ENROLLED

SENATE BILL NO. 1004

(By Senator Tomblin, Mr. President, and Spouse)

PASSED January 29, 2005

In Effect from Passage
ENROLLED

Senate Bill No. 1004

(By Senators Tomblin, Mr. President, and Sprouse
By request of the Executive)

[Passed January 29, 2005; in effect from passage.]

§23-2C-8, §23-2C-9, §23-2C-10, §23-2C-11, §23-2C-12, §23-2C-13, §23-2C-14, §23-2C-15, §23-2C-16, §23-2C-17, §23-2C-18, §23-2C-19, §23-2C-20, §23-2C-21, §23-2C-22 and §23-2C-23; to amend said Code by adding thereto a new article, designated §23-2D-1, §23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9 and §23-2D-10; to amend and reenact §23-3-1 and §23-3-4 of said Code; to amend and reenact §23-4-1b, §23-4-1c, §23-4-1d, §23-4-1e, §23-4-3, §23-4-3b, §23-4-4, §23-4-6, §23-4-6a, §23-4-6b, §23-4-7, §23-4-7a, §23-4-7b, §23-4-8, §23-4-8a, §23-4-8b, §23-4-8c, §23-4-9, §23-4-10, §23-4-11, §23-4-12, §23-4-14, §23-4-15, §23-4-15a, §23-4-15b, §23-4-16, §23-4-16a, §23-4-17, §23-4-20, §23-4-24 and §23-4-25 of said Code; to amend and reenact §23-4A-1 and §23-4A-4 of said Code; to amend said Code by adding thereto a new section, designated §23-4A-9; to amend said Code by adding thereto a new section, designated §23-4B-9; to amend and reenact §23-4C-5 of said Code; to amend said Code by adding thereto a new section, designated §23-4C-6; to amend and reenact §23-5-1, §23-5-2, §23-5-3, §23-5-4, §23-5-5, §23-5-7, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12 and §23-5-15 of said Code; to amend and reenact §29-22A-10 and §29-22A-10b of said Code; to amend and reenact §§33-1-2 and §§33-1-10 of said Code; to amend and reenact §§33-2-10 and §§33-2-20 of said Code; to amend and reenact §§33-41-2, §§33-41-8 and §§33-41-11 of said Code; and to amend and reenact §§61-3-24e, §§61-3-24f, §§61-3-24g and §§61-3-24h of said Code, all relating to workers' compensation generally; reducing the unfunded liability of the workers' compensation fund; providing existing and new revenue sources therefor, including new and existing taxes; providing for dissolution of workers' compensation commission; converting state agency to employer-owned mutual insurance company; providing for private carriers to offer workers' compensation insurance; providing for employees of the commission to be exempt from provisions of civil service coverage; providing for transfer of fraud investigation and prosecution unit and assets necessary for its opera-
tion; providing for transfer of certain workers' compensation commission functions, rights, responsibilities, employees and assets to the insurance commissioner and the industrial council; providing certain civil remedies to commission, mutual company and private carriers; providing for exemption from required coverage for certain employers who cover their employees under federal Longshore and Harbor Workers' Compensation Act; providing for payment periods to be other than quarterly; providing authority to enjoin employers from engaging in business when in default; requiring self-insured employers to obtain insurance for catastrophic risks; providing for transfer of authority over certain funds to the insurance commissioner; providing for statutory subrogation of medical and indemnity benefits; providing for expedited appeals to the office of judges; authorizing negotiation for subrogation claims; providing for capital and surplus requirements of employers' mutual insurance company; providing for election of a board of directors of employers' mutual insurance company; providing for establishment of claims index to assist insurers; providing for establishment and administration of certain funds and accounts in state treasury; providing for adverse risk assignment plan; providing, upon meeting of certain criteria, for issuance of proclamation by the governor; providing for preferential placement of any employee laid off after transfer of functions; providing certain retraining and other benefits; providing for novation of policies to new employers mutual insurance company; providing for requirements of a basic policy of workers' compensation insurance; providing for setting of industrial insurance rates; providing for collection of premiums; providing for transfer of Occupational Pneumoconiosis Board; providing for limitation of liability for insurers providing workers' compensation insurance and third-party administrators; providing for transfer of rules to be applicable to the industrial insurance market; providing for transfer of certain assets to new mutual insurance company; providing for termination of interdisciplinary examining board and health care advisory panel; providing
for selection of occupational pneumoconiosis board members by governor; providing for transfer of authority over occupational pneumoconiosis board; providing for negotiation of final settlement in workers' compensation claims; providing terms of employment for chief administrative law judge; making technical corrections throughout; providing internal effective dates; providing for civil administrative and criminal penalties; and making conforming changes throughout.

Be it enacted by the Legislature that:

§23-4-1e, §23-4-3, §23-4-3b, §23-4-4, §23-4-6, §23-4-6a, §23-4-6b, §23-4-7, §23-4-7a, §23-4-7b, §23-4-8, §23-4-9a, §23-4-8b, §23-4-8c, §23-4-9, §23-4-10, §23-4-11, §23-4-12, §23-4-14, §23-4-15, §23-4-15a, §23-4-15b, §23-4-16, §23-4-16a, §23-4-17, §23-4-20, §23-4-24 and §23-4-25 of said Code be amended and reenacted; that §23-4A-1 and §23-4A-4 of said Code be amended and reenacted; that said Code be amended by adding thereto a new section, designated §23-4A-9; that said Code be amended by adding thereto a new section, designated §23-4B-9; that §23-4C-5 of said Code be amended and reenacted; that said Code be amended by adding thereto a new section, designated §23-4C-6; that §23-5-1, §23-5-2, §23-5-3, §23-5-4, §23-5-5, §23-5-7, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12 and §23-5-15 of said Code be amended and reenacted; that §29-22A-10 and §29-22A-10b of said Code be amended and reenacted; that §33-1-2 and §33-1-10 of said Code be amended and reenacted; that §33-2-10 and §33-2-20 of said Code be amended and reenacted; that §33-41-2, §33-41-8 and §33-41-11 of said Code be amended and reenacted; and that §61-3-24e, §61-3-24f, §61-3-24g and §61-3-24h of said Code be amended and reenacted, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT MONEYS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund until the first day of June, two thousand five, then to workers’ compensation deficit reduction fund.

1 (a) The Legislature finds and declares that certain dedicated revenues should be preserved in trust for the purpose of stabilizing the state’s health related programs and delivery systems. It further finds and declares that these dedicated revenues should be preserved in trust for the purpose of educating the public about the health risks associated with tobacco usage and establishing a program
designed to reduce and stop the use of tobacco by the citizens of this state and in particular by teenagers.

(b) There is hereby created a special account in the state treasury, designated the "West Virginia Tobacco Settlement Medical Trust Fund", which shall be an interest-bearing account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, with the interest income a proper credit to the fund. Unless contrary to federal law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. Funds paid into the account may also be derived from the following sources:

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

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

(3) Any appropriations by the Legislature which may be made for this purpose; and

(4) Any funds or accrued interest remaining in the board of risk and insurance management physicians' mutual insurance company account created pursuant to section seven, article twenty-f, chapter thirty-three of this code on or after the first day of July, two thousand four.

(c) The moneys from the principal in the trust fund may not be expended for any purpose, except that on the first day of April, two thousand three, the treasurer shall transfer to the board of risk and insurance management physicians' mutual insurance company account created by section seven, article twenty-f, chapter thirty-three of this code, twenty-four million dollars from the West Virginia tobacco settlement medical trust fund for use as the initial capital and surplus of the physicians' mutual insurance company created pursuant to said article. The remaining
moneys in the trust fund resulting from interest earned on
the moneys in the fund and the return on investments of
the moneys in the fund shall be available only upon
appropriation by the Legislature as part of the state
budget and expended in accordance with the provisions of
section three of this article.

(d) Notwithstanding the preceding subsections to the
contrary, the first thirty million dollars of all revenues
received after the thirtieth day of June, two thousand five,
pursuant to section IX(c)(1) of the tobacco master settle-
ment agreement shall in the fiscal year beginning the first
day of July, two thousand five, and each fiscal year
thereafter, be deposited in the workers' compensation debt
reduction fund established in the state treasury in section
five, article two-d, chapter twenty-three of this code.
Receipts in excess of thirty million dollars shall be depos-
ited as provided in section three of this article.

(c) Notwithstanding anything in this code to the con-
trary, strategic compensation payments received pursuant
to section IX(c)(2) of the tobacco master settlement
agreement, beginning in two thousand eight, shall be
deposited in their entirety in the workers' compensation
debt reduction fund.

CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

(a) The provisions of this article apply to the following
taxes imposed by this chapter:

(1) Inheritance and transfer taxes and estate taxes
imposed by article eleven of this chapter;

(2) Business registration tax imposed by article twelve of
this chapter;

(3) Minimum severance tax on coal imposed by article
twelve-b of this chapter;
(4) Corporate license tax imposed by article twelve-c of this chapter;
(5) Business and occupation tax imposed by article thirteen of this chapter;
(6) Severance and business privilege taxes imposed by article thirteen-a of this chapter;
(7) Additional severance taxes imposed by article thirteen-v of this chapter;
(8) Telecommunications tax imposed by article thirteen-b of this chapter;
(9) Gasoline and special fuels excise tax imposed by article fourteen of this chapter;
(10) Motor fuels excise tax imposed by article fourteen-c of this chapter;
(11) Motor carrier road tax imposed by article fourteen-a of this chapter;
(12) Interstate fuel tax agreement authorized by article fourteen-b of this chapter;
(13) Consumers sales and service tax imposed by article fifteen of this chapter;
(14) Use tax imposed by article fifteen-a of this chapter;
(15) Tobacco products excise taxes imposed by article seventeen of this chapter;
(16) Soft drinks tax imposed by article nineteen of this chapter;
(17) Personal income tax imposed by article twenty-one of this chapter;
(18) Business franchise tax imposed by article twenty-three of this chapter;
(19) Corporation net income tax imposed by article twenty-four of this chapter; and
(20) Health care provider taxes imposed by article twenty-seven of this chapter.

(b) The provisions of this article also apply to the West Virginia tax procedure and administration act in article ten of this chapter and to any other articles of this chapter when application is expressly provided by the Legislature.

(c) The provisions of this article also apply to municipal sales and use taxes imposed pursuant to article thirteen-c, chapter eight of this code; the charitable bingo fee imposed by sections six and six-a, article twenty, chapter forty-seven of this code; the charitable raffle fee imposed by section seven, article twenty-one of said chapter; and the charitable raffle boards and games fees imposed by section three, article twenty-three of said chapter.

(d) Each and every provision of this article applies to the articles of this chapter listed in subsections (a), (b) and (c) of this section, with like effect, as if the provisions of this article were applicable only to the tax and were set forth in extenso in this article.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-3. Application of this article.

(a) The provisions of this article apply to inheritance and transfer taxes, estate tax and interstate compromise and arbitration of inheritance and death taxes, business registration tax, minimum severance tax on coal, corporate license tax, business and occupation tax, severance tax, additional severance taxes, telecommunications tax, interstate fuel tax, consumers sales and service tax, use tax, tobacco products excise taxes, soft drinks tax, personal income tax, business franchise tax, corporation net income tax, gasoline and special fuels excise tax, motor
fuels excise tax, motor carrier road tax, health care
data provider taxes and tax relief for elderly homeowners and
renters administered by the state tax commissioner. This
article shall not apply to ad valorem taxes on real and
personal property or any other tax not listed in this
section, except that in the case of ad valorem taxes on real
and personal property, when any return, claim, statement
or other document is required to be filed, or any payment
is required to be made within a prescribed period or before
a prescribed date, and the applicable law requires delivery
to the office of the sheriff of a county of this state, the
methods prescribed in section five-f of this article for
timely filing and payment to the tax commissioner or state
tax department are the same methods utilized for timely
filing and payment with the sheriff.

(b) The provisions of this article apply to beer barrel tax
levied by article sixteen of this chapter; and to wine liter
tax levied by section four, article eight, chapter sixty of
this code.

(c) The provisions of this article apply to any other
article of this chapter when the application is expressly
provided by the Legislature.

(d) The provisions of this article apply to municipal sales
and use taxes imposed under article thirteen-c, chapter
eight of this code and collected by the tax commissioner.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

§11-13V-1. Short title.

This article may be cited as the “Workers' Compensation
Debt Reduction Act of 2005”. No inference, implication or
presumption of legislative construction shall be drawn or
made by reason of the location or grouping of any particu-
lar section or provision or portion of this article and no
legal effect shall be given to any descriptive matter of
headings relating to any part, section, subsection, subdivi-
sion or paragraph of this article.
§11-13V-2. Legislative intent and findings.

(a) Legislative intent. – It is the intent of the Legislature in enacting this article to impose new, additional privilege taxes on severing or producing natural resources in this state and for the net proceeds from collection of the new taxes to be dedicated to paying down the unfunded liability in the workers' compensation fund, or paying debt service on bonds sold to raise funds to pay down the unfunded liability in the workers' compensation fund, or for any combination of these two purposes.

(b) Findings. – The Legislature finds and declares that:

1. The unfunded liability in the state workers' compensation program exceeds three billion dollars;

2. Until a fiscally responsible plan for paying this unfunded liability is provided by the Legislature, the condition of the workers' compensation fund will continue to negatively affect economic development in this state;

3. Until a fiscally responsible plan for paying this unfunded liability is provided by the Legislature, the Legislature will not be able to privatize workers' compensation;

4. Until a fiscally responsible plan for paying this unfunded liability is provided, the Legislature will need to annually appropriate dollars from the general revenue fund of the state to pay down this unfunded liability and to cover the annual shortfall between funds available to pay workers' compensation benefits to injured workers and premiums collected by the workers' compensation fund from employers;

5. In accordance with the constitution of this state and decisions of the West Virginia supreme court of appeals, the Legislature may enact a new tax and dedicate the net collections of the tax to pay down this unfunded liability.

All definitions set forth in articles twelve-d and article thirteen-a of this chapter apply to those defined terms that also appear in this article, if applicable.

§11-13V-4. Imposition of tax.

(a) Imposition of additional tax on privilege of severing coal. - Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an additional annual severance tax for exercising the privilege after the thirtieth day of November, two thousand five. The tax shall be fifty-six cents per ton and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after the thirtieth day of November, two thousand five, for sale, profit or commercial use during the taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of clean coal determined in accordance with rules promulgated by the tax commissioner as provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment before the first day of July, two thousand five, the rule may be promulgated as an emergency legislative rule. This tax shall be in addition to all taxes imposed with respect to the severance and production of coal in this state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-two of this code, if applicable.

(b) Imposition of additional tax on privilege of severing natural gas. - For the privilege of engaging or continuing within this state in the business of severing natural gas for sale, profit or commercial use, there is hereby levied and
shall be collected from every person exercising this privilege an additional annual privilege tax. The rate of this additional tax shall be four and seven-tenths cents per mcf of natural gas and the measure of the tax is natural gas produced after the thirtieth day of November, two thousand five, determined at the point where the production privilege ends for purposes of the tax imposed by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to natural gas produced after the thirtieth day of November, two thousand five.

(c) Imposition of additional tax on privilege of severing timber. – For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the gross value of the timber produced, determined at the point where the production privilege ends for purposes of the tax imposed by section thirteen-b, article thirteen-a of this chapter and upon which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to timber produced after the thirtieth day of November, two thousand five.

(d) No pyramiding of tax burden. – Each ton of coal and each mcf of natural gas severed in this state after the effective date of the taxes imposed by this section shall be included in the measure of a tax imposed by this section only one time.

(e) Effect on utility rates. – The public service commission shall, upon the application of any public utility that, as of the effective date of the taxes imposed by this section, is not currently making periodic adjustments to its
approved rates and charges to reflect changes in its fuel costs because the mechanism historically used to make such periodic adjustments is suspended by an order of the commission, allow such utility to defer, for future recovery from its customers, any increase in its costs attributable to the taxes imposed by this section upon: coal and natural gas severed in this state and utilized in the production of electricity generated or produced in this state and sold to customers in this state; coal and natural gas severed in this state and utilized in the production of electricity not generated or produced in this state that is sold to customers in this state; and natural gas severed in this state that is sold to customers in this state.

(f) **Dedication of new taxes.** – The net amount of all monies received by the tax commissioner from collection of the taxes imposed by this section, including any interest, additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this code, shall be deposited in the workers’ compensation debt reduction fund created in article two-d, chapter twenty-three of this code. As used in this section, “net amount of all taxes received by the tax commissioner” means the gross amount received by the tax commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this article, including the amount of any interest on the overpayment amount due the taxpayer under the provisions of section fourteen, article ten of this chapter.

(g) **Sunset expiration date of taxes.** – The new taxes imposed by this section shall expire and not be imposed with respect to privileges exercised on and after the first day of the month following the month in which the governor certifies to the Legislature that: (1) The revenue bonds issued pursuant to article two-a, chapter twenty-three of this code, have been retired, or payment of the debt service provided for; and (2) that an independent certified actuary has determined that the unfunded
liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety. Expiration of the taxes imposed in this section as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.


(a) General rule. – For purposes of the taxes imposed by this article, a taxpayer’s taxable year shall be the same as the taxpayer’s taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer’s taxable year under this article.

(b) Change of taxable year. – If a taxpayer’s taxable year is changed for federal income tax purposes, taxpayer’s taxable year for purposes of this article is similarly changed. The taxpayer shall provide a copy of the authorization for the change from the internal revenue service, with taxpayer’s annual return for the taxable year filed under this article.

(c) Methods of accounting same as federal. –

(1) Same as federal. – A taxpayer’s method of accounting under this article shall be the same as the taxpayer’s method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used, unless the tax commissioner, in writing, consents to the use of another method. Accrual basis taxpayers may deduct bad debts only in the year to which they relate.

(2) Change of accounting methods. – If a taxpayer’s method of accounting is changed for federal income tax purposes, the taxpayer’s method of accounting for purposes of this article is similarly changed. The taxpayer shall provide a copy of the authorization for the change
from the internal revenue service with its annual return for the taxable year filed under this article.

(d) Adjustments. — In computing a taxpayer's liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined, under rules promulgated by the tax commissioner in accordance with article three, chapter twenty-nine-a of this code, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

§11-13V-6. Time for filing annual returns and other documents.

1 On or before the expiration of one month after the end of the taxable year, every taxpayer subject to a tax imposed by this article shall make and file an annual return for the entire taxable year showing all information the tax commissioner requires and computing the amount of taxes due under this article for the taxable year. Returns made on the basis of a calendar year shall be filed on or before the thirty-first day of January following the close of the calendar year. Returns made on the basis of a fiscal year shall be filed on or before the last day of the first month following the close of the fiscal year.

§11-13V-7. Periodic installment payments of taxes imposed by this article; exceptions.

(a) General rule. — Except as provided in subsection (b) of this section, taxes levied by this article are due and payable in periodic installments as follows:

1 (1) Tax of fifty dollars or less per month. — If a person's aggregate annual tax liability under this article and article thirteen-a of this chapter is reasonably expected to be fifty dollars or less per month, no installment payments of tax are required under this section during that taxable year.
(2) Tax of more than one thousand dollars per month. — For taxpayers whose aggregate estimated tax liability under this article and article thirteen-a of this chapter exceeds one thousand dollars per month, the tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subdivision on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year. When this subdivision applies, the taxpayer shall, on or before the due date specified in this subdivision, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the estimate and mail it together with a remittance, in the form prescribed by the tax commissioner: Provided, however, That the installment payment otherwise due under this paragraph on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June.

(3) Tax of one thousand dollars per month or less. — For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax is due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued. When this subdivision applies, the taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner.

(b) Exception. — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he or she considers it necessary to ensure payment of the tax, may require the return and payment under this section for
periods of shorter duration than those prescribed in subsection (a) of this section.

(c) Remittance by electronic funds transfer. – When the taxpayer's annual aggregate liability for tax under this article and article thirteen-a of this chapter exceeds fifty thousand dollars for the prior tax year, payments of estimated tax required by this article and article thirteen-a during the then current tax year shall be by electronic funds transfer, in accordance with rules of the tax commissioner and rules of the state treasurer, except as otherwise permitted by the tax commissioner.


The tax commissioner may, upon written request received on or prior to the due date of the annual return or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article, upon such terms as he or she may by rule prescribe, or by contract require, if good cause satisfactory to the tax commissioner is provided by the taxpayer.


(a) Amount determined on return. – The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency. – Under rules prescribed by the tax commissioner in accordance with the provisions of article three, chapter twenty-nine-a of this code, the commissioner may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An exten-
sion under this subsection may be granted only where it is
shown to the satisfaction of the tax commissioner that
payment of a deficiency upon the date fixed for the
payment thereof will result in undue hardship to the
taxpayer.

(c) No extension for certain deficiencies. – No extension
may be granted under this section for any deficiency if the
deficiency is due to negligence, to intentional disregard of
rules and regulations, or to fraud with intent to evade tax.

§11-13V-10. Place for filing returns or other documents.

Tax returns, statements or other documents, or copies
thereof, required by this article, or rules promulgated by
the commissioner, shall be filed with the tax commissioner
by delivery, in person or by mail, to his or her office in
Charleston, West Virginia: Provided, That the tax commis-
sioner may, by rules, prescribe the place and other means
of delivery for filing such returns, statements, or other
documents, or copies thereof.

§11-13V-11. Time and place for paying tax shown on returns.

(a) General rule. – The person required to make the
annual return required by this article shall, without
assessment or notice and demand from the tax commis-
sioner, pay the tax at the time and place fixed for filing the
return (determined without regard to any extension of
time for filing the return).

(b) Date fixed for payment of tax. – The date fixed for
payment of the taxes imposed by this article shall be
deemed to be a reference to the last day fixed for the
payment (determined without regard to any extension of
time for paying the tax).

(c) Terms of extension. – Any extension of time for
payment of tax under this section may be granted upon
such terms as the tax commissioner may, by rule prescribe,
or by contract require.
§11-13V-12. Signing of returns and other documents.

(a) General. – Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) Signing of corporation returns. – The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, the fiduciary shall sign the return. The fact that an individual’s name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) Signing of partnership returns. – The return of a partnership shall be signed by any one of the partners. The fact that a partner’s name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) Signing of limited liability company returns. – The return of a limited liability company shall be signed by any one of its authorized members. The fact that a member’s name is signed on the return shall be prima facie evidence that the member is authorized to sign the return on behalf of the limited liability company.

(e) Signature presumed authentic. – The fact that an individual’s name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him or her.

(f) Verification of returns. – Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.
§11-13V-13. Bond of taxpayer may be required.

(a) Whenever it is deemed necessary to ensure compliance with this article, the tax commissioner may require any taxpayer to post a cash or corporate surety bond.

(b) The amount of the bond shall be fixed by the tax commissioner but, except as provided in subsection (c) of this section, shall not be greater than three times the average quarterly liability of taxpayers filing returns for quarterly periods, five times the average monthly liability of taxpayers required to file returns for monthly periods, or two times the average periodic liability of taxpayers permitted or required to file returns for other than monthly or quarterly periods.

(c) Notwithstanding the provisions of subsection (b) of this section, no bond required under this section shall be less than five hundred dollars.

(d) The amount of the bond may be increased or decreased by the tax commissioner at any time subject to the limitations provided in this section.

(e) The tax commissioner may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a taxpayer's business until the bond is posted and any delinquent tax, including applicable interest and additions to tax has been paid. This action may be brought in the circuit court of Kanawha County or in the circuit court of any county having jurisdiction over the taxpayer.

§11-13V-14. Collection of tax; agreement for processor to pay tax due from severor.

(a) General. – In the case of natural resources, other than natural gas, where the tax commissioner finds that it would facilitate and expedite the collection of the taxes imposed by this article, the tax commissioner may authorize the taxpayer processing the natural resource to report
and pay the tax which would be due from the taxpayer severing the natural resources. The agreement shall be in the form prescribed by or acceptable to the tax commissioner.

(1) The agreement must be signed:

(A) By the owner, if the taxpayer is a natural person;

(B) In the case of a partnership, limited liability company or association, by a partner or member;

(C) In the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the agreement.

