

**ACTS**  
OF THE  
**LEGISLATURE**  
OF  
**WEST VIRGINIA**



**Regular Session, 1995**

**Volume I**  
**Chapters 1 — 132**

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## FOREWORD

These volumes contain the Acts of the First Regular Session of the 72nd Legislature, 1995.

### First Regular Session, 1995

The First Regular Session of the 72nd Legislature convened on January 11, 1995. The Constitutional sixty-day limit on the duration of the session was midnight, March 11, 1995. The Governor issued a proclamation on March 8, 1995 extending the session for a period of three days for the sole purpose of considering the Budget. Subsequent proclamations were issued extending the session, and the Legislature adjourned *sine die* on March 17, 1995.

Bills totaling 1,431 were introduced in the two houses during the session (835 House and 596 Senate). The Legislature passed 259 bills, 127 House and 132 Senate.

The Governor vetoed four bills (H. B. 2257, Deposit of certain fees into Miners' Health, Safety and Training Fund; S. B. 49, Relating to state boards of examination or registration; S. B. 227, Prohibiting change orders on state contracts exceeding a certain percentage of the original bid; and S. B. 576, Relating to reemployment after retirement for holders of elected public office). The Legislature amended and again passed S. B. 576, leaving a net total of 256 bills, 126 House and 130 Senate, which became law.

Fifty-six bills became law without the Governor's signature, 48 House bills and eight Senate bills.

There were 98 Concurrent Resolutions introduced during the session, 48 House and 50 Senate, of which 16 House and 14 Senate were adopted. Twenty-seven House Joint Resolutions and eight Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One House Joint Resolution, H. J. R. 2, Fish and Wildlife Conservation Revenue Amendment, and one Senate Joint Resolution, S. J. R. 8, Nongame Wildlife and Natural Heritage Revenue Amendment, were adopted by the Legislature. The House introduced 27 House Resolutions and the Senate introduced 32 Senate Resolutions, of which 16 House and 31 Senate were adopted.

The Senate failed to pass 39 House bills passed by the House, and 56 Senate bills failed passage by the House. Three House bills died in conference: H. B. 2828, Repealing expired language pertaining to the total state basic foundation program and foundation allowance for regional educational service agencies, etc.; H. B. 2579, Administration of the Medicaid program; and H. B. 2827, Changing service credit for retirement purposes for employees of the Legislature.

\* \* \* \* \*

These volumes will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

These Acts will be published with buckram binding and when available, may be purchased from the Department of Administration, Purchasing Division Section, State Capitol, Charleston, West Virginia 25305.

DONALD L. KOPP,  
*Clerk of the House and  
Keeper of the Rolls.*

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# MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1995

## OFFICERS

*President*—Robert C. Chambers, Huntington

*Clerk*—Donald L. Kopp, Clarksburg

*Sergeant at Arms*—Oce Smith, Fairmont

*Doorkeeper*—Don Yoak, Spencer

District	Name	Address	Prior Legislative Service
First	Sam Love (D)	Weirton	66th-71st
	Tamara Pettit (D)	New Cumberland ..	Appt. 11/20/89, 69th; 70th-71st
Second	Timothy R. Ennis (D)	Wellsburg	
	Roy E. Givens (D)	Wellsburg	64th-69th
Third	Tal Hutchins (D)	Wheeling	
	Greg Martin (R)	Wheeling	70th
Fourth	Donald A. Haskins (R)	Glen Dale	70th
	Scott G. Varner (D)	Moundsville	71st
Fifth	Charles Clements (R)	New Martinsville	
Sixth	James E. Willison (R)	Sistersville	69th-71st
Seventh	Otis A. Leggett (R)	St. Marys	68th-71st
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71st
Ninth	Larry Border (R)	Davisville	70th-71st
	Tom Azinger (R)	Vienna	
Eleventh	J. D. Beane (D)	Parkersburg	70th-71st
	Edward B. Kime (R)	Vienna	Appt. 12/1/94
	Bob Ashley (R)	Spencer	67th-71st
Twelfth	Karen L. Facemyer (R)	Ripley	71st
Thirteenth	Jerry K. Kelly (D)	Red House	
	Gary Otho Tillis (D)	Bancroft	
Fourteenth	Kelly Given (R)	Hurricane	
	Mike Hall (R)	Hurricane	
Fifteenth	Robert Chambers (D)	Huntington	64th-71st
	Arley R. Johnson (D)	Huntington	
	Margarette R. Leach (D)	Huntington	71st
Sixteenth	Susan Hubbard (D)	Huntington	
	Evan H. Jenkins (D)	Huntington	
Seventeenth	Jody G. Smirl (R)	Huntington	58th-61st; 67th
Eighteenth	Kenneth R. Adkins (D)	Huntington	Appt. 1/20/92; 70th-71st
Nineteenth	Larry Jack Heck (D)	Huntington	71st
	K. Steven Kominar (D)	Kermit	
Twentieth	Grant Preece (D)	Ragland	70th-71st
	Tracy Dempsey (D)	Harts	70th-71st
	Danny L. Ellis (D)	Chapmanville	71st
	Tom Rose Tomblin (D)	Mitchell Heights	
	David E. Whitman (D)	Chapmanville	Appt. 2/17/89, 69th; 71st
Twenty-first	Earnest H. Kuhn (D)	Van	
Twenty-second	Ernest C. Moore (D)	Thorpe	60th-63rd; 65th; 71st
	Emily W. Yeager (D)	Welch	Appt. 3/10/93, 71st
Twenty-third	Richard Browning (D)	Oceana	69th-71st
	W. Richard Staton (D)	Mullens	69th-71st
Twenty-fourth	Eustace Frederick (D)	Bluefield	Appt. 10/29/93, 71st
Twenty-fifth	Homer Ball (D)	Athens	
	Elizabeth Osborne (D)	Princeton	Appt. 10/20/94, 71st
Twenty-sixth	Mary Pearl Compton (D)	Union	69th-71st

HOUSE OF DELEGATES

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Twenty-seventh ..	Robert S. Kiss (D) .....	Beckley .....	69th-71st
	Warren R. McGraw II (D) .....	Beckley .....	71st
	Robert P. Pulliam M.D. (D) ...	Beckley .....	71st
	Arnold W. Ryan (D) .....	Hinton .....	67th-69th; 71st
	Ron Thompson (D) .....	Beckley .....	
Twenty-eighth ..	James J. Rowe (D) .....	Lewisburg .....	69th-71st
	Bill Wallace (R) .....	Clintonville .....	69th-71st
Twenty-ninth ...	Tom Louisos (D) .....	Oak Hill .....	67th-68th; 70th-71st
	Bruce N. Petersen (D) .....	Fayetteville .....	71st
	John Pino (D) .....	Oak Hill .....	67th-68th; 70th-71st
Thirtieth .....	Jon Amores (D) .....	Charleston .....	
	Ann Calvert (R) .....	Charleston .....	70th
	Joe Farris (D) .....	Charleston .....	70th-71st
	Dan Greear (R) .....	South Charleston ...	
	Margaret Miller (R) .....	South Charleston ...	69th-71st
	Rudy Seacrist (D) .....	Charleston .....	Appt. 6/25/77, 63rd; 65th-69th
	Vic Sproule (R) .....	South Charleston ...	
Thirty-first .....	Mark A. Hunt (D) .....	Charleston .....	
Thirty-second ...	Steve Harrison (R) .....	Nitro .....	71st
	Dick Henderson (R) .....	St. Albans .....	71st
	Jay Nesbitt (R) .....	Cross Lanes .....	71st
	Ronald Neal Walters (R) .....	Cross Lanes .....	71st
Thirty-third .....	Clinton N. Nichols (D) .....	Clay .....	Appt. 10/14/93, 71st
Thirty-fourth ...	Marjorie H. Burke (D) .....	Sand Fork .....	Appt. 4/13/78, 63rd; 64th-69th
Thirty-fifth .....	George Kallai (D) .....	Summersville .....	
Thirty-sixth .....	Joseph-B. Talbott (D) .....	Webster Springs ..	71st
Thirty-seventh ..	Joe Martin (D) .....	Elkins .....	Appt. 6/15/78, 63rd; 64th-71st
	William D. Proudfoot (D) .....	Elkins .....	70th-71st
Thirty-eighth ...	Douglas K. Stalnaker (R) .....	Weston .....	
Thirty-ninth .....	Dale F. Riggs (R) .....	Buckhannon .....	69th-71st
Fortieth .....	Richard H. Everson (D) .....	Philippi .....	71st
Forty-first .....	Samuel J. Cann (D) .....	Bridgeport .....	
	Ron Fragale (D) .....	Clarksburg .....	70th-71st
	Larry A. Linch (D) .....	Bridgeport .....	71st
	Barbara A. Warner (D) .....	Bridgeport .....	69th-71st
Forty-second ...	John F. Bennett (D) .....	Grafton .....	71st
Forty-third .....	Nick Fantasia (D) .....	Kingmont .....	52nd-53rd; 57th-60th; 62nd; 69th; Appt. 2/26/93, 71st
	Roman W. Prezioso (D) .....	Fairmont .....	69th-71st
	Paul E. Prunty (D) .....	Fairmont .....	61st; 63rd-65th; 67th-68th; 70th
Forty-fourth ...	Robert C. Beach (D) .....	Core .....	Appt. 7/27/90, 69th; 70th-71st
	Eric T. Blass (R) .....	Morgantown .....	
	Barbara Evans Fleischauer (D) ..	Morgantown .....	
	Brian Gallagher (D) .....	Morgantown .....	Appt. 5/22/89, 69th; 70th-71st
Forty-fifth .....	Larry A. Williams (D) .....	Tunnelton .....	Appt. 10/08/93, 71st
Forty-sixth .....	David Collins (D) .....	Davis .....	70th-71st
Forty-seventh ...	Harold K. Michael (D) .....	Moorefield .....	69th-71st
Forty-eighth .....	Allen V. Evans (R) .....	Dorcas .....	70th-71st
Forty-ninth .....	Carl Thomas (R) .....	Keyser .....	
Fiftieth .....	Jerry L. Mezzatesta (D) .....	Romney .....	68th-71st
Fifty-first .....	Charles S. Trump IV (R) .....	Berkeley Springs ...	71st
Fifty-second .....	Vicki V. Douglas (D) .....	Martinsburg .....	70th-71st
Fifty-third .....	Larry V. Faircloth (R) .....	Inwood .....	65th-71st
Fifty-fourth .....	John Overington (R) .....	Martinsburg .....	67th-71st
Fifty-fifth .....	John Dolye (D) .....	Shepherdstown .....	66th-71st
Fifty-sixth .....	Dale Manuel (D) .....	Charles Town .....	69th-71st

(D) Democrats .....	69
(R) Republicans .....	31
TOTAL .....	100

# MEMBERS OF THE SENATE

## REGULAR SESSION, 1995

### OFFICERS

*President*—Earl Ray Tomblin, Logan

*Clerk*—Darrell E. Holmes, Charleston

*Sergeant at Arms*—Tony DeRaimo, Leewood

*Doorkeeper*—Porter Cotton, Chesapeake

District	Name	Address	Prior Legislative Service
First	Thais Blatnik (D)	Wheeling	(House 63rd; 65th-67th); 69th-71st
	Edwin J. Bowman (D)	Weirton	
Second	Don Macnaughtan (D)	New Martinsville	70th-71st
	Larry Wiedebusch (D)	Glen Dale	(House 62nd-67th); 69th-71st
Third	Donna Jean Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-71st
	J. Frank Deem (R)	Vienna	(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th)
Fourth	Oshel B. Craig (D)	Hurricane	(House 65th); 66th-71st
	Robert L. Dittmar (D)	Ravenswood	69th-71st
Fifth	Robert H. Plymale (D)	Ceredo	71st
	Thomas F. Scott (R)	Huntington	
Sixth	H. Truman Chafin (D)	Williamson	66th-71st
	A. Keith Wagner (D)	Iaeger	69th-71st
Seventh	Lloyd G. Jackson II (D)	Hamlin	68th-69th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-71st
Eighth	Jack Buckalew (R)	Charleston	
	David Grubb (D)	Charleston	(House 69th-70th); 71st
Ninth	Billy Wayne Bailey, Jr. (D)	Alpoca	Appt. 1/8/91, 70th; 71st
	William R. Wooton (D)	Beckley	(House 63rd-67th; 69th); 70th-71st
Tenth	Leonard W. Anderson (D)	Hinton	70th-71st
	Tony E. Whitlow (D)	Princeton	(House 60th-61st; 63rd-66th); 67th-71st
Eleventh	Shirley D. Love (D)	Oak Hill	
	Randy Schoonover (D)	Clay	(House 69th-70th); Appt. 9/13/89, 71st
Twelfth	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-71st
	Rebecca I. White (D)	Jane Lew	
Thirteenth	Joe Manchin III (D)	Fairmont	(House 66th); 68th-71st
	Michael A. Oliverio II (D)	Morgantown	(House 71st)
Fourteenth	David E. Miller (D)	Kingwood	(House 69th-70th); Appt. 9/27/93, 71st
	Sarah M. Minear (R)	Parsons	
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr., 69th); Appt. 9/25/89, 69th; 70th-71st.
	Mike Ross (D)	Coalton	71st
Sixteenth	Harry E. Dugan (R)	Martinsburg	
	John C. Yoder (R)	Harpers Ferry	71st
Seventeenth	Larry Kimble (R)	Charleston	
	Martha Yeager Walker (D)	Charleston	(House 70th); 71st

(D)	Democrats	26
(R)	Republicans	8
	TOTAL	34

# COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1995

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## STANDING

### AGRICULTURE AND NATURAL RESOURCES

Beach (*Chair of Agriculture*), Dempsey (*Vice Chair of Agriculture*), Love (*Chair of Natural Resources*), Fragale (*Vice Chair of Natural Resources*), Ball, Burke, Ennis, Everson, Heck, Linch, Nichols, Osborne, Proudfoot, Prunty, Thompson, Tomblin, Williams, Anderson, Border, Evans, Facemyer, Henderson, Leggett, Riggs and Willison.

### BANKING AND INSURANCE

Farris (*Chair of Banking*), Beane (*Vice Chair of Banking*), Gallagher (*Chair of Insurance*), Adkins (*Vice Chair of Insurance*), Cann, Dempsey, Douglas, Fantasia, Hunt, Hutchins, Kominar, Louisos, McGraw, Michael, Moore, Seacrist, Thompson, Tillis, Azinger, Clements, Faircloth, Greear, Hall, Nesbitt and Walters.

### CONSTITUTIONAL REVISION

Doyle (*Chair*), Talbott (*Vice Chair*), Browning, Collins, Ellis, Fleischauer, Frederick, Givens, Kelley, Jenkins, Linch, McGraw, Moore, Petersen, Preece, Pulliam, Ryan, Calvert, Given, Harrison, Overington, Smirl, Sprouse, Stalnaker and Wallace.

### EDUCATION

Prezioso (*Chair*), Proudfoot (*Vice Chair*), Ball, Beach, Collins, Dempsey, Ellis, Ennis, Everson, Heck, Hubbard, Kallai, Kuhn, Leach, McGraw, Williams, Yeager, Anderson, Blass, Hall, Haskins, Henderson, Leggett, G. Martin and Overington.

### FINANCE

Kiss (*Chair*), Browning (*Vice Chair*), Burke, Compton, Doyle, Farris, Frederick, Gallagher, Kelley, Leach, Mezzatesta, Petersen, Pettit, Seacrist, Talbott, Tomblin, Warner, Border, Clements, Evans, Facemyer, Leggett, Miller, Wallace and Walters.

## GOVERNMENT ORGANIZATION

J. Martin (*Chair*), Varner (*Vice Chair*), Adkins, Cann, Bennett, Fantasia, Fragale, Givens, Kominar, Louisos, Love, Michael, Nichols, Osborne, Prunty, Pulliam, Thompson, Azinger, Calvert, Given, Harrison, Nesbitt, Sprouse, Stalnaker and Willison.

## HEALTH AND HUMAN RESOURCES

Compton (*Chair*), Petersen (*Vice Chair*), Amores, Beach, Burke, Douglas, Doyle, Ellis, Fleischauer, Gallagher, Hubbard, Hunt, Hutchins, Leach, Manuel, Osborne, Pulliam, Warner, Given, Haskins, Henderson, G. Martin, Miller, Sprouse and Thomas.

## INDUSTRY AND LABOR

Pettit (*Chair*), Whitman (*Vice Chair*), Beane, Cann, Farris, Frederick, Heck, Johnson, Kelley, Kuhn, Louisos, Prunty, Talbott, Tillis, Tomblin, Williams, Yeager, Azinger, Blass, Haskins, Kime, G. Martin, Overington, Thomas and Walters.

