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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
2nd Extraordinary Session, 2003

**ENROLLED**

SENATE BILL NO. 2013

(By Senator KESSLER, ET AL)

PASSED July 1, 2003

In Effect from Passage

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2003 JUL 17 P 2:05

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

ENROLLED

**Senate Bill No. 2013**

(BY SENATORS KESSLER, ROSS, SNYDER, HARRISON,  
SMITH AND WEEKS)

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[Passed July 1, 2003; in effect from passage.]

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AN ACT to repeal sections one, two, three, four, five, six and seven, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section five-b, article two, chapter twenty-three of said code; to repeal section seven, article four-a of said chapter; to amend and reenact section thirty-three-d, article three, chapter five-a of said code; to amend and reenact sections four and five, article three, chapter five-b of said code; to amend and reenact section one, article two, chapter five-f of said code; to amend and reenact section seven, article twelve, chapter eleven of said code; to amend and reenact section four, article one-a, chapter twelve of said code; to amend and reenact section six, article six of said chapter; to amend and reenact section ten, article two, chapter fifteen of said code; to amend and reenact section fifteen, article one, chapter sixteen of said code; to amend and reenact section three, article twenty-nine-d of said chapter; to amend and reenact section three, article thirty-

six of said chapter; to amend and reenact section twenty-six, article nine-a, chapter eighteen of said code; to amend and reenact section twelve-a, article ten-a of said chapter; to amend and reenact section two, article ten-k of said chapter; to amend and reenact section three, article three-a, chapter twenty-one of said code; to amend and reenact section four, article one, chapter twenty-one-a of said code; to amend and reenact sections six, six-c and thirteen, article two of said chapter; to amend and reenact section eleven, article ten of said chapter; to amend and reenact section eight, article three, chapter twenty-two of said code; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen and eighteen, article one, chapter twenty-three of said code; to further amend said article by adding thereto eight new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, four-a and nineteen; to amend and reenact sections one, one-c, one-d, two, three, four, five, five-a, five-c, five-d, six, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article two of said chapter; to amend and reenact section one, article two-a of said chapter; to amend and reenact sections one, two and three, article two-b of said chapter; to amend and reenact sections one, one-a, two, three and five, article three of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact sections one, one-a, one-b, one-c, one-d, one-e, two, three, three-b, three-c, four, five, six, six-a, six-b, six-d, seven, seven-a, seven-b, eight, eight-a, eight-b, eight-c, nine, nine-b, ten, eleven, twelve, fourteen, fifteen, fifteen-a, fifteen-b, sixteen, sixteen-a, seventeen, eighteen, twenty, twenty-two, twenty-three, twenty-four and twenty-five, article four of said chapter; to further amend said article by adding thereto a new section, designated section one-g; to amend and reenact sections one, three, five, six and eight, article four-a of said chapter; to amend and reenact sections two, five, six and seven, article four-b of said chapter; to further amend said article by adding thereto a new section, designated section eight-b; to

amend and reenact sections two, three, four and five, article four-c of said chapter; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fifteen, seventeen and eighteen, article five of said chapter; to amend and reenact section two, article eight, chapter twenty-six of said code; to amend and reenact sections one hundred twenty-five and one hundred thirty-one, article eighteen, chapter forty-eight of said code; and to amend and reenact sections twenty-four-e, twenty-four-f and twenty-four-g, article three, chapter sixty-one of said code, all relating to workers' compensation generally; repealing provisions relating to the compensation programs performance council; repealing provisions relating to default settlement; repealing provisions relating to employees and payment of salaries from the disabled workmen's relief fund; removing workers' compensation from the bureau of employment programs; directing certain reports to be filed quarterly; providing legislative findings; creating workers' compensation commission as an independent agency assuming all duties of division; creating the workers' compensation board of managers; establishing composition of board; establishing qualifications for membership; establishing appointment procedures for members; providing for compensation and travel expenses; setting forth the powers and duties of board; establishing position, powers and duties of executive director; establishing qualifications; establishing procedure for removal; providing violator system to prohibit certain persons from obtaining state licenses, certificates and permits in certain circumstances; providing for payment withholding and interception of moneys of certain employers; providing penalties for failure to withhold or intercept payments; authorizing interagency agreements for the bureau of employment programs and workers' compensation commission; providing for the adoption of workers' compensation rules by commission; transferring assets and contracts; establishing fraud and abuse investigation and prosecution unit; providing powers and duties of unit; providing for legislative oversight of commission; providing for salaries

and expenses of commission; requiring bond and insurance for the executive director and associate director; authorizing the executive director to hire an associate director and other employees; providing for associate director to assume authority in absence of executive director; authorizing certain commission employees to administer oaths; providing for issuance and enforcement of agency subpoenas; providing additional civil remedies for violations of law; allowing certain elected local officials not to participate in workers' compensation; providing that limited liability companies may elect to not provide workers' compensation coverage to certain members; clarifying that extraction of natural resources is provision of services; requiring promulgation of rule to prevent contractors from avoiding liability for workers' compensation premiums; creating ongoing duty to provide information to commission; authorizing rate reductions for safety and loss prevention and drug-free workplace initiatives; requiring rates, surcharges and assessments to be financially sound and sufficient to meet needs of the funds; establishing rate caps; authorizing the commission to require employers to pay premium taxes more often than quarterly; extending time for commission to collect from defaulting or delinquent employers; establishing statute of limitations; allowing specified groups of employers to self-insure their obligations to the commission; requiring self-insured employers to administer claims; requiring self-insured employers to comply with the law and commission rules; establishing components of self-insured premium tax; requiring employers that self-insure second injury benefits to continue to be responsible for the claims; providing that self-insured employers who fail to make benefit payments are in default in certain circumstances; authorizing the commission to determine self-insured rates; authorizing self-insured employers to obtain third-party insurance for catastrophic claims and requiring copy of policy; prohibiting self-insured employers from contracting with third-party administrators who have not been approved by the commission; allowing for subrogation of medical benefits and

authorizing reasonable attorney fees and reasonable portion of costs; eliminating second injury awards and the second injury reserve fund for certain claims; providing for management of the deficit; authorizing emergency fiscal measures; reporting requirements of self-insurers; requiring commission to adopt standards for evaluation of whole-body impairment with regard to certain occupational diseases; providing an expedited appeal to the office of judges where self-insured denies compensability; requiring assessment of claimant's return-to-work potential; providing assistance in return-to-work efforts; authorizing repayment of overpayments from future benefits and providing for liability of attorney for certain fees and expenses; prohibiting a claimant from receiving certain workers' compensation benefits and private benefits in certain circumstances; requiring award of permanent partial disability benefits be made as expeditiously as possible; requiring medical providers to submit timely requests for payment; authorizing certain employers with managed health care plans to require employees to use the plan for treatment of compensable injuries; exceptions; authorizing the commission to establish managed health care plans; providing for weighing of evidence; providing for suspension or termination of health care providers; requiring commission to set standards for medical management of claims; providing benefits for cemetery expenses; eliminating annual increases in benefits; reducing certain benefit rates; establishing new criteria for eligibility for benefits for certain injuries and diseases; increasing to fifty percent the percentage of whole body impairment for eligibility for consideration for a permanent total disability award; establishing internal operative dates; requiring the executive director to promulgate a rule to establish requirements for an application for permanent total disability benefits; specifying application required for claim for permanent total disability benefits; providing for the establishment of an onset date for permanent total disability benefits; providing for increase of minimum aggregation of percentages of permanent disability or medical impairment

prior to applying for permanent total disability award; providing for prior disability awards excluded from calculation; providing that ability to acquire skills may be considered in permanent total disability determination; providing that neither certain proximity of employment nor comparison of wages may be considered when determining permanent total disability; terminating permanent total disability benefits at age seventy in certain circumstances; eliminating the five-percent presumptive award of occupational pneumoconiosis; authorizing application for occupational pneumoconiosis benefits within three years of determination of impairment; providing that the commission may suspend benefits to a claimant for refusing, without good cause, treatment or examination by a physician; providing for a trial work period; modifying provisions for vocational rehabilitation services; authorizing reopening and review of claims; establishing duty to provide information to commission; expanding monitoring in injury claims; authorizing suspension or termination of benefits in certain circumstances; removing certain offset provisions; providing certain incentives for premium discounts; providing that certain portion of rate increase not be subject to collection; expanding sources from which overpayment of benefits and awards may be collected; providing for further examinations of certain disability benefit recipients; providing for transfer of certain funds from and to coal-workers' pneumoconiosis fund; permitting certain employers to self-insure certain obligations; providing for the settlement of claims; providing a statute of limitations on employer liability in certain circumstances; requiring certain security or bond from employers; administration of claims by self-insured employers; requiring certain additional amounts to be paid to the commission by employers; providing circumstances in which employers are in default in obligations to the commission; requiring commission approval of employer use of third-party administrator; requiring electronic transfer of funds; providing time limitation for certain payments; authorizing rule to permit employers to contract with certain providers

of services in certain circumstances; providing for payments of certain benefits during participation in certain rehabilitation plans; providing for the termination of or limitation on certain benefits in certain circumstances; requiring rules for certain administrative functions; requiring expedited hearings in certain circumstances; providing for finality of certain administrator decisions; providing standards of review; providing for mediation; providing for removal of chief administrative law judge; providing for appeals; establishing time frames for appeals; establishing standards for appeal; creating the workers' compensation board of review; authorizing salary for members; providing for appointment of members of board; establishing qualifications of members of the board; establishing position of chairman; authorizing rules of procedure; authorizing clerk and other employees; providing for remand of cases; providing for standards for appeals to the West Virginia supreme court of appeals; providing civil and criminal penalties and judgments for restitution; making technical corrections and removing archaic language throughout; and providing conforming amendments.

*Be it enacted by the Legislature of West Virginia:*

That sections one, two, three, four, five, six and seven, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section five-b, article two, chapter twenty-three of said code be repealed; that section seven, article four-a of said chapter be repealed; that section thirty-three-d, article three, chapter five-a of said code be amended and reenacted; that sections four and five, article three, chapter five-b of said code be amended and reenacted; that section one, article two, chapter five-f of said code be amended and reenacted; that section seven, article twelve, chapter eleven of said code be amended and reenacted; that section four, article one-a, chapter twelve of said code be amended and reenacted; that section six, article six of said chapter be amended and reenacted; that section ten, article two, chapter fifteen of said code be amended and reenacted; that



section fifteen, article one, chapter sixteen of said code be amended and reenacted; that section three, article twenty-nine-d of said chapter be amended and reenacted; that section three, article thirty-six of said chapter be amended and reenacted; that section twenty-six, article nine-a, chapter eighteen of said code be amended and reenacted; that section twelve-a, article ten-a of said chapter be amended and reenacted; that section two, article ten-k of said chapter be amended and reenacted; that section three, article three-a, chapter twenty-one of said code be amended and reenacted; that section four, article one, chapter twenty-one-a of said code be amended and reenacted; that sections six, six-c and thirteen, article two of said chapter be amended and reenacted; that section eleven, article ten of said chapter be amended and reenacted; that section eight, article three, chapter twenty-two of said code be amended and reenacted; that sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen and eighteen, article one, chapter twenty-three of said code be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, four-a and nineteen; that sections one, one-c, one-d, two, three, four, five, five-a, five-c, five-d, six, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article two of said chapter be amended and reenacted; that section one, article two-a of said chapter be amended and reenacted; that sections one, two and three, article two-b of said chapter be amended and reenacted; that sections one, one-a, two, three and five, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six; that sections one, one-a, one-b, one-c, one-d, one-e, two, three, three-b, three-c, four, five, six, six-a, six-b, six-d, seven, seven-a, seven-b, eight, eight-a, eight-b, eight-c, nine, nine-b, ten, eleven, twelve, fourteen, fifteen, fifteen-a, fifteen-b, sixteen, sixteen-a, seventeen, eighteen, twenty, twenty-two, twenty-three, twenty-four and twenty-five, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-g; that sections

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

**CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-33d. Grounds for debarment.**

- 1     Grounds for debarment are:
- 2     (1) Conviction of an offense involving fraud or a felony
- 3     offense in connection with obtaining or attempting to
- 4     obtain a public contract or subcontract;
- 5     (2) Conviction of any federal or state antitrust statute
- 6     relating to the submission of offers;
- 7     (3) Conviction of an offense involving embezzlement,
- 8     theft, forgery, bribery, falsification or destruction of
- 9     records, making false statements or receiving stolen
- 10    property in connection with the performance of a contract;
- 11    (4) Conviction of a felony offense demonstrating a lack
- 12    of business integrity or business honesty that affects the
- 13    present responsibility of the vendor or subcontractor;
- 14    (5) Default on obligations owed to the state, including,
- 15    but not limited to, obligations under the West Virginia

16 workers' compensation act, the West Virginia unemploy-  
17 ment compensation act and West Virginia state tax and  
18 revenue laws. For purposes of this subsection, a vendor is  
19 in default when, after due notice, the vendor fails to  
20 submit a required payment, interest thereon or penalty,  
21 and has not entered into a repayment agreement with the  
22 appropriate agency of the state or has entered into a  
23 repayment agreement but does not remain in compliance  
24 with its obligations under the repayment agreement. In  
25 the case of a vendor granted protection by order of a  
26 federal bankruptcy court or a vendor granted an exemp-  
27 tion under any rule of the bureau of employment programs  
28 or the workers' compensation commission, the director  
29 may waive debarment under section thirty-three-f of this  
30 article: *Provided*, That in no event may debarment be  
31 waived with respect to any vendor who has not paid all  
32 current state obligations for at least the four most recent  
33 calendar quarters, excluding the current calendar quarter,  
34 or with respect to any vendor who is in default on a  
35 repayment agreement with an agency of the state;

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

42 (7) Violation of the terms of a public contract or subcon-  
43 tract for:

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

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

50 (C) Use of substandard materials on one or more public  
51 contracts or defects in construction in one or more public

52 construction projects amounting to intentionally deficient  
53 or grossly negligent performance, even if discovery of the  
54 defect is subsequent to acceptance of a construction  
55 project and expiration of any warranty thereunder;

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

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

#### **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

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

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

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

5 (b) The development office and the tourism commission  
6 established pursuant to article two of this chapter, the  
7 economic development authority established pursuant to  
8 article fifteen, chapter thirty-one of this code, the bureau  
9 of employment programs established pursuant to article  
10 four, chapter twenty-one-a of this code, the workers'  
11 compensation commission established pursuant to article  
12 one, chapter twenty-three of this code, the workforce  
13 investment commission established pursuant to article  
14 two-c of this chapter, West Virginia jobs investment trust,  
15 regional planning and development councils, West Virginia  
16 rural development council, governor's office of technology  
17 and West Virginia clearinghouse for workforce education  
18 shall each file a copy of its legislative rules with the

19 commission as provided for in this section. Each agency  
20 that proposes legislative rules in accordance to the provi-  
21 sions of article three, three-a or three-b, chapter twenty-  
22 nine-a of this code relating to economic development or  
23 workforce development shall file the rules with the joint  
24 commission at the time the rules are filed with the secre-  
25 tary of state prior to the public comment period or public  
26 hearing required in said chapter.

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

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

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

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

20 (B) Geographic areas served by post-secondary educa-  
21 tional institutions and area vocational education schools;

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

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

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

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

31 (3) A comprehensive review of West Virginia's existing  
32 economic and community development resources and the  
33 recommendation of an organizational structure, including,  
34 but not limited to, the reorganization of the bureau of  
35 commerce and the development office that would allow  
36 the state to successfully compete in the new global econ-  
37 omy.

38 (b) In order to effectuate in the most cost-effective and  
39 efficient manner the studies required in this article, it is  
40 necessary for the joint commission to assemble and  
41 compile a tremendous amount of information. The  
42 development office will assist the joint commission in the  
43 collection and analysis of this information. The tourism  
44 commission established pursuant to article two of this  
45 chapter, the economic development authority established  
46 pursuant to article fifteen, chapter thirty-one of this code,  
47 the bureau of employment programs established pursuant  
48 to article four, chapter twenty-one-a of this code, the  
49 workers' compensation commission established pursuant  
50 to article one, chapter twenty-three of this code, the  
51 workforce investment commission established pursuant to  
52 article two-c of this chapter, West Virginia jobs investment  
53 trust, regional planning and development councils, West  
54 Virginia rural development council, governor's office of  
55 technology and West Virginia clearinghouse for workforce  
56 education all shall provide a copy of the agency's annual  
57 report as submitted to the governor in accordance with the  
58 requirements set forth in section twenty, article one,  
59 chapter five of this code to the West Virginia development  
60 office. The development office shall review, analyze and  
61 summarize the data contained in the reports, including its  
62 own annual report, and annually submit its findings to the

63 joint commission on or before the thirty-first day of  
64 December.

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

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

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

### **ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

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

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

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

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

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

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

15 (5) Education and state employees grievance board  
16 provided for in article twenty-nine, chapter eighteen of

17 this code and article six-a, chapter twenty-nine of this  
18 code;

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

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

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

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

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

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

31 (b) The department of commerce, labor and environmen-  
32 tal resources and the office of secretary of the department  
33 of commerce, labor and environmental resources are  
34 abolished. For purposes of administrative support and  
35 liaison with the office of the governor, the following  
36 agencies and boards, including all allied, advisory and  
37 affiliated entities, are grouped under two bureaus and one  
38 commission as follows:

39 (1) Bureau of commerce:

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

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

45 (ii) Board of manufactured housing construction and  
46 safety provided for in article nine, chapter twenty-one of  
47 this code;



48 (B) Office of miners' health, safety and training provided  
49 for in article one, chapter twenty-two-a of this code. The  
50 following boards are transferred to the office of miners'  
51 health, safety and training for purposes of administrative  
52 support and liaison with the office of the governor:

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

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

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

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

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

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

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

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

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

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

79 (2) Bureau of employment programs provided for in  
80 article one, chapter twenty-one-a of this code; and

81 (3) Workers' compensation commission provided for in  
82 article one, chapter twenty-three of this code.

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

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

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

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

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

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

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

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

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

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

110 (2) Educational broadcasting authority provided for in  
111 article five, chapter ten of this code;

112 (3) Joint commission for vocational-technical-occupational  
113 tional education provided for in article three-a, chapter  
114 eighteen-b of this code;

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

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

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

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

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

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

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

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

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

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

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

141 (f) The following agencies and boards, including all of  
142 the allied, advisory, affiliated or related entities and funds

143 associated with any agency or board, are transferred to  
144 and incorporated in and administered as a part of the  
145 department of military affairs and public safety:

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

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

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

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

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

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

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

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

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

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

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

171 (g) The following agencies and boards, including all of  
172 the allied, advisory, affiliated or related entities and funds  
173 associated with any agency or board, are transferred to

174 and incorporated in and administered as a part of the  
175 department of tax and revenue:

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

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

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

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

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

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

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

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

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

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

201 (2) Parkways, economic development and tourism  
202 authority provided for in article sixteen-a, chapter seven-  
203 teen of this code;

204 (3) Division of motor vehicles provided for in article two,  
205 chapter seventeen-a of this code;

206 (4) Driver's licensing advisory board provided for in  
207 article two, chapter seventeen-b of this code;

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

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

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

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

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

230 (k) Any department previously transferred to and  
231 incorporated in a department created in section two,  
232 article one of this chapter by prior enactment of this  
233 section in chapter three, acts of the Legislature, first  
234 extraordinary session, one thousand nine hundred eighty-  
235 nine, and subsequent amendments means a division of the  
236 appropriate department. Wherever reference is made to  
237 any department transferred to and incorporated in a  
238 department created in section two, article one of this  
239 chapter, the reference means a division of the appropriate  
240 department and any reference to a division of a depart-

241 ment so transferred and incorporated means a section of  
242 the appropriate division of the department.

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

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

## CHAPTER 11. TAXATION.

### ARTICLE 12. BUSINESS REGISTRATION TAX.

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

1 Any person to whom a certificate of registration has  
2 been issued under the provisions of section four of this  
3 article shall keep the certificate posted in a conspicuous  
4 position in the place where the privilege of the business is  
5 exercised. The certificate of registration shall be produced  
6 for inspection whenever required by the tax commissioner  
7 or by any law-enforcement officers of this state, county or  
8 municipality in which the privileges to conduct business  
9 are exercised.

10 No injunction shall issue from any court in the state  
11 enjoining the collection of any business registration  
12 certificate tax required in this section; and any person  
13 claiming that any business certificate is not due, for any  
14 reason, shall pay the tax under protest and petition the tax  
15 commissioner for a refund in accordance with the provi-  
16 sions of section fourteen, article ten of this chapter.

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

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

34 The tax commissioner shall deliver to the commissioner  
35 of the bureau of employment programs and the executive  
36 director of the workers' compensation commission the  
37 information contained in the business franchise registra-  
38 tion certificate when this information is used to implement  
39 and administer a single point of registration program for  
40 persons engaging in any business activity in the state of  
41 West Virginia. The single point of registration program  
42 shall provide that, once an individual has received a  
43 business franchise registration certificate, the tax commis-  
44 sioner shall notify the commissioner of the bureau of  
45 employment programs and the executive director of the  
46 workers' compensation commission of the names, ad-



47 dresses and other identifying information of that individ-  
48 ual or entity. Upon receiving this information, the com-  
49 missioner of the bureau of employment programs and the  
50 executive director of the workers' compensation commis-  
51 sion shall contact all businesses receiving a business  
52 franchise registration certificate and provide all necessary  
53 forms and paperwork to register a business within the  
54 bureau and commission pursuant to subsection (b), section  
55 six-b, article two, chapter twenty-one-a of this code and  
56 subsection (c), section two, article two, chapter twenty-  
57 three of this code.

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

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

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

#### **§12-1A-4. Applications for loan priority; loan package; counsel- ing.**

1 (a) An eligible lending institution that desires to partici-  
2 pate in the linked deposit program shall accept and review  
3 loan applications from eligible small businesses that have  
4 been prepared with the advice of the small business  
5 development center. The lending institution shall apply all  
6 usual lending standards to determine the credit worthiness

7 of each eligible small business and whether the loan  
8 application meets the criteria established in this article.

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

17 (c) In considering which eligible small businesses should  
18 receive linked deposit loans, the eligible lending institu-  
19 tion shall give priority to the economic needs of the area in  
20 which the business is located, the number of jobs to be  
21 created and preserved by the receipt of the loan, the  
22 reasonable ability of the small business to repay the loan  
23 and other factors considered appropriate by the eligible  
24 financial institution.

25 (d) A small business receiving a linked deposit loan shall  
26 receive supervision and counseling provided by the small  
27 business development center when applying for the loan.  
28 The services available from the small business develop-  
29 ment center include eligibility certification, business  
30 planning, quarterly financial statement review and loan  
31 application assistance. The state tax division, the bureau  
32 of employment programs and the workers' compensation  
33 commission shall provide the small business development  
34 center with information as to the standing of each small  
35 business loan applicant. The small business development  
36 center shall include these certifications with the loan  
37 application.

38 (e) The eligible financial institution shall forward to the  
39 treasurer a linked deposit loan package in the form and  
40 manner prescribed by the treasurer. The treasurer shall  
41 forward notice of approval of the loan to the small busi-

42 ness development center at the same time it is furnished to  
43 the eligible financial institution.

**ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.**

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

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

17 (b) The board shall produce monthly financial state-  
18 ments for the assets managed by the board and cause them  
19 to be delivered to each member of the board and the  
20 executive secretary of the consolidated public retirement  
21 board as established in sections one and two, article ten-d,  
22 chapter five of this code and to the executive director of  
23 the workers' compensation commission as administrator of  
24 the workers' compensation fund and coal-workers' pneu-  
25 moconiosis fund as provided in section one-b, article one,  
26 chapter twenty-three of this code and section one, article  
27 three of said chapter and section seven, article four-b of  
28 said chapter.

29 (c) The board shall deliver in each quarter to the council  
30 of finance and administration and the consolidated public  
31 retirement board a report detailing the investment perfor-  
32 mance of the 401(a) plans.

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

42 (e) The board shall provide any other information  
43 requested in writing by the council of finance and admin-  
44 istration.

45 (f) All statements and reports with respect to participant  
46 plans required in this section shall be available for inspec-  
47 tion by the members and beneficiaries and designated  
48 representatives of the participant plans.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 2. WEST VIRGINIA STATE POLICE.

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

1 (a) The standard uniform to be used by the West Virginia  
2 state police after the effective date of this article shall be  
3 as follows: Forestry green blouse with West Virginia state  
4 police emblem on sleeve; black shoulder strap one-inch  
5 black stripe around sleeve, four inches from end of sleeve;  
6 forestry green breeches with one-inch black stripe down  
7 the side; trousers (slacks) with one-inch black stripe down

8 the side for officers and clerks regularly enlisted in the  
9 state police; forestry green shirts with West Virginia state  
10 police emblem on sleeve; black shoulder straps; forestry  
11 green mackinaw with West Virginia state police emblem  
12 on sleeve; black shoulder straps; one-inch black stripe  
13 around sleeve four inches from end of sleeve; campaign hat  
14 of olive drab color; black Sam Browne belt with holster;  
15 black leggings and shoes; the officer's uniform will have  
16 one and one-quarter inch black stripe around the sleeve of  
17 blouse and mackinaw four inches from end of sleeve  
18 circumposed with one-half inch gold braid, also black  
19 collars on blouse, with two silver shoulder bars for cap-  
20 tains, one silver shoulder bar for first lieutenant, one gold  
21 shoulder bar for second lieutenant. For noncommissioned  
22 officers the uniform blouse and shirt will have thereon  
23 black chevrons of the appropriate rank.

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

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

44 state of West Virginia are and remain the property of the  
45 state.

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

49 (e) The superintendent may contract and furnish at state  
50 police expense medical and hospital services for treatment  
51 of illness or injury of a member which shall be determined  
52 by the superintendent to have been incurred by the  
53 member while engaged in the performance of duty and  
54 from causes beyond control of the members. Notwith-  
55 standing any other provision of this code, the superinten-  
56 dent has the right of subrogation in any civil action or  
57 settlement brought by or on behalf of a member in relation  
58 to any act by another which results in the illness, injury or  
59 death of a member. To this end, the superintendent may  
60 initiate an action on behalf of the state police in order to  
61 recover the costs incurred in providing medical and  
62 hospital services for the treatment of a member resulting  
63 from injury or illness originating in the performance of  
64 official duties. This subsection shall not affect the power  
65 of a court to apply ordinary equitable defenses to the right  
66 of subrogation.

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

74 Third-party reimbursements received by the superinten-  
75 dent after the expiration of the fiscal year in which the  
76 injury, illness or death occurred will be deposited to a  
77 nonexpiring special revenue account. Funds deposited to  
78 this account may be used solely for defraying the costs of  
79 medical or hospital services rendered to any sworn mem-

80 bers as a direct result of an illness, injury or death result-  
81 ing from the performance of official duties.

82 (f) The superintendent shall establish and maintain local  
83 headquarters at those places in West Virginia that are in  
84 his or her judgment suitable and proper to render the West  
85 Virginia state police most efficient for the purpose of  
86 preserving the peace, protecting property, preventing  
87 crime, apprehending criminals and carrying into effect all  
88 other provisions of this article. The superintendent shall  
89 provide, by acquisition, lease or otherwise, for local  
90 headquarters, for housing and quarters for the accommo-  
91 dation of the members of the West Virginia state police,  
92 and for any other facilities necessary or useful for the  
93 effective operation of the West Virginia state police and  
94 shall provide all equipment and supplies necessary for the  
95 members of the West Virginia state police to perform their  
96 duties.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

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

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

10 (b) Each individual designated to hold any inquiry,  
11 investigation or hearing may administer oaths and affir-  
12 mations, certify to all official acts, issue subpoenas and  
13 order the attendance and testimony of witnesses in the

14 production of papers, books and documents. In case of the  
15 failure of any person to comply with any subpoena or  
16 order issued under the authority of this section, the  
17 secretary or his or her authorized representative may  
18 invoke the aid of any circuit court of this state. The court  
19 may thereupon order that person to comply with the  
20 requirements of the subpoena order or to give evidence as  
21 to the matter in question. Failure to obey the order of the  
22 court may be punished by the court as a contempt of court.

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

**ARTICLE 29D. STATE HEALTH CARE.**

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

1 (a) All departments and divisions of the state, including,  
2 but not limited to, the bureau of employment programs;  
3 the division of health and the division of human services  
4 within the department of health and human resources; the  
5 public employees insurance agency within the department  
6 of administration; the division of rehabilitation services;  
7 the workers' compensation commission; or the other  
8 department or division as shall supervise or provide  
9 rehabilitation; and the university of West Virginia board



10 of trustees, as the governing board for the state's medical  
11 schools, are authorized and directed to cooperate in order,  
12 among other things, to ensure the quality of the health  
13 care services delivered to the beneficiaries of the depart-  
14 ments and divisions and to ensure the containment of costs  
15 in the payment for services.

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

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

35 (1) Utilization review and quality assurance programs;

36 (2) The establishment of a schedule or schedules of the  
37 maximum reasonable amounts to be paid to health care  
38 providers for the delivery of health care services covered  
39 by the plan or plans. The schedule or schedules may be  
40 either prospective in nature or cost reimbursement in  
41 nature, or a mixture of both: *Provided*, That any payment  
42 methods or schedules for institutions which provide  
43 inpatient care shall be institution-specific and shall, at a  
44 minimum, take into account a disproportionate share of  
45 medicaid, charity care and medical education: *Provided*,

46 *however*, That in no event may any rate set in this article  
47 for an institutional health care provider be greater than  
48 the institution's current rate established and approved by  
49 the health care cost review authority pursuant to article  
50 twenty-nine-b of this chapter;

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

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

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

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

64 (d) The director of the public employees insurance  
65 agency shall contract with an independent actuarial  
66 company for a review every four years of the claims  
67 experience of all governmental entities whose employees  
68 participate in the public employees insurance agency  
69 program, including, but not limited to, all branches of  
70 state government, all state departments or agencies  
71 (including those receiving funds from the federal govern-  
72 ment or a federal agency), all county and municipal  
73 governments or any other similar entity for the purpose of  
74 determining the cost of providing coverage under the  
75 program, including administrative cost, to each govern-  
76 mental entity.

77 (e) Nothing in this section shall be construed to give or  
78 reserve to the Legislature any further or greater power or  
79 jurisdiction over the operations or programs of the various  
80 departments and divisions affected by this article than

81 that already possessed by the Legislature in the absence of  
82 this article.

83 (f) For the purchase of health care or health care services  
84 by a health care provider participating in a plan under this  
85 section on or after the first day of September, one thou-  
86 sand nine hundred eighty-nine, by the public employees  
87 insurance agency, the division of rehabilitation services  
88 and the workers' compensation commission, a state check  
89 shall be issued in payment thereof within sixty-five days  
90 after a legitimate uncontested invoice is actually received  
91 by the division, commission or agency. Any state check  
92 issued after sixty-five days shall include interest at the  
93 current rate, as determined by the state tax commissioner  
94 under the provisions of section seventeen-a, article ten,  
95 chapter eleven of this code. The interest shall be calcu-  
96 lated from the sixty-sixth day after the invoice was  
97 actually received by the commission or agency until the  
98 date on which the state check is mailed to the vendor.

**ARTICLE 36. NEEDLESTICK INJURY PREVENTION.**

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

1 (a) There is established a needlestick injury prevention  
2 advisory committee to advise the director in the develop-  
3 ment of rules required under this article.

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

9 (1) A representative of the health insurance industry;

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

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

15 (4) A phlebotomist employed in a hospital or nursing  
16 home;

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

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

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

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

24 (c) Members of the committee serve without compensa-  
25 tion. Each member shall be reimbursed for actual and  
26 necessary expenses incurred for each day or portion  
27 thereof engaged in the discharge of official duties, in a  
28 manner consistent with guidelines of the travel manage-  
29 ment office of the department of administration.

30 (d) A majority of all members constitutes a quorum for  
31 the transaction of all business. Members serve for two-  
32 year terms and may not serve for more than two consecu-  
33 tive terms.

## CHAPTER 18. EDUCATION.

### ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

#### §18-9A-26. Allowance for workers' compensation for unpaid student work-based learning.

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

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

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

13 (b) The state department of education shall communicate  
14 the amount of the premium to the governor and Legisla-  
15 ture by the first day of December of each year.

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

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

35 (e) Subject to an appropriation by the Legislature, funds  
36 shall be provided to the department of education to  
37 distribute to the county boards. If the appropriation is less  
38 than the total premium calculated, the county boards,  
39 individually, shall either reduce the number of students  
40 participating in work-based learning experiences off  
41 school premises or the county boards shall pay the differ-  
42 ence between the amount of the premium calculated by the  
43 workers' compensation commission and the amount  
44 allocated to the county board by the department of  
45 education.

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

1 (a) The workers' compensation commission shall create  
2 a classification and calculate a base premium tax rate for  
3 clients of the division of rehabilitation services participat-  
4 ing in unpaid work-based training programs within  
5 integrated community-based settings. The workers'  
6 compensation commission shall report to the division of  
7 rehabilitation services:

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

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

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

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

**ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD  
INJURY REHABILITATION FUND ACT.****§18-10K-2. Board created, membership, terms, officers and  
staff.**

1 (a) There is hereby established the West Virginia trau-  
2 matic brain and spinal cord injury rehabilitation fund  
3 board.

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

6 (1) The secretary of the department of education and the  
7 arts, *ex officio*, or his or her designee;

8 (2) The secretary of health and human resources, *ex*  
9 *officio*, or his or her designee;

10 (3) The state superintendent of schools, *ex officio*, or his  
11 or her designee;

12 (4) The secretary of the department of military affairs  
13 and public safety, *ex officio*, or his or her designee;

14 (5) The director of the bureau of behavioral health  
15 within the department of health and human resources, *ex*  
16 *officio*, or his or her designee;

17 (6) The director of the division of rehabilitation services,  
18 *ex officio*, or his or her designee;

19 (7) The director of the bureau of medical services, *ex*  
20 *officio*, or his or her designee;

21 (8) The director of the office of emergency services, *ex*  
22 *officio*, or his or her designee;

23 (9) The executive director of the workers' compensation  
24 commission, *ex officio*, or his or her designee;

25 (10) Seven members appointed by the governor to  
26 represent public and private health organizations or other  
27 disability coalitions or advisory groups; and

28 (11) Seven members appointed by the governor who are  
29 either survivors of traumatic brain or spinal cord injury or  
30 family members of persons with traumatic brain or spinal  
31 cord injury.

32 (c) The citizen members shall be appointed by the  
33 governor for terms of three years, except that of the  
34 members first appointed, two of the representatives of  
35 public and nonprofit private health organizations, disabili-  
36 ty coalitions or advisory groups and two of the represen-  
37 tatives of survivors or family members of persons with  
38 traumatic brain or spinal cord injuries shall serve for  
39 terms of one year, two of the representatives of each of  
40 those respective groups shall serve for terms of two years  
41 and the remaining three representatives of each of those  
42 respective groups shall serve for terms of three years. All  
43 subsequent appointments shall be for three years. Mem-  
44 bers shall serve until the expiration of the term for which  
45 they have been appointed or until their successors have  
46 been appointed and qualified. In the event of a vacancy,  
47 the governor shall appoint a qualified person to serve for  
48 the unexpired term. No member may serve more than two  
49 consecutive three-year terms. State officers or employees  
50 may be appointed to the board unless otherwise prohibited  
51 by law.

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

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

## **CHAPTER 21. LABOR.**

### **ARTICLE 3A. OCCUPATIONAL SAFETY AND HEALTH ACT.**

#### **§21-3A-3. Division of occupational safety and health; coordina- tion of activities with workers' compensation commission.**



1 (a) There is continued in the labor department a division  
2 of occupational safety and health comprised of a subdivi-  
3 sion for safety, a subdivision for health and the other  
4 subdivisions the commissioner considers necessary. This  
5 division shall administer all matters pertaining to occupa-  
6 tional safety and occupational health.

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

11 (c) The labor commissioner shall provide for coordina-  
12 tion between the division of occupational safety and  
13 health and the workers' compensation commission includ-  
14 ing, but not limited to, the establishment of standardized  
15 procedures and reportings.

#### **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

##### **ARTICLE 1. UNEMPLOYMENT COMPENSATION.**

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

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

7 Wherever within this chapter the term "department",  
8 "bureau" or "fund" is used, it shall be taken to mean  
9 bureau of employment programs unless otherwise indi-  
10 cated.

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

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

**§21A-2-6. Powers and duties generally.**

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

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

8 (2) Prescribe uniform rules pertaining to investigations,  
9 departmental hearings and propose rules for promulga-  
10 tion;

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

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

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

21 (6) Make reports in the form and containing information  
22 required by the United States department of labor and  
23 comply with any requirements that the United States  
24 department of labor finds necessary to assure the correct-  
25 ness and verification of the reports;

26 (7) Make available to any agency of the United States  
27 charged with the administration of public works or  
28 assistance through public employment, upon its request,  
29 the name, address, ordinary occupation and employment  
30 status of each recipient of unemployment compensation  
31 and a statement of the recipient's rights to further com-  
32 pensation under this chapter;

33 (8) Keep an accurate and complete record of all bureau  
34 proceedings, record and file all bonds and contracts and  
35 assume responsibility for the custody and preservation of  
36 all papers and documents of the bureau;

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

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

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

45 (12) Make recommendations and an annual report to the  
46 governor concerning the condition, operation and func-  
47 tioning of the bureau;

48 (13) Invoke any legal or special remedy for the enforce-  
49 ment of orders or the provisions of this chapter;

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

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

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

61 (17) (A) Propose for promulgation rules under which  
62 agencies of this state shall not grant, issue or renew any  
63 contract, license, permit, certificate or other authority to  
64 conduct a trade, profession or business to or with any  
65 employing unit whose account is in default with the

66 commissioner with regard to the administration of this  
67 chapter. The term "agency" includes any unit of state  
68 government such as officers, agencies, divisions, depart-  
69 ments, boards, commissions, authorities or public corpora-  
70 tions. An employing unit is not in default if it has entered  
71 into a repayment agreement with the unemployment  
72 compensation division of the bureau and remains in  
73 compliance with its obligations under the repayment  
74 agreement.

75 (B) The rules shall provide that, before granting, issuing  
76 or renewing any contract, license, permit, certificate or  
77 other authority to conduct a trade, profession or business  
78 to or with any employing unit, the designated agencies  
79 shall review a list or lists provided by the bureau of  
80 employers that are in default. If the employing unit's  
81 name is not on the list, the agency, unless it has actual  
82 knowledge that the employing unit is in default with the  
83 bureau, may grant, issue or renew the contract, license,  
84 permit, certificate or other authority to conduct a trade,  
85 profession or business. The list may be provided to the  
86 agency in the form of a computerized database or data-  
87 bases that the agency can access. Any objections to the  
88 refusal to issue or renew shall be reviewed under the  
89 appropriate provisions of this chapter. The rules provided  
90 for by this subdivision shall be promulgated pursuant to  
91 the provisions of article three, chapter twenty-nine-a of  
92 this code. The prohibition against granting, issuing or  
93 renewing any contract, license, permit, certificate or other  
94 authority under this subdivision shall continue in full  
95 force and effect until the revised rules are promulgated  
96 and are in effect.