(2) The agreement may be terminated by any party to the agreement upon giving thirty days' written notice to the other parties to the agreement: *Provided*, That the tax commissioner may terminate the agreement immediately upon written notice to the other parties when either the taxpayer processing the natural resource or the taxpayer severing the natural resource fails to comply with the terms of the agreement.

(b) *Natural gas.* —

(1) In the case of natural gas, except for those cases:

(A) Where the person severing (or both severing and processing) the natural gas will sell the gas to the ultimate consumer; or

(B) Where the tax commissioner determines that the collection of taxes due under this article would be accomplished in a more efficient and effective manner through the severor, or severor and processor, remitting the taxes, the first person to purchase the natural gas after it has been severed, or in the event that the natural gas has been severed and processed before the first sale, the first person to purchase natural gas after it has been severed and processed, shall be liable for the collection of the taxes.
imposed by this article. That person shall collect the taxes imposed from the person severing (or severing and processing) the natural gas, and that person shall remit the taxes to the tax commissioner;

(C) In those cases where the person severing (or severing and processing) the natural gas sells the gas to the ultimate consumer, the person so severing (or severing and processing) the natural gas shall be liable for the taxes imposed by this article;

(D) In those cases where the tax commissioner determines that the collection of the taxes due under this article from the person severing the natural gas, or severing and processing the natural gas would be accomplished in a more efficient and effective manner through the severor (or severor and processor) remitting the taxes, the tax commissioner shall set out his or her determination in writing, stating his or her reasons for so finding, and so advise the severor (or severor and processor) at least fifteen days in advance of the first reporting period for which the commissioner's determination is effective.

(2) On or before the last day of the month following each taxable calendar month, the person first purchasing natural gas, as described in subdivision (1) of this subsection, shall report purchases of natural gas during the taxable month, showing the quantities of gas purchased, the price paid, the date of purchase, and any other information considered necessary by the tax commissioner for the administration of the tax imposed by this article, and shall pay the amount of tax due, on forms prescribed by the tax commissioner.

(3) On or before the last day of the month following each taxable calendar month, each person severing (or severing and processing) natural gas, shall report the sales of natural gas, showing the name and address of the person to whom sold, the quantity of gas sold, the date of sale and the sales price on forms prescribed by the tax commissioner.

(a) General. – Every person liable for reporting or paying tax under this article shall keep records, receipts, invoices and other pertinent papers in the form required by the tax commissioner.

(b) Period of retention. – Every taxpayer shall keep the records for a tax year for a period of not less than three years after the annual return is filed under this article, unless the tax commissioner, in writing, authorizes their earlier destruction. An extension of time for making an assessment automatically extends the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

(c) Special rule for purchasers of standing timber or of logs. – In addition to the records required by subsection (a) of this section, every person purchasing standing timber, logs or wood products sawn or chipped in conjunction with a timber harvesting operation in this state shall obtain from the person from whom the standing timber, logs or wood products sawn or chipped in conjunction with a timber harvesting operation are purchased a true copy of the seller’s then current business registration certificate issued under article twelve of this chapter or a copy of federal form 1099 for the year of the purchase. When the seller is a person not required by this chapter to have a business registration certificate, the purchaser shall obtain an affidavit from the seller:

(1) Stating that the seller does not have a business registration certificate and that the seller is not required by this chapter to have a business registration certificate;

(2) Listing the seller’s social security number or federal employer identification number; and

(3) Listing the seller’s current mailing address. The tax commissioner may develop a form for this affidavit.
1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article ten
3 of this chapter applies to the taxes imposed by this article,
4 except as otherwise expressly provided in this article, with
5 like effect as if that act were applicable only to the taxes
6 imposed by this article and were set forth in extenso in
7 this article.

§11-13V-17. Crimes and penalties.
1 Each and every provision of the "West Virginia Tax
2 Crimes and Penalties Act" set forth in article nine of this
3 chapter applies to the taxes imposed by this article with
4 like effect as if that act were applicable only to the taxes
5 imposed by this article and were set forth in extenso in
6 this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-96. Dedication of personal income tax proceeds.
1 (a) There is hereby dedicated an annual amount of forty-
2 five million dollars from annual collections of the tax
3 imposed by this article for payment of the unfunded
4 liability of the current workers compensation fund. No
5 portion of this amount may be pledged for payment of
6 debt service on revenue bonds issued pursuant to article
7 two-d, chapter twenty-three of this code.

8 (b) Notwithstanding any other provision of this code to
9 the contrary, beginning in January of two thousand six,
10 forty-five million dollars from collections of the tax
11 imposed by this article shall be deposited each calendar
12 year to the credit of the old fund created in article two-c,
13 chapter twenty-three of this code, in accordance with the
14 following schedule. Each calendar month, except for July,
15 August and September each year, five million dollars shall
16 be transferred, on or before the twenty-eighth day of the
17 month, to the workers' compensation debt reduction fund
18 created in article two-d, chapter twenty-three of this code.
(c) Expiration. – The transfers required by this section shall continue to be made until the governor certifies to the Legislature that an independent actuary study determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety. No transfer pursuant to this section shall be made thereafter.

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 and constitutes a substantial deterrent to the economic development of this state. The Legislature further finds that addressing the workers' compensation crisis requires the efforts of all persons and entities involved and resolution of the crisis is in the best interest of the public. 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 through the mutualization of the system and the opening of the market to private workers' compensation insurance carriers. It was and remains 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 was 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-
Governor of the workers' compensation system of the state of West Virginia. The powers and duties heretofore imposed upon the workers' compensation division and the commissioner of the bureau of employment programs as they relate to workers' compensation are hereby transferred to and imposed upon the workers' compensation commission and its executive director in the manner prescribed by this chapter.

(d) It is the intent of the Legislature that the transfer of the administration of the workers' compensation system of this state from the workers' compensation division under the commissioner of the bureau of employment programs to the workers' compensation commission under its executive director and the workers' compensation board of managers is to become effective the first day of October, two thousand three. Any provisions of the enactment of Enrolled Senate Bill No. 2013 in the year two thousand three relating to the transfer of the administration of the workers' compensation system of this state that conflict with the intent of the Legislature as described in this subsection shall, to that extent, become operative on the first day of October, two thousand three, and until that date, prior enactments of this code in effect on the effective date of Enrolled Senate Bill No. 2013 relating to the administration of the workers' compensation system of this state, whether amended and reenacted or repealed by the passage of Enrolled Senate Bill No. 2013, have full force and effect. All provisions of the enactment of Enrolled Senate Bill No. 2013 in the year two thousand three relating to matters other than the transfer of the administration of the workers' compensation system of this state shall become operative on the effective date of that enactment, unless otherwise specifically provided in that enactment.

§23-1-1a. 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 five.

(2) Effective the first day of January, two thousand six, if the commission continues, 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 six, and expire as follows:

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

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

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

(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 (b) of this section, each of the appointed voting members of the board shall be appointed based upon his or her demon-
strated 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-
mium, by the state board of risk and insurance management established pursuant to article twelve, chapter twenty-nine of this code.

(j) The board of managers shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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; and

(17) Complete all duties set forth in article two-c of this chapter.

(k) The board of managers shall continue to exist pursuant to this article until the commission is terminated pursuant to the provisions of this chapter.

§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: Provided, however, That, effective the first day of July, two thousand six, if the commission has not been terminated or otherwise discontinued, all employees of the commission shall be exempt and otherwise not under the jurisdiction of the provisions of the statutes, rules and regulations of the classified service set forth in article six, chapter twenty-nine of this code and article six-a of said chapter and are afforded no protections, rights or access to procedures set forth in said provision.

All commission employees shall be employees at will
unless his or her employment status is altered by an express, written employment contract executed on behalf of the commission and the employee. The commission and its employees shall be exempt and otherwise not under the jurisdiction of the state personnel board, the department of personnel, or any other successor agency, and their statutes, rules and regulations;

(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. 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 and shall otherwise continue to provide all necessary administrative support to the commission in connection with the commission’s personnel needs until the company established in article two-c of this chapter becomes operational. 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 said article;

(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 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 policymaking, 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 in this section. A contingency fee payable from the amount recovered by judgment or settlement for the commission is only permitted, to the extent not prohibited by federal law, when the assets of a defendant or respondent are depleted so that a full recovery plus attorneys' fees is not possible;

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

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

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

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

(IV) The degree of risk involved in the case with regard to the probability of success or failure;
(V) The overhead costs incurred by counsel with regard to the use of paralegals and other office staff, experts and investigators; and

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

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

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

(16) Propose rules for promulgation by the board of managers under which agencies of this state shall revoke or refuse to grant, issue or renew any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit whose account is in default with the commission with regard to the administration of this chapter. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations. An employing unit is not in default if it has entered into a 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 subdivi-
sion 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 pro-
mulged 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
(19) Recommend for approval of the board of managers, rules to eliminate the ability of an employer to avoid an experience modification factor by virtue of a reorganization of a business;

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

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

(22) Facilitate the transfer of the fraud investigation and prosecution unit, along with the assets necessary to support the functions being performed, to the insurance commissioner. This transfer shall be to be completed by the first day of July, two thousand five. This unit has the responsibility and authority for investigating and controlling fraud of the workers' compensation system of the state of West Virginia. The fraud unit shall be under the supervision of an inspector general, who shall be appointed by the insurance commissioner. Nothing in this section shall preclude the commission or, when applicable, the company created in article two-c of this chapter and other private carriers, from independently investigating and controlling abuse and exercising the powers granted to the commission to address and eliminate abuse under this chapter. The executive director may select persons that are assigned to the fraud and abuse unit on the effective date of the enactment of this section to be assigned and remain employees of the workers' compensa-
The commission shall determine its fiscal year two thousand six budget for the fraud investigation and prosecution unit and shall make advanced quarterly payments to the insurance commissioner during fiscal year two thousand six for the actual operational expenses incurred as a direct result of this transfer:

Provided, That the payments and expenses shall be reconciled prior to the final fiscal year transfer and any unexpended amount shall be deducted from the final quarter's payment. This reimbursement methodology shall repeat for fiscal year two thousand seven. Any amounts transferred under this section to the insurance commissioner shall be appropriated by the Legislature. The commission's inspector general shall serve as the initial inspector general for the insurance commissioner;

(A) The inspector general shall, with the consent and advice of the executive director, employ all personnel as necessary for the institution, development and finalization of procedures and investigations which serve to ensure that only necessary and proper workers' compensation benefits and expenses are paid to or on behalf of injured employees and to insure employers subscribe to and pay the proper premium to the West Virginia workers' compensation commission. Qualification, 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 and rules 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 promulgation by the board of managers rules for determining the existence of fraud and abuse as it relates to the workers' compensation system in West Virginia;
The fraud and abuse unit will be responsible for the initiation, development, review and proposal for promulgation by the board of managers of rules regarding the existence of fraud and abuse as it relates to the workers' compensation system in West Virginia;

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

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;

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

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

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

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

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

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

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

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

(A) May expend up to fifty thousand dollars for pur-
chases 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, con-
tracts for the purchase of an automated claims administra-
tion system and associated computer hardware and
software in the administration of claims for benefits made
under provisions of this chapter and contracts for techni-
cal 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 emer-
gency 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 agree-
ment;

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

(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;

(28) Upon termination of the commission, accomplish the
transfer to the insurance commissioner established in
article two-c of this chapter, the insurance commissioner,
and any other applicable state agency or department, of
the functions necessary for the regulation of the workers'
compensation insurance industry, including, but not
limited to, the following commission functions: rate
making, self-insurance, office of judges and board of
review. The executive director may select persons that are
assigned to these functions on the effective date of the
enactment of this section to be assigned and become
employees of the company as established in article two-c
of this chapter. The executive director may, in consulta-
tion with the insurance commissioner, select persons that
are assigned to the insurance commissioner. The commis-
sion shall determine its fiscal year two thousand six
budget for each of those functions, reduce the budget
amount attributable to self-insured employers for these
functions and shall make advanced quarterly payments to
the insurance commissioner during fiscal year two thou-
sand six for the actual operational expenses incurred as a
direct result of this transfer. The amount shall include the
funds necessary to operate the industrial council and the
insurance commissioner shall be administratively responsible for the industrial council's budget: Provided, That the payments and expenses shall be reconciled prior to the final fiscal year transfer and any unexpended amount shall be deducted from the final quarter's payment. This reimbursement methodology shall repeat for fiscal year two thousand and seven. Any amounts transferred under this section to the insurance commissioner shall be appropriated by the Legislature. For the final calendar quarter of two thousand five and the first and second calendar quarters of the year two thousand six, all self-insured employers shall remit to the insurance commissioner on a quarterly basis the administrative component of their fiscal year two thousand six rate. For the fiscal year beginning the first day of July, two thousand six, self-insured employers shall remit an administrative charge to the insurance commissioner in an amount determined by the commissioner. All self-insured employer advance deposits shall transfer from the commission to the insurance commissioner upon termination of the commission; and

(29) Perform all duties set forth in article two-c of this chapter.

§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 or the company created in article two-c of this chapter to the effect that all payments, interest and penalties thereon accrued against the contractor under this chapter as of the termination of the commission have been paid or that provisions satisfactory to the commission or company created in article two-c of this chapter 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 provi-
sions of this chapter, shall assist the commission or
company created in article two-c of this chapter in collect-
ing the payment that is due under subsection (a) of this
section. For this purpose, disclosure of joint delinquency
and default lists of employers with respect to unemploy-
ment 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 reve-
uue, the department of administration, the division of
highways or other appropriate state agency or officer.

§23-1-1e. Transfer of assets and contracts; ability to acquire,
own, lease and otherwise manage property.

(a) 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-
ners' compensation commission.

(b) From the termination of the commission through the
thirtieth day of June, two thousand eight, the company
may continue to contract and exchange data and informa-
tion with the office of information, services and communi-
§23-1-lg. Legislative intent to create a quasi-public entity.

In recognition of the impact a state's workers' compensation premium levels may have on the state's ability to conduct economic development and the resulting need to operate the state's workers' compensation system in such a manner that will enable the lowest premiums to be charged employers while at the same time ensuring adequate benefit levels are provided to injured workers, it is the intent of the Legislature that the workers' compensation commission remain a commission of the state as provided in article two, chapter five-f of this code until the company created in article two-c of this chapter is created and operational and the New Fund created in article two-c of this chapter has been funded. Until the termination of the commission and in order for the commission to be able to capture the efficiencies associated with private sector operations, the workers' compensation commission is exempt from the provisions of the following effective upon the date upon which this enactment is made effective by the Legislature:

(a) Article three, chapter five-a, related to the department of administration purchasing division; and

(b) Section eleven, article three, chapter twelve, relating to appropriations, expenditures and deductions.


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

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

(c) The powers and duties set forth in the section shall be transferred from the workers' compensation commission to the insurance commissioner upon termination of the commission.

§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.

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

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

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

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

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

(4) Pro se.

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

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

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

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

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

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

(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 pro-
vided 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 doctorate-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.

(h) The powers and duties set forth in the section shall be transferred from the workers' compensation commission to the insurance commissioner upon termination of the commission.


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 powers and duties set forth in the section shall be transferred from the workers' compensation commission to the insurance commissioner as of the termination of the commission.


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

§23-1-17. Annual report by the insurance commissioner and occupational pneumoconiosis board.

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


(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, the
company, a private carrier or self-insured employer, 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, the company, the
private carrier or self-insured employer, 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, the insurance commissioner, the company, a
private carrier or self-insured employer by any attorney in
contract with or employed by the workers' compensation
commission, the insurance commissioner, the company, a
private carrier or self-insured employer 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 or insur-
ance commissioner. Upon creation of the company
pursuant to article two-c of this chapter, venue for a civil
action under this section for the company, private carriers
and self-insured employers shall be either in the county in
which the defendant resides or the county in which the
injured worker was employed, as selected by the company,
the private carrier or self-insured employer.

(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 regis-
tration 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 emer-
gency service organizations as defined by article five,
chapter fifteen of this code, and all persons, firms, associa-
tions 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 pay-
ment: Provided, That rates will be adjusted by the com-
mission 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, inter-
mittent 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.

(8) Any employer whose employees are eligible to receive
benefits under the federal Longshore and Harbor Workers'
Compensation Act, 33 U. S. C. §901, et seq., but only for
those employees eligible for those benefits.

(c) Notwithstanding any other provision of this chapter
to the contrary, whenever there are churches in a circuit
which employ one individual clergyman and the payments
to the clergyman from the churches constitute his or her
full salary, such circuit or group of churches may elect to
be considered a single employer for the purpose of pre-
mium payment into the workers' compensation fund.

(d) Employers who are not required to subscribe to the
workers' compensation fund may voluntarily choose to
subscribe to and pay premiums into the fund for the
protection of their employees and in that case are subject
to all requirements of this chapter and all rules and
regulations prescribed by the commission with reference
to rates, classifications and premium payments and shall
afford to them the protection of this chapter, including
section six of this article, but the failure of the employers
to choose to subscribe to and to pay premiums into the
fund shall not impose any liability upon them other than
any liability that would exist notwithstanding the provi-
sions 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 work-
ners' compensation fund the premiums provided for in this
section, and at the time of making application to the
workers' compensation commission, the employer shall
furnish a statement under oath showing the probable
length of time the employment will continue in this state,
the character of the work, an estimate of the monthly
payroll and any other information which may be required
by the commission. At the time of making application the
employer shall deposit with the commission to the credit
of the workers' compensation fund the amount required by
section five of this article. That amount shall be returned
to the employer if the employer's application is rejected by
the commission. Upon notice to the employer of the
acceptance of his or her application by the commission, he
or she is an employer within the meaning of this chapter
and subject to all of its provisions.

(f) Any foreign corporation employer choosing to comply
with the provisions of this chapter and to receive the
benefits under this chapter shall, at the time of making
application to the commission in addition to other require-
ments of this chapter, furnish the commission with a
certificate from the secretary of state, where the certificate
is necessary, showing that it has complied with all the
requirements necessary to enable it legally to do business
in this state and no application of a foreign corporation
employer shall be accepted by the commission until the
certificate is filed.

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

(1) Any political subdivision of the state including
county commissions and municipalities, boards of educa-
tion, 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 corpo-
ration or an association shall consist of a president, a vice
president, a secretary and a treasurer, each of whom is
elected by the board of directors at the time and in the
manner prescribed by the bylaws. Other officers and
assistant officers that are considered necessary may be
elected or appointed by the board of directors or chosen in
any other manner prescribed by the bylaws and, if elected,
appointed or chosen, the employer may elect not to include
the officer or assistant officer as an "employee" within the
meaning of this chapter: Provided, That except for those
persons who are members of the board of directors or who
are the corporation's or association's president, vice
president, secretary and treasurer and who may be ex-
cluded by reason of their positions from the benefits of this
chapter even though their duties, responsibilities, activi-
ties or actions may have a dual capacity of work which is
ordinarily performed by an officer and also of work which
is ordinarily performed by a worker, an administrator or an employee who is not an officer, no other officer or assistant officer who is elected or appointed shall be excluded by election from coverage or be denied the benefits of this chapter merely because he or she is an officer or assistant officer if, as a matter of fact:

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

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

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

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

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

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

(j) Upon the termination of the commission, the criteria governing which employer shall or may subscribe to the workers' compensation commission shall also govern which employers shall or may purchase workers' compensation insurance under article two-c of this chapter.

§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-
quently 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 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.

(f) Effective upon termination of the commission, this section shall be applicable only to unpaid premiums due the commission or the old fund as provided in article two-c of this chapter.
§23-2-2. Commission to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.

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

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

(1) Upon written request to the state tax commissioner: The names, addresses, places of business and other identifying information of all businesses receiving a business franchise registration certificate and the dates thereof; and the names and social security numbers or other tax identification numbers of the businesses and of the businesses' workers and employees, if otherwise collected, and the quarterly or other applicable reporting period 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 employ-
ing 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 or other applicable reporting period wages paid
by each employing unit to each identified employee.

(c) All information acquired by the workers' compensa-
tion commission pursuant to subsection (b) of this section
shall be used only for auditing premium payments, assis-
ting in a wage determination, assisting in the determination
of employment status and registering businesses under the
single point of registration program as set forth in article
twelve, chapter eleven of this code. The workers' compen-
sation 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 ob-
tained 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' compensa-
tion 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, and effective upon termination of the commission, the insurance commissioner, shall prepare and furnish report forms for the use of employers subject to this chapter. Every employer receiving from the commission any form or forms with direction for completion and returning to the commission shall return the form, within the period fixed by the commission, completed as to answer fully and correctly all pertinent questions in the form, and if unable to do so, shall give good and sufficient reasons for the failure. Every employer subject to the provisions of this chapter shall make application to the commission on the forms prescribed by the commission for that purpose; and any employer who terminates his or her business or for any other reason is no longer subject to this chapter shall immediately notify the commission on forms to be furnished by the commission for that purpose.

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

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

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

(A) Rate adjustments by industry or individual employer, including merit rate adjustments;
(B) Notification regarding rate adjustments prior to the quarter in which the rate adjustments will be in effect;

(C) Chargeability of claims; and

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

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

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

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

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

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

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

(6) The rule shall be consistent with the principles of promoting more effective workplace health and safety programs as contained in article two-b of this chapter.
(b) In accordance with generally accepted accounting principles, the workers' compensation commission shall keep an accurate accounting of all money or moneys earned, due and received by the workers' compensation fund and of the liability incurred and disbursements made against the fund; and an accurate account of all money or moneys earned, due and received from each individual subscriber and of the liability incurred and disbursements made against the same.

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

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

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

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

(1) Thereafter, the premium taxes shall be paid quarterly or at other payment intervals established by the commission on or before the last day of the month following the end of the quarter or designated payment interval 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 or other designated payment interval. The commission may require employers, in accordance with the provisions of rules proposed by the executive director and promulgated by the board of managers, to report gross wages and pay premium taxes monthly or at other intervals.

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

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

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

(5) The commission shall encourage employer efforts to create and maintain safe workplaces, to encourage loss prevention programs and to encourage employer-provided wellness programs, through the normal operation of the experience rating formula, seminars and other public presentations, the development of model safety programs and other initiatives as may be determined by the executive director and the board of managers.
(b) Failure of an employer to timely pay premium taxes as provided 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 reporting period 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 reporting period commencing on and after the first day of July, one thousand nine hundred ninety-five, shall pay a late reporting or payment penalty of the greater of fifty dollars or a sum obtained by multiplying the premium tax due with the report by the penalty rate applicable to that reporting period. 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 reporting period 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 reporting period's report and payment and is due when that reporting period'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 by law. The notification shall demand the filing of the delinquent payroll report and payment of delin-
quent 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 reporting period. 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 reporting period for which the delinquency occurs. The commission shall notify the default employer of the method by which the employer may be reinstated with the fund. The commission shall also notify the employees of the employer by written notice as hereinafter provided in this section.

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

(f) (1) Except as provided in subdivision (3) of this subsection, any employer who is required to subscribe to the fund and who is in default on the effective date of this section or who subsequently defaults, and any employer who has elected to subscribe to the fund and who defaults and whose account is terminated prior to the effective date of this section or whose account is subsequently terminated, shall be restored immediately to the benefits and protection of this chapter only upon the filing of all delinquent payroll and other reports required by the commission and payment into the fund of all unpaid premiums, an adequate premium deposit, accrued interest and the penalty for late reporting and payment. Interest is calculated as provided by section thirteen of this article. The commission shall not have the authority to waive either premium or accrued interest: Provided, That until termination of the commission, the commissioner shall have the authority to waive either premium or accrued interest if the waiver is part of the full and final resolution of administrative or civil litigation. 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 by section five-a of this article or as otherwise provided by this code. Applications for reinstatement shall: (A) Be made upon forms prescribed by the commission; (B) include a report of the gross wages payroll of the employer which had not been reported to the commission during the entire period of delinquency and default. The gross wages information shall be certified by the employer or its authorized agent; and (C) include a payment of a portion of the liability equal to one half of one percent of the gross payroll during the period of delinquency and default or equal to another portion of the liability determined by rule but not to exceed the amount of the entire liability due and owing for the period of delinquency and default. An employer who applies for reinstatement is entitled to the benefits and protection of this chapter on the day a properly completed and acceptable application which is accompanied by the application payment is received by the commission: Provided, That if the commission reinstates an employer subject to the terms of a reinstatement agreement, the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with the reinstatement agreement or to timely file current reports and to pay current premiums within the month following the end of the period for which the report and payment are due, or to otherwise maintain its account in good standing or, if the
reinstatement agreement does not require earlier restoration of the premium deposit, to restore the premium deposit to the required amount by the end of the repayment period shall cause the reinstatement application and the reinstatement agreement to be null, void and of no effect, and the employer is denied the benefits and protection of this chapter effective from the date that the employer's account originally became delinquent.