## JUDICIARY

Staton (*Chair*), Pino (*Vice Chair*), Amores, Beane, Collins, Douglas, Fleischauer, Hunt, Hutchins, Jenkins, Johnson, Linch, Manuel, Moore, Preece, Ryan, Tillis, Whitman, Faircloth, Greear, Kime, Riggs, Smirl, Thomas and Trump.

## POLITICAL SUBDIVISIONS

Manual (*Chair*), Collins (*Vice Chair*), Ball, Bennett, Fantasia, Fragale, Givens, Jenkins, Johnson, Kallai, Kuhn, Pettit, Proudfoot, Ryan, Seacrist, Varner, Yeager, Anderson, Calvert, Facemyer, Harrison, Smirl, Stalnaker, Trump and Willison.

## ROADS AND TRANSPORTATION

Warner (*Chair*), Preece (*Vice Chair*), Adkins, Amores, Bennett, Compton, Ennis, Everson, Hubbard, Kallai, Kominar, Leach, Love, Nichols, Pino, Varner, Whitman, Blass, Border, Clements, Evans, Greear, Hall, Kime and Nesbitt.

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## RULES

Chambers (*Chair*), Kiss, J. Martin, Mezzatesta, Michael, Prezioso, Rowe, Staton, Ashley, Faircloth, Miller and Riggs.



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**JOINT****ENROLLED BILLS**

Moore (*Chair*), Fantasia (*Vice Chair*), Overington and Willison.

**GOVERNMENT AND FINANCE**

Chambers (*Chair*), Kiss, J. Martin, Rowe, Staton, Ashley and Trump.

**GOVERNMENT OPERATIONS**

J. Martin (*Chair*), Varner, Love, Nesbitt and Stalnaker.

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Douglas (*Chair*), Linch (*Vice Chair*), Compton, Gallagher, Faircloth and Riggs.

**PENSIONS AND RETIREMENT**

Browning (*Chair*), Prezioso (*Vice Chair*), Frederick, Seacrist, Williams, Haskins and Wallace.

**RULES**

Chambers (*Cochair*), Rowe and Ashley

**STATUTORY LEGISLATIVE COMMISSIONS****FOREST MANAGEMENT REVIEW COMMISSION**

J. Martin (*Chair*), Douglas, Mezzatesta, Michael and Willison.

**INTERSTATE COOPERATION**

Beane (*Chair*), Doyle, Farris, Fleischauer, Jenkins, Greear and Walters.

**JUVENILE LAW**

Givens (*Chair*), Douglas and Trump.

HOUSE OF DELEGATES COMMITTEES

**OVERSIGHT COMMISSION ON  
EDUCATION ACCOUNTABILITY**

Prezioso (*Chair*), Browning, Mezzatesta, Proudfoot,  
Yeager and Anderson.

**OVERSIGHT COMMISSION ON  
HEALTH AND HUMAN RESOURCES**

Compton (*Chair*), Gallagher, Kiss, J. Martin, Petersen and  
Ashley.

**OVERSIGHT COMMISSION ON  
REGIONAL JAIL AND CORRECTIONAL FACILITY**

Manuel (*Chair*), Leach, Pino, Whitman, Clements and  
Thomas.

**SPECIAL INVESTIGATIONS**

Chambers (*Chair*), J. Martin, Rowe, Faircloth and Trump.

## COMMITTEES OF THE SENATE

Regular Session, 1995

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### STANDING

#### AGRICULTURE

Whitlow (*Chair*), White (*Vice Chair*), Anderson, Dittmar, Helmick, Love, Miller, Ross, Dugan and Minear.

#### BANKING AND INSURANCE

Manchin (*Chair*), Helmick (*Vice Chair*), Blatnik, Chafin, Craigo, Dittmar, Sharpe, Wagner, Wiedebusch, Wooton, Kimble, Scott and Yoder.

### CONFIRMATIONS

Blatnik (*Chair*), Grubb (*Vice Chair*), Chafin, Jackson, Love, Oliverio, Wooton, Deem and Yoder.

### EDUCATION

Jackson (*Chair*), Miller (*Vice Chair*), Bailey, Blatnik, Grubb, Helmick, Oliverio, Plymale, Schoonover, Wagner, White, Boley, Dugan and Minear.

### ENERGY, INDUSTRY AND MINING

Sharpe (*Chair*), Oliverio (*Vice Chair*), Anderson, Bowman, Jackson, Macnaughtan, Manchin, Ross, Schoonover, Wagner, Whitlow, Deem, Dugan and Minear.

### FINANCE

Craigo (*Chair*), Manchin (*Vice Chair*), Bailey, Blatnik, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Sharpe, Walker, Whitlow, Boley, Dugan, Kimble and Minear.

### GOVERNMENT ORGANIZATION

Wagner (*Chair*), Bowman (*Vice Chair*), Bailey, Jackson, Macnaughtan, Manchin, Miller, Plymale, Walker, White, Wiedebusch, Wooton, Buckalew, Scott and Yoder.

**HEALTH AND HUMAN RESOURCES**

Walker (*Chair*), Macnaughtan (*Vice Chair*), Blatnik, Craigo, Grubb, Jackson, Manchin, Plymale, Ross, Sharpe, Wooton, Boley, Kimble and Scott.

**INTERSTATE COOPERATION**

Grubb (*Chair*), Anderson (*Vice Chair*), Bowman, Schoonover, Whitlow, Deem and Scott.

**JUDICIARY**

Wooton (*Chair*), Wiedebusch (*Vice Chair*), Anderson, Bowman, Dittmar, Grubb, Miller, Oliverio, Ross, Schoonover, Wagner, White, Buckalew, Deem, Scott and Yoder.

**LABOR**

Macnaughtan (*Chair*), Schoonover (*Vice Chair*), Bailey, Bowman, Love, Miller, Wagner, Wiedebusch, Deem and Minear.

**MILITARY**

Helmick (*Chair*), Bailey (*Vice Chair*), Dittmar, Love, Oliverio, Wiedebusch, Wooton, Buckalew and Kimble.

**NATURAL RESOURCES**

Dittmar (*Chair*), Whitlow (*Vice Chair*), Anderson, Bowman, Craigo, Grubb, Macnaughtan, Miller, Ross, White, Wiedebusch, Deem, Minear and Yoder.

**PENSIONS**

Plymale (*Chair*), Helmick (*Vice Chair*), Jackson, Manchin, Walker, Boley and Kimble.

**RULES**

Tomblin (*Chair*), Anderson, Chafin, Craigo, Manchin, Sharpe, Walker, Wooton, Boley and Buckalew.

**SMALL BUSINESS**

Anderson (*Chair*), Ross (*Vice Chair*), Blatnik, Craigo, Love, Oliverio, Plymale, Sharpe, Walker, Dugan, Scott and Yoder.

**TRANSPORTATION**

Miller (*Chair*), Love (*Vice Chair*), Dittmar, Oliverio, Plymale, Schoonover, Whitlow, Buckalew and Dugan.

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**JOINT**

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**ENROLLED BILLS**

Schoonover (*Chair*), Bailey, Walker, White and Kimble.

**GOVERNMENT AND FINANCE**

Tomblin (*Chair*), Chafin, Craigo, Sharpe, Wooton, Boley and Deem.

**GOVERNMENT OPERATIONS**

Wagner (*Chair*), Bowman, Wiedebusch, Minear and Yoder.

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Ross (*Chair*), Grubb (*Vice Chair*), Anderson, Macnaughtan, Boley and Buckalew.

**PENSIONS AND RETIREMENT**

Plymale (*Chair*), Helmick (*Vice Chair*), Jackson, Manchin, Walker, Boley and Kimble.

**RULES**

Tomblin (*Chair*), Chafin and Boley.

**STATUTORY LEGISLATIVE COMMISSIONS**

**FOREST MANAGEMENT REVIEW COMMISSION**

Plymale (*Chair*), Helmick, Miller, Ross and Whitlow.

**INTERSTATE COOPERATION**

Grubb (*Chair*), Anderson (*Vice Chair*), Bowman, Schoonover, Whitlow, Deem and Scott.

**JUVENILE LAW**

Wiedebusch (*Chair*), Bowman and Yoder.

**OVERSIGHT COMMISSION ON**

**EDUCATION ACCOUNTABILITY**

Jackson (*Chair*), Bailey, Blatnik, Craigo, Wagner and Dugan.

**OVERSIGHT COMMISSION ON**

**REGIONAL JAIL AND CORRECTIONAL FACILITY**

Blatnik (*Chair*), Craigo, Helmick, Love, Wiedebusch and Yoder.

**SPECIAL INVESTIGATIONS**

Tomblin (*Chair*), Blatnik, Wooton, Buckalew and Boley.

# LEGISLATURE OF WEST VIRGINIA

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# ACTS

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## FIRST REGULAR SESSION, 1995

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### CHAPTER 1

(Com. Sub. for S. B. 351—By Senators Wooton, Dittmar, Yoder,  
Schoonover and Wiedebusch)

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[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to the tolling of statutes of limitation upon claims and causes of action which have not been instituted prior to a stay or order resulting from a bankruptcy proceeding.

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

That article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two, to read as follows:

#### **ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.**

##### **§55-2-22. Effect of bankruptcy.**

- 1 The running of any statute of limitation shall be tolled
- 2 for any claim or cause of action for which the prosecution
- 3 of the same within the period of limitation has been stayed

4 by the provisions of the United States bankruptcy code or  
5 by an order entered in a bankruptcy proceeding pending  
6 the duration of the stay or the effective period of the order  
7 and for a period thereafter of the remaining period of  
8 limitation or for one year, whichever is longer.

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## CHAPTER 2

(H. B. 2338—By Delegates Prezioso, Gallagher, Staton,  
Douglas, Jenkins, Leach and Mezzatesta)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nine, article eight, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dismissal of cases for failure to prosecute.

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

That section nine, article eight, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. ABATEMENT, REVIVAL, DISCONTINUANCE, RE-  
INSTATEMENT OF SUITS.**

**§56-8-9. Discontinuance for failure to prosecute or pay court costs.**

1 Any court in which is pending any case wherein for  
2 more than one year there has been no order or proceeding  
3 but to continue it, or wherein the plaintiff is delinquent in  
4 the payment of accrued court costs, may, in its discretion,  
5 order such case to be struck from its docket; and it shall  
6 thereby be discontinued. A court making such order may  
7 direct it to be published in such newspaper as it may  
8 name.



## CHAPTER 3

(Com. Sub. for S. B. 141—By Senator Yoder)

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[Passed March 9, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to repeal sections fifteen and sixteen, article two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article two-b of said chapter; to amend and reenact section eighteen, article fifteen, chapter eleven of said code; to amend and reenact sections one, two, three, four, five, seven, eleven, twenty and twenty-two, article two-a, chapter twenty-nine of said code; and to further amend said article by adding thereto six new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e and eleven-f, all relating to the state aeronautics commission generally; repealing the commission's authority relating to the licensing of air schools and aeronautics instructors, the certification of airport sites and the licensing of airports; repealing provisions relating to the regulation of weather modification; purposes for which the commission may use taxes on aircraft fuel; revising definitions relating to aeronautics; amending definitions; replacing the state road commissioner with the secretary of transportation as a member of the commission; eliminating the commission's general supervision of airports, air schools and aeronautics; eliminating the commission's authority to classify airports; eliminating the commission's rule-making authority regarding air schools, the classification of airports and the enforcement of the federal air commerce act; legislative rules; commission authority regarding investments with board of investments; commission seal; qualification of and limitations on director of aeronautics; eliminating police powers of and enforcement of laws by commission, agents and employees; removing designation of commission as agent regarding federal moneys in certain circumstances; applications for and receipts by political subdivisions for federal aid; prohibiting the operation of aircraft while under the influence of alcohol, controlled substances or drugs; implied consent to test; tests for alcohol which may be administered; use of test results;

certain immunity from liability incident to administering tests; interpretation and use of chemical test; right to demand test; fee for withdrawing blood sample and administering urine test; payment for fees; commission authority to inspect; enforcement of aeronautics laws; commission orders, notices and hearings; method of mailing notices; and criminal penalties.

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

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

**ARTICLE 2A. STATE AERONAUTICS COMMISSION.**

- §29-2A-1. Definitions.
- §29-2A-2. Creation and membership.
- §29-2A-3. Powers and duties of commission.
- §29-2A-4. Organization of commission; meetings; reports; offices.
- §29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; administrative and other assistants.
- §29-2A-7. Federal aid.
- §29-2A-11. Operation of aircraft while under influence of alcohol, controlled substances or drugs; criminal penalties.
- §29-2A-11a. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.
- §29-2A-11b. Preliminary analysis of breath to determine alcoholic content of blood.
- §29-2A-11c. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.
- §29-2A-11d. Interpretation and use of chemical test.
- §29-2A-11e. Right to demand test.
- §29-2A-11f. Fee for withdrawing blood sample and making urine test; payment of fees.
- §29-2A-20. Enforcement of aeronautics laws.
- §29-2A-22. Commission orders, notices and opportunity for hearings.

**§29-2A-1. Definitions.**

1 As used in the statutes of West Virginia, unless the  
2 context otherwise requires:

3 (a) "Aeronautics" means the art and science of flight,  
4 including, but not limited to, transportation by aircraft; the  
5 operation, construction, repair or maintenance of aircraft,  
6 aircraft power plants and accessories, including the repair,  
7 packing and maintenance of parachutes; and the design,  
8 establishment, construction, extension, operation, improve-  
9 ment, repair or maintenance of airports or other air navi-  
10 gation facilities.

11 (b) "Aircraft" means any contrivance now known, or  
12 hereafter invented, used or designed for navigation of or  
13 flight in the air.

14 (c) "Airmen" means any individual who engages, as  
15 the person in command, or as pilot, mechanic or member  
16 of the crew, in the navigation of the aircraft while under  
17 way and any individual who is directly in charge of the  
18 inspection, maintenance, overhauling or repair of aircraft  
19 engines, propellers or appliances and any individual who  
20 serves in the capacity of aircraft dispatcher or air-traffic  
21 control-tower operator. It does not include any individual  
22 employed outside the United States, or any individual  
23 employed by a manufacturer of aircraft, aircraft engines,  
24 propellers or appliances to perform duties as inspector or  
25 mechanic in connection therewith, or any individual per-  
26 forming inspection or mechanical duties in connection  
27 with aircraft owned or operated by him.

28 (d) "Air navigation" or "navigation" means the opera-  
29 tion or navigation of aircraft in the air space over this state,  
30 or upon any airport within this state.

31 (e) "Air navigation facility" means any facility other  
32 than one owned or controlled by the federal government  
33 used in, available for use in, or designed for use in aid of  
34 air navigation, including airports, and any structures,  
35 mechanisms, lights, beacons, markers, communications  
36 system or other instrumentalities or devices used or useful  
37 as an aid or constituting an advantage or convenience to  
38 the safe taking off, navigation, and landing of aircraft or  
39 the safe and efficient operation or maintenance of an

40 airport, and any combination of any or all of such facili-  
41 ties.

42 (f) "Airport" means any area of land or water which is  
43 used, or intended for use, for the landing and take off of  
44 aircraft and any appurtenant areas which are used, or in-  
45 tended for use, for airport buildings or other airport facili-  
46 ties or rights-of-way, together with all airport buildings  
47 and facilities located thereon.

48 (g) "Airport hazard" means any structure, object of  
49 natural growth or use of land which obstructs the air space  
50 required for the flight of aircraft in landing or taking off  
51 at any airport or is otherwise hazardous to such landing or  
52 taking off.

53 (h) "Commission" means the West Virginia state aero-  
54 nautics commission.

55 (i) "Director" means the director of aeronautics of this  
56 state.

57 (j) "Municipality" means any county, city, town, village  
58 or other political subdivision of this state. "Municipal"  
59 means pertaining to a municipality as herein defined.

60 (k) "Operation of aircraft" or "operate aircraft" means  
61 the use, navigation or piloting of aircraft in the airspace  
62 over this state or upon the ground within this state.

63 (l) "Person" means any individual, firm, copartnership,  
64 corporation, company, association, joint stock association  
65 or body politic and includes any trustee, receiver, assignee  
66 or other similar representative thereof.

67 (m) The singular of any of the above defined terms  
68 shall include the plural and plural the singular.