97 (C) The rules may be promulgated or implemented in  
98 phases so that specific agencies or specific types of con-  
99 tracts, licenses, permits, certificates or other authority to  
100 conduct trades, professions or businesses will be subject to  
101 the rules beginning on different dates. The presumptions  
102 of ownership or control contained in the division of

103 environmental protection's surface mining reclamation  
104 regulations promulgated under the provisions of article  
105 three, chapter twenty-two of this code are not applicable  
106 or controlling in determining the identity of employing  
107 units who are in default for the purposes of this subdivi-  
108 sion. The rules shall also provide a procedure allowing  
109 any agency or interested person, after being covered under  
110 the rules for at least one year, to petition the bureau of  
111 employment programs to be exempt from the provisions of  
112 the rules. Rules subjecting all applicable agencies and  
113 contracts, licenses, permits, certificates or other authority  
114 to conduct trades, professions or businesses to the require-  
115 ments of this subdivision that were promulgated prior to  
116 the first day of October, two thousand three, shall be  
117 revised and submitted for legislative review no later than  
118 the first day of June, two thousand four;

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

127 (19) Enter into interagency agreements to assist in  
128 exchanging information and fulfilling the provisions of  
129 this article.

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

1 (a) All state, county, district and municipal officers and  
2 agents making contracts on behalf of the state of West  
3 Virginia or any political subdivision thereof shall withhold  
4 payment in the final settlement of contracts until the  
5 receipt of a certificate from the commissioner to the effect  
6 that all payments, interest and penalties thereon accrued  
7 against the contractor under this chapter have been paid  
8 or that provisions satisfactory to the commissioner have

9 been made for payment. Any official violating this  
10 subsection is guilty of a misdemeanor and, on conviction  
11 thereof, shall be fined not more than one thousand dollars  
12 or confined in a county or regional jail for not more than  
13 one year, or both fined and confined.

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

**§21A-2-13. Deputies.**

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

**ARTICLE 10. GENERAL PROVISIONS.**

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

1 (a) Each employer, including labor organizations as  
2 defined in subsection (i) of this section, shall, quarterly,

3 submit certified reports on or before the last day of the  
4 month next following the calendar quarter, on forms to be  
5 prescribed by the commissioner. The reports shall contain:

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

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

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

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

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

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

32 (1) The United States department of agriculture;

33 (2) The state agency responsible for enforcement of the  
34 medicaid program under Title XIX of the Social Security  
35 Act;

36 (3) The United States department of health and human  
37 services or any state or federal program operating and  
38 approved under Title I, Title II, Title X, Title XIV or Title  
39 XVI of the Social Security Act;

40 (4) Those agencies of state government responsible for  
41 economic and community development; secondary, post-  
42 secondary and vocational education; vocational rehabilita-  
43 tion, employment and training, including, but not limited  
44 to, the administration of the Perkins Act and the Job  
45 Training and Partnership Act;

46 (5) The tax division, but only for the purposes of collec-  
47 tion and enforcement;

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

51 (7) Any agency of this or any other state, or any federal  
52 agency, charged with the administration of an unemploy-  
53 ment compensation law or the maintenance of a system of  
54 public employment offices;

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

58 (9) The workers' compensation commission for purposes  
59 of collection and enforcement: *Provided*, That the workers'  
60 compensation commission shall provide similar informa-  
61 tion to the bureau of employment programs.

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

67 (e) The commissioner may, before furnishing any infor-  
68 mation permitted under this section, require that those  
69 who request the information shall reimburse the bureau of



70 employment programs for any cost associated for furnish-  
71 ing the information.

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

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

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

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

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

#### **§22-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of**

**permits; proof of insurance; termination of permits;  
permit fees.**

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

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

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

24 (3) A permit terminates if the permittee has not com-  
25 menced the surface mining operations covered by the  
26 permit within three years of the date the permit was  
27 issued: *Provided*, That the director may grant reasonable  
28 extensions of time upon a timely showing that the exten-  
29 sions are necessary by reason of litigation precluding  
30 commencement, or threatening substantial economic loss  
31 to the permittee, or by reason of conditions beyond the  
32 control and without the fault or negligence of the  
33 permittee: *Provided, however*, That with respect to coal to  
34 be mined for use in a synthetic fuel facility or specific

35 major electric generating facility, the permittee shall be  
36 considered to have commenced surface mining operations  
37 at the time the construction of the synthetic fuel or  
38 generating facility is initiated.

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

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

54 (6) (A) Prior to the issuance of any permit the director  
55 shall ascertain from the commissioner of the bureau of  
56 employment programs and the executive director of the  
57 workers' compensation commission whether the applicant  
58 is in compliance with the provisions of section six-c,  
59 article two, chapter twenty-one-a of this code and section  
60 five, article two, chapter twenty-three of this code with  
61 regard to any required subscription to the unemployment  
62 compensation fund or to the workers' compensation fund,  
63 the payment of premiums and other charges to the fund,  
64 the timely filing of payroll reports and the maintenance of  
65 adequate deposits. If the applicant is delinquent or  
66 defaulted, or has been terminated by the bureau or the  
67 commission, the permit shall not be issued until the  
68 applicant returns to compliance or is restored by the  
69 bureau or the commission under a reinstatement agree-  
70 ment: *Provided*, That in all inquiries the commissioner of  
71 the bureau of employment programs and the executive

72 director of the workers' compensation commission shall  
73 make response to the division of environmental protection  
74 within fifteen calendar days; otherwise, failure to respond  
75 timely is considered to indicate the applicant is in compli-  
76 ance and the failure will not be used to preclude issuance  
77 of the permit.

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

## **CHAPTER 23. WORKERS' COMPENSATION.**

### **ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.**

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

1 (a) The Legislature finds that a deficit exists in the  
2 workers' compensation fund of such critical proportions  
3 that it constitutes an imminent threat to the immediate  
4 and long-term solvency of the fund. The Legislature  
5 further finds that addressing the workers' compensation  
6 crisis requires the efforts of all persons and entities  
7 involved. Modification to the rate system, alteration of the  
8 benefit structure, improvement of current management  
9 practices and changes in perception must be merged into  
10 a unified effort to make the workers' compensation system  
11 viable and solvent. It is the intent of the Legislature that  
12 the amendments to this chapter enacted in the year two  
13 thousand three be applied from the date upon which the  
14 enactment is made effective by the Legislature. The  
15 Legislature finds that an emergency exists as a result of  
16 the combined effect of this deficit, other state budgetary  
17 deficits and liabilities and other grave social and economic  
18 circumstances currently confronting the state and that  
19 unless the changes provided by the enactment of the  
20 amendments to this chapter, as well as other legislation  
21 designed to address the problem are made effective

22 immediately, the fiscal stability of this state will suffer  
23 irreparable harm. Accordingly, the Legislature finds that  
24 the need of the citizens of this state for the protection of  
25 the state treasury and the solvency of the workers' com-  
26 pensation funds requires the limitations on any expecta-  
27 tions that may have arisen from prior enactments of this  
28 chapter.

29 (b) It is the further intent of the Legislature that this  
30 chapter be interpreted so as to assure the quick and  
31 efficient delivery of indemnity and medical benefits to  
32 injured workers at a reasonable cost to the employers who  
33 are subject to the provisions of this chapter. It is the  
34 specific intent of the Legislature that workers' compensa-  
35 tion cases shall be decided on their merits and that a rule  
36 of "liberal construction" based on any "remedial" basis of  
37 workers' compensation legislation shall not affect the  
38 weighing of evidence in resolving such cases. The workers'  
39 compensation system in this state is based on a mutual  
40 renunciation of common law rights and defenses by  
41 employers and employees alike. Employees' rights to sue  
42 for damages over and above medical and health care  
43 benefits and wage loss benefits are to a certain degree  
44 limited by the provisions of this chapter and employers'  
45 rights to raise common law defenses such as lack of  
46 negligence, contributory negligence on the part of the  
47 employee, and others, are curtailed as well. Accordingly,  
48 the Legislature hereby declares that any remedial compo-  
49 nent of the workers' compensation laws is not to cause the  
50 workers' compensation laws to receive liberal construction  
51 that alters in any way the proper weighing of evidence as  
52 required by section one-g, article four of this chapter.

53 (c) The "workers' compensation division of the bureau of  
54 employment programs" is, on or after the first day of  
55 October, two thousand three, reestablished, reconstituted  
56 and continued as the workers' compensation commission,  
57 an agency of the state. The purpose of the commission is  
58 to ensure the fair, efficient and financially stable adminis-

59 tration of the workers' compensation system of the state of  
60 West Virginia. The powers and duties heretofore imposed  
61 upon the workers' compensation division and the commis-  
62 sioner of the bureau of employment programs as they  
63 relate to workers' compensation are hereby transferred to  
64 and imposed upon the workers' compensation commission  
65 and its executive director in the manner prescribed by this  
66 chapter.

67 (d) It is the intent of the Legislature that the transfer of  
68 the administration of the workers' compensation system of  
69 this state from the workers' compensation division under  
70 the commissioner of the bureau of employment programs  
71 to the workers' compensation commission under its  
72 executive director and the workers' compensation board of  
73 managers is to become effective the first day of October,  
74 two thousand three. Any provisions of the enactment of  
75 Enrolled Senate Bill No. 2013 in the year two thousand  
76 three relating to the transfer of the administration of the  
77 workers' compensation system of this state that conflict  
78 with the intent of the Legislature as described in this  
79 subsection shall, to that extent, become operative on the  
80 first day of October, two thousand three, and until that  
81 date, prior enactments of this code in effect on the effec-  
82 tive date of Enrolled Senate Bill No. 2013 relating to the  
83 administration of the workers' compensation system of  
84 this state, whether amended and reenacted or repealed by  
85 the passage of Enrolled Senate Bill No. 2013, have full  
86 force and effect. All provisions of the enactment of  
87 Enrolled Senate Bill No. 2013 in the year two thousand  
88 three relating to matters other than the transfer of the  
89 administration of the workers' compensation system of  
90 this state shall become operative on the effective date of  
91 that enactment, unless otherwise specifically provided for  
92 in that enactment.

**§23-1-1a. Workers' compensation board of managers; appoint-  
ment; composition; qualifications; terms; chair-  
person; meetings and quorum; compensation and  
travel expenses; powers and duties.**

1 (a) On the first day of October, two thousand three, the  
2 compensation programs performance council heretofore  
3 established in article three, chapter twenty-one-a of this  
4 code is hereby abolished and there is hereby created the  
5 "workers' compensation board of managers", which may  
6 also be referred to as "the board of managers" or "the  
7 board".

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

10 (A) The governor or his or her designee;

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

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

19 (D) Eight members appointed by the governor with the  
20 advice and consent of the Senate who meet the require-  
21 ments and qualifications prescribed in subsections (c) and  
22 (d) of this section: *Provided*, That the members serving on  
23 the compensation programs performance council hereto-  
24 fore established in article three, chapter twenty-one-a of  
25 this code on the effective date of the enactment of this  
26 section in two thousand three are hereby appointed as  
27 members of the board of managers subject to the provi-  
28 sions of subdivision (1), subsection (c) of this section.

29 (2) Two members of the West Virginia Senate and two  
30 members of the West Virginia House of Delegates shall  
31 serve as advisory members of the board and are not voting  
32 members. The governor shall appoint the legislative  
33 members to the board. No more than three of the legisla-  
34 tive members may be of the same political party.

35 (c)(1) The initial eight appointed voting members of the  
36 board of managers shall consist of the members appointed  
37 under the provisions of paragraph (D), subdivision (1),  
38 subsection (a) of this section and the remaining members  
39 appointed pursuant to the provisions of subsection (d) of  
40 this section. The term of each of the initial appointed  
41 members shall expire on the thirty-first day of December,  
42 two thousand four.

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

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

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

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

53 (3) Except for appointments to fill vacancies, each  
54 subsequent appointment shall be for a term ending the  
55 thirtieth day of June of the fourth year following the year  
56 the preceding term expired. In the event a vacancy occurs,  
57 it shall be filled by appointment for the unexpired term.  
58 A member whose term has expired shall continue in office  
59 until a successor has been duly appointed and qualified.  
60 No member of the board may be removed from office by  
61 the governor except for official misconduct, incompetency,  
62 neglect of duty or gross immorality.

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

66 (d) Except for those initially appointed under the  
67 provisions of paragraph (D), subdivision (1), subsection (a)  
68 of this section, each of the appointed voting members of



69 the board shall be appointed based upon his or her demon-  
70 strated knowledge and experience to effectively accom-  
71 plish the purposes of this chapter. They shall meet the  
72 minimum qualifications as follows:

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

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

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

101 (e) Each member of the board shall have a fiduciary  
102 responsibility to the commission and all workers' compen-  
103 sation funds and shall assure the proper administration of  
104 the funds in a fiscally responsible manner.

105 (f) The board shall elect one member to serve as chair-  
106 person. The chairperson shall serve for a one-year term  
107 and may serve more than one consecutive term. The board  
108 shall hold meetings at the request of the chairperson or at  
109 the request of at least three of the members of the board,  
110 but no less frequently than once every three months. The  
111 chairperson shall determine the date and time of each  
112 meeting. Six members of the board constitute a quorum  
113 for the conduct of the business of the board. No vacancy  
114 in the membership of the board shall impair the right of a  
115 quorum to exercise all the rights and perform all the duties  
116 of the board. No action shall be taken by the board except  
117 upon the affirmative vote of six members of the board.

118 (g) Notwithstanding any provision of article seven,  
119 chapter six of this code to the contrary, the board shall  
120 establish the salary of the executive director. The board  
121 shall establish a set of performance measurements to  
122 evaluate the performance of the executive director in  
123 fulfilling his or her duties as prescribed in this chapter and  
124 shall annually rate the executive director's performance  
125 according to the established measurements and may adjust  
126 his or her annual salary in accordance with that perfor-  
127 mance rating.

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

132 (2) Each voting appointed member of the board is  
133 entitled to be reimbursed for actual and necessary ex-  
134 penses incurred for each day or portion thereof engaged in  
135 the discharge of official duties in a manner consistent with  
136 guidelines of the travel management office of the depart-  
137 ment of administration.

138 (i) Each member of the board shall be provided appro-  
139 priate liability insurance, including, but not limited to,  
140 errors and omissions coverage, without additional pre-

141 mium, by the state board of risk and insurance manage-  
142 ment established pursuant to article twelve, chapter  
143 twenty-nine of this code.

144 (j) The board of managers shall:

145 (1) Review and approve, reject or modify recommenda-  
146 tions from the executive director for the development of  
147 overall policy for the administration of this chapter;

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

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

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

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

174 (6) In conjunction with the executive director initiate,  
175 oversee and review all independent financial and actuarial

176 reviews of the commission. The board shall employ an  
177 internal auditor for the purpose of examining internal  
178 compliance with the provisions of this chapter. The  
179 internal auditor shall be employed directly by the board.  
180 The internal auditor shall submit copies of all reports  
181 prepared by the internal auditor for the board to the joint  
182 committee on government and finance within five days of  
183 submitting or making the report to the board, by filing the  
184 report with the legislative librarian;

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

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

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

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

207 (11) Require the workers' compensation commission to  
208 develop, maintain and use thorough and efficient claims  
209 management procedures and processes and fund manage-  
210 ment in accordance with the generally accepted practices  
211 of the workers' compensation insurance industry;

212 (12) Consider such other matters regarding the workers'  
213 compensation system as the governor, executive director  
214 or any member of the board may desire;

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

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

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

229 (16) Study the feasibility of, provide a plan for and  
230 provide a proposal for a request for proposals from the  
231 private sector for, privatizing the workers' compensation  
232 system of this state, including, but not limited to, a plan  
233 for privatizing the administration of the workers' compen-  
234 sation system of this state and a plan for allowing employ-  
235 ers to obtain private insurance to insure their obligations  
236 under the workers' compensation system of this state;  
237 study the effect, if any, of attorneys fees on the cost of  
238 administering the workers' compensation system; study  
239 the extent to which fraud or abuse on the part of employ-  
240 ees, providers and others have an effect on the cost of  
241 administering the workers' compensation system; study  
242 the extent, if any, that the rates and amounts of disability  
243 awards exceed the rates and amounts of such awards in  
244 other states; study the comparative desirability of alterna-  
245 tive permanent disability administration in those other  
246 states, and alternative deficit management strategies,  
247 including nontraditional funding; study the feasibility of

248 authorizing a plan of multiple rate classifications by  
249 individual employers for employers who have different or  
250 seasonally diverse job classifications and duties: *Provided*,  
251 That no such plan may be implemented until adopted by  
252 the Legislature; and, in consultation with the director of  
253 the division of personnel, study the feasibility of establish-  
254 ing a work incentive program to place unemployed  
255 qualified recipients of workers' compensation benefits in  
256 state or local government employment. On or before the  
257 first day of January, two thousand six, the commission  
258 shall report the findings and conclusions of each study, the  
259 plans and proposals, and any recommendations the  
260 commission may have as a result of the study to the joint  
261 committee on government and finance.

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

1 (a) The executive director shall be hired by the board of  
2 managers for a term not to exceed five years and may be  
3 retained based on overall performance for additional  
4 terms: *Provided*, That the executive director of the division  
5 of workers' compensation on the date of the enactment of  
6 this section in the year two thousand three shall serve as  
7 the initial executive director of the commission and shall  
8 receive the same salary and benefits as received as the  
9 executive director of the division of workers' compensa-  
10 tion through and until the board of managers establishes  
11 his or her salary and benefits as the executive director of  
12 the commission. The position of executive director shall  
13 be full-time employment. Except for the initial executive  
14 director, candidates for the position of executive director  
15 shall have a minimum of a bachelor of arts or science  
16 degree from an accredited four-year college or university  
17 in one or more of the following disciplines: Finance;  
18 economics; insurance administration; law; public adminis-  
19 tration; accounting; or business administration. Candi-  
20 dates for the position of executive director will be consid-  
21 ered based on their demonstrated education, knowledge

22 and a minimum of ten years' experience in the areas of  
23 workers' compensation, insurance company management,  
24 administrative and management experience with an  
25 organization comparable in size to the workers' compensa-  
26 tion commission or any relevant experience which demon-  
27 strates an ability to effectively accomplish the purposes of  
28 this chapter.

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

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

40 (d) The executive director shall have an official seal for  
41 the authentication of orders and proceedings, upon which  
42 seal shall be engraved the words "West Virginia Workers'  
43 Compensation Commission" and any other design pre-  
44 scribed by the board of managers. The courts in this state  
45 shall take judicial notice of the seal of the commission and  
46 in all cases copies of orders, proceedings or records in the  
47 office of the West Virginia workers' compensation com-  
48 mission are equal to the original in evidence.

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

51 (f) The executive director shall serve until the expiration  
52 of his or her term, resignation or until removed by a two  
53 thirds vote of the full board of managers. The board of  
54 managers and the executive director may, by agreement,  
55 terminate the term of employment at any time.

56 (g) The executive director shall have overall management  
57 responsibility and administrative control and supervision  
58 within the workers' compensation commission and has the  
59 power and duty to:

60 (1) Establish, with the approval of the board of manag-  
61 ers, the overall administrative policy of the commission for  
62 the purposes of this chapter;

63 (2) Employ, direct and supervise all employees required  
64 in the connection with the performance of the duties  
65 assigned to the commission by this chapter and fix the  
66 compensation of the employees in accordance with the  
67 provisions of article six, chapter twenty-nine of this code:  
68 *Provided*, That the executive director shall identify which  
69 members of the staff of the workers' compensation com-  
70 mission shall be exempted from the salary schedules or  
71 pay plan adopted by the state personnel board and further  
72 identify such staff members by job classification or  
73 designation, together with the salary or salary ranges for  
74 each such job classification or designation and shall file  
75 this information with the director of the division of  
76 personnel no later than the thirty-first day of December,  
77 two thousand three, and thereafter as changes are made or  
78 at least annually;

79 (3) Reorganize the work of the commission, its divisions,  
80 sections and offices to the extent necessary to achieve the  
81 most efficient performance of its functions. All persons  
82 employed by the workers' compensation division in  
83 positions that were formerly supervised and directed by  
84 the commissioner of the bureau of employment programs  
85 under chapter twenty-one-a of this code are hereby  
86 assigned and transferred in their respective classifications  
87 to the workers' compensation commission effective the  
88 first day of October, two thousand three. Further, the  
89 executive director may select persons that are employed by  
90 the bureau of employment programs on the effective date  
91 of the enactment of this section in the year two thousand  
92 three to be assigned and transferred to the workers'



93 compensation commission in their respective classifica-  
94 tions, such assignment and transfer to take effect no later  
95 than the thirty-first day of December, two thousand three.  
96 Employees in the classified service who have gained  
97 permanent status as of the effective date of this article will  
98 not be subject to further qualifying examination in their  
99 respective classifications by reason of any transfer re-  
100 quired by the provisions of this subdivision. Due to the  
101 emergency currently existing at the commission and the  
102 urgent need to develop fast, efficient claims processing,  
103 management and administration, the executive director is  
104 hereby granted authority to reorganize internal functions  
105 and operations and to delegate, assign, transfer, combine,  
106 establish, eliminate and consolidate responsibilities and  
107 duties to and among the positions transferred under the  
108 authority of this subdivision. The division of personnel  
109 shall cooperate fully by assisting in all personnel activities  
110 necessary to expedite all changes for the commission.  
111 Nothing contained in this subdivision shall be construed to  
112 either abridge the rights of employees within the classified  
113 service of the state to the procedures and protections set  
114 forth in article six, chapter twenty-nine of this code or to  
115 preclude the reclassification or reallocation of positions in  
116 accordance with procedures set forth in article six, chapter  
117 twenty-nine of this code;

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

127 (5) With the advice and approval of the board of manag-  
128 ers, propose operating guidelines and policies to standard-  
129 ize administration, expedite commission business and

130 promote the efficiency of the services provided by the  
131 commission;

132 (6) Prepare and submit to the board of managers infor-  
133 mation the board requires for classifications of occupa-  
134 tions or industries; the basis for premium rates, taxes,  
135 surcharges and assessment for administrative charges, for  
136 assessments related to loss experience, for assessments of  
137 prospective risk exposure, for assessments of deficit  
138 management and deficit reduction costs incurred, for other  
139 deficit management and deficit reduction assessments, for  
140 rules and systems of rating, rate revisions and merit rating  
141 for employers covered by this chapter; and information  
142 regarding the extent, degree and amount of subsidization  
143 between the classifications. The executive director shall  
144 obtain, prepare and submit any other information the  
145 board of managers requires for the prompt and efficient  
146 discharge of its duties;

147 (7) Keep accurate and complete accounts and records  
148 necessary to the collection, administration and distribu-  
149 tion of the workers' compensation funds;

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

153 (9) Make recommendations and an annual report to the  
154 governor concerning the condition, operation and func-  
155 tioning of the commission;

156 (10) Invoke any legal or special remedy for the enforce-  
157 ment of orders or the provisions of this chapter;

158 (11) Prepare and submit for approval to the board of  
159 managers a budget for each fiscal year, including estimates  
160 of the costs and necessary expenditures of the commission  
161 in the discharge of all duties imposed by this chapter as  
162 well as the costs of furnishing office space to the officers  
163 and employees of the commission;

164 (12) Ensure that all employees of the commission follow  
165 the orders, operating guidelines and policies of the com-  
166 mission as they relate to the commission's overall policy-  
167 making, management and adjudicatory duties under this  
168 chapter;

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

172 (14) Provide at commission expense a program of  
173 continuing professional, technical and specialized instruc-  
174 tion for the personnel of the commission. The executive  
175 director shall consult with and report at least annually to  
176 the legislative oversight commission on workforce invest-  
177 ment for economic development to obtain the most appro-  
178 priate training using all available resources;

179 (15) (A) Contract or employ counsel to perform all legal  
180 services for the commission including, but not limited to,  
181 representing the executive director, board of managers and  
182 commission in any administrative proceeding and in any  
183 state or federal court. Additionally, the commission may,  
184 but shall not be required to, call upon the attorney general  
185 for legal assistance and representation as provided by law.  
186 The attorney general shall not approve or exercise author-  
187 ity over in-house counsel or contract counsel hired pursu-  
188 ant to this section;

189 (B) In addition to the authority granted by this section to  
190 the executive director and notwithstanding any provision  
191 to the contrary elsewhere in this code, use any attorney  
192 regularly employed by the commission or the office of the  
193 attorney general to represent the commission, the execu-  
194 tive director or the board of managers in any matter  
195 arising from the performance of its duties or the execution  
196 of its powers under this chapter. In addition, the executive  
197 director, with the approval of the board of managers, may  
198 retain counsel for any purpose in the administration of this  
199 chapter relating to the collection of any amounts due from

200 employers to the commission: *Provided*, That the alloca-  
201 tion of resources for the purpose of any collections shall be  
202 pursuant to the plan developed by the board of managers.  
203 The board of managers shall solicit proposals from counsel  
204 who are interested in representing the commission under  
205 the terms of this subdivision. Thereafter, the board of  
206 managers shall select any attorneys it determines neces-  
207 sary to pursue the collection objectives of this subdivision:

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

216 (ii) In the event that any collections action, other than a  
217 collections action against a claimant, initiated either by  
218 retained counsel or other counsel on behalf of the commis-  
219 sion results in a judgment or settlement in favor of the  
220 commission, the court or, if there was no judicial compo-  
221 nent to the action, the administrative law judge, shall  
222 determine the amount of attorneys' fees that shall be paid  
223 by the defendants or respondents to the retained or other  
224 counsel representing the commission. If the court is to  
225 determine the amount of attorneys' fees, it shall include in  
226 its determination the amount of fee that should be paid for  
227 the representation of the commission in pursuing the  
228 administrative component, if any, of the action. The  
229 amount so paid shall be fixed by the court or the adminis-  
230 trative law judge in an amount no less than twenty percent  
231 of its recovery. Any additional amount of attorneys' fees  
232 shall be determined by use of the following factors:

233 (I) The counsel's normal hourly rate or, if the counsel is  
234 an employee of the commission or is an employee of the  
235 office of the attorney general, an hourly rate the court or

236 the administrative law judge determines to be customary  
237 based upon the attorney's experience and skill level;

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

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

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

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

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

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

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

263 (16) Propose rules for promulgation by the board of  
264 managers under which agencies of this state shall revoke  
265 or refuse to grant, issue or renew any contract, license,  
266 permit, certificate or other authority to conduct a trade,  
267 profession or business to or with any employing unit  
268 whose account is in default with the commission with  
269 regard to the administration of this chapter. The term

270 “agency” includes any unit of state government such as  
271 officers, agencies, divisions, departments, boards, commis-  
272 sions, authorities or public corporations. An employing  
273 unit is not in default if it has entered into a repayment  
274 agreement with the commission and remains in compliance  
275 with its obligations under the repayment agreements;

276 (A) The rules shall provide that, before granting, issuing  
277 or renewing any contract, license, permit, certificate or  
278 other authority to conduct a trade, profession or business  
279 to or with any employing unit, the designated agencies  
280 shall review a list or lists provided by the commission of  
281 employers that are in default. If the employing unit’s  
282 name is not on the list, the agency, unless it has actual  
283 knowledge that the employing unit is in default with the  
284 commission, may grant, issue or renew the contract,  
285 license, permit, certificate or other authority to conduct a  
286 trade, profession or business. The list may be provided to  
287 the agency in the form of a computerized database or  
288 databases that the agency can access. Any objections to  
289 the refusal to issue or renew shall be reviewed under the  
290 appropriate provisions of this chapter. The prohibition  
291 against granting, issuing or renewing any contract, license,  
292 permit, certificate or other authority under this subdivi-  
293 sion shall remain in full force and effect as promulgated  
294 under section six, article two, chapter twenty-one-a of this  
295 code until the rules required by this subsection are pro-  
296 mulgated and in effect;

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

301 (17) Deposit to the credit of the appropriate special  
302 revenue account or fund, notwithstanding any other  
303 provision of this code and to the extent allowed by federal  
304 law, all amounts of delinquent payments or overpayments,  
305 interest and penalties thereon and attorneys’ fees and costs  
306 collected under the provisions of this chapter. The

307 amounts collected shall not be treated by the auditor or  
308 treasurer as part of the general revenue of the state;

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

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

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

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

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

339 (A) The inspector general shall, with the consent and  
340 advice of the executive director, employ all personnel as  
341 necessary for the institution, development and finalization

342 of procedures and investigations which serve to ensure  
343 that only necessary and proper workers' compensation  
344 benefits and expenses are paid to or on behalf of injured  
345 employees and to insure employers subscribe to and pay  
346 the proper premium to the West Virginia workers' com-  
347 pensation commission. Qualification, compensation and  
348 personnel practice relating to the employees of the fraud  
349 and abuse unit, including that of the position of inspector  
350 general, shall be governed by the provisions of the statutes,  
351 rules and regulations of the classified service pursuant to  
352 article six, chapter twenty-nine of this code. The inspector  
353 general shall supervise all personnel, which collectively  
354 shall be referred to in this chapter as the fraud and abuse  
355 unit;

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

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

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

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

369 (iv) The fraud and abuse unit, in cases of criminal fraud,  
370 has the authority to review and prosecute those cases for  
371 violations of sections twenty-four-e, twenty-four-f,  
372 twenty-four-g and twenty-four-h, article three, chapter  
373 sixty-one of this code, as well as any other criminal  
374 statutes that may be applicable. In addition the fraud and  
375 abuse unit not only has the authority to prosecute and  
376 refer cases involving criminal fraud to appropriate state



377 authorities for prosecution, but it also has the authority,  
378 and is encouraged, to cooperate with the appropriate  
379 federal authorities for review and possible prosecution, by  
380 either state or federal agencies, of cases involving criminal  
381 fraud concerning the workers' compensation system in  
382 West Virginia;

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

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

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

405 (D) Notwithstanding any provision of this code to the  
406 contrary, specific personnel designated by the inspector  
407 general may carry handguns in the course of their official  
408 duties after meeting specialized qualifications established  
409 by the governor's committee on crime, delinquency and  
410 correction, which qualifications shall include the success-  
411 ful completion of handgun training provided to law-  
412 enforcement officers by the West Virginia state police:

413 *Provided*, That nothing in this subsection shall be con-  
414 strued to include the personnel so designated by the  
415 inspector general to carry handguns within the meaning of  
416 the term law-enforcement official as defined in section  
417 one, article twenty-nine, chapter thirty of this code;

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

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

437 (23) Enter into interagency agreements to assist in  
438 exchanging information and fulfilling the default provi-  
439 sions of this chapter;

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

443 (A) May expend up to fifty thousand dollars for pur-  
444 chases of and may contract for goods and services without  
445 securing competitive bids. This emergency spending  
446 authority expires on the first day of July, two thousand  
447 five; and

448 (B) May expend such sums as the executive director  
449 determines are necessary for professional services, con-  
450 tracts for the purchase of an automated claims administra-  
451 tion system and associated computer hardware and  
452 software in the administration of claims for benefits made  
453 under provisions of this chapter and contracts for techni-  
454 cal services and related services necessary to develop,  
455 implement and maintain the system and associated  
456 computer hardware and software. The provisions of  
457 article three, chapter five-a of this code relating to the  
458 purchasing division of the department administration shall  
459 not apply to these contracts. The director shall award the  
460 contract or contracts on a competitive basis. This emer-  
461 gency spending authority expires on the thirty-first day of  
462 December, two thousand six;

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

475 (26) Propose the designation of health care providers to  
476 make decisions for the commission regarding appropriate-  
477 ness of medical services; and

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

**§23-1-1c. Payment withholding; interccption; penalty.**

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

14 (b) Any agency of the state, for the limited purpose of  
15 intercepting, pursuant to section five-a, article two of this  
16 chapter, any payment by or through the state to an  
17 employer who is in default in payment of contributions,  
18 premiums, deposits, interest or penalties under the provi-  
19 sions of this chapter, shall assist the commission in  
20 collecting the payment that is due. For this purpose,  
21 disclosure of joint delinquency and default lists of employ-  
22 ers with respect to unemployment compensation as  
23 provided in section six-c, article one, chapter twenty-one-  
24 a of this code and workers' compensation contributions,  
25 premiums, interest, deposits or penalties is authorized.  
26 The commission and the bureau of employment programs  
27 may enter into an interagency agreement to effect the  
28 provisions of this section. The lists may be in the form of  
29 a computerized database to be accessed by the auditor, the  
30 department of tax and revenue, the department of admin-  
31 istration, the division of highways or other appropriate  
32 state agency or officer.

**§23-1-1d. Rules of former division of workers' compensation.**

1 Except as otherwise provided for in this chapter, all  
2 rules applicable to the former workers' compensation  
3 division of the bureau of employment programs are hereby  
4 adopted and made effective as to the operation of the

5 workers' compensation commission under this chapter to  
6 the extent that they are not in conflict with the current  
7 law. The board of managers shall review and approve,  
8 modify or replace all existing rules no later than the first  
9 day of July, two thousand six.

**§23-1-1e. Transfer of assets and contracts.**

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

**§23-1-1f. Continuation.**

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

**§23-1-2. Oversight of the workers' compensation commission.**

1 (a) In addition to any other oversight of the commission  
2 exercised by the Legislature, the commission shall report  
3 at least quarterly to the joint committee on government  
4 and finance and the joint commission on economic devel-  
5 opment. The commission shall collect data and report on  
6 claims and injuries and on the costs and outcomes of  
7 injuries by standard codes for medical treatment, vocation  
8 rehabilitation services, return-to-work services, other  
9 benefits payable to or on behalf of employees, efforts to  
10 eliminate fraud and abuse and the impact of judicial and  
11 quasijudicial rulings on the administration of the workers'

12 compensation system and the solvency of the fund. The  
13 workers' compensation commission shall provide to the  
14 joint committee on government and finance and the joint  
15 commission on economic development an action plan for  
16 improving the workers' compensation system. This plan  
17 shall include detail on any administrative changes under-  
18 taken by the commission, a report on the anticipated  
19 outcome of the changes, a cost-benefit analysis of the  
20 changes and time frames for commencement and comple-  
21 tion of these changes. Subsequent reports to the joint  
22 committee on government and finance and the joint  
23 commission on economic development shall report on the  
24 progress of these changes. The administrative changes  
25 shall include, but are not limited to, claims processing,  
26 reorganization, staff development and training, return-to-  
27 work programs, workplace alternatives for injured work-  
28 ers, safety programs and medical and vocational services.

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

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

44 (d) The commission shall further report on methodolo-  
45 gies used to establish all types of assessments and rates.

46 (e) The commission shall further report on legislative  
47 action that may be required to further improve the opera-  
48 tion of the commission.

49 (f) The commission shall further report on efforts to  
50 eliminate fraud and abuse including a statistical break-  
51 down of investigations being conducted and their out-  
52 comes. The commission shall report to the joint committee  
53 on government and finance on a monthly basis until the  
54 first day of July, two thousand four on fraud and abuse  
55 and quarterly thereafter.

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

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

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

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

1 (a) The offices of the workers' compensation commission  
2 shall be open for the transaction of business between the  
3 hours of eight-thirty o'clock a.m. and five o'clock p.m. of  
4 each and every day, excepting Saturdays, Sundays and  
5 legal holidays, and be open upon any additional days and

6 at any additional times elected by the commission. The  
7 executive director is the chief executive officer of the  
8 workers' compensation commission.

9 (b) Except as expressly provided for in this subsection,  
10 information obtained regarding employers and claimants  
11 pursuant to this chapter for the purposes of its administra-  
12 tion is not subject to the provisions of chapter twenty-  
13 nine-b of this code unless the provisions are hereafter  
14 specifically made applicable, in whole or in part. The  
15 information that is reasonably necessary may be released  
16 in formal orders or opinions of any tribunal or court which  
17 is presented with an issue arising under this chapter as  
18 well as in the presentations of the parties before the  
19 tribunal or court. Similarly, claimants or other interested  
20 parties to an issue arising under this chapter may, upon  
21 request, obtain information from the commission's records  
22 to the extent necessary for the proper presentation or  
23 defense of a claim or other matter. Information may be  
24 released pursuant to the provisions of chapter twenty-  
25 nine-b of this code only if all identifying information has  
26 first been eliminated from the records. Nothing in this  
27 subsection shall prevent the release of information to  
28 another agency of the state or of the federal government  
29 for the legitimate purposes of those agencies: *Provided,*  
30 That the agency shall guarantee the confidentiality of the  
31 information provided to the fullest extent possible in  
32 keeping with its own statutory and regulatory mandates.  
33 Nothing in this section shall prevent the commission from  
34 complying with any subpoena duces tecum: *Provided,*  
35 *however,* That the issuing tribunal or court shall take such  
36 actions as proper to maintain the confidentiality of the  
37 information.

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

41 (1) The base premium tax rate for a specific employer;



42 (2) Whether or not a specific employer has obtained  
43 coverage under the provisions of this chapter;

44 (3) Whether or not a specific employer is in good stand-  
45 ing or is delinquent or in default according to the commis-  
46 sion's records and the time periods thereof; and

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

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

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

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

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

1 The executive director shall keep and maintain his or her  
2 office at the seat of government and shall provide a  
3 suitable room or rooms, necessary office furniture, sup-  
4 plies, books, periodicals, maps and other equipment. After  
5 due notice, showing the time and place, the executive  
6 director may hold hearings anywhere within the state, or  
7 elsewhere by agreement of claimant and employer, with  
8 the approval of the executive director.

**§23-1-6. Employment of associate director and other assistants; compensation and travel expenses.**

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

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

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

1 Whenever it appears that the executive director will be  
2 absent or unable to act for one week or more, the associate  
3 director of the commission may be designated by the  
4 executive director to act during his or her absence or  
5 inability to act, and during that period he or she shall have  
6 all the duties and powers of the executive director. In the  
7 event a vacancy occurs in the office of executive director,  
8 the associate director shall have all the duties and powers  
9 of the executive director until an executive director or a  
10 temporary executive director is hired by the board of  
11 managers. The board of managers may determine the

12 amount of additional compensation the associate director  
13 may receive as acting executive director.

**§23-1-8. Authority of executive director and employees as to oaths and evidence.**

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

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

1 In case of failure or refusal of any person to comply with  
2 the order of the executive director, or subpoena issued by  
3 him or her, the associate director, or duly appointed  
4 employee, or on the refusal of a witness to testify to any  
5 matter regarding which he or she may be lawfully interro-  
6 gated, or refusal to permit an inspection as aforesaid, the  
7 circuit judge of the county in which the person resides, on  
8 application of the executive director, associate director or  
9 any duly appointed employee, shall compel obedience by  
10 attachment proceedings as for contempt, as in the case of  
11 disobedience of the requirements of a subpoena issued  
12 from the court on a refusal to testify in the court.

