term "payment of the costs of asset forfeiture" means:

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

(I) Contract services;

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

(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the workers' compensation fund to determine the validity of the lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;
(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

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

(7) Venue for prosecution of any violation of this section shall be either the county in which the defendant's principal business operations are located or in Kanawha County where the workers' compensation fund is located.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated 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 is approved this the 17th Day of July, 2003.

Governor
PRESENTED TO THE GOVERNOR

Date 7/16/63
Time 12:10