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

(4) Following any failure of an employer to comply with the provisions of a reinstatement agreement, the commission may make and continue with any of the collection efforts provided 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 deduct-
ing 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 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 de-
faulted 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
doors 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 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 pro-
cess, 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 pur-
chaser; duty of secretary of state to register liens;
distraint powers; insolvency proceedings; secretary
of state to withhold certificates of dissolution;
injunctive relief; bond; attorney fees and costs.

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

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

(c) In addition to all other civil remedies prescribed, the commission may in the name of the state, after giving appropriate notice as required by due process, restrain 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 restrain in the name of the state before the delinquency occurs. For that purpose, the commission may require the services of a sheriff of any county in the state in levying the distress in the county in which the sheriff is an officer and in which the personal property is situated. A sheriff collecting any payment, interest and penalty thereon is entitled to the compensation as provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the commission is entitled to recover its attorneys' fees and costs of action from the employer.
(d) In case a business subject to the payments, interest and penalties thereon imposed under this chapter is operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction the business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of the payments, interest and penalties as they become due.

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

(f) In any case when an employer required to subscribe to the fund defaults in payments of premium, premium deposits, penalty or interest thereon, for as many as two reporting periods, which reporting periods 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.

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

(a) Notwithstanding any provisions of this chapter to the contrary, the following types of employers or employers'
groups may apply for permission to self-insure their workers' compensation risk including their risk of catastrophic injuries.

(1) The types of employers are:

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

(B) Any employer or group of employers as provided for subdivision (c) 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 employer who is signatory to a collective bargaining agreement that allows for participation in a group workers' compensation insurance program may join with any other employer or employers that are signatory to a collective bargaining agreement or agreements that allow for participation in a group workers' compensation program and jointly apply to the commission to collectively self-insure their obligations under this chapter. The employers must collectively meet the conditions set forth in paragraph (A) or (B) of this subdivision. There shall be joint and several liability for all employers who choose to jointly 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
37 financial condition based upon an analysis of its audited
38 financial statements and the full accrued value of current
39 liability for future claim payments based upon generally
40 accepted actuarial and accounting principles of the em-
41 ployer's existing and expected liability.

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

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

(5) Whenever a self-insured employer furnishes security
73 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 or other assigned
reporting period, 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 or other assigned reporting period.
Each self-insured employer shall pay into the workers'
compensation fund as portions of its self-insured employer
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 or other assigned
reporting period'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 applica-
table, 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 employer premium taxes,
surcharges or assessments, the commission shall, in an
appropriate case, determine the full accrued value based
upon generally accepted actuarial and accounting princi-
ples 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. Upon
termination of the commission, self-insured employers
shall either self-insure their catastrophic risk or insure
their catastrophic risk through a policy of excess insurance
obtained through a private insurance carrier approved by
the insurance commissioner. Self-insured employers shall
also reinsure their catastrophic risks.

(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. As stated in this subsection, this option shall expire upon termination of the commission. If the employees of that employer suffer injury or death from a catastrophe, the payment of the resulting benefits shall be made from the catastrophe reserve of the surplus fund provided for in subsection (b), section one, article three of this chapter. Any portion of an employer's catastrophic liability insured and paid under a policy of insurance purchased by the employer shall not be included in the liabilities upon which the employer's security or bond is determined in subsection (a) of this section.

(2) If an otherwise self-insured employer elects to self-insure its catastrophic risk, the security or bond required in subsection (a) of this section shall include the liability for the catastrophic risk.

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

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

Provided, That the funds contained in the security pool shall be deposited into the old fund and the funds contained in the guaranty pool shall be deposited in the self-insured employer guaranty risk pool created in article two-c of this chapter. All assets held by the commission for security pursuant to 85 CSR §19 (2004) shall transfer to the insurance commissioner.

(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 employer 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 and, upon termination of the commission, shall purchase workers' compensation insurance as provided for in article two-c of this chapter, 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. Upon termination of the commission, those self-insured employers may thereafter purchase workers' compensation insurance as provided for in article two-c of this chapter, but said self-insured employers shall remain liable for their self-insured employer claims liabilities.

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

(m) An employer may not hire any person or group to self-administer claims under this chapter as a third-party administrator unless the person or group has been determined to be qualified to be a third-party administrator by the commission pursuant to rules adopted by the board of managers. Any person or group whose status as a third-party administrator has been revoked, suspended or terminated by the commission shall immediately cease administration of claims and shall not administer claims unless subsequently authorized by the commission.
All regulatory, oversight, and document gathering authority provided to the commission under section nine, article two, chapter twenty-three shall transfer to the insurance commissioner and the industrial council upon termination of the commission.

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 reasonable attorney's fees and reasonable 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) Effective the first day of January, two thousand six, the commission, any successor to the commission, any other private carrier and any self-insured employer shall be allowed statutory subrogation with regard to all medical and indemnity benefits actually paid as of the date of the recovery. The commission, successor to the commission, any other private carrier and the self-insured employer shall permit the deduction from the amount received a reasonable attorney's fees and costs and may negotiate the amount to accept as subrogation. It is the duty of the injured worker, his or her dependents, his or her personal representative or his or her attorney to give reasonable notice to the commission, successor to the commission, any other private carrier, or the self-insured employer after a claim is filed against the third party and prior to the disbursement of any third party recovery. The statutory subrogation described in this section does not apply to uninsured and underinsured motorist coverage or any other insurance coverage purchased by the injured worker or on behalf of the injured worker. If the injured worker obtains a recovery from a third party and the injured worker, personal representative or the injured worker's attorney fails to protect the statutory right of subrogation created herein, the injured worker, personal representative and the injured worker's attorney shall lose the right to retain attorney fees and costs out of the subrogation amount. In addition, such failure creates a cause of action for the private carrier or self-insured employer against the injured worker, personal representative and the injured worker's attorney for the amount of the full subrogation amount and the reasonable fees and costs associated with any such cause of action. The right of subrogation granted by the provisions of this subsection 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 five.

(e) The right of subrogation granted the commission in subsections (a) through (c), inclusive, of this section shall be exercised by the insurance commissioner and his or her designated administrator of the old fund, as set forth in article two-c of this chapter, for 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 five. The insurance commissioner and his or her designated administrator shall be paid a recovery fee of ten percent of the actual amount recovered through subrogation with the remainder to be deposited into the old fund.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-1. Findings and purpose.

(a) The Legislature finds that:

(1) There is a long-term actuarial funding crisis in the state-run monopolistic workers' compensation system;

(2) Similar short-term and long-term crisis have been ongoing during the past two decades;

(3) During the current crisis, employers in West Virginia find it increasingly difficult to afford the rates charged by the workers' compensation commission for workers' compensation coverage and that paying said rates adversely impacts employers' ability to compete in a global economic environment;

(4) The cost of obtaining workers' compensation coverage from the state system may result in many employers leaving the state;
Employers' access to competitive workers' compensation rates and the resulting economic development benefit is of utmost importance to the citizens of West Virginia;

A mechanism is needed to provide an enduring solution to this recurring workers' compensation crisis;

An employers' mutual insurance company or a similar entity has proven to be a successful mechanism in other states for helping employers secure insurance and for stabilizing the insurance market;

There is a substantial public interest in creating a method to provide a stable workers' compensation insurance market in this state;

The state-run workers' compensation program is a substantial actual and potential liability to the state;

There is substantial public benefit in transferring certain actual and potential future liability of the state to the private sector and creating a stable self-sufficient entity which will be a potential source of workers' compensation coverage for employers in this state;

A stable, financially viable insurer in the private sector will aid in providing a continuing source of insurance funds to compensate injured workers; and

Because the public will greatly benefit from the formation of an employers' mutual insurance company, state efforts to encourage and support the formation of such an entity, including providing funding for the entity's initial capital, is in the clear public interest.

The purpose of this article is to create a mechanism for the formation of an employers' mutual insurance company that will provide:

A means for employers to obtain workers' compensation insurance that is reasonably available and affordable; and
Enr. S. B. No. 1004]

(2) Compensation to employees of mutual policyholders who suffer work place injuries as defined in chapter twenty-three of this code.


(a) "Executive director" means the executive director of the West Virginia workers’ compensation commission as provided in section one-b, article one, chapter twenty-three of this code.

(b) "Commission" means the West Virginia workers’ compensation commission as provided by section one, article one, chapter twenty-three of this code.

(c) "Insurance commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of this code.

(d) "Company" or "successor to the commission" means the employers’ mutual insurance company created pursuant to the terms of this article.

(e) "Policy default" shall mean a policyholder that has failed to comply with the terms of its workers’ compensation insurance policy and is consequently without workers’ compensation insurance coverage.

(f) "Industrial insurance" means insurance which provides all compensation and benefits required by chapter twenty-three of this code.

(g) "Insurer" includes:

(1) A self-insured employer; and

(2) A private carrier.

(h) "Industrial council" means the advisory group established in section five of this article.

(i) "Mutualization transition fund" shall be a fund over which the state treasurer is custodian. Moneys transferred
or otherwise payable to the mutualization transition fund shall be deposited in the state treasury to the credit of the mutualization transition fund. Disbursements shall be made from the mutualization transition fund upon requisitions signed by the executive director, and, upon termination of the commission, the insurance commissioner, and shall be reasonably related to the legal, operational, consultative and human resource related expenses associated with the establishment of the company and the transferring of personnel from the commission to the company.

(j) "New fund" shall mean a fund owned and operated by the commission and, upon termination of the commission, the successor organization of the West Virginia workers' compensation commission and shall consist of those funds transferred to it from the workers' compensation fund and any other applicable funds. New fund shall include all moneys due and payable to the workers' compensation fund for the quarters ending the thirtieth day of September, two thousand five and the thirty-first day of December, two thousand five, which have not been collected by the workers' compensation fund as of the thirty-first day of December, two thousand five.

(k) "New fund liabilities" shall mean all claims payment obligations (indemnity and medical expenses) for all claims, actual and incurred but not reported, for any claim with a date of injury or last exposure on or after the first day of July, two thousand five: Provided, That new fund liabilities shall begin with claims payments becoming due and owing on said claims on or after the first day of January, two thousand six.

(l) "Old fund" shall mean a fund held by the state treasurer's office consisting of those funds transferred to it from the workers' compensation fund or other sources and those funds due and owing the workers' compensation fund as of the thirtieth day of June, two thousand five that are thereafter collected. The old fund and assets therein
shall remain property of the state and shall not novate or
otherwise transfer to the company.

(m) "Old fund liabilities" mean all claims payment
obligations (indemnity and medical expenses), related
liabilities and appropriate administrative expenses
necessary for the administration of all claims, actual and
incurred but not reported, for any claim with a date of
injury or last exposure on or before the thirtieth day of
June, two thousand five: Provided, That old fund liabilities
shall include all claims payments for any claim, regardless
of date of injury or last exposure, through the thirty-first
day of December, two thousand five: Provided, however,
That old fund liabilities shall include all claims with dates
of injuries or last exposure prior to the first day of July,
two thousand four for bankrupt self-insured employers
that had defaulted on their claims obligations which have
been recognized by the commission in its actuarially
determined liability number as of the thirtieth day of June,
two thousand five.

(n) "Private carrier" means any insurer or the legal
representative of an insurer authorized by the insurance
commissioner to provide workers' compensation insurance
pursuant to this chapter and which maintains an office in
the state. The term does not include a self-insured em-
ployer or private employers but shall include any successor
to the commission.

(o) "Uninsured employer fund" means a fund held by the
state treasurer's office consisting of those funds trans-
ferred to it from the workers' compensation fund and any
other source. Disbursements from the uninsured employer
fund shall be upon requisitions signed by the insurance
commissioner and the administrator of the fund, and as
otherwise set forth in an exempt legislative rule promul-
gated by the workers' compensation board of managers.

(p) "Self-insured employer guaranty risk pool" shall be
a fund held by the state treasurer's office consisting of
those funds transferred to it from the guaranty pool
created pursuant to 85 CSR §19 (2004) and any future
funds collected through continued administration of that
exempt legislative rule as administered by the insurance
commissioner. Disbursements shall be made from the self-
insured employer guaranty risk pool upon requisitions
signed by the insurance commissioner and the administra-
tor of the fund. The obligations of the fund shall be as
provided in 85 CSR §19 (2004). The company shall
administer the self-insured employer guaranty risk pool
for a term and administrative fee as provided in the
administration of the old fund.

(q) "Self-insured employer security risk pool" shall be a
fund held by the state's treasurer consisting of those funds
paid into it through the insurance commissioner's adminis-
tration of 85 CSR §19 (2004). Disbursements from said
fund shall be made from the self-insured employer security
risk pool upon requisitions signed by the insurance
commissioner and the administrator of the fund. The
obligations of the fund shall be as provided in 85 CSR §19:
Provided, That said liabilities shall be limited to those
self-insured employers who default on their claims obliga-
tions after the termination of the commission. The com-
pany shall administer the self-insured employer security
risk pool for a term and administrative fee as provided in
the administration of the old fund.

(r) "Private carrier guaranty fund" shall be a fund held
by the state treasurer's office consisting of funds deposited
pursuant to this article. Disbursements shall be made
from the private carrier guaranty fund upon requisitions
signed by the insurance commissioner and the administra-
tor of the fund. The obligations of the fund shall be as
provided in this article. The company shall administer the
private carrier guaranty fund for a term and administra-
tive fee as provided in the administration of the old fund.

(s) "Assigned risk fund" shall be a fund held by the state
treasurer's office consisting of funds deposited pursuant to
Enr. S. B. No. 1004] 102

138 this article. Disbursements shall be made from the
139 assigned risk fund upon requisitions signed by the insurance commissioner. The obligations of the fund shall be as
140 provided in this article.
141
142 (t) "Comprehensive financial plan" shall mean the plan
143 compiled by the director for acceptance by the insurance
144 commissioner identifying and forecasting cash flows,
145 funding sources, debt terms and structures, and scheduled
146 amortization and permanent resolution of all old fund
147 liabilities. The comprehensive financial plan shall provide
148 for the retirement of the revenue bonds authorized by
149 article two-d, chapter twenty-three of this code and all
150 realized and potential claims against the old fund shall be
151 fully reserved. The comprehensive financial plan may
152 include any other information the insurance commissioner
153 may require as a basis for managing the post-transition
154 fiscal soundness of the old fund.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia workers' compensation commission.

1 (a) On or before the first day of June, two thousand five,
2 the executive director may take such actions as are
3 necessary to establish an employers' mutual insurance
4 company as a domestic, private, nonstock, corporation to:
5
6 (1) Insure employers against liability for injuries and
7 occupational diseases for which their employees may be
8 entitled to receive compensation pursuant to chapter
9 twenty-three of this code and federal Longshore and
10 Harbor Workers' Compensation Act, 33 U. S. C. §901, et
11 seq.;
12
13 (2) Provide employer's liability insurance incidental to
14 and provided in connection with the insurance specified in
15 paragraph (1), including coal-workers pneumoconiosis
16 coverage and employer excess liability coverage as pro-
17 vided in this chapter; and
(3) Transact such other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code.

(4) The company shall not sell, assign or transfer substantial assets or ownership of the company.

(b) If the executive director establishes a domestic mutual insurance company pursuant to subsection (a) of this section:

(1) As soon as practical, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws with the insurance commissioner and apply for a license with the insurance commissioner to transact insurance in this state. Notwithstanding any other provision of this code, the insurance commissioner shall act on the documents within fifteen days of the filing by the company.

(2) In recognition of the workers' compensation liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature hereby authorizes the insurance commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three of chapter thirty-three. The company shall furnish the insurance commissioner with all information and cooperate in all respects necessary for the insurance commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three. The insurance commissioner shall monitor the economic viability of the company during its initial operation on not less than a monthly basis, until such time as the commissioner in his or her discretion, determines that monthly reporting is not necessary. In all other
respects the company shall be subject to comply with the applicable provisions of chapter thirty-three of this code.

(3) Subject to the provisions of subsection (4) of this section, the insurance commissioner may waive other requirements imposed on mutual insurance companies by the provisions of chapter thirty-three as the insurance commissioner determines is necessary to enable the company to begin insuring employers in this state at the earliest possible date.

(4) Within forty months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), section five-b, article three, chapter thirty-three of this code in effect on the effective date of this enactment, unless said deadline is extended by the insurance commissioner.

(c) For the duration of its existence, the company is not and shall not be considered a department, unit, agency, or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the company, whenever incurred, shall be the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

(d) The moneys of the company are not and shall not be considered part of the general revenue fund of the state. The debts, claims, obligations and liabilities of the company are not and shall not be considered a debt of the state or a pledge of the credit of the state.

(e) The company is not subject to provisions of article nine-a, chapter six of this code; the provisions of chapter twenty-nine-b of this code; the provisions of article three, chapter five-a of this code; the provisions of article six, chapter twenty-nine of this code; the provisions of article six-a of said chapter; or the provisions of chapter twelve of this code.
(f) If the commission has been terminated, effective upon said termination, private carriers, including the company, shall not be subject to payment of premium taxes, surcharges and credits contained in article three of chapter thirty-three of this code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market shall be subject to the following:

(1) Each fiscal year, the insurance commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policy holders. The surcharge percentage shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible payments by all employers into the portion of the insurance commissioner's budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policy holder's premium payment and deductible payments as a surcharge and remitted to the insurance commissioner. Said surcharge shall be remitted within ten (10) days of receipt of premium payments, whenever said payments are made by its insureds;

(2) Each fiscal year, the insurance commissioner shall calculate a percentage surcharge to be remitted on a monthly basis by self-insured employers and said percentage shall be calculated by dividing previous year's self-insured payroll in the state into the portion of the insurance commissioner's budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer's monthly payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The workers' compensation board of managers may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the insurance commissioner with all required information and cooperate in all respects necessary for the insurance commissioner to perform the
duties set forth in this section and in other provisions of this chapter and chapter thirty-three. The surcharge shall be calculated so as to only defray the costs associated with the administration of chapter twenty-three of this code and the funds raised shall not be used for any other purpose.

(3) Upon termination of the commission, the company and all other private carriers shall collect a premiums surcharge from their policy holders equal to ten percent, or such higher or lower rate as annually determined, by the first day of May of each year, by the insurance commissioner to produce forty-five million dollars annually, of each policy holder's periodic premium amount for workers' compensation insurance. Additionally, by the first day of May each year, the self-insured employer community shall be assessed a cumulative total of nine million dollars. The methodology for the assessment shall be fair and equitable and determined by exempt legislative rule issued by the workers' compensation board of managers. The amount collected shall be remitted to the insurance commissioner for deposit in the workers' compensation debt reduction fund created in section five, article two-d of this chapter.

(g) The new premiums surcharge imposed by subdivision (2), subsection (f) of this section shall sunset and not be collectible with respect to workers' compensation insurance premiums paid when the policy is renewed on or after the first day of the month following the month in which the Governor certifies to the Legislature that the revenue bonds issued pursuant to article two-d, chapter twenty-three of this code have been retired and that the unfunded liability of the old fund has been paid or has been provided for in its entirety, whichever occurs last.

§23-2C-4. Governance and organization.

(a) (1) The commission shall implement the initial formation and organization of the company as provided by this article.
(2) From the inception of the company, until the first day of January, two thousand six, the company shall be governed by a provisional board of directors consisting of the three-persons on the executive committee of the workers' compensation board of managers and four members of the Legislature. Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory nonvoting members of the board. The Governor shall appoint the legislative members to the board. No more than three of the legislative members shall be of the same political party. The provisional board shall have the authority to function as necessary to establish the company and cause it to become operational, including the right to contract on behalf of the company. Each voting board member shall receive compensation of not more than three hundred fifty dollars per day and actual and necessary expenses for each day during which he or she is required to and does attend a meeting of the board.

(3) The provisional board shall develop procedures for the nomination of the board of directors that will succeed the provisional board on the first day of January, two thousand six, and for the conduct of the election, to be held no later than the first day of November, two thousand five, and shall give notice of the election to the current subscribers to the workers' compensation fund. These procedures shall be exempt from the provisions of article three, chapter twenty-nine-a of this code.

(4) Except as limited by this section and applicable insurance rules and statutes, the company may: (1) On its own; (2) through the formation or acquisition of subsidiaries; or (3) through a joint enterprise, offer:

(A) Workers' compensation insurance in a state other than West Virginia to the extent it also provides workers' compensation or occupational disease insurance coverage to the employer pursuant to chapter twenty-three of this code;
(B) Other workers' compensation products and services and related products and services in West Virginia or other states; and

(C) Other property and casualty insurance in West Virginia and other states.

(b) Effective the first day of January, two thousand six, the company shall be governed by a board of directors consisting of seven directors, as follows:

(1) Three owners or officers of an entity that has purchased or will immediately upon termination of the commission purchase and maintain an active workers' compensation insurance policy from the company. At least one shall be a certified public accountant with financial management or pension or insurance audit expertise and at least one shall be an attorney with financial management experience.

(2) Two directors who have substantial experience as an officer or employee of a company in the insurance industry, one of whom is from a company with less than fifty employees;

(3) One director with general knowledge and experience in business management who is an officer and employee of the company and is responsible for the daily management of the company; and

(4) The chief executive officer of the company.

(c) The directors and officers of the company are to be chosen in accordance with the articles of incorporation and bylaws of the company. The initial board of directors selected shall serve for the following terms: (1) Two for four-year terms; (2) two for three-year terms; (3) two for two-year terms; and (4) one for a one-year term. Thereafter, the directors shall serve staggered terms of four years. No director chosen may serve more than two consecutive terms, except for the chief executive officer of the com-
pany. Furthermore, owners, directors, or employees of employers otherwise licensed to write workers' compensation insurance in this state or licensed or otherwise authorized to act as a third-party administrator shall not be eligible to be nominated, appointed, elected or serve on the company's board of directors.

(d) The executive director shall prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and the provisions of chapters thirty-one and thirty-three of this code.

§23-2C-5. Creation of the industrial council; duties.

(a) There is hereby created within the office of the insurance commissioner an industrial council.

(b) On or before the first day of July, two thousand five, the governor with the advice and consent of the Senate, shall appoint five voting members to the industrial council who meet the requirements and qualifications prescribed in this subsection. Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory nonvoting members of the board. 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. The insurance commissioner shall serve as an advisory nonvoting member of the board.

(1) (A) Five members shall be appointed by the governor with the advice and consent of the Senate for terms that begin upon appointment after the effective date of this legislation and expire as follows:

(i) One member shall be appointed for a term ending the thirtieth day of June, two thousand seven;

(ii) Two members shall be appointed for a term ending the thirtieth day of June, two thousand eight; and
(iii) Two members shall be appointed for a term ending the thirtieth day of June, two thousand nine.

(B) 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 council may be removed from office by the governor except for official misconduct, incompetency, neglect of duty or gross immorality.

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

(2) Each of the appointed voting members of the council 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:

(A) Each shall hold a baccalaureate degree from an accredited college or university: Provided, That no more than one 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 this subdivision;

(B) 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;

(C) 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; one shall be an academician holding an advanced degree from an accredited college or university in business, finance, insurance or economics; and one shall represent organized labor.