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

1 Each officer who serves subpoenas on behalf of the  
2 commission shall receive the same fee as a sheriff and each  
3 witness who appears in obedience to a subpoena before the  
4 executive director, associate director or duly appointed  
5 employee shall receive for his or her attendance the fees  
6 and mileage provided for witnesses in civil cases in the  
7 circuit court, which shall be audited and paid out of the  
8 workers' compensation fund in the same manner as other  
9 expenses are audited and paid, if the witness was subpoenaed.

10 naed without the request of either claimant or employer at  
11 the instance of the executive director, associate director or  
12 duly appointed employee. The witness fees and mileage of  
13 any witness subpoenaed by, or at the instance of, either  
14 claimant or employer shall be paid by the party who  
15 subpoenas the witness.

**§23-1-11. Depositions; investigations.**

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

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

**§23-1-12. Copies of proceedings as evidence.**

1 A transcribed copy of the evidence and proceedings, or  
2 any specific part thereof, on any investigation or hearing,  
3 taken by a stenographer appointed by the executive  
4 director and certified and sworn to by the stenographer to  
5 be a true and correct transcript of the testimony in the

6 investigation or hearing, or of a particular witness, or of a  
7 specific part thereof, or to be a correct transcript of the  
8 proceedings had on the investigation or hearing purporting  
9 to be taken and subscribed, may be received in evidence by  
10 the executive director with the same effect as if the  
11 stenographer were present and testified to the facts  
12 certified. A copy of the transcript shall be furnished on  
13 demand to any party upon payment of the fee prescribed  
14 in the rules and policies of the commission. The fee shall  
15 not exceed that prescribed for transcripts in the circuit  
16 court.

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

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

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

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

19 (2) By a nonresident attorney duly licensed and admitted  
20 to practice before a court of record of general jurisdiction

21 in another state or country or in the District of Columbia  
22 who has complied with the provisions of rule  
23 8.0—admission pro hac vice, West Virginia supreme court  
24 rules for admission to the practice of law, as amended;

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

33 (4) Pro se.

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

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

40 (2) By a nonresident attorney duly licensed and admitted  
41 to practice before a court of record of general jurisdiction  
42 in another state or country or in the District of Columbia  
43 who has complied with the provisions of rule  
44 8.0—admission pro hac vice, West Virginia supreme court  
45 rules for admission to the practice of law, as amended;

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

52 (4) By a representative from an employer service com-  
53 pany who has been recognized by the commission as being  
54 qualified to represent an employer or who is an individual

55 otherwise found to be qualified by the commission to act  
56 as a representative. The representative shall participate in  
57 the presentation of facts, figures and factual conclusions  
58 as distinguished from the presentation of legal conclusions  
59 in respect to the facts and figures.

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

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

69 (f) At the direction of a treating or evaluating psychia-  
70 trist or clinical doctoral-level psychologist, a psychiatric  
71 or psychological report concerning a claimant who is  
72 receiving treatment or is being evaluated for psychiatric or  
73 psychological problems may be withheld from the claim-  
74 ant. In that event, a summary of the report shall be  
75 compiled by the reporting psychiatrist or clinical doctoral-  
76 level psychologist. The summary shall be provided to the  
77 claimant upon his or her request. Any representative or  
78 attorney of the claimant must agree to provide the claim-  
79 ant with only the summary before the full report is pro-  
80 vided to the representative or attorney for his or her use in  
81 preparing the claimant's case. The report shall only be  
82 withheld from the claimant in those instances where the  
83 treating or evaluating psychiatrist or clinical doctoral-  
84 level psychologist certifies that exposure to the contents of  
85 the full report is likely to cause serious harm to the  
86 claimant or is likely to cause the claimant to pose a serious  
87 threat of harm to a third party.

88 (g) In any matter arising under articles one through five,  
89 inclusive, of this chapter in which the commission is  
90 required to give notice to a party, if a party is represented

91 by an attorney or other representative, then notice to the  
92 attorney or other representative is sufficient notice to the  
93 party represented.

**§23-1-14. Forms.**

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

**§23-1-15. Procedure before commission.**

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

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

1 Annually, on or about the fifteenth day of September in  
2 each year, the executive director and the occupational  
3 pneumoconiosis board shall make a report as of the  
4 thirtieth day of June addressed to the governor, which  
5 shall include a statement of the causes of the injuries for  
6 which the awards were made, an explanation of the  
7 diagnostic techniques used by the occupational pneumoco-  
8 niosis board and all examining physicians to determine the  
9 presence of disease, the extent of impairment attributable  
10 thereto, a description of the scientific support for the  
11 diagnostic techniques and a summary of public and



12 private research relating to problems and prevention of  
13 occupational diseases. The report shall include a detailed  
14 statement of all disbursements, and the condition of the  
15 fund, together with any specific recommendations for  
16 improvements in the workers' compensation law and for  
17 more efficient and responsive administration of the work-  
18 ers' compensation law, which the executive director  
19 considers appropriate. Copies of all annual reports shall  
20 be filed with the secretary of state and shall be made  
21 available to the Legislature and to the public at large.

**§23-1-18. Commission employees not subject to subpoena for  
workers' compensation hearings.**

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

**§23-1-19. Civil remedies.**

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

16 (b) No criminal action or indictment need be brought  
17 against any person, firm, corporation or other entity as a  
18 condition for establishing civil liability hereunder.

19 (c) A civil action under this section may be prosecuted  
20 and maintained on behalf of the workers' compensation  
21 commission by the attorney general and his assistants or  
22 by any attorney in contract with or employed by the  
23 workers' compensation commission to provide such  
24 representation.

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

28 (e) The remedies and penalties provided in this section  
29 are in addition to those remedies and penalties provided  
30 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.**

1 (a) The state of West Virginia and all governmental  
2 agencies or departments created by it, including county  
3 boards of education, political subdivisions of the state, any  
4 volunteer fire department or company and other emer-  
5 gency service organizations as defined by article five,  
6 chapter fifteen of this code, and all persons, firms, associa-  
7 tions and corporations regularly employing another person  
8 or persons for the purpose of carrying on any form of  
9 industry, service or business in this state, are employers  
10 within the meaning of this chapter and are required to  
11 subscribe to and pay premium taxes into the workers'  
12 compensation fund for the protection of their employees  
13 and are subject to all requirements of this chapter and all  
14 rules prescribed by the workers' compensation commission  
15 with reference to rate, classification and premium pay-  
16 ment: *Provided*, That rates will be adjusted by the com-  
17 mission to reflect the demand on the compensation fund by  
18 the covered employer.

19 (b) The following employers are not required to sub-  
20 scribe to the fund, but may elect to do so:

21 (1) Employers of employees in domestic services;

22 (2) Employers of five or fewer full-time employees in  
23 agricultural service;

24 (3) Employers of employees while the employees are  
25 employed without the state except in cases of temporary  
26 employment without the state;

27 (4) Casual employers. An employer is a casual employer  
28 when the number of his or her employees does not exceed  
29 three and the period of employment is temporary, inter-  
30 mittent and sporadic in nature and does not exceed ten  
31 calendar days in any calendar quarter;

32 (5) Churches;

33 (6) Employers engaged in organized professional sports  
34 activities, including employers of trainers and jockeys  
35 engaged in thoroughbred horse racing; or

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

50 (c) Notwithstanding any other provision of this chapter  
51 to the contrary, whenever there are churches in a circuit  
52 which employ one individual clergyman and the payments

53 to the clergyman from the churches constitute his or her  
54 full salary, such circuit or group of churches may elect to  
55 be considered a single employer for the purpose of pre-  
56 mium payment into the workers' compensation fund.

57 (d) Employers who are not required to subscribe to the  
58 workers' compensation fund may voluntarily choose to  
59 subscribe to and pay premiums into the fund for the  
60 protection of their employees and in that case are subject  
61 to all requirements of this chapter and all rules and  
62 regulations prescribed by the commission with reference  
63 to rates, classifications and premium payments and shall  
64 afford to them the protection of this chapter, including  
65 section six of this article, but the failure of the employers  
66 to choose to subscribe to and to pay premiums into the  
67 fund shall not impose any liability upon them other than  
68 any liability that would exist notwithstanding the provi-  
69 sions of this chapter.

70 (e) Any foreign corporation employer whose employment  
71 in this state is to be for a definite or limited period which  
72 could not be considered "regularly employing" within the  
73 meaning of this section may choose to pay into the work-  
74 ers' compensation fund the premiums provided for in this  
75 section, and at the time of making application to the  
76 workers' compensation commission, the employer shall  
77 furnish a statement under oath showing the probable  
78 length of time the employment will continue in this state,  
79 the character of the work, an estimate of the monthly  
80 payroll and any other information which may be required  
81 by the commission. At the time of making application the  
82 employer shall deposit with the commission to the credit  
83 of the workers' compensation fund the amount required by  
84 section five of this article. That amount shall be returned  
85 to the employer if the employer's application is rejected by  
86 the commission. Upon notice to the employer of the  
87 acceptance of his or her application by the commission, he  
88 or she is an employer within the meaning of this chapter  
89 and subject to all of its provisions.

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

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

104 (1) Any political subdivision of the state including  
105 county commissions and municipalities, boards of educa-  
106 tion, or emergency services organizations organized under  
107 the auspices of a county commission may elect not to  
108 provide coverage to any elected official. The election not  
109 to provide coverage does not apply to individuals in  
110 appointed positions or to any other employees of the  
111 political subdivision;

112 (2) If an employer is a partnership, sole proprietorship,  
113 association or corporation, the employer may elect not to  
114 include as an "employee" within this chapter, any member  
115 of the partnership, the owner of the sole proprietorship or  
116 any corporate officer or member of the board of directors  
117 of the association or corporation. The officers of a corpo-  
118 ration or an association shall consist of a president, a vice  
119 president, a secretary and a treasurer, each of whom is  
120 elected by the board of directors at the time and in the  
121 manner prescribed by the bylaws. Other officers and  
122 assistant officers that are considered necessary may be  
123 elected or appointed by the board of directors or chosen in  
124 any other manner prescribed by the bylaws and, if elected,  
125 appointed or chosen, the employer may elect not to include  
126 the officer or assistant officer as an "employee" within the

127 meaning of this chapter: *Provided*, That except for those  
128 persons who are members of the board of directors or who  
129 are the corporation's or association's president, vice  
130 president, secretary and treasurer and who may be ex-  
131 cluded by reason of their positions from the benefits of this  
132 chapter even though their duties, responsibilities, activi-  
133 ties or actions may have a dual capacity of work which is  
134 ordinarily performed by an officer and also of work which  
135 is ordinarily performed by a worker, an administrator or  
136 an employee who is not an officer, no other officer or  
137 assistant officer who is elected or appointed shall be  
138 excluded by election from coverage or be denied the  
139 benefits of this chapter merely because he or she is an  
140 officer or assistant officer if, as a matter of fact:

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

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

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

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

158 (h) In the event of election under subsection (g) of this  
159 section, the employer shall serve upon the commission  
160 written notice naming the positions not to be covered and  
161 shall not include the "employee's" remuneration for

162 premium purposes in all future payroll reports, and the  
163 partner, proprietor or corporate or executive officer is not  
164 considered an employee within the meaning of this chapter  
165 after the notice has been served. Notwithstanding the  
166 provisions of subsection (g), section five of this article, if  
167 an employer is delinquent or in default or has not sub-  
168 scribed to the fund even though it is obligated to do so  
169 under the provisions of this article, any partner, proprietor  
170 or corporate or executive officer shall not be covered and  
171 shall not receive the benefits of this chapter.

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

**§23-2-1c. Extraterritorial coverage; approval and change of  
agreements.**

1 (a) Whenever, with respect to an employee of an em-  
2 ployer who is a subscriber in good standing to the workers'  
3 compensation fund or an employer who has elected to pay  
4 compensation directly, as provided in section nine of this  
5 article, there is a possibility of conflict with respect to the  
6 application of workers' compensation laws because the  
7 contract of employment is entered into and all or some  
8 portion of the work is performed or is to be performed in  
9 a state or states other than this state, the employer and the  
10 employee may agree to be bound by the laws of this state  
11 or by the laws of any other state in which all or some  
12 portion of the work of the employee is to be performed:  
13 *Provided*, That the executive director may review and  
14 accept or reject the agreement. The review shall be  
15 conducted in keeping with the executive director's fidu-  
16 ciary obligations to the workers' compensation fund which  
17 may include, among other things, the nexus of the em-  
18 ployer and the employee to the state: *Provided, however*,  
19 That nothing in this section shall be construed as to  
20 require an agreement in those instances where subdivision  
21 (3), subsection (b), section one of this article or subdivision  
22 (1), subsection (a), section one-a of this article are applica-

23 ble. All agreements shall be in writing and filed with the  
24 executive director within ten days after execution of the  
25 agreement but shall not become effective until approved  
26 by the executive director and shall, thereafter, remain in  
27 effect until terminated or modified by agreement of the  
28 parties similarly filed or by order of the executive director.  
29 If the parties agree to be bound by the laws of this state,  
30 an employee injured within the terms and provisions of  
31 this chapter is entitled to benefits under this chapter  
32 regardless of the situs of the injury or exposure to occupa-  
33 tional pneumoconiosis or other occupational disease, and  
34 the rights of the employee and his or her dependents under  
35 the laws of this state shall be the exclusive remedy against  
36 the employer on account of injury, disease or death in the  
37 course of and as a result of the employment.

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

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

58 (d) If any employee or his or her dependents are awarded  
59 workers' compensation benefits or recover damages from



60 the employer under the laws of another state for an injury  
61 received in the course of and resulting from the employ-  
62 ment, the amount awarded or recovered, whether paid or  
63 to be paid in future installments, shall be credited against  
64 the amount of any benefits payable under this chapter for  
65 the same injury.

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

1 (a) For the exclusive purposes of this section, the term  
2 “employer” as defined in section one of this article in-  
3 cludes any primary contractor who regularly subcontracts  
4 with other employers for the performance of any work  
5 arising from or as a result of the primary contractor’s own  
6 contract: *Provided*, That a subcontractor does not include  
7 one providing goods rather than services. For purposes of  
8 this subsection, extraction of natural resources is a  
9 provision of services. In the event that a subcontracting  
10 employer defaults on its obligations to make payments to  
11 the commission, then the primary contractor is liable for  
12 the payments. However, nothing contained in this section  
13 shall extend or except to a primary contractor or subcon-  
14 tractors the provisions of section six, six-a or eight of this  
15 article. This section is applicable only with regard to  
16 subcontractors with whom the primary contractor has a  
17 contract for any work or services for a period longer than  
18 thirty days: *Provided, however*, That this section is also  
19 applicable to contracts for consecutive periods of work  
20 that total more than thirty days. It is not applicable to the  
21 primary contractor with regard to sub-subcontractors.  
22 However, a subcontractor for the purposes of a contract  
23 with the primary contractor can itself become a primary  
24 contractor with regard to other employers with whom it  
25 subcontracts. It is the intent of the Legislature that no  
26 contractor, whether a primary contractor, subcontractor  
27 or sub-subcontractor, escape or avoid liability for any

28 workers' compensation premium, assessment or tax. The  
29 executive director shall propose for promulgation a rule to  
30 effect this purpose on or before the thirty-first day of  
31 December, two thousand three.

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

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

50 (2) In order to continue avoiding liability under this  
51 section, the primary contractor shall request that the  
52 commission inform the primary contractor of any subse-  
53 quent default by the subcontractor. In the event that the  
54 subcontractor does default, the commission shall notify the  
55 primary contractor of the default by placing a notice in the  
56 first-class United States mail, postage prepaid, and  
57 addressed to the primary contractor at the address fur-  
58 nished to the commission by the primary contractor. The  
59 mailing is good and sufficient notice to the primary  
60 contractor of the subcontractor's default. However, the  
61 primary contractor is not liable under this section until the  
62 first day of the calendar quarter following the calendar  
63 quarter in which the notice is given and then the liability  
64 is only for that following calendar quarter and thereafter

65 and only if the subcontract has not been terminated:  
66 *Provided*, That the commission is entitled to collect only  
67 once for the amount of premiums, premium deposits and  
68 interest due to the default, but the commission may impose  
69 other penalties on the primary contractor or on the  
70 subcontractor, or both.

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

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

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

**§23-2-2. Commission to be furnished information by employers,  
state tax commissioner and division of unemploy-  
ment compensation; secrecy of information; exami-  
nation of employers, etc.; violation a misdemeanor.**

1 (a) Every employer shall furnish the executive director,  
2 upon request, all information required by him or her to  
3 carry out the purposes of this chapter. Every employer  
4 shall have a continuous and ongoing duty to maintain  
5 current information about its activities, risks and rates on

6 the books of the commission. The executive director, or  
7 any person employed by the commission for that purpose,  
8 may examine under oath any employer or officer, agent or  
9 employee of any employer.

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

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

27 (2) Upon written application to the division of unem-  
28 ployment compensation: In addition to the information  
29 that may be released to the workers' compensation com-  
30 mission for the purposes of this chapter under the provi-  
31 sions of chapter twenty-one-a of this code, the names,  
32 addresses and other identifying information of all employ-  
33 ing units filing reports and information pursuant to  
34 section eleven, article ten, chapter twenty-one-a of this  
35 code as well as information contained in those reports  
36 regarding the number and names, addresses and social  
37 security numbers of employees employed and the gross  
38 quarterly wages paid by each employing unit to each  
39 identified employee.

40 (c) All information acquired by the workers' compensa-  
41 tion commission pursuant to subsection (b) of this section

42 shall be used only for auditing premium payments, assist-  
43 ing in a wage determination, assisting in the determination  
44 of employment status and registering businesses under the  
45 single point of registration program as defined in section  
46 two, article one, chapter eleven of this code. The workers'  
47 compensation commission, upon receiving the business  
48 franchise registration certificate information made  
49 available pursuant to subsection (b) of this section, shall  
50 contact all businesses receiving a business franchise  
51 registration certificate and provide all necessary forms to  
52 register the business under the provisions of this article.  
53 Any officer or employee of this state who uses the informa-  
54 tion obtained under this section in any manner other than  
55 the one stated in this section or elsewhere authorized in  
56 this code, or who divulges or makes known in any manner  
57 any of the information obtained under this section, is  
58 guilty of a misdemeanor and, upon conviction thereof,  
59 shall be fined not more than one thousand dollars or  
60 incarcerated in the county or regional jail for not more  
61 than one year, or both, together with cost of prosecution.

62 (d) Reasonable costs of compilation and production of  
63 any information made available pursuant to subsection (b)  
64 of this section shall be charged to the workers' compensa-  
65 tion commission.

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

**§23-2-3. Report forms and other forms for use of employers.**

1 The commission shall prepare and furnish report forms  
2 for the use of employers subject to this chapter. Every  
3 employer receiving from the commission any form or  
4 forms with direction for completion and returning to the  
5 commission shall return the form, within the period fixed  
6 by the commission, completed as to answer fully and  
7 correctly all pertinent questions in the form, and if unable  
8 to do so, shall give good and sufficient reasons for the

9 failure. Every employer subject to the provisions of this  
10 chapter shall make application to the commission on the  
11 forms prescribed by the commission for that purpose; and  
12 any employer who terminates his or her business or for any  
13 other reason is no longer subject to this chapter shall  
14 immediately notify the commission on forms to be fur-  
15 nished by the commission for that purpose.

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

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

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

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

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

16 (C) Chargeability of claims; and

17 (D) Any further matters that are necessary and consis-  
18 tent with the goals of this chapter;

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

23 (A) Have not incurred a compensable injury for one year  
24 or more and who maintain an employee safety committee

25 or similar organization and make periodic safety inspec-  
26 tions of the workplace;

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

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

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

41 (5) The rule shall be consistent with classification and  
42 rate-making methodologies found in the insurance indus-  
43 try; and

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

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

56 (c) Prospective rates set in accordance with the provi-  
57 sions of this article shall at all times be financially sound  
58 in accordance with generally accepted accounting princi-

59 ples and fully fund the prospective claim obligations for  
60 the year in which the rates were made. Rates, surcharges  
61 or assessments for deficit management and deficit reduc-  
62 tion purposes shall be fair and equitable, financially sound  
63 in accordance with generally accepted accounting princi-  
64 ples and sufficient to meet the payment obligations of the  
65 fund.

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

85 (e) Claims management incentive adjustments, whether  
86 imposed in a manner that would result in either a debit or  
87 a credit to any employer's account, shall not be considered  
88 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.**

1 (a) For the purpose of creating a workers' compensation  
2 fund, each employer who is required to subscribe to the



3 fund or who elects to subscribe to the fund shall pay  
4 premium taxes calculated as a percentage of the em-  
5 ployer's gross wages payroll as defined by the commission  
6 at the rate determined by the commission and then in  
7 effect plus any additional premium taxes developed from  
8 rates, surcharges or assessments as determined by the  
9 commission. At the time each employer subscribes to the  
10 fund, the application required by the commission shall be  
11 filed and a premium deposit equal to the first quarter's  
12 estimated premium tax payment shall be remitted. The  
13 minimum quarterly premium to be paid by any employer  
14 is twenty-five dollars.

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

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

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

40 deposit shall be credited to the employer's account on the  
41 books of the commission and used to pay premium taxes  
42 and any other sums due the fund when an employer  
43 becomes delinquent or in default as provided in this  
44 article.

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

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

62 (b) Failure of an employer to timely pay premium taxes  
63 as provided for in subsection (a) of this section, to timely  
64 file a payroll report or to maintain an adequate premium  
65 deposit shall cause the employer's account to become  
66 delinquent. No employer will be declared delinquent or be  
67 assessed any penalty for the delinquency if the commission  
68 determines that the delinquency has been caused by delays  
69 in the administration of the fund. The commission shall,  
70 in writing, within sixty days of the end of each quarter  
71 notify all delinquent employers of their failure to timely  
72 pay premium taxes, to timely file a payroll report or to  
73 maintain an adequate premium deposit. Each employer  
74 who fails to timely file any payroll report or timely pay the  
75 premium tax due with the report, or both, for any quarter  
76 commencing on and after the first day of July, one thou-

77 sand nine hundred ninety-five, shall pay a late reporting  
78 or payment penalty of the greater of fifty dollars or a sum  
79 obtained by multiplying the premium tax due with the  
80 report by the penalty rate applicable to that quarter. The  
81 penalty rate to be used in a workers' compensation com-  
82 mission's fiscal year is calculated annually on the first day  
83 of each fiscal year. The penalty rate used to calculate the  
84 penalty for each quarter in a fiscal year is the quotient,  
85 rounded to the nearest higher whole number percentage  
86 rate, obtained by dividing the sum of the prime rate plus  
87 four percent by four. The prime rate is the rate published  
88 in the *Wall Street Journal* on the last business day of the  
89 commission's prior fiscal year reflecting the base rate on  
90 corporate loans posted by at least seventy-five percent of  
91 the nation's thirty largest banks. The late penalty shall be  
92 paid with the most recent quarter's report and payment  
93 and is due when that quarter's report and payment are  
94 filed. If the late penalty is not paid when due, it may be  
95 charged to and collected by the commission from the  
96 employer's premium deposit account or otherwise as  
97 provided for by law. The notification shall demand the  
98 filing of the delinquent payroll report and payment of  
99 delinquent premium taxes, the penalty for late reporting  
100 or payment of premium taxes or premium deposit, the  
101 interest penalty and an amount sufficient to maintain the  
102 premium deposit before the end of the third month follow-  
103 ing the end of the preceding quarter. Interest shall accrue  
104 and be charged on the delinquent premium payment and  
105 premium deposit pursuant to section thirteen of this  
106 article.

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

113 (d) Failure by the employer, who is required to subscribe  
114 to the fund and who fails to resolve the delinquency within

115 the prescribed period, shall place the account in default  
116 and shall deprive the default employer of the benefits and  
117 protection afforded by this chapter, including section six  
118 of this article, and the employer is liable as provided in  
119 section eight of this article. The default employer's  
120 liability under these sections is retroactive to midnight of  
121 the last day of the month following the end of the quarter  
122 for which the delinquency occurs. The commission shall  
123 notify the default employer of the method by which the  
124 employer may be reinstated with the fund. The commis-  
125 sion shall also notify the employees of the employer by  
126 written notice as hereinafter provided for in this section.

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

143 (f)(1) Except as provided for in subdivision (3) of this  
144 subsection, any employer who is required to subscribe to  
145 the fund and who is in default on the effective date of this  
146 section or who subsequently defaults, and any employer  
147 who has elected to subscribe to the fund and who defaults  
148 and whose account is terminated prior to the effective date  
149 of this section or whose account is subsequently termi-  
150 nated, shall be restored immediately to the benefits and  
151 protection of this chapter only upon the filing of all

152 delinquent payroll and other reports required by the  
153 commission and payment into the fund of all unpaid  
154 premiums, an adequate premium deposit, accrued interest  
155 and the penalty for late reporting and payment. Interest  
156 is calculated as provided for by section thirteen of this  
157 article.

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

162 (2) The commission may restore a defaulted or termi-  
163 nated employer through a reinstatement agreement. The  
164 reinstatement agreement shall require the payment in full  
165 of all premium taxes, premium deposits, the penalty for  
166 late reporting and payment, past accrued interest and  
167 future interest calculated pursuant to the provisions of  
168 section thirteen of this article. Notwithstanding the filing  
169 of a reinstatement application or the entering into of a  
170 reinstatement agreement, the commission is authorized to  
171 file a lien against the employer as provided by section five-  
172 a of this article. In addition, entry into a reinstatement  
173 agreement is discretionary with the commission. Its  
174 discretion shall be exercised in keeping with the fiduciary  
175 obligations owed to the workers' compensation fund. If  
176 the commission declines to enter into a reinstatement  
177 agreement and if the employer does not comply with the  
178 provisions of subdivision (1) of this subsection, the com-  
179 mission may proceed with any of the collection efforts  
180 provided for by section five-a of this article or as other-  
181 wise provided for by this code. Applications for reinstate-  
182 ment shall: (A) Be made upon forms prescribed by the  
183 commission; (B) include a report of the gross wages payroll  
184 of the employer which had not been reported to the  
185 commission during the entire period of delinquency and  
186 default. The gross wages information shall be certified by  
187 the employer or its authorized agent; and (C) include a  
188 payment of a portion of the liability equal to one half of  
189 one percent of the gross payroll during the period of

190 delinquency and default or equal to another portion of the  
191 liability determined by rule but not to exceed the amount  
192 of the entire liability due and owing for the period of  
193 delinquency and default. An employer who applies for  
194 reinstatement is entitled to the benefits and protection of  
195 this chapter on the day a properly completed and accept-  
196 able application which is accompanied by the application  
197 payment is received by the commission: *Provided*, That if  
198 the commission reinstates an employer subject to the terms  
199 of a reinstatement agreement, the subsequent failure of the  
200 employer to make scheduled payments or to pay accrued  
201 or future interest in accordance with the reinstatement  
202 agreement or to timely file current reports and to pay  
203 current premiums within the month following the end of  
204 the period for which the report and payment are due, or to  
205 otherwise maintain its account in good standing or, if the  
206 reinstatement agreement does not require earlier restora-  
207 tion of the premium deposit, to restore the premium  
208 deposit to the required amount by the end of the repay-  
209 ment period shall cause the reinstatement application and  
210 the reinstatement agreement to be null, void and of no  
211 effect, and the employer is denied the benefits and protec-  
212 tion of this chapter effective from the date that the em-  
213 ployer's account originally became delinquent.

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

225 (4) Following any failure of an employer to comply with  
226 the provisions of a reinstatement agreement, the commis-  
227 sion may make and continue with any of the collection

228 efforts provided for by this chapter or elsewhere in this  
229 code even if the employer files another reinstatement  
230 application.

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

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

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

251 (3) Notice to employees provided for in this section shall  
252 be given by posting written notice that the employer is  
253 defaulted under the compensation law of West Virginia,  
254 and in the case of employers required by this chapter to  
255 subscribe and pay premiums to the fund, that the de-  
256 faulted employer is liable to its employees for injury or  
257 death, both in workers' compensation benefits and in  
258 damages at common law or by statute; and in the case of  
259 employers not required by this chapter to subscribe and  
260 pay premiums to the fund, but voluntarily electing to do so  
261 as provided in this article, that neither the employer nor  
262 the employees are protected by the law as to any injury or  
263 death sustained after the date specified in the notice. The

264 notice shall be in the form prescribed by the commission  
265 and shall be posted in a conspicuous place at the chief  
266 works of the employer, as it appears in records of the  
267 commission. If the chief works of the employer cannot be  
268 found or identified, the notices shall be posted at the front  
269 door of the courthouse of the county in which the chief  
270 works are located, according to the commission's records.  
271 Any person who shall, prior to the reinstatement of the  
272 employer, as provided for in this section, or prior to sixty  
273 days after the posting of the notice, whichever shall first  
274 occur, remove, deface or render illegible the notice, shall  
275 be guilty of a misdemeanor and, upon conviction thereof,  
276 shall be fined one thousand dollars. The notice shall state  
277 this provision upon its face. The commission may require  
278 any sheriff, deputy sheriff, constable or other official of  
279 the state of West Virginia, authorized to serve civil pro-  
280 ccess, to post the notice and to make return thereof of the  
281 fact of the posting to the commission. Any failure of the  
282 officer to post any notice within ten days after he or she  
283 has received the notice from the commission, without just  
284 cause or excuse, constitutes a willful failure or refusal to  
285 perform a duty required of him or her by law within the  
286 meaning of section twenty-eight, article five, chapter  
287 sixty-one of this code. Any person actually injured by  
288 reason of the failure has an action against the official, and  
289 upon any official bond he or she may have given, for the  
290 damages as the person may actually have incurred, but not  
291 to exceed, in the case of any surety upon the bond, the  
292 amount of the penalty of the bond. Any official posting  
293 the notice as required in this subdivision is entitled to the  
294 same fee as is now or may hereafter be provided for the  
295 service of process in suits instituted in courts of record in  
296 the state of West Virginia. The fee shall be paid by the  
297 commission out of any funds at its disposal, but shall be  
298 charged by the commission against the account of the  
299 employer to whose delinquency the notice relates.

**§23-2-5a. Collection of premiums from defaulting employers;  
interest and penalties; civil remedies; creation and**



**enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.**

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

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

25 (c) In addition to all other civil remedies prescribed, the  
26 commission may in the name of the state, after giving  
27 appropriate notice as required by due process, distraint  
28 upon any personal property, including intangible property,  
29 of any employer delinquent for any payment, interest and  
30 penalty thereon. If the commission has good reason to  
31 believe that the property or a substantial portion of the

32 property is about to be removed from the county in which  
33 it is situated, upon giving appropriate notice, either before  
34 or after the seizure, as is proper in the circumstances, the  
35 commission may likewise distrain in the name of the state  
36 before the delinquency occurs. For that purpose, the  
37 commission may require the services of a sheriff of any  
38 county in the state in levying the distress in the county in  
39 which the sheriff is an officer and in which the personal  
40 property is situated. A sheriff collecting any payment,  
41 interest and penalty thereon is entitled to the compensa-  
42 tion as provided by law for his or her services in the levy  
43 and enforcement of executions. Upon prevailing in any  
44 distraint action, the commission is entitled to recover its  
45 attorneys' fees and costs of action from the employer.

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

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

64 (f) In any case when an employer required to subscribe  
65 to the fund defaults in payments of premium, premium  
66 deposits, penalty or interest thereon, for as many as two  
67 calendar quarters, which quarters need not be consecutive,  
68 and remains in default after due notice, the commission

69 may bring action in the circuit court of Kanawha County  
70 to enjoin the employer from continuing to carry on the  
71 business in which the liability was incurred: *Provided*,  
72 That the commission may as an alternative to this action  
73 require the delinquent employer to file a bond in the form  
74 prescribed by the commission with satisfactory surety in  
75 an amount not less than fifty percent more than the  
76 payments, interest and penalties due.

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

1 For payments due after the effective date of the amend-  
2 ment and reenactment of this section during the year one  
3 thousand nine hundred ninety-three, every action or  
4 process to collect any premium, premium deposit, interest  
5 or penalty due from an employer pursuant to this article  
6 by the executive director shall be brought or issued within  
7 five years next after the date on which the employer is  
8 required by the section imposing the premium, premium  
9 deposit, interest or penalty to file a report and pay the  
10 amount due thereunder. The limitation provided by this  
11 section shall also apply to enforcement of the lien, if any,  
12 securing the payment of the premium, premium deposit,  
13 interest or penalty, but shall not apply in the event of  
14 fraud or in the event the employer wholly fails to file the  
15 report required by the section imposing the premium,  
16 premium deposit, interest or penalty. For payments that  
17 were due prior to the effective date of this section, there  
18 continues to be no limitation on when actions or processes  
19 may be brought or issued. For every debt collectible under  
20 this section which first becomes due and owing after the  
21 effective date of the amendment and reenactment of this  
22 section during the year two thousand three, every action or  
23 process to collect the debt shall be brought or issued  
24 within ten years after the date on which the employer is  
25 required to file a report and pay the amount assessed or  
26 owed to the commission.

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

1 Notwithstanding any other provision to the contrary, the  
2 executive director, with the approval of the board of  
3 managers, may write-off any uncollected receivable due  
4 under the provisions of this article or article four of this  
5 chapter which the executive director and the board of  
6 managers determine uncollectible.

**§23-2-6. Exemption of contributing employers from liability.**

1 Any employer subject to this chapter who subscribes and  
2 pays into the workers' compensation fund the premiums  
3 provided by this chapter or who elects to make direct  
4 payments of compensation as provided in this section is  
5 not liable to respond in damages at common law or by  
6 statute for the injury or death of any employee, however  
7 occurring, after so subscribing or electing, and during any  
8 period in which the employer is not in default in the  
9 payment of the premiums or direct payments and has  
10 complied fully with all other provisions of this chapter.  
11 Continuation in the service of the employer shall be  
12 considered a waiver by the employee and by the parents of  
13 any minor employee of the right of action as aforesaid,  
14 which the employee or his or her parents would otherwise  
15 have: *Provided*, That in case of employers not required by  
16 this chapter to subscribe and pay premiums into the  
17 workers' compensation fund, the injured employee has  
18 remained in the employer's service with notice that his or  
19 her employer has elected to pay into the workers' compen-  
20 sation fund the premiums provided by this chapter, or has  
21 elected to make direct payments as aforesaid.

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

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

4 workers' compensation risk including their risk of cata-  
5 strophic injuries.

6 (1) The types of employers are:

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

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

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

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

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

31 (B) Provide security or bond in an amount and form  
32 determined by the executive director with the approval of  
33 the board of managers which shall balance the employer's  
34 financial condition based upon an analysis of its audited  
35 financial statements and the full accrued value of current  
36 liability for future claim payments based upon generally

37 accepted actuarial and accounting principles of the em-  
38 ployer's existing and expected liability.

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

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

69 (5) Whenever a self-insured employer furnishes security  
70 or bond, including replacement and amended bonds and  
71 other securities, as surety to ensure the employer's or  
72 guarantor's payment of all obligations under this chapter  
73 for which the security or bond was furnished, the security

74 or bond shall be in the most current form or forms ap-  
75 proved and authorized by the commission for use by the  
76 employer or its guarantors, surety companies, banks,  
77 financial institutions or others in its behalf for that  
78 purpose.

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

91 (2) An employer or employers' group who self-insures its  
92 risk and self-administers its claims shall exercise all  
93 authority and responsibility granted to the commission in  
94 this chapter and provide notices of action taken to effect  
95 the purposes of this chapter to provide benefits to persons  
96 who have suffered injuries or diseases covered by this  
97 chapter. An employer or employers' group granted  
98 permission to self-insure and self-administer its obliga-  
99 tions under this chapter shall at all times be bound and  
100 shall comply fully with all of the provisions of this chap-  
101 ter. Furthermore, all of the provisions contained in article  
102 four of this chapter pertaining to disability and death  
103 benefits are binding on and shall be strictly adhered to by  
104 the self-insured employer in its administration of claims  
105 presented by employees of the self-insured employer.  
106 Violations of the provisions of this chapter and such rules  
107 relating to this chapter as may be approved by the board  
108 of managers may constitute sufficient grounds for the  
109 termination of the authority for any employer to self-  
110 insure its obligations under this chapter. Claim notices

111 currently generated by the commission on behalf of self-  
112 insured employers must be generated and sent by the self-  
113 insured employer or its third-party administrator.

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

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

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

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

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

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

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

143 (d) The required payments to the employer's injured  
144 employees or dependents of fatally injured employees as



145 benefits provided for by this chapter including second  
146 injury benefits and catastrophic injury benefits, if applica-  
147 ble, shall constitute the remaining portion of the self-  
148 insurer's premium tax.

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

161 (f)(1) If an employer defaults in the payment of any  
162 portion of its self-insured premium taxes, surcharges or  
163 assessments, the commission shall, in an appropriate case,  
164 determine the full accrued value based upon generally  
165 accepted actuarial and accounting principles of the em-  
166 ployer's liability including the costs of all awarded claims  
167 and of all incurred but not reported claims. The amount  
168 determined may, in an appropriate case, be assessed  
169 against the employer. The commission may demand and  
170 collect the present value of the defaulted tax liability.  
171 Interest shall accrue upon the demanded amount as  
172 provided for in section thirteen of this article until the  
173 premium tax is fully paid. Payment of all amounts then  
174 due to the commission and to the employer's employees is  
175 a sufficient basis for reinstating the employer to good  
176 standing with the fund. In addition, any self-insured  
177 employer who, without good cause, ceases to make re-  
178 quired payments to the employer's injured employees or  
179 dependents of fatally injured employees as benefits  
180 provided for by this chapter including second injury  
181 benefits and catastrophic injury benefits, if applicable, is  
182 in default. The board of managers shall establish by rule

183 the procedures by which the existence or nonexistence of  
184 good cause is to be determined by the commission.

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

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

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

217 (2) If an otherwise self-insured employer elects to self-  
218 insure its catastrophic risk, the security or bond required

219 in subsection (a) of this section shall include the liability  
220 for the catastrophic risk.

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

228 (i) The commission may create, implement, establish and  
229 administer a perpetual self-insurance security risk pool of  
230 funds, sureties, securities, insurance provided by private  
231 insurance carriers or other states' programs, and other  
232 property, of both real and personal properties, to secure  
233 the payment of obligations of self-insured employers. If a  
234 pool is created, the board of managers shall adopt rules for  
235 the organizational plan, participation, contributions and  
236 other payments which may be required of self-insured  
237 employers under this section. The board of managers may  
238 adopt a rule authorizing the commission to assess each  
239 self-insured employer in proportion according to each  
240 employer's portion of the unsecured obligation and  
241 liability or to assess according to some other method  
242 provided for by rule which shall properly create and fund  
243 the risk pool to serve the needs of employees, employers  
244 and the workers' compensation fund by providing ade-  
245 quate security. The board of managers, in establishing a  
246 security risk pool, may authorize the executive director to  
247 use any assessments, premium taxes and revenues and  
248 appropriations as may be made available to the commis-  
249 sion.