### §29-2A-2. Creation and membership.

1 There is hereby created an aeronautics commission, to  
2 be known as "The West Virginia State Aeronautics Com-  
3 mission", to consist of five members to be appointed by  
4 the governor, by and with the advice and consent of the  
5 Senate. One of such members shall be the secretary of  
6 transportation ex officio, whose term as such member shall  
7 continue for the period that he or she holds the office of

8 secretary of transportation. The other four members of  
9 the commission shall be appointed by the governor, each  
10 to serve a term beginning the first day of July, one thou-  
11 sand nine hundred forty-seven, one to serve for a term of  
12 one year, one to serve for a term of two years, one to serve  
13 for a term of three years and one to serve for a term of  
14 four years. The successors of the members (other than the  
15 secretary of transportation) initially appointed as provided  
16 herein shall be appointed for terms of four years each in  
17 the same manner as the members originally appointed  
18 under this article, except that any person appointed to fill  
19 a vacancy occurring prior to the expiration of the term for  
20 which his or her predecessor was appointed shall be ap-  
21 pointed only for the remainder of such term. Each mem-  
22 ber shall serve until the appointment and qualification of  
23 his or her successor. No more than three members of the  
24 commission shall be members of the same political party.  
25 All members of the commission shall be citizens and resi-  
26 dents of this state. The members of the commission who  
27 shall be appointed by the governor as provided by this  
28 section shall be selected with due regard to their fitness by  
29 reason of their aeronautical knowledge and practical expe-  
30 rience in the field of aeronautics. In making such ap-  
31 pointments, the governor shall, so far as may be possible  
32 and practicable, select the several members from different  
33 geographical sections of the state.

34 No member shall receive any salary for his or her  
35 services, but each shall be reimbursed for actual and nec-  
36 essary expenses incurred by such member in the perfor-  
37 mance of his or her duties in accordance with state travel  
38 rules.

### §29-2A-3. Powers and duties of commission.

1 The commission shall assume, carry on and succeed to  
2 all the duties, rights, powers, obligations and liabilities  
3 heretofore belonging to, exercised by, or assumed by the  
4 state board of aeronautics, pursuant to statutory authority  
5 heretofore existing and as changed or modified by the  
6 provisions of this article. It may enter into any contracts  
7 necessary to the execution of the powers granted to it by  
8 this article. It is empowered and directed to encourage,  
9 foster and assist in the development of aeronautics in this  
10 state and to encourage the establishment of airports and  
11 air navigation facilities. It shall cooperate with and assist  
12 the federal government, the municipalities of this state and

13 other persons in the development of aeronautics and shall  
14 act to coordinate the aeronautical activities of these bodies  
15 and persons. Municipalities are authorized to cooperate  
16 with the commission in the development of aeronautics  
17 and aeronautics facilities in this state. The commission is  
18 hereby given the power and authority to make such rules  
19 as it may deem necessary and advisable for the public  
20 safety, governing the designing, laying out, locating,  
21 building, equipping and operating of all airports and the  
22 conduct of all other phases of aeronautics.

23 The commission shall keep on file with the secretary  
24 of state, and at the principal office of the commission, a  
25 copy of all its rules and orders having general effect for  
26 public inspection. It shall provide for the publication and  
27 general distribution of all its orders, rules and procedures  
28 having general effect. Copies of any such orders or rules  
29 shall be delivered to any person interested, free of charge,  
30 upon request. The publication and distribution of any  
31 such order or rule as provided herein shall be sufficient  
32 notice to the public of the provisions, requirements and  
33 effect thereof.

34 Each rule of the commission shall be promulgated as a  
35 legislative rule pursuant to the provisions of chapter  
36 twenty-nine-a of this code.

37 Except where otherwise prohibited, the commission is  
38 authorized to permit the state board of investments to  
39 invest, as provided by this code, any funds received by the  
40 commission pursuant to the provisions of this code.

**§29-2A-4. Organization of commission; meetings; reports;  
offices.**

1 The commission shall make, and may from time to  
2 time amend, rules for the administration of the powers  
3 granted to it by this article as are not inconsistent therewith  
4 and as the commission may deem expedient. The com-  
5 mission shall organize by electing from among its mem-  
6 bers a chairman who shall serve as such for a period of  
7 two years. Such chairman shall have the power to sign  
8 documents, execute contracts and otherwise act for and in  
9 the name of the commission in all matters within the law-  
10 ful powers of the commission and duly authorized by a  
11 majority of its members.

12 The commission shall determine the number, date and

13 place of its regular meetings, but at least one such meeting  
14 shall be held annually at the commission's established  
15 offices in the city of Charleston. Whenever the conven-  
16 nience of the public or of interested persons may be pro-  
17 moted, or delay or expense may be prevented, the com-  
18 mission may hold meetings, hearings or proceedings at  
19 any other place designated by it.

20 The commission shall report in writing to the governor  
21 on or before the thirty-first day of August of each year.  
22 The report shall contain a summary of the commission's  
23 proceedings during the preceding fiscal year, a detailed  
24 and itemized statement of all revenue received and all  
25 expenditures made by or on behalf of the commission,  
26 such other information as it may deem necessary or useful  
27 and any additional information which may be requested  
28 by the governor. The fiscal year of the commission shall  
29 conform to the fiscal year of the state.

30 An office shall be established and maintained by the  
31 commission in the city of Charleston. In addition, the  
32 commission may establish and maintain such other offices  
33 within the state as it may deem necessary and expedient.

**§29-2A-5. Director of aeronautics; appointment, qualifica-  
tions, compensation, powers and duties; admin-  
istrative and other assistants.**

1 A director of aeronautics shall be appointed by the  
2 commission, who shall serve for an indefinite term at the  
3 pleasure of the commission. The director shall be ap-  
4 pointed with due regard to his or her fitness, by aeronauti-  
5 cal education and by knowledge of and recent practical  
6 experience in aeronautics, for the efficient dispatch of the  
7 powers and duties vested in and imposed upon him by this  
8 article. The director shall hold or have held an airman's  
9 license issued by the United States as described in section  
10 fourteen of this article. The director shall devote his or  
11 her time to the duties of his or her office as required and  
12 prescribed by this article and shall not have any pecuniary  
13 interest in, or any stock in, or bonds of, any civil aeronau-  
14 tical enterprise. The director shall receive such compensa-  
15 tion as the commission may determine, which said com-  
16 pensation shall, however, conform in general to the com-  
17 pensation received by persons occupying positions of  
18 similar importance and responsibility with other agencies  
19 of this state. The director shall be reimbursed for all trav-

20 eling and other expenses incurred by him or her in the  
21 discharge of his or her official duties in accordance with  
22 state travel rules. The director shall be the executive offi-  
23 cer of the commission and under its supervision shall  
24 administer the provisions of this article and the rules and  
25 orders established thereunder and all other laws of the  
26 state relative to aeronautics. The director shall attend, but  
27 not vote, at all meetings of the commission. The director  
28 shall act as secretary of the commission and shall be in  
29 charge of its offices and responsible to the commission for  
30 the preparation of reports and the collection and dissemi-  
31 nation of data and other public information relating to  
32 aeronautics. At the direction of the commission the direc-  
33 tor shall, together with the chairman of the commission,  
34 execute all contracts entered into by the commission  
35 which are legally authorized and for which funds are pro-  
36 vided in any appropriations act. The commission may, by  
37 written order filed in its office, delegate to the director any  
38 of the powers or duties vested or imposed upon it by this  
39 article. Such delegated powers and duties may be exer-  
40 cised by such director in the name of the commission.  
41 The commission may also employ such administrative,  
42 engineering, technical and clerical assistance as may be  
43 required. The director and such other assistants may,  
44 under the supervision of the commission, insofar as is  
45 reasonably possible, make available the engineering and  
46 other technical services of the commission, without charge  
47 to any municipality, and with or without charge to any  
48 other person desiring them, in connection with the con-  
49 struction, maintenance or operation, or proposed construc-  
50 tion, maintenance or operation of any airport.

**§29-2A-7. Federal aid.**

1 (a) The commission is authorized to cooperate with  
2 the government of the United States, and any agency or  
3 department thereof, in the planning, acquisition, construc-  
4 tion, improvement, maintenance and operation of airports  
5 and other air navigation facilities in this state and is autho-  
6 rized to accept federal aid either outright or by way of  
7 matching the same, in whole or in part, as may be re-  
8 quired, and when funds for matching are available to the  
9 commission, and to comply with the provisions of the laws  
10 of the United States and any regulations made thereunder  
11 for the expenditure of federal moneys upon such airports  
12 and other air navigation facilities.



13 (b) The commission is authorized to accept, receive  
14 and receipt for federal moneys and other moneys, either  
15 public or private, for and in behalf of this state, or any  
16 municipality thereof, for the planning, acquisition, con-  
17 struction, improvement, maintenance and operation of  
18 airports and other air navigation facilities, whether such  
19 work is to be done by the state or by such municipality, or  
20 jointly, aided by grants of aid from the United States,  
21 upon such terms and conditions as are or may be pre-  
22 scribed by the laws of the United States and any rules or  
23 regulations made thereunder, and it is hereby designated  
24 as the agency of the state, and is authorized to and may act  
25 as agent of any municipality of this state upon the request  
26 of such municipality, in accepting, receiving and receipt-  
27 ing for such moneys in its behalf for airports or other air  
28 navigation facility purposes, and in contracting for the  
29 planning, acquisition, construction, improvement, mainte-  
30 nance or operation of airports or other air navigation  
31 facilities, financed, either in whole or in part, by federal  
32 moneys; and any such municipality is authorized to and  
33 may enter into an agreement with the commission pre-  
34 scribing the terms and conditions of such agency in accor-  
35 dance with federal laws, rules and regulations and with this  
36 article. Such moneys as are paid over by the United States  
37 government shall be retained by the state or paid over to  
38 said municipalities under such terms and conditions as  
39 may be imposed by the United States government in mak-  
40 ing such grants.

41 (c) All contracts for the planning, acquisition, con-  
42 struction, improvement, maintenance and operation of  
43 airports, or other air navigation facilities made by the  
44 commission, either as the agent of the state or as the agent  
45 of any municipality therein, shall be made pursuant to the  
46 laws of this state governing the making of like contracts:  
47 *Provided*, That where the planning, acquisition, construc-  
48 tion, improvement, maintenance and operation of any  
49 airport or other air navigation facility is financed wholly  
50 or partially with federal moneys, the commission, as agent  
51 of the state or of any municipality thereof, may let con-  
52 tracts in the manner prescribed by the federal authorities,  
53 acting under the laws of the United States, and any rules or  
54 regulations made thereunder, notwithstanding any other  
55 state law to the contrary.

56 (d) All moneys accepted for disbursement by the  
57 commission pursuant to this section shall be deposited in

58 the state treasury, and, unless otherwise prescribed by the  
59 authority from which the money is received, kept in separate  
60 funds, designated according to the purposes for which  
61 the moneys were made available, and held by the state in  
62 trust for such purposes. All such moneys are hereby ap-  
63 propriated for the purposes for which the same were made  
64 available and shall be expended in accordance with federal  
65 laws and regulations and with the provisions of this article.  
66 The commission is authorized, whether acting for this state  
67 or as the agent of any municipality therein, when request-  
68 ed by the United States government or any agency or  
69 department thereof, or when requested by the state or  
70 municipality for which the money has been made avail-  
71 able, to disburse such moneys for the designated purposes,  
72 but this shall not preclude any other authorized method of  
73 disbursement.

74 (e) The state or any municipality therein is authorized  
75 to cooperate with the government of the United States, and  
76 any agency or department thereof, in the acquisition, con-  
77 struction, improvement, maintenance and operation of  
78 airports and other air navigation facilities in this state and  
79 is authorized to accept federal aid, either by way of out-  
80 right grant or by matching the same, in whole or in part, as  
81 may be required, and to comply with the provisions of the  
82 laws of the United States and any regulations made there-  
83 under for the expenditure of federal moneys upon such  
84 airports and other navigation facilities.

**§29-2A-11. Operation of aircraft while under influence of alcohol, controlled substances or drugs; criminal penalties.**

1 (a) Any person who:

2 (1) Operates an aircraft in this state while:

3 (A) He is under the influence of alcohol; or

4 (B) He is under the influence of any controlled sub-  
5 stance; or

6 (C) He is under the influence of any other drug; or

7 (D) He is under the combined influence of alcohol  
8 and any controlled substance or any other drug; or

9 (E) He has an alcohol concentration in his or her  
10 blood of four hundredths of one percent or more, by

11 weight; and

12 (2) When so operating an aircraft does any act forbid-  
13 den by law or fails to perform any duty imposed by law in  
14 the operation of such aircraft, which act or failure proxi-  
15 mately causes bodily injury to any person other than him-  
16 self, is guilty of a felony, and, upon conviction thereof,  
17 shall be imprisoned in the penitentiary for a definite term  
18 of imprisonment of not less than one year nor more than  
19 five years, or in the discretion of the court, be confined in  
20 jail not more than one year and be fined not more than  
21 five hundred dollars.

22 (b) Any person who:

23 (1) Operates an aircraft in this state while:

24 (A) He is under the influence of alcohol; or

25 (B) He is under the influence of any controlled sub-  
26 stance; or

27 (C) He is under the influence of any other drug; or

28 (D) He is under the combined influence of alcohol  
29 and any controlled substance or any other drug; or

30 (E) He has an alcohol concentration in his or her  
31 blood of four hundredths of one percent or more, by  
32 weight;

33 (2) Is guilty of a misdemeanor, and, upon conviction  
34 thereof, shall be confined in jail not more than one year or  
35 fined not more than five hundred dollars, or both, in the  
36 discretion of the court.

37 (c) Any person who:

38 (1) Knowingly permits his or her aircraft to be operat-  
39 ed in this state by any other person who is:

40 (A) Under the influence of alcohol; or

41 (B) Under the influence of any controlled substance;  
42 or

43 (C) Under the influence of any other drug; or

44 (D) Under the combined influence of alcohol and any  
45 controlled substance or any other drug; or

46 (E) Has an alcohol concentration in his or her blood

47 of four hundredths of one percent or more, by weight;

48 (2) Is guilty of a misdemeanor, and, upon conviction  
49 thereof, shall be confined in jail not more than one year or  
50 fined not more than five hundred dollars, or both, in the  
51 discretion of the court.

52 (d) A person violating any provision of subsection (a)  
53 of this section is, for the second offense under this section,  
54 guilty of a felony, and, upon conviction thereof, shall be  
55 imprisoned in the penitentiary for a definite term of im-  
56 prisonment of not less than one year nor more than five  
57 years.

58 (e) A person violating any provision of subsection (b)  
59 or (c) of this section is, for the second offense under this  
60 section, guilty of a felony, and, upon conviction thereof,  
61 shall be imprisoned in the penitentiary for a definite term  
62 of imprisonment of not less than one year nor more than  
63 three years.

64 (f) For purposes of subsections (d) and (e) of this  
65 section relating to second and subsequent offenses, the  
66 following types of convictions shall be regarded as convic-  
67 tions under this section:

68 (1) Any conviction under the provisions of the prior  
69 enactment of this section;

70 (2) Any conviction under a statute of the United States  
71 or of any other state of an offense which has the same  
72 elements as an offense described in subsection (a), (b) or  
73 (c) of this section.

74 (g) A person may be charged in a warrant or indict-  
75 ment or information for a second or subsequent offense  
76 under this section if the person has been previously arrest-  
77 ed for or charged with a violation of this section which is  
78 alleged to have occurred within the applicable time peri-  
79 ods for prior offenses, notwithstanding the fact that there  
80 has not been a final adjudication of the charges for the  
81 alleged previous offense. In such case, the warrant or  
82 indictment or information must set forth the date, location  
83 and particulars of the previous offense or offenses. No  
84 person may be convicted of a second or subsequent of-  
85 fense under this section unless the conviction for the pre-  
86 vious offense has become final.

87 (h) The fact that any person charged with a violation

88 of subsection (a) or (b) of this section, or any person per-  
89 mitted to operate an aircraft as described under subsection  
90 (c) of this section, is or has been legally entitled to use  
91 alcohol, a controlled substance or a drug shall not consti-  
92 tute a defense against any charge of violating subsection  
93 (a), (b) or (c) of this section.

94 (i) For purposes of this section, the term "controlled  
95 substance" shall have the meaning ascribed to it in chapter  
96 sixty-a of this code.

97 (j) When any person is convicted of violating any  
98 provision of this section, the clerk of the court in which  
99 such conviction is had shall, within seventy-two hours after  
100 such conviction is had, transmit to the commission a certi-  
101 fied abstract of the judgment of conviction. The commis-  
102 sion shall, within seventy-two hours after receipt thereof,  
103 transmit a true copy thereof to the federal aviation admin-  
104 istration.