(D) The council shall appoint one member to serve as chairperson. The chairperson shall serve for a one-year term and may serve more than one consecutive term. The council shall hold meetings at the request of the chairperson or at the request of at least three of the members of the council, but no less frequently than once every three months. The chairperson shall determine the date and time of each meeting. Three members of the council constitute a quorum for the conduct of the business of the council. No vacancy in the membership of the council shall impair the right of a quorum to exercise all the rights and perform all the duties of the council. No action shall be taken by the council except upon the affirmative vote of three members of the council.

(3) (A) Each voting appointed member of the council 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.

(B) Each voting appointed member of the council 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.

(C) Each member of the council shall be provided appropriate liability insurance, including, but not limited to, errors and omissions coverage, without additional premium, by the state board of risk and insurance management established pursuant to article twelve, chapter twenty-nine of this code.

(c) The industrial council shall:

(1) In consultation with the insurance commissioner, establish operating guidelines and policies designed to ensure the effective administration of the workers' compensation insurance market in West Virginia.

(2) Review and approve, reject or modify rules that are proposed by the insurance commissioner for operation and regulation of the workers' compensation insurance market before the rules are filed with the secretary of state. The rules adopted by the industrial council are not subject to sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The industrial council 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.

(3) In accordance with the laws and rules of West Virginia, establish and monitor performance standards and measurements to ensure the timeliness and accuracy of activities performed under chapter twenty-three of this code and applicable rules.

(4) Submit for approval by the Legislature, as an isolated and clearly discernable component of the insurance commissioner's budget, a budget for the sufficient administrative resources and funding requirements necessary for their duties under this article.

(5) Perform all record and information gathering functions necessary to carry out its duties under this code.
(6) Every two years, conduct an overview of the safety initiatives currently being utilized or which could be utilized in the workers' compensation insurance market and report said finding to the joint committee on government and finance. Each private carrier and self-insured employer shall cooperate with the council in the performance of its duties to evaluate insurer services provided to employers in controlling losses and providing information on the prevention of industrial accidents or occupational diseases. Each employer, private carrier and self-insured employer shall provide to the council, upon request, any information, statistics or data in its records requested by the council in the performance of these duties.

(7) Perform all other duties as specifically provided in this chapter for the industrial council and those duties incidental thereto.

(8) Establish a method of indexing claims of injured workers that will make information concerning the injured workers of one insurer available to other insurers.

(A) Every insurer shall provide information, as required by the industrial council, for establishing and maintaining the claims index.

(B) If an employee files a claim with an insurer, the insurer is entitled to receive from the administrator a list of the prior claims of the employee. If the insurer desires to inspect the files related to the prior claims, he or she must obtain the written consent of the employee or the insurance commissioner or his or her designee. The use of the information contained in the files is limited to the administration of the claim.

(a) Effective upon the date upon which this enactment is made effective by the Legislature, there is hereby created in the state treasury a "workers' compensation old fund", "workers' compensation new fund", "mutualization transition fund", "workers' compensation uninsured employers' fund", "self-insured employer guaranty risk pool", "self-insured employer security risk pool", "private carrier guaranty fund" and an "assigned risk fund". The executive director of the workers' compensation commission shall have full authority to administer the old fund, the new fund, the mutualization transition fund, the uninsured employers' fund, the self-insured employer guaranty risk pool, the self-insured employer security risk pool and the private carrier guaranty fund until termination of the commission. As soon as practicable upon the establishment of the mutualization transition fund, the executive director shall cause thirty-five million dollars to be transferred from the workers' compensation fund into the mutualization transition fund. All unencumbered funds remaining in the mutualization transition fund as of termination of the commission shall be transferred into the private carrier guaranty fund or, if the proclamation set forth in this article has not been issued, back to the workers' compensation fund. Expenditures from the funds established by this section shall be upon appropriation of the Legislature except that during the fiscal year ending the thirtieth day of June, two thousand five, expenditures from the mutualization transition fund up to amounts expended for the purposes of this article are authorized rather than pursuant to an appropriation by the Legislature.

(b) If the proclamation set forth in this article is issued, then upon termination of the commission, the funds contained in the workers' compensation fund shall be disbursed as follows: (1) A minimum of three hundred million dollars into the workers' compensation old fund, the exact amount of which shall be set forth in the governor's proclamation provided in this article; (2) five million
dollars into the uninsured employers' fund; and (3) the
remainder into the new fund. Additionally, the funds
contained in the guaranty pool provided in 85 CSR §19
(2004) shall be transferred into the self-insured employer
guaranty risk pool created in this article.


(a) The state treasurer shall be the custodian of the
workers' compensation old fund, workers' compensation
uninsured employers' fund, the self-insured employer
guaranty risk pool, the self-insured employer security risk
pool, the private carrier guaranty fund and the assigned
risk pool and moneys payable to each of these funds shall
be deposited in the state treasury to the credit of the funds.
Each fund shall be a separate and distinct fund upon the
books and records of the auditor and treasurer. Disburse-
ments from these funds shall be made upon requisitions
signed by the executive director and, effective upon
termination of the commission, the administrator of the
funds and the insurance commissioner. The workers'
compensation old fund, the workers' compensation
uninsured employer fund, the self-insured employer
guaranty risk pool, self-insured employer security risk
pool, the private carrier guaranty fund and the assigned
risk fund are participant plans as defined in section two,
article six, chapter twelve of this code and are subject to
the provisions of section nine-a of said article. The funds
may be invested by the investment management board in
accordance with said article.

(b) If the governor issues the proclamation set forth in
this article, then, effective upon termination of the com-
mission, all remaining assets and funds contained in the
workers' compensation fund which are payable to the new
fund shall be so disbursed and paid to the company by
communication of the executive director to the state
treasurer or other appropriate state official prior to the
termination of the commission.
§23-2C-8. West Virginia uninsured employers' fund.

(a) The West Virginia uninsured employers' fund shall be governed by the following:

1. All money and securities in the fund must be held by the state treasurer as custodian thereof to be used solely as provided in this article.

2. The state treasurer may disburse money from the fund only upon written requisition of the insurance commissioner and administrator of the fund.

3. The insurance commissioner shall assess each private carrier and all self-insured employers an amount to be deposited in the fund. The assessment may be collected by each private carrier from its policy holders in the form of a policy surcharge. To establish the amount of the assessment, the insurance commissioner shall determine the amount of money necessary to maintain an appropriate balance in the fund for each fiscal year and shall allocate a portion of that amount to be payable by private carriers, a portion to be payable by self-insured employers, and a portion to be paid by any other appropriate group. After allocating the amounts payable, the insurance commissioner shall apply an assessment rate to the:

(A) Private carriers that reflects the relative hazard of the employments covered by the private carriers, results in an equitable distribution of costs among the private carriers and is based upon expected annual premiums to be received;

(B) Self-insured employers that results in an equitable distribution of costs among the self-insured employers and is based upon expected annual expenditures for claims; and

(C) Any other categories of payees that results in an equitable distribution of costs among them and is based upon expected annual expenditures for claims or premium to be received.
(4) The workers' compensation board of managers may adopt rules for the establishment and administration of the assessment methodologies, rates, payments and any penalties that the workers' compensation board of managers determines are necessary to carry out the provisions of this section.

(b) Payments from the fund shall be governed by the following:

(1) Except as otherwise provided in this subsection, an injured worker of any employer required to be covered under this chapter who has failed to obtain coverage may receive compensation from the uninsured employers' fund if:

(A) He or she meets all jurisdictional and entitlement provisions of this chapter;

(B) He or she files a claim with the insurance commissioner; and

(C) He or she makes an irrevocable assignment to the insurance commissioner a right to be subrogated to the rights of the injured employee.

(2) If the insurance commissioner receives a claim, it shall immediately notify the employer of the claim. For the purposes of this section, the employer has the burden of proving that it provided mandatory workers' compensation insurance coverage for the employee or that it was not required to maintain workers' compensation insurance for the employee. If the employer meets this burden, benefits shall not be paid from the fund.

(3) Any employer who has failed to provide mandatory coverage required by the provisions of chapter twenty-three of this code is liable for all payments made on its behalf, including any benefits, administrative costs and attorney's fees paid from the fund or incurred by the insurance commissioner.
(4) The insurance commissioner:

(A) May recover from the employer the payments made by it, any accrued interest and attorney fees and costs by bringing a civil action in a court of competent jurisdiction.

(B) May enter into a contract with any person, including the administrator of the uninsured employers' fund, to assist in the collection of any liability of an uninsured employer.

(C) In lieu of a civil action, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

(5) The insurance commissioner shall:

(A) Determine whether the employer was insured within five days after receiving notice of the claim from the employee.

(B) Assign the claim to the administrator of the fund for administration and, if appropriate, payment of compensation.

(6) Upon determining whether the claim is accepted or denied, the fund administrator shall notify the injured employee and the named employer of its determination.

(7) Any party aggrieved by a determination made by the insurance commissioner or the fund administrator regarding the claims decisions made pursuant to this section may appeal that determination by filing a protest with the office of judges as set forth in article five of this chapter.

(8) An uninsured employer is liable for the interest on any amount paid on his or her claims from the fund. The interest must be calculated at a rate set in accordance with the provisions of section thirteen, article two of this chapter, compounded monthly, from the date the claim is paid from the account until payment is received by the
insurance commissioner or fund administrator from the employer.

(9) Attorney's fees recoverable by the insurance commissioner or administrator pursuant to this section must be paid at the usual and customary rate for that attorney.

(10) In addition to any other liabilities provided in this section, the insurance commissioner or the fund administrator may impose an administrative fine of not more than ten thousand dollars against an employer if the employer fails to provide mandatory coverage required by this chapter. All fines and other moneys collected pursuant to this section shall be deposited into the uninsured employer fund.

(c) The company shall be the administrator of the uninsured employers' fund from the fund's inception and thereafter for seven years and shall be charged with all authority and responsibilities incidental to the administration of the fund which are necessary to accomplish the express provisions and the intent of this chapter. The company shall be paid a monthly administrative fee of five percent of claims paid each month for the administration of the fund through the thirty-first day of December, two thousand ten, and four percent of claims paid each month for the administration of the fund thereafter through the thirty-first day of December, two thousand twelve. The company's administrative duties shall include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the state treasurer's office or other applicable state agency and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. The administration of the fund after this seven year period shall be subject to the procedures set forth in article three, chapter five-a of this code.

(d) Employees of self-insured employers who are injured while employed by a self-insured employer are ineligible for benefits from the West Virginia uninsured employer fund.

(a) The private carrier guaranty fund established in article two-c of this chapter shall provide benefits to those employees whose employers' private carrier is found to be insolvent by a court of competent jurisdiction in the insurer's state of domicile or has otherwise defaulted on its payment obligations and is subject to an administrative action by the insurance commissioner.

(b) The private carrier guaranty fund shall be funded through assessments on each private carrier of workers' compensation insurance. All assessments shall be deposited in the private carrier guaranty fund established in this article. The assessment may be collected by each carrier from its policy holders in the form of a policy surcharge. To establish the amount of the assessment, the insurance commissioner shall determine the amount of money necessary to pay outstanding obligations of the defaulting private carrier and to maintain an appropriate balance in the fund for each fiscal year. The insurance commissioner shall apply an assessment rate to the private carriers that reflects the relative hazard of the employments covered by the private carriers, results in an equitable distribution of costs among the private carriers and is based upon expected annual premiums to be received.

(c) A defaulting private carrier shall not be permitted to write any workers' compensation insurance in this state until it has reimbursed the private carrier guaranty fund for any payments made for the private carrier's unpaid obligations.

(d) Private carriers providing workers' compensation insurance shall not be subject to article twenty-six, chapter thirty-three of this code for any premiums received for coverage provided under this chapter.

(e) The insurance commissioner may promulgate rules to implement the provisions of this section.
§23-2C-10. West Virginia adverse risk assignment.

(a) To qualify for adverse risk assignment, an employer must have been categorically declined coverage by at least two insurers that are not affiliated with each other. The employer shall have the burden of establishing that at least two insurers are unwilling to provide coverage at any premium level that is reasonably related to the risk presented by the employer.

(b) To qualify for adverse risk assignment, the employer shall make an application to the insurance commissioner and shall submit the evidence described in subsection (a) of this section.

(c) Upon receipt of the adverse risk assignment application, the insurance commissioner shall determine whether subsection (a) of this section has been satisfied. If so, the insurance commissioner shall, through the assigned risk fund, provide coverage to the applicant at a premium level to be determined by the insurance commissioner, which premiums shall be consistent with generally accepted accounting principles, actuarially sound, and consistent with classification and rate-making methodologies found in the insurance industry. All rates, surcharges or assessments and assignment of adverse risk employers shall be fair and equitable and financially sound in accordance with generally accepted accounting principles.

(d) The coverage provided by this section shall be pursuant to a pooling arrangement managed by the insurance commissioner. The insurance commissioner may contract with any third party, including any private carrier, to administer this pooling arrangement. Costs necessary to operate this pooling arrangement shall be funded by premiums paid by covered employers, surcharges, if any, to covered employers and assessments to private carriers providing workers' compensation insurance in this state.
(c) The workers' compensation board of managers shall promulgate a rule for the establishment of the pooling mechanism and administration thereof; assessment of private carriers; and rating structure with differing rate tiers for insureds.

(f) As often as necessary, the insurance commissioner may assess all private carriers providing workers' compensation insurance in this state such funds as are necessary to cover any deficiencies in the pooling arrangement. The assessments shall result in an equitable distribution of costs among private carriers based upon premiums received by the private carriers. Assessments made upon private carriers pursuant to this section may be collected by each carrier from its policy holders in the form of a surcharge.

§23-2C-11. Transfer of assets from new fund to the mutual insurance company established as a successor to the commission; transfer of commission employees.

(a) If the governor determines that:

(1) The old fund assets are sufficient to satisfy the old fund liabilities or that a revenue source has been secured to satisfy the old fund liabilities as they occur from time to time;

(2) The executive director has established a mutual insurance company pursuant to this code;

(3) The comprehensive financial plan has been accepted by the insurance commissioner; and

(4) The commissioner of insurance has determined that the mutual insurance company established by the executive director qualifies:

(A) For a certificate of authority to transact workers' compensation insurance in this state; and
(B) For the authority to issue nonassessable policies of insurance pursuant to this code, the governor shall issue a proclamation stating that the events described in subdivisions (1) through (4), inclusive, of this subsection have occurred, along with the exact amount of funds to be transferred from the workers’ compensation fund to the old fund. The Governor shall establish the effective date of the termination of the commission in the proclamation.

(b) If the governor issues said proclamation:

The executive director shall cause the transfer to the mutual insurance company established pursuant this code the premiums and other money paid or payable, transferred or transferable from the workers’ compensation fund into the new fund, old fund, and any other applicable fund. The investment management board, state treasurer and any other agency or board shall fully cooperate in the transfer of the new fund assets.

(c) Upon the issuance of the proclamation set forth in subsection (a) of this section, all commission employees assigned regulatory duties shall transfer, along with the assets necessary to support the functions being performed, from the commission to the insurance commissioner. Provided, That the executive director shall, in consultation with the insurance commissioner, have sole authority to identify and select the employees that are employed by the commission to be assigned and transferred to the insurance commission. For purposes of this section, regulatory duties shall include, but may not be limited to, self-insurance, rating services, office of judges and board of review.

(d) The division of personnel shall cooperate fully by assisting in all personnel activities necessary to expedite all changes for the commission and the insurance commissioner. Due to the emergency currently existing at the commission and the urgent need to develop fast, efficient claims processing, management and administration, the
insurance commissioner 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 subsection. These actions shall not be subject to the grievance process. The provisions of this subsection are not effective after the thirty-first day of December, two thousand six.

§23-2C-12. Certain personnel provisions governing employees laid-off by the mutual during its initial year of operation.

(a) If a mutual insurance company is established pursuant to this article, a person who:

(1) Is employed on the first day of January, two thousand five, by the commission;

(2) Was employed by the commission upon its termination; and

(3) Is laid off by the company on or before the thirtieth day of June, two thousand eight, is entitled to be placed on an appropriate reemployment list maintained by the department of personnel and to be allowed a preference on that list. The department of personnel shall maintain such an employee on the reemployment list indefinitely, or until the employee has declined three offers of employment at a paygrade substantially similar to that of his or her position upon termination of the commission, or until he or she is reemployed by the executive branch of state government, whichever occurs earlier.

(b) The executive director may select former bureau of employment program employees who are, upon the termination of the commission, employees of the office of information services and communication and who enter into an employment contract with the company before the first day of December, two thousand five, to become
§23-2C-13. Certain retraining benefits to those employees laid-off by the mutual during its first year of operation.

If a domestic mutual insurance company is established pursuant to this article, the chief executive officer of the company shall enter into an agreement with the department of personnel for the provision of services and training to an employee of the company who is laid off during the first year of the company's operation and requires additional training to obtain other gainful employment. The department of personnel shall administer the program. The fees required for those services and training shall be in an amount established by the department or personnel, must not exceed two million dollars, in the aggregate, and shall be paid out of the mutualization transition fund. The executive director may select former bureau of employment program employees who are, upon the termination of the commission, employees of the office of information services and communication and who enter into an employment contract with the company before the first day of December, two thousand five, to become employees of the company and said employees shall be afforded the benefits of this section.

§23-2C-14. Certain benefits provided to commission employees.

(a) If a domestic mutual insurance company is created pursuant to this article and becomes operational as a private carrier, then the company shall pay the full actuarial cost to purchase years of credit for not more than five years of service under the state's public employee retirement system to those individuals who retire upon termination of the commission or who become employed by the company upon termination of the commission. The amount purchased per employee shall be calculated by allowing six months of credit to be purchased for each
year of service with the commission or its predecessors, including the bureau of employment programs, and shall be paid out of the mutualization transition fund. If upon said purchase, an employee does not vest in the public employee retirement plan, the employee can receive his or her contribution from the retirement plan and an amount equal to the employer's contribution to be payable out of the mutualization transition fund.

(b) The public employees' retirement system shall take such action as is necessary to carry out the provisions of subsection (a).

(c) All employees employed by the commission on the thirty-first day of December, two thousand four, who are employed by the company immediately upon termination of the commission shall have the following options related to their accrued sick leave: Freeze said accrued sick leave at the balance that existed as of thirty-first day of December, two thousand four and use said sick leave at the time of retirement to purchase insurance through the public employee insurance agency. Any related charges shall be paid from the old fund; have their accrued sick leave irrevocably surrendered in exchange for one hour of pay for each hour of accrued sick leave surrendered to be payable from the mutualization transition fund.

(d) The executive director may select former bureau of employment program employees who are, upon the termination of the commission, employees of the office of information services and communication and who enter into an employment contract with the company before the first day of December, two thousand five, to become employees of the company and said employees shall be afforded the benefits of this section.


(a) Effective upon termination of the commission, all subscriber policies with the commission shall novate to the
company and all employers otherwise shall purchase
workers' compensation insurance from the company,
unless permitted to self-insure their obligations. The
company shall assume responsibility for all new fund
obligations of the subscriber policies which novate to the
company or which are issued thereafter. Each subscriber
whose policy novates to the company shall also have its
advanced deposit credited to its account with the com-
pany. Employers purchasing workers' compensation
insurance from the company shall have the right to
designate a representative or agent to act on its behalf in
any and all matters relevant to coverage and claims as
administered by the company.

(b) Effective the first day of July, two thousand eight, an
employer may elect to: (1) Continue to purchase workers'
compensation insurance from the company; (2) purchase
workers' compensation insurance from another private
carrier licensed and otherwise authorized to transact
workers' compensation insurance in this state; or (3) self-
insure its obligations if it satisfies all requirements of this
code to so self-insure and is permitted to do so: Provided,
That all state and local governmental bodies, including,
but not limited to, all counties and municipalities and
their subdivisions and including all boards, colleges,
universities and schools, shall continue to purchase work-
ners' compensation insurance from the company through
the thirtieth day of June, two thousand twelve. The
company and other private carriers shall be permitted to
sell workers' compensation insurance through licensed
agents in the state. To the extent that a private carrier
markets workers' compensation insurance through a
licensed agent, it shall be subject to all applicable provi-
sions of chapter thirty-three of the code. All employers'
must immediately notify the insurance commissioner of
its private carrier and any change thereto.

(c) An employer may elect to change its private insurer
carrier on or after the first day of July, two thousand eight,
if the employer has:
(1) Given at least thirty days' notice to the insurance commissioner of the change of insurer; and

(2) Furnished evidence satisfactory to the insurance commissioner that the payment of compensation has otherwise been secured.

(d) Each private carrier and employer shall notify the insurance commissioner if an employer has changed his or her insurer or has allowed his or her insurance to lapse within twenty-four hours or by the end of the next working day, whichever is later, after the insurer has notice of the change or lapse. Every employer shall post a notice upon its premises in a conspicuous place identifying its industrial insurer. The notice must include the insurer's name, business address and telephone number and the name, business address and telephone number of its nearest adjuster in this state. The employer shall at all times maintain the notice provided for the information of his or her employees. Release of employer policy information and status by the industrial council and the insurance commissioner shall be governed by section four, article one, chapter twenty-three of this code. The insurance commissioner shall collect and maintain information related to officers, directors and ten percent or more owners of each carrier's policy holders. The private carrier shall provide said information to the insurance commissioner.

(e) Any rule promulgated by the workers' compensation board of managers empowering agencies of this state to 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 employer whose account is in default with the commission shall be fully enforceable by the insurance commissioner against the employer in policy default with a private carrier.

(f) Effective the first day of July, two thousand eight, the company may decline to offer coverage to any applicant.
Effective the first day of July, two thousand eight, the company and private carriers may cancel a policy or decline to renew a policy upon the issuance of sixty days written advance notice to the policyholder: Provided, That cancellation of the policy by the carrier for failure of consideration to be paid by the policyholder is effective after fifteen days advance written notice of cancellation to the policyholder.


(a) Notwithstanding any provision of this code to the contrary, the company shall be the administrator of the workers' compensation old fund from inception of the company and thereafter for seven years and shall be charged with all authority and responsibilities incidental to the administration of the old fund which are necessary to accomplish the express provisions and the intent of this chapter. The company shall be paid a monthly administrative fee of five percent of claims paid each month for the administration of the old fund through the thirty-first day of December, two thousand ten, and four percent of claims paid each month for the administration of the old fund thereafter through the thirty-first day of December, two thousand twelve. The company’s administrative duties shall include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the state treasurer’s office or other applicable state agency, and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. The administration of the old fund after this seven-year period shall be subject to the procedures set forth in article three, chapter five-a of this code.

(b) The insurance commissioner may contract or employ counsel to perform legal services related solely to the collection of moneys due the old fund, including the collection of moneys due the old fund and enforcement of repayment agreements entered into for the collection of moneys due on or before the thirtieth day of June, two
thousand five, in any administrative proceeding and in any state or federal court.

(c) The insurance commissioner shall review claims determined to be payable from the old fund and may contest the determination pursuant to the provisions of article five of this chapter.

(d) The insurance commissioner may conduct or cause to be conducted an annual audit to be performed on the old fund.

§23-2C-17. Administration of a competitive system.

(a) Every policy of insurance issued by a private carrier:

(1) Shall be in writing;

(2) Shall contain the insuring agreements and exclusions; and

(3) If it contains a provision inconsistent with this chapter, it shall be deemed to be reformed to conform with this chapter.

(b) The workers' compensation board of managers shall promulgate a rule which prescribes the requirements of a basic policy to be used by private carriers.

(c) A private carrier may enter into a contract to have his or her plan of insurance administered by a third-party administrator, including the company. A private carrier shall not enter into a contract with any person for the administration of any part of the plan of insurance unless that person maintains an office in this state and has registered with the insurance commissioner of this state in accordance with article forty-six, chapter thirty-three of the code.

(d) A self-insured employer or a private carrier may:

(1) Enter into a contract or contracts with one or more organizations for managed care to provide comprehensive
medical and health care services to employees for injuries and diseases that are compensable pursuant to chapter twenty-three of this code. The managed care plan must be approved pursuant to the provisions of section three, article four of this chapter.