250 (j) Any self-insured employer which has had a period of  
251 inactivity due to the nonemployment of employees which  
252 results in its reporting of no wages on reports to the  
253 commission for a period of four or more consecutive  
254 quarters shall have its status at the commission inacti-  
255 vated and shall apply for reactivation to status as a self-

256 insured employer prior to its reemployment of employees.  
257 Despite the inactivation, the self-insured employer shall  
258 continue to make payments on all awards for which it is  
259 responsible. Upon application for reactivation of its status  
260 as an operating self-insured employer, the employer shall  
261 document that it meets the eligibility requirements needed  
262 to maintain self-insured status under this section and any  
263 rules adopted to implement it. If the employer is unable to  
264 requalify and obtain approval for reactivation, the em-  
265 ployer shall, effective with the date of employment of any  
266 employee, become a subscriber to the workers' compensa-  
267 tion fund, but shall continue to be a self-insurer as to the  
268 prior period of active status and to furnish security or  
269 bond and meet its prior self-insurance obligations.

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

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

290 (m) An employer may not hire any person or group to  
291 self-administer claims under this chapter as a third-party  
292 administrator unless the person or group has been deter-

293 mined to be qualified to be a third-party administrator by  
294 the commission pursuant to rules adopted by the board of  
295 managers. Any person or group whose status as a third-  
296 party administrator has been revoked, suspended or  
297 terminated by the commission shall immediately cease  
298 administration of claims and shall not administer claims  
299 unless subsequently authorized by the commission.

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

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

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

**§23-2-11. Partial invalidity of chapter.**

1 If any employer is adjudicated to be outside the lawful  
2 scope of this chapter, the chapter shall not apply to him or  
3 her or his or her employee; or if any employee is adjudi-  
4 cated to be outside the lawful scope of this chapter,

5 because of remoteness of his or her work from the hazard  
6 of his or her employer's work, the adjudication shall not  
7 impair the validity of this chapter in other respects and in  
8 every case an accounting in accordance with the justice of  
9 the case shall be had of moneys received. If the provisions  
10 of this chapter for the creation of the workers' compensa-  
11 tion fund, or the provisions of this chapter making the  
12 compensation to the employee provided in it exclusive of  
13 any other remedy on the part of the employee, is held  
14 invalid, the entire chapter shall be invalidated and an  
15 accounting according to the justice of the case shall be had  
16 of money received. In other respects an adjudication of  
17 invalidity of any part of this chapter shall not affect the  
18 validity of the chapter as a whole or any part of this  
19 chapter.

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

1 If the provisions of this chapter relating to compensation  
2 for injuries to, or death of, workers are repealed or ad-  
3 judged invalid or unconstitutional, the period intervening  
4 between the occurrence of any injury or death and the  
5 repeal, or the final adjudication of invalidity or unconsti-  
6 tutionality, shall not be computed as a part of the time  
7 limited by law for the commencement of any action  
8 relating to the injuries or death, but the amount of any  
9 compensation which may have been paid on account of  
10 injury or death shall be deducted from any judgment for  
11 damages recovered on account of the injury or death.

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

1 Effective the first day of July, one thousand nine hun-  
2 dred ninety-nine, payments unpaid on the date on which  
3 due and payable shall immediately begin bearing interest  
4 as specified in this section. The interest rate per annum  
5 for each fiscal year shall be calculated as the greater of the  
6 commission's current discount rate or the prime rate plus

7 four percent, each rounded to the nearest whole percent.  
8 The discount rate shall be determined by the board of  
9 managers on an annual basis. The prime rate shall be the  
10 rate published in the *Wall Street Journal* on the last  
11 business day of the commission's prior fiscal year reflect-  
12 ing the base rate on corporate loans posted by at least  
13 seventy-five percent of the nation's thirty largest banks.  
14 This same rate of interest shall be applicable to all rein-  
15 statement agreements entered into by the commission  
16 pursuant to section five of this article on and after the  
17 effective date of this section: *Provided*, That if an em-  
18 ployer enters into a subsequent reinstatement agreement  
19 within seven years of the date of the first agreement, the  
20 interest rate shall be eighteen percent per annum. Interest  
21 shall be compounded quarterly until payment plus accrued  
22 interest is received by the commission: *Provided, however*,  
23 That on and after the date of execution of a reinstatement  
24 agreement, for determining future interest on any past-due  
25 premium, premium deposit, and past compounded interest  
26 thereon, any reinstatement agreement entered into by the  
27 commission shall provide for a simple rate of interest,  
28 determined in accordance with the provisions of this  
29 section which is not subject to change during the life of the  
30 reinstatement agreement for the future interest. Interest  
31 collected pursuant to this section shall be paid into the  
32 workers' compensation fund: *Provided further*, That in no  
33 event shall the rate of interest charged a political subdivi-  
34 sion of the state or a volunteer fire department pursuant to  
35 this section exceed ten percent per annum.

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

- 1 (a) If any employer sells or otherwise transfers substan-
- 2 tially all of the employer's assets, so as to give up substan-
- 3 tially all of the employer's capacity and ability to continue

4 in the business in which the employer has previously  
5 engaged:

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

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

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

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

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

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

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



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

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

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

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

57 (d) If an employer subject to subsection (a), (b) or (c) of  
58 this section pays to the commission, prior to the execution  
59 of an agreement of sale or other transfer, a sum sufficient  
60 to retire all of the indebtedness that the employer would  
61 owe at the time of the execution, the commission shall  
62 issue a certificate to the employer stating that the em-  
63 ployer's account is in good standing with the commission  
64 and that the assets may be sold or otherwise transferred  
65 without the attachment of the commission's lien. An  
66 agreement of sale or other transfer may provide for the  
67 creation of an escrow account into which the employers  
68 shall pay the full amount owed to the commission. The  
69 subsequent timely payment of that full amount to the  
70 commission operates to place both employers in good  
71 standing with the commission to the extent of the prede-  
72 cessor employer's liabilities retroactive to the date of sale

73 or other transfer. In the event that the employer would not  
74 owe any sum to the commission on the aforesaid date of  
75 execution, a certificate shall also be issued to the employer  
76 upon the employer's request stating that the employer's  
77 account is in good standing with the commission and that  
78 the assets may be sold or otherwise transferred without the  
79 attachment of the commission's lien.

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

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

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

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

1 (a) At any time prior to or following the acquisition  
2 described in subsection (a), (b) or (c), section fourteen of  
3 this article, the buyer or other recipient may file a certified  
4 petition with the commission requesting that the commis-

5 sion waive the payment by the buyer or other recipient of  
6 premiums, premium deposits, interest and imposition of  
7 the modified rate of premiums attributable to the prede-  
8 cessor employer or other penalty, or any combination  
9 thereof. The commission shall review the petition by  
10 considering the following seven factors:

- 11 (1) The exact nature of the default;
- 12 (2) The amount owed to the commission;
- 13 (3) The solvency of the fund;
- 14 (4) The financial condition of the buyer or other recipi-  
15 ent;
- 16 (5) The equities exhibited towards the fund by the buyer  
17 or other recipient during the acquisition process;
- 18 (6) The potential economic impact upon the state and the  
19 specific geographic area in which the buyer or other  
20 recipient is to be or is located, if the acquisition were not  
21 to occur; and
- 22 (7) Whether the assets are purchased in an arms-length  
23 transaction.

24 Unless requested by a party or by the commission, no  
25 hearing need be held on the petition. However, any  
26 decision made by the commission on the petition shall be  
27 in writing and shall include appropriate findings of fact  
28 and conclusions of law. The decision shall be effective ten  
29 days following notice to the public of the decision unless  
30 an objection is filed in the manner provided in this section.  
31 Notice shall be given by the commission's filing with the  
32 secretary of state, for publication in the state register, of  
33 a notice of the decision. At the time of filing the notice of  
34 its decision, the commission shall also file with the secre-  
35 tary of state a true copy of the decision. The publication  
36 shall include a statement advising that any person object-  
37 ing to the decision must file, within ten days after publica-  
38 tion of the notice, a verified response with the commission

39 setting forth the objection and the basis for the objection.  
40 If any objection is filed, the commission shall hold an  
41 administrative hearing, conducted pursuant to article five,  
42 chapter twenty-nine-a of this code, within fifteen days of  
43 receiving the response unless the buyer or other recipient  
44 consents to a later hearing. Nothing in this subsection  
45 shall be construed to be applicable to the seller or other  
46 transferor or to affect in any way a proceeding under  
47 sections five and five-a of this article.

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

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

1 (a) If a new corporate employer which is not subject to  
2 the provisions of section fifteen of this article is created by  
3 the officers or shareholders of a preexisting corporate  
4 employer and if the new corporate employer and the  
5 preexisting corporate employer: (1) Are managed by the  
6 same, or substantially the same, management personnel;  
7 (2) have a common ownership by at least forty percent of  
8 each corporation's shareholders; (3) are in the same class  
9 or group as determined by the executive director under the  
10 provisions of section four of this article; and (4) if the  
11 preexisting corporate employer's account is in good  
12 standing with the commission, at the time the new corpo-  
13 rate employer registers with the commission, the new

14 corporate employer may request that the commission  
15 assign to it the same rate of payment of premiums as that  
16 assigned to the preexisting corporate employer. If the  
17 executive director decides that the granting of the request  
18 is in keeping with his or her fiduciary obligations to the  
19 workers' compensation fund, the executive director may  
20 grant the request of the employer.

21 (b) If a new corporate employer which is not subject to  
22 the provisions of section fifteen of this article is created by  
23 the officers or shareholders of a preexisting corporate  
24 employer and if the new corporate employer and the  
25 preexisting corporate employer: (1) Are managed by the  
26 same, or substantially the same, management personnel;  
27 (2) have a common ownership by at least forty percent of  
28 each corporation's shareholders; and (3) are in the same  
29 class or group as determined by the executive director  
30 under the provisions of section four of this article, at any  
31 time within one year of the new corporate employer's  
32 registration with the commission, the executive director  
33 may decide that, in keeping with his or her fiduciary  
34 obligations to the workers' compensation fund, the new  
35 corporate employer shall be assigned the same rate of  
36 payment of premiums as that assigned to the preexisting  
37 corporate employer at any time within the aforesaid one-  
38 year period: *Provided*, That if the new corporate employer  
39 fails to reveal to the commission on the forms provided by  
40 the commission that its situation meets the factual re-  
41 quirements of this section, the commission may demand  
42 payment from the new corporate employer in an amount  
43 sufficient to eliminate the deficiency in payments by the  
44 new corporate employer from the date of registration to  
45 the date of discovery plus interest thereon as provided for  
46 by section thirteen of this article. The commission may use  
47 its powers pursuant to section five-a of this article to  
48 collect the amount due.

**§23-2-17. Employer right to hearing; content of petition; appeal.**

1 Notwithstanding any provision in this chapter to the  
2 contrary and notwithstanding any provision in section  
3 five, article five, chapter twenty-nine-a of this code to the  
4 contrary, in any situation where an employer objects to a  
5 decision or action of the executive director made under the  
6 provisions of this article, the employer is entitled to file a  
7 petition demanding a hearing upon the decision or action.  
8 The petition must be filed within thirty days of the em-  
9 ployer's receipt of notice of the disputed executive direc-  
10 tor's decision or action or, in the absence of such receipt,  
11 within sixty days of the date of the executive director's  
12 making the disputed decision or taking the disputed  
13 action, the time limitations being hereby declared to be a  
14 condition of the right to litigate the decision or action and  
15 therefore jurisdictional.

16 The employer's petition shall clearly identify the deci-  
17 sion or action disputed and the bases upon which the  
18 employer disputes the decision or action. Upon receipt of  
19 a petition, the executive director shall schedule a hearing  
20 which shall be conducted in accordance with the provi-  
21 sions of article five, chapter twenty-nine-a of this code.  
22 An appeal from a final decision of the executive director  
23 shall be taken in accord with the provisions of articles five  
24 and six of said chapter: *Provided*, That all appeals shall be  
25 taken to the circuit court of Kanawha County.

**ARTICLE 2A. SUBROGATION.**

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

1 (a) Where a compensable injury or death is caused, in  
2 whole or in part, by the act or omission of a third party,  
3 the injured worker or, if he or she is deceased or physically  
4 or mentally incompetent, his or her dependents or personal  
5 representative are entitled to compensation under the  
6 provisions of this chapter and shall not by having received  
7 compensation be precluded from making claim against the  
8 third party.

9 (b) Notwithstanding the provisions of subsection (a) of  
10 this section, if an injured worker, his or her dependents or  
11 his or her personal representative makes a claim against  
12 the third party and recovers any sum for the claim, the  
13 commission or a self-insured employer shall be allowed  
14 statutory subrogation with regard to medical benefits paid  
15 as of the date of the recovery. The commission or self-  
16 insured employer shall permit the deduction from the  
17 amount received a reasonable attorney's fee and a reason-  
18 able portion of costs. It is the duty of the injured worker,  
19 his or her dependents, his or her personal representative,  
20 or his or her attorney to notify the commission and the  
21 employer when the claim is filed against the third party.

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

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

#### **ARTICLE 2B. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS.**

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

1 In order to carry out the purposes of this chapter and to  
2 encourage voluntary compliance with occupational safety  
3 and health laws, regulations, rules and standards and to

4 promote more effective workplace health and safety  
5 programs, the executive director acting in conjunction  
6 with the board of managers shall:

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

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

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

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

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

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

**§23-2B-2. Mandatory programs; safety committees; require-  
ments; rules; exceptions.**

1 (a) Based upon and to the extent authorized by criteria  
2 established by the executive director, the commission is  
3 authorized to conduct special inspections or investigations  
4 focused on specific problems or hazards in the workplace



5 with or without the agreement of the employer. The  
6 executive director shall issue a report on his or her find-  
7 ings and shall furnish a copy of the report to the employer  
8 and to any bargaining unit representing the employees of  
9 the employer. The executive director may share informa-  
10 tion obtained or developed pursuant to this article with  
11 other governmental agencies.

12 (b) For any employer whose experience modification  
13 factor exceeds the criteria established by the board of  
14 managers, the executive director may require the employer  
15 to establish a safety committee composed of representa-  
16 tives of the employer and the employees of the employer.

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

21 (1) Prescribing the membership of the committees,  
22 training, frequency of meetings, recordkeeping and  
23 compensation of employee representatives on safety  
24 committees; and

25 (2) Prescribing the duties and functions of safety com-  
26 mittees which include, but are not limited to:

27 (A) Establishing procedures for workplace safety inspec-  
28 tions and for investigating job-related accidents, illnesses  
29 and deaths; and

30 (B) Evaluating accident and illness prevention programs.

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

37 (e) It is not the purpose of this article to either supercede  
38 the federal Occupational Health and Safety Act program,

39 federal Mine Safety and Health Act program or to create  
40 a state counterpart to these programs.

**§23-2B-3. Premium rate credits; qualified loss management program; loss management firms; penalties; rules.**

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

7 (b) The program applies a prospective credit to the  
8 premium rate of a subscribing employer who participates  
9 in a qualified loss management program. The prospective  
10 credit is given for a period of up to three years: *Provided,*  
11 That the employer remains in the program for a corre-  
12 sponding period of time.

13 (c) The rule shall specify the requirements of a qualified  
14 loss management program and shall include a requirement  
15 that a recognized loss management firm participate in the  
16 program. A loss management firm shall be recognized if  
17 it has demonstrated an ability to significantly reduce  
18 workers' compensation losses for its client employers by  
19 implementing a loss control management program. The  
20 amount of credit against premium rates that may be  
21 allowed by the executive director shall vary from firm to  
22 firm and shall be primarily determined by the loss reduc-  
23 tion success experienced by all of the subscribing employ-  
24 ers of the sponsoring loss management firm over a period  
25 of time to be determined by the executive director.

26 (d) A credit is applied to the employer's premium rate for  
27 up to three years. The amount of the credit applied to the  
28 first year is based on the credit factor assigned to the loss  
29 management firm on the date the employer subscribes to  
30 the program. The amount of the credit applied to the  
31 second and third years shall be based on the credit factor

32 assigned to the loss management firm and in effect on each  
33 first day of July of the pertinent year: *Provided*, That the  
34 applicable credit is halved in the third year.

35 (e) The employer may terminate participation in the  
36 program upon three years of continuous participation in  
37 the program without penalty. Sooner termination may  
38 result in a penalty being applied to the employer's pre-  
39 mium rate.

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

44 (1) Participation for one year or less shall result in credit  
45 for the full three years;

46 (2) Participation for more than one year but less than  
47 two years shall result in a credit for two years;

48 (3) Participation for two years or more but less than  
49 three years shall result in a credit for one year; and

50 (4) Participation for three years or more shall result in no  
51 credit.

52 (g) This section shall not become effective until the board  
53 of managers promulgates an appropriate rule to imple-  
54 ment this section's provisions.

#### **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' compensa-  
2 tion fund from the premiums and other funds paid thereto  
3 by employers, as provided in this section, for the benefit of  
4 employees of employers who have paid the premiums  
5 applicable to the employers and have otherwise complied  
6 fully with the provisions of section five, article two of this  
7 chapter, and for the benefit, to the extent elsewhere in this

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

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

26 (c) A catastrophe is hereby defined as an accident in  
27 which three or more employees are killed or receive  
28 injuries, which, in the case of each individual, consist of:  
29 Loss of both eyes or the sight thereof; loss of both hands or  
30 the use thereof; loss of both feet or the use thereof; or loss  
31 of one hand and one foot or the use thereof. The aggregate  
32 of all medical and hospital bills and other costs and all  
33 benefits payable on account of a catastrophe is defined as  
34 "catastrophe payment". In case of a catastrophe to the  
35 employees of an employer who is an ordinary premium-  
36 paying subscriber to the fund, or to the employees of an  
37 employer who, having elected to carry the employer's own  
38 risk under section nine, article two of this chapter, has  
39 previously elected, or may later elect, to pay into the  
40 catastrophe reserve of the fund under the provisions of  
41 said section, the catastrophe payment arising from the  
42 catastrophe shall not be charged against, or paid by, the  
43 employer but shall be paid from the catastrophe reserve of  
44 the fund.

45 (d) For all awards made on or after the effective date of  
46 the amendments to this section enacted during the year  
47 two thousand three, the following provisions relating to  
48 second injury are not applicable. For awards made before  
49 the date specified in this subsection, if an employee who  
50 has a definitely ascertainable physical impairment, caused  
51 by a previous occupational injury, occupational pneumo-  
52 coniosis or occupational disease, irrespective of its com-  
53 pensability, becomes permanently and totally disabled  
54 through the combined effect of the previous injury and a  
55 second injury received in the course of and as a result of  
56 his or her employment, the employer shall be chargeable  
57 only for the compensation payable for the second injury:  
58 *Provided*, That in addition to the compensation, and after  
59 the completion of the payments therefor, the employee  
60 shall be paid the remainder of the compensation that  
61 would be due for permanent total disability out of the  
62 workers' compensation fund. The procedure by which the  
63 claimant's request for a permanent total disability award  
64 under this section is ruled upon shall require that the issue  
65 of the claimant's degree of permanent disability first be  
66 determined. Thereafter, by means of a separate order, a  
67 decision shall be made as to whether the award is a second  
68 injury award under this subsection or a permanent total  
69 disability award to be charged to the employer's account  
70 or to be paid directly by the employer if the employer has  
71 elected to be self-insured under the provisions of section  
72 nine, article two of this chapter.

73 (e) Employers electing, as provided in this chapter, to  
74 compensate individually and directly their injured em-  
75 ployees and their fatally injured employees' dependents  
76 shall do so in the manner prescribed by the commission  
77 and shall make all reports and execute all blanks, forms  
78 and papers as directed by the commission, and as provided  
79 in this chapter.

**§23-3-1a. Transfer of silicosis fund to workers' compensation  
fund; claims under former article six.**

1 Ten percent of the funds collected and held as the  
2 workers' compensation silicosis fund under the provisions  
3 of former article six of this chapter shall be transferred to  
4 and made a part of the workers' compensation fund  
5 provided for in the preceding section, and the balance of  
6 the silicosis fund shall be refunded to the subscribers to  
7 the fund in proportion to their contributions to the fund  
8 under the provisions of former article six; and all awards  
9 previously made under the provisions of article six shall be  
10 paid from the workers' compensation fund, or directly by  
11 the employer, under order of the executive director, if the  
12 employer has elected to carry his or her own risk under the  
13 provisions of section nine, article two of this chapter:  
14 *Provided, That notwithstanding the repeal of article six,*  
15 *the provisions of the article are applicable in all cases of*  
16 *the disease or death, because of silicosis, or an employee*  
17 *whose last exposure to silicon dioxide dust has occurred*  
18 *prior to the effective date of this section, whose claim or*  
19 *application for compensation benefits for silicosis, or that*  
20 *of his or her dependent, has not been filed prior to that*  
21 *date, and whose employer, at the time of the exposure, was*  
22 *subject to the provisions of article six of this chapter.*

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

1 The state treasurer is the custodian of the workers'  
2 compensation fund and all premiums, deposits or other  
3 moneys payable to each fund shall be deposited in the  
4 state treasury to the credit of the fund for which it was  
5 assessed, transferred or collected in the manner prescribed  
6 in this chapter. The workers' compensation fund shall  
7 consist of the premiums and deposits provided by this  
8 chapter and any other moneys or funds given, appropri-  
9 ated or otherwise designated or accruing to it and all  
10 earnings. The fund shall be a separate and distinct fund  
11 upon the books and records of the auditor and treasurer.  
12 Disbursements therefrom shall be made upon requisitions  
13 signed by the executive director.

14 The workers' compensation fund is a participant plan as  
15 defined in section two, article six, chapter twelve of this  
16 code and is subject to the provisions of section nine-a of  
17 said article. The fund shall be invested by the investment  
18 management board in accordance with said article.

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

1 Whenever there is in the state treasury any funds  
2 belonging to the workers' compensation fund not likely, in  
3 the opinion of the commission, to be required for immedi-  
4 ate use, it is the duty of the investment management board  
5 to invest the funds as prescribed in section two of this  
6 article. Whenever it becomes necessary or expedient to use  
7 any of the invested funds, the investment management  
8 board, at the direction of the commission, shall collect, sell  
9 or otherwise realize upon any investment to the amount  
10 considered necessary or expedient to use.

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

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

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

14 (c) The commission may establish a program that  
15 invoices and other charges against the workers' compensa-  
16 tion fund may be submitted to the commission by elec-  
17 tronic means.

18 (d) Any program authorized by this section must be  
19 implemented through a rule promulgated by the board of  
20 managers.

**§23-3-6. Emergency fiscal measures.**

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

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

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

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

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

27 (4) (A) If in any year expenditures from the workers'  
28 compensation fund are expected to exceed assets in that  
29 fund, the executive director may under the following  
30 conditions request a transfer of moneys from the principal



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

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

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

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

67 (7) It is the intent of the Legislature that, pursuant to  
68 legislative appropriation, four million dollars will be  
69 transferred from the unappropriated balance of the state  
70 excess lottery reserve fund to the workers' compensation  
71 fund and that the amounts transferred be expended to  
72 satisfy the obligations of the workers' compensation fund.

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

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

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

1 (a) Subject to the provisions and limitations elsewhere in  
2 this chapter, the commission shall disburse the workers'  
3 compensation fund to the employees of employers subject  
4 to this chapter who have received personal injuries in the  
5 course of and resulting from their covered employment or  
6 to the dependents, if any, of the employees in case death  
7 has ensued, according to the provisions hereinafter made;  
8 and also for the expenses of the administration of this  
9 chapter, as provided in section two, article one of this  
10 chapter: *Provided*, That in the case of any employees of the  
11 state and its political subdivisions, including: Counties;  
12 municipalities; cities; towns; any separate corporation or  
13 instrumentality established by one or more counties, cities  
14 or towns as permitted by law; any corporation or instru-  
15 mentality supported in most part by counties, cities or  
16 towns; any public corporation charged by law with the

17 performance of a governmental function and whose  
18 jurisdiction is coextensive with one or more counties, cities  
19 or towns; any agency or organization established by the  
20 department of mental health for the provision of commu-  
21 nity health or mental retardation services and which is  
22 supported, in whole or in part, by state, county or municip-  
23 al funds; board, agency, commission, department or  
24 spending unit, including any agency created by rule of the  
25 supreme court of appeals, who have received personal  
26 injuries in the course of and resulting from their covered  
27 employment, the employees are ineligible to receive  
28 compensation while the employees are at the same time  
29 and for the same reason drawing sick leave benefits. The  
30 state employees may only use sick leave for nonjob-related  
31 absences consistent with sick leave use and may draw  
32 workers' compensation benefits only where there is a job-  
33 related injury. This proviso shall not apply to permanent  
34 benefits: *Provided, however,* That the employees may  
35 collect sick leave benefits until receiving temporary total  
36 disability benefits. The division of personnel shall pro-  
37 mulgate rules pursuant to article three, chapter twenty-  
38 nine-a of this code relating to use of sick leave benefits by  
39 employees receiving personal injuries in the course of and  
40 resulting from covered employment: *Provided further,*  
41 That in the event an employee is injured in the course of  
42 and resulting from covered employment and the injury  
43 results in lost time from work, and the employee for  
44 whatever reason uses or obtains sick leave benefits and  
45 subsequently receives temporary total disability benefits  
46 for the same time period, the employee may be restored  
47 sick leave time taken by him or her as a result of the  
48 compensable injury by paying to his or her employer the  
49 temporary total disability benefits received or an amount  
50 equal to the temporary total disability benefits received.  
51 The employee shall be restored sick leave time on a day-  
52 for-day basis which corresponds to temporary total  
53 disability benefits paid to the employer: *And provided*  
54 *further,* That since the intent of this subsection is to

55 prevent an employee of the state or any of its political  
56 subdivisions from collecting both temporary total disabil-  
57 ity benefits and sick leave benefits for the same time  
58 period, nothing in this subsection prevents an employee of  
59 the state or any of its political subdivisions from electing  
60 to receive either sick leave benefits or temporary total  
61 disability benefits but not both.

62 (b) For the purposes of this chapter, the terms "injury"  
63 and "personal injury" includes occupational pneumoconi-  
64 osis and any other occupational disease, as hereinafter  
65 defined, and the commission shall also disburse the work-  
66 ers' compensation fund to the employees of the employers  
67 in whose employment the employees have been exposed to  
68 the hazards of occupational pneumoconiosis or other  
69 occupational disease and in this state have contracted  
70 occupational pneumoconiosis or other occupational  
71 disease, or have suffered a perceptible aggravation of an  
72 existing pneumoconiosis or other occupational disease, or  
73 to the dependents, if any, of the employees, in case death  
74 has ensued, according to the provisions hereinafter made:  
75 *Provided*, That compensation shall not be payable for the  
76 disease of occupational pneumoconiosis, or death resulting  
77 from the disease, unless the employee has been exposed to  
78 the hazards of occupational pneumoconiosis in the state of  
79 West Virginia over a continuous period of not less than  
80 two years during the ten years immediately preceding the  
81 date of his or her last exposure to such hazards, or for any  
82 five of the fifteen years immediately preceding the date of  
83 his or her last exposure. An application for benefits on  
84 account of occupational pneumoconiosis shall set forth the  
85 name of the employer or employers and the time worked  
86 for each. The commission may allocate to and divide any  
87 charges resulting from such claim among the employers by  
88 whom the claimant was employed for as much as sixty  
89 days during the period of three years immediately preced-  
90 ing the date of last exposure to the hazards of occupational  
91 pneumoconiosis. The allocation shall be based upon the  
92 time and degree of exposure with each employer.

93 (c) For the purposes of this chapter, disability or death  
94 resulting from occupational pneumoconiosis, as defined in  
95 subsection (d) of this section shall be treated and compen-  
96 sated as an injury by accident.

97 (d) Occupational pneumoconiosis is a disease of the lungs  
98 caused by the inhalation of minute particles of dust over  
99 a period of time due to causes and conditions arising out  
100 of and in the course of the employment. The term "occu-  
101 pational pneumoconiosis" includes, but is not limited to,  
102 such diseases as silicosis, anthracosilicosis, coal worker's  
103 pneumoconiosis, commonly known as black lung or  
104 miner's asthma, silico-tuberculosis (silicosis accompanied  
105 by active tuberculosis of the lungs), coal worker's pneumo-  
106 coniosis accompanied by active tuberculosis of the lungs,  
107 asbestosis, siderosis, anthrax and any and all other dust  
108 diseases of the lungs and conditions and diseases caused by  
109 occupational pneumoconiosis which are not specifically  
110 designated in this section meeting the definition of occu-  
111 pational pneumoconiosis set forth in this subsection.

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

116 (f) For the purposes of this chapter, occupational disease  
117 means a disease incurred in the course of and resulting  
118 from employment. No ordinary disease of life to which the  
119 general public is exposed outside of the employment is  
120 compensable except when it follows as an incident of  
121 occupational disease as defined in this chapter. Except in  
122 the case of occupational pneumoconiosis, a disease shall be  
123 considered to have been incurred in the course of or to  
124 have resulted from the employment only if it is apparent  
125 to the rational mind, upon consideration of all the circum-  
126 stances: (1) That there is a direct causal connection  
127 between the conditions under which work is performed  
128 and the occupational disease; (2) that it can be seen to have  
129 followed as a natural incident of the work as a result of the

130 exposure occasioned by the nature of the employment; (3)  
131 that it can be fairly traced to the employment as the  
132 proximate cause; (4) that it does not come from a hazard to  
133 which workmen would have been equally exposed outside  
134 of the employment; (5) that it is incidental to the character  
135 of the business and not independent of the relation of  
136 employer and employee; and (6) that it appears to have had  
137 its origin in a risk connected with the employment and to  
138 have flowed from that source as a natural consequence,  
139 though it need not have been foreseen or expected before  
140 its contraction: *Provided*, That compensation shall not be  
141 payable for an occupational disease or death resulting  
142 from the disease unless the employee has been exposed to  
143 the hazards of the disease in the state of West Virginia  
144 over a continuous period that is determined to be suffi-  
145 cient, by rule of the board of managers, for the disease to  
146 have occurred in the course of and resulting from the  
147 employee's employment. An application for benefits on  
148 account of an occupational disease shall set forth the name  
149 of the employer or employers and the time worked for  
150 each. The commission may allocate to and divide any  
151 charges resulting from such claim among the employers by  
152 whom the claimant was employed. The allocation shall be  
153 based upon the time and degree of exposure with each  
154 employer.

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

162 (h) Claims for occupational disease as defined in subsec-  
163 tion (f) of this section, except occupational pneumoconio-  
164 sis, shall be processed in like manner as claims for all other  
165 personal injuries.

166 (i) On or before the first day of January, two thousand  
167 four, workers' compensation commission shall adopt  
168 standards for the evaluation of claimants and the determi-  
169 nation of a claimant's degree of whole body medical  
170 impairment in claims of carpal tunnel syndrome.

**§23-4-1a. Report of injuries by employee.**

1 Every employee who sustains an injury subject to this  
2 chapter, or his or her representative, shall immediately on  
3 the occurrence of the injury or as soon thereafter as  
4 practicable give or cause to be given to the employer or  
5 any of the employer's agents a written notice of the  
6 occurrence of the injury, with like notice or a copy of the  
7 notice to the workers' compensation commission stating in  
8 ordinary language the name and address of the employer,  
9 the name and address of the employee, the time, place,  
10 nature and cause of the injury, and whether temporary  
11 total disability has resulted from the injury. The notice  
12 shall be given personally to the employer or any of the  
13 employer's agents, or may be sent by certified mail ad-  
14 dressed to the employer at the employer's last known  
15 residence or place of business. The notice may be given to  
16 the workers' compensation commission by mail.

**§23-4-1b. Report of injuries by employers.**

1 It is the duty of every employer to report to the commis-  
2 sion every injury sustained by any person in his or her  
3 employ. The report shall be on forms prescribed by the  
4 commission and shall be made within five days of the  
5 employer's receipt of the employee's notice of injury,  
6 required by section one-a of this article, or within five  
7 days after the employer has been notified by the commis-  
8 sion that a claim for benefits has been filed on account of  
9 such injury, whichever is sooner, and, notwithstanding any  
10 other provision of this chapter to the contrary, the five-day  
11 period may not be extended by the commission, but the  
12 employer has the right to file a supplemental report at a  
13 later date. The employer's report of injury shall include a

14 statement as to whether or not, on the basis of the infor-  
15 mation available, the employer disputes the compensabil-  
16 ity of the injury or objects to the payment of temporary  
17 total disability benefits in connection with the injury. The  
18 statements by the employer shall not prejudice the em-  
19 ployer's right thereafter to contest the compensability of  
20 the injury, or to object to any subsequent finding or award,  
21 in accordance with article five of this chapter; but an  
22 employer's failure to make timely report of an injury as  
23 required in this section, or statements in the report to the  
24 effect that the employer does not dispute the compensabil-  
25 ity of the injury or object to the payment of temporary  
26 total disability benefits for the injury, shall be considered  
27 to be a waiver of the employer's right to object to any  
28 interim payment of temporary total disability benefits  
29 paid by the commission with respect to any period from  
30 the date of injury to the date of the commission's receipt of  
31 any objection made to the interim payments by the  
32 employer.

**§23-4-1c. Payment of temporary total disability benefits di-  
rectly to claimant; payment of medical benefits;  
payments of benefits during protest; right of  
commission to collect payments improperly made.**

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

7 (1) The commission may enter an order conditionally  
8 approving the claimant's application if the commission  
9 finds that obtaining additional medical evidence or  
10 evaluations or other evidence related to the issue of  
11 compensability would aid the commission in making a  
12 correct final decision. Benefits shall be paid during the  
13 period of conditional approval; however, if the final  
14 decision is one that rejects the claim, the payments shall be



15 considered an overpayment. The commission or self-  
16 insured employer may only recover the amount of the  
17 overpayment as provided for in subsection (h) of this  
18 section.

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

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

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

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

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

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

44 (3) Any party may object to the order of the commission  
45 and obtain an evidentiary hearing as provided in section  
46 one, article five of this chapter: *Provided*, That if the  
47 claimant files a timely protest to the ruling of a self-  
48 insured employer denying the compensability of the claim,

49 the office of judges shall provide a hearing on the protest  
50 on an expedited basis as determined by rule of the office  
51 of judges.

52 (b) Where it appears from the employer's report, or from  
53 proper medical evidence, that a compensable injury will  
54 result in a disability which will last longer than three days  
55 as provided in section five of this article, the commission  
56 may immediately enter an order commencing the payment  
57 of temporary total disability benefits to the claimant in the  
58 amounts provided for in sections six and fourteen of this  
59 article, and the payment of the expenses provided for in  
60 subsection (a), section three of this article, relating to the  
61 injury, without waiting for the expiration of the thirty-day  
62 period during which objections may be filed to the find-  
63 ings as provided in section one, article five of this chapter.  
64 The commission shall enter an order commencing the  
65 payment of temporary total disability or medical benefits  
66 within fifteen days of receipt of either the employee's or  
67 employer's report of injury, whichever is received sooner,  
68 and also upon receipt of either a proper physician's report  
69 or any other information necessary for a determination.  
70 The commission shall give to the parties immediate notice  
71 of any order granting temporary total disability or medical  
72 benefits. When an order granting temporary total disabili-  
73 ty benefits is made, the claimant's return-to-work poten-  
74 tial shall be assessed. The commission may schedule  
75 medical and vocational evaluation of the claimant and  
76 assign appropriate personnel to expedite the claimant's  
77 return to work as soon as reasonably possible.

78 (c) The commission may enter orders granting temporary  
79 total disability benefits upon receipt of medical evidence  
80 justifying the payment of the benefits. The commission  
81 may not enter an order granting prospective temporary  
82 total disability benefits for a period of more than ninety  
83 days: *Provided*, That when the commission determines that  
84 the claimant remains disabled beyond the period specified  
85 in the prior order granting temporary total disability

86 benefits, the commission shall enter an order continuing  
87 the payment of temporary total disability benefits for an  
88 additional period not to exceed ninety days and shall give  
89 immediate notice to all parties of the decision.

90 (d) Upon receipt of the first report of injury in claim, the  
91 commission shall request from the employer or employers  
92 any wage information necessary for determining the rate  
93 of benefits to which the employee is entitled. If an em-  
94 ployer does not furnish the commission with this informa-  
95 tion within fifteen days from the date the commission  
96 received the first report of injury in the case, the employee  
97 shall be paid temporary total disability benefits for lost  
98 time at the rate the commission obtains from reports made  
99 pursuant to subsection (b), section two, article two of this  
100 chapter. If no wages have been reported, the commission  
101 shall make the payments at the rate the commission finds  
102 would be justified by the usual rate of pay for the occupa-  
103 tion of the injured employee. The commission shall adjust  
104 the rate of benefits both retroactively and prospectively  
105 upon receipt of proper wage information. The commission  
106 shall have access to all wage information in the possession  
107 of any state agency.

108 (e) Subject to the limitations set forth in section sixteen  
109 of this article, upon a finding of the commission or a self-  
110 insured employer that a claimant who has sustained a  
111 previous compensable injury which has been closed by  
112 order, or by the claimant's return to work, suffers further  
113 temporary total disability or requires further medical or  
114 hospital treatment resulting from the compensable injury,  
115 the commission or the self-insured employer shall immedi-  
116 ately commence the payment of temporary total disability  
117 benefits to the claimant in the amount provided for in  
118 sections six and fourteen of this article, and the expenses  
119 provided for in subsection (a), section three of this article,  
120 relating to the disability, without waiting for the expira-  
121 tion of the thirty-day period during which objections may

122 be filed. The commission or self-insured employer shall  
123 give immediate notice to the parties of its decision.

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

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

136 (h) In the event that an employer files a timely objection  
137 to any order of the division with respect to compensability,  
138 or any order denying an application for modification with  
139 respect to temporary total disability benefits, or with  
140 respect to those expenses outlined in subsection (a), section  
141 three of this article, the division shall continue to pay to  
142 the claimant such benefits and expenses during the period  
143 of such disability. Where it is subsequently found by the  
144 division that the claimant was not entitled to receive such  
145 temporary total disability benefits or expenses, or any part  
146 thereof, so paid, the division shall, when the employer is a  
147 subscriber to the fund, credit said employer's account with  
148 the amount of the overpayment. When the employer has  
149 protested the compensability or applied for modification  
150 of a temporary total disability benefit award or expenses  
151 and the final decision in that case determines that the  
152 claimant was not entitled to the benefits or expenses, the  
153 amount of benefits or expenses is considered overpaid.  
154 For all awards made or nonawarded partial benefits paid  
155 the commission or self-insured employer may only recover  
156 the amount of overpaid benefits or expenses by withhold-  
157 ing, in whole or in part, future disability benefits payable

158 to the individual in the same or other claims and credit the  
159 amount against the overpayment until it is repaid in full.