**§29-2A-11a. Implied consent to test; administration at direc-  
tion of law-enforcement officer; designation  
of type of test; definition of law-enforcement  
officer.**

1 Any person who operates an aircraft in this state shall  
2 be deemed to have given his or her consent by the opera-  
3 tion thereof to a preliminary breath analysis and a second-  
4 ary chemical test of either his or her blood, breath or urine  
5 for the purposes of determining the alcoholic content of  
6 his or her blood. A preliminary breath analysis may be  
7 administered in accordance with the provisions of section  
8 eleven-b of this article whenever a law-enforcement officer  
9 has reasonable cause to believe a person to have commit-  
10 ted an offense prohibited by section eleven of this article.  
11 A secondary test of blood, breath or urine shall be inci-  
12 dental to a lawful arrest and shall be administered at the  
13 direction of the arresting law-enforcement officer having  
14 reasonable grounds to believe the person to have commit-  
15 ted an offense prohibited by said section. The  
16 law-enforcement agency by which such law-enforcement  
17 officer is employed shall designate which one of the  
18 aforesaid secondary tests shall be administered: *Provided*,  
19 That if the test so designated is a blood test and the person  
20 so arrested refuses to submit to such blood test, then the  
21 law-enforcement officer making such arrest shall desig-  
22 nate in lieu thereof either a breath or urine test to be ad-

23 ministered.

24 For the purpose of this article, the term  
25 "law-enforcement officer" means and is limited to: (1)  
26 Any member of the division of public safety of this state;  
27 (2) any sheriff and any deputy sheriff of any county; (3)  
28 any member of a police department in any municipality as  
29 defined in section two, article one, chapter eight of this  
30 code; and (4) any conservation officer of the division of  
31 natural resources. If any municipality or the division of  
32 natural resources does not have available to its  
33 law-enforcement officers the testing equipment or facili-  
34 ties necessary to conduct any secondary test which a  
35 law-enforcement officer may administer under this article,  
36 any member of the West Virginia state police, the sheriff  
37 of the county wherein the arrest is made or any deputy of  
38 such sheriff or any municipal law-enforcement officer of  
39 another municipality within the county wherein the arrest  
40 is made may, upon the request of such arresting  
41 law-enforcement officer and in his or her presence, con-  
42 duct such secondary test and the results of such test may  
43 be used in evidence to the same extent and in the same  
44 manner as if such test had been conducted by such arrest-  
45 ing law-enforcement officer. Only the person actually  
46 administering or conducting such test shall be competent  
47 to testify as to the results and the veracity of such test.

**§29-2A-11b. Preliminary analysis of breath to determine  
alcoholic content of blood.**

1 When a law-enforcement officer has reason to believe  
2 a person has committed an offense prohibited by section  
3 eleven of this article, the law-enforcement officer may  
4 require such person to submit to a preliminary breath  
5 analysis for the purpose of determining such person's  
6 blood alcohol content. Such breath analysis must be ad-  
7 ministered as soon as possible after the law-enforcement  
8 officer has a reasonable belief that the person has been  
9 operating an aircraft while under the influence of alcohol,  
10 controlled substances or drugs. Any preliminary breath  
11 analysis required under this section must be administered  
12 with a device and in a manner approved by the bureau of  
13 public health for that purpose. The results of a prelimi-  
14 nary breath analysis shall be used solely for the purpose  
15 of guiding the officer in deciding whether an arrest should  
16 be made. When an operator is arrested following a pre-  
17 liminary breath analysis, the tests as hereinafter provided

18 in this article shall be administered in accordance with the  
19 provisions thereof.

**§29-2A-11c. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.**

1 Only a doctor of medicine or osteopathy, or registered  
2 nurse, or trained medical technician at the place of his or  
3 her employment, acting at the request and direction of the  
4 law-enforcement officer, may withdraw blood for the  
5 purpose of determining the alcoholic content thereof.  
6 These limitations shall not apply to the taking of a breath  
7 test or a urine specimen. In withdrawing blood for the  
8 purpose of determining the alcoholic content thereof, only  
9 a previously unused and sterile needle and sterile vessel  
10 may be utilized and the withdrawal shall otherwise be in  
11 strict accord with accepted medical practices. A nonalco-  
12 holic antiseptic shall be used for cleansing the skin prior  
13 to venepuncture. The person tested may, at his or her own  
14 expense, have a doctor of medicine or osteopathy, regis-  
15 tered nurse or trained medical technician at the place of  
16 his or her employment, of his or her own choosing, ad-  
17 minister a chemical test in addition to the test administered  
18 at the direction of the law-enforcement officer. Upon the  
19 request of the person who is tested, full information con-  
20 cerning the test taken at the direction of the  
21 law-enforcement officer shall be made available to him or  
22 her. No person who administers any such test upon the  
23 request of a law-enforcement officer as herein defined, no  
24 hospital in or with which such person is employed or is  
25 otherwise associated or in which such test is administered  
26 and no other person, firm or corporation by whom or with  
27 which such person is employed or is in any way associat-  
28 ed, may be in any way criminally liable for the administra-  
29 tion of such test or civilly liable in damages to the person  
30 tested unless for gross negligence or willful or wanton  
31 injury.

**§29-2A-11d. Interpretation and use of chemical test.**

1 (a) (1) Upon trial for the offense of operating an air-  
2 craft in this state while under the influence of alcohol,  
3 controlled substances or drugs, or upon the trial of any  
4 civil or criminal action arising out of acts alleged to have  
5 been committed by any person operating an aircraft while

6 under the influence of alcohol, controlled substances or  
7 drugs, evidence of the amount of alcohol in the person's  
8 blood at the time of the arrest or of the acts alleged, as  
9 shown by a chemical analysis of his or her blood, breath  
10 or urine, is admissible, if the sample or specimen was taken  
11 within two hours from and after the time of arrest or of the  
12 acts alleged, and shall give rise to the following presump-  
13 tion or have the following effect: Evidence that there was,  
14 at that time, four hundredths of one percent or more, by  
15 weight, of alcohol in his or her blood, shall be prima facie  
16 evidence that the person was under the influence of alco-  
17 hol.

18 (2) Percent by weight of alcohol in the blood shall be  
19 based upon milligrams of alcohol per one hundred cubic  
20 centimeters of blood.

21 (b) A chemical analysis of a person's blood, breath or  
22 urine, in order to give rise to the presumption or to have  
23 the effect provided for in subsection (a) of this section,  
24 must be performed in accordance with methods and stan-  
25 dards approved by the state bureau of public health. A  
26 chemical analysis of blood or urine to determine the alco-  
27 holic content of blood shall be conducted by a qualified  
28 laboratory or by the state police scientific laboratory of  
29 the criminal identification bureau of the West Virginia  
30 state police.

31 (c) The provisions of this article shall not limit the  
32 introduction in any administrative or judicial proceeding  
33 of any other competent evidence bearing on the question  
34 of whether the person was under the influence of alcohol,  
35 controlled substances or drugs.

**§29-2A-11e. Right to demand test.**

1 Any person lawfully arrested for operating an aircraft  
2 in this state while under the influence of alcohol, con-  
3 trolled substances or drugs shall have the right to demand  
4 that a sample or specimen of his or her blood, breath or  
5 urine be taken within two hours from and after the time of  
6 arrest and that a chemical test thereof be made. The anal-  
7 ysis disclosed by such chemical test shall be made avail-  
8 able to such arrested person forthwith upon demand.

**§29-2A-11f. Fee for withdrawing blood sample and making  
urine test; payment of fees.**



1 A reasonable fee shall be allowed to the person with-  
2 drawing a blood sample or administering a urine test at the  
3 request and direction of a law-enforcement officer in  
4 accordance with the provisions of this article. If the per-  
5 son whose blood sample was withdrawn or whose urine  
6 was tested was arrested and charged with a violation of  
7 section eleven of this article, the county having venue of  
8 such charge shall pay said fee and if said person is subse-  
9 quently convicted of such charge, such fee shall be taxed  
10 as a part of the costs of the criminal proceeding and shall  
11 be paid, notwithstanding any other provision of this code  
12 to the contrary, into the general fund of said county.

**§29-2A-20. Enforcement of aeronautics laws.**

1 It shall be the duty of the commission, its members,  
2 the director, officers and such employees of the commis-  
3 sion as may be designated by it, and every state and mu-  
4 nicipal officer charged with the enforcement of state and  
5 municipal laws, to enforce and assist in the enforcement of  
6 this article and of all rules and orders issued pursuant  
7 thereto and of all other laws of this state relating to aero-  
8 nautics; and in that connection each of the aforesaid per-  
9 sons is authorized to inspect and examine at reasonable  
10 hours any aircraft, the credentials of any airman or other  
11 person engaged in aeronautics required by the laws of this  
12 state or of the United States to have in his or her posses-  
13 sion credentials evidencing his or her authority or permis-  
14 sion to engage in aeronautics, any premises and the build-  
15 ings and other structures thereon, where airports, air navi-  
16 gation facilities or other aeronautical activities are operat-  
17 ed or conducted.

18 The commission is authorized in the name of the state  
19 to enforce the provisions of this article and the rules and  
20 orders issued pursuant thereto by injunction or other legal  
21 process in the courts of this state.

**§29-2A-22. Commission orders, notices and opportunity for hearings.**

1 Every order of the commission requiring performance  
2 of certain acts or compliance with certain requirements  
3 and any denial or revocation of an approval shall set forth  
4 the reasons and shall state the acts to be done or require-  
5 ments to be met before approval by the commission will  
6 be given or the approval granted or restored or the order  
7 modified or changed. Orders issued by the commission

8 pursuant to the provisions of this article shall be served  
9 upon the persons affected either by certified mail or in the  
10 manner provided by section one, article two, chapter  
11 fifty-six of this code. In every case where notice and  
12 opportunity for hearing are required under the provisions  
13 of this article, the order of the commission shall, on not  
14 less than ten days' notice, specify a time when and place  
15 where the person affected may be heard, or the time within  
16 which he may request a hearing, and such order shall  
17 become effective upon the expiration of the time for exer-  
18 cising such opportunity for hearing unless a hearing is  
19 held or requested within the time provided, in which case  
20 the order shall be suspended until the commission shall  
21 affirm, disaffirm or modify such order after hearing held  
22 or default by the person affected.

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## CHAPTER 4

(Com. Sub. for H. B. 2471—By Mr. Speaker, Mr. Chambers, and Delegate Manuel)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-b; to amend and reenact section four, article sixteen-a, chapter nineteen of said code; and to amend article two-b, chapter forty-nine of said code by adding thereto a new section, designated section seventeen, all relating to commissioner of agriculture promulgating rules establishing an integrated pest management program for schools and daycare centers; and requiring county boards of education and daycare centers to implement the program.

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

That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section nine-b; that section four, article sixteen-a, chapter nineteen of said code be amended and reenacted; and that article two-b, chapter forty-nine of said code be amended by adding thereto a new section, designated section seventeen, all to read as follows:

### **Chapter**

- 18. Education.**
- 19. Agriculture.**
- 49. Child Welfare**

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

#### **§18-5-9b. Implementation of the Integrated Pest Management Program.**

1 By the fifteenth day of August, one thousand nine  
2 hundred ninety-five, the board shall implement the inte-  
3 grated pest management program promulgated under  
4 rules by the department of agriculture under authority of  
5 section four, article sixteen-a, chapter nineteen of this  
6 code.

## **CHAPTER 19. AGRICULTURE.**

### **ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.**

#### **§19-16A-4. Powers and duties of the commissioner.**

1 The commissioner of agriculture has the power and  
2 duty to carry out the provisions of this article and is au-  
3 thorized to:

4 (a) Delegate to employees of the department of agri-  
5 culture the authority vested in the commissioner by virtue  
6 of the provisions of this article;

7 (b) Cooperate, receive grants in aid and enter into  
8 agreements with any other agency of the state, the United  
9 States department of agriculture, United States environ-  
10 mental protection agency or any other federal agency or  
11 any other state or agency thereof for the purpose of carry-

12 ing out the provisions of this article;

13 (c) Contract for research projects;

14 (d) Require that pesticides used in this state are ade-  
15 quately tested and are safe for use under local conditions;

16 (e) Require that individuals who sell, store, dispose or  
17 apply pesticides are adequately trained and observe appro-  
18 priate safety practices;

19 (f) Promulgate rules pursuant to chapter twenty-nine-a  
20 of this code, including, but not limited to, the following:

21 (1) Licensing of businesses that sell, store, recommend  
22 for use, mix or apply pesticides;

23 (2) Registration of pesticides for manufacture, distri-  
24 bution, sale, storage or use in this state;

25 (3) Requiring reporting and recordkeeping related to  
26 licensing and registration;

27 (4) Establishing training, testing and standards for  
28 certification of commercial application, public application,  
29 registered technician and private applicator;

30 (5) Revoking, suspending or denying licenses, regis-  
31 tration and certification or certificate or permits;

32 (6) Creating advisory committees made up of both  
33 pesticide industry representatives and consumers as con-  
34 sidered necessary to implement this article;

35 (7) Establishing a fee structure for licenses, registra-  
36 tion and certificate to defray the costs of implementing  
37 this article;

38 (8) Classifying or subclassifying certificate or certifi-  
39 cates to be issued under this article. The classification  
40 may include, but not be limited to, agricultural, forest,  
41 ornamental, aquatic, right-of-way, industrial, institutional,  
42 structural or health-related pest control;

43 (9) Restricting or prohibiting the sale or use and dis-

44 posal of any pesticide, pesticide container or residue which  
45 is extremely hazardous;

46 (10) Coordinating and supporting pesticide monitor-  
47 ing programs;

48 (11) Developing a program for registration of persons  
49 with health sensitivity to pesticide drift;

50 (12) Establishing guidelines and requirements, as  
51 deemed necessary, for licenses, certificate holders and  
52 permittees for the identification of pests and their methods  
53 of inspection of property to determine the presence of  
54 pests;

55 (13) Establishing procedures for reporting spills, acci-  
56 dents or incidents; and

57 (14) Such other rules necessary or convenient to carry  
58 out the purpose of this article;

59 (g) Design and conduct an appropriate educational  
60 program on the use of pesticides and the necessity for care  
61 when applying the same; and

62 (h) Only after consultation with the state board of  
63 education, division of human services for child welfare,  
64 representatives from the environmental community, and  
65 representatives of school and daycare employees, by the  
66 first day of July, one thousand nine hundred ninety-five,  
67 promulgate emergency rules, pursuant to article three,  
68 chapter twenty-nine-a of this code, establishing an inte-  
69 grated pest management program. The emergency and  
70 legislative rules for the program established in this subsec-  
71 tion shall include, but are not limited to, the following:

72 (1) The use of least hazardous materials;

73 (2) That pesticides shall only be applied when moni-  
74 toring indicates that pest infestations are present;

75 (3) That students and school and daycare employees,  
76 except school, board of education or daycare employees  
77 that are certified applicators, shall not be present during

78 application and provide for appropriate reentry times,  
 79 except that pesticides may be applied to a localized area of  
 80 infestation when students or school and daycare employ-  
 81 ees are present if the infestation causes an imminent threat  
 82 of bodily harm;

83 (4) A definition of pesticides; and

84 (5) A system for prior notification to parents and school  
 85 and daycare employees.

### CHAPTER 49. CHILD WELFARE.

#### ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

##### §49-2B-17. Implementation of the integrated pest management program.

1 By the fifteenth day of August, one thousand nine  
 2 hundred ninety-five, the commissioner shall implement  
 3 the integrated pest management program promulgated  
 4 under rules by the department of agriculture under au-  
 5 thority of section four, article sixteen-a, chapter nineteen  
 6 of this code.

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## CHAPTER 5

(Com. Sub. for H. B. 2425—By Delegates Beach and Michael)

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[Passed March 11, 1995; in effect ninety days from passage.  
 Became law without Governor's signature.]

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AN ACT to amend and reenact sections one, two, three, four, five, six, eight, nine, ten and eleven, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulation of poultry as well as meat; allowing the commissioner of agriculture to elect where a hearing will be held for grievances filed under this article; increasing the penalties for violating this article; and new violation and penalties.

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

That sections one, two, three, four, five, six, eight, nine, ten and eleven, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.**

- §19-2B-1. Purpose and construction; continuation of meat and poultry inspection program.
- §19-2B-2. Definitions.
- §19-2B-3. Commissioner to enforce article; rules; cooperation with federal agencies, etc.
- §19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.
- §19-2B-5. Access to establishments, records, etc.
- §19-2B-6. Inspection, marking, labeling, branding, etc.; quarantine; segregation; scheduling of operations; disposition of carcasses, etc.; reinspection; health examination; rejection tags.
- §19-2B-8. Exemptions.
- §19-2B-9. Hearings; judicial review.
- §19-2B-10. Additional prohibitions.
- §19-2B-11. Penalties.