(2) Require employees to obtain medical and health care services for their industrial injuries from those organizations and persons with whom the self-insured employer, or private carrier has contracted or as the self-insured employer or private carrier otherwise prescribes.

(3) Except for emergency care, require employees to obtain the approval of the self-insured employer or private carrier before obtaining medical and health care services for their industrial injuries from a provider of health care who has not been previously approved by the self-insured employer or private carrier.

(e) A private carrier or self-insured employer may inquire about and request medical records of an injured employee that concern a preexisting medical condition that is reasonably related to the industrial injury of that injured employee.

(f) An injured employee must sign all medical releases necessary for the insurer of his or her employer to obtain information and records about a preexisting medical condition that is reasonably related to the industrial injury of the employee and that will assist the insurer to determine the nature and amount of workers' compensation to which the employee is entitled.

§23-2C-18. Ratemaking; insurance commissioner.

(a) For the fiscal year beginning the first day of July, two thousand six, the company shall charge the actuarially determined base rates for the fiscal year. The base rates shall be calculated by the company and submitted for approval by the insurance commissioner.
(b) For the fiscal year beginning the first day of July, two thousand seven, the company shall charge the actuarially determined base rates for said fiscal year. The base rates shall be calculated by the company and submitted for approval by the insurance commissioner.

(c) Effective for the fiscal year beginning the first day of July, two thousand eight, all private carriers' rates shall be governed by the following:

(1) For the period beginning on first day of July, two thousand eight, and ending on the thirtieth day of June, two thousand nine, no more than five percent variance from the base rates established by the insurance commissioner.

(2) For the period beginning on the first day of July, two thousand nine, and ending on the thirtieth day of June, two thousand ten, no more than ten percent variance from the base rates established by the insurance commissioner.

(d) For the period beginning on the first day of July, two thousand six through the thirtieth day of June, two thousand ten, the company and, when applicable, a private carrier, may continue to calculate experience modification factors and other related rating modification methodologies to adequately insure individual employer risks.

(e) The variances provided in this section are only applicable to base rates and shall be exclusive of experience modification and other related adjustments, including surcharges imposed by this chapter.

(f) For the period beginning the first day of July, two thousand ten, and thereafter, the insurance commissioner shall set base rates for approved classifications and thereafter in accordance with rules established in accordance with subsection nine of this section. Said rates shall be released to the public at least ninety days prior to the first day of July each year. Within thirty days from this release date, private carriers shall submit to the insurance...
commissioner their proposed rates, which may be higher than the base rates established by the insurance commissioner. The insurance commissioner retains authority to disapprove rates in effect if it is determined that the rates are not in compliance with the following:

(1) Rates must not be excessive, inadequate or unfairly discriminatory, nor may an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a monopoly.

(2) The insurance commissioner may disapprove rates if there is not a reasonable degree of price competition at the consumer level with respect to the class of business to which they apply. In determining whether a reasonable degree of price competition exists, the insurance commissioner shall consider all relevant tests, including:

(A) The number of insurers actively engaged in the class of business and their shares of the market;

(B) The existence of differentials in rates in that class of business;

(C) Whether long-run profitability for private carriers generally of the class of business is unreasonably high in relation to its risk;

(D) Consumers' knowledge in regard to the market in question; and

(E) Whether price competition is a result of the market or is artificial. If competition does not exist, rates are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to the risk of the class of business, or if expenses are unreasonably high in relation to the services rendered.

(3) Rates are inadequate if they are clearly insufficient, together with the income from investments attributable to them, to sustain projected losses and expenses in the class of business to which they apply.
(4) One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with similar exposure to loss but different expense factors, or similar expense factors but different exposure to loss, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise or blanket policy.

(g) The rate-making provisions and premium provisions contained in article two of this chapter shall not be applicable to the company or other private carriers. The workers' compensation board of managers, in consultation with the insurance commissioner, shall issue an exempt legislative rule to govern ratemaking and premium collection by the company and other private carriers.

§23-2C-19. Special provisions as to private carrier premium collection.

(a) Each employer who is required to purchase and maintain workers' compensation insurance or who elects to purchase workers' compensation insurance shall pay a premium to a private carrier. Each carrier shall notify its policy holders of the mandated premium payment methodology and under what circumstances a policy holder will be found to be in policy default.

(b) An employer who is required to purchase and maintain workers' compensation insurance but fails to do so or otherwise enters policy default shall be deprived of the benefits and protection afforded by this chapter, including section six, article two of this chapter, and the employer is liable as provided in section eight of said article. The policy defaulted employer's liability under these sections is retroactive to the day the policy default occurs. The private carrier shall notify the policy de-
faulted employer of the method by which the employer
may be reinstated with the private carrier.

(c) A private carrier is authorized to commence a civil
action against an employer who, after due notice, defaults
on any payment. If judgment is against the employer, the
employer shall pay the costs of the action. Upon prevail-
ing in a civil action, the private carrier is entitled to
recover its attorneys' fees and costs of action from the
employer.

d) 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,
its officers and its directors, immediately due and owing to
the private carrier and shall, in addition, be a lien enforce-
able against all the property of the employer: Provided,
That the lien shall not be enforceable as against a pur-
chaser (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.

(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
its private carrier 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 private carrier has been made for
payment.

(f) In addition to any other liabilities provided in this
section, the insurance commissioner may impose an
administrative fine of not more than ten thousand dollars
against an employer if the employer fails to provide
mandatory coverage required by the this chapter. Further,
prior to providing an applicant employer with coverage
mandated in this chapter, all private carriers shall exercise
reasonable due diligence to ensure that an employer
applicant has not been in policy default with another
carrier or in default with the commission. If it is discov-
ered that the employer applicant remains in policy default
with another carrier or the commission, the company or
new carrier shall not provide the coverage mandated by
this chapter until such time as the preexisting policy
default is cured. Any provider violating this provision
may be fined not more than ten thousand dollars by the
insurance commissioner.

(g) The company and the insurance commissioner shall
be provided extraordinary powers to collect any premium
amounts payable to the workers' compensation fund or the
new fund and due from first day of July, two thousand
two, through the thirtieth day of June, two thousand eight.
Those powers shall include: (1) Withholding of coverage
effective the first day of January, two thousand six.
Employers without coverage shall immediately be de-
prived of the benefits and protection afforded by this
chapter, including section six, article two of this chapter
and the employer is liable as provided in section eight of
said article; (2) the right to maintain a civil action against
all officers and directors of the employer individually for
collection of the premium owed; and (3) the right to
immediately report the employers' to the state tax depart-
ment and other state agencies to secure suspension of any
and all licenses, certificates, permits, registrations and
other similar approval documents necessary for the
employer to conduct business in this state.


(a) A self-insured employer shall continue to comply
with rules promulgated by the board of managers govern-
ing the self-administration of its claims and the successor
to the commission shall also comply with the rules promul-
gated by the board of managers governing the self-admin-
istration of claims.

(b) The successor to the commission, any other private
carrier and any employer that 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. The
successor to the commission, private carriers and self-
insured employers 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
successor to the commission, private carriers, and the self-
insured employer in their administration of claims pre-

tended by employees of the self-insured employer.

(c) Upon termination of the commission, the occupa-
tional pneumoconiosis board shall be transferred to the
insurance commissioner and shall be administered by the
insurance commissioner. The company and other private
carriers shall have all authority and responsibility granted
to the self-insured employers in the administration and
processing of occupational pneumoconiosis claims.

(d) Upon termination of the commission, all claims
allocation responsibilities shall transfer from the commis-
sion to the insurance commissioner.

(e) Upon termination of the commission, the administra-
tor of the old fund shall have all administrative and
adjudicatory authority vested in the commission in
administering old law liabilities and otherwise processing
and deciding old law claims.
§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.

(a) No cause of action may be brought or maintained by an employee against a private carrier or a third-party administrator, or any employee or agent of a private carrier or third-party administrator, who violates any provision of this chapter or chapter thirty-three of this code.

(b) Any administrative fines or remedies provided in this chapter or rules promulgated by the workers' compensation commission or the insurance commissioner are the exclusive civil remedies for any violation of this chapter committed by a private carrier or a third-party administrator or any agent or employee of a private carrier or a third-party administrator.

(c) Upon a determination by the Office of Judges' that a denial of compensability, a denial of an initial award of temporary total disability or a denial of an authorization for medical benefits was unreasonable, reasonable attorney's fees and the costs actually incurred in the process of obtaining a reversal of the denial shall be awarded to the claimant and paid by the company, private carrier or self-insured employer which issued the unreasonable denial. A denial is unreasonable if, after submission by or on behalf of the claimant, of evidence of the compensability of the claim, the entitlement to initial temporary total disability benefits or medical benefits, the company, private carrier or self-insured employer is unable to demonstrate that it had evidence or a legal basis supported by legal authority at the time of the denial which is relevant and probative and supports the denial of the award or authorization. Payment of attorney's fees and costs awarded under this subsection will be made to the claimant at the conclusion of litigation, including all appeals, of the claimant's protest of the denial.

Except as otherwise provided in this chapter, all rules applicable to the former workers' compensation commission are hereby adopted and made effective as to the operation of the workers' compensation insurance market to the extent that they are not in conflict with the current law. Authority to enforce the existing rules and the regulatory functions of the commission as set forth in chapter twenty-three of the code shall transfer from the commission to the insurance commissioner effective upon termination of the commission.

§23-2C-23. Transfer of assets and contracts.

With the establishment of the company, all commission assets, excluding those necessary to perform the regulatory function of the insurance commissioner under this chapter are hereby transferred and assigned to the company.

ARTICLE 2D. WORKERS' COMPENSATION DEBT REDUCTION BONDS.


This article shall be known and may be cited as the "Workers' Compensation Debt Reduction Bond Act".

§23-2D-2. Legislative findings; legislative intent.

The Legislature finds and declares that:

(a) The supreme court of appeals has ruled that article X, section four of the constitution does not preclude issuance of revenue bonds which are to be redeemed from a special fund.

(b) The supreme court of appeals has also ruled that the Legislature may not designate funds that will be used to liquidate a bond issue out of a current tax source that flows into the general revenue fund.

(c) This act imposes several new taxes and provides for those taxes to be deposited in the workers' compensation
enr. S. B. No. 1004] 140

debt reduction fund created in section five of this article, which is a special account in the treasury and is not part of the state general revenue fund.

(d) This act also provides for certain special revenue dollars that are not part of the state general revenue fund to also be deposited in the workers' compensation debt reduction fund.

(e) This article provides for the reduction of the old fund liability of the workers' compensation commission through the issuance of revenue bonds for the purpose of:

(1) Providing for the safety and soundness of the workers' compensation system; and

(2) Redeeming the unfunded liability of the workers' compensation fund in order to realize savings over the remaining term of the amortization schedules of the unfunded actuarial accrued liabilities.

(f) The general credit of the state will not be pledged for repayment of bonds issued under this article and repayment will come from moneys that are not part of the state's general revenue fund.


For purposes of this article:

(a) "Old fund" means the fund created in sections two and six, article two-c of this chapter;

(b) "Workers' compensation commission" or "commission" means the West Virginia workers' compensation commission established under article one, chapter twenty-three of this code, or any successor to all or any substantial part of its powers and duties; and

(c) "Workers' compensation debt reduction revenue bond" means any bond or bonds issued by the economic development authority pursuant to this article.
§23-2D-4. Workers' compensation debt reduction revenue bonds; amount; when may issue.

(a) Revenue bonds of the state of West Virginia are hereby authorized to be issued and sold by the West Virginia economic development authority created and provided in article fifteen, chapter thirty-one of this code, solely for the paying down and elimination of the current unfunded liability of the workers' compensation fund, as provided by the constitution and the provisions of this article. The principal of, and the interest and redemption premium, if any, on, the bonds shall be payable solely from the special fund provided in section six of this article for repayment.

(b) The bonds shall bear such date or dates and mature at such time or times, be in such amounts, be in such denominations, be in such registered form, carry such registration privileges, be due and payable at such time or times, not exceeding thirty years from their respective dates, and place and in such amounts, and subject to such terms of redemption as the resolution may provide: Provided, That in no event may the amount of bonds issued pursuant to this article exceed one billion five hundred million dollars.

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

(d) Net proceeds from sale of these bonds shall be deposited in the old fund.

§23-2D-5. Special account created; use of moneys in the fund.

(a) There is hereby created in the state treasury a special interest bearing account known as the "workers' compen-
sation debt reduction fund." Funds in this account may be
invested in the manner permitted by the provisions of
article six, chapter twelve of this code, with interest
income a proper credit to this fund.

(b) Moneys to be deposited in this account include:

(1) The amounts provided in section two, article eleven-
a, chapter four of this code;

(2) The net amount of all moneys received by the tax
commissioner from collection of the new taxes imposed by
section four, article thirteen-v, chapter eleven of this code,
including any interest, additions to tax, or penalties
collected with respect to these taxes pursuant to article
ten, chapter eleven of this code;

(3) The net amount of moneys received by the insurance
commissioner from collection of the new premiums tax
imposed by section three, article two-c of this chapter; and

(4) Moneys from racetrack video lottery net terminal
income, as provided in section ten and ten-b, article
twenty-two-a, chapter twenty-nine of this code.

(c) Moneys in this account are to be used and expended
to reduce the workers' compensation debt or to pay debt
service on bonds sold pursuant to this article for the
purpose of reducing or paying the workers' compensation
debt, or for any combination of both of these purposes.

(d) From the moneys deposited in this fund, there shall
first be transferred each month to the debt service fund
created in section six of this article sufficient amounts to
provide for the timely payment of the principal, interest
and redemption premium, if any, on any revenue bonds or
refunding bonds issued pursuant to this article, as deter-
mimed in the trust agreement or agreements. Remaining
moneys shall be transferred monthly to the old fund.

When in any fiscal year ending after the thirtieth day of June, two thousand six, the state collects net severance tax on the privilege of severing, extracting, reducing to possession or producing coal for sale profit or commercial use imposed by section three, article thirteen-a, chapter eleven of the code, that is in excess of the net amount of the tax collected in fiscal year two thousand six, fifty percent of the difference shall be deposited in the old fund created in article two-c of this chapter. For purposes of this subsection, the amount of the additional severance tax on coal imposed pursuant to section six, article thirteen-a, chapter eleven of the code, collected each fiscal year for the benefit of counties and municipalities as provided in said section six, shall be excluded when determining the amount of the tax imposed by section three, article thirteen-a, chapter eleven of the code, that is collected each fiscal year from the privilege of severing, extracting, reducing to possession or producing coal for sale, profit or commercial use. The provisions of this subsection shall not be effective after the thirtieth day of June, two thousand nine.

§23-2D-6. Creation of debt service fund; disbursements to pay debt service on workers' compensation debt reduction revenue bonds.

(a) There is hereby created a special account in the state treasury, which shall be designated and known as the "West Virginia Workers' Compensation Debt Reduction Revenue Bond Debt Service Fund", into which shall monthly be deposited amounts from the workers' compensation debt reduction fund necessary to pay debt service on the bonds and to provide for any coverage requirements.

(b) All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article, including any and all commercially customary and reasonable costs and
expenses which may be incurred in connection with the
issuance, refunding, redemption or defeasance thereof.

(c) The treasurer shall transfer monies in this fund as set
forth in the trust agreement for the bonds issued under
this article.

(d) A lien on the proceeds of the West Virginia workers'
compensation debt reduction revenue bond debt service
fund up to a maximum amount equal to the projected
annual principal, interest and coverage ratio requirements
may be granted by the economic development authority in
favor of the bonds it issues secured by this fund.


The state of West Virginia covenants and agrees with the
holders of the bonds issued pursuant hereto as follows: (1)
that such bonds shall never constitute a direct and general
obligation of the state of West Virginia; (2) that the full
faith and credit of the state is not hereby pledged to secure
the payment of the principal and interest of such bonds; (3)
that new annual state taxes that are not and never were
part of the state general revenue fund shall be collected in
an amount sufficient to pay as it may accrue the interest
on such bonds and the principal thereof; and (4) that the
moneys transferred to the workers' compensation debt
reduction revenue bond debt service fund as provided in
this article are irrevocably set aside and dedicated to the
payment of the interest on and principal of any bond
becoming due and payable in such year.

§23-2D-8. Workers' compensation debt reduction revenue bonds
lawful investments.

All workers' compensation debt reduction revenue bonds
issued pursuant to this article shall be lawful investments
for banking institutions, societies for savings, building and
loan associations, savings and loan associations, deposit
guarantee associations, trust companies, insurance compa-

1 Any workers' compensation debt reduction revenue bonds which are outstanding may at any time be refunded by the issuance of refunding bonds in an amount deemed necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon; to accomplish the purpose of this article; and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the workers' compensation debt reduction revenue bonds to be refunded shall have then matured or shall thereafter mature. Any refunding bonds issued pursuant to this article shall be payable from the workers' compensation debt reduction revenue bond debt service fund shall be secured in accordance with the provisions of this article.

§23-2D-10. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses, incurred in the issuance of any revenue bonds pursuant to this article shall be paid out of bond proceeds.

ARTICLE 3. WORKERS' COMPENSATION FUND.

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

1 (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. The workers'
compensation fund created pursuant to this article shall
terminate upon termination of the commission and its
proceeds shall be distributed as set forth in article two-c
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.
Effective upon termination of the commission, all funds in
the catastrophe fund shall be transferred into the old fund,
all claims payable as a consequence of a catastrophe
hazard shall be payable from the old fund and any premi-
ums due under this article shall be payable to the old fund.
Employers shall purchase catastrophe insurance from the
company or another private carrier and shall also reinsure
their catastrophic risk.

(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 pneumo-
coniosis or occupational disease, irrespective of its com-
pensability, 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 employer 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.

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

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

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1b. Report of injuries by employers.
It is the duty of every employer to report to the commission, the successor to the commission or another private carrier, whichever is applicable, every injury sustained by any person in his or her employ. The report shall be on forms prescribed by the commission or the insurance commissioner, whichever is applicable, 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 or the insurance commissioner, whichever is applicable, 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 the successor to the commission, or another private carrier, whichever is applicable, 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 objected 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, the successor to the commission, or another private carrier with respect to any period from the date of injury to the date of receipt of any objection made to the interim payments by the employer.
§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission, successor to the commission, other private carriers and self-insured employers to collect payments improperly made.

(a) In any claim for benefits under this chapter, the workers' compensation commission, the successor to the commission, other private carriers or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may enter an order conditionally approving the claimant's application if it 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may only recover the amount of the overpayment as provided for in subsection (h) of this section.

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

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

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

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

(D) Whether the claimant has received unemployment compensation benefits within sixty days of the filing. In the event of an affirmative finding upon any of these four factors, the finding shall be given probative weight in the overall determination of the compensability of the claim or of the merits of the reopening request.

(3) Any party may object to the order of the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, and obtain an evidentiary hearing as provided in section one, article five of this chapter: Provided, That if the successor to the commissioner, other private carrier or self-insured, whichever is applicable, fails to timely issue a ruling upon any application or motion as provided by law, or if the claimant files a timely protest to the ruling of a self-insured employer, private carrier, or other issuing entity, denying the compensability of the claim, denying initial temporary total disability benefits or denying medical authorization, 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,
successor to the commission, other private carrier or self-
insured employer, whichever is applicable, may immedi-
ately enter an order commencing the payment of tempo-
rary 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, successor to the commission, other
private carrier or self-insured employer, whichever is
applicable, shall enter an order commencing the payment
of temporary total disability or medical benefits within
fifteen working 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, successor to the commission, other
private carrier or self-insured employer, whichever is
applicable, 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, successor to the commission, other
private carrier or self-insured employer, whichever is
applicable, may enter orders granting temporary total
disability benefits upon receipt of medical evidence
justifying the payment of the benefits. The commission,
successor to the commission, other private carrier or self-
insured employer, whichever is applicable, may not enter
an order granting prospective temporary total disability
benefits for a period of more than ninety days. Provided,
That when the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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 this information within fifteen days from the date the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall make the payments at the rate the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, finds would be justified by the usual rate of pay for the occupation of the injured employee. The rate of benefits shall be adjusted 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, payment of temporary total disability benefits to the claimant in the amount provided for in sections six and fourteen of this article shall immediately commence, 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. Immediate notice to the parties of the decision shall be given.

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

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

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

(i) In the event that the commission, successor to the
commission, other private carrier or self-insured employer,
whichever is applicable, finds that, based upon the em-
ployer’s report of injury, the claim is not compensable, the
commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
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, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
shall reduce the temporary total disability benefits
provided under this chapter by an amount sufficient to
ensure that the claimant does not receive monthly benefits
in excess of the amount provided by the employer’s plan or
the temporary total disability benefit, whichever is
greater: Provided, That this subsection does not apply to
215 benefits being paid under the terms and conditions of a
216 collective bargaining agreement.

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

(a) If the commission, successor to the commission, other
private carrier or self-insured employer, whichever is
applicable, makes an award for permanent partial or
permanent total disability, the commission, successor to
the commission, other private carrier or self-insured
employer, whichever is applicable, shall start payment of
benefits by mailing or delivering the amount due directly
to the employee within fifteen working days from the date
of the award: Provided, That the commission, successor to
the commission, other private carrier or self-insured
employer, whichever is applicable, may withhold payment
of the portion of the award that is the subject of subsec-
tion (b) of this section until seventy-seven days have
expired without an objection being filed.

(b) When the commission, successor to the commission,
other private carrier, self-insured employer, the office of
judges or the workers' compensation board of review,
whichever is applicable, 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, the commission the successor to the commission
or other private carrier, payment of monthly permanent
total disability benefits shall begin. However, any pay-
ment 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, benefits shall continue to be paid 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may only recover that amount by withholding, in whole or in part, as determined by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

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

(f) If a claimant is receiving benefits paid through a retirement plan, wage replacement plan, salary continuation plan or other benefit plan provided by the employer to which the employee has not contributed, and that plan does not provide an offset for permanent total disability benefits to which the claimant is also entitled under this chapter as a result of the same injury or disease, the employer shall notify the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, of the duplication of the benefits paid to the claimant. Upon receipt of the notice, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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 subsection does not apply to benefits being paid under the terms and conditions of a collective bargaining agreement.

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

(a) Notwithstanding any provision of this code to the contrary, no person shall be jurisdictionally entitled to 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 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 rema-in...
ing period of temporary total disability shall be made if
justified by the evidence and authorized by order of the
commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable.

(b) Notwithstanding any provision of this code to the
contrary, no person confined in a state correctional facility
or jail who suffers injury or a disease in the course of and
resulting from his or her work during the period of con-
fine ment which work is imposed by the administration of
the state correctional facility or 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.

§23-4-3. 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, physi-
cian, etc., prohibited; criminal penalties for viola-
tion; payments to certain providers prohibited;
medical cost and care program; payments; interloc-
utory orders.

(a) The workers' compensation commission, and effective
upon termination of the commission, the insurance
commissioner, shall establish and alter from time to time,
as it 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
and effective upon termination of the commission, the
insurance commissioner, also, on the first day of each
regular session and also from time to time, as it may
consider appropriate, shall submit the schedule, with any
changes thereto, to the Legislature.

The commission, and effective upon termination of the
commission, all private carriers and self-insured employ-
ers or their agents, shall disburse and pay for personal
injuries to the employees who are entitled to the benefits
under this chapter as follows:

(1) Sums for health care services, rehabilitation services,
durable medical and other goods and other supplies and
medically related items as may be reasonably required.

The commission, and effective upon termination of the
commission, all private carriers and self-insured employ-
ers or their agents, shall determine that which is reason-
ably required within the meaning of this section in accor-
dance 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 commis-
sion, and effective upon termination of the commission, all
private carriers and self-insured employers or their agents,
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, and effective upon termination of the com-
misson, all private carriers, self-insured employers and
other payors, specific justification for the need for the
additional services in the particular case and the commis-
sion shall have the justification reviewed by a health care professional before authorizing the additional services. The commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, may enter into preferred provider and managed care agreements which provides for fees and other payments which deviate from the schedule set forth in this subsection.