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

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

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

1 (a) If the commission makes an award for permanent  
2 partial or permanent total disability, the commission or  
3 self-insured employer shall start payment of benefits by  
4 mailing or delivering the amount due directly to the  
5 employee within fifteen days from the date of the award:  
6 *Provided*, That the commission may withhold payment of  
7 the portion of the award that is the subject of subsection  
8 (b) of this section until seventy-seven days have expired  
9 without an objection being filed.

10 (b) When the commission, self-insured employer, the  
11 office of judges or the workers' compensation board of  
12 review enters an order or provides notice granting the  
13 claimant a permanent total disability award and an  
14 objection or petition for appeal is filed by the employer or  
15 the commission, the commission or self-insured employer  
16 shall begin the payment of monthly permanent total  
17 disability benefits. However, any payment for a back  
18 period of benefits from the onset date of total permanent  
19 disability to the date of the award shall be limited to a  
20 period of twelve months of benefits. If, after all litigation  
21 is completed and the time for the filing of any further  
22 objections or appeals to the award has expired and the  
23 award of permanent total disability benefits is upheld, the  
24 claimant shall receive the remainder of benefits due to him  
25 or her based upon the onset date of permanent total  
26 disability that was finally determined.

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

41 (d) If a timely protest to the award is filed, as provided  
42 in section one or nine, article five of this chapter, the  
43 commission or self-insured employer shall continue to pay  
44 to the claimant benefits during the period of the disability  
45 unless it is subsequently found that the claimant was not  
46 entitled to receive the benefits, or any part thereof, in

47 which event the commission shall, where the employer is  
48 a subscriber to the fund, credit the employer's account  
49 with the amount of the overpayment. If the final decision  
50 in any case determines that a claimant was not lawfully  
51 entitled to benefits paid to him or her pursuant to a prior  
52 decision, the amount of benefit paid shall be considered  
53 overpaid. For all awards made or nonawarded partial  
54 benefits paid the commission or self-insured employer may  
55 only recover that amount by withholding, in whole or in  
56 part, as determined by the commission, future disability  
57 benefits payable to the individual in the same or other  
58 claims and credit the amount against the overpayment  
59 until it is repaid in full.

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

64 (f) If a claimant is receiving benefits paid through a  
65 retirement plan, wage replacement plan, salary continua-  
66 tion plan or other benefit plan provided by the employer  
67 to which the employee has not contributed, and that plan  
68 does not provide an offset for permanent total disability  
69 benefits to which the claimant is also entitled under this  
70 chapter as a result of the same injury or disease, the  
71 employer shall notify the commission of the duplication of  
72 the benefits paid to the claimant. Upon receipt of the  
73 notice, the commission shall reduce the permanent total  
74 disability benefits provided under this chapter by an  
75 amount sufficient to ensure that the claimant does not  
76 receive monthly benefits in excess of the amount provided  
77 by the employer's plan or the permanent total disability  
78 benefit, whichever is greater: *Provided*, That this subsec-  
79 tion does not apply to benefits being paid under the terms  
80 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.**

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

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

**§23-4-1g. Weighing of evidence.**

1 (a) For all awards made on or after the effective date of  
2 the amendment and reenactment of this section during the  
3 year two thousand three, resolution of any issue raised in  
4 administering this chapter shall be based on a weighing of  
5 all evidence pertaining to the issue and a finding that a  
6 preponderance of the evidence supports the chosen manner  
7 of resolution. The process of weighing evidence shall  
8 include, but not be limited to, an assessment of the rele-  
9 vance, credibility, materiality and reliability that the  
10 evidence possesses in the context of the issue presented.



11 Under no circumstances will an issue be resolved by  
12 allowing certain evidence to be dispositive simply because  
13 it is reliable and is most favorable to a party's interests or  
14 position. If, after weighing all of the evidence regarding  
15 an issue in which a claimant has an interest, there is a  
16 finding that an equal amount of evidentiary weight exists  
17 favoring conflicting matters for resolution, the resolution  
18 that is most consistent with the claimant's position will be  
19 adopted.

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

**§23-4-2. Disbursement where injury is self-inflicted or inten-  
tionally caused by employer; legislative declara-  
tions and findings; "deliberate intention" defined.**

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

17 employee's intoxication and may only test for the purpose  
18 of determining whether the person is intoxicated.

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

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

32 (d) (1) It is declared that enactment of this chapter and  
33 the establishment of the workers' compensation system in  
34 this chapter was and is intended to remove from the  
35 common law tort system all disputes between or among  
36 employers and employees regarding the compensation to  
37 be received for injury or death to an employee except as  
38 expressly provided in this chapter and to establish a  
39 system which compensates even though the injury or death  
40 of an employee may be caused by his or her own fault or  
41 the fault of a coemployee; that the immunity established  
42 in sections six and six-a, article two of this chapter is an  
43 essential aspect of this workers' compensation system; that  
44 the intent of the Legislature in providing immunity from  
45 common lawsuit was and is to protect those immunized  
46 from litigation outside the workers' compensation system  
47 except as expressly provided in this chapter; that, in  
48 enacting the immunity provisions of this chapter, the  
49 Legislature intended to create a legislative standard for  
50 loss of that immunity of more narrow application and  
51 containing more specific mandatory elements than the  
52 common law tort system concept and standard of willful,  
53 wanton and reckless misconduct; and that it was and is the

54 legislative intent to promote prompt judicial resolution of  
55 the question of whether a suit prosecuted under the  
56 asserted authority of this section is or is not prohibited by  
57 the immunity granted under this chapter.

58 (2) The immunity from suit provided under this section  
59 and under section six-a, article two of this chapter may be  
60 lost only if the employer or person against whom liability  
61 is asserted acted with "deliberate intention". This re-  
62 quirement may be satisfied only if:

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

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

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

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

85 (C) That the specific unsafe working condition was a  
86 violation of a state or federal safety statute, rule or  
87 regulation, whether cited or not, or of a commonly ac-  
88 cepted and well-known safety standard within the indus-

89 try or business of the employer, which statute, rule,  
90 regulation or standard was specifically applicable to the  
91 particular work and working condition involved, as  
92 contrasted with a statute, rule, regulation or standard  
93 generally requiring safe workplaces, equipment or work-  
94 ing conditions;

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

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

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

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

107 (B) Notwithstanding any other provision of law or rule  
108 to the contrary, and consistent with the legislative findings  
109 of intent to promote prompt judicial resolution of issues of  
110 immunity from litigation under this chapter, the court  
111 shall dismiss the action upon motion for summary judg-  
112 ment if it finds, pursuant to rule 56 of the rules of civil  
113 procedure that one or more of the facts required to be  
114 proved by the provisions of subparagraphs (A) through (E),  
115 inclusive, paragraph (ii) of this subdivision do not exist,  
116 and the court shall dismiss the action upon a timely  
117 motion for a directed verdict against the plaintiff if after  
118 considering all the evidence and every inference legiti-  
119 mately and reasonably raised thereby most favorably to  
120 the plaintiff, the court determines that there is not suffi-  
121 cient evidence to find each and every one of the facts  
122 required to be proven by the provisions of subparagraphs

123 (A) through (E), inclusive, paragraph (ii) of this subdivi-  
124 sion; and

125 (C) The provisions of this paragraph and of each sub-  
126 paragraph thereof are severable from the provisions of  
127 each other subparagraph, subsection, section, article or  
128 chapter of this code so that if any provision of a subpara-  
129 graph of this paragraph is held void, the remaining  
130 provisions of this act and this code remain valid.

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

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

1 (a) The workers' compensation commission shall estab-  
2 lish and alter from time to time, as the commission deter-  
3 mines appropriate, a schedule of the maximum reasonable  
4 amounts to be paid to health care providers, providers of  
5 rehabilitation services, providers of durable medical and  
6 other goods and providers of other supplies and medically  
7 related items or other persons, firms or corporations for  
8 the rendering of treatment or services to injured employees  
9 under this chapter. The commission also, on the first day

10 of each regular session and also from time to time, as the  
11 commission may consider appropriate, shall submit the  
12 schedule, with any changes thereto, to the Legislature.

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

16 (1) Sums for health care services, rehabilitation services,  
17 durable medical and other goods and other supplies and  
18 medically related items as may be reasonably required.  
19 The commission shall determine that which is reasonably  
20 required within the meaning of this section in accordance  
21 with the guidelines developed by the health care advisory  
22 panel pursuant to section three-b of this article: *Provided*,  
23 That nothing in this section shall prevent the implementa-  
24 tion of guidelines applicable to a particular type of  
25 treatment or service or to a particular type of injury before  
26 guidelines have been developed for other types of treat-  
27 ment or services or injuries: *Provided, however*, That any  
28 guidelines for utilization review which are developed in  
29 addition to the guidelines provided for in section three-b  
30 of this article may be used by the commission until super-  
31 seded by guidelines developed by the health care advisory  
32 panel pursuant to said section. Each health care provider  
33 who seeks to provide services or treatment which are not  
34 within any guideline shall submit to the commission  
35 specific justification for the need for the additional  
36 services in the particular case and the commission shall  
37 have the justification reviewed by a health care profes-  
38 sional before authorizing the additional services. The  
39 commission may enter into preferred provider and man-  
40 aged care agreements.

41 (2) Payment for health care services, rehabilitation  
42 services, durable medical and other goods and other  
43 supplies and medically related items authorized under this  
44 subsection may be made to the injured employee or to the  
45 person, firm or corporation who or which has rendered the  
46 treatment or furnished health care services, rehabilitation

47 services, durable medical or other goods or other supplies  
48 and items, or who has advanced payment for them, as the  
49 commission considers proper, but no payments or dis-  
50 bursements shall be made or awarded by the commission  
51 unless duly verified statements on forms prescribed by the  
52 commission have been filed with the commission within  
53 six months after the rendering of the treatment or the  
54 delivery of such goods, supplies or items or within ninety  
55 days of a subsequent compensability ruling if a claim is  
56 initially rejected: *Provided*, That no payment under this  
57 section shall be made unless a verified statement shows no  
58 charge for or with respect to the treatment or for or with  
59 respect to any of the items specified in this subdivision has  
60 been or will be made against the injured employee or any  
61 other person, firm or corporation. When an employee  
62 covered under the provisions of this chapter is injured in  
63 the course of and as a result of his or her employment and  
64 is accepted for health care services, rehabilitation services,  
65 or the provision of durable medical or other goods or other  
66 supplies or medically related items, the person, firm or  
67 corporation rendering the treatment may not make any  
68 charge or charges for the treatment or with respect to the  
69 treatment against the injured employee or any other  
70 person, firm or corporation which would result in a total  
71 charge for the treatment rendered in excess of the maxi-  
72 mum amount set forth therefor in the commission's  
73 schedule.

74 (3) Any pharmacist filling a prescription for medication  
75 for a workers' compensation claimant shall dispense a  
76 generic brand of the prescribed medication if a generic  
77 brand exists. If a generic brand does not exist, the phar-  
78 macist may dispense the name brand. In the event that a  
79 claimant wishes to receive the name brand medication in  
80 lieu of the generic brand, the claimant may receive the  
81 name brand medication but, in that event, the claimant is  
82 personally liable for the difference in costs between the  
83 generic brand medication and the brand name medication.

84 (4) In the event that a claimant elects to receive health  
85 care services from a health care provider from outside of  
86 the state of West Virginia and if that health care provider  
87 refuses to abide by and accept as full payment the reim-  
88 bursement made by the workers' compensation commis-  
89 sion pursuant to the schedule of maximum reasonable  
90 amounts of fees authorized by subsection (a) of this  
91 section, with the exceptions noted below, the claimant is  
92 personally liable for the difference between the scheduled  
93 fee and the amount demanded by the out-of-state health  
94 care provider.

95 (A) In the event of an emergency where there is an urgent  
96 need for immediate medical attention in order to prevent  
97 the death of a claimant or to prevent serious and perma-  
98 nent harm to the claimant, if the claimant receives the  
99 emergency care from an out-of-state health care provider  
100 who refuses to accept as full payment the scheduled  
101 amount, the claimant is not personally liable for the  
102 difference between the amount scheduled and the amount  
103 demanded by the health care provider. Upon the claim-  
104 ant's attaining a stable medical condition and being able  
105 to be transferred to either a West Virginia health care  
106 provider or an out-of-state health care provider who has  
107 agreed to accept the scheduled amount of fees as payment  
108 in full, if the claimant refuses to seek the specified alterna-  
109 tive health care providers, he or she is personally liable for  
110 the difference in costs between the scheduled amount and  
111 the amount demanded by the health care provider for  
112 services provided after attaining stability and being able  
113 to be transferred.

114 (B) In the event that there is no health care provider  
115 reasonably near to the claimant's home who is qualified to  
116 provide the claimant's needed medical services who is  
117 either located in the state of West Virginia or who has  
118 agreed to accept as payment in full the scheduled amounts  
119 of fees, the commission, upon application by the claimant,  
120 may authorize the claimant to receive medical services



121 from another health care provider. The claimant is not  
122 personally liable for the difference in costs between the  
123 scheduled amount and the amount demanded by the health  
124 care provider.

125 (b) (1) No employer shall enter into any contracts with  
126 any hospital, its physicians, officers, agents or employees  
127 to render medical, dental or hospital service or to give  
128 medical or surgical attention to any employee for injury  
129 compensable within the purview of this chapter, and no  
130 employer shall permit or require any employee to contrib-  
131 ute, directly or indirectly, to any fund for the payment of  
132 such medical, surgical, dental or hospital service within  
133 such hospital for the compensable injury. Any employer  
134 violating this subsection is liable in damages to the em-  
135 ployer's employees as provided in section eight, article two  
136 of this chapter, and any employer or hospital or agent or  
137 employee thereof violating the provisions of this section is  
138 guilty of a misdemeanor and, upon conviction thereof,  
139 shall be punished by a fine not less than one hundred  
140 dollars nor more than one thousand dollars or by impris-  
141 onment not exceeding one year, or both.

142 (2) The provisions of this subsection shall not prohibit an  
143 employer from participating in a managed health care  
144 plan, including, but not limited to, a preferred provider  
145 organization or program or a health maintenance organi-  
146 zation or managed care organization or other medical cost  
147 containment relationship with the providers of medical,  
148 hospital or other health care. An employer that provides  
149 a managed health care plan approved by the commission  
150 for its employees may require an injured employee to use  
151 health care providers authorized by the managed health  
152 care plan for care and treatment of his or her compensable  
153 injuries. If the employer does not provide a managed  
154 health care plan or program, the claimant may select his or  
155 her initial health care provider for treatment of a compen-  
156 sable injury or disease, except as provided under subdivi-  
157 sion (3) of this subsection. If a claimant wishes to change

158 his or her health care provider and if his or her employer  
159 has established and maintains a managed health care plan,  
160 the claimant shall select a new health care provider  
161 through the managed health care plan. A claimant who  
162 has used the providers under the employer's managed  
163 health care plan may select a health care provider outside  
164 the employer's plan for treatment of the compensable  
165 injury or disease if the employee receives written approval  
166 from the commission to do so and the approval is given  
167 pursuant to criteria established by rule of the commission.

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

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

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

192 (c) When an injury has been reported to the commission  
193 by the employer without protest, the commission or self-

194 insured employer may pay, within the maximum amount  
195 provided by schedule established under this section, bills  
196 for health care services without requiring the injured  
197 employee to file an application for benefits.

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

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

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

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

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

1 (a) The commission shall establish a health care advisory  
2 panel consisting of representatives of the various branches

3 and specialties among health care providers in this state.  
4 There shall be a minimum of five members of the health  
5 care advisory panel who shall receive reasonable compen-  
6 sation for their services and reimbursement for reasonable  
7 actual expenses. Each member of this panel shall be  
8 provided appropriate professional or other liability  
9 insurance, without additional premium, by the state board  
10 of risk and insurance management created pursuant to  
11 article twelve, chapter twenty-nine of this code. The panel  
12 shall:

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

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

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

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

29 (5) Assist the commission in establishing appropriate  
30 professional review of requests by health care providers to  
31 exceed the

32 guidelines for treatment of injuries and occupational  
33 diseases established pursuant to subdivision (1) of this  
34 section.

35 (b) In addition to the requirements of subsection (a) of  
36 this section, on or before the thirty-first day of December,

37 two thousand three, the board of managers shall promul-  
38 gate a rule establishing the process for the medical man-  
39 agement of claims and awards of disability which includes,  
40 but is not limited to, reasonable and standardized guide-  
41 lines and parameters for appropriate treatment, expected  
42 period of time to reach maximum medical improvement  
43 and range of permanent partial disability awards for  
44 common injuries and diseases or, in the alternative, which  
45 incorporates by reference the medical and disability  
46 management guidelines, plan or program being utilized by  
47 the commission for the medical and disability management  
48 of claims, with the requirements, standards, parameters  
49 and limitations of such guidelines, plan or program having  
50 the same force and effect as the rule promulgated in  
51 compliance herewith.

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

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

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

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

18 (3) If the commission determines that the health care  
19 provider has had his or her license to practice suspended

20 or terminated by the appropriate authority in this state or  
21 in another state;

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

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

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

38 (b) Upon the determination by the executive director  
39 that there is probable cause to believe that a health care  
40 provider should be suspended or terminated pursuant to  
41 this section, the executive director shall provide the health  
42 care provider with written notice stating the nature of the  
43 charges against the health care provider and the time and  
44 place of a hearing. Upon issuance of the notice and due  
45 consideration of the executive director's fiduciary duties,  
46 the executive director may immediately suspend payment  
47 to the health care provider pending the final order of  
48 suspension or termination. The health care provider shall  
49 appear to show cause why the health care provider's right  
50 to receive payment under this chapter should not be  
51 suspended or terminated. At the hearing the health care  
52 provider shall be afforded an opportunity to review the  
53 evidence, to cross-examine the witnesses, and present  
54 testimony and enter evidence in support of its position.  
55 The hearing shall be conducted in accordance with the

56 provisions of article five, chapter twenty-nine-a of this  
57 code. The hearing may be conducted by the executive  
58 director or a hearing officer appointed by the executive  
59 director. The executive director or hearing officer has the  
60 power to subpoena witnesses, papers, records, documents  
61 and other data and things in connection with the proceed-  
62 ing under this subsection and to administer oaths or  
63 affirmations in the hearing. If, after reviewing the record  
64 of the hearing, the executive director determines that the  
65 right of the health care provider to obtain payment under  
66 this article should be suspended for a specified period of  
67 time or should be permanently terminated, the executive  
68 director shall issue a final order suspending or terminating  
69 the right of the health care provider to obtain payment for  
70 services under this article. The order shall set forth  
71 findings of fact and conclusions of law in support of the  
72 decision. The order shall be mailed to the health care  
73 provider by certified mail, return receipt requested. Any  
74 appeal by the health care provider shall be brought in the  
75 circuit court of Kanawha County or in the county in which  
76 the provider's principal place of business is located. The  
77 scope of the court's review of the final order shall be as  
78 provided in section four, article five, chapter twenty-nine-  
79 a of this code. The provider may be suspended or termi-  
80 nated, based upon the final order of the executive director  
81 or hearing officer, pending final disposition of any appeal.  
82 The final order may be stayed by the circuit court after  
83 hearing, but shall not be stayed in or as a result of any ex  
84 parte proceeding. If the health care provider does not  
85 appeal the final order within thirty days, it is final.

86 (c) No payment shall be made to a health care provider  
87 or to an injured employee for services provided by a health  
88 care provider after the effective date of a final order  
89 terminating or suspending the health care provider:  
90 *Provided*, That nothing in this subsection shall prohibit  
91 payment by the executive director or self-insured em-  
92 ployer to a suspended or terminated health care provider  
93 for medical services rendered where the medical services

94 were rendered to an injured employee in an emergency  
95 situation. The suspended or terminated provider may not  
96 make any charge or charges for any services provided  
97 against the injured employee unless the injured employee,  
98 before any services are rendered, is given notice by the  
99 provider in writing that the provider does not participate  
100 in the workers' compensation program and that the  
101 injured employee will be solely responsible for all pay-  
102 ments to the provider and unless the injured employee also  
103 signs a written consent, before any services are rendered,  
104 to make payment directly and to waive any right to  
105 reimbursement from the executive director or the self-  
106 insured employer. The written consent and waiver signed  
107 by the injured employee shall be filed by the provider with  
108 the executive director and shall be made a part of the  
109 claim file.

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

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

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

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

**§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.**



1 (a) In case the personal injury causes death, reasonable  
2 funeral or cemetery expense, in an amount to be fixed,  
3 from time to time, by the commission shall be paid from  
4 the fund, payment to be made to the persons who have  
5 furnished the services and supplies, or to the persons who  
6 have advanced payment for the services and supplies, as  
7 the commission may determine proper, in addition to any  
8 award made to the employee's dependents.

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

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

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

28 (c) Any person who knowingly and willfully seeks or  
29 receives payment of funeral expenses in excess of the  
30 amount fixed by the commission without satisfying both  
31 of the requirements of subsection (b) of this section is  
32 guilty of a misdemeanor and, upon conviction thereof,  
33 shall be fined three thousand dollars or confined in a  
34 county or regional jail for a definite term of confinement  
35 of twelve months, or both.

**§23-4-5. Benefits for first three days after injury.**

1 If the period of disability does not last longer than three  
2 days from the day the employee leaves work as the result  
3 of the injury, no award shall be allowed, except the  
4 disbursements provided for in the two next preceding  
5 sections, but if the period of disability lasts longer than  
6 seven days from the day the employee leaves work as a  
7 result of the injury, an award shall be allowed for the first  
8 three days of such disability.

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

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

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

12 (b) For all awards made on and after the effective date of  
13 the amendment and reenactment of this section during the  
14 year two thousand three, if the injury causes temporary  
15 total disability, the employee shall receive during the  
16 continuance of the disability a maximum weekly benefit to  
17 be computed on the basis of sixty-six and two-thirds  
18 percent of the average weekly wage earnings, wherever  
19 earned, of the injured employee, at the date of injury, not  
20 to exceed one hundred percent of the average weekly wage  
21 in West Virginia: *Provided*, That in no event shall an  
22 award for temporary total disability be subject to annual  
23 adjustments resulting from changes in the average weekly  
24 wage in West Virginia: *Provided, however*, in the case of a  
25 claimant whose award was granted prior to the effective

26 date of the amendment and reenactment of this section  
27 during the year two thousand three, the maximum benefit  
28 rate shall be the rate applied under the prior enactment of  
29 this subsection which was in effect at the time the injury  
30 occurred. The minimum weekly benefits paid under this  
31 subdivision shall not be less than thirty-three and one-  
32 third percent of the average weekly wage in West Virginia,  
33 except as provided in sections six-d and nine of this  
34 article. In no event, however, shall the minimum weekly  
35 benefits exceed the level of benefits determined by use of  
36 the applicable federal minimum hourly wage; *Provided*  
37 *further*, That any claimant receiving permanent total  
38 disability benefits, permanent partial disability benefits or  
39 dependents' benefits prior to the first day of July, one  
40 thousand nine hundred ninety-four, shall not have his or  
41 her benefits reduced based upon the requirement in this  
42 subdivision that the minimum weekly benefit shall not  
43 exceed the applicable federal minimum hourly wage.

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

58 (d) For all awards of permanent total disability benefits  
59 that are made on or after the second day of February, one  
60 thousand nine hundred ninety-five, including those claims  
61 in which a request for an award was pending before the  
62 division or which were in litigation but not yet submitted

63 for a decision, then benefits shall be payable until the  
64 claimant attains the age necessary to receive federal old  
65 age retirement benefits under the provisions of the Social  
66 Security Act, 42 U. S. C. §401 and 402, in effect on the  
67 effective date of this section. The claimant shall be paid  
68 benefits so as not to exceed a maximum benefit of sixty-  
69 six and two-thirds percent of the claimant's average  
70 weekly wage earnings, wherever earned, at the time of the  
71 date of injury not to exceed one hundred percent of the  
72 average weekly wage in West Virginia. The minimum  
73 weekly benefits paid under this section shall be as is  
74 provided for in subdivision (b) of this section. In all claims  
75 in which an award for permanent total disability benefits  
76 was made prior to the second day of February, one thou-  
77 sand nine hundred ninety-five, the awards shall continue  
78 to be paid at the rate in effect prior to the effective date of  
79 the amendment and reenactment of this section in the year  
80 two thousand three: *Provided*, That the provisions of  
81 sections one through eight, inclusive, article four-a of this  
82 chapter shall be applied thereafter to all prior awards that  
83 were previously subject to its provisions. A single or  
84 aggregate permanent disability of eighty-five percent or  
85 more entitles the employee to a rebuttable presumption of  
86 a permanent total disability for the purpose of paragraph  
87 (2), subdivision (n) of this section: *Provided, however*, That  
88 the claimant must also be at least fifty percent medically  
89 impaired upon a whole body basis or has sustained a  
90 thirty-five percent statutory disability pursuant to the  
91 provisions of subdivision (f) of this section. The presump-  
92 tion may be rebutted if the evidence establishes that the  
93 claimant is not permanently and totally disabled pursuant  
94 to subdivision (n) of this section. Under no circumstances  
95 may the commission grant an additional permanent  
96 disability award to a claimant receiving a permanent total  
97 disability award: *Provided further*, That if any claimant  
98 thereafter sustains another compensable injury and has  
99 permanent partial disability resulting from the injury, the  
100 total permanent disability award benefit rate shall be

101 computed at the highest benefit rate justified by any of the  
102 compensable injuries.

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

124 (2) If a claimant is released by his or her treating physi-  
125 cian to return to work at the job he or she held before the  
126 occupational injury occurred and if the claimant's  
127 preinjury employer does not offer the preinjury job or a  
128 comparable job to the employee when a position is avail-  
129 able to be offered, the award for the percentage of partial  
130 disability shall be computed on the basis of six weeks of  
131 compensation for each percent of disability.

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

135 (f) If the injury results in the total loss by severance of  
136 any of the members named in this subdivision, the per-

137 centage of disability shall be determined by the percentage  
138 of disability, specified in the following table:

139 The loss of a great toe shall be considered a ten percent  
140 disability.

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

143 The loss of other toes shall be considered a four percent  
144 disability.

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

147 The loss of all toes shall be considered a twenty-five  
148 percent disability.

149 The loss of forepart of foot shall be considered a thirty  
150 percent disability.

151 The loss of a foot shall be considered a thirty-five  
152 percent disability.

153 The loss of a leg shall be considered a forty-five percent  
154 disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

210 For the partial loss of hearing in one or both ears, the  
211 percentage of disability shall be determined by the com-  
212 mission, using as a basis the total loss of hearing in both  
213 ears.

214 If a claimant sustains a compensable injury which  
215 results in the total loss by severance of any of the bodily  
216 members named in this subdivision or dies from sickness  
217 or noncompensable injury before the commission makes  
218 the proper award for the injury, the commission shall  
219 make the award to the claimant's dependents as defined in  
220 this chapter, if any; the payment to be made in the same  
221 installments that would have been paid to claimant if  
222 living: *Provided*, That no payment shall be made to any  
223 surviving spouse of the claimant after his or her remar-  
224 riage and that this liability shall not accrue to the estate of  
225 the claimant and is not subject to any debts of, or charges  
226 against, the estate.

227 (g) If a claimant to whom has been made a permanent  
228 partial award dies from sickness or noncompensable  
229 injury, the unpaid balance of the award shall be paid to  
230 claimant's dependents as defined in this chapter, if any;  
231 the payment to be made in the same installments that



232 would have been paid to claimant if living: *Provided*, That  
233 no payment shall be made to any surviving spouse of the  
234 claimant after his or her remarriage, and that this liability  
235 shall not accrue to the estate of the claimant and is not  
236 subject to any debts of, or charges against, such estate.

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

240 (i) For the purposes of this chapter, with the exception of  
241 those injuries provided for in subdivision (f) of this section  
242 and in section six-b of this article, the degree of permanent  
243 disability other than permanent total disability shall be  
244 determined exclusively by the degree of whole body  
245 medical impairment that a claimant has suffered. For  
246 those injuries provided for in subdivision (f) of this section  
247 and section six-b of this article, the degree of disability  
248 shall be determined exclusively by the provisions of said  
249 subdivision and said section. The occupational pneumoco-  
250 niosis board created pursuant to section eighta of this  
251 article shall premise its decisions on the degree of pulmo-  
252 nary function impairment that claimants suffer solely  
253 upon whole body medical impairment. The workers'  
254 compensation commission shall adopt standards for the  
255 evaluation of claimants and the determination of a claim-  
256 ant's degree of whole body medical impairment. Once the  
257 degree of medical impairment has been determined, that  
258 degree of impairment shall be the degree of permanent  
259 partial disability that shall be awarded to the claimant.  
260 This subdivision is applicable to all injuries incurred and  
261 diseases with a date of last exposure on or after the second  
262 day of February, one thousand nine hundred ninety-five,  
263 to all applications for an award of permanent partial  
264 disability made on and after that date and to all applica-  
265 tions for an award of permanent partial disability that  
266 were pending before the commission or pending in litiga-  
267 tion but not yet submitted for decision on and after that

268 date. The prior provisions of this subdivision remain in  
269 effect for all other claims.

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

297 (1) The executive director shall establish requirements  
298 for the proper completion and support for an application  
299 for permanent total disability benefits within an existing  
300 or a new rule no later than the first day of January, two  
301 thousand four. Upon adoption of the rule by the board of  
302 managers, no issue of permanent total disability may be  
303 referred to the interdisciplinary examining board unless a  
304 properly completed and supported application for perma-

305 nent total disability benefits has been first filed with the  
306 commission. Prior to the referral of any issue to the  
307 interdisciplinary examining board, the commission shall  
308 conduct examinations of the claimant that it finds neces-  
309 sary and obtain all pertinent records concerning the  
310 claimant's medical history and reports of examinations  
311 and forward them to the board at the time of the referral.  
312 The commission shall provide adequate notice to the  
313 employer of the filing of the request for a permanent total  
314 disability award and the employer shall be granted an  
315 appropriate period in which to respond to the request. The  
316 claimant and the employer may furnish all pertinent  
317 information to the board and shall furnish to the board  
318 any information requested by the board. The claimant and  
319 the employer may each submit no more than one report  
320 and opinion regarding each issue present in a given claim.  
321 The employer may have the claimant examined by medical  
322 specialists and vocational rehabilitation specialists:  
323 *Provided*, That the employer is entitled to only one  
324 examination on each issue present in a given claim. Any  
325 additional examinations must be approved by the commis-  
326 sion and shall be granted only upon a showing of good  
327 cause. The reports from all employer-conducted examina-  
328 tions must be filed with the board and served upon the  
329 claimant. The board may request that those persons who  
330 have furnished reports and opinions regarding a claimant  
331 provide it with additional information considered neces-  
332 sary by the board. Both the claimant and the employer, as  
333 well as the commission, may submit reports from experts  
334 challenging or supporting the other reports in the record  
335 regardless of whether or not the expert examined the  
336 claimant or relied solely upon the evidence of record.

337 (2) If the board or a quorum of the board elects to  
338 examine a claimant, the individual members shall conduct  
339 any examinations that are pertinent to each of their  
340 specialties. If a claim presents an issue beyond the exper-  
341 tise of the board, the board may obtain advice or evalua-  
342 tions by other specialists. In addition, if the board of

343 managers determines that the number of applications  
344 pending before the interdisciplinary examining board has  
345 exceeded the level at which the board can review and  
346 make recommendations within a reasonable time, the  
347 board of managers may authorize the executive director to  
348 appoint any additional members to the board that are  
349 necessary to reduce the backlog of applications. The  
350 additional members shall be recommended by the health  
351 care advisory panel. The executive director may make any  
352 appointments he or she chooses from the recommenda-  
353 tions. The additional board members shall not serve a set  
354 term but shall serve until the board of managers deter-  
355 mines that the number of pending applications has been  
356 reduced to an acceptable level.

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

363 (4) In the event the board members elect to examine a  
364 claimant, the board shall prepare a report stating the tests,  
365 examinations, procedures and other observations that  
366 were made, the manner in which each was conducted and  
367 the results of each. The report shall state the findings  
368 made by the board and the reasons for the findings.  
369 Copies of the reports of all examinations made by the  
370 board shall be served upon the parties and the commission.  
371 Each shall be given an opportunity to respond in writing  
372 to the findings and conclusions stated in the reports.

373 (5) The board shall state its initial recommendations to  
374 the commission in writing with an explanation for each  
375 recommendation setting forth the reasons for each. The  
376 recommendations shall be served upon the parties and the  
377 commission and each shall be afforded a thirty-day  
378 opportunity to respond in writing to the board regarding  
379 the board's recommendations. The board shall review any

380 responses and issue its final recommendations. The final  
381 recommendations shall be effectuated by the entry of an  
382 appropriate order by the commission. For all awards for  
383 permanent total disability where the claim was filed on or  
384 after the effective date of the amendment and reenactment  
385 of this section in the year two thousand three, the commis-  
386 sion shall establish the date of onset of the claimant's  
387 permanent total disability as the date when a properly  
388 completed and supported application for permanent total  
389 disability benefits as prescribed in subdivision (1) of this  
390 subsection that results in a finding of permanent total  
391 disability was filed with the commission: *Provided*, That  
392 upon notification of the commission by a claimant or his  
393 or her representative that the claimant seeks to be evalu-  
394 ated for permanent total disability, the commission shall  
395 send the claimant or his or her representative the proper  
396 application form. The commission shall set time limits for  
397 the return of the application. A properly completed and  
398 supported application returned within the time limits set  
399 by the commission shall be treated as if received on the  
400 date the commission was notified the claimant was seeking  
401 evaluation for permanent total disability: *Provided*,  
402 *however*, That notwithstanding any other provision of this  
403 section to the contrary, the onset date may not be sooner  
404 than the date upon which the claimant meets the percent-  
405 age thresholds of prior permanent partial disability that  
406 are established by subsection (n) of this section as a  
407 prerequisite to the claimant's qualification for consider-  
408 ation for a permanent total disability award.

409 (6) Except as noted below, objections pursuant to section  
410 one, article five of this chapter to any order shall be  
411 limited in scope to matters within the record developed  
412 before the workers' compensation commission and the  
413 board and shall further be limited to the issue of whether  
414 the board properly applied the standards for determining  
415 medical impairment, if applicable, and the issue of  
416 whether the board's findings are clearly wrong in view of  
417 the reliable, probative and substantial evidence on the

418 whole record. If either party contends that the claimant's  
419 condition has changed significantly since the review  
420 conducted by the board, the party may file a motion with  
421 the administrative law judge, together with a report  
422 supporting that assertion. Upon the filing of the motion,  
423 the administrative law judge shall cause a copy of the  
424 report to be sent to the examining board asking the board  
425 to review the report and provide comments if the board  
426 chooses within sixty days of the board's receipt of the  
427 report. The board may either supply comments or, at the  
428 board's discretion, request that the claim be remanded to  
429 the board for further review. If remanded, the claimant is  
430 not required to submit to further examination by the  
431 employer's medical specialists or vocational rehabilitation  
432 specialists. Following the remand, the board shall file its  
433 recommendations with the administrative law judge for  
434 his or her review. If the board elects to respond with  
435 comments, the comments shall be filed with the adminis-  
436 trative law judge for his or her review. Following the  
437 receipt of either the board's recommendations or com-  
438 ments, the administrative law judge shall issue a written  
439 decision ruling upon the asserted change in the claimant's  
440 condition. No additional evidence may be introduced  
441 during the review of the objection before the office of  
442 judges or elsewhere on appeal: *Provided*, That each party  
443 and the commission may submit one written opinion on  
444 each issue pertinent to a given claim based upon a review  
445 of the evidence of record either challenging or defending  
446 the board's findings and conclusions. Thereafter, based  
447 upon the evidence of record, the administrative law judge  
448 shall issue a written decision containing his or her findings  
449 of fact and conclusions of law regarding each issue in-  
450 volved in the objection.

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

454 (l) Except as otherwise specifically provided in this  
455 chapter, temporary total disability benefits payable under

456 subdivision (b) of this section shall not be deductible from  
457 permanent partial disability awards payable under  
458 subdivision (e) or (f) of this section. Compensation, either  
459 temporary total or permanent partial, under this section  
460 shall be payable only to the injured employee and the right  
461 to the compensation shall not vest in his or her estate,  
462 except that any unpaid compensation which would have  
463 been paid or payable to the employee up to the time of his  
464 or her death, if he or she had lived, shall be paid to the  
465 dependents of the injured employee if there are any  
466 dependents at the time of death.

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

469 Loss of both eyes or the sight thereof.

470 Loss of both hands or the use thereof.

471 Loss of both feet or the use thereof.

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

473 (n) (1) Other than for those injuries specified in subdivi-  
474 sion (m) of this section, in order to be eligible to apply for  
475 an award of permanent total disability benefits for all  
476 injuries incurred and all diseases, including occupational  
477 pneumoconiosis, regardless of the date of last exposure, on  
478 and after the effective date of the amendment and  
479 reenactment of this section during the year two thousand  
480 three a claimant: (A) Must have been awarded the sum of  
481 fifty percent in prior permanent partial disability awards;  
482 (B) must have suffered a single occupational injury or  
483 disease which results in a finding by the commission that  
484 the claimant has suffered a medical impairment of fifty  
485 percent; or (C) has sustained a thirty-five percent statutory  
486 disability pursuant to the provisions of subdivision (f) of  
487 this section. Upon filing an application, the claim will be  
488 reevaluated by the examining board pursuant to subdivi-  
489 sion (i) of this section to determine if the claimant has  
490 suffered a whole body medical impairment of fifty percent

491 or more resulting from either a single occupational injury  
492 or occupational disease or a combination of occupational  
493 injuries and occupational diseases or has sustained a  
494 thirty-five percent statutory disability pursuant to the  
495 provisions of subdivision (f) of this section. A claimant  
496 whose prior permanent partial disability awards total  
497 eighty-five percent or more shall also be examined by the  
498 board and must be found to have suffered a whole body  
499 medical impairment of fifty percent in order for his or her  
500 request to be eligible for further review. The examining  
501 board shall review the claim as provided for in subdivision  
502 (j) of this section. If the claimant has not suffered whole  
503 body medical impairment of at least fifty percent or has  
504 sustained a thirty-five percent statutory disability pursu-  
505 ant to the provisions of subdivision (f) of this section, the  
506 request shall be denied. Upon a finding that the claimant  
507 has a fifty percent whole body medical impairment or has  
508 sustained a thirty-five percent statutory disability pursu-  
509 ant to the provisions of subdivision (f) of this section, the  
510 review of the application continues as provided for in the  
511 following paragraph of this subdivision. Those claimants  
512 whose prior permanent partial disability awards total  
513 eighty-five percent or more and who have been found to  
514 have a whole body medical impairment of at least fifty  
515 percent or have sustained a thirty-five percent statutory  
516 disability pursuant to the provisions of subdivision (f) of  
517 this section are entitled to the rebuttable presumption  
518 created pursuant to subdivision (d) of this section for the  
519 remaining issues in the request.