**§19-2B-1. Purpose and construction; continuation of meat and poultry inspection program.**

1 Subject to the provisions of section seven of this arti-  
2 cle, the basic purpose of this article is to provide for the  
3 inspection, labeling and disposition of animals, poultry,  
4 carcasses, meat products and poultry products which are to  
5 be sold or offered for sale through commercial outlets for  
6 human consumption, the licensing of commercial slaugh-  
7 terers, custom slaughterers and processors, and the inspec-  
8 tion of slaughterhouses and processing plants located in  
9 the state of West Virginia. This article, being intended to  
10 protect the health of the citizens of West Virginia, shall be  
11 liberally construed.

12 After having conducted a performance and fiscal audit  
13 through its joint committee on government operations,  
14 pursuant to section nine, article ten, chapter four of this  
15 code, the Legislature hereby finds and declares that the

16 meat inspection program should be continued and rees-  
17 tablished. Accordingly, notwithstanding the provisions of  
18 section four, article ten, chapter four of this code, the meat  
19 and poultry inspection program shall continue to exist  
20 until the first day of July, one thousand nine hundred  
21 ninety-eight.

**§19-2B-2. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) "Department" means the department of agriculture  
4 of the state of West Virginia;

5 (b) "Commissioner" means the commissioner of agri-  
6 culture of the state of West Virginia and duly authorized  
7 representatives;

8 (c) "Person" means any individual, partnership, corpo-  
9 ration, association, or other entity;

10 (d) "Contract veterinarian" means a graduate of a  
11 school of veterinary medicine accredited by the American  
12 Veterinary Medical Association who provides services for  
13 the department under contract;

14 (e) "Veterinary supervisor" means a graduate of a  
15 school of veterinary medicine accredited by the American  
16 Veterinary Medical Association, employed by the depart-  
17 ment and authorized by the commissioner to perform on  
18 his or her behalf any inspection and supervisory functions  
19 under this article;

20 (f) "Inspector" means an individual employed by the  
21 department and authorized by the commissioner to per-  
22 form on his or her behalf any inspection and supervisory  
23 functions under this article;

24 (g) "State inspection" means inspection services con-  
25 ducted by the department at or in connection with estab-  
26 lishments required to be licensed by this article;

27 (h) "W. Va. condemned," or abbreviation thereof,  
28 means the animal or poultry so marked has been inspected  
29 and found to be in a dying condition, or to be affected



30 with any other condition or disease that would require  
31 condemnation of its carcass;

32 (i) "W. Va. inspected and condemned," or abbreviation  
33 thereof, means that the carcass, meat product or poultry  
34 product, so marked or so identified, is adulterated and  
35 shall be disposed of in the manner prescribed by the com-  
36 missioner;

37 (j) "W. Va. retained" means that the carcass, meat  
38 product or poultry product or any ingredient used in  
39 processing, or any direct or indirect container used for  
40 meat products or poultry products so identified is held for  
41 further examination by a veterinary supervisor or contract  
42 veterinarian to determine its disposal;

43 (k) "W. Va. suspect" means that the animal or poultry  
44 so marked and identified is suspected of being affected  
45 with a disease or condition which may require its condem-  
46 nation, in whole or in part, when slaughtered, and is sub-  
47 ject to further examination by a contract veterinarian or  
48 veterinary supervisor to determine its disposal;

49 (l) "W. Va. inspected and passed," or abbreviation  
50 thereof, means that the carcass, meat product or poultry  
51 product so marked or so identified, was at the time it was  
52 so marked or so identified found to be wholesome;

53 (m) "Country" when used in the name of a meat prod-  
54 uct or poultry product means that such meat product or  
55 poultry product was actually prepared on a farm;

56 (n) "Federal inspection" means the meat and poultry  
57 inspection service conducted by the food safety and in-  
58 spection service of the United States department of agri-  
59 culture;

60 (o) "Federal Meat Inspection Act" means the act so  
61 entitled, approved March four, one thousand nine hundred  
62 seven, as amended by the Wholesome Meat Act.

63 (p) "Federal Poultry Products Inspection Act" means  
64 the act of Congress approved August twenty-eighth, one  
65 thousand nine hundred fifty-seven, as amended;

66 (q) "Inspection legend" means a mark or a statement

67 on a carcass, meat product or poultry product indicating  
68 the same has been inspected and passed in this state under  
69 the provisions of this article;

70 (r) "Label" means a display of written, printed or  
71 graphic matter on a container indicating the carcass, meat  
72 product or poultry product contained therein has been  
73 inspected and passed in this state under the provisions of  
74 this article;

75 (s) "Official inspection mark" means any symbol pre-  
76 scribed by the commissioner for the purpose of identify-  
77 ing the inspection status of any meat product or poultry  
78 product so inspected;

79 (t) "Establishment number" means an official number  
80 assigned by the commissioner to each establishment and  
81 included on the inspection legend and label to identify all  
82 inspected and passed carcasses, meat product or poultry  
83 product handled in that establishment;

84 (u) "Container" and "package" shall include, but not be  
85 limited to, any box, can, tin, cloth, plastic or any other  
86 receptacle, wrapper or cover;

87 (v) "Sell" means offer for sale, expose for sale, have in  
88 possession for sale, exchange, barter or trade;

89 (w) "Animals" mean cattle, swine, sheep and goats;

90 (x) "Carcass" means all or any part of a slaughtered  
91 animal or poultry, including viscera, which is capable of  
92 being used for human consumption;

93 (y) "Meat" means the edible part of the muscle of  
94 animals or poultry, which is skeletal or which is found in  
95 the tongue, in the diaphragm, in the heart or in the esoph-  
96 agus, with or without the accompanying or overlying fat,  
97 and the portions of bone, skin, sinew nerve and blood  
98 vessels which normally accompany the muscle tissue and  
99 which are not separated from it in the process of dressing;  
100 it does not include the muscle found in the lips, snout or  
101 ears;

102 (z) "Meat food product" means any article of food for  
103 human consumption or any article which enters into the

104 composition of food for human consumption, which is  
105 derived or prepared in whole or in part from any portion  
106 of any animal or poultry, except organotherapeutic sub-  
107 stances, meat juices, meat extract and the like which are  
108 only for medicinal purposes and are advertised only to the  
109 medical profession; any edible part of the carcass which  
110 has been manufactured, cured, smoked, processed or oth-  
111 erwise treated shall be considered a meat food product;

112 (aa) "Meat by-product" means any edible part of an  
113 animal or poultry other than meat or meat food product;

114 (bb) "Meat product" means any meat, meat food prod-  
115 uct, and meat by-product capable of use as human food;

116 (cc) "Poultry" means any domesticated bird which is  
117 used or intended to be used for human consumption;

118 (dd) "Poultry meat" means the carcass or parts of such  
119 carcass of any poultry;

120 (ee) "Poultry food product" means any product of  
121 poultry, other than eggs, capable of use as human food  
122 which is made wholly or in part from any poultry meat or  
123 other portion of the carcass of poultry;

124 (ff) "Poultry by-product" means any part or parts of  
125 poultry, other than eggs, capable of use as human food,  
126 other than poultry carcass which have been derived from  
127 one or more birds;

128 (gg) "Poultry product" means any poultry meat, poul-  
129 try food product, and poultry by-product capable of use  
130 as human food;

131 (hh) "Process" means to cut up, bone, chop, mix, grind,  
132 slice, cook, smoke, cure, salt, marinate, dry, can, or oth-  
133 erwise manufacture, process, or package any meat product  
134 or poultry product;

135 (ii) "Denature" means the uniform application of suffi-  
136 cient quantities of crude carbolic acid, cresylic disinfect-  
137 ant, or any other agent approved by the commissioner  
138 upon and into the freely slashed flesh of any carcass or  
139 product condemned;

140 (jj) "Decharacterization" means the uniform applica-  
141 tion of sufficient quantities of dye, charcoal, malodorous  
142 fish oil, or any other agent approved by the commissioner,  
143 upon and into the freely slashed flesh of carcasses or meat  
144 not being rendered, so as to unequivocally preclude its use  
145 for human food;

146 (kk) "Inedible" means the carcass, meat product or  
147 poultry product derived from 4-D or condemned animals  
148 or poultry, or meat products or poultry products which  
149 have deteriorated or are otherwise unfit for human con-  
150 sumption;

151 (ll) "4-D animal" means an animal that is dead, dying,  
152 down or diseased on arrival at the slaughterhouse;

153 (mm) "Commercial slaughterer" means a person en-  
154 gaged for profit in this state in the business of slaughter-  
155 ing animals or poultry for human consumption which are  
156 to be sold or offered for sale through a commercial outlet  
157 or establishment, and shall include a person who in addi-  
158 tion to such commercial slaughtering also engages in the  
159 business of a custom slaughterer;

160 (nn) "Custom slaughterer" means a person engaged  
161 for profit in this state in the business of slaughtering ani-  
162 mals or poultry for human consumption which are not to  
163 be sold or offered for sale through a commercial outlet,  
164 commercial establishment, distributor, or to an individual,  
165 and shall include the boning or cutting up of carcasses of  
166 such animals or poultry and the grinding, chopping and  
167 mixing of the carcasses thereof;

168 (oo) "Slaughterhouse" shall include, but not be limited  
169 to, all buildings, structures and facilities used in the  
170 slaughtering of animals or poultry for human consump-  
171 tion;

172 (pp) "Distributor" means a person engaged for profit  
173 in this state in the business where carcasses, meat products  
174 or poultry products are received from state inspected es-  
175 tablishments, or establishments inspected by the United  
176 States department of agriculture;

177 (qq) "Processor" means a person who engages for  
178 profit in this state in the business of processing carcasses,

- 178 meat products or poultry products for human consump-  
179 tion;
- 180 (rr) "Commercial processor" means a processor for  
181 commercial outlets or distributors and shall include the  
182 business of custom processing;
- 183 (ss) "Custom processor" means a processor in which  
184 the carcass, meat products or poultry products derived  
185 through processing cannot be sold or offered for sale  
186 through a commercial outlet, commercial establishment,  
187 distributor, or to an individual;
- 188 (tt) "Processing plant" shall include, but not be limited  
189 to, all buildings, structures, chill rooms, aging rooms, pro-  
190 cessing rooms, sanitary facilities, other facilities, and uten-  
191 sils, used by or in connection with the operations of a  
192 processor;
- 193 (uu) "Establishment" means any slaughterhouse, pro-  
194 cessing plant or distributor in this state;
- 195 (vv) "Related industries" means rendering plants, re-  
196 frigerated meat warehouses, food lockers, meat and poul-  
197 try wholesalers, brokers, pet food manufacturers, other  
198 animal food manufacturers, animal impoundments whose  
199 main source of food supply is derived from the raw meats,  
200 transportation firms and private carriers;
- 201 (ww) "Commercial outlet" means a place of business in  
202 this state and shall include all retail stores and public eat-  
203 ing places in which carcasses, meat products or poultry  
204 products are stored, sold or offered for sale for human  
205 consumption by the purchaser or other individual con-  
206 sumers;
- 207 (xx) "Commercial dealer" means any person who  
208 operates one or more commercial outlets and who sells or  
209 offers for sale thereat any carcasses, meat products or  
210 poultry products for human consumption, and who does  
211 not can, cook, cure, dry, smoke or render any carcass,  
212 meat products or poultry products at such outlets and who  
213 conducts no slaughtering or preparing of carcasses, meat  
214 products or poultry products at such outlets other than  
215 boning or cutting up of carcasses, and other than grinding,

216 chopping and mixing operations at such outlets with re-  
217 spect to trim or meat derived only from such boning or  
218 cutting up operations;

219 (yy) "Custom slaughtered carcass, meat or poultry" or  
220 "custom processed meat products or poultry products"  
221 mean, respectively, carcasses, meat products or poultry  
222 products which were slaughtered, or processed by a cus-  
223 tom slaughterer;

224 (zz) "Wholesome" means sound, healthful, clean, and  
225 otherwise fit for human consumption;

226 (aaa) "Adulterated" means and shall apply to any car-  
227 cass, part thereof, meat product or poultry product under  
228 one or more of the following circumstances:

229 (1) If it bears or contains any poisonous or deleterious  
230 substance which may render it injurious to health; but in  
231 case the substance is not an added substance, such carcass,  
232 meat product or poultry product shall not be considered  
233 adulterated under this clause if the quantity of such sub-  
234 stance in or on such carcass, meat product or poultry  
235 product does not ordinarily render it injurious to health;

236 (2) (A) If it bears or contains (by reason of adminis-  
237 tration of any substance to the live animal or poultry or  
238 otherwise) any added poisonous or added deleterious  
239 substance (other than one which is a pesticide chemical in  
240 or on a raw agricultural commodity; a food additive; or a  
241 color additive) which may, in the judgment of the com-  
242 missioner make such carcass, meat product or poultry  
243 product unfit for human food;

244 (B) If it is, in whole or in part, a raw agricultural com-  
245 modity and such commodity bears or contains a pesticide  
246 chemical which is unsafe within the meaning of the federal  
247 Food, Drug and Cosmetic Act;

248 (C) If it bears or contains any food additive which is  
249 unsafe within the meaning of the federal Food, Drug and  
250 Cosmetic Act;

251 (D) If it bears or contains any color additive which is  
252 unsafe within the meaning of the federal Food, Drug and

253 Cosmetic Act: *Provided*, That a carcass, meat product or  
254 poultry product which is not adulterated under paragraph  
255 (B), (C) or (D) of this subsection, shall nevertheless be  
256 deemed adulterated if use of the pesticide chemical, food  
257 additive, or color additive in or on such carcass, meat  
258 product or poultry product is prohibited by rules in estab-  
259 lishments at which inspection is maintained;

260 (3) If it consists in whole or in part of any filthy, pu-  
261 trid, or decomposed substance or is for any other reason  
262 unsound, unhealthful, unwholesome, or otherwise unfit for  
263 human food;

264 (4) If it has been processed, packed, or held under  
265 insanitary conditions whereby it may have become con-  
266 taminated with filth or pathogenic microorganisms, or  
267 whereby it may have been rendered injurious to health;

268 (5) If it is, in whole or in part, the product of an ani-  
269 mal or poultry which has died otherwise than by slaughter;

270 (6) If its container is composed, in whole or in part, of  
271 any poisonous or deleterious substance which may render  
272 the contents injurious to health;

273 (7) If it has been intentionally subjected to radiation,  
274 unless the use of the radiation was in conformity with a  
275 regulation or exemption in effect pursuant to the federal  
276 Food, Drug and Cosmetic Act;

277 (8) If any valuable constituent has been in whole or in  
278 part omitted or abstracted therefrom; or if any substance  
279 has been substituted, wholly or in part therefor; or if dam-  
280 age or inferiority has been concealed in any manner; or if  
281 any substance has been added thereto or mixed or packed  
282 therewith so as to increase its bulk or weight, or reduce its  
283 quality or strength, or make it appear better or of greater  
284 value than it is;

285 (bbb) "Antemortem" means before death;

286 (ccc) "Postmortem" means after death;

287 (ddd) "Reinspection" means inspection of the process-  
288 ing of carcass, meat products and poultry products, as well  
289 as a reexamination of products previously inspected;

290 (eee) "Licensee" means any person licensed under the  
291 provisions of this article.

**§19-2B-3. Commissioner to enforce article; rules; cooperation with federal agencies, etc.**

1 (a) The commissioner shall administer and enforce the  
2 provisions of this article and for this purpose is hereby  
3 authorized and empowered to promulgate reasonable rules  
4 and to employ or contract with such persons as may be  
5 appropriate. All rules shall be promulgated in accordance  
6 with the provisions of chapter twenty-nine-a of this code.  
7 Such rules shall, insofar as practicable, be in conformity  
8 with the rules and regulations issued under the federal  
9 Meat Inspection Act and the federal Poultry Products  
10 Inspection Act.

11 (b) The commissioner is hereby authorized and em-  
12 powered to cooperate with the federal government and  
13 any agencies, departments and instrumentalities thereof,  
14 the state of West Virginia and any agencies, departments  
15 or political subdivisions thereof, and any other state or  
16 commonwealth and any agencies, departments or political  
17 subdivisions thereof, in order to carry out the effective  
18 administration of this article.

**§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.**

1 (a) No commercial slaughterer, custom slaughterer,  
2 commercial processor, custom processor or distributor  
3 shall operate an establishment unless he or she shall first  
4 have obtained a license from the commissioner, which  
5 license remains unsuspended and unrevoked. Application  
6 for such license shall be made on forms prescribed by the  
7 commissioner and shall be accompanied by the fee re-  
8 quired in this section.