(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, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, considers proper, but no payments or disbursements shall be made or awarded by the commission unless duly verified statements on forms prescribed by the commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors, have been filed within six months after the rendering of the treatment or the delivery of such goods, supplies or items or within ninety days of a subsequent compensability ruling if a claim is initially rejected:

Provided, That no payment under this section shall be made unless a verified statement shows no charge for or with respect to the treatment or for or with respect to any of the items specified in this subdivision has been or will be made against the injured employee or any other person, firm or corporation. When an employee covered under the provisions of this chapter is injured, in the course of and as a result of his or her employment and is accepted for health care services, rehabilitation services, or the provision of durable medical or other goods or other supplies or medically related items, the person, firm or corporation
rendering the treatment may not make any charge or charges for the treatment or with respect to the treatment against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commission schedule set forth in this subsection.

(3) Any pharmacist filling a prescription for medication for a workers' compensation claimant shall dispense a generic brand of the prescribed medication if a generic brand exists. If a generic brand does not exist, the pharmacist may dispense the name brand. In the event that a claimant wishes to receive the name brand medication in lieu of the generic brand, the claimant may receive the name brand medication but, in that event, the claimant is personally liable for the difference in costs between the generic brand medication and the brand name medication.

(4) In the event that a claimant elects to receive health care services from a health care provider from outside of the state of West Virginia and if that health care provider refuses to abide by and accept as full payment the reimbursement made by the workers' compensation commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, pursuant to the schedule of maximum reasonable amounts of fees authorized by this subsection, 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 imprison-
ment not exceeding one year, or both.

(2) The provisions of this subsection shall not prohibit an
employer, the successor to the commission, other private
carrier or self-insured 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, successor to the commission, other private
carrier or self-insured employer that provides a managed
health care plan approved by the commission or, upon
termination of the commission, the insurance commis-
sioner, for its employees or the employees of its insured
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 estab-
lished 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 em-
ployer'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 nor the commission had an approved health care management plan at the time the initial choice was made, and if the claimant's employer does not provide access to such a plan as part of the employer's general health insurance benefit, then the claimant shall be provided with a new health care provider from the commission's managed health care plan available to him or her.

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

(d) The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall provide for the replacement of artificial limbs, crutches, hearing aids, eyeglasses and all other mechanical appliances provided in accordance with this section which later wear out, or which later need to be refitted because of the progression of the injury which caused the devices to be originally furnished, or which are broken in the course of and as a result of the employee's employment. The commission, successor to the commis-
Enr. S. B. No. 1004]

233 tion, other private carrier or self-insured employer shall
234 pay for these devices, when needed, notwithstanding any
235 time limits provided by law.
236
237 (e) No payment shall be made to a health care provider
238 who is suspended or terminated under the terms of section
239 three-c of this article except as provided in subsection (c)
240 of said section.
241
242 (f) The commission, successor to the commission, other
243 private carrier or self-insured employer, whichever is
244 applicable, may engage in and contract for medical cost
245 containment programs, pharmacy benefits management
246 programs, medical case management programs and
247 utilization review programs. Payments for these programs
248 shall be made from the workers' compensation fund or the
249 funds of the successor to the commission, other private
250 carrier, or self-insured employer. Any order issued
251 pursuant to the program shall be interlocutory in nature
252 until an objecting party has exhausted all review processes
253 provided for by the commission, successor to the commis-
254 sion, other private carrier or self-insured employer,
255 whichever is applicable.
256
257 (g) Notwithstanding the provisions of this section, the
258 commission, successor to the commission, other private
259 carrier or self-insured employer may establish fee sched-
260 ules, make payments and take other actions required or
261 allowed pursuant to article twenty-nine-a, chapter sixteen
262 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
3 and specialties among health care providers in this state
4 which shall be in existence until termination of the
5 commission. There shall be a minimum of five members of
6 the health care advisory panel who shall receive reason-
7 able compensation for their services and reimbursement
for reasonable actual expenses. Each member of this panel shall be provided appropriate professional or other liability insurance, without additional premium, by the state board of risk and insurance management created pursuant to article twelve, chapter twenty-nine of this code. The panel shall:

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

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

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

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

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

(b) In addition to the requirements of subsection (a) of this section, on or before the thirty-first day of December, two thousand three, the board of managers shall promulgate a rule establishing the process for the medical management of claims and awards of disability which includes, but is not limited to, reasonable and standardized guidelines and parameters for appropriate treatment, expected period of time to reach maximum medical
improvement and range of permanent partial disability
awards for common injuries and diseases or, in the alter-
ative, 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.

§23-4-4. Funeral expenses; wrongfully seeking payment; crimi-
nal 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, and upon its
termination, the insurance commissioner, shall be paid
from the fund, or the private carrier, payment to be made
to the persons who have furnished the services and sup-
plies, or to the persons who have advanced payment for
the services and supplies, as the commission may deter-
mine proper, in addition to any award made to the em-
ployee's dependents.

(b) A funeral director or cemeterian, or any person who
furnished the services and supplies associated with the
funeral or cemetery expenses, or a person who has ad-
vanced 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, and upon its termination, the
insurance commissioner, 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 or insurance commissioner; 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 or the insurance commissioner.

(c) Any person who knowingly and willfully seeks or receives payment of funeral expenses in excess of the amount fixed by the commission or the insurance commissioner 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 jail for a definite term of confinement of twelve months, or both.

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

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

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

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

(c) Subdivision (b) of this section is limited as follows: Aggregate award for a single injury causing temporary 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, successor to the commission, other private carrier or self-insured employer, whichever is
applicable, grant an additional permanent disability award to a claimant receiving a permanent total disability award: Provided further, That if any claimant thereafter sustains another compensable injury and has permanent partial disability resulting from the injury, the total permanent disability award benefit rate shall be computed at the highest benefit rate justified by any of the compensable injuries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For the partial loss of hearing in one or both ears, the percentage of disability shall be determined by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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 interdisciplinary examining board shall terminate upon termination of the commission and all administrative and adjudicatory functions performed by the interdisciplinary examining board shall be performed by the following reviewing bodies for those claims over which they have administrative jurisdiction: (1) The insurance commissioner or his or her designated administrator of each of the funds set forth in this chapter; (2) private carriers; or (3) self-insured employers. The reviewing bodies shall employ or otherwise engage adequate resources, including medical professionals, to perform the functions of the interdisciplinary examining board. 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, or, any other reviewing body, unless a properly completed and supported application for permanent total disability benefits has been first filed. Prior to the referral of any issue to the interdisciplinary examining board, or, upon its termination, prior to a reviewing body's adjudication of a permanent total disability application, the commission, or reviewing body 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 or reviewing body 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 or other reviewing body and shall furnish to the board or other reviewing body any information requested. 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 or other reviewing body and shall be granted only upon a showing of good cause. The reports from all employer-conducted examinations must be filed with the board or other reviewing body and served upon the claimant. The board or other reviewing body may request that those persons who have furnished reports and opinions regarding a claimant provide it with additional information considered necessary. Both the claimant and the employer, as well as the commission, or other reviewing body may submit or obtain 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
380 to questions related to medical cost containment, utilization review decisions and managed care decisions arising under section three of this article.

383 (4) In the event the board members or other reviewing body elects to examine a claimant, the board or other reviewing body 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 or other reviewing body and the reasons for the findings. Copies of the reports of all examinations made by the board or other reviewing body shall be served upon the parties and the commission until its termination. Each shall be given an opportunity to respond in writing to the findings and conclusions stated in the reports.

396 (5) The board or other reviewing body 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 or other reviewing body regarding its recommendations. The board or other reviewing body 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, or, upon its termination, the private carrier or self-insured employer. 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 or other reviewing body 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 or other reviewing body: Provided, That upon notification of the commission or other reviewing body by a claimant or his or her representative that the claimant seeks to be evaluated for permanent total disability, the commission or other reviewing body shall send the claimant or his or her representative the proper application form. The commission or other reviewing body 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 or other reviewing body shall be treated as if received on the date the commission or other reviewing body 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 or other reviewing body and shall further be limited to the issue of whether the board or other reviewing body 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. The preponderance of the evidence set forth in article one of this chapter shall apply to decisions made by reviewing bodies other than the commission instead of the clearly wrong standard. If either party contends that the claimant's condition has changed significantly since the review conducted by the board or other reviewing body, 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 or other reviewing body 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 or other reviewing body may either supply com-
ments or, at the board's or other reviewing body's discre-
tion, 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 or other reviewing body
shall file its recommendations with the administrative law
judge for his or her review. If the board or other reviewing
body 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 or other
reviewing body's recommendations or comments, the
administrative law judge shall issue a written decision
ruling upon the asserted change in the claimant's condi-
tion. 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 or other reviewing body's findings and conclu-
sions. 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. The
limitation of the scope of review otherwise provided in this
subsection is not applicable upon termination of the
commission and any objections shall be subject to article
five of this chapter in its entirety.

(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 or other reviewing
body pursuant to subdivision (i) of this section to deter-
mine 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 or other reviewing body
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 or
other reviewing body 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 statu-
tory 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 statu-
tory 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 subdivi-
sion. 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 subdivi-
sion (d) of this section for the remaining issues in the
request.

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

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

(A) Eighty percent for the first year;
(B) Seventy percent for the second year;
(C) Sixty percent for the third year; and

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

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

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

(B) No percent of whole body medical impairment existing as the result of any occupational disease, the diagnosis of which is based solely upon symptoms rather than specific, objective and measurable medical findings, and for which a claim has been made under this chapter may be included in the aggregation of permanent disability 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to
the commission, other private carrier or self-insured
employer, whichever is applicable, 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, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
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 commis-
sion 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 of this article 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 aforementioned average decibel loss exceeds twenty-seven and one-half decibels, up to a maximum of one hundred percent hearing impairment, which maximum is reached at ninety decibels; and

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

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

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

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

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

(4) The percent of binaural hearing impairment obtained shall be multiplied by fifty-five to ascertain the degree of permanent partial disability.
(d) No permanent partial disability benefits shall be granted for tinnitus, psychogenic hearing loss, recruitment or hearing loss above three thousand hertz.

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

**TABLE**

<table>
<thead>
<tr>
<th>% of Speech Discrimination</th>
<th>% of Permanent Partial Disability</th>
</tr>
</thead>
<tbody>
<tr>
<td>90% and up to and including</td>
<td>100% and up to and including</td>
</tr>
<tr>
<td>80% and up to but not including</td>
<td>90% and up to but not including</td>
</tr>
<tr>
<td>70% and up to but not including</td>
<td>80% and up to but not including</td>
</tr>
<tr>
<td>60% and up to but not including</td>
<td>70% and up to but not including</td>
</tr>
<tr>
<td>0% and up to but not including</td>
<td>60% and up to but not including</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 claim-
ant 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 evalua-
tion, 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.

(j) Effective upon termination of the commission, the
administrative duties governing hearing loss claims shall
transfer to the insurance commissioner.

§23-4-7. Release of medical information to employer; legislative
findings; effect of application for benefits; duty of
employer.

(a) The Legislature hereby finds and declares that two of
the primary objectives of the workers' compensation
system established by this chapter are to provide benefits
to an injured claimant promptly and to effectuate his or
her return to work at the earliest possible time; that the
prompt dissemination of medical information to the
commission and employer as to diagnosis, treatment and
recovery is essential if these two objectives are to be
achieved; that claimants are increasingly burdened with
the task of contacting their treating physicians to request
the furnishing of detailed medical information to the
commission and their employers; that the commission is
increasingly burdened with the administrative responsibil-
ity of providing copies of medical reports to the employer
involved, whereas in other states the employer can obtain
the necessary medical information direct from the treating
physician; that much litigation is occasioned in this state
because of a lack of medical information having been
received by the employer as to the continuing disability of
a claimant; and that detailed narrative reports from the
treating physician are often necessary in order for the
commission, the claimant's representatives and the
employer to evaluate a claim and determine whether
additional or different treatment is indicated.

(b) In view of the foregoing findings, a claimant irrevo-
cably agrees by the filing of his or her application for
benefits that any physician may release to and orally
discuss with the claimant's employer, or its representative,
or with a representative of the commission, successor to
the commission, other private carrier or self-insured
employer, whichever is applicable, from time to time, the
claimant's medical history and any medical reports
pertaining to the occupational injury or disease and to any
prior injury or disease of the portion of the claimant's
body to which a medical impairment is alleged containing
detailed information as to the claimant's condition,
treatment, prognosis and anticipated period of disability
and dates as to when the claimant will reach or has
reached his or her maximum degree of improvement or
will be or was released to return to work. For the exclu-
sive purposes of this chapter, the patient-physician
privilege of confidentiality is waived with regard to the
physician's providing this medical information to the
commission, the employer or to the employer's representa-
tive. Whenever a copy of any medical report is obtained
by the employer or its representative and the physician has
not also forwarded a copy of the medical report to the
commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
the employer shall forward a copy of the medical report to
the commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
§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 evalua-
Enr. S. B. No. 1004] 194

...
nonawarded partial benefits paid the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall refer the claimant to a physician or physicians of its 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable.

(e) Notwithstanding any provision in subsection (c) of this section, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable,
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 perma-
nent disability award as provided in subsection (c) of this
section;

(3) When other evidence submitted to the commission,
successor to the commission, other private carrier or self-
insured employer, whichever is applicable, justifies a
finding that the claimant has reached his or her maximum
degree of improvement; or

(4) When other evidence submitted or otherwise obtained
justifies a finding that the claimant has engaged or is
engaging in abuse, including, but not limited to, physical
activities inconsistent with his or her compensable work-
ers' compensation injury.

In all cases, a finding by the commission, successor to
the commission, other private carrier or self-insured
employer, whichever is applicable, 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, successor to the commission,
other private carrier or self-insured employer, whichever
is applicable, 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, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
shall refer the claimant to a physician or physicians of the
commission's selection for examination and evaluation in
accordance with the provisions of subsection (d) of this
section and the provisions of subsection (e) of this section
are fully applicable: Provided, That the requirement of
mandatory examinations and evaluations pursuant to the
provisions of this subsection shall not apply to any claim-
ant 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, successor to the commission, other
private carrier or self-insured employer, whichever is
applicable, 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 em-
ployer’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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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
199

actual 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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 provide notice 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, from referring the injured employee for any permanent disability evaluation required or permitted by any other provision of this article.

(d) Nothing in this section shall prevent the employee from returning to work without a trial return-to-work period.

(e) Nothing in this section shall be construed to require an injured employee to return to work on a trial basis.

(f) The provisions of this section shall be terminated and be of no further force and effect on the first day of July, two thousand seven.

§23-4-8. Physical examination of claimant.

The commission, successor to the commission, other private carrier or self-insured employer, whichever is
applicable, may, after due notice to the employer and claimant, whenever in its 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable; 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable. 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable.

§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. Effective upon termination of the commission, the physicians shall be appointed by the insurance commissioner: Provided, That those physicians serving as of the termination of the commission shall continue to serve until replaced. 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 and, effective upon termination of the commission, the insurance commissioner. 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 and, effective upon termination of the commission, the insurance commissioner, shall, from time to time, fix the compensation to be paid each member of the board. Members are also entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. In fixing the compensation of board members, the executive director or the insurance commissioner shall take into consideration the number of claimants a member of the board actually examines, the actual time spent by members in discharging their duties and the recommendation of the board of managers and governor as to reasonable reimbursement per unit of time expended based on comparative data for physicians within the state in the same medical specialties.

§23-4-8b. Occupational pneumoconiosis board; procedure; autopsy.

The occupational pneumoconiosis board, upon reference to it by an appropriate party of a case of occupational pneumoconiosis, shall notify the employee, or in case he or she is dead, the claimant, and the employer, successor to the commission, other private carrier or self-insured employer, whichever is applicable, to appear before the board at a time and place stated in the notice. If the employee is living, he or she shall appear before the board at the time and place specified and submit to the examination, including clinical and X-ray examinations, required by the board. If a physician licensed to practice medicine in the state makes an affidavit that the employee is physically unable to appear at the time and place designated by the board, the board shall, on notice to the proper parties, change the place and time as may reasonably facilitate the hearing or examination of the employee or
may appoint a qualified specialist in the field of respiratory disease to examine the claimant on behalf of the board. The employee, or in case he or she is dead, the claimant, and employer shall also produce as evidence to the board all reports of medical and X-ray examinations which may be in their respective possession or control, showing the past or present condition of the employee. If the employee is dead, the notice of the board shall further require that the claimant produce necessary consents and permits so that an autopsy may be performed, if the board so directs. When in the opinion of the board an autopsy is considered necessary accurately and scientifically to ascertain and determine the cause of death, the autopsy examination shall be ordered by the board, which shall designate a duly licensed physician, a pathologist or any other specialists determined necessary by the board, to make the examination and tests to determine the cause of death and certify his or her or their written findings, in triplicate, to the board. The findings shall be public records. In the event that a claimant for compensation for the death refuses to consent and permit the autopsy to be made, all rights for compensation are forfeited.

The employee, or if he or she be dead, the claimant, and the employer, shall be entitled to be present at all examinations conducted by the board and to be represented by attorneys and physicians.

§23-4-8c. Occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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
deaded 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 condition of the right to litigate the findings and therefore jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the board, the commission or administrative law judge shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions stated in the report. If objection has been filed to the findings and conclusions of the board, notice of the objection shall be given to the board, and the members of the board joining in the findings and conclusions shall appear at the time fixed by the commission or office of judges for the hearing to submit to examination and cross-examination in respect to the findings and conclusions. At the hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board and to the taking of testimony of other qualified physicians and roentgenologists.

(e) In the event that a claimant receives a final decision that he or she has no evidence of occupational pneumoconiosis, the claimant is barred for a period of three years from the date of the occupational pneumoconiosis board's decision or until his or her employment with the employer
who employed the claimant at the time designated as the
candidate’s last date of exposure in the denied claim has
terminated, whichever is sooner, from filing a new claim
or pursuing a previously filed, but unruled upon, claim for
occupational pneumoconiosis or requesting a modification
of any prior ruling finding him or her not to be suffering
from occupational pneumoconiosis. For the purposes of
this subsection, a claimant’s employment shall be consid-
ered 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 unruled 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.

(f) Effective upon termination of the commission, the
insurance commissioner shall assume all administrative
powers and responsibilities necessary to administer
sections eight-a, eight-b and eight-c 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, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
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 rehabili-
tation to return injured employees to employment which
is comparable in work and pay to that which the individ-
ual performed prior to the injury. If a return to compar-
able work is not possible, the goal of rehabilitation is to
return the individual to alternative suitable employment,
using all possible alternatives of job modification, restruct-
turing, 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 cooper-
ate in the development of a rehabilitation 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,
successor to the commission, other private carrier or self-
insured employer, whichever is applicable, the commis-
sion, successor to the commission, other private carrier or
self-insured employer, whichever is applicable, shall at the
earliest possible time determine whether the employee
would be assisted in returning to remunerative employ-
ment with the provision of rehabilitation services and if it
is determined 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 medi-
cines, medical, surgical, dental or hospital treatment or
other services which the commission, successor to the
commission, other private carrier or self-insured employer,
whichever is applicable, in its sole discretion determines
will directly assist the employee's return to employment,
the commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable. 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, orders physical or vocational rehabilitation of a claimant as provided in this section, the claimant shall, during the time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him or her totally disabled during the period of rehabilitation, be compensated on a temporary total disability basis for that period.
(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be seventy percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in sections six, six-d and fourteen of this article as the calculation is performed for temporary total disability benefits, subject to the following limitations: In no event are the benefits subject to the minimum benefit amounts required by the provisions of subdivision (b), section six of this article, nor may the benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to sections six, six-d and fourteen of this article during any period of temporary total disability resulting from the injury in the claim: Provided, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid: Provided, however, That the aggregate award of temporary total rehabilitation or temporary partial rehabilitation benefits for a single injury for which an award of temporary total rehabilitation or temporary partial rehabilitation benefits is made on or after the effective date of the amendment and reenactment of this section in the year two thousand three shall be for a period not exceeding fifty-two weeks unless the payment of temporary total rehabilitation disability benefits is in conjunction with an approved vocational rehabilitation plan for retraining, in which event the payment period of temporary total rehabilitation disability benefits may be extended for a period not to exceed a total of one hundred four weeks. The amount of temporary partial rehabilitation benefits payable under this subsection shall be
reviewed every ninety days to determine whether the injured employee's average weekly wage in the new employment has changed and, if the change has occurred, the amount of benefits payable under this subsection shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section and no payment of temporary partial rehabilitation benefits shall be made after the claimant has received the vocational training provided under the rehabilitation plan.

(e) The executive director, in consultation with the board of managers, shall propose for promulgation rules for the purpose of developing a comprehensive rehabilitation program which will assist injured workers to return to suitable gainful employment after an injury in a manner consistent with the provisions and findings of this section. The rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to this section. Notwithstanding any other provision of this chapter to the contrary, and in addition to the provisions of section three of this article authorizing employers to participate in a managed health care plan, including a managed health care plan that provides 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.

§23-4-10. 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 prefer-
ence 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, successor to the
commission, other private carrier or self-insured employer,
whichever is applicable, but no partially dependent person shall receive compensation payments as a result of the death of more than one employee.

Compensation under this subdivision and subdivision (b) of this section shall, except as may be specifically provided to the contrary in those subdivisions, cease upon the death of the dependent, and the right to the compensation shall not vest in his or her estate.

(d) "Dependent", as used in this chapter, means a widow, widower, child under eighteen years of age, or under twenty-five years of age when a full-time student as provided in this section, invalid child or posthumous child, who, at the time of the injury causing death, is dependent, in whole or in part, for his or her support upon the earnings of the employee, stepchild under eighteen years of age, or under twenty-five years of age when a full-time student as provided in this section, child under eighteen years of age legally adopted prior to the injury causing death, or under twenty-five years of age when a full-time student as provided in this section, child under 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, grandfather or grandmother, who, at the time of the injury causing death, is dependent, in whole or in part, for his or her support upon the earnings of the employee; and invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death; 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.
1 The benefits, in case of death, shall be paid to one or
2 more dependents of the decedent, or to any other persons,
3 for the benefit of all of the dependents, as may be deter-
4 mined by the commission, successor to the commission,
5 other private carrier or self-insured employer, whichever
6 is applicable, who may apportion the benefits among the
7 dependents in the manner as they consider just and
8 equitable. Payment to a dependent subsequent in right
9 may be made if the commission considers proper and it
10 operates to discharge all other claims for the benefits.

1 The dependent or person to whom benefits are paid shall
2 apply the benefits to the use of the several beneficiaries of
3 the benefits according to their respective claims upon the
4 decedent for support, in compliance with the finding and
5 direction of the commission, successor to the commission,
6 other private carrier or self-insured employer, whichever
7 is applicable.

1 (a) The average weekly wage earnings, wherever earned,
2 of the injured person at the date of injury and the average
3 weekly wage in West Virginia as determined by the
4 commission, and, effective the first day of January, two
5 thousand six, the insurance commissioner, in effect at the
6 date of injury, shall be taken as the basis upon which to
7 compute the benefits.
8
9 (1) In cases involving occupational pneumoconiosis or
10 other occupational diseases, the “date of injury” is the
11 date of the last exposure to the hazards of occupational
12 pneumoconiosis or other occupational diseases.
13
14 (2) In computing benefits payable on account of occupa-
15 tional pneumoconiosis, the commission, successor to the
16 commission, other private carrier or self-insured employer,
17 whichever is applicable, shall deduct the amount of all
18 prior workers' compensation benefits paid to the same
claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

(b)(1) Until the first day of July, one thousand nine hundred ninety-four, the expression “average weekly wage earnings, wherever earned, of the injured person, at the date of injury”, within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(2) On and after the first day of July, one thousand nine hundred ninety-four, the expression “average weekly wage earnings, wherever earned, of the injured person, at the date of injury”, within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the weekly average derived from the best quarter of wages out of the preceding four quarters of wages as reported to the commission pursuant to subsection (b), section two, article two of this chapter, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(c) The expression “average weekly wage in West Virginia”, within the meaning of this chapter, is the average weekly wage in West Virginia as determined by the commissioner of the bureau of employment programs in accordance with the provisions of sections ten and eleven, article six, chapter twenty-one-a of this code and other applicable provisions of said chapter.
(d) In any claim for injuries, including occupational pneumoconiosis and other occupational diseases, occurring on or after the first day of July, one thousand nine hundred seventy-one, any award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits shall be paid at the weekly rates or in the monthly amount in the case of dependent benefits applicable to the claimant in effect on the date of the injury. In no event shall an award for permanent total disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia.