520 (2) For all awards made on or after the effective date of  
521 the amendment and reenactment of this section during the  
522 year two thousand three, disability which renders the  
523 injured employee unable to engage in substantial gainful  
524 activity requiring skills or abilities which can be acquired  
525 or which are comparable to those of any gainful activity in  
526 which he or she has previously engaged with some regular-  
527 ity and over a substantial period of time shall be consid-  
528 ered in determining the issue of total disability. The



529 comparability of preinjury income to post-disability  
530 income will not be a factor in determining permanent total  
531 disability. Geographic availability of gainful employment  
532 within a driving distance of seventy-five miles from the  
533 residence of the employee or within the distance from the  
534 residence of the employee to his or her preinjury employ-  
535 ment, whichever is greater, will be a factor in determining  
536 permanent total disability. For any permanent total  
537 disability award made after the amendment and  
538 reenactment of this section in the year two thousand three,  
539 permanent total disability benefits shall cease at age  
540 seventy years. In addition, the vocational standards  
541 adopted pursuant to subsection (m), section seven, article  
542 three of this chapter shall be considered once they are  
543 effective.

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

559 (A) Eighty percent for the first year;

560 (B) Seventy percent for the second year;

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

562 (D) Fifty percent for the fourth year: *Provided*, That in  
563 no event shall the benefits exceed one hundred percent of

564 the average weekly wage in West Virginia. In no event  
565 shall the benefits be subject to the minimum benefit  
566 amounts required by the provisions of subdivision (b) of  
567 this section.

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

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

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

587 (o) To confirm the ongoing permanent total disability  
588 status of the claimant, the commission may elect to have  
589 any recipient of a permanent total disability award  
590 undergo one independent medical examination during  
591 each of the first five years that the permanent total  
592 disability award is paid and one independent medical  
593 examination during each three-year period thereafter until  
594 the claimant reaches the age of seventy years: *Provided,*  
595 That the commission may elect to have any recipient of a  
596 permanent total disability award under the age of fifty  
597 years undergo one independent medical examination  
598 during each year that the permanent total disability award  
599 is paid until the recipient reaches the age of fifty years,

600 and thereafter one independent medical examination  
601 during each three-year period thereafter until the claimant  
602 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.**

1 If an employee is found to be permanently disabled due  
2 to occupational pneumoconiosis, as defined in section one  
3 of this article, the percentage of permanent disability is  
4 determined by the degree of medical impairment that is  
5 found by the occupational pneumoconiosis board. The  
6 commission shall enter an order setting forth the findings  
7 of the occupational pneumoconiosis board with regard to  
8 whether the claimant has occupational pneumoconiosis  
9 and the degree of medical impairment, if any, resulting  
10 therefrom. That order is the final decision of the commis-  
11 sion for purposes of section one, article five of this chapter.  
12 If a decision is objected to, the office of judges shall affirm  
13 the decision of the occupational pneumoconiosis board  
14 made following hearing unless the decision is clearly  
15 wrong in view of the reliable, probative and substantial  
16 evidence on the whole record. Compensation is paid  
17 therefor in the same manner and at the same rate as is  
18 provided for permanent disability under the provisions of  
19 subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n), section  
20 six of this article: *Provided*, That for any employee who  
21 applies for occupational pneumoconiosis benefits whose  
22 award was granted on or after the effective date of the  
23 amendment and reenactment of this section during the  
24 year two thousand three, there shall be no permanent  
25 partial disability awarded based solely upon a diagnosis of  
26 occupational pneumoconiosis, it being the intent of the  
27 Legislature to eliminate any permanent partial disability  
28 awards for occupational pneumoconiosis without a  
29 specific finding of measurable impairment.

30 If the employee dies from occupational pneumoconiosis,  
31 the benefits shall be as provided for in section ten of this  
32 article; as to the benefits sections eleven to fourteen,  
33 inclusive, of this article apply.

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

39 The provisions of section sixteen, article four of this  
40 chapter and sections two, three, four and five, article five  
41 of this chapter providing for the further adjustment of  
42 claims are applicable to the claim of any claimant who  
43 receives a permanent partial disability award for occupa-  
44 tional pneumoconiosis.

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

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

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

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

16 (2) The percent of monaural hearing impairment for the  
17 injured ear shall be calculated by multiplying by one and  
18 six-tenths percent the difference by which the aforemen-

19 tioned average decibel loss exceeds twenty-seven and one-  
20 half decibels, up to a maximum of one hundred percent  
21 hearing impairment, which maximum is reached at ninety  
22 decibels; and

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

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

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

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

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

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

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

50 (e) An additional amount of permanent partial disability  
51 shall be granted for impairment of speech discrimination,  
52 if any, to determine the additional amount for binaural

53 impairment, the percentage of speech discrimination in  
 54 each ear shall be added together and the result divided by  
 55 two to calculate the average percentage of speech discrim-  
 56 ination, and the permanent partial disability shall be  
 57 ascertained by reference to the percentage of permanent  
 58 partial disability in the table below on the line with the  
 59 percentage of speech discrimination obtained. To deter-  
 60 mine the additional amount for monaural impairment, the  
 61 permanent partial disability shall be ascertained by  
 62 reference to the percentage of permanent partial disability  
 63 in the table below on the line with the percentage of  
 64 speech discrimination in the injured ear.

65 **TABLE**

66 67 % of Speech Discrimination	% of Permanent Partial Disability
68 90% and up to and including 100%	0%
69 80% and up to but not including 90%	1%
70 70% and up to but not including 80%	3%
71 60% and up to but not including 70%	4%
72 0% and up to but not including 60%	5%

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

75 (g) An application for benefits alleging a noise-induced  
 76 hearing loss shall set forth the name of the employer or  
 77 employers and the time worked for each. The commission  
 78 shall allocate to and divide any charges resulting from the  
 79 claim among the employers with whom the claimant  
 80 sustained exposure to hazardous noise for as much as sixty  
 81 days during the period of three years immediately preced-  
 82 ing the date of last exposure. The allocation is based upon  
 83 the time of exposure with each employer. In determining  
 84 the allocation, the commission shall consider all the time  
 85 of employment by each employer during which the claim-  
 86 ant was exposed and not just the time within the three-  
 87 year period, under the same allocation as is applied in  
 88 occupational pneumoconiosis cases.

89 (h) The commission shall provide, consistent with current  
90 practice, for prompt referral the claims for evaluation, for  
91 all medical reimbursement and for prompt authorization  
92 of hearing enhancement devices.

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

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

1 (a) For purposes of this section, a part-time employee  
2 means an employee who, at the date of injury, is custom-  
3 arily employed twenty-five hours per week or less on a  
4 regular basis and is classified by the employer as a part-  
5 time employee: *Provided*, That the term “part-time  
6 employee” shall not include an employee who regularly  
7 works more than twenty-five hours per week for the  
8 employer, nor shall it include an employee who regularly  
9 works for more than one employer and whose regular  
10 combined working hours total more than twenty-five  
11 hours per week when that employee is rendered unable to  
12 perform the duties of his or her employment as a result of  
13 the injury, nor shall it include any employee in the con-  
14 struction industry who works less than twenty-five hours  
15 per week.

16 (b) For purposes of establishing temporary total disabil-  
17 ity weekly benefits pursuant to subdivision (b), section six  
18 of this article for part-time employees, the “average  
19 weekly wage earnings, wherever earned, of the injured  
20 person at the date of injury” shall be computed based upon  
21 the best average weekly gross pay, wherever earned, which  
22 is received by the employee during the best quarter of  
23 wages out of the preceding four quarters of wages as  
24 reported to the commission pursuant to subsection (b),  
25 section two, article two of this chapter: *Provided*, That for  
26 part-time employees who have been employed less than

27 two months but more than one week prior to the date of  
28 injury or any employee whose wages have not yet been  
29 reported to the commission, the average weekly wage  
30 earnings shall be calculated based upon the average gross  
31 earnings in the weeks actually worked: *Provided, however,*  
32 That for part-time employees who have been employed one  
33 week or less, the average weekly wage earnings shall be  
34 calculated based upon the average weekly wage prevailing  
35 for the same or similar part-time employment at the time  
36 of injury except that when an employer has agreed to pay  
37 a certain hourly wage to a part-time employee, the average  
38 weekly wage shall be computed by multiplying the hourly  
39 wage by the regular numbers of hours contracted to be  
40 worked each week: *Provided further,* That notwithstand-  
41 ing any provision of this article to the contrary, no part-  
42 time employee shall receive temporary total disability  
43 benefits greater than his or her average weekly wage  
44 earnings as so calculated.

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

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

1 (a) The Legislature hereby finds and declares that two of  
2 the primary objectives of the workers' compensation  
3 system established by this chapter are to provide benefits  
4 to an injured claimant promptly and to effectuate his or  
5 her return to work at the earliest possible time; that the  
6 prompt dissemination of medical information to the  
7 commission and employer as to diagnosis, treatment and  
8 recovery is essential if these two objectives are to be  
9 achieved; that claimants are increasingly burdened with  
10 the task of contacting their treating physicians to request



11 the furnishing of detailed medical information to the  
12 commission and their employers; that the commission is  
13 increasingly burdened with the administrative responsibility  
14 of providing copies of medical reports to the employer  
15 involved, whereas in other states the employer can obtain  
16 the necessary medical information direct from the treating  
17 physician; that much litigation is occasioned in this state  
18 because of a lack of medical information having been  
19 received by the employer as to the continuing disability of  
20 a claimant; and that detailed narrative reports from the  
21 treating physician are often necessary in order for the  
22 commission, the claimant's representatives and the  
23 employer to evaluate a claim and determine whether  
24 additional or different treatment is indicated.

25 (b) In view of the foregoing findings, a claimant irrevocably  
26 agrees by the filing of his or her application for  
27 benefits that any physician may release to and orally  
28 discuss with the claimant's employer, or its representative,  
29 or with a representative of the commission, from time to  
30 time, the claimant's medical history and any medical  
31 reports pertaining to the occupational injury or disease  
32 and to any prior injury or disease of the portion of the  
33 claimant's body to which a medical impairment is alleged  
34 containing detailed information as to the claimant's  
35 condition, treatment, prognosis and anticipated period of  
36 disability and dates as to when the claimant will reach or  
37 has reached his or her maximum degree of improvement or  
38 will be or was released to return to work. For the exclusive  
39 purposes of this chapter, the patient-physician  
40 privilege of confidentiality is waived with regard to the  
41 physician's providing this medical information to the  
42 commission, the employer or to the employer's representative.  
43 Whenever a copy of any medical report is obtained  
44 by the employer or its representative and the physician has  
45 not also forwarded a copy of the medical report to the  
46 commission, the employer shall forward a copy of the  
47 medical report to the commission within ten days from the  
48 date the employer received the medical report from the  
49 physician.

**§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority; suspension of benefits.**

1 (a) The Legislature hereby finds and declares that  
2 injured claimants should receive the type of treatment  
3 needed as promptly as possible; that overpayments of  
4 benefits with the resultant hardship created by the re-  
5 quirement of repayment should be minimized; and that to  
6 achieve these two objectives it is essential that the com-  
7 mission establish and operate a systematic program for the  
8 monitoring of injury claims where the disability continues  
9 longer than might ordinarily be expected.

10 (b) In view of the foregoing findings, the commission, in  
11 consultation with the health care advisory panel, shall  
12 establish guidelines as to the anticipated period of disabili-  
13 ty for the various types of injuries. Each injury claim in  
14 which temporary total disability continues beyond the  
15 anticipated period of disability established for the injury  
16 involved shall be reviewed by the commission. If satisfied,  
17 after reviewing the medical evidence, that the claimant  
18 would not benefit by an independent medical evaluation,  
19 the commission shall mark the claim file accordingly and  
20 shall diary the claim file as to the next date for required  
21 review which shall not exceed sixty days. If the commis-  
22 sion concludes that the claimant might benefit by an  
23 independent medical evaluation, the commission shall  
24 proceed as specified in subsections (d) and (e) of this  
25 section.

26 (c) When the authorized treating physician concludes  
27 that the claimant has either reached his or her maximum  
28 degree of improvement or is ready for disability evalua-  
29 tion, or when the claimant has returned to work, the  
30 authorized treating physician may recommend a perma-

31 nent partial disability award for residual impairment  
32 relating to and resulting from the compensable injury, and  
33 the following provisions govern and control:

34 (1) If the authorized treating physician recommends a  
35 permanent partial disability award of fifteen percent or  
36 less, the commission shall enter an award of permanent  
37 partial disability benefits based upon the recommendation  
38 and all other available information. The claimant's  
39 entitlement to temporary total disability benefits ceases  
40 upon the entry of the award unless previously terminated  
41 under the provisions of subsection (e) of this section.

42 (2) If, however, the authorized treating physician  
43 recommends a permanent partial disability award in  
44 excess of fifteen percent, or recommends a permanent total  
45 disability award, the claimant's entitlement to temporary  
46 total disability benefits ceases upon the receipt by the  
47 commission of the medical report. The commission shall  
48 refer the claimant to a physician or physicians of the  
49 commission's selection for independent evaluation prior to  
50 the entry of a permanent disability award: *Provided*, That  
51 unless the claimant has returned to work, the claimant  
52 shall thereupon receive benefits which shall be at the  
53 permanent partial disability rate as provided in subdivi-  
54 sion (e), section six of this article until the entry of a  
55 permanent disability award or until the claimant returns  
56 to work. The amount of benefits paid prior to the receipt  
57 of the independent evaluation report shall be considered  
58 and determined to be payment of the permanent disability  
59 award granted, if any. In the event that benefits actually  
60 paid exceed the amount granted by the permanent partial  
61 disability award, the claimant is entitled to no further  
62 benefits by the award and the excess paid shall be an  
63 overpayment. For all awards made or nonawarded partial  
64 benefits paid the commission or self-insured employer may  
65 only recover the amount of overpaid benefits or expenses  
66 by withholding, in whole or in part, future disability  
67 benefits payable to the individual in the same or other

68 claims and credit the amount against the overpayment  
69 until it is repaid in full.

70 (d) When the commission concludes that an independent  
71 medical evaluation is indicated, or that a claimant may be  
72 ready for disability evaluation in accordance with other  
73 provisions of this chapter, the commission shall refer the  
74 claimant to a physician or physicians of the commission's  
75 selection for examination and evaluation. If the physician  
76 or physicians selected recommend continued, additional or  
77 different treatment, the recommendation shall be relayed  
78 to the claimant and the claimant's treating physician and  
79 the recommended treatment may be authorized by the  
80 commission.

81 (e) Notwithstanding any provision in subsection (c) of  
82 this section, the commission shall enter a notice suspend-  
83 ing the payment of temporary total disability benefits but  
84 providing a reasonable period of time during which the  
85 claimant may submit evidence justifying the continued  
86 payment of temporary total disability benefits when:

87 (1) The physician or physicians selected by the commis-  
88 sion conclude that the claimant has reached his or her  
89 maximum degree of improvement;

90 (2) When the authorized treating physician advises the  
91 commission that the claimant has reached his or her  
92 maximum degree of improvement or that he or she is ready  
93 for disability evaluation and when the authorized treating  
94 physician has not made any recommendation with respect  
95 to a permanent disability award as provided in subsection  
96 (c) of this section;

97 (3) When other evidence submitted to the commission  
98 justifies a finding that the claimant has reached his or her  
99 maximum degree of improvement; or

100 (4) When other evidence submitted or otherwise obtained  
101 justifies a finding that the claimant has engaged or is  
102 engaging in abuse, including, but not limited to, physical

103 activities inconsistent with his or her compensable work-  
104 ers' compensation injury.

105 In all cases, a finding by the commission that the claim-  
106 ant has reached his or her maximum degree of improve-  
107 ment terminates the claimant's entitlement to temporary  
108 total disability benefits regardless of whether the claimant  
109 has been released to return to work. Under no circum-  
110 stances shall a claimant be entitled to receive temporary  
111 total disability benefits either beyond the date the claim-  
112 ant is released to return to work or beyond the date he or  
113 she actually returns to work.

114 In the event that the medical or other evidence indicates  
115 that claimant has a permanent disability, unless he or she  
116 has returned to work, the claimant shall thereupon receive  
117 benefits which shall be at the permanent partial disability  
118 rate as provided in subdivision (e), section six of this  
119 article until entry of a permanent disability award,  
120 pursuant to an evaluation by a physician or physicians  
121 selected by the commission, or until the claimant returns  
122 to work. The amount of benefits shall be considered and  
123 determined to be payment of the permanent disability  
124 award granted, if any. In the event that benefits actually  
125 paid exceed the amount granted under the permanent  
126 disability award, the claimant is entitled to no further  
127 benefits by the order.

128 (f) Notwithstanding the anticipated period of disability  
129 established pursuant to the provisions of subsection (b) of  
130 this section, whenever in any claim temporary total  
131 disability continues longer than one hundred twenty days  
132 from the date of injury (or from the date of the last  
133 preceding examination and evaluation pursuant to the  
134 provisions of this subsection or pursuant to the directions  
135 of the commission under other provisions of this chapter),  
136 the commission shall refer the claimant to a physician or  
137 physicians of the commission's selection for examination  
138 and evaluation in accordance with the provisions of  
139 subsection (d) of this section and the provisions of subsec-

140 tion (e) of this section are fully applicable: *Provided*, That  
141 the requirement of mandatory examinations and evalua-  
142 tions pursuant to the provisions of this subsection shall not  
143 apply to any claimant who sustained a brain stem or spinal  
144 cord injury with resultant paralysis or an injury which  
145 resulted in an amputation necessitating a prosthetic  
146 appliance.

147 (g) The provisions of this section are in addition to and  
148 in no way in derogation of the power and authority vested  
149 in the commission by other provisions of this chapter or  
150 vested in the employer to have a claimant examined by a  
151 physician or physicians of the employer's selection and at  
152 the employer's expense, or vested in the claimant or  
153 employer to file a protest, under other provisions of this  
154 chapter.

155 (h) All evaluations and examinations performed by  
156 physicians shall be performed in accordance with the  
157 protocols and procedures established by the health care  
158 advisory panel pursuant to section three e-b of this article:  
159 *Provided*, That the physician may exceed these protocols  
160 when additional evaluation is medically necessary.

161 (i) The commission may suspend benefits being paid to  
162 a claimant if the claimant refuses, without good cause, to  
163 undergo the examinations or needed treatments provided  
164 for in this section until the claimant submits to the exami-  
165 nation or needed treatments. The executive director shall  
166 propose rules for approval by the commission to imple-  
167 ment the provisions of this subsection.

**§23-4-7b. Trial return to work.**

1 (a) The Legislature hereby finds and declares that it is in  
2 the interest of employees, employers and the commission  
3 that injured employees be encouraged to return to work as  
4 quickly as possible after an injury and that appropriate  
5 protections be afforded to injured employees who return  
6 to work on a trial basis.

7 (b) Notwithstanding any other provisions of this chapter  
8 to the contrary, the injured employee shall not have his or  
9 her eligibility to receive temporary total disability benefits  
10 terminated when he or she returns to work on a trial basis  
11 as set forth in this section. An employee is eligible to  
12 return to work on a trial basis when he or she is released  
13 to work on a trial basis by the treating physician.

14 (c) When an injured employee returns to work on a trial  
15 basis, the employer shall provide a trial return-to-work  
16 notification to the commission. Upon receipt of the  
17 notification, the commission shall note the date of the first  
18 day of work pursuant to the trial return and shall continue  
19 the claimant's eligibility for temporary total disability  
20 benefits, but shall temporarily suspend the payment of  
21 temporary total disability benefits during the period  
22 actually worked by the injured employee. The claim shall  
23 be closed on a temporary total disability basis either when  
24 the injured employee or the authorized treating physician  
25 notifies the commission that the injured employee is able  
26 to perform his or her job or automatically at the end of a  
27 period of three months from the date of the first day of  
28 work unless the employee notifies the commission that he  
29 or she is unable to perform the duties of the job, whichever  
30 occurs first. If the injured employee is unable to continue  
31 working due to the compensable injury for a three-month  
32 period, the injured employee shall notify the commission  
33 and temporary total disability benefits shall be reinstated  
34 immediately and he or she shall be referred for a rehabili-  
35 tation evaluation as provided in section nine of this article.  
36 No provision of this section shall be construed to prohibit  
37 the commission from referring the injured employee for  
38 any permanent disability evaluation required or permitted  
39 by any other provision of this article.

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

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

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

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

1 The commission may, after due notice to the employer  
2 and claimant, whenever in the commission's opinion it is  
3 necessary, order a claimant of compensation for a personal  
4 injury other than occupational pneumoconiosis to appear  
5 for examination before a medical examiner or examiners  
6 selected by the commission; and the claimant and em-  
7 ployer, respectively, each have the right to select a physi-  
8 cian of the claimant's or the employer's own choosing and  
9 at the claimant's or the employer's own expense to partici-  
10 pate in the examination. All examinations shall be  
11 performed in accordance with the protocols and proce-  
12 dures established by the health care advisory panel  
13 pursuant to section three-b of this article: *Provided*, That  
14 the physician may exceed these protocols when additional  
15 evaluation is medically necessary. The claimant and  
16 employer shall, respectively, be furnished with a copy of  
17 the report of examination made by the medical examiner  
18 or examiners selected by the commission. The respective  
19 physicians selected by the claimant and employer have the  
20 right to concur in any report made by the medical exam-  
21 iner or examiners selected by the commission, or each may  
22 file with the commission a separate report, which separate  
23 report shall be considered by the commission in passing  
24 upon the claim. If the compensation claimed is for occu-  
25 pational pneumoconiosis, the commission may, after due  
26 notice to the employer, and whenever in the commission's  
27 opinion it is necessary, order a claimant to appear for  
28 examination before the occupational pneumoconiosis  
29 board provided for in section eight-a of this article. In any  
30 case the claimant is entitled to reimbursement for loss of



31 wages, and to reasonable traveling and other expenses  
32 necessarily incurred by him or her in obeying the order.

33 Where the claimant is required to undergo a medical  
34 examination or examinations by a physician or physicians  
35 selected by the employer, as aforesaid or in connection  
36 with any claim which is in litigation, the employer shall  
37 reimburse the claimant for loss of wages, and reasonable  
38 traveling and other expenses in connection with the  
39 examination or examinations, not to exceed the expenses  
40 paid when a claimant is examined by a physician or  
41 physicians selected by the commission.

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

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

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

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

1 The occupational pneumoconiosis board, upon reference  
2 to it by the commission of a case of occupational pneumo-  
3 coniosis, shall notify the employee, or in case he or she is  
4 dead, the claimant, and the employer to appear before the  
5 board at a time and place stated in the notice. If the  
6 employee is living, he or she shall appear before the board  
7 at the time and place specified and submit to the examina-  
8 tion, including clinical and X-ray examinations, required  
9 by the board. If a physician licensed to practice medicine  
10 in the state makes an affidavit that the employee is  
11 physically unable to appear at the time and place desig-  
12 nated by the board, the board shall, on notice to the proper  
13 parties, change the place and time as may reasonably  
14 facilitate the hearing or examination of the employee or  
15 may appoint a qualified specialist in the field of respira-  
16 tory disease to examine the claimant on behalf of the  
17 board. The employee, or in case he or she is dead, the  
18 claimant, and employer shall also produce as evidence to  
19 the board all reports of medical and X-ray examinations  
20 which may be in their respective possession or control,  
21 showing the past or present condition of the employee. If  
22 the employee is dead, the notice of the board shall further  
23 require that the claimant produce necessary consents and  
24 permits so that an autopsy may be performed, if the board

25 so directs. When in the opinion of the board an autopsy is  
26 considered necessary accurately and scientifically to  
27 ascertain and determine the cause of death, the autopsy  
28 examination shall be ordered by the board, which shall  
29 designate a duly licensed physician, a pathologist or any  
30 other specialists determined necessary by the board, to  
31 make the examination and tests to determine the cause of  
32 death and certify his or her or their written findings, in  
33 triplicate, to the board. The findings shall be public  
34 records. In the event that a claimant for compensation for  
35 the death refuses to consent and permit the autopsy to be  
36 made, all rights for compensation are forfeited.

37 The employee, or if he or she be dead, the claimant, and  
38 the employer, shall be entitled to be present at all exami-  
39 nations conducted by the board and to be represented by  
40 attorneys and physicians.

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

1 (a) The occupational pneumoconiosis board, as soon as  
2 practicable, after it has completed its investigation, shall  
3 make its written report, to the commission of its findings  
4 and conclusions on every medical question in controversy  
5 and the commission shall send one copy of the report to  
6 the employee or claimant and one copy to the employer.  
7 The board shall also return to and file with the commission  
8 all the evidence as well as all statements under oath, if  
9 any, of the persons who appeared before it on behalf of the  
10 employee or claimant, or employer, and also all medical  
11 reports and X-ray examinations produced by or on behalf  
12 of the employee or claimant, or employer.

13 (b) If it can be shown that the claimant or deceased  
14 employee has been exposed to the hazard of inhaling  
15 minute particles of dust in the course of and resulting from

16 his or her employment for a period of ten years during the  
17 fifteen years immediately preceding the date of his or her  
18 last exposure to such hazard and that the claimant or  
19 deceased employee has sustained a chronic respiratory  
20 disability, it shall be presumed that the claimant is  
21 suffering or the deceased employee was suffering at the  
22 time of his or her death from occupational pneumoconiosis  
23 which arose out of and in the course of his or her employ-  
24 ment. This presumption is not conclusive.

25 (c) The findings and conclusions of the board shall set  
26 forth, among other things, the following:

27 (1) Whether or not the claimant or the deceased em-  
28 ployee has contracted occupational pneumoconiosis and,  
29 if so, the percentage of permanent disability resulting  
30 therefrom;

31 (2) Whether or not the exposure in the employment was  
32 sufficient to have caused the claimant's or deceased  
33 employee's occupational pneumoconiosis or to have  
34 perceptibly aggravated an existing occupational pneumo-  
35 coniosis or other occupational disease; and

36 (3) What, if any, physician appeared before the board on  
37 behalf of the claimant or employer and what, if any,  
38 medical evidence was produced by or on behalf of the  
39 claimant or employer.

40 (d) If either party objects to the whole or any part of the  
41 findings and conclusions of the board, the party shall file  
42 with the commission or, on or after the first day of July,  
43 one thousand nine hundred ninety-one, with the office of  
44 judges, within thirty days from receipt of the copy to that  
45 party, unless for good cause shown the commission or chief  
46 administrative law judge extends the time, the party's  
47 objections to the findings and conclusions of the board in  
48 writing, specifying the particular statements of the board's  
49 findings and conclusions to which such party objects. The  
50 filing of an objection within the time specified is a condi-

51 tion of the right to litigate the findings and therefore  
52 jurisdictional. After the time has expired for the filing of  
53 objections to the findings and conclusions of the board, the  
54 commission or administrative law judge shall proceed to  
55 act as provided in this chapter. If after the time has  
56 expired for the filing of objections to the findings and  
57 conclusions of the board no objections have been filed, the  
58 report of a majority of the board of its findings and  
59 conclusions on any medical question shall be taken to be  
60 plenary and conclusive evidence of the findings and  
61 conclusions stated in the report. If objection has been filed  
62 to the findings and conclusions of the board, notice of the  
63 objection shall be given to the board, and the members of  
64 the board joining in the findings and conclusions shall  
65 appear at the time fixed by the commission or office of  
66 judges for the hearing to submit to examination and cross-  
67 examination in respect to the findings and conclusions. At  
68 the hearing, evidence to support or controvert the findings  
69 and conclusions of the board shall be limited to examina-  
70 tion and cross-examination of the members of the board  
71 and to the taking of testimony of other qualified physi-  
72 cians and roentgenologists.

73 (e) In the event that a claimant receives a final decision  
74 that he or she has no evidence of occupational pneumoco-  
75 niosis, the claimant is barred for a period of three years  
76 from the date of the occupational pneumoconiosis board's  
77 decision or until his or her employment with the employer  
78 who employed the claimant at the time designated as the  
79 claimant's last date of exposure in the denied claim has  
80 terminated, whichever is sooner, from filing a new claim  
81 or pursuing a previously filed, but unruled upon, claim for  
82 occupational pneumoconiosis or requesting a modification  
83 of any prior ruling finding him or her not to be suffering  
84 from occupational pneumoconiosis. For the purposes of  
85 this subsection, a claimant's employment shall be consid-  
86 ered to be terminated if, for any reason, he or she has not  
87 worked for that employer for a period in excess of ninety  
88 days. Any previously filed, but unruled upon, claim shall

89 be consolidated with the claim in which the board's  
90 decision is made and shall be denied together with the  
91 decided claim. The provisions of this subsection shall not  
92 be applied in any claim where doing so would, in and of  
93 itself, later cause a claimant's claim to be forever barred  
94 by the provisions of section fifteen of this article.

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

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

24 (b) In cases where an employee has sustained a perma-  
25 nent disability, or has sustained an injury likely to result  
26 in temporary disability as determined by the commission,  
27 the commission shall at the earliest possible time deter-  
28 mine whether the employee would be assisted in returning  
29 to remunerative employment with the provision of rehabil-  
30 itation services and if the commission determines that the

31 employee can be physically and vocationally rehabilitated  
32 and returned to remunerative employment by the provi-  
33 sion of rehabilitation services including, but not limited to,  
34 vocational or on-the-job training, counseling, assistance in  
35 obtaining appropriate temporary or permanent work site,  
36 work duties or work hours modification, by the provision  
37 of crutches, artificial limbs or other approved mechanical  
38 appliances, or medicines, medical, surgical, dental or  
39 hospital treatment or other services which the commission  
40 in its sole discretion determines will directly assist the  
41 employee's return to employment, the commission shall  
42 immediately develop a rehabilitation plan for the em-  
43 ployee and, after due notice to the employer, expend an  
44 amount necessary for that purpose: *Provided*, That the  
45 expenditure for vocational rehabilitation shall not exceed  
46 twenty thousand dollars for any one injured employee:  
47 *Provided, however*, That no payment shall be made for  
48 such vocational rehabilitation purposes as provided in this  
49 section unless authorized by the commission prior to the  
50 rendering of the physical or vocational rehabilitation,  
51 except that payments shall be made for reasonable medical  
52 expenses without prior authorization if sufficient evidence  
53 exists which would relate the treatment to the injury and  
54 the attending physician or physicians have requested  
55 authorization prior to the rendering of the treatment:  
56 *Provided further*, That payment for physical rehabilita-  
57 tion, including the purchase of prosthetic devices and  
58 other equipment and training in use of the devices and  
59 equipment, are considered expenses within the meaning of  
60 section three of this article and are subject to the provi-  
61 sions of sections three, three-b and three-c of this article.  
62 The provision of any rehabilitation services may be  
63 pursuant to a rehabilitation plan to be developed and  
64 monitored by a rehabilitation professional for each injured  
65 employee or by such other provider as determined by the  
66 commission. Notwithstanding any other provision of this  
67 section to the contrary, the commission may determine  
68 under rules promulgated by the board of managers that a

69 rehabilitation plan or any component thereof is not  
70 appropriate for an injured employee.

71 (c) In every case in which the commission orders physical  
72 or vocational rehabilitation of a claimant as provided in  
73 this section, the claimant shall, during the time he or she  
74 is receiving any vocational rehabilitation or rehabilitative  
75 treatment that renders him or her totally disabled during  
76 the period of rehabilitation, be compensated on a tempo-  
77 rary total disability basis for that period.

78 (d) In every case in which the claimant returns to gainful  
79 employment as part of a rehabilitation plan, and the  
80 employee's average weekly wage earnings are less than the  
81 average weekly wage earnings earned by the injured  
82 employee at the time of the injury, he or she shall receive  
83 temporary partial rehabilitation benefits calculated as  
84 follows: The temporary partial rehabilitation benefit shall  
85 be seventy percent of the difference between the average  
86 weekly wage earnings earned at the time of the injury and  
87 the average weekly wage earnings earned at the new  
88 employment, both to be calculated as provided in sections  
89 six, six-d and fourteen of this article as the calculation is  
90 performed for temporary total disability benefits, subject  
91 to the following limitations: In no event are the benefits  
92 subject to the minimum benefit amounts required by the  
93 provisions of subdivision (b), section six of this article, nor  
94 may the benefits exceed the temporary total disability  
95 benefits to which the injured employee would be entitled  
96 pursuant to sections six, six-d and fourteen of this article  
97 during any period of temporary total disability resulting  
98 from the injury in the claim: *Provided*, That no temporary  
99 total disability benefits shall be paid for any period for  
100 which temporary partial rehabilitation benefits are paid:  
101 *Provided, however*, That the aggregate award of tempo-  
102 rary total rehabilitation or temporary partial rehabilita-  
103 tion benefits for a single injury for which an award of  
104 temporary total rehabilitation or temporary partial  
105 rehabilitation benefits is made on or after the effective



106 date of the amendment and reenactment of this section in  
107 the year two thousand three shall be for a period not  
108 exceeding fifty-two weeks unless the payment of tempo-  
109 rary total rehabilitation disability benefits is in conjunc-  
110 tion with an approved vocational rehabilitation plan for  
111 retraining, in which event the payment period of tempo-  
112 rary total rehabilitation disability benefits may be ex-  
113 tended for a period not to exceed a total of one hundred  
114 four weeks. The amount of temporary partial rehabilita-  
115 tion benefits payable under this subsection shall be  
116 reviewed every ninety days to determine whether the  
117 injured employee's average weekly wage in the new  
118 employment has changed and, if the change has occurred,  
119 the amount of benefits payable under this subsection shall  
120 be adjusted prospectively. Temporary partial rehabilita-  
121 tion benefits shall only be payable when the injured  
122 employee is receiving vocational rehabilitation services in  
123 accordance with a rehabilitation plan developed under this  
124 section and no payment of temporary partial rehabilita-  
125 tion benefits shall be made after the claimant has received  
126 the vocational training provided under the rehabilitation  
127 plan.

128 (e) The executive director, in consultation with the board  
129 of managers, shall propose for promulgation rules for the  
130 purpose of developing a comprehensive rehabilitation  
131 program which will assist injured workers to return to  
132 suitable gainful employment after an injury in a manner  
133 consistent with the provisions and findings of this section.  
134 The rules shall provide definitions for rehabilitation  
135 facilities and rehabilitation services pursuant to this  
136 section. Notwithstanding any other provision of this  
137 chapter to the contrary, and in addition to the provisions  
138 of section three of this article authorizing employers to  
139 participate in a managed health care plan, including a  
140 managed health care plan that provide physical and  
141 vocational rehabilitation services, an employer may  
142 contract directly with one or more providers of vocational  
143 rehabilitation services to be the employer's preferred

144 provider of vocational rehabilitation services for its  
145 employees who receive injuries compensable under the  
146 provisions of this chapter and the rules promulgated under  
147 this section may require those employees to use the  
148 preferred providers.

**§23-4-9b. Preexisting impairments not considered in fixing amount of compensation.**

1 Where an employee has a definitely ascertainable  
2 impairment resulting from an occupational or a  
3 nonoccupational injury, disease or any other cause,  
4 whether or not disabling, and the employee thereafter  
5 receives an injury in the course of and resulting from his or  
6 her employment, unless the subsequent injury results in  
7 total permanent disability within the meaning of section  
8 one, article three of this chapter, the prior injury, and the  
9 effect of the prior injury, and an aggravation, shall not be  
10 taken into consideration in fixing the amount of compen-  
11 sation allowed by reason of the subsequent injury. Com-  
12 pensation shall be awarded only in the amount that would  
13 have been allowable had the employee not had the preex-  
14 isting impairment. Nothing in this section requires that  
15 the degree of the preexisting impairment be definitely  
16 ascertained or rated prior to the injury received in the  
17 course of and resulting from the employee's employment  
18 or that benefits must have been granted or paid for the  
19 preexisting impairment. The degree of the preexisting  
20 impairment may be established at any time by competent  
21 medical or other evidence. Notwithstanding the foregoing  
22 provisions of this section, if the definitely ascertainable  
23 preexisting impairment resulted from an injury or disease  
24 previously held compensable and the impairment had not  
25 been rated, benefits for the impairment shall be payable to  
26 the claimant by or charged to the employer in whose  
27 employ the injury or disease occurred. The employee shall  
28 also receive the difference, if any, in the benefit rate  
29 applicable in the more recent claim and the prior claim.

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

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

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

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

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

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

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

33 (c) If the deceased employee leaves no wholly dependent  
34 person, but there are partially dependent persons at the  
35 time of death, the payment shall be fifty dollars a month

36 to continue for the portion of the period of six years after  
37 the death, determined by the commission, but no partially  
38 dependent person shall receive compensation payments as  
39 a result of the death of more than one employee.

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

45 (d) "Dependent", as used in this chapter, means a widow,  
46 widower, child under eighteen years of age, or under  
47 twenty-five years of age when a full-time student as  
48 provided in this section, invalid child or posthumous child,  
49 who, at the time of the injury causing death, is dependent,  
50 in whole or in part, for his or her support upon the earn-  
51 ings of the employee, stepchild under eighteen years of  
52 age, or under twenty-five years of age when a full-time  
53 student as provided in this section, child under eighteen  
54 years of age legally adopted prior to the injury causing  
55 death, or under twenty-five years of age when a full-time  
56 student as provided in this section, father, mother, grand-  
57 father or grandmother, who, at the time of the injury  
58 causing death, is dependent, in whole or in part, for his or  
59 her support upon the earnings of the employee; and invalid  
60 brother or sister wholly dependent for his or her support  
61 upon the earnings of the employee at the time of the injury  
62 causing death; and

63 (e) If a person receiving permanent total disability  
64 benefits dies from a cause other than a disabling injury  
65 leaving any dependents as defined in subdivision (d) of this  
66 section, an award shall be made to the dependents in an  
67 amount equal to one hundred four times the weekly  
68 benefit the worker was receiving at the time of his or her  
69 death and be paid either as a lump sum or in periodic  
70 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, who may apportion the benefits  
5 among the dependents in the manner as they consider just  
6 and equitable. Payment to a dependent subsequent in  
7 right may be made if the commission considers proper and  
8 it operates to discharge all other claims for the benefits.

**§23-4-12. Application of 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.

**§23-4-14. Computation of benefits.**

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, in effect at the date of injury, shall be taken  
5 as the basis upon which to compute the benefits.

6 (1) In cases involving occupational pneumoconiosis or  
7 other occupational diseases, the "date of injury" is the  
8 date of the last exposure to the hazards of occupational  
9 pneumoconiosis or other occupational diseases.

10 (2) In computing benefits payable on account of occupa-  
11 tional pneumoconiosis, the commission shall deduct the  
12 amount of all prior workers' compensation benefits paid to  
13 the same claimant on account of silicosis, but a prior  
14 silicosis award shall not, in any event, preclude an award  
15 for occupational pneumoconiosis otherwise payable under  
16 this article.