9 When such a person operates as a commercial slaugh-  
10 terer and also operates as a commercial processor, whether  
11 such operations are located on the same or different pre-



12 mises in this state, each such operation shall be licensed.  
 13 When such a person operates two or more slaughterhouses  
 14 not on the same premises in this state, or operates two or  
 15 more processing plants not on the same premises in this  
 16 state, a separate license shall be required for each such  
 17 slaughterhouse and each such processing plant. Each  
 18 license shall expire on the thirtieth day of June next fol-  
 19 lowing its issuance, and the annual fee for each such li-  
 20 cense shall be based upon the average number of animals  
 21 slaughtered per year and upon the average finished prod-  
 22 uct poundage processed per year, as set forth in the fol-  
 23 lowing table, except that the annual fee for the license of a  
 24 person who operates solely as a custom slaughterer shall  
 25 be ten dollars or as a custom processor shall be five dollars  
 26 or as a distributor shall be five dollars.

27		Average Number of Animals	Annual
28	Class	Slaughtered Per Year	Fee
29	Small	1-500	\$10.00
30	Medium	501-1000	\$25.00
31	Large	1001-5000	\$50.00
32	Extra Large	Over 5000	\$75.00

33		Average Finished Product	Annual
34	Class	Poundage Processed Per Year	Fee
35	Small	1-25,000	\$10.00
36	Medium	25,001-250,000	\$25.00
37	Large	250,001-1,000,000	\$50.00
38	Extra Large	Over 1,000,000	\$75.00

39 Before issuing any license required by the provisions  
 40 of this section, the commissioner shall inspect the appli-  
 41 cant's establishment and if the commissioner is satisfied  
 42 that the establishment is clean and sanitary, is properly  
 43 equipped, and is in conformity with the provisions of this  
 44 article and any reasonable rules promulgated by the com-  
 45 missioner, and if he or she is further satisfied that the car-  
 46 casses, meat products or poultry products to be sold or  
 47 offered for sale therefrom through commercial outlets will  
 48 be wholesome and unadulterated, he or she shall issue the  
 49 license. Each license shall specify the location of the

50 establishment at which the licensee shall carry on his or  
51 her operations. The license shall also contain the estab-  
52 lishment number assigned by the commissioner.

53 (b) When a licensee changes the location of his or her  
54 establishment, he or she shall not operate at such new  
55 location unless and until his or her establishment at such  
56 new location has been inspected by the commissioner and  
57 a new license has been issued, or when a licensee leases,  
58 sells, changes name, incorporates or in any other way  
59 changes the status of his or her establishment with rela-  
60 tionship to issuance of current license, the new lessee,  
61 owner, etc., shall not operate at the location unless and  
62 until the establishment at such location has been inspected  
63 and approved by the commissioner and a new license has  
64 been issued in accordance with the provisions of subsec-  
65 tion (a) of this section: *Provided*, That a fee shall not be  
66 charged for such new license during the license year in  
67 which the change in location or change in ownership,  
68 name or leasing was made.

69 (c) The commissioner may refuse to grant a license or  
70 may suspend or revoke a license issued under the provi-  
71 sions of this section whenever he or she finds that the  
72 applicant's or licensee's establishment, as the case may be,  
73 is not clean or sanitary, or is not properly equipped, or is  
74 not in conformity with the provisions of this article or any  
75 reasonable rules promulgated by the commissioner, or if  
76 he or she finds that the carcasses, meat products or poultry  
77 products to be sold or offered for sale therefrom through  
78 commercial outlets are or will be adulterated.

79 Upon the refusal to grant a license, the commissioner  
80 shall furnish a written statement to the applicant specifying  
81 the grounds for such refusal. No such revocation or sus-  
82 pension of a license shall be effective until the licensee has  
83 received written notice thereof, which notice shall specify  
84 the grounds for such revocation or suspension.

85 Whenever there is sufficient cause for the revocation  
86 or suspension of a license as hereinabove specified, the  
87 commissioner may in lieu of such revocation or suspen-  
88 sion, suspend inspections at the establishment. Immediate-  
89 ly upon suspension of such inspections the commissioner

90 shall give the licensee written notice thereof, and such  
91 notice shall contain a recitation of the deficiencies which  
92 must be fully and completely corrected before inspections  
93 shall be resumed.

94 Upon receipt of a written statement advising that a  
95 license has been refused or upon receipt of a written no-  
96 tice of the revocation or suspension of a license, or upon  
97 the suspension of inspections at the licensee's establish-  
98 ment, the applicant or licensee, as the case may be, may, in  
99 writing, demand a hearing. The commissioner shall hold  
100 such a hearing within ten days after receipt of such written  
101 demand, in accordance with the provisions of section nine  
102 of this article.

**§19-2B-5. Access to establishments, records, etc.**

1 The commissioner may at any time enter upon and  
2 inspect any establishment, place, premises or conveyance,  
3 either private or public, where animals or poultry are  
4 slaughtered or carcasses, meat products or poultry prod-  
5 ucts are processed, handled, stored, transported, distribut-  
6 ed, sold or offered for sale, for the purpose of examining  
7 such animals or poultry, carcasses, meat products or poul-  
8 try products. Any person engaged in the business of  
9 operating an establishment shall maintain such records as  
10 the commissioner may require directly pertaining to the  
11 movement, storage and distribution or other disposition of  
12 animals or poultry, carcasses, meat products and poultry  
13 products, and such records shall be open to inspection by  
14 the commissioner at any time during the normal working  
15 hours at such establishment.

**§19-2B-6. Inspection, marking, labeling, branding, etc.; quar-  
antine; segregation; scheduling of operations;  
disposition of carcasses, etc.; reinspection; health  
examination; rejection tags.**

1 (a) The commissioner shall provide antemortem and  
2 postmortem inspection of all animals and poultry which  
3 are to be sold or offered for sale through a commercial  
4 outlet, establishment or distributor.

5 (b) The commissioner shall provide reinspection of

6 carcasses, meat products and poultry products during  
7 further processing which have previously been inspected.

8 (c) All inspections under the provisions of this article  
9 shall be performed in accordance with reasonable rules  
10 promulgated by the commissioner.

11 (d) The commissioner shall inspect all establishments  
12 under state inspection to make certain that they are operat-  
13 ing in accordance with the provisions of this article and all  
14 reasonable rules promulgated by the commissioner.

15 (e) When one inspector is assigned to make inspec-  
16 tions at two or more establishments where few animals or  
17 poultry are slaughtered, or where small quantities of car-  
18 casses, meat products or poultry products are processed, or  
19 where the operations at such establishments are sporadic,  
20 and such establishments in any of such cases are in rea-  
21 sonable close proximity to one another, the commissioner,  
22 giving full consideration to the convenience of the licens-  
23 ees of such establishments and considering the available  
24 inspection work force, may by written notice to such li-  
25 censees specify a reasonable schedule for such operations:  
26 *Provided*, That the commissioner may not require opera-  
27 tions other than during normal working hours.

28 (f) Every conveyance used by any establishment un-  
29 der state inspection, and, notwithstanding the provisions of  
30 section seven of this article, every conveyance used by any  
31 slaughterhouse, processing plant or distributor inspected  
32 by the United States department of agriculture, for the  
33 transportation of carcasses, meat products or poultry prod-  
34 ucts shall be maintained in a clean and sanitary condition  
35 and may be inspected in accordance with the provisions of  
36 this article and reasonable rules promulgated by the com-  
37 missioner.

38 (g) The commissioner shall require such quarantine  
39 and segregation of animals or poultry, carcasses, meat  
40 products or poultry products in establishments as is  
41 deemed necessary to effectuate the provisions of this arti-  
42 cle.

43 (h) The head, tongue, tail, thymus glands, viscera,

44 blood and other parts of any slaughtered animal shall be  
45 retained in such a manner as to preserve their identity until  
46 after the postmortem inspection has been completed.

47 (i) Each licensee shall pay for such devices for the  
48 affixing of marks, brands, or stamps and for such labels as  
49 may be prescribed for his or her establishment by the  
50 commissioner. Such devices and labels shall be under the  
51 exclusive control and supervision of the commissioner.  
52 The label used by any licensee shall be of the form and  
53 size prescribed by reasonable rules promulgated by the  
54 commissioner.

55 (j) Each animal or poultry carcass that has been in-  
56 spected and passed in this state by the commissioner shall  
57 be marked at the time of inspection with the inspection  
58 legend. Any animal or poultry carcass which is not passed  
59 shall be marked conspicuously by the commissioner at the  
60 time of inspection in the following manner: "W. Va. in-  
61 spected and condemned," or any abbreviation thereof.

62 (k) Each primal part of an animal or poultry carcass  
63 that has been inspected and passed shall be marked with  
64 the inspection legend, and each liver, beef heart and beef  
65 tongue that has been inspected and passed shall be brand-  
66 ed with the inspection legend at the time of final inspec-  
67 tion. Meat that has been boned out, cut from primal parts  
68 or otherwise changed so that the inspection legend is no  
69 longer plainly visible, and meat products and poultry  
70 products that are too small to be marked with the inspec-  
71 tion legend shall be packed in closed containers to which  
72 shall be affixed the label indicating that the meat products  
73 or poultry products contained therein have been inspected  
74 and passed. Upon removal of the contents of such con-  
75 tainers bearing such label, the label shall be defaced to  
76 prevent its reuse.

77 (l) All carcasses, meat products and poultry products  
78 which have been derived from an animal or poultry  
79 slaughtered by a custom slaughterer or processed by a  
80 custom slaughterer or custom processor shall be marked  
81 "W. Va. custom slaughtered" in letters not less than three  
82 eights of an inch in height.

83 (m) Each official inspection mark shall contain the  
84 establishment number of the establishment involved, un-  
85 less otherwise authorized by rules promulgated by the  
86 commissioner.

87 (n) The commissioner is hereby authorized and em-  
88 powered to seize and destroy (1) any animal or poultry to  
89 be slaughtered in this state and thereafter sold or offered  
90 for sale through a commercial outlet or distributor which  
91 cannot be made fit for human consumption; (2) any ani-  
92 mal or poultry, carcass, meat product or poultry product  
93 slaughtered or processed in this state in violation of the  
94 provisions of this article or any reasonable rules promul-  
95 gated by the commissioner; (3) any carcass, meat product  
96 or poultry product that does not bear an inspection legend  
97 or meat label provided for by this article or which has not  
98 been inspected and passed under inspection provided by  
99 the United States department of agriculture and which is  
100 intended to be sold or offered for sale through a commer-  
101 cial outlet or distributor; and (4) any animal or poultry,  
102 carcass, meat product or poultry product which is adulter-  
103 ated.

104 Where appropriate the commissioner may in lieu of  
105 destruction as aforesaid denature, decharacterize, mutilate  
106 or slash any carcass, meat product or poultry product  
107 intended to be sold or offered for sale through a commer-  
108 cial outlet or distributor. The commissioner is also autho-  
109 rized and empowered to seize and retain under a retained  
110 tag any animal or poultry, carcass, meat product or poul-  
111 try product until the commissioner determines to destroy,  
112 denature, decharacterize, mutilate, slash or release the  
113 same. Whenever the commissioner is authorized or em-  
114 powered to take any of the actions specified in this subsec-  
115 tion, he or she may order and direct the person having  
116 custody or possession of such animal or poultry, carcass,  
117 meat product or poultry product, or the licensee of the  
118 establishment in which it is found, to be responsible for  
119 the disposition thereof, as well as any necessary storage,  
120 handling or other incidentals related thereto. Such dispo-  
121 sition shall be carried out only under the direction and  
122 supervision of the commissioner.

123           (o) Whenever practicable, the commissioner shall fore-  
124 go the actions authorized in the immediately preceding  
125 subsection and permit reprocessing if such reprocessing  
126 will correct or eliminate the conditions which would have  
127 justified any of such actions. Any such reprocessing in  
128 this state shall be under the supervision of the commis-  
129 sioner.

130           (p) Whenever the commissioner has good cause to  
131 believe that any carcass, meat product or poultry product  
132 whether fresh, frozen, or processed, and which is intended  
133 to be sold or offered for sale through a commercial outlet  
134 or distributor, may be adulterated or otherwise injurious to  
135 health, he or she may inspect or reinspect the same under  
136 the provisions of this article and any reasonable rules  
137 promulgated by him or her, even though such carcass,  
138 meat product or poultry product may have been previous-  
139 ly inspected and passed.

140           (q) No licensee shall employ in any establishment any  
141 person who has any communicable disease or infected  
142 wounds or who is a carrier of any communicable disease.  
143 To enforce the provisions of this subsection, the commis-  
144 sioner may require any employee or prospective employ-  
145 ee to submit to a health examination by a physician and  
146 furnish to the commissioner a certificate from such physi-  
147 cian concerning his or her findings. The cost of conduct-  
148 ing such examination and furnishing such certificate shall  
149 be borne by the licensee concerned.

150           (r) Whenever the commissioner inspects any room,  
151 compartment, equipment or utensil in any establishment  
152 subject to state inspection and finds the same not to be  
153 clean and sanitary or finds the same to be otherwise un-  
154 suitable for the slaughtering or processing operations  
155 carried on in such establishment, he or she shall affix  
156 thereto a rejection tag or rejection notice. No such reject-  
157 ed room, compartment, equipment or utensil shall be used  
158 until the deficiencies requiring such rejection shall have  
159 been fully and completely corrected and the rejection tag  
160 or rejection notice has been removed. No person other  
161 than the commissioner shall remove any such rejection tag  
162 or notice.

163 (s) When any animal or poultry, carcass, meat product  
164 or poultry product has been inspected hereunder, the  
165 appropriate official inspection mark shall be affixed there-  
166 to, and no person shall remove the same unless authorized  
167 so to do by the commissioner.

**§19-2B-8. Exemptions.**

1 (a) In order to accomplish the objectives of this article,  
2 the commissioner may by reasonable rules exempt from  
3 inspection:

4 (1) Any commercial dealer, provided all carcasses,  
5 meat products or poultry products sold or offered for sale  
6 by such dealer were slaughtered and/or processed in com-  
7 mercial establishments under state inspection or have been  
8 inspected and passed by the United States department of  
9 agriculture and shall be identified, labeled and sold in  
10 normal retail quantities as prescribed by reasonable rules  
11 promulgated by the commissioner;

12 (2) The slaughtering by any person of animals of his  
13 or her own raising, and the preparation by him or her of  
14 the carcasses, meat products or poultry products of such  
15 animals exclusively for use by him or her and members of  
16 his or her household and his or her nonpaying guests and  
17 employees; or custom slaughtered animals, by a custom  
18 slaughterer, delivered by the owner thereof for such  
19 slaughter and the preparation by such slaughterer or cus-  
20 tom processor of the carcasses, meat products or poultry  
21 products of such animals, exclusively for use, in the  
22 household of such owner, by him or her and members of  
23 his or her household and his or her nonpaying guests and  
24 employees: *Provided*, That the custom slaughterer or  
25 custom processor is not handling adulterated carcasses,  
26 meat products and poultry products; maintains identity of  
27 carcasses, meat products and poultry products; and main-  
28 tains acceptable sanitation and operational controls as  
29 prescribed by reasonable rules promulgated by the com-  
30 missioner;

31 (3) Antemortem and postmortem inspection of a li-  
32 censed custom slaughterer;



33 (4) Any other operations which the commissioner may  
34 determine would best be exempted to further the purposes  
35 of this article, to the extent such exemptions conform to  
36 the federal Meat Inspection Act and the federal Poultry  
37 Products Inspection Act as amended from time to time  
38 and the regulations thereunder.

39 (b) Any institution operated by the state requiring  
40 inspection under this article shall be exempt from the  
41 licensing fee as required by section four of said article.

**§19-2B-9. Hearings; judicial review.**

1 (a) When any person is entitled to a hearing before the  
2 commissioner as authorized in this article, the commis-  
3 sioner shall hold such hearing and all of the pertinent  
4 provisions of article five, chapter twenty-nine-a of this  
5 code shall apply to and govern such hearing and the ad-  
6 ministrative procedures in connection with and following  
7 such hearing, with like effect as if the provisions of said  
8 article five were set forth in extenso in this subsection,  
9 except that the hearing shall be held in the county in  
10 which the establishment involved is located, or in which  
11 the affected person resides or has his or her principal  
12 place of business, or in Kanawha county, West Virginia, at  
13 the election of the commissioner. Any such hearing shall  
14 be held within the time limits hereinbefore specified in this  
15 article, unless there is a postponement or a continuance for  
16 good cause shown.