(a) To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application for compensation shall be made on the form or forms prescribed by the commission and, effective upon termination of the commission, the insurance commissioner, and filed with the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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 effective upon termination of the commission, the insurance commissioner, and filed with the commission,
successor to the commission, other private carrier or self-
insured employer, whichever is applicable, 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 pneumoconio-
sis 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 applica-
tion shall be filed by the dependent of the employee within
one year from and after the employee's death, and such
time limitation is a condition of the right and hence
jurisdictional.

(c) To entitle any employee to compensation for 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, effective upon termination
of the commission, the insurance commissioner, and filed
with the commission, successor to the commission, other
private carrier or self-insured employer, whichever is
applicable, 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 condi-
tion of the right and therefore jurisdictional, or, in case of
death, the application shall be filed as aforesaid by the
dependent of the employee within one year from and after
the employee's death, and such time limitation is a condi-
tion of the right and hence jurisdictional.
§23-4-15a. Nonresident alien beneficiaries.

1 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, in its discretion may make, and the beneficiary shall accept, commutation of the benefits into a lump sum settlement and payment. Nonresident alien beneficiaries within the meaning of this section means persons not citizens of the United States residing outside of the territorial limits of the United States at the time of the injury with respect to which benefits are awarded.

§23-4-15b. Determination of nonmedical questions by commission; claims for occupational pneumoconiosis; hearing.

1 (a) If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the last day of the last continuous period of sixty days' exposure to the hazards of occupational pneumoconiosis, the commission shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his or her claim, whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than ten years during the fifteen years immediately preceding the date of his or her last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to the employee by a physician, the commission shall determine whether the claimant filed his or her application within
that period and whether in the state of West Virginia the
claimant was exposed to the hazard over a continuous
period of not less than two years during the ten years
immediately preceding the date of last exposure to the
hazard and whether the claimant was exposed to the
hazard over a period of not less than ten years during the
fifteen years immediately preceding the date of last
exposure to the hazard. If a claim for occupational
pneumoconiosis benefits is filed by a dependent of a
deceased employee, the commission shall determine
whether the deceased employee was exposed to the
hazards of occupational pneumoconiosis for a continuous
period of not less than sixty days while in the employ of
the employer within ten years prior to the filing of the
claim, whether in the state of West Virginia the deceased
employee was exposed to the hazard over a continuous
period of not less than two years during the ten years
immediately preceding the date of his or her last exposure
to the hazard and whether the claimant was exposed to the
hazard over a period of not less than ten years during the
fifteen years immediately preceding the date of his or her
last exposure to the hazard. The commission shall also
determine other nonmedical facts that, in the commission's
opinion, are pertinent to a decision on the validity of the
claim.

The commission shall enter an order with respect to
nonmedical findings within ninety days following receipt
by the commission of both the claimant's application for
occupational pneumoconiosis benefits and the physician's
report filed in connection with the claimant's application
and shall give each interested party notice in writing of
these findings with respect to all the nonmedical facts.
The findings and actions of the commission are final unless
the employer, employee, claimant or dependent, within
thirty days after receipt of the notice, objects to the
findings, and unless an objection is filed within the thirty-
day period, the findings are forever final, the time limita-
tion is a condition of the right to litigate the findings and
therefore jurisdictional. Upon receipt of an objection, the chief administrative law judge shall set a hearing as provided in section nine, article five of this chapter. In the event of an objection to the findings by the employer, the claim shall, notwithstanding the fact that one or more hearings may be held with respect to the objection, mature for reference to the occupational pneumoconiosis board with like effect as if the objection had not been filed. If the administrative law judge concludes after the protest hearings that the claim should be dismissed, a final order of dismissal shall be entered. The final order is subject to appeal in accordance with the provisions of sections ten and twelve, article five of this chapter. If the administrative law judge concludes after the protest hearings that the claim should be referred to the occupational pneumoconiosis board for its review, the order entered shall be interlocutory only and may be appealed only in conjunction with an appeal from a final order with respect to the findings of the occupational pneumoconiosis board.

(b) The administrative duties required to be performed by the commission pursuant to section fifteen-b of this article, and all applicable exempt legislative rules shall transfer from the commission to the insurance commissioner effective upon termination of the commission.

§23-4-16. 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, over each case is continuing and the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, if they were provided without a prior request. For the exclusive purposes of this subdivision, medical services and rehabilitation services shall not include any encounter in which significant treatment was not performed.

(b) In any claim in which an injured employee makes application for a further period of temporary total disability, if the application is in writing and filed within the applicable time limit stated above, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, shall pass upon the request within thirty days of its receipt and, if the commission determines that the claimant may be entitled to an award, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission,
other private carrier or self-insured employer, whichever
is applicable, to the claimant, in addition to all other
benefits awarded, upon due proof of the amount thereof
being furnished by the claimant, but shall in no case
exceed the sum fixed pursuant to the applicable schedule
of maximum reasonable fees.

(d) The commission, successor to the commission, other
private carrier or self-insured employer, whichever is
applicable, 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, successor to the commission, other
private carrier or self-insured employer, whichever is
applicable, 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 commis-
sion may determine, the commission may require the
claimant to provide documents and other information to
the commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
including, but not limited to, tax returns, financial records
and affidavits demonstrating level of income, recreational
activities, work activities, medications used and physi-
cians or other medical or rehabilitation providers treating
or prescribing medication or other services for the claim-
ant; require the claimant to appear under oath before the
commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable,
or its duly authorized representative and answer ques-
tions; and suspend or terminate any benefits of a claimant
who willfully fails to provide the information or appear as required: Provided, That the commission shall develop, implement and complete a program as soon as reasonably possible that requires each person receiving permanent total disability benefits on the effective date of the amendment and reenactment of this section in the year two thousand three, and each person who is awarded those benefits thereafter, to submit the tax returns and the affidavit described herein at least once: Provided, however, That this requirement does not restrict the commission's authority to require the information that may be required herein at such other times as the commission may determine. The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, may reopen a claim for reevaluation when, in its sole discretion, it concludes that there exists good cause to believe that the claimant no longer meets the eligibility requirements under subdivision (n), section six of this article. The eligibility requirements, including any vocational standards, shall be applied as those requirements are stated at the time of a claim's reopening.

(2) Upon reopening a claim under this subsection, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable. In addition, the workers' compensation commission, successor to the commission, other private
carrier or self-insured employer, whichever is applicable, 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 final order as otherwise provided 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 continuously monitor permanent total disability awards under this section to the joint committee on government and finance and the joint commission on economic development.

(e) A claimant may have only one active request for a permanent disability award pending in a claim at any one time. Any new request that is made while another is pending shall be consolidated into the former request.

§23-4-16a. Interest on benefits.

Whenever any award of temporary total, permanent partial or permanent total disability benefits or dependent benefits is made on or after the first day of July, one thousand nine hundred seventy-one, and a protest is filed to the award or an appeal is taken from the award by an employer only and not by the claimant or dependent and the award is not ultimately denied or reduced following the protest or appeal, the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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.
§23-4-20. Postmortem examinations.

1 The commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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 or her or its own expense, to participate in the postmortem examination. The respective physicians selected by the claimant and the employer have the right to concur in any report made by the physician selected by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, or each may file with the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

(a) Notwithstanding any provision of this chapter to the contrary, except as stated below, no claimant shall be awarded permanent total disability benefits arising under subdivision (d) or (n), section six of this article or section eight-c of this article who terminates active employment and is receiving full old-age retirement benefits under the
Social Security Act, 42 U.S.C. §§401 and 402. Any claimant shall be evaluated only for the purposes of receiving a permanent partial disability award premised solely upon the claimant’s impairments. This subsection is not applicable in any claim in which the claimant has completed the submission of his or her evidence on the issue of permanent total disability prior to the later of the following: Termination of active employment or the initial receipt of full old-age retirement benefits under the Social Security Act. Once the claimant has terminated active employment and has begun to receive full old-age social security retirement benefits, the claimant may not produce additional evidence of permanent total disability nor shall the claim be remanded for the production of the evidence.

(b) The workers' compensation commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, has the sole and exclusive jurisdiction to initially hear and decide any claim or request pertaining, in whole or in part, to subdivision (d) or (n), section six of this article. Any claim or request for permanent total disability benefits arising under said subdivisions shall first be presented to the commission as part of the initial claim filing or by way of an application for modification or adjustment pursuant to section sixteen of this article. The office of judges may consider a claim only after the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable, 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 commis-
sion, successor to the commission, other private carrier or
self-insured employer, whichever is applicable, 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 in subdivisions (b) and (d), section six of this article.

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-1. Disabled workers' relief fund created.

(a) 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
two thousand nine hundred sixty-seven, who are under the age
of twenty-three and who are full-time students, and for
the relief of other persons who are receiving dependents'
benefits on account of the death of an employee in
amounts less than the specified 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, hereto-
before 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 execu-
tive 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.

(b) Effective upon termination of the commission, the
"Disabled Workers' Relief Fund" shall be administered by
the successor to the commission and the administrative
duties assigned to the executive director shall be trans-
ferred to the chief executive officer of the successor to the
commission.


Payments to an individual entitled to participate in the
disabled workers' relief fund may be made from said fund
by separate check or may be made from said fund and
from the workers' compensation fund and, effective upon
termination of the commission, the old fund, by one check,
but each such check drawn on the two funds shall be so
written as to show plainly the payments made from each
fund. No disbursements shall be made from the workers'
compensation fund or the old fund on account of any
provisions of this article.
§23-4A-9. Transfer of authority to the insurance commissioner.

1 Effective upon termination of the commission, the authority to make the annual transfer as required in section eight of this article shall transfer to the insurance commissioner.

ARTICLE 4B. COAL WORKERS' PNEUMOCONIOSIS FUND.


1 Upon the termination of the commission, all assets, obligations and liabilities resulting from this article are transferred to the successor of the commission. The state treasurer and all other departments, agencies and boards shall cooperate to ensure this novation occurs in an expeditious and orderly fashion. Thereafter, the company shall offer insurance to provide for the benefits required by this article until at least the thirtieth day of June, two thousand eight.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-5. Administration.

1 Until the termination of the commission, 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.

§23-4C-6. Novation to the successor of the commission.

1 Upon the termination of the commission, all assets, obligations and liabilities resulting from this article are transferred to the successor of the commission. Thereafter, the company shall offer insurance to provide for the benefits required by this article until at least the thirtieth
day of June, two thousand eight. The state treasurer and all other departments, agencies and boards shall cooperate to ensure this novation occurs in an expedient and orderly fashion.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

(a) The workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers may hear and determine all questions within their jurisdiction. In matters arising under articles three and four of this chapter, the commission, the successor to the commission, other private insurance carriers and self-insured employers 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, the successor to the commission, other private insurance carriers and self-insured employers may develop additional information that it considers to be necessary in the interests of fairness to the parties and in keeping with their fiduciary obligations. With regard to any issue which is ready for a decision, the commission, the successor to the commission, other private insurance carriers and self-insured employers 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, the successor to the commission, other private insurance carriers and self-insured employers shall give notice, in writing, to the employer, employee, claim-
29 ant or dependant as the case may be, of its action. The
30 notice shall state the time allowed for filing an objection
31 to the finding. The action of the commission, the successor
32 to the commission, other private insurance carriers and
33 self-insured employers is final unless the employer,
34 employee, claimant or dependant shall, within thirty days
35 after the receipt of the notice, object in writing, to the
36 finding. Unless an objection is filed within the thirty-day
37 period, the finding or action is final. This time limitation
38 is a condition of the right to litigate the finding or action
39 and hence jurisdictional. Any objection shall be filed with
40 the office of judges with a copy served upon the commis-
41 sion, the successor to the commission, other private
42 insurance carriers and self-insured employers, whichever
43 is applicable, and other parties in accordance with the
44 procedures set forth in sections eight and nine of this
45 article. In all instances where a private carrier, self-
46 insured employer or a third-party administrator has made
47 claims decisions as authorized in this chapter, they shall
48 provide claimants notice of all claims decisions as pro-
49 vided by rules for self-administration promulgated by the
50 board of managers and shall be bound by each require-
51 ment imposed upon the commission by this article.

52 (c) Where a finding or determination of the commission,
53 the successor to the commission, other private insurance
54 carriers and self-insured employers, whichever is applica-
55 ble, is protested only by the employer, and the employer
56 does not prevail in its protest, and in the event the claim-
57 ant is required to attend a hearing by subpoena or agree-
58 ment of counsel or at the express direction of the commis-
59 sion or office of judges, then the claimant in addition to
60 reasonable traveling and other expenses shall be reim-
61 bursed for loss of wages incurred by the claimant in
62 attending the hearing.

63 (d) The commission, the successor to the commission,
64 other private insurance carriers and self-insured employ-
65 ers, whichever is applicable may amend, correct or set
aside any order or decision on any issue entered by it which, at the time of issuance or any time thereafter, is discovered to be defective or clearly erroneous or the result of mistake, clerical error or fraud, or otherwise not supported by the evidence. Jurisdiction to take this action continues until the expiration of two years from the date of entry of an order unless the order is sooner affected by appellate action: Provided, That corrective actions in the case of fraud may be taken at any time.

(e) All objections to orders of the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable shall be styled in the name of the issuing entity. All appeals prosecuted from the office of judges shall be in the name of the issuing party. 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.

1. In any case where an injured employee makes application in writing for a further adjustment of his or her claim under the provisions of section sixteen, article four of this chapter and the application discloses cause for a further adjustment, the commission shall, after due notice to the employer, make the modifications, or changes with respect to former findings or orders in the claim that are justified. Any party dissatisfied with any modification or change made by the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, is, upon proper and timely objection, entitled to a hearing, as provided in section nine of this article.

§23-5-3. Refusal to reopen claim; notice; objection.

1. If it appears to the commission, the successor to the commission, other private insurance carriers and self-
insured employers, whichever is applicable, 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 in its former findings and which would entitle the claimant to greater benefits than the claimant has already received, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall make a decision upon the application. If the application discloses cause for a further adjustment, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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 or by the denial of an application for modification is, upon proper and timely
§23-5-5. Refusal of modification; notice; objection.

If in any case it appears to the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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 the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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 successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable. 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.


With the exception of medical benefits for nonorthopedic occupational disease claims, the claimant, the employer and the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or
appellate processes. If the employer is not active in the claim, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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 and said settlement shall be made a part of the claim record. 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, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable. 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 an 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-insurer employer and its sureties or guarantors or both as provided in section five and five-a, article two of this chapter.

Each settlement agreement shall provide the toll free number of the West Virginia State Bar Association and shall provide the injured worker with five business days to revoke the executed agreement. The insurance commissioner may void settlement agreements entered into by an unrepresented injured worker which are determined to be unconscionable pursuant to criteria established by rule of the commissioner.

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' compens-
sation 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 manag-
ers. The salary shall be within the salary range for compa-
rable 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. Upon transfer of the office of judges to the
insurance commissioner, the chief administrative law
judge shall continue to serve as chief administrative law
judge until the thirty-first day of December, two thousand
seven. Thereafter, appointments of the chief administra-
tive law judge shall be for terms of four years beginning
the first day of January, two thousand eight, and the chief
administrative law judge may be removed only for cause
by the vote of four members of the Industrial Council. 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 adminis-
trative review of orders issued by the workers' compensa-
tion 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-
ine of this code. All additional administrative law judges
shall be persons who have been admitted to the practice of
law in this state and shall also have had at least two years
of experience as an attorney. The chief administrative law
judge shall supervise the other administrative law judges
and other personnel which collectively shall be referred to
in this chapter as the office of judges.

(d) The administrative expense of the office of judges
shall be included within the annual budget of the workers'
compensation commission and, upon termination of the
commission, the insurance commissioner.

(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-
ine-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
hearings examiners that are necessary for the proper
conduct of a system of administrative review of disputed
claims. The chief administrative law judge shall make
reports that are requested of him or her by the workers'
compensation board of managers.

(g) Effective upon termination of the commission, the
office of judges and the board of review shall be trans-
ferred to the insurance commissioner, which shall have
the oversight and administrative authority heretofore
provided to the executive director and the board of
managers.

§23-5-9. Hearings on objections to commission or self-insured
employer decisions; mediation; remand.

(a) Objections to a decision of the workers' compensation
commission, the successor to the commission, other private
insurance carriers and self-insured employers, whichever
is applicable, 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, the successor to the commission,
other private insurance carriers and self-insured employ-
ers, whichever is applicable, 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, the successor to the commission, other private
insurance carriers and self-insured employers, whichever
is applicable, shall be notified of any hearing at least ten
days in advance. The office of judges shall review and
amend, or modify, as necessary its procedural rules by the
first day of July, two thousand seven.
(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 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 action protested. 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, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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, workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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 this section is hereby abolished.

(b) There is hereby created the "workers' compensation
board of review", which may also be referred to as "the
board of review" or "the board". Effective the first day of
February, two thousand four, the board of review shall
exercise exclusive jurisdiction over all appeals from the
workers' compensation office judges including any and all
appeals pending with the board of appeals on the thirty-
first day of January, two thousand four.

(c) The board shall consist of three members.

(d) The governor shall appoint, from names submitted by
the "workers' compensation board of review nominating
committee", with the advice and consent of the Senate,
three qualified attorneys to serve as members of the board
of review. If the governor does not select a nominee for
any vacant position from the names provided by the
nominating committee, he shall notify the nominating
committee of that circumstance and the committee shall
provide additional names for consideration by the governor. A member of the board of review may be removed by
the governor for official misconduct, incompetence,
neglect of duty, gross immorality or malfeasance and then
only after notice and opportunity to respond and present
evidence. No more than two of the members of the board
may be of the same political party. The members of the
board of review shall be paid an annual salary of eighty-
five thousand dollars. Members are entitled to be 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 can-
didate 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 thou-
sand 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 Decem-
ber, two thousand three, the deadline for filling all posi-
tions of the board of review will be extended, as necessary,
if, on or before that date, the governor has timely re-
quested additional names from the nominating committee.
Thereafter, the nominating committee shall meet at the
request of the governor in order to make timely recom-
pendations 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 Decem-
ber, 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 thou-
sand 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 contin-
uance 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 records of those hearings before admin-
istrative 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.
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.

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.

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.

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.

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 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.

If deemed necessary by the board, the board may, through staffing or other resources, procure assistance in review of medical portions of decisions.
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.

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.

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.

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.

The board shall report monthly to the board of managers on the status of all claims on appeal.

Effective upon termination of the commission, the board of review shall be transferred to the insurance commissioner which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

§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, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, 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 and the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The executive director, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a board of review decision irrespective of whether or not he or she appeared or participated in the appeal to the board of review.

(d) Instead of affirming, reversing or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event
the board shall remand the case to the chief administrative
law judge for the taking of further evidence, the administrative law judge shall proceed to take new, additional or further evidence in accordance with any instruction given by the board within thirty days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least ten days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within sixty days, render his or her decision affirming, reversing or modifying the former action of the administrative law judge. The decision shall be appealable to, and proceeded with by the board of review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand the case to the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, for further development. Any decision made by the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever applicable, 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, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, to the supreme court of appeals within thirty days from the date of the final order by filing a petition therefor with the court against the board and the adverse party or parties as respondents. Unless the petition for review is filed within the thirty-day period, no appeal or review shall be allowed, such time limitation is a condition of the right to such appeal or review and hence jurisdictional. The clerk of the supreme court of appeals shall notify each of the respondents and the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, of the filing of such petition. The board shall, within ten days after receipt of the notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. If review is granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before an order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review is granted or the certified question is docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the workers' compensation commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, of that fact by mail. If a review is granted or the certificd ques-
tion 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 misstatement or mischaracterization of particular components of the evidentiary record.

(d) If the decision of the board effectively represents a reversal of a prior ruling of either the commission or the office of judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the supreme court of appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo re-weighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there is insufficient support to sustain the decision.

CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission
control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: Provided, That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the state lottery fund. For all fiscal years beginning on or after the first day of July, two thousand one, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, but four percent of any amount of gross
terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter.

(c) Net terminal income shall be divided as set out in this subsection. For all fiscal years beginning on or after the first day of July, two thousand one, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as set out in section ten-b of this article. The licensed racetrack's share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed race-track in connection with video lottery operations. The division shall be made as follows:

1. The commission shall receive thirty percent of net terminal income, which shall be paid into the state lottery fund as provided in section ten-a of this article;

2. Until the first day of July, two thousand five, fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code, on and after the first day of July, two thousand five, the rate shall be seven percent of net terminal income;

3. The county where the video lottery terminals are located shall receive two percent of the net terminal income: Provided, That:

(A) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during the fiscal year one thousand nine hundred ninety-nine by a county in which
a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, said fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning the first day of July, one thousand nineteen hundred ninety-nine, and thereafter, any amount in excess of the two percent received during the fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any other county other that a county described in paragraph (A) or (B) of this proviso;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for
payment into the pension plan for all employees of the
licensed racing association;

(5) The West Virginia thoroughbred development fund
created under section thirteen-b, article twenty-three,
chapter nineteen of this code and the West Virginia
greyhound breeding development fund created under
section ten of said article shall receive an equal share of a
total of not less than one and one-half percent of the net
terminal income: Provided, That for any racetrack which
does not have a breeder's program supported by the
thoroughbred development fund or the greyhound breed-
ing development fund, the one and one-half percent
provided for in this subdivision shall be deposited in the
special fund established by the licensee and used for
payment of regular purses, in addition to other amounts
provided in subdivision (2) of this subsection and article
twenty-three, chapter nineteen of this code.

(6) The West Virginia racing commission shall receive
one percent of the net terminal income which shall be
deposited and used as provided in section thirteen-c,
article twenty-three, chapter nineteen of this code.

(7) A licensee shall receive forty-seven percent of net
terminal income.

(8) (A) The tourism promotion fund established in
section twelve, article two, chapter five-b of this code shall
receive three percent of the net terminal income: Provided,
That for the fiscal year beginning the first day of July, two
thousand three, the tourism commission shall transfer
from the tourism promotion fund five million dollars of
the three percent of the net terminal income described in
this section and section ten-b of this article into the fund
administered by the West Virginia economic development
authority pursuant to section seven, article fifteen, chapter
thirty-one of this code, five million dollars into the capitol
renovation and improvement fund administered by the
department of administration pursuant to section six,
article four, chapter five-a of this code and five million dollars into the tax reduction and federal funding increased compliance fund; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after the thirtieth day of June, two thousand four, this three percent of net terminal income and the three percent of net terminal income described in paragraph (B), subdivision (8), subsection (a), section ten-b of this article shall be distributed as provided in this paragraph as follows:

(i) 1.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the tourism promotion fund created under section twelve, article two, chapter five-b of this code;

(ii) 0.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the development office promotion fund created under section three-b, article two, chapter five-b of this code;

(iii) 0.5 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the research challenge fund created under section ten, article one-b, chapter eighteen-b of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the capitol renovation and improvement fund administered by the department of administration pursuant to section six, article four, chapter five-a of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the 2004 capitol com-
plex parking garage fund administered by the department of administration pursuant to section five-a, article four, chapter five-a of this code;

(9) On and after the first day of July, two thousand five, seven percent of net terminal income shall be deposited into the workers' compensation debt reduction fund created in section five, article two-d, chapter twenty-three of this code; and

(10) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning the first day of July, two thousand three, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are
not sufficient funds to complete the placement of veterans
grave markers in any one year, or at all. Upon payment in
full of the bonded indebtedness on the veterans memorial,
one hundred thousand dollars of the one percent of net
terminal income provided for in this subdivision shall be
deposited in the special fund in the division of culture and
history created under section three, article one-i, chapter
twenty-nine of this code and be expended by the division
of culture and history to establish a West Virginia veterans
memorial archives within the cultural center to serve as a
repository for the documents and records pertaining to the
veterans memorial, to restore and maintain the monu-
ments and memorial on the capitol grounds: Provided,
however, That five hundred thousand dollars of the one
percent of net terminal income shall be deposited in the
state treasury in a special fund of the department of
administration, created under section five, article four,
chapter five-a of this code, to be used for construction and
maintenance of a parking garage on the state capitol
complex; and the remainder of the one percent of net
terminal income shall be deposited in equal amounts in the
capitol dome and improvements fund created under
section two, article four, chapter five-a of this code and
cultural facilities and capitol resources matching grant
program fund created under section three, article one of
this chapter.