17 (b) (1) Until the first day of July, one thousand nine  
18 hundred ninety-four, the expression "average weekly wage  
19 earnings, wherever earned, of the injured person, at the

20 date of injury”, within the meaning of this chapter, shall  
21 be computed based upon the daily rate of pay at the time  
22 of the injury or upon the average pay received during the  
23 two months, six months or twelve months immediately  
24 preceding the date of the injury, whichever is most favor-  
25 able to the injured employee, except for the purpose of  
26 computing temporary total disability benefits for part-  
27 time employees pursuant to the provisions of section six-d  
28 of this article.

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

42 (c) The expression “average weekly wage in West  
43 Virginia”, within the meaning of this chapter, is the  
44 average weekly wage in West Virginia as determined by  
45 the commissioner of the bureau of employment programs  
46 in accordance with the provisions of sections ten and  
47 eleven, article six, chapter twenty-one-a of this code and  
48 other applicable provisions of said chapter.

49 (d) In any claim for injuries, including occupational  
50 pneumoconiosis and other occupational diseases, occurring  
51 on or after the first day of July, one thousand nine hun-  
52 dred seventy-one, any award for temporary total, perma-  
53 nent partial or permanent total disability benefits or for  
54 dependent benefits shall be paid at the weekly rates or in  
55 the monthly amount in the case of dependent benefits  
56 applicable to the claimant in effect on the date of the

57 injury. In no event shall an award for permanent total  
58 disability be subject to annual adjustments resulting from  
59 changes in the average weekly wage in West Virginia.

**§23-4-15. Application for benefits.**

1 (a) To entitle any employee or dependent of a deceased  
2 employee to compensation under this chapter, other than  
3 for occupational pneumoconiosis or other occupational  
4 disease, the application for compensation shall be made on  
5 the form or forms prescribed by the commission and filed  
6 with the commission within six months from and after the  
7 injury or death, as the case may be, and unless filed within  
8 the six months period, the right to compensation under  
9 this chapter is forever barred, such time limitation being  
10 hereby declared to be a condition of the right and hence  
11 jurisdictional, and all proofs of dependency in fatal cases  
12 must also be filed with the commission within six months  
13 from and after the death. In case the employee is mentally  
14 or physically incapable of filing the application, it may be  
15 filed by his or her attorney or by a member of his or her  
16 family.

17 (b) To entitle any employee to compensation for occupa-  
18 tional pneumoconiosis under the provisions of this subsec-  
19 tion, the application for compensation shall be made on  
20 the form or forms prescribed by the commission and filed  
21 with the commission within three years from and after the  
22 last day of the last continuous period of sixty days or more  
23 during which the employee was exposed to the hazards of  
24 occupational pneumoconiosis or within three years from  
25 and after a diagnosed impairment due to occupational  
26 pneumoconiosis was made known to the employee by a  
27 physician and unless filed within the three-year period, the  
28 right to compensation under this chapter is forever barred,  
29 such time limitation being hereby declared to be a condi-  
30 tion of the right and hence jurisdictional, or, in the case of  
31 death, the application shall be filed by the dependent of  
32 the employee within one year from and after the em-

33 ployee's death, and such time limitation is a condition of  
34 the right and hence jurisdictional.

35 (c) To entitle any employee to compensation for occupa-  
36 tional disease other than occupational pneumoconiosis  
37 under the provisions of this section, the application for  
38 compensation shall be made on the form or forms pre-  
39 scribed by the commission and filed with the commission  
40 within three years from and after the day on which the  
41 employee was last exposed to the particular occupational  
42 hazard involved or within three years from and after the  
43 employee's occupational disease was made known to him  
44 or her by a physician or which he or she should reasonably  
45 have known, whichever last occurs, and unless filed within  
46 the three-year period, the right to compensation under this  
47 chapter shall be forever barred, such time limitation being  
48 hereby declared to be a condition of the right and there-  
49 fore jurisdictional, or, in case of death, the application  
50 shall be filed as aforesaid by the dependent of the em-  
51 ployee within one year from and after the employee's  
52 death, and such time limitation is a condition of the right  
53 and hence jurisdictional.

**§23-4-15a. Nonresident alien beneficiaries.**

1 Notwithstanding any other provisions of this chapter,  
2 nonresident alien beneficiaries are entitled to the same  
3 benefits as citizens of the United States: *Provided*, That  
4 the commission in its discretion may make, and the  
5 beneficiary shall accept, commutation of the benefits into  
6 a lump sum settlement and payment. Nonresident alien  
7 beneficiaries within the meaning of this section means  
8 persons not citizens of the United States residing outside  
9 of the territorial limits of the United States at the time of  
10 the injury with respect to which benefits are awarded.

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



1 If a claim for occupational pneumoconiosis benefits is  
2 filed by an employee within three years from and after the  
3 last day of the last continuous period of sixty days'  
4 exposure to the hazards of occupational pneumoconiosis,  
5 the commission shall determine whether the claimant was  
6 exposed to the hazards of occupational pneumoconiosis for  
7 a continuous period of not less than sixty days while in the  
8 employ of the employer within three years prior to the  
9 filing of his or her claim, whether in the state of West  
10 Virginia the claimant was exposed to such hazard over a  
11 continuous period of not less than two years during the ten  
12 years immediately preceding the date of his or her last  
13 exposure to the hazard and whether the claimant was  
14 exposed to the hazard over a period of not less than ten  
15 years during the fifteen years immediately preceding the  
16 date of his or her last exposure to the hazard. If a claim  
17 for occupational pneumoconiosis benefits is filed by an  
18 employee within three years from and after the employee's  
19 occupational pneumoconiosis was made known to the  
20 employee by a physician, the commission shall determine  
21 whether the claimant filed his or her application within  
22 that period and whether in the state of West Virginia the  
23 claimant was exposed to the hazard over a continuous  
24 period of not less than two years during the ten years  
25 immediately preceding the date of last exposure to the  
26 hazard and whether the claimant was exposed to the  
27 hazard over a period of not less than ten years during the  
28 fifteen years immediately preceding the date of last  
29 exposure to the hazard. If a claim for occupational  
30 pneumoconiosis benefits is filed by a dependent of a  
31 deceased employee, the commission shall determine  
32 whether the deceased employee was exposed to the  
33 hazards of occupational pneumoconiosis for a continuous  
34 period of not less than sixty days while in the employ of  
35 the employer within ten years prior to the filing of the  
36 claim, whether in the state of West Virginia the deceased  
37 employee was exposed to the hazard over a continuous  
38 period of not less than two years during the ten years

39 immediately preceding the date of his or her last exposure  
40 to the hazard and whether the claimant was exposed to the  
41 hazard over a period of not less than ten years during the  
42 fifteen years immediately preceding the date of his or her  
43 last exposure to the hazard. The commission shall also  
44 determine other nonmedical facts that, in the commission's  
45 opinion, are pertinent to a decision on the validity of the  
46 claim.

47 The commission shall enter an order with respect to  
48 nonmedical findings within ninety days following receipt  
49 by the commission of both the claimant's application for  
50 occupational pneumoconiosis benefits and the physician's  
51 report filed in connection with the claimant's application  
52 and shall give each interested party notice in writing of  
53 these findings with respect to all the nonmedical facts.  
54 The findings and actions of the commission are final unless  
55 the employer, employee, claimant or dependent, within  
56 thirty days after receipt of the notice, objects to the  
57 findings, and unless an objection is filed within the thirty-  
58 day period, the findings are forever final, the time limita-  
59 tion is a condition of the right to litigate the findings and  
60 therefor jurisdictional. Upon receipt of an objection, the  
61 chief administrative law judge shall set a hearing as  
62 provided in section nine, article five of this chapter. In the  
63 event of an objection to the findings by the employer, the  
64 claim shall, notwithstanding the fact that one or more  
65 hearings may be held with respect to the objection, mature  
66 for reference to the occupational pneumoconiosis board  
67 with like effect as if the objection had not been filed. If  
68 the administrative law judge concludes after the protest  
69 hearings that the claim should be dismissed, a final order  
70 of dismissal shall be entered. The final order is subject to  
71 appeal in accordance with the provisions of sections ten  
72 and twelve, article five of this chapter. If the administra-  
73 tive law judge concludes after the protest hearings that the  
74 claim should be referred to the occupational pneumoconio-  
75 sis board for its review, the order entered shall be interloc-  
76 utory only and may be appealed only in conjunction with

77 an appeal from a final order with respect to the findings of  
78 the occupational pneumoconiosis board.

**§23-4-16. Commission's jurisdiction over case continuous;  
modification of finding or order; time limitation  
on awards; reimbursement of claimant for ex-  
penses; reopening cases involving permanent  
total disability; promulgation of rules.**

1 (a) The power and jurisdiction of the commission over  
2 each case is continuing and the commission may, in  
3 accordance with the provisions of this section and after  
4 due notice to the employer, make modifications or changes  
5 with respect to former findings or orders that are justified.  
6 Upon and after the second day of February, one thousand  
7 nine hundred ninety-five, the period in which a claimant  
8 may request a modification, change or reopening of a prior  
9 award that was entered either prior to or after that date  
10 shall be determined by the following subdivisions of this  
11 subsection. Any request that is made beyond that period  
12 shall be refused.

13 (1) Except as provided in section twenty-two of this  
14 article, in any claim which was closed without the entry of  
15 an order regarding the degree, if any, of permanent  
16 disability that a claimant has suffered, or in any case in  
17 which no award has been made, any request must be made  
18 within five years of the closure. During that time period,  
19 only two requests may be filed.

20 (2) Except as stated below, in any claim in which an  
21 award of permanent disability was made, any request must  
22 be made within five years of the date of the initial award.  
23 During that time period, only two requests may be filed.  
24 With regard to those occupational diseases, including  
25 occupational pneumoconiosis, which are medically  
26 recognized as progressive in nature, if any such request is  
27 granted by the commission, a new five-year period begins  
28 upon the date of the subsequent award. With the advice of  
29 the health care advisory panel, the executive director and

30 the board of managers shall by rule designate those  
31 progressive diseases which are customarily the subject of  
32 claims.

33 (3) No further award may be made in fatal cases except  
34 within two years after the death of the employee.

35 (4) With the exception of the items set forth in subsection  
36 (d), section three of this article, in any claim in which  
37 medical or any type of rehabilitation service has not been  
38 rendered or durable medical goods or other supplies have  
39 not been received for a period of five years, no request for  
40 additional medical or any type of rehabilitation benefits  
41 shall be granted nor shall any medical or any type of  
42 rehabilitation benefits or any type of goods or supplies be  
43 paid for by the commission if they were provided without  
44 a prior request. For the exclusive purposes of this subdivi-  
45 sion, medical services and rehabilitation services shall not  
46 include any encounter in which significant treatment was  
47 not performed.

48 (b) In any claim in which an injured employee makes  
49 application for a further period of temporary total disabil-  
50 ity, if the application is in writing and filed within the  
51 applicable time limit stated above, the commission shall  
52 pass upon the request within thirty days of the receipt of  
53 the request. If the decision is to grant the request, the  
54 order shall provide for the receipt of temporary total  
55 disability benefits. In any case in which an injured  
56 employee makes application for a further award of  
57 permanent partial disability benefits or for an award of  
58 permanent total disability benefits, if the application is in  
59 writing and filed within the applicable time limit as stated  
60 above, the commission shall pass upon the request within  
61 thirty days of its receipt and, if the commission determines  
62 that the claimant may be entitled to an award, the com-  
63 mission shall refer the claimant for further examinations  
64 that are necessary.

65 (c) If the application is based on a report of any medical  
66 examination made of the claimant and submitted by the  
67 claimant to the commission in support of his or her  
68 application and the claim is opened for further consider-  
69 ation and additional award is later made, the claimant  
70 shall be reimbursed for the expenses of the examination.  
71 The reimbursement shall be made by the commission to  
72 the claimant, in addition to all other benefits awarded,  
73 upon due proof of the amount thereof being furnished the  
74 commission by the claimant, but shall in no case exceed  
75 the sum fixed pursuant to the commission's schedule of  
76 maximum reasonable fees established under the provisions  
77 of section three of this article.

78 (d) The commission has continuing power and jurisdic-  
79 tion over claims in which permanent total disability  
80 awards have been made after the eighth day of April, one  
81 thousand nine hundred ninety-three.

82 (1) The commission shall continuously monitor perma-  
83 nent total disability awards and may, from time to time,  
84 after due notice to the claimant, reopen a claim for  
85 reevaluation of the continuing nature of the disability and  
86 possible modification of the award. At such times as the  
87 commission may determine, the commission may require  
88 the claimant to provide documents and other information  
89 to the commission, including, but not limited to, tax  
90 returns, financial records and affidavits demonstrating  
91 level of income, recreational activities, work activities,  
92 medications used and physicians or other medical or  
93 rehabilitation providers treating or prescribing medication  
94 or other services for the claimant; require the claimant to  
95 appear under oath before the commission or its duly  
96 authorized representative and answer questions; and  
97 suspend or terminate any benefits of a claimant who  
98 willfully fails to provide the information or appear as  
99 required: *Provided*, That the commission shall develop,  
100 implement and complete a program as soon as reasonably  
101 possible that requires each person receiving permanent

102 total disability benefits on the effective date of the amend-  
103 ment and reenactment of this section in the year two  
104 thousand three, and each person who is awarded those  
105 benefits thereafter, to submit the tax returns and the  
106 affidavit described herein at least once: *Provided, how-*  
107 *ever,* That this requirement does not restrict the commis-  
108 sion's authority to require the information that may be  
109 required herein at such other times as the commission may  
110 determine. The commission may reopen a claim for  
111 reevaluation when, in the commission's sole discretion, it  
112 concludes that there exists good cause to believe that the  
113 claimant no longer meets the eligibility requirements  
114 under subdivision (n), section six of this article. The  
115 eligibility requirements, including any vocational stan-  
116 dards, shall be applied as those requirements are stated at  
117 the time of a claim's reopening.

118 (2) Upon reopening a claim under this subsection, the  
119 commission may take evidence, have the claimant evalu-  
120 ated, make findings of fact and conclusions of law and  
121 shall vacate, modify or affirm the original permanent total  
122 disability award as the record requires. The claimant's  
123 former employer shall not be a party to the reevaluation,  
124 but shall be notified of the reevaluation and may submit  
125 any information to the commission as the employer may  
126 elect. In the event the claimant retains his or her award  
127 following the reevaluation, the claimant's reasonable  
128 attorneys' fees incurred in defending the award shall be  
129 paid by the workers' compensation commission from the  
130 workers' compensation fund. In addition, the workers'  
131 compensation commission shall reimburse a prevailing  
132 claimant for his or her costs in obtaining one evaluation on  
133 each issue during the course of the reevaluation with the  
134 reimbursement being made from the fund. The board of  
135 managers shall adopt criteria for the determination of  
136 reasonable attorneys' fees.

137 (3) This subsection shall not be applied to awards made  
138 under the provisions of subdivision (m), section six of this

139 article. The claimant may seek review of the commission's  
140 final order as otherwise provided for in article five of this  
141 chapter for review of orders granting or denying perma-  
142 nent disability awards.

143 (4) The commission shall establish by rule criteria for  
144 review, reopening and reevaluating a claim under this  
145 subsection. The commission shall at least quarterly  
146 provide a report of the exercise of its authority to continu-  
147 ously monitor permanent total disability awards under  
148 this section to the joint committee on government and  
149 finance and the joint commission on economic develop-  
150 ment.

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

**§23-4-16a. Interest on benefits.**

1 Whenever any award of temporary total, permanent  
2 partial or permanent total disability benefits or dependent  
3 benefits is made on or after the first day of July, one  
4 thousand nine hundred seventy-one, and a protest is filed  
5 to the award or an appeal is taken from the award by an  
6 employer only and not by the claimant or dependent and  
7 the award is not ultimately denied or reduced following  
8 the protest or appeal, the commission shall add interest to  
9 the award at the simple rate of six percent per annum from  
10 the date the award would have been payable had the  
11 protest or appeal not been filed or taken, exclusive of any  
12 period for which a continuance was granted upon motion  
13 of any party other than the protesting or appealing  
14 employer. Any interest payable shall be charged to the  
15 account of the protesting or appealing employer to the  
16 extent that the benefits upon which such interest is  
17 computed are charged to the account of the employer.

**§23-4-17. Commutation of periodical benefits.**

1 The commission, under special circumstances and when  
2 it is considered advisable, may commute periodical  
3 benefits to one or more lump-sum payments. Upon the  
4 application of any claimant who has received an award of  
5 partial or total disability, who is not a citizen of the  
6 United States and desires to reside permanently beyond  
7 the territorial limits of the United States, or upon the  
8 application of an alien dependent of a deceased employee  
9 with respect of whose death award of compensation has  
10 been made, the dependent residing in the territorial limits  
11 of the United States at the time of the decedent's death,  
12 and desiring to reside permanently beyond the territorial  
13 limits of the United States, the commission may commute  
14 into one lump-sum payment the periodical payments to  
15 which the claimant or dependent would be entitled, but at  
16 the rate of one-half the amount that would be payable to  
17 a citizen of the United States under like circumstances.  
18 The lump-sum payment at the rate specified in this section  
19 discharges all liability with respect to the award, but in no  
20 event shall the award be paid until the claimant or de-  
21 pendent has actually arrived and domiciled himself or  
22 herself outside the territorial limits of the United States,  
23 except a sufficient portion of the award to pay transporta-  
24 tion and other necessary expenses.

**§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.**

1 Except as provided by this section, compensation shall  
2 be paid only to the employees or their dependents and is  
3 exempt from all claims of creditors and from any attach-  
4 ment, execution or assignment other than compensation to  
5 counsel for legal services, under the provisions of, and  
6 subject to the limitations contained in section sixteen,  
7 article five of this chapter, and other than for the enforce-  
8 ment of orders for child or spousal support entered  
9 pursuant to the provisions of chapter forty-eight of this  
10 code. Payments may be made in the periodic installments  
11 determined by the commission in each case, but in no



12 event less frequently than semimonthly for any temporary  
13 award and monthly for any permanent award. Payments  
14 for permanent disability shall be paid on or before the  
15 third day of the month in which they are due. In all cases  
16 where compensation is awarded or increased, the amount  
17 of compensation shall be calculated and paid from the date  
18 of disability.

**§23-4-20. Postmortem examinations.**

1 The commission may, after due notice to the employer  
2 and claimant, whenever it considers it necessary, order an  
3 autopsy and may designate a duly licensed physician to  
4 make the postmortem examination or examinations that  
5 are necessary to determine the cause of the deceased  
6 employee's death. The physician shall file with the  
7 commission a written report of his or her findings. The  
8 claimant and the employer, respectively, have the right to  
9 select a physician of his, her or its own choosing and, at  
10 his, her or its own expense, to participate in the postmor-  
11 tem examination. The respective physicians selected by  
12 the claimant and the employer have the right to concur in  
13 any report made by the physician selected by the commis-  
14 sion, or each may file with the commission a separate  
15 report. In any case, including silicosis cases, in which  
16 either the employer or a claimant requests that an autopsy  
17 be performed, the autopsy shall be directed as provided in  
18 this section. In the event that a claimant for compensation  
19 for the death refuses to consent and permit the autopsy to  
20 be made all rights to compensation shall be forfeited.

**§23-4-22. Permanent disability evaluations; limitations; notice.**

1 Notwithstanding any provision in this chapter to the  
2 contrary, any claim which was closed for the receipt of  
3 temporary total disability benefits or which was closed on  
4 a no-lost-time basis and which was more than five years  
5 prior to the effective date of this section shall not be  
6 considered to still be open or the subject for an evaluation  
7 of the claimant for permanent disability merely because an

8 evaluation has not previously been conducted and a  
9 decision on permanent disability has not been made:  
10 *Provided*, That if a request for an evaluation was made in  
11 a claim prior to the twenty-ninth day of March, one  
12 thousand nine hundred ninety-three, the commission shall  
13 have the evaluation performed. In every instance, a claim  
14 shall be a case in which no award has been made for the  
15 purposes of section sixteen of this article. In every claim  
16 closed after the effective date of this section, the commis-  
17 sion shall give notice to the parties of the claimant's right  
18 to a permanent disability evaluation.

**§23-4-23. Permanent total disability benefits; reduction of  
disability benefits; reduction of benefits; applica-  
tion of section; severability.**

1 (a) This section is applicable whenever benefits are being  
2 paid for permanent total disability benefits arising under  
3 subdivision (d), (m) or (n), section six of this article or  
4 under section eight-c of this article. This section is not  
5 applicable to the receipt of temporary total disability  
6 benefits, the receipt of permanent partial disability  
7 benefits, the receipt of benefits by partially or wholly  
8 dependent persons or to the receipt of benefits pursuant to  
9 the provisions of subsection (e), section ten of this article.  
10 This section is not applicable to the receipt of medical  
11 benefits or the payment for medical benefits.

12 (b) Whenever applicable benefits are paid to a benefi-  
13 ciary with respect to the same time period for which  
14 payments under a self-insurance plan, a wage continuation  
15 plan or a disability insurance policy provided by an  
16 employer are also received or being received by the  
17 beneficiary, the applicable benefits shall be reduced by  
18 these amounts:

19 (1) The after-tax amount of the payments received or  
20 being received under a self-insurance plan, a wage contin-  
21 uation plan or under a disability insurance policy provided  
22 by an employer if the employee did not contribute directly

23 to the plan or to the payment of premiums regarding the  
24 disability insurance policy; or

25 (2) The proportional amount, based on the ratio of the  
26 employer's contributions to the total insurance premiums  
27 for the policy period involved, of the after-tax amount of  
28 the payments received or being received by the employee  
29 pursuant to a disability insurance policy provided by an  
30 employer if the employee did contribute directly to the  
31 payment of premiums regarding the disability insurance  
32 policy: *Provided*, That in no event shall applicable benefits  
33 be reduced below the minimum weekly benefits as pro-  
34 vided for in subdivisions (b) and (d), section six of this  
35 article.

36 (c) This section applies to awards of permanent total  
37 disability made after the effective date of this section.

38 (d) The board of managers shall promulgate the appro-  
39 priate rules for the interpretation, processing and enforce-  
40 ment of this section.

41 (e) If any portion of this section or any application of  
42 this section is subsequently found to be unconstitutional  
43 or in violation of applicable law, it shall not affect the  
44 validity of the remainder of this section or the applications  
45 of the section that are not unconstitutional or in violation.

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

1 (a) Notwithstanding any provision of this chapter to the  
2 contrary, except as stated below, no claimant shall be  
3 awarded permanent total disability benefits arising under  
4 subdivision (m) or (n), section six of this article or section  
5 eight-c of this article who terminates active employment  
6 and is receiving full old-age retirement benefits under the  
7 Social Security Act, 42 U. S. C. §401 and 402. Any claim-  
8 ant shall be evaluated only for the purposes of receiving a

9 permanent partial disability award premised solely upon  
10 the claimant's impairments. This subsection is not appli-  
11 cable in any claim in which the claimant has completed  
12 the submission of his or her evidence on the issue of  
13 permanent total disability prior to the later of the follow-  
14 ing: Termination of active employment or the initial  
15 receipt of full old-age retirement benefits under the Social  
16 Security Act. Once the claimant has terminated active  
17 employment and has begun to receive full old-age social  
18 security retirement benefits, the claimant may not produce  
19 additional evidence of permanent total disability before  
20 the commission or the office of judges nor shall the claim  
21 be remanded for the production of the evidence.

22 (b) The workers' compensation commission has the sole  
23 and exclusive jurisdiction to initially hear and decide any  
24 claim or request pertaining, in whole or in part, to subdivi-  
25 sion (d) or (n), section six of this article. Any claim or  
26 request for permanent total disability benefits arising  
27 under said subdivisions shall first be presented to the  
28 commission as part of the initial claim filing or by way of  
29 an application for modification or adjustment pursuant to  
30 section sixteen of this article. The office of judges may  
31 consider a claim only after the commission has entered an  
32 appropriate order.

**§23-4-25. Permanent total disability benefits; reduction of  
disability benefits for wages earned by claimant.**

1 (a) After the eighth day of April, one thousand nine  
2 hundred ninety-three, a reduction in the amount of  
3 benefits as specified in subsection (b) of this section shall  
4 be made whenever benefits are being paid for a permanent  
5 total disability award regardless of when the benefits were  
6 awarded. This section is not applicable to the receipt of  
7 medical benefits or the payment for medical benefits, the  
8 receipt of permanent partial disability benefits, the receipt  
9 of benefits by partially or wholly dependent persons, or to  
10 the receipt of benefits pursuant to the provisions of  
11 subsection (e), section ten of this article. Prior to the

12 application of this section to any claimant, the commission  
13 shall give the claimant notice of the effect of this section  
14 upon a claimant's award if and when the claimant later  
15 earns wages.

16 (b) Whenever applicable benefits are paid to a claimant  
17 with respect to the same time period in which the claimant  
18 has earned wages as a result of his or her employment, the  
19 following reduction in applicable benefits shall be made.  
20 The claimant's applicable monthly benefits and monthly  
21 net wages received from the current employment shall be  
22 added together. If the total exceeds by more than one  
23 hundred twenty percent of the amount of the claimant's  
24 monthly net wages earned during his or her last employ-  
25 ment prior to the award of permanent total disability  
26 benefits, the excess shall be reduced by one dollar for each  
27 two dollars that the claimant's monthly benefits and  
28 monthly net wages exceed the one hundred twenty percent  
29 level: *Provided*, That in no event shall applicable benefits  
30 be reduced below the minimum weekly benefits as pro-  
31 vided for in subdivisions (b) and (d), section six of this  
32 article.

**ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.**

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

1 For the relief of persons who are receiving benefits  
2 pursuant to a permanent total disability award in amounts  
3 less than thirty-three and one-third percent of the average  
4 weekly wage for the state of West Virginia per month, and  
5 for the relief of widows who are receiving benefits on  
6 account of the death of an employee in amounts less than  
7 thirty-three and one-third percent of the average weekly  
8 wage in the state of West Virginia per month, and for the  
9 relief of children of employees deceased before one thou-  
10 sand nine hundred sixty-seven, who are under the age of  
11 twenty-three and who are full-time students, and for the  
12 relief of other persons who are receiving dependents'  
13 benefits on account of the death of an employee in

14 amounts less than the specific monetary amounts set forth  
15 in section ten, article four of this chapter and in effect as  
16 of the first day of July, one thousand nine hundred  
17 seventy-three, there is continued a separate fund, hereto-  
18 fore known as the “Disabled Workmen’s Relief Fund”, and  
19 which shall hereafter be known as the “Disabled Workers’  
20 Relief Fund”, which shall consist of any sums that are,  
21 from time to time, made available to carry out the objects  
22 and purposes of this article. The fund shall be in the  
23 custody of the state treasurer and disbursements from the  
24 fund shall be made upon requisition signed by the execu-  
25 tive director to those persons entitled to participate in the  
26 fund and in such amounts to each participant that are  
27 provided in section three of this article.

**§23-4A-3. Computation of benefits.**

1 Each individual entitled to participate in the disabled  
2 workers’ relief fund is entitled to receive payments with-  
3 out application (except that an application shall be  
4 required under section five of this article) from the fund of  
5 an amount equal to the difference between the amounts set  
6 forth in section one of this article and the amount the  
7 individual is in fact receiving by virtue of and under the  
8 laws of this state. The first payment shall be made concu-  
9 rrently with the payment to him or her of workers’ compen-  
10 sation on the first day of August, one thousand nine  
11 hundred seventy-six, and subsequent payments shall be  
12 made during the period thereafter in which the participant  
13 is entitled to workers’ compensation benefits by virtue of  
14 and under the laws of this state.

**§23-4A-5. Employers providing own system of compensation.**

1 The executive director shall promptly require of each  
2 employer who has elected to pay direct compensation  
3 under the provisions of section nine, article two of this  
4 chapter a verified list of the names and addresses of all  
5 persons to whom the employer is paying workers’ compen-  
6 sation on account of permanent total disability or because

7 of the death of an employee and any evidence respecting  
8 those persons as the executive director may reasonably  
9 consider necessary to determine the eligibility of any  
10 person to participate in the disabled workers' relief fund.  
11 Any person claiming the right to participate in the fund  
12 under the provisions of this section may file his or her  
13 application for participation with the executive director  
14 and shall be accorded a hearing on the application.

**§23-4A-6. Powers of commission over disabled workers' relief fund.**

1 In the investigation and determination of the right of  
2 persons to participate in the disabled workers' relief fund,  
3 the executive director has and may exercise all the powers  
4 which he or she possesses under the other articles of this  
5 chapter. His or her powers and jurisdiction over each case  
6 is continuing, but there shall be no appeal from the com-  
7 mission's decisions to any other body or tribunal. No  
8 attorney, representative or agent of any claimant or  
9 participant is entitled to charge or receive a fee or com-  
10 pensation or gratuity in any form for representing or  
11 assisting or pretending to represent or assist any person to  
12 become a participant in the disabled workers' relief fund.

**§23-4A-8. Disabled workers' relief fund; how funded.**

1 For the purpose of carrying out the provisions of this  
2 article, the board of managers shall transfer annually, out  
3 of the interest earned during the previous year on invest-  
4 ments held by the workers' compensation fund, and out of  
5 the amount assessed against self-insured employers  
6 pursuant to the provisions of section nine, article two of  
7 this chapter an amount estimated by the executive director  
8 to be necessary to carry out the provisions of this article  
9 for one year.

10 The money shall be deposited by the board of managers  
11 in the disabled workers' relief fund, as required by this  
12 article.

**ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.****§23-4B-2. Coal-workers' pneumoconiosis fund established.**

1 For the relief of persons who are entitled to receive  
2 benefits by virtue of Title IV of the federal Coal Mine  
3 Health and Safety Act of 1969, as amended, there is  
4 continued a fund to be known as the coal-workers' pneu-  
5 moconiosis fund, which fund shall be separate from the  
6 workers' compensation fund. The coal-workers' pneumo-  
7 coniosis fund shall consist of premiums and other funds  
8 paid to the fund by employers, subject to the provisions of  
9 Title IV of the federal Coal Mine Health and Safety Act of  
10 1969, as amended, who shall elect to subscribe to the fund  
11 to ensure the payment of benefits required by the act.

12 The state treasurer shall be the custodian of the coal-  
13 workers' pneumoconiosis fund, and all premiums, deposits  
14 or other moneys paid to the fund shall be deposited in the  
15 state treasury to the credit of the coal-workers' pneumoco-  
16 niosis fund. Disbursements from the fund shall be made  
17 upon requisition signed by the executive director of the  
18 workers' compensation commission to those persons  
19 entitled to participate in the fund. The West Virginia state  
20 board of investments may invest any surplus, reserve or  
21 other moneys belonging to the coal-workers' pneumoconi-  
22 osis fund in accordance with article six, chapter twelve of  
23 this code.

**§23-4B-5. Payment of benefits.**

1 Upon receipt of an order of compensation issued pursu-  
2 ant to a claim for benefits filed under the provisions of  
3 Title IV of the federal Coal Mine Health and Safety Act of  
4 1969, as amended, the executive director shall disburse the  
5 coal-workers' pneumoconiosis fund in the amounts and to  
6 the persons as directed by the order.

**§23-4B-6. Coal-workers' pneumoconiosis fund; how funded.**

1 For the purpose of creating the coal-workers' pneumoco-  
2 niosis fund, each employer, who elects to subscribe to the



3 fund, shall pay premiums based upon and being a percent-  
4 age of the payroll of the employer determined by the board  
5 of managers. It is the duty of the board of managers to fix  
6 and maintain the lowest possible rates of premiums  
7 consistent with the maintenance of a solvent fund and the  
8 creation and maintenance of a reasonable surplus after  
9 providing for payment to maturity of all liability insured  
10 pursuant to Title IV of the federal Coal Mine Health and  
11 Safety Act of 1969, as amended. The rates shall be ad-  
12 justed annually or more often as may, in the opinion of the  
13 board of managers, be necessary.

14 The board of managers may by rule classify subscribers  
15 into groups or classes according to the nature of the  
16 hazards incident to the business of the subscribers and  
17 assign premium rates to the subscribers. In addition, the  
18 board of managers may by rule prescribe procedures for  
19 subscription, payroll reporting, premium payment, termi-  
20 nation of subscription, reinstatement and other matters  
21 pertinent to the subscribers' continuing participation in  
22 the coal-workers' pneumoconiosis fund.

**§23-4B-7. Administration.**

1 The coal-workers' pneumoconiosis fund shall be admin-  
2 istered by the executive director of the workers' compen-  
3 sation commission, who shall employ any employees  
4 necessary to discharge his or her duties and responsibili-  
5 ties under this article. All payments of salaries and  
6 expenses of the employees and all expenses peculiar to the  
7 administration of this article shall be made by the state  
8 treasurer from the coal-workers' pneumoconiosis fund  
9 upon requisitions signed by the executive director.

**§23-4B-8b. Transfer of funds to workers' compensation fund.**

1 (a) Notwithstanding any provision of section eight of this  
2 article to the contrary, the assets which were previously  
3 transferred from the coal-workers' pneumoconiosis fund  
4 and held in a separate account may, on or after the first

5 day of July, two thousand three, be expended for workers'  
6 compensation fund liabilities.

7 (b) The Legislature hereby finds and declares that there  
8 is a substantial actuarial surplus in the coal-workers'  
9 pneumoconiosis fund in excess of one hundred seventy  
10 million dollars. The Legislature further finds and declares  
11 that there is a substantial actuarial deficit in the workers'  
12 compensation fund. The executive director shall conduct  
13 an actuarial audit to determine the amount of the actuarial  
14 surplus in the coal-workers' pneumoconiosis fund as of  
15 the thirtieth day of June, two thousand three, and certify  
16 the amount, as of that date, in a written order which  
17 together with the results of the audit shall be a public  
18 record. The executive director shall also obtain a state-  
19 ment from the commission's actuary that a distributable  
20 surplus exists in the coal-workers' pneumoconiosis fund.  
21 When the actuary provides the statement, and notwith-  
22 standing any provision of this article to the contrary, the  
23 executive director shall, by written order, transfer an  
24 amount not to exceed one hundred seventy million dollars  
25 from the coal-workers' pneumoconiosis fund to the work-  
26 ers' compensation fund, which assets shall thereupon  
27 become merged into and consolidated with the workers'  
28 compensation fund and expended for workers' compensa-  
29 tion fund liabilities: *Provided*, That a level of reserve shall  
30 be retained in the coal-workers' pneumoconiosis fund  
31 sufficient within a seventy percent confidence level, on an  
32 actuarial basis, to satisfy the payment of all claims  
33 incurred, including claims which were incurred but not  
34 reported, on or before the thirtieth day of June, two  
35 thousand three. In the event the commission's actuary or  
36 an actuary employed by the board of managers determines  
37 prior to the thirtieth day of June, two thousand six, that  
38 the assets of the coal-workers' pneumoconiosis fund are  
39 not adequate to enable the coal-workers' pneumoconiosis  
40 fund to meet its claim obligations under Title IV of the  
41 federal Coal Mine Health and Safety Act of 1996, as  
42 amended, the executive director shall, upon appropriation

43 of the Legislature, transfer an amount not to exceed fifty  
44 million dollars from the workers' compensation fund to the  
45 coal-workers' pneumoconiosis fund for expenditure to  
46 meet those obligations.

**ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.**

**§23-4C-2. Employers' excess liability fund established.**

1 (a) To provide insurance coverage for employers subject  
2 to this chapter who may be subjected to liability for any  
3 excess of damages over the amount received or receivable  
4 under this chapter, the commission may continue the fund  
5 known as the employers' excess liability fund, which fund  
6 shall be separate from the workers' compensation fund.  
7 The employers' excess liability fund shall consist of  
8 premiums paid to it by employers who may voluntarily  
9 elect to subscribe to the fund for coverage of potential  
10 liability to any person who may be entitled to any excess  
11 of damages over the amount received or receivable under  
12 this chapter.

13 (b) The board of managers may provide for, by the  
14 promulgation of a rule pursuant to section one e a, article  
15 one of this chapter, the continuance, abolition or sale of  
16 the employers' excess liability fund established by section  
17 one of this article. In the event that the fund is to be sold,  
18 the sale shall be conducted through the solicitation of  
19 competitive bids. Any funds that remain after the sale or  
20 abolition of the employers' excess liability fund shall be  
21 paid into and become a part of the workers' compensation  
22 fund to be used for the purposes of that fund. In the event  
23 that the employers' excess liability fund program is  
24 abolished and the remaining liabilities of that program  
25 exceed the amount retained in the employers' excess  
26 liability fund, the excess liability including the costs of  
27 administration shall be paid for from the workers' com-  
28 pensation fund.

**§23-4C-3. Payment of excess damages from fund.**

1 Upon receipt of a final order of a court determining the  
2 liability under section two, article four of this chapter of  
3 a subscribing employer and the amount of the excess of  
4 damages over the amount received or receivable under this  
5 chapter, the executive director shall make disbursements  
6 from the employers' excess liability fund in the amounts  
7 and to the persons as directed by the final order. In the  
8 event of a proposed settlement of a disputed claim against  
9 a subscribing employer, the executive director, upon  
10 approving the settlement upon petition by the subscribing  
11 employer, shall make disbursements from the employers'  
12 excess liability fund in the amounts and to the persons  
13 specified in the approved settlement. In the event of the  
14 settlement of any disputed claim in which one or more of  
15 the persons entitled to the proceeds to be paid pursuant to  
16 the settlement is under a legal disability by reason of age,  
17 mental incapacity or other reason, the settlement, if  
18 required by other provisions of law to be approved by a  
19 circuit court, shall be approved by the circuit court of the  
20 county in which the person under disability is a resident or  
21 in which a civil action could be brought and maintained  
22 upon the claim, in addition to being approved by the  
23 commission as required by this section. The executive  
24 director shall by rule establish criteria and procedures for  
25 the settlement of all disputed claims.

**§23-4C-4. Employers' excess liability fund; how funded.**

1 For the purpose of creating the employers' excess  
2 liability fund, each employer who elects to subscribe to the  
3 fund shall pay premiums based upon and being a percent-  
4 age of the payroll of the employer determined by the board  
5 of managers. It is the duty of the board of managers to fix  
6 and maintain the lowest possible rates or premiums  
7 consistent with the maintenance of a solvent fund. The  
8 premium rates shall be adjusted annually or more often as  
9 may, in the opinion of the board of managers, be neces-  
10 sary.

11 The board of managers shall initially classify subscribers  
12 into groups or classes according to the nature of the

13 unusual hazards incident to the business of the subscribers  
14 as contemplated by section four, article two of this chapter  
15 and assign premium rates to the subscribers. The fixing,  
16 maintaining and adjusting of premium rates and the initial  
17 classification of subscribers into groups or classes pursu-  
18 ant to this section are findings or determinations of fact  
19 and not a legislative rule. In addition, the board of  
20 managers shall by rule prescribe procedures for subscrip-  
21 tion, payroll reporting, premium payment, termination of  
22 subscription, reinstatement, reclassification of groups,  
23 classes or subscribers, the increase or decrease of premi-  
24 ums based upon incidence of liability and amounts  
25 awarded, and other matters pertinent to the subscribers'  
26 continuing participation in the employers' excess liability  
27 fund.