17 (b) For the purpose of any such hearing, the commis-  
18 sioner shall have the power and authority to issue subpoe-  
19 nas and subpoenas duces tecum, in accordance with the  
20 provisions of section one, article five, chapter twenty-  
21 nine-a of this code. All subpoenas and subpoenas duces  
22 tecum shall be issued and served within the time and for  
23 the fees and shall be enforced, as specified in section one,  
24 article five of said chapter twenty-nine-a, and all of the  
25 said section one provisions dealing with subpoenas and  
26 subpoenas duces tecum shall apply to subpoenas and  
27 subpoenas duces tecum issued for the purpose of a hear-  
28 ing hereunder. At any such hearing, the person who de-  
29 manded the same may represent himself or be represented  
30 by an attorney-at-law admitted to practice before any

31 circuit court of this state.

32 (c) After such hearing and consideration of all the  
33 testimony, evidence and record in the case, the commis-  
34 sioner shall make and enter an order deciding the matter  
35 in question. Such order shall be accompanied by findings  
36 of fact and conclusions of law as specified in section three,  
37 article five, chapter twenty-nine-a of this code, and a copy  
38 of such order and accompanying findings and conclu-  
39 sions shall be served upon all the parties and their attor-  
40 neys of record, if any, in person or by registered or certi-  
41 fied mail. The commissioner shall also cause a notice to  
42 be served with a copy of such order, which notice shall  
43 advise the parties of their right to judicial review, in accor-  
44 dance with the provisions of subsection (d) of this section.  
45 The order of the commissioner shall be final unless vacat-  
46 ed or modified upon judicial review thereof in accordance  
47 with the provisions of subsection (d) of this section.

48 (d) Any party adversely affected by a final order  
49 made and entered by the commissioner after such hearing,  
50 held in accordance with the provisions of subsections (a)  
51 through (c) of this section, is entitled to judicial review  
52 thereof. All of the pertinent provisions of section four,  
53 article five, chapter twenty-nine-a of this code shall apply  
54 to and govern such review with like effect as if the provi-  
55 sions of said section four were set forth in extenso in this  
56 subsection, except that the petition shall be filed in the  
57 circuit court of the county in which the hearing before the  
58 commissioner was held.

59 (e) The judgment of the circuit court shall be final  
60 unless reversed, vacated or modified on appeal to the su-  
61 preme court of appeals in accordance with the provisions  
62 of section one, article six, chapter twenty-nine-a of this  
63 code.

#### §19-2B-10. Additional prohibitions.

1 In addition to any other prohibitions contained in this  
2 article, it shall be unlawful:

3 (a) For any person to operate any establishment under  
4 state inspection which is not clean and sanitary;

- 5 (b) To slaughter any adulterated animal or poultry  
6 intended to be sold or offered for sale through a commer-  
7 cial outlet or distributor;
- 8 (c) To sell or offer for sale through a commercial  
9 outlet or distributor any carcass, meat product or poultry  
10 product for human consumption which is adulterated;
- 11 (d) To slaughter for human consumption any animal  
12 or poultry tagged or permanently identified as "W. Va.  
13 condemned," or abbreviation thereof;
- 14 (e) To process, sell or offer for sale for human con-  
15 sumption any carcass, meat product or poultry product  
16 which is mislabeled with intent to deceive or which is  
17 marked "W. Va. inspected and condemned," or abbrevia-  
18 tion thereof;
- 19 (f) To process in an establishment under state inspec-  
20 tion for sale through any commercial outlet or distributor  
21 any carcass, meat product or poultry product intended for  
22 human consumption and derived in whole or in part from  
23 any calf, pig, kid, lamb, chicken or turkey which is so  
24 immature as to be lacking in nutritional value;
- 25 (g) To knowingly or intentionally expose any carcass,  
26 meat product and poultry product in any establishment  
27 under state inspection to insects, live animals or any con-  
28 tamination;
- 29 (h) To add kangaroo meat, horse meat, mule meat or  
30 other equine meat to any animal meat, meat product or  
31 poultry product derived from animals and to be sold or  
32 offered for sale through commercial outlets or distributors  
33 for human consumption;
- 34 (i) To remove any hide, skin or any other part of an  
35 unborn or stillborn animal or poultry in the confines of a  
36 room in an establishment where any animals or poultry,  
37 carcasses, meat products or poultry products are slaugh-  
38 tered or processed, as the case may be, or to be sold or  
39 offered for sale through a commercial outlet or distribu-  
40 tor;
- 41 (j) To process for human consumption in any estab-

42 lishment subject to state inspection any carcass, meat prod-  
43 uct and poultry product derived from any animal which  
44 died other than by slaughter;

45 (k) To transport to any commercial outlet or distribu-  
46 tor for the purpose of being sold or offered for sale there-  
47 in, any carcass, meat product or poultry product which is  
48 not marked, branded or stamped as having been inspected  
49 and passed by the commissioner or by the United States  
50 department of agriculture;

51 (l) For any commercial outlet or distributor to receive,  
52 for the purpose of being sold or offered for sale therein,  
53 any carcass, meat product or poultry product which is not  
54 marked, branded or stamped as having been inspected and  
55 passed by the commissioner or by the United States de-  
56 partment of agriculture;

57 (m) To slaughter any horse, mule or other equine in  
58 any establishment under state inspection in which animals  
59 or poultry are slaughtered for human consumption for the  
60 purpose of being sold or offered for sale through com-  
61 mercial outlets;

62 (n) To bring any kangaroo meat, horse meat, mule  
63 meat or other equine meat into any establishment under  
64 state inspection where animal or poultry carcasses, meat  
65 products or poultry products are processed for human  
66 consumption for the purpose of being sold or offered for  
67 sale through commercial outlets;

68 (o) To transport, process, sell or offer for sale any  
69 kangaroo meat, horse meat, mule meat or other equine  
70 meat within this state for human consumption unless it is  
71 conspicuously and plainly identified or stamped as such;

72 (p) For any person to use an establishment number  
73 not assigned to him or her or to use an establishment  
74 number in connection with operations concerning which a  
75 different establishment number was assigned by the com-  
76 missioner;

77 (q) To remove from any article any retained tag af-  
78 fixed by the commissioner, unless such removal is autho-  
79 rized by him or her;

80 (r) To remove from any room, compartment, equip-  
81 ment or utensil any rejection tag or rejection notice af-  
82 fixed by the commissioner, unless such removal is autho-  
83 rized by him or her;

84 (s) For a licensee to use any container bearing an  
85 official inspection mark unless it contains the exact car-  
86 cass, meat product or poultry product which was in the  
87 container at the time such contents were inspected and  
88 passed: *Provided*, That such a container may be otherwise  
89 used if such official inspection mark thereon is removed,  
90 obliterated or destroyed, and such other use is authorized  
91 by reasonable rules promulgated by the commissioner;

92 (t) For any person, other than the commissioner, to  
93 possess, keep or use, except as authorized by the commis-  
94 sioner, any meat label or device for the affixing of a mark,  
95 brand or stamp prescribed for inspection purposes here-  
96 under;

97 (u) For any person, with intent to deceive, to possess,  
98 keep or use any label, mark, brand or stamp similar in  
99 character or import to an official label, mark, brand or  
100 stamp prescribed by the commissioner hereunder or to an  
101 official label, mark, brand or stamp used by the United  
102 States department of agriculture;

103 (v) To falsely make, falsely issue, falsely publish, alter,  
104 forge, simulate or counterfeit any inspection certificate,  
105 memorandum, label, mark, brand, or stamp, or device for  
106 making an inspection mark, brand or stamp, or to possess,  
107 keep or use the same, with intent to deceive;

108 (w) For any person to refuse to permit the commis-  
109 sioner to enter and inspect at any time, upon presentation  
110 of appropriate credentials, an establishment under state  
111 inspection, or to interfere with any such lawful entry or  
112 inspection;

113 (x) For any person to refuse to permit the commis-  
114 sioner, upon presentation of appropriate credentials, to  
115 examine and copy the records described in section five of  
116 this article;

117 (y) For a person to prevent or fail to decharacterize or

118 denature carcasses, meat products or poultry products as  
119 prescribed by reasonable rules promulgated by the com-  
120 missioner;

121 (z) For a person to transport offal, blood, or inedible  
122 and condemned parts of animal and poultry carcasses  
123 from slaughterhouses, processing plants or other related  
124 industries: *Provided*, That such products may be trans-  
125 ported if placed in suitable containers with tight covers, or  
126 watertight tanks so as not to contaminate the public high-  
127 ways or private roadways while going to or from the  
128 points of pickup;

129 (aa) For a person to store offal, blood, or inedible and  
130 condemned parts of animal and poultry carcasses from  
131 slaughterhouses, processing plants or other related indus-  
132 tries during interim transit movement in refrigerated ware-  
133 houses, food lockers or other related industries: *Provided*,  
134 That such products may be otherwise stored if properly  
135 marked "NOT FOR HUMAN FOOD" "FOR ANIMAL  
136 FOOD ONLY" and identified as approved products to be  
137 used for animal food;

138 (bb) For a person knowingly to purchase or deliver, or  
139 both, a 4-D animal to an establishment in this state;

140 (cc) For any person to transport carcasses, meat prod-  
141 ucts and poultry products that are intended for human  
142 consumption in a manner which would permit the prod-  
143 ucts to become adulterated;

144 (dd) For any person who forcibly assaults, resists,  
145 opposes, impedes, intimidates, or interferes with the com-  
146 missioner or his or her representative while engaged in or  
147 on account of the performances of his or her official du-  
148 ties.

#### §19-2B-11. Penalties.

1 (a) Any person who violates any of the provisions of  
2 this article shall be guilty of a misdemeanor, and, upon  
3 conviction thereof, shall for the first offense be fined not  
4 less than two hundred nor more than one thousand dollars  
5 and upon conviction of each subsequent offense shall be  
6 fined not less than four hundred nor more than two thou-

7 sand dollars.

8 (b) If such a person knowingly sells, offers for sale or  
9 distribution, or attempts to sell, offers for sale or  
10 distribution of a carcass, meat product or poultry product  
11 that is contaminated with pathogenic microorganisms or  
12 otherwise adulterated, such a person shall be guilty of a  
13 misdemeanor, and upon conviction thereof, shall be fined  
14 not less than five thousand dollars nor more than ten  
15 thousand dollars upon conviction of each offense.

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## CHAPTER 6

(Com. Sub. for S. B. 416—By Senators Yoder, Dugan and Plymale)

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[Passed March 8, 1995; in effect ninety days from passage.  
Approved by the Governor.]

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AN ACT to amend and reenact sections three and eight, article twenty-nine, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing regional airport authorities to develop industrial parks in area of public airports.

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

That sections three and eight, article twenty-nine, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 29. INTERGOVERNMENTAL RELATIONS—REGIONAL AIRPORTS.**

§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports and develop industrial parks; state aeronautics commission.

§8-29-8. Powers of authorities generally.

**§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports and develop industrial parks; state aeronautics commission.**

1 Each authority is hereby empowered and authorized  
2 to acquire, establish, construct, equip, improve, finance,  
3 maintain and operate a regional airport or landing field  
4 and appurtenant facilities so located to best serve the  
5 region in which they are located, including, but not limited  
6 to, industrial parks. Each authority shall be subject to the  
7 jurisdiction of the state aeronautics commission to the  
8 same extent as a state or municipal airport.

## PART II. GENERAL POWERS OF AUTHORITIES.

### §8-29-8. Powers of authorities generally.

1 Each authority is hereby given plenary power and  
2 authority as follows:

3 (1) To make and adopt all necessary bylaws and rules  
4 for its organization and operations not inconsistent with  
5 law;

6 (2) To elect its own officers, to appoint committees  
7 and to employ and fix the compensation for personnel  
8 necessary for its operation;

9 (3) To enter into contracts with any person, including  
10 both public and private corporations, or governmental  
11 department or agency, and generally to do any and all  
12 things necessary or convenient for the purpose of  
13 acquiring, establishing, constructing, equipping,  
14 improving, financing, maintaining and operating a public  
15 airport to best serve the region in which it is located,  
16 including the development of an industrial park in the  
17 same general area;

18 (4) To delegate any authority given to it by law to any  
19 of its officers, committees, agents or employees;

20 (5) To apply for, receive and use grants-in-aid,  
21 donations and contributions from any source or sources,  
22 including, but not limited to, the federal government and  
23 any department or agency thereof, and this state subject to  
24 any constitutional and statutory limitations with respect  
25 thereto, and to accept and use bequests, devises, gifts and  
26 donations from any person;

27 (6) To acquire lands and hold title thereto in its own  
28 name;



29 (7) To purchase, own, hold, sell and dispose of  
30 personal property and to sell, lease or otherwise dispose of  
31 any real property which it may own;

32 (8) To borrow money and execute and deliver  
33 negotiable notes, mortgage bonds, other bonds, debentures  
34 and other evidences of indebtedness therefor, and give  
35 such security therefor as shall be requisite, including  
36 giving a mortgage or deed of trust on its airport properties  
37 and facilities or assigning or pledging the gross or net  
38 revenues therefrom;

39 (9) To raise funds by the issuance and sale of revenue  
40 bonds in the manner provided by the applicable  
41 provisions of article sixteen of this chapter, it being hereby  
42 expressly provided that for the purpose of the issuance  
43 and sale of revenue bonds, each authority is a "governing  
44 body" as that term is used in said article only;

45 (10) To establish, charge and collect reasonable fees  
46 and charges for services or for the use of any part of its  
47 property or facilities, or for both services and such use;

48 (11) To expend its funds in the execution of the  
49 powers and authority herein given;

50 (12) To apply for, receive and use loans, grants,  
51 donations, technical assistance and contributions from any  
52 regional or area commissions that may be established; and

53 (13) To prescribe by bylaw the manner of financial  
54 participation by members.

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## CHAPTER 7

(H. B. 2221—By Delegates Kiss, Browning, Leach, Gallagher,  
Farris, Compton and Tomblin)

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[Passed January 27, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eleven, article two,

chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the alcohol beverage control commission to purchase specified property for a warehouse.

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

That section eleven, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSION-  
ER.**

**§60-2-11. Powers and duties.**

1       The alcohol beverage control commissioner shall  
2       have the following powers and duties and any and all  
3       other powers and duties reasonably necessary and  
4       convenient for the purpose of this chapter:

5       (1) Exercise general supervision of, and make rules  
6       and regulations for, the management of his or her  
7       department;

8       (2) Sign and execute in the name of the commission-  
9       er any contract or agreement authorized by this chapter;

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

12      (4) With the approval of the governor, acquire title to  
13      and purchase real estate containing 12.168 acres situate on  
14      River Road in the Hub Industrial Park, Nitro, in Putnam  
15      County, West Virginia, which real estate is improved by  
16      block and steel building containing approximately one  
17      hundred fifty thousand (150,000) square feet, formerly  
18      known as the Heck's warehouse, for a sale price not to  
19      exceed two million, two hundred fifty thousand dollars  
20      (\$2,250,000.00);

21      (5) Keep a complete and accurate record of all  
22      proceedings, record and file all bonds and contracts taken

23 or entered into, and assume responsibility for the custody  
24 and preservation of all papers and documents pertaining  
25 to the commissioner;

26 (6) Purchase or lease as provided by law all equipment  
27 necessary for the conduct of the department;

28 (7) Report to the governor each year all information  
29 relative to the operation and functions of the department.  
30 The commissioner shall make such other reports and rec-  
31 ommendations as may be required by the governor;

32 (8) Exercise any other power that may be necessary or  
33 proper for the orderly conduct of the business and the  
34 effective discharge of the duties of the commissioner; and

35 (9) Invoke any legal or equitable remedies for the  
36 enforcement of the orders of the commissioner or the  
37 provisions of this chapter.

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## CHAPTER 8

(Com. Sub. for H. B. 2004—By Mr. Speaker, Mr. Chambers,  
and Delegate Ashley)

[By Request of the Executive]

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[Passed March 17, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making appropriations of public money out of the  
treasury in accordance with section fifty-one, article six of  
the constitution.

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

**Title**

- I. General Provisions.**
- II. Appropriations.**
- III. Administration.**

**TITLE I—GENERAL PROVISIONS.**

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.
- §5. Maximum expenditures.

## TITLE I—GENERAL PROVISIONS.

1       **Section 1. General policy.**—The purpose of this bill  
2 is to appropriate money necessary for the economical and  
3 efficient discharge of the duties and responsibilities of the  
4 state and its agencies during the fiscal year one thousand  
5 nine hundred ninety-six.

1       **Sec. 2. Definitions.**—For the purpose of this bill:

2       "Governor" shall mean the governor of the state of  
3 West Virginia.

4       "Code" shall mean the code of West Virginia, one  
5 thousand nine hundred thirty-one, as amended.

6       "Spending unit" shall mean the department, division,  
7 office, board, commission, agency or institution to which  
8 an appropriation is made.

9       The "fiscal year one thousand nine hundred ninety-  
10 six" shall mean the period from the first day of July, one  
11 thousand nine hundred ninety-five, through the thirtieth  
12 day of June, one thousand nine hundred ninety-six.