(B) For each fiscal year beginning after the thirtieth day
of June, two thousand four:

(i) Five hundred thousand dollars of the one percent of
net terminal income shall be deposited in the state trea-
sury in a special fund of the department of administration,
created under section five, article four, chapter five-a of
this code, to be used for construction and maintenance of
a parking garage on the state capitol complex; and

(ii) The remainder of the one percent of net terminal
income and all of the one percent of net terminal income
described in paragraph (B), subdivision (9), subsection (a),
Enr. S. B. No. 1004] 260

section ten-b of this article twenty-two-a shall be distrib-
minated as follows: The net terminal income shall be deposited
in equal amounts into the capitol dome and capitol
improvements fund created under section two, article four,
chapter five-a of this code and the cultural facilities and
capitol resources matching grant program fund created
under section three, article one, chapter twenty-nine of
this code until a total of one million five hundred thousand
dollars is deposited into the cultural facilities and capitol
resources matching grant program fund; thereafter, the
remainder shall be deposited into the capitol dome and
capitol improvements fund.

(d) Each licensed racetrack shall maintain in its account
an amount equal to or greater than the gross terminal
income from its operation of video lottery machines, to be
electronically transferred by the commission on dates
established by the commission. Upon a licensed race-
track’s failure to maintain this balance, the commission
may disable all of a licensed racetrack’s video lottery
terminals until full payment of all amounts due is made.
Interest shall accrue on any unpaid balance at a rate
consistent with the amount charged for state income tax
delinquency under chapter eleven of this code. The
interest shall begin to accrue on the date payment is due to
the commission.

(e) The commission’s central control computer shall keep
accurate records of all income generated by each video
lottery terminal. The commission shall prepare and mail
to the licensed racetrack a statement reflecting the gross
terminal income generated by the licensee’s video lottery
terminals. Each licensed racetrack shall report to the
commission any discrepancies between the commission’s
statement and each terminal’s mechanical and electronic
meter readings. The licensed racetrack is solely responsi-
ble for resolving income discrepancies between actual
money collected and the amount shown on the accounting
meters or on the commission’s billing statement.
(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack shall
authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

§29-22A-10b. Distribution of excess net terminal income.

(a) For all years beginning on or after the first day of July, two thousand one, any amount of net terminal income generated annually by a licensed racetrack in excess of the amount of net terminal income generated by that licensed racetrack during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as follows:

1. The commission shall receive forty-one percent of net terminal income, which the commission shall deposit in the state excess lottery revenue fund created in section eighteen-a, article twenty-two of this chapter;

2. Until the first day of July, two thousand five, eight percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code; on and after the first day of July, two thousand five, the rate shall be four percent of net terminal income;

3. The county where the video lottery terminals are located shall receive two percent of the net terminal income: Provided, That:

(A) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:
(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, the fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this proviso;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under
section ten, article twenty-three, chapter nineteen of this
code shall receive an equal share of a total of not less than
one and one-half percent of the net terminal income:
Provided, That for any racetrack which does not have a
breeder's program supported by the thoroughbred develop-
ment fund or the greyhound breeding development fund,
the one and one-half percent provided for in this subdivi-
sion shall be deposited in the special fund established by
the licensee and used for payment of regular purses, in
addition to other amounts provided for in subdivision (2)
of this subsection and article twenty-three, chapter
nineteen of this code;

(6) The West Virginia racing commission shall receive
one percent of the net terminal income which shall be
deposited and used as provided in section thirteen-c,
article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-two percent of net
terminal income;

(8) The tourism promotion fund established in section
twelve, article two, chapter five-b of this code shall receive
three percent of the net terminal income: Provided, That
for each fiscal year beginning after the thirtieth day of
June, two thousand four, this three percent of net terminal
income shall be distributed pursuant to the provisions of
paragraph (B), subdivision (8), subsection (c), section ten
of this article;

(9) On and after the first day of July, two thousand five,
four percent of net terminal incomes shall be deposited into
the workers' compensation debt reduction fund created in
section five, article two-d, chapter twenty-three of this
code: Provided, That in any fiscal year when the amount
of money generated by this subdivision together with the
total allocation transferred by the operation of subdivision
(9), subsection (c), section ten of this article totals eleven
million dollars, all subsequent distributions under this
subdivision (9) shall be deposited in the special fund
established by the licensee, and used for payment of
regular purses in addition to other amounts provided for
in article twenty-three, chapter nineteen of this code; and

(10) (A) One percent of the net terminal income shall be
deposited in equal amounts in the capitol dome and
improvements fund created under section two, article four,
chapter five-a of this code and cultural facilities and
capitol resources matching grant program fund created
under section three, article one of this chapter; and

(B) Notwithstanding any provision of paragraph (A) of
this subdivision to the contrary, for each fiscal year
beginning after the thirtieth day of June, two thousand
four, this one percent of net terminal income shall be
distributed pursuant to the provisions of subparagraph (ii),
paragraph (B), subdivision (9), subsection (c), section ten
of this article.

(b) The commission may establish orderly and effective
procedures for the collection and distribution of funds
under this section in accordance with the provisions of this
section and section ten of this article.

CHAPTER 33. INSURANCE.

ARTICLE 1. DEFINITIONS.

§33-1-2. Insurer.

Insurer is every person engaged in the business of
making contracts of insurance. Insurer includes private
carrier as that term is used in chapter twenty-three of this
code.

§33-1-10. Kinds of insurance defined.

The following definitions of kinds of insurance are not
mutually exclusive and, if reasonably adaptable thereto,
a particular coverage may be included under one or more
of such definitions:
(a) Life insurance. — Life insurance is insurance on human lives including endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits for disability and annuities.

(b) Accident and sickness. — Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or expense resulting from sickness and insurance relating thereto. Group credit accident and health insurance may also include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purposes of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or criminal misconduct. Any or all of the above-mentioned perils may be included in an insurance policy, at the discretion of the policyholder.

(c) Fire. — Fire insurance is insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (12), subdivision (e) of this section.

(d) Marine insurance is insurance:

(1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests
and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land (above or below ground), or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builders' risks and all personal property floater risks;

(2) Against any and all kinds of loss or damage to person or to property in connection with or appertaining to a marine, inlandmarine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(3) Against any and all kinds of loss or damage to precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise;

(4) Against any and all kinds of loss or damage to bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion or any or all of them are the only hazards to be covered;

(5) Against any and all kinds of loss or damage to piers, wharves, docks and ships, excluding the risks of fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion and each of them;
(6) Against any and all kinds of loss or damage to other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for control of waterways; and

(7) Marine protection and indemnity insurance, which is insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(e) Casualty. — Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incident to ownership, maintenance or use of any such vehicle, aircraft or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing or cranking, or caused by being struck by any vehicle, aircraft or draft or riding animal, if such insurance is issued as a part of insurance on the vehicle, aircraft or draft or riding animal;

(2) Liability insurance, which is insurance against legal liability for the death, injury or disability of any human being, or for damage to property, and provisions for medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;
(3) Burglary and theft insurance, which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing, including supplemental coverages for medical, hospital, surgical and funeral benefits sustained by the named insured or other person as a result of bodily injury during the commission of a burglary, robbery or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents resulting from any cause;

(4) Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause;

(5) Glass insurance, which is insurance against loss or damage to glass, including its lettering, ornamentation and fittings;

(6) Boiler and machinery insurance, which is insurance against any liability and loss or damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery or apparatus and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;

(7) Leakage and fire extinguishing equipment insurance, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water mains, pipes and containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus;

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their
obligations to the insured. Credit insurance shall include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or criminal misconduct; any or all of the above-mentioned perils may be included in an insurance policy, at the discretion of the policyholder;

(9) Malpractice insurance, which is insurance against legal liability of the insured and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service;

(10) Entertainment insurance, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors or other principals;

(11) Mine subsidence insurance as provided for in article thirty of this chapter;

(12) Miscellaneous insurance, which is insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy; and
(13) Federal flood insurance, which is insurance provided by the federal insurance administration or by private insurers through the write your own program within the national flood insurance program, instituted by the federal insurance administration pursuant to the provision of 42 U.S.C. §4071, on real or personal property of every kind and interest therein, against loss or damage from flood or mudslide and against loss consequential to such loss or damage, other than noncontractual liability for any loss or damage.

(14) Workers' compensation insurance, which is insurance providing all compensation and benefits required by chapter twenty-three of this code.

(f) Surety. — Surety insurance includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings and contracts of surety ship: Provided, That surety insurance does not include the guaranteeing and executing of bonds by professional bondsmen in criminal cases or by individuals not in the business of becoming a surety for compensation upon bonds;

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while they are being transported in armored motor vehicles or by messenger, but not including any other risks of transportation or
navigation, and also insurance against loss or damage to
such an insured's premises or to his furnishings, fixtures,
equipment, safes and vaults therein, caused by burglary,
robbery, theft, vandalism or malicious mischief, or any
attempt to commit such crimes; and

(4) Title insurance, which is insurance of owners of
property or others having an interest therein, or liens or
cumbrances thereon, against loss by encumbrance,
defective title, invalidity or adverse claim to title.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-10. Rules and regulations.

(a) The commissioner is authorized to promulgate and
adopt rules relating to insurance as are necessary to
discharge his or her duties and exercise his or her powers
and to effectuate the provisions of this chapter, protect
and safeguard the interests of policyholders and the public
of this state.

(b) The commissioner is authorized to promulgate rules
necessary to discharge his or her duties relating to work-
rs' compensation insurance as set forth in chapter
twenty-three of this code, which shall be exempt from the
provisions of chapter twenty-nine-a, article three of this
code, except that these rules shall be filed with the Secre-
tary of State's Office.

(c) Prior to assuming regulatory authority over workers'
compensation insurance pursuant to article two-c, chapter
twenty-three of this code, the commissioner shall review
and revise all applicable rules to reflect the assumption of
this new regulatory authority: Provided, That all such
revisions shall be exempt from the provisions of chapter
twenty-nine-a, article three, except that the amended rules
shall be filed with the Secretary of State's Office.

§33-2-20. Authority of insurance commissioner to regulate
workers compensation industry; authority of
insurance commissioner to administer chapter twenty-three.

(a) Upon the termination of the Workers' Compensation Commission pursuant to chapter twenty-three of this code, the powers and duties heretofore imposed upon the Workers' Compensation Commission as they relate to general administration of the provisions of chapter twenty-three of this code are hereby transferred to and imposed upon the insurance commissioner.

(b) Unless otherwise specified in chapter twenty-three, upon termination of the Workers' Compensation Commission, the duties imposed upon the Workers' Compensation Commission as they relate to the award and payment of disability and death benefits and the review of claims in articles four and five, chapter twenty-three of this code, will be imposed upon the employers mutual insurance company established pursuant to article two-c, chapter twenty-three of this code, a private carrier offering workers' compensation insurance in this state and self-insured employers. Whenever reference is made to the Workers' Compensation Commissioner in those articles, the duty prescribed shall apply to the employers mutual insurance company, a private carrier or self-insured employer, as applicable.

(c) From the effective date of this enactment, the insurance commissioner shall regulate all insurers licensed to transact workers' compensation insurance in this state and all of the provisions of this chapter shall apply to such insurers, unless otherwise exempted by statute.

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-2. Definitions.

As used in this article:

(1) "Benefits" mean money payments, goods, services or other thing of value paid in response to a claim filed with an insurer based upon a policy of insurance;
(2) "Business of insurance" means the writing of insurance, including the writing of workers' compensation insurance under the provisions of chapter twenty-three of this code, self-insurance by an employer or employer group for workers' compensation risk including the risk of catastrophic injuries under the provisions of chapter twenty-three of this code or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents or employees of insurers, or who are other persons authorized to act on their behalf;

(3) "Claim" means an application or request for payment or benefits provided under the terms of a policy of insurance;

(4) "Commissioner" means the insurance commissioner of West Virginia or his or her designee;

(5) "Health care provider" means a person, partnership, corporation, facility or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, pharmacist, podiatrist, chiropractor, physical therapist or psychologist;

(6) "Insurance" means a contract or arrangement in which a person undertakes to:

(A) Pay or indemnify another person as to loss from certain contingencies called "risks", including through reinsurance;

(B) Pay or grant a specified amount or determinable benefit to another person in connection with ascertainable risk contingencies;

(C) Pay an annuity to another person;
(D) Act as surety; or

(E) Self-insurance for workers’ compensation risk including the risk of catastrophic injuries under the provisions of chapter twenty-three of this code.

(7) "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance. Insurer includes, but is not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers’ mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group or other insurer, regardless of the type of coverage written, including the writing of workers’ compensation insurance or self insurance under the provisions of chapter twenty-three of this code, benefits provided or guarantees made by each. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer;

(8) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, trustees, an unincorporated organization, or any similar business entity or any combination of the foregoing. "Person" also includes hospital service corporations, medical service corporations and dental service corporations as defined in article twenty-four of this chapter, health care corporations as defined in article twenty-five of this chapter, or a health maintenance organization organized pursuant to article twenty-five-a of this chapter;

(9) "Policy" means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance, coverage by a self-insured employer or
employer group for its workers’ compensation risk including its risk of catastrophic injuries or reinsurance, affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state;

(10) “Reinsurance” means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer;

(11) “Statement” means any written or oral representation made to any person, insurer or authorized agency. A statement includes, but is not limited to, any oral report or representation; any insurance application, policy, notice or statement; any proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, or other evidence of loss, injury or expense; any bill for services, diagnosis, prescription, hospital or doctor record, X-ray, test result or other evidence of treatment, services or expense; and any application, report, actuarial study, rate request or other document submitted or required to be submitted to any authorized agency. A statement also includes any written or oral representation recorded by electronic or other media; and

(12) “Unit” means the insurance fraud unit established pursuant to the provisions of this article acting collectively or by its duly authorized representatives.

ARTICLE 41. PRIVILEGES AND IMMUNITY.

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

(a) There is established the West Virginia insurance fraud unit within the office of the insurance commissioner of West Virginia. The commissioner may employ full-time supervisory, legal and investigative personnel for the unit, who shall be qualified by training and experience in the
areas of detection, investigation or prosecution of fraud within and against the insurance industry to perform the duties of their positions. The director of the fraud unit shall be a full-time position and shall be appointed by the commissioner and serve at his or her will and pleasure. The commissioner shall provide office space, equipment, supplies, clerical and other staff that is necessary for the unit to carry out its duties and responsibilities under this article.

(b) The fraud unit may in its discretion:

(1) Initiate inquiries and conduct investigations when the unit has cause to believe violations of the provisions of this chapter, the provisions of chapter twenty-three, the provisions of article three, chapter sixty-one of this code relating to the business of insurance have been or are being committed;

(2) Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state and local law-enforcement and regulatory agencies, persons engaged in the business of insurance and the general public to determine whether the reports require further investigation; and

(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts.

(c) The insurance fraud unit may:

(1) Employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors and clerical support personnel and other personnel as the commissioner determines necessary from time to time to accomplish the purposes of this article;

(2) Inspect, copy or collect records and evidence,
(3) Serve subpoenas issued by grand juries and trial courts in criminal matters;

(4) Share records and evidence with federal, state or local law-enforcement or regulatory agencies, and enter into interagency agreements;

(5) Make criminal referrals to the county prosecutors;

(6) Conduct investigations outside this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the insurance fraud unit to examine at the place where the information is located. The insurance fraud unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to similar requests from officials of other states;

(7) The fraud unit may initiate investigations and participate in the development of, and if necessary, the prosecution of any health care provider, including a provider of rehabilitation services, suspected of fraudulent activity related to the business of insurance;

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

(9) Notwithstanding any provision of this code to the contrary, specific personnel designated by the commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the governor's committee on crime, delinquency and correction, which 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 any person designated by the commissioner as a law-enforcement
 officer as that term is defined by the provisions of section
one, article twenty-nine, chapter thirty of this code; and
(10) The insurance fraud unit shall not be subject to the
provisions of article nine-a, chapter six of this code and
the investigations conducted by the insurance fraud unit
and the materials placed in the files of the unit as a result
of any such investigation are exempt from public discl o-
sure under the provisions of chapter twenty-nine-b of this
code.

§33-41-11. Fraudulent claims to insurance companies.

(a) Any person who knowingly and willfully and with
intent to defraud submits a materially false statement in
support of a claim for insurance benefits or payment
pursuant to a policy of insurance or who conspires to do so
is guilty of a crime and is subject to the penalties set forth
in the provisions of this section.

(b) Any person who commits a violation of the provisions
of subsection (a) of this section where the benefit sought
exceeds one thousand dollars in value is guilty of a felony
and, upon conviction thereof, shall be confined in a
correctional facility for not less than one nor more than
ten years, fined not more than ten thousand dollars, or
both or in the discretion of the circuit court confined in a
county or regional jail for not more than one year and so
fined.

(c) Any person who commits a violation of the provisions
of subsection (a) of this section where the benefit sought is
one thousand dollars or less in value, is guilty of a misde-
meanor and, upon conviction thereof, shall be confined in
a county or regional jail for not more than one year, fined
not more than two thousand five hundred dollars, or both.

(d) Any person convicted of a violation of this section is
subject to the restitution provisions of article eleven-a,
chapter sixty-one of this code.
(e) In addition to the foregoing provisions, the offenses enumerated in sections twenty-four-e through twenty-four-h, inclusive, article three, chapter sixty-one of this code are applicable to matters concerning workers' compensation insurance.

(f) The circuit court may award to the unit or other law-enforcement agency investigating a violation of this section or other criminal offense related to the business of insurance its cost of investigation.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24e. Omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

(1) Failure to subscribe:

(A) Responsible person. Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a person who is responsible for and who is required by specific assignment, duty or legal duty, which is either expressed or inherent in laws which require the employer's principals to be informed and to know the facts and laws affecting the business organization and to make internal policy and decisions which ensure that the individual and organization comply with the general laws and provisions of chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers' compensation insurance shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or in the discretion of the court, be confined in a county or regional jail not more than one
year and shall be fined not more than two thousand five hundred dollars.

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

(2) Failure to pay:

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

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

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

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

(3) Failure to file premium tax reports:

(A) Any person who individually or as owner, partner,
      president, other officer, or manager of a sole proprietor-
      ship, firm, partnership, company, corporation or associa-
      tion, who, as a responsible person as defined in this
      section, knowingly and willfully fails to file a premium tax
      report with the workers' compensation fund or a premium
      report to a private carrier as required by chapter twenty-
      three of this code, shall be guilty of a felony and, upon
      conviction thereof, shall be imprisoned in a state correc-
      tional facility not less than one nor more than ten years, or
      in the discretion of the court, be confined in a county or
      regional jail for a term not to exceed one year and shall be
      fined not more than two thousand five hundred dollars.

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

132 (4) Failure to file other reports:

133 (A) Any person, individually or as owner, partner,
134 president or other officer, or manager of a sole proprietor-
135 ship, firm, partnership, company, corporation or associa-
136 tion who, as a responsible person as defined in this section,
137 knowingly and willfully fails to file any report, other than
138 a premium tax report, required by such chapter shall be
139 guilty of a misdemeanor and, upon conviction thereof,
140 shall be confined in a county or regional jail for a term not
141 to exceed one year or fined an amount not to exceed two
142 thousand five hundred dollars, or both, in the discretion of
143 the court.

144 (B) Any corporation, association, company or partner-
145 ship which, as an employer as defined in chapter twenty-
146 three of this code, knowingly and willfully fails to file any
147 report, other than a premium tax report, with the workers’
148 compensation fund or insurance commissioner as required
149 by chapter twenty-three of this code, shall be guilty of a
150 misdemeanor and, upon conviction thereof, shall be fined
151 an amount not to exceed two thousand five hundred
152 dollars.

153 (5) False testimony or statements:

154 Any person, individually or as owner, partner, president,
155 other officer, or manager of a sole proprietorship, firm,
156 partnership, company, corporation or association who, as
157 a responsible person as defined in this section, knowingly
158 and willfully makes a false report or statement under oath,
159 affidavit, certification or by any other means respecting
160 any information required to be provided under chapter
161 twenty-three of this code shall be guilty of a felony and,
162 upon conviction thereof, shall be confined in a state
163 correctional facility for a definite term of imprisonment
which is not less than one year nor more than three years or fined not less than one thousand dollars nor more than ten thousand dollars, or both, in the discretion of the court. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the workers’ compensation fund, insurance commissioner or private carrier as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the state of West Virginia workers’ compensation commission, insurance commissioner or private carrier.

(6) Asset forfeiture:

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

(B) For purposes of subdivision (A) of this subsection, the term “payment of the costs of asset forfeiture” means:

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

(I) Contract services;

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

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

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

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

(7) Venue:

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

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

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

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

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

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

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

(3) In addition to any other penalty imposed, the court
shall order any person convicted under this section to
make full restitution of all moneys paid by the workers'
compensation fund, private carrier or self-insured em-
ployer as the result of a violation of this section. The
restitution ordered shall constitute a judgment against the
defendant and in favor of the state of West Virginia
workers' compensation commission, private carrier or
self-insured employer.

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

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

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

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

(A) To defraud the workers’ compensation fund, private carrier or a self-insured employer in connection with the delivery of or payment for workers’ compensation health care benefits, items or services;

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

(C) To make any charge or charges against any injured employee or any other person, firm or corporation which would result in a total charge for the treatment or service rendered in excess of the maximum amount set forth in the workers’ compensation commission’s schedule of maximum reasonable amounts to be paid for the treatment or services issued pursuant to subsection (a), section three article four, chapter twenty-three of this code is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than two thousand five hundred dollars.
(2) Any person who, in any matter involving a health care program related to workers' compensation insurance, knowingly and willfully:

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

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

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

(4) Any health care provider who fails, in violation of subsection (3) of this section to post a notice, in the form required by the workers' compensation commission, in the provider's public waiting area that the provider cannot accept any patient whose treatment or other services or supplies would ordinarily be paid for from the workers' compensation fund, private carrier or by a self-insured employer unless the patient consents, in writing, prior to the provision of the treatment or other services or supplies, to make payment for that treatment or other services or supplies himself or herself, is guilty of a misdemeanor and,
upon conviction thereof, shall be fined one thousand
dollars.

(5) Any person convicted under the provisions of this
section shall, after such conviction, be barred from
providing future services or supplies to injured employees
for the purposes of workers' compensation and shall cease
to receive payment for services or supplies. In addition to
any other penalty imposed, the court shall order any
defendant convicted under this section to make full
restitution of all moneys paid by or due to the workers'
compensation fund, private carrier or self-insured em-
ployer as the result of a violation of this section. The
restitution ordered shall constitute a judgment against the
defendant and in favor of the state of West Virginia
workers' compensation commission, insurance commis-
sioner, private carrier or self-insured employer.

(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 consti-
tutes 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.

§61-3-24h. Providing false documentation to workers' compensation to the insurance commissioner or a private carrier of workers' compensation insurance; altering documents or certificates from workers' compensation; penalties; venue.

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

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

(3) Venue for prosecution of any violation of this section shall be either the county in which the claimant resides, a defendant's principal business operations are located, or in Kanawha County where the workers' compensation fund is located.
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 16th Day of December, 2005.

Governor