**§23-4C-5. Administration.**

1 The employers' excess liability fund shall be adminis-  
2 tered by the executive director, who shall employ any  
3 employees that are necessary to discharge his or her duties  
4 and responsibilities under this article. All payments of  
5 salaries and expenses of the employees and all expenses  
6 peculiar to the administration of this article shall be made  
7 by the state treasurer from the employers' excess liability  
8 fund upon requisitions signed by the executive director.

**ARTICLE 5. REVIEW.**

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

1 (a) The workers' compensation commission may hear and  
2 determine all questions within its jurisdiction. In matters  
3 arising under articles three and four of this chapter, the  
4 commission shall promptly review and investigate all  
5 claims. The parties to a claim shall file the information in  
6 support of their respective positions as they consider  
7 proper. In addition, the commission may develop addi-  
8 tional information that it considers to be necessary in the  
9 interests of fairness to the parties and in keeping with the

10 fiduciary obligations owed to the fund. With regard to any  
11 issue which is ready for a decision, the commission shall  
12 explain the basis of its decisions.

13 (b) Except with regard to interlocutory matters and  
14 those matters set forth in subsection (d) of this section,  
15 upon making any decision, upon making or refusing to  
16 make any award or upon making any modification or  
17 change with respect to former findings or orders, as  
18 provided by section sixteen, article four of this chapter,  
19 the commission shall give notice, in writing, to the em-  
20 ployer, employee, claimant or dependant as the case may  
21 be, of its action. The notice shall state the time allowed for  
22 filing an objection to the finding. The action of the  
23 commission is final unless the employer, employee, claim-  
24 ant or dependant shall, within thirty days after the receipt  
25 of the notice, object in writing, to the finding. Unless an  
26 objection is filed within the thirty-day period, the finding  
27 or action is final. This time limitation is a condition of the  
28 right to litigate the finding or action and hence jurisdic-  
29 tional. Any objection shall be filed with the office of  
30 judges with a copy served upon the commission and other  
31 parties in accordance with the procedures set forth in  
32 sections eight and nine of this article. In all instances  
33 where a self-insured employer or a third-party administra-  
34 tor has made claims decisions as authorized in this chap-  
35 ter, they shall provide claimants and the commission  
36 notice of all claims decisions as provided for by rules for  
37 self-administration promulgated by the board of managers  
38 and shall be bound by each requirement imposed upon the  
39 commission by this article.

40 (c) Where a finding or determination of the commission  
41 is protested only by the employer, and the employer does  
42 not prevail in its protest, and in the event the claimant is  
43 required to attend a hearing by subpoena or agreement of  
44 counsel or at the express direction of the commission or  
45 office of judges, then the claimant in addition to reason-  
46 able traveling and other expenses shall be reimbursed for

47 loss of wages incurred by the claimant in attending the  
48 hearing.

49 (d) The commission or self-insured employer may amend,  
50 correct or set aside any order or decision on any issue  
51 entered by it which, at the time of issuance or any time  
52 thereafter, is discovered to be defective or clearly errone-  
53 ous or the result of mistake, clerical error or fraud, or  
54 otherwise not supported by the evidence. Jurisdiction to  
55 take this action continues until the expiration of two years  
56 from the date of entry of an order unless the order is  
57 sooner affected by appellate action: *Provided*, That  
58 corrective actions in the case of fraud may be taken at any  
59 time.

60 (e) All objections to orders of the commission or self-  
61 insured employers shall be styled in the name of the  
62 workers' compensation commission. All appeals prose-  
63 cuted from the office of judges shall either be in the name  
64 of the workers' compensation commission or shall be  
65 against the workers' compensation commission unless the  
66 parties to the appeal are limited to a claimant and a self-  
67 insured employer. In all actions under this article, the  
68 workers' compensation commission shall be the party in  
69 interest unless the parties to the appeal are limited to a  
70 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 applica-  
2 tion in writing for a further adjustment of his or her claim  
3 under the provisions of section sixteen, article four of this  
4 chapter and the application discloses cause for a further  
5 adjustment, the commission shall, after due notice to the  
6 employer, make the modifications, or changes with respect  
7 to former findings or orders in the claim that are justified.  
8 Any party dissatisfied with any modification or change  
9 made by the commission is, upon proper and timely

10 objection, entitled to a hearing, as provided in section nine  
11 of this article.

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

1 If it appears to the commission that an application filed  
2 under section two of this article fails to disclose a progres-  
3 sion or aggravation in the claimant's condition, or some  
4 other fact or facts which were not previously considered  
5 by the commission in its former findings and which would  
6 entitle the claimant to greater benefits than the claimant  
7 has already received, the commission shall, within a  
8 reasonable time, notify the claimant and the employer that  
9 the application fails to establish a prima facie cause for  
10 reopening the claim. The notice shall be in writing stating  
11 the reasons for denial and the time allowed for objection  
12 to the decision of the commission. The claimant may,  
13 within thirty days after receipt of the notice, object in  
14 writing to the finding. Unless the objection is filed within  
15 the thirty-day period, no objection shall be allowed. This  
16 time limitation is a condition of the right to objection and  
17 hence jurisdictional. Upon receipt of an objection, the  
18 office of judges shall afford the claimant an evidentiary  
19 hearing as provided in section nine of this article.

**§23-5-4. Application by employer for modification of award;  
objection to modification; hearing.**

1 In any case in which an employer makes application in  
2 writing for a modification of any award previously made  
3 to an employee of the employer, the commission shall  
4 make a decision upon the application. If the application  
5 discloses cause for a further adjustment, the commission  
6 shall, after due notice to the employee, make the modifica-  
7 tions or changes with respect to former findings or orders  
8 that are justified. Any party dissatisfied with any modifi-  
9 cation or change made by the commission or by the denial  
10 of an application for modification is, upon proper and  
11 timely objection, entitled to a hearing as provided in  
12 section nine of this article.



**§23-5-5. Refusal of modification; notice; objection.**

1 If in any case it appears to the commission that the  
2 application filed pursuant to section four of this article  
3 fails to disclose some fact or facts which were not previ-  
4 ously considered by the commission in its former findings,  
5 and which would entitle the employer to any modification  
6 of the previous award, the commission shall, within sixty  
7 days from the receipt of the application, notify the claim-  
8 ant and employer that the application fails to establish a  
9 just cause for modification of the award. The notice shall  
10 be in writing stating the reasons for denial and the time  
11 allowed for objection to the decision of the commission.  
12 The employer may, within thirty days after receipt of the  
13 notice, object in writing to the decision. Unless the  
14 objection is filed within the thirty-day period, no objection  
15 shall be allowed. This time limitation is a condition of the  
16 right to objection and hence jurisdictional. Upon receipt  
17 of the objection, the office of judges shall afford the  
18 employer an evidentiary hearing as provided in section  
19 nine of this article.

**§23-5-6. Time periods for objections and appeals; extensions.**

1 Notwithstanding the fact that the time periods set forth  
2 for objections, protests and appeals to or from the workers'  
3 compensation office of judges are jurisdictional, the  
4 periods may be extended or excused upon application of  
5 either party within a period of time equal to the applicable  
6 period by requesting an extension of the time period  
7 showing good cause or excusable neglect, accompanied by  
8 the objection or appeal petition. In exercising discretion  
9 the administrative law judge, appeal board or court, as the  
10 case may be, shall consider whether the applicant was  
11 represented by counsel and whether timely and proper  
12 notice was actually received by the applicant or the  
13 applicant's representative.

**§23-5-7. Compromise and settlement.**

1 With the exception of medical benefits for nonorthopedic  
2 occupational disease claims, the claimant, the employer

3 and the workers' compensation commission may negotiate  
4 a final settlement of any and all issues in a claim wherever  
5 the claim is in the administrative or appellate processes.  
6 Upon entering into an agreement, the parties shall file the  
7 written and executed agreement with the office of judges.  
8 The office of judges shall review the proposed agreement  
9 to determine if it is fair and reasonable to the parties and  
10 shall ensure that each of the parties is fully aware of the  
11 effects of the agreement including what each party is  
12 conceding in exchange for the agreement. If the office of  
13 judges concludes that the agreement is not fair or is not  
14 reasonable or that one of the parties is not fully informed,  
15 the agreement will not be approved. The decision on this  
16 question is not reviewable. If the employer is not active in  
17 the claim, the commission may negotiate a final settlement  
18 of any and all issues in a claim except for medical benefits  
19 for nonorthopedic occupational disease claims with the  
20 claimant. Upon approval of the settlement, it shall be  
21 made a part of the claim record. The office of judges shall  
22 send written notice of the settlement to all parties and,  
23 where appropriate, to the appeal board or the supreme  
24 court of appeals. Except in cases of fraud, no issue that is  
25 the subject of an approved settlement agreement may be  
26 reopened by any party, including the commission. Any  
27 settlement agreement may provide for a lump-sum pay-  
28 ment or a structured payment plan, or any combination  
29 thereof, or any other basis as the parties may agree. If a  
30 self-insured employer later fails to make the agreed-upon  
31 payment, the commission shall assume the obligation to  
32 make the payments and shall recover the amounts paid or  
33 to be paid from the self-insured employer and its sureties  
34 or guarantors or both as provided for in sections five and  
35 five-a, article two of this chapter.

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

**§23-5-8. Designation of office of administrative law judges;  
powers of chief administrative law judge.**

1 (a) The workers' compensation office of administrative  
2 law judges previously created pursuant to chapter twelve,  
3 acts of the Legislature, one thousand nine hundred ninety,  
4 second extraordinary session, is hereby continued and  
5 designated to be an integral part of the workers' compen-  
6 sation system of this state. The office of judges shall be  
7 under the supervision of a chief administrative law judge  
8 who shall be appointed by the governor, with the advice  
9 and consent of the Senate.

10 (b) The chief administrative law judge shall be a person  
11 who has been admitted to the practice of law in this state  
12 and shall also have had at least four years of experience as  
13 an attorney. The chief administrative law judge's salary  
14 shall be set by the workers' compensation board of manag-  
15 ers. The salary shall be within the salary range for compa-  
16 rable chief administrative law judges as determined by the  
17 state personnel board created by section six, article six,  
18 chapter twenty-nine of this code. The chief administrative  
19 law judge may only be removed by a vote of two thirds of  
20 the members of the workers' compensation board of  
21 managers and shall not be removed except for cause and  
22 then only after he or she has been presented in writing  
23 with the reasons for his or her removal and is given  
24 opportunity to respond and to present evidence. No other  
25 provision of this code purporting to limit the term of office  
26 of any appointed official or employee or affecting the  
27 removal of any appointed official or employee is applica-  
28 ble to the chief administrative law judge.

29 (c) The chief administrative law judge shall employ  
30 administrative law judges and other personnel that are  
31 necessary for the proper conduct of a system of adminis-  
32 trative review of orders issued by the workers' compensa-  
33 tion commission which orders have been objected to by a  
34 party. The employees shall be in the classified service of  
35 the state. Qualifications, compensation and personnel  
36 practice relating to the employees of the office of judges,  
37 other than the chief administrative law judge, shall be

38 governed by the provisions of this code and rules of the  
39 classified service pursuant to article six, chapter  
40 twenty-nine of this code. All additional administrative  
41 law judges shall be persons who have been admitted to the  
42 practice of law in this state and shall also have had at least  
43 two years of experience as an attorney. The chief adminis-  
44 trative law judge shall supervise the other administrative  
45 law judges and other personnel which collectively shall be  
46 referred to in this chapter as the office of judges.

47 (d) The administrative expense of the office of judges  
48 shall be included within the annual budget of the workers'  
49 compensation commission.

50 (e) The office of judges shall, from time to time, promul-  
51 gate rules of practice and procedure for the hearing and  
52 determination of all objections to findings or orders of the  
53 workers' compensation commission. The office of judges  
54 shall not have the power to initiate or to promulgate  
55 legislative rules as that phrase is defined in article three,  
56 chapter twenty-nine-a of this code. Any rules adopted  
57 pursuant to this section which are applicable to the  
58 provisions of this article are not subject to sections nine  
59 through sixteen, inclusive, article three, chapter twenty-  
60 nine-a of this code. The office of judges shall follow the  
61 remaining provisions of said chapter for giving notice to  
62 the public of its actions and the holding of hearings or  
63 receiving of comments on the rules.

64 (f) The chief administrative law judge has the power to  
65 hear and determine all disputed claims in accordance with  
66 the provisions of this article, establish a procedure for the  
67 hearing of disputed claims, take oaths, examine witnesses,  
68 issue subpoenas, establish the amount of witness fees, keep  
69 records and make reports that are necessary for disputed  
70 claims and exercise any additional powers, including the  
71 delegation of powers to administrative law judges or  
72 hearing examiners that are necessary for the proper  
73 conduct of a system of administrative review of disputed  
74 claims. The chief administrative law judge shall make

75 reports that are requested of him or her by the workers'  
76 compensation board of managers.

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

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

14 (b) The office of judges shall establish a program for  
15 mediation to be conducted in accordance with the require-  
16 ments of rule twenty-five of the West Virginia trial court  
17 rules. The parties may agree that the result of the media-  
18 tion is binding. A case may be referred to mediation by  
19 the administrative law judge on his or her own motion, on  
20 motion of a party or by agreement of the parties. Upon  
21 issuance of an order for mediation, the office of judges  
22 shall assign a mediator from a list of qualified mediators  
23 maintained by the West Virginia state bar.

24 (c) The office of judges shall keep full and complete  
25 records of all proceedings concerning a disputed claim.  
26 Subject to the rules of practice and procedure promulgated  
27 pursuant to section eight of this article, the record upon  
28 which the matter shall be decided shall include any  
29 evidence submitted by a party to the office of judges,  
30 evidence taken at hearings conducted by the office of  
31 judges and any documents in the commission's claim files  
32 which relate to the subject matter of the objection. The

33 record may include evidence or documents submitted in  
34 electronic form or other appropriate medium in accor-  
35 dance with the rules of practice and procedure. The office  
36 of judges is not bound by the usual common law or statu-  
37 tory rules of evidence.

38 (d) All hearings shall be conducted as determined by the  
39 chief administrative law judge pursuant to the rules of  
40 practice and procedure promulgated pursuant to section  
41 eight of this article. Upon consideration of the designated  
42 record, the chief administrative law judge or other autho-  
43 rized adjudicator within the office of judges shall, based  
44 on the determination of the facts of the case and applica-  
45 ble law, render a decision affirming, reversing or modify-  
46 ing the commission's action. The decision shall contain  
47 findings of fact and conclusions of law and shall be mailed  
48 to all parties.

49 (e) The rule authorized by subsection (a) of this section  
50 shall be promulgated on or before the first day of October,  
51 two thousand three. Until the rule is promulgated, any  
52 rules previously promulgated shall remain in full force and  
53 effect.

54 (f) The office of judges may remand a claim to the  
55 commission for further development of the facts or  
56 administrative matters as, in the opinion of the adminis-  
57 trative law judge, may be necessary for a full and complete  
58 disposition of the case. The administrative law judge shall  
59 establish a time within which the commission must report  
60 back to the administrative law judge.

61 (g) The decision of the workers' compensation office of  
62 judges regarding any objections to a decision of the work-  
63 ers' compensation commission or a self-insured employer  
64 is final and benefits shall be paid or denied in accordance  
65 with the decision unless the decision is subsequently  
66 appealed and reversed in accordance with the procedures  
67 set forth in this article.

**§23-5-10. Appeal from administrative law judge decision to appeal board.**

1 The employer, claimant or workers' compensation  
2 commission may appeal to the appeal board created in  
3 section eleven of this article for a review of a decision by  
4 an administrative law judge. No appeal or review shall lie  
5 unless application therefor be made within thirty days of  
6 receipt of notice of the administrative law judge's final  
7 action or in any event within sixty days of the date of such  
8 final action, regardless of notice and, unless the applica-  
9 tion for appeal or review is filed within the time specified,  
10 no such appeal or review shall be allowed, such time  
11 limitation being hereby declared to be a condition of the  
12 right of such appeal or review and hence jurisdictional.

**§23-5-11. Workers' compensation board of review generally.**

1 (a) On the thirty-first day of January, two thousand four,  
2 the workers' compensation appeal board heretofore  
3 established in section eleven, article five of this chapter is  
4 hereby abolished.

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

13 (c) The board shall consist of three members.

14 (d) The governor shall appoint, from names submitted by  
15 the "workers' compensation board of review nominating  
16 committee", with the advice and consent of the Senate,  
17 three qualified attorneys to serve as members of the board  
18 of review. If the governor does not select a nominee for  
19 any vacant position from the names provided by the  
20 nominating committee, he shall notify the nominating

21 committee of that circumstance and the committee shall  
22 provide additional names for consideration by the gover-  
23 nor. A member of the board of review may be removed by  
24 the governor for official misconduct, incompetence,  
25 neglect of duty, gross immorality or malfeasance and then  
26 only after notice and opportunity to respond and present  
27 evidence. No more than two of the members of the board  
28 may be of the same political party. The members of the  
29 board of review shall be paid an annual salary of eighty-  
30 five thousand dollars. Members are entitled to be reim-  
31 bursed for actual and necessary travel expenses incurred  
32 in the discharge of official duties in a manner consistent  
33 with the guidelines of the travel management office of the  
34 department of administration.

35 (e) The nominating committee shall consist of the  
36 following members: (1) The president of the West Virginia  
37 state bar who will serve as the chairperson of the commit-  
38 tee; (2) an active member of the West Virginia state bar  
39 workers' compensation committee selected by the major  
40 trade association representing employers in this state; (3)  
41 an active member of the West Virginia state bar workers'  
42 compensation committee selected by the highest ranking  
43 officer of the major employee organization representing  
44 workers in this state; (4) the dean of the West Virginia  
45 university school of law; and (5) the chairman of the  
46 judicial investigation committee.

47 (f) The nominating committee is responsible for review-  
48 ing and evaluating candidates for possible appointment to  
49 the board of review by the governor. In reviewing candi-  
50 dates, the nominating committee may accept comments  
51 from and request information from any person or source.

52 (g) Each member of the nominating committee may  
53 submit up to three names of qualified candidates for each  
54 position on the board of review: *Provided*, That the  
55 member of the nominating committee selected by the  
56 major trade organization representing employers of this  
57 state shall submit at least one name of a qualified candi-



58 date for each position on the board who either is, or who  
59 represents, small business employers of this state. After  
60 careful review of the candidates, the committee shall select  
61 a minimum of one candidate for each position on the  
62 board.

63 (h) No later than the first day of November, two thou-  
64 sand three, the nominating committee shall present to the  
65 governor its list of candidates for the initial board of  
66 review. The governor shall appoint the initial board no  
67 later than the thirty-first day of December, two thousand  
68 three: *Provided*, That upon the thirty-first day of Decem-  
69 ber, two thousand three, the deadline for filling all posi-  
70 tions of the board of review will be extended, as necessary,  
71 if on or before that date the governor has timely requested  
72 additional names from the nominating committee. There-  
73 after, the nominating committee shall meet at the request  
74 of the governor in order to make timely recommendations  
75 to the governor for appointees to the board as the initial  
76 and subsequent terms expire or become vacant. The  
77 recommendations shall be submitted no later than thirty  
78 days prior to the expiration of any term.

79 (i) Of the initial appointments, one member shall be  
80 appointed for a term ending the thirty-first day of Decem-  
81 ber, two thousand six; one member shall be appointed for  
82 a term ending the thirty-first day of December, two  
83 thousand eight; and one member shall be appointed for a  
84 term ending the thirty-first day of December, two thou-  
85 sand ten. Thereafter, the appointments shall be for six-  
86 year terms.

87 (j) A member of the board of review must, at the time he  
88 or she takes office and thereafter during his or her contin-  
89 uance in office, be a resident of this state, be a member in  
90 good standing of the West Virginia state bar, have a  
91 minimum of ten years' experience as an attorney admitted  
92 to practice law in this state prior to appointment and have  
93 a minimum of five years' experience in preparing and  
94 presenting cases or hearing actions and making decisions

95 on the basis of the record of those hearings before admin-  
96 istrative agencies, regulatory bodies or courts of record at  
97 the federal, state or local level.

98 (k) No member of the board of review may hold any  
99 other office, or accept any appointment or public trust, nor  
100 may he or she become a candidate for any elective public  
101 office or nomination thereto. Violation of this subsection  
102 requires the member to vacate his or her office. No  
103 member of the board of review may engage in the practice  
104 of law during his or her term of office.

105 (l) A vacancy occurring on the board other than by  
106 expiration of a term shall be filled in the manner original  
107 appointments were made, for the unexpired portion of the  
108 term.

109 (m) The board shall designate one of its members in  
110 rotation to be chairman of the board for as long as the  
111 board may determine by order made and entered of record.  
112 In the absence of the chairman, any other member desig-  
113 nated by the members present shall act as chairman.

114 (n) The board of review shall meet as often as necessary  
115 to hold review hearings, at such times and places as the  
116 chairman may determine. Two members shall be present  
117 in order to conduct review hearings or other business. All  
118 decisions of the board shall be determined by a majority of  
119 the members of the board.

120 (o) The board of review shall make general rules regard-  
121 ing the pleading, including the form of the petition and  
122 any responsive pleadings, practice and procedure to be  
123 used by the board.

124 (p) The board of review may hire a clerk and other  
125 professional and clerical staff necessary to carry out the  
126 requirements of this article. It is the duty of the clerk of  
127 the board of review to attend in person, or by deputy, all  
128 the sessions of the board, to obey its orders and directions,  
129 to take care of and preserve in an office, kept for the

130 purpose, all records and papers of the board and to  
131 perform other duties as prescribed by law or required of  
132 him or her by the board. All employees of the board shall  
133 serve at the will and pleasure of the board. The board's  
134 employees are exempt from the salary schedule or pay plan  
135 adopted by the division of personnel. All personnel of the  
136 board of review shall be under the supervision of the  
137 chairman of the board of review.

138 (q) If deemed necessary by the board, the board may,  
139 through staffing or other resources, procure assistance in  
140 review of medical portions of decisions.

141 (r) Upon the conclusion of any hearing, or prior thereto  
142 with concurrence of the parties, the member shall  
143 promptly determine the matter and make an award in  
144 accordance with his or her determination.

145 (s) The award shall become a part of the commission file.  
146 A copy of the award shall be sent forthwith by mail to all  
147 parties in interest.

148 (t) The award is final when entered. The award shall  
149 contain a statement explaining the rights of the parties to  
150 an appeal to the board of review and the applicable time  
151 limitations involved.

152 (u) The board shall submit a budget to the executive  
153 director for inclusion in the budget for the workers'  
154 compensation commission sufficient to adequately provide  
155 for the administrative and other operating expenses of the  
156 board.

157 (v) The board shall report monthly to the board of  
158 managers on the status of all claims on appeal.

**§23-5-12. Appeal to board; procedure; remand and supplement-  
tal hearing.**

1 (a) Any employer, employee, claimant or dependent, who  
2 shall feel aggrieved at any final action of the administra-  
3 tive law judge taken after a hearing held in accordance

4 with the provisions of section nine of this article, shall  
5 have the right to appeal to the board created in section  
6 eleven of this article for a review of such action. The  
7 workers' compensation commission shall likewise have the  
8 right to appeal to the board any final action taken by the  
9 administrative law judge. The aggrieved party shall file a  
10 written notice of appeal with the office of judges directed  
11 to the board, within thirty days after receipt of notice of  
12 the action complained of, or in any event, regardless of  
13 notice, within sixty days after the date of the action  
14 complained of, and unless the notice of appeal is filed  
15 within the time specified, no appeal shall be allowed, the  
16 time limitation is a condition of the right to appeal and  
17 hence jurisdictional. The office of judges shall notify the  
18 other parties immediately upon the filing of a notice of  
19 appeal. The notice of appeal shall state the ground for  
20 review and whether oral argument is requested. The office  
21 of judges shall forthwith make up a transcript of the  
22 proceedings before the office of judges and certify and  
23 transmit it to the board. The certificate shall incorporate  
24 a brief recital of the proceedings in the case and recite  
25 each order entered and the date thereof.

26 (b) The board shall set a time and place for the hearing  
27 of arguments on each claim and shall notify the interested  
28 parties thereof. The review by the board shall be based  
29 upon the record submitted to it and such oral argument as  
30 may be requested and received. The board may affirm,  
31 reverse, modify or supplement the decision of the adminis-  
32 trative law judge and make such disposition of the case as  
33 it determines to be appropriate. Briefs may be filed by the  
34 interested parties in accordance with the rules of proce-  
35 dure prescribed by the board. The board may affirm the  
36 order or decision of the administrative law judge or  
37 remand the case for further proceedings. It shall reverse,  
38 vacate or modify the order or decision of the administra-  
39 tive law judge if the substantial rights of the petitioner or  
40 petitioners have been prejudiced because the administra-  
41 tive law judge's findings are:

- 42 (1) In violation of statutory provisions; or
- 43 (2) In excess of the statutory authority or jurisdiction of  
44 the administrative law judge; or
- 45 (3) Made upon unlawful procedures; or
- 46 (4) Affected by other error of law; or
- 47 (5) Clearly wrong in view of the reliable, probative and  
48 substantial evidence on the whole record; or
- 49 (6) Arbitrary or capricious or characterized by abuse of  
50 discretion or clearly unwarranted exercise of discretion.
- 51 (c) After a review of the case, the board shall issue a  
52 written decision to be filed with the commission and a  
53 copy thereof sent by mail to the parties.
- 54 (1) All decisions, findings of fact and conclusions of law  
55 of the board of review shall be in writing and state with  
56 specificity the laws and facts relied upon to sustain,  
57 reverse or modify the administrative law judge's decision.
- 58 (2) Decisions of the board of review shall be made by a  
59 majority vote of the board of review.
- 60 (3) A decision of the board of review is binding upon the  
61 executive director and the commission with respect to the  
62 parties involved in the particular appeal. The executive  
63 director shall have the right to seek judicial review of a  
64 board of review decision irrespective of whether or not he  
65 appeared or participated in the appeal to the board of  
66 review.
- 67 (d) Instead of affirming, reversing or modifying the  
68 decision of the administrative law judge, the board may,  
69 upon motion of any party or upon its own motion, for good  
70 cause shown, to be set forth in the order of the board,  
71 remand the case to the chief administrative law judge for  
72 the taking of such new, additional or further evidence as  
73 in the opinion of the board may be necessary for a full and

74 complete development of the facts of the case. In the event  
75 the board shall remand the case to the chief administrative  
76 law judge for the taking of further evidence, the adminis-  
77 trative law judge shall proceed to take new, additional or  
78 further evidence in accordance with any instruction given  
79 by the board within thirty days after receipt of the order  
80 remanding the case. The chief administrative law judge  
81 shall give to the interested parties at least ten days'  
82 written notice of the supplemental hearing, unless the  
83 taking of evidence is postponed by agreement of parties, or  
84 by the administrative law judge for good cause. After the  
85 completion of a supplemental hearing, the administrative  
86 law judge shall, within sixty days, render his or her  
87 decision affirming, reversing or modifying the former  
88 action of the administrative law judge. The decision shall  
89 be appealable to, and proceeded with by the board of  
90 review in the same manner as other appeals. In addition,  
91 upon a finding of good cause, the board may remand the  
92 case to the workers' compensation commission for further  
93 development. Any decision made by the commission  
94 following a remand shall be subject to objection to the  
95 office of judges and not to the board. The board may  
96 remand any case as often as in its opinion is necessary for  
97 a full development and just decision of the case.

98 (e) All appeals from the action of the administrative law  
99 judge shall be decided by the board at the same session at  
100 which they are heard, unless good cause for delay thereof  
101 be shown and entered of record.

102 (f) In all proceedings before the board, any party may be  
103 represented by counsel.

**§23-5-15. Appeals from final decisions of board to supreme  
court of appeals; procedure; costs.**

1 (a) Review of any final decision of the board, including  
2 any order of remand, may be prosecuted by either party or  
3 by the workers' compensation commission to the supreme  
4 court of appeals within thirty days from the date of the

5 final order by filing a petition therefor with the court  
6 against the board and the adverse party or parties as  
7 respondents. Unless the petition for review is filed within  
8 the thirty-day period, no appeal or review shall be al-  
9 lowed, such time limitation is a condition of the right to  
10 such appeal or review and hence jurisdictional. The clerk  
11 of the supreme court of appeals shall notify each of the  
12 respondents and the workers' compensation commission of  
13 the filing of such petition. The board shall, within ten  
14 days after receipt of the notice, file with the clerk of the  
15 court the record of the proceedings had before it, including  
16 all the evidence. The court or any judge thereof in vaca-  
17 tion may thereupon determine whether or not a review  
18 shall be granted. If review is granted to a nonresident of  
19 this state, he or she shall be required to execute and file  
20 with the clerk before an order or review shall become  
21 effective, a bond, with security to be approved by the  
22 clerk, conditioned to perform any judgment which may be  
23 awarded against him or her. The board may certify to the  
24 court and request its decision of any question of law  
25 arising upon the record, and withhold its further proceed-  
26 ing in the case, pending the decision of court on the  
27 certified question, or until notice that the court has  
28 declined to docket the same. If a review is granted or the  
29 certified question is docketed for hearing, the clerk shall  
30 notify the board and the parties litigant or their attorneys  
31 and the workers' compensation commission of that fact by  
32 mail. If a review is granted or the certified question  
33 docketed, the case shall be heard by the court in the same  
34 manner as in other cases, except that neither the record  
35 nor briefs need be printed. Every review granted or  
36 certified question docketed prior to thirty days before the  
37 beginning of the term, shall be placed upon the docket for  
38 that term. The attorney general shall, without extra  
39 compensation, represent the board in such cases. The  
40 court shall determine the matter brought before it and  
41 certify its decision to the board and to the commission.  
42 The cost of the proceedings on petition, including a

43 reasonable attorney's fee, not exceeding thirty dollars to  
44 the claimant's attorney, shall be fixed by the court and  
45 taxed against the employer if the latter is unsuccessful. If  
46 the claimant, or the commission (in case the latter is the  
47 applicant for review) is unsuccessful, the costs, not includ-  
48 ing attorney's fees, shall be taxed against the commission,  
49 payable out of the workers' compensation fund, or shall be  
50 taxed against the claimant, in the discretion of the court.  
51 But there shall be no cost taxed upon a certified question.

52 (b) In reviewing a decision of the board of review, the  
53 supreme court of appeals shall consider the record pro-  
54 vided by the board and give deference to the board's  
55 findings, reasoning and conclusions, in accordance with  
56 subsections (c) and (d) of this section.

57 (c) If the decision of the board represents an affirmation  
58 of a prior ruling by both the commission and the office of  
59 judges that was entered on the same issue in the same  
60 claim, the decision of the board may be reversed or  
61 modified by the supreme court of appeals only if the  
62 decision is in clear violation of constitutional or statutory  
63 provision, is clearly the result of erroneous conclusions of  
64 law, or is based upon the board's material misstatement or  
65 mischaracterization of particular components of the  
66 evidentiary record. The court may not conduct a de novo  
67 re-weighing of the evidentiary record. If the court reverses  
68 or modifies a decision of the board pursuant to this  
69 subsection, it shall state with specificity the basis for the  
70 reversal or modification and the manner in which the  
71 decision of the board clearly violated constitutional or  
72 statutory provisions, resulted from erroneous conclusions  
73 of law, or was based upon the board's material misstate-  
74 ment or mischaracterization of particular components of  
75 the evidentiary record.

76 (d) If the decision of the board effectively represents a  
77 reversal of a prior ruling of either the commission or the  
78 office of judges that was entered on the same issue in the  
79 same claim, the decision of the board may be reversed or



80 modified by the supreme court of appeals only if the  
81 decision is in clear violation of constitutional or statutory  
82 provisions, is clearly the result of erroneous conclusions of  
83 law, or is so clearly wrong based upon the evidentiary  
84 record that even when all inferences are resolved in favor  
85 of the board's findings, reasoning and conclusions, there is  
86 insufficient support to sustain the decision. The court may  
87 not conduct a de novo re-weighing of the evidentiary  
88 record. If the court reverses or modifies a decision of the  
89 board pursuant to this subsection, it shall state with  
90 specificity the basis for the reversal or modification and  
91 the manner in which the decision of the board clearly  
92 violated constitutional or statutory provisions, resulted  
93 from erroneous conclusions of law, or was so clearly wrong  
94 based upon the evidentiary record that even when all  
95 inferences are resolved in favor of the board's findings,  
96 reasoning and conclusions, there is insufficient support to  
97 sustain the decision.

**§23-5-17. Termination of office of judges.**

1 The office of judges terminates on the first day of July,  
2 two thousand nine, pursuant to the provisions of article  
3 ten, chapter four of this code unless sooner terminated,  
4 continued or reestablished pursuant to the provisions of  
5 said article.

**§23-5-18. Termination of the workers' compensation appeal  
board and the workers' compensation board of  
review.**

1 After the thirty-first day of December, two thousand  
2 three, the workers' compensation appeal board shall be  
3 terminated and all matters pending before the appeal  
4 board on the thirty-first day of December, two thousand  
5 three, shall be transferred to the board of review.

6 Pursuant to the provisions of article ten, chapter four of  
7 this code, the workers' compensation board of review shall  
8 continue to exist until the first day of July, two thousand

9 nine, unless sooner terminated, continued or reestablished  
10 by act of the Legislature.

## **CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.**

### **ARTICLE 8. EMERGENCY HOSPITALS.**

#### **§26-8-2. Patients; expenses; disposition of receipts.**

1 The department of health and human resources shall  
2 admit to the hospitals, under its rules, persons requiring  
3 hospital care and shall treat free of charge persons acci-  
4 dentally injured in this state while engaged in their usual  
5 employment, but preference at all times shall be given to  
6 persons accidentally injured: *Provided*, That the executive  
7 director of the workers' compensation commission shall  
8 pay to the hospitals for the treatment of anyone entitled to  
9 benefits or aid out of the workers' compensation fund the  
10 same fee or expenses that would be paid to a private  
11 hospital for similar treatment. All moneys collected under  
12 this section shall be paid into the state treasury through  
13 the state commissioner of public institutions as required in  
14 section thirteen, article one, chapter twenty-five of this  
15 code.

## **CHAPTER 48. DOMESTIC RELATIONS.**

### **ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.**

#### **§48-18-125. Employment and income reporting.**

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "em-  
3 ployee" for purposes of federal income tax withholding, as  
4 defined in 26 U. S. C. §3401;

5 (2) "Employer" means the person or entity for whom an  
6 individual performs or performed any service of whatever  
7 nature and who has control of the payment of the individ-  
8 ual's wages for performance of the service or services, as  
9 defined in 26 U. S. C. §3401;

10 (3) An individual is considered a "new hire" on the first  
11 day in which that individual performs services for remuneration and on which an employer begins to withhold  
12 amounts for income tax purposes.  
13

14 (b) Except as provided in subsections (c) and (d) of this  
15 section, all employers doing business in the state shall  
16 report to the bureau for child support enforcement:

17 (1) The hiring of any person who resides or works in this  
18 state to whom the employer anticipates paying earnings;  
19 and

20 (2) The rehiring or return to work of any employee who  
21 resides or works in this state.

22 (c) Employers are not required to report the hiring,  
23 rehiring or return to work of any person who is an employee of a federal or state agency performing intelligence  
24 or counterintelligence functions if the head of the agency  
25 has determined that reporting could endanger the safety of  
26 the employee or compromise an ongoing investigation or  
27 intelligence mission.  
28

29 (d) An employer that has employees in states other than  
30 this state and that transmits reports magnetically or  
31 electronically is not required to report to the bureau for  
32 child support enforcement the hiring, rehiring or return to  
33 work of any employee if the employer has filed with the  
34 secretary of the federal department of health and human  
35 services, as required by 42 U. S. C. §653A, a written  
36 designation of another state in which it has employees as  
37 the reporting state.

38 (e) Employers shall report by mailing to the bureau for  
39 child support enforcement a copy of the employee's W-4  
40 form; however, an employer may transmit the information  
41 through another means if approved in writing by the  
42 bureau for child support enforcement prior to the transmittal. The report shall include the employee's name,  
43 address and social security number, the employer's name  
44

45 and address, any different address of the payroll office and  
46 the employer's federal tax identification number. The  
47 employer may report other information, such as date of  
48 birth or income information, if desired.

49 (f) Employers shall submit a report within fourteen days  
50 of the date of the hiring, rehiring or return to work of the  
51 employee. However, if the employer transmits the reports  
52 magnetically or electronically by two monthly submis-  
53 sions, the reports shall be submitted not less than twelve  
54 days nor more than sixteen days apart.

55 (g) An employer shall provide to the bureau for child  
56 support enforcement, upon its written request, information  
57 regarding an obligor's employment, wages or salary,  
58 medical insurance, start date and location of employment.

59 (h) Any employer who fails to report in accordance with  
60 the provisions of this section shall be assessed a civil  
61 penalty of no more than twenty-five dollars per failure. If  
62 the failure to report is the result of a conspiracy between  
63 the employer and the employee not to supply the required  
64 report or to supply a false or incomplete report, the  
65 employer shall be assessed a civil penalty of no more than  
66 five hundred dollars.

67 (i) Employers required to report under this section may  
68 assess each employee reported one dollar for the adminis-  
69 trative costs of reporting.

70 (j) Uses for the new hire information include, but are not  
71 limited to, the following:

72 (1) The state directory of new hires shall furnish the  
73 information to the national directory of new hires;

74 (2) The bureau for child support enforcement shall use  
75 information received pursuant to this section to locate  
76 individuals for purposes of establishing paternity and of  
77 establishing, modifying and enforcing child support  
78 obligations and may disclose the information to any agent

73 section. The restitution ordered shall constitute a judg-  
74 ment against the defendant and in favor of the state of  
75 West Virginia workers' compensation commission.

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

83 (B) For purposes of subdivision (A) of this subsection, the  
84 term "payment of the costs of asset forfeiture" means:

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

91 (I) Contract services;

92 (II) The employment of outside contractors to operate  
93 and manage properties or provide other specialized  
94 services necessary to dispose of the properties in an effort  
95 to maximize the return from the properties; and

96 (III) Reimbursement of any state or local agency for any  
97 expenditures made to perform the functions described in  
98 this subparagraph;

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

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

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

112 (7) Venue for prosecution of any violation of this section  
113 shall be either the county in which the defendant's princi-  
114 pal business operations are located or in Kanawha County  
115 where the workers' compensation fund is located.

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

*Carly Orr*  
.....  
Chairman Senate Committee

*Sharon Spencer*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Daniel Elphines*  
.....  
Clerk of the Senate

*Bryson M. Bond*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert S. Kiss*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *17* .....  
Day of *July* ....., 2003.

*Bob Wise*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 7/9/03

Time 12:40 PM