13       "General revenue fund" shall mean the general operat-  
14 ing fund of the state and includes all moneys received or  
15 collected by the state except as provided in section two,  
16 article two, chapter twelve of the code or as otherwise pro-  
17 vided.

18       "Special revenue funds" shall mean specific revenue  
19 sources which by legislative enactments are not required to  
20 be accounted for as general revenue, including federal  
21 funds.

22       "From collections" shall mean that part of the total  
23 appropriation which must be collected by the spending  
24 unit to be available for expenditure. If the authorized  
25 amount of collections is not collected, the total appropria-  
26 tion for the spending unit shall be reduced automatically  
27 by the amount of the deficiency in the collections. If the  
28 amount collected exceeds the amount designated "from  
29 collections," the excess shall be set aside in a special sur-  
30 plus fund and may be expended for the purpose of the  
31 spending unit as provided by article two, chapter five-a of  
32 the code.

1       **Sec. 3. Classification of appropriations.**—An appro-  
2 priation for:

3 "Personal services" shall mean salaries, wages and other  
4 compensation paid to full-time, part-time and temporary  
5 employees of the spending unit but shall not include fees  
6 or contractual payments paid to consultants or to independent  
7 contractors engaged by the spending unit.

8 Unless otherwise specified, appropriations for "personal  
9 services" shall include salaries of heads of spending  
10 units.

11 "Annual increment" shall mean funds appropriated for  
12 "eligible employees" and shall be disbursed only in accordance  
13 with article five, chapter five of the code.

14 Funds appropriated for "annual increment" shall be  
15 transferred to "personal services" or other designated items  
16 only as required.

17 "Employee benefits" shall mean social security matching,  
18 workers' compensation, unemployment compensation,  
19 pension and retirement contributions, public employees  
20 insurance matching, personnel fees or any other benefit  
21 normally paid by the employer as a direct cost of employment.  
22 Should the appropriation be insufficient to cover  
23 such costs, the remainder of such cost shall be transferred  
24 by each spending unit from its "personal services" line  
25 item or its "unclassified" line item to its "employee benefits"  
26 line item. If there is no appropriation for "employee benefits,"  
27 such costs shall be transferred by each spending  
28 unit from its "personal services" line item or its "unclassified"  
29 line item. Each spending unit is hereby authorized  
30 and required to make such payments in accordance with  
31 the provisions of article two, chapter five-a of the code.

32 Each spending unit shall be responsible for all contributions,  
33 payments or other costs related to coverage and claims of its  
34 employees for unemployment compensation. Such expenditures shall  
35 be considered an employee benefit.  
36

37 "Current expenses" shall mean operating costs other  
38 than personal services and shall not include equipment,  
39 repairs and alterations, buildings or lands.

40 Each spending unit shall be responsible for and  
41 charged monthly for all postage meter service and shall  
42 reimburse the appropriate revolving fund monthly for all  
43 such amounts. Such expenditures shall be considered a  
44 current expense.

45 "Equipment" shall mean equipment items which have  
46 an appreciable and calculable period of usefulness in  
47 excess of one year.

48 "Repairs and alterations" shall mean routine mainte-  
49 nance and repairs to structures and minor improvements  
50 to property which do not increase the capital assets.

51 "Buildings" shall include new construction and major  
52 alteration of existing structures and the improvement of  
53 lands and shall include shelter, support, storage, protection  
54 or the improvement of a natural condition.

55 "Lands" shall mean the purchase of real property or  
56 interest in real property.

57 "Capital outlay" shall mean and include buildings,  
58 lands or buildings and lands, with such category or item of  
59 appropriation to remain in effect as provided by section  
60 twelve, article three, chapter twelve of the code.

61 From appropriations made to the spending units of  
62 state government, upon approval of the governor there  
63 may be transferred to a special account an amount suffi-  
64 cient to match federal funds under any federal act.

65 Appropriations classified in any of the above catego-  
66 ries shall be expended only for the purposes as defined  
67 above and only for the spending units herein designated:  
68 *Provided*, That the secretary of each department shall have  
69 the authority to transfer within the department those funds  
70 appropriated to the various agencies of the department:  
71 *Provided, however*, That no more than five percent of the  
72 funds appropriated to any one agency or board may be  
73 transferred to other agencies or boards within the depart-  
74 ment: *Provided further*, That the secretary of each depart-  
75 ment and the director, commissioner, executive secretary,  
76 superintendent, chairman or any other agency head not  
77 governed by a departmental secretary as established by  
78 chapter five-f of the code shall have the authority to trans-  
79 fer funds appropriated to "personal services" and "employ-  
80 ee benefits" to other lines within the same account and no  
81 funds from other lines shall be transferred to the "personal  
82 services" line: *And provided further*, That if the Legisla-  
83 ture by subsequent enactment consolidates agencies,  
84 boards or functions, the secretary may transfer the funds  
85 formerly appropriated to such agency, board or function  
86 in order to implement such consolidation. No funds may

87 be transferred from a special revenue account, dedicated  
 88 account, capital expenditure account or any other account  
 89 or fund specifically exempted by the Legislature from  
 90 transfer, except that the use of the appropriations from the  
 91 state road fund transferred to the office of the secretary of  
 92 the department of transportation is not a use other than the  
 93 purpose for which such funds were dedicated and is per-  
 94 mitted.

95 Appropriations otherwise classified shall be expended  
 96 only where the distribution of expenditures for different  
 97 purposes cannot well be determined in advance or it is  
 98 necessary or desirable to permit the spending unit the  
 99 freedom to spend an appropriation for more than one of  
 100 the above classifications.

1 Sec. 4. Method of expenditure.—Money appropriat-  
 2 ed by this bill, unless otherwise specifically directed, shall  
 3 be appropriated and expended according to the provisions  
 4 of article three, chapter twelve of the code or according to  
 5 any law detailing a procedure specifically limiting that  
 6 article.

7 Funds of the state of West Virginia not heretofore  
 8 classified as to purpose and existing within the funds of  
 9 the treasury shall be determined by the governor and  
 10 transferred to a special account for the purpose of expen-  
 11 diture as part of the general fund of the state.

1 Sec. 5. Maximum expenditures.—No authority or  
 2 requirement of law shall be interpreted as requiring or  
 3 permitting an expenditure in excess of the appropriations  
 4 set out in this bill.

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## TITLE II—APPROPRIATIONS.

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- SECTION 9. Supplemental and deficiency appropriations.
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- SECTION 14. Sinking fund deficiencies.
- SECTION 15. Appropriations for local governments.
- SECTION 16. Total appropriations.
- SECTION 17. General school fund.

1       **Section 1. Appropriations from general revenue.—**  
 2 From the state fund, general revenue, there are hereby  
 3 appropriated conditionally upon the fulfillment of the  
 4 provisions set forth in article two, chapter five-a of the  
 5 code the following amounts, as itemized, for expenditure  
 6 during the fiscal year one thousand nine hundred  
 7 ninety-six.

**LEGISLATIVE**

*1—Senate*

Account No.

Fund 0165 FY 1996 Org 2100

	<b>Activity</b>	<b>General Revenue Fund</b>
1	Compensation of Members (R) . . . 003	\$ 816,200
2	Compensation and Per Diem	
3	of Officers and Employees (R) . 005	1,560,000
4	Employee Benefits (R) . . . . . 010	330,000
5	Current Expenses and	
6	Contingent Fund (R) . . . . . 021	560,000



7	Repairs and Alterations (R) . . . . .	064	40,000
8	Computer Supplies (R) . . . . .	101	15,000
9	Computer Systems (R) . . . . .	102	80,000
10	Printing Blue Book (R) . . . . .	103	150,000
11	Expenses of Members (R) . . . . .	399	<u>445,000</u>
12	Total . . . . .		\$ 3,996,200

13 The appropriations for the senate for the fiscal year  
 14 1994-95 are to remain in full force and effect and are  
 15 hereby reappropriated to June 30, 1996. Any balances so  
 16 reappropriated may be transferred and credited to the  
 17 1995-96 accounts.

18 Upon the written request of the clerk of the senate, the  
 19 auditor shall transfer amounts between items of the total  
 20 appropriation in order to protect or increase the efficiency  
 21 of the service.

22 The clerk of the senate, with the approval of the presi-  
 23 dent, is authorized to draw his or her requisitions upon the  
 24 auditor, payable out of the Current Expenses and Contingent  
 25 Fund of the senate, for any bills for supplies and  
 26 services that may have been incurred by the senate and not  
 27 included in the appropriation bill, for supplies and services  
 28 incurred in preparation for the opening, the conduct of  
 29 the business and after adjournment of any regular or ex-  
 30 traordinary session, and for the necessary operation of the  
 31 senate offices, the requisitions for which are to be accom-  
 32 panied by bills to be filed with the auditor.

33 The clerk of the senate, with the written approval of the  
 34 president, or the president of the senate shall have authori-  
 35 ty to employ such staff personnel during any session of  
 36 the Legislature as shall be needed in addition to staff per-  
 37 sonnel authorized by the senate resolution adopted during  
 38 any such session. The clerk of the senate, with the written  
 39 approval of the president, or the president of the senate  
 40 shall have authority to employ such staff personnel be-  
 41 tween sessions of the Legislature as shall be needed, the  
 42 compensation of all staff personnel during and between  
 43 sessions of the Legislature, notwithstanding any such sen-

44 ate resolution, to be fixed by the president of the senate.  
 45 The clerk is hereby authorized to draw his or her requisitions upon the auditor for the payment of all such staff  
 46 personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Em-  
 47 ployees or Current Expenses and Contingent Fund of the  
 48 senate.  
 49  
 50

51 For duties imposed by law and by the senate, the clerk  
 52 of the senate shall be paid a monthly salary as provided by  
 53 the senate resolution, unless increased between sessions  
 54 under the authority of the president, payable out of the  
 55 appropriation for Compensation and Per Diem of Officers  
 56 and Employees or Current Expenses and Contingent Fund  
 57 of the senate.

58 The distribution of the blue book shall be by the office  
 59 of the clerk of the senate and shall include seventy-five  
 60 copies for each member of the Legislature and two copies  
 61 for each classified and approved high school and junior  
 62 high school and one copy for each elementary school  
 63 within the state.

## 2—House of Delegates

### Account No.

#### Fund 0170 FY 1996 Org 2200

1	Compensation of Members (R) . . . 003	\$	2,050,000
2	Compensation and Per Diem		
3	of Officers and Employees (R) . 005		521,162
4	Current Expenses and		
5	Contingent Fund (R) . . . . . 021		1,495,427
6	Expenses of Members (R) . . . . . 399		<u>1,120,000</u>
7	Total . . . . .	\$	5,186,589

8 The appropriations for the house of delegates for the  
 9 fiscal year 1994-95 are to remain in full force and effect  
 10 and are hereby reappropriated to June 30, 1996. Any  
 11 balances so reappropriated may be transferred and credit-  
 12 ed to the 1995-96 accounts.

13       Upon the written request of the clerk of the house of  
14 delegates, the auditor shall transfer amounts between items  
15 of the total appropriation in order to protect or increase  
16 the efficiency of the service.

17       The clerk of the house of delegates, with the approval  
18 of the speaker, is authorized to draw his or her requisitions  
19 upon the auditor, payable out of the Current Expenses and  
20 Contingent Fund of the house of delegates, for any bills  
21 for supplies and services that may have been incurred by  
22 the house of delegates and not included in the appropria-  
23 tion bill, for bills for services and supplies incurred in  
24 preparation for the opening of the session and after ad-  
25 journment, and for the necessary operation of the house  
26 of delegates' offices, the requisitions for which are to be  
27 accompanied by bills to be filed with the auditor.

28       The speaker of the house of delegates, upon approval  
29 of the house committee on rules, shall have authority to  
30 employ such staff personnel during and between sessions  
31 of the Legislature as shall be needed, in addition to per-  
32 sonnel designated in the house resolution, and the com-  
33 pensation of all personnel shall be as fixed in such house  
34 resolution for the session, or fixed by the speaker, with the  
35 approval of the house committee on rules, during and  
36 between sessions of the Legislature, notwithstanding such  
37 house resolution. The clerk of the house is hereby autho-  
38 rized to draw requisitions upon the auditor for such servic-  
39 es, payable out of the appropriation for the Compensation  
40 and Per Diem of Officers and Employees or Current Ex-  
41 penses and Contingent Fund of the house of delegates.

42       For duties imposed by law and by the house of dele-  
43 gates, including salary allowed by law as keeper of the  
44 rolls, the clerk of the house of delegates shall be paid a  
45 monthly salary as provided in the house resolution, unless  
46 increased between sessions under the authority of the  
47 speaker, with the approval of the house committee on  
48 rules, and payable out of the appropriation for Compensa-  
49 tion and Per Diem of Officers and Employees or Current  
50 Expenses and Contingent Fund of the house of delegates.

**3—Joint Expenses**

(WV Code Chapter 4)

Account No.

Fund 0175 FY 1996 Org 2300

1	Joint Committee on		
2	Government and Finance (R) . . . . .	104	\$ 4,589,186
3	Legislative Printing (R) . . . . .	105	910,000
4	Legislative Rule-Making		
5	Review Committee (R) . . . . .	106	232,600
6	Work Force Development		
7	Council (R) . . . . .	529	100,000
8	Legislative Computer System (R) . . . . .	107	1,001,009
9	Joint Standing Committee		
10	on Education (R) . . . . .	108	54,125
11	Joint Commission on Vocational-		
12	Technical-Occupational		
13	Education (R) . . . . .	109	50,000
14	Tax Reduction and		
15	Federal Funding		
16	Increased Compliance . . . . .	642	<u>20,000,000</u>
17	Total . . . . .		\$ 26,936,920

18 The appropriations for the joint expenses for the fiscal  
 19 year 1994-95 are to remain in full force and effect and  
 20 are hereby reappropriated to June 30, 1996. Any balanc-  
 21 es so reappropriated may be transferred and credited to  
 22 the 1995-96 accounts.

23 Upon the written request of the clerk of the senate, with  
 24 the approval of the president of the senate, and the clerk  
 25 of the house of delegates, with the approval of the speaker  
 26 of the house of delegates, and a copy to the legislative  
 27 auditor, the auditor shall transfer amounts between items  
 28 of the total appropriation in order to protect or increase  
 29 the efficiency of the service.

30 The appropriation for the Tax Reduction and Federal  
 31 Funding Increased Compliance (TRAFFIC) (fund 0175,  
 32 activity 642) is intended for possible general state tax  
 33 reductions or the offsetting of any reductions in federal  
 34 funding for state programs. It is not intended as a general  
 35 appropriation for expenditure by the Legislature.

## JUDICIAL

### 4—Supreme Court—General Judicial

#### Account No.

Fund 0180 FY 1996 Org 2400

1	Personal Services (R) . . . . .	001	\$ 26,094,420
2	Annual Increment (R) . . . . .	004	263,064
3	Social Security Matching (R) . . . .	011	2,008,697
4	Public Employees' Insurance		
5	Matching (R) . . . . .	012	2,890,770
6	Public Employees'		
7	Retirement Matching (R) . . . . .	016	2,495,000
8	Other Expenses (R) . . . . .	029	3,100,000
9	Judges' Retirement System (R) . . .	110	5,372,931
10	Other Court Costs (R) . . . . .	111	2,400,000
11	Judicial Training Program (R) . . .	112	250,000
12	Mental Hygiene Fund (R) . . . . .	113	900,000
13	Guardianship Attorney Fees (R) ..	588	100,000
14	Family Law Master Program (R) ..	190	<u>950,000</u>
15	Total . . . . .		\$ 46,824,882

16 The appropriations to the supreme court of appeals for  
 17 the fiscal years 1989-90, 1990-91, 1991-92, 1992-93,  
 18 1993-94 and 1994-95 are to remain in full force and  
 19 effect and are hereby reappropriated to June 30, 1996.  
 20 Any balances so reappropriated may be transferred and  
 21 credited to the 1995-96 accounts.

22 This appropriation shall be administered by the admin-  
 23 istrative director of the supreme court of appeals, who  
 24 shall draw his requisitions for warrants in payment in the  
 25 form of payrolls, making deductions therefrom as re-  
 26 quired by law for taxes and other items.

27 The appropriation for the Judges' Retirement System is  
 28 to be transferred to the consolidated public retirement  
 29 board, in accordance with the law relating thereto, upon  
 30 requisition of the administrative director of the supreme  
 31 court of appeals.

### EXECUTIVE

#### 5—Governor's Office

(WV Code Chapter 5)

Account No.

Fund 0101 FY 1996 Org 0100

1	Salary of Governor . . . . .	002	\$	72,000
2	Personal Services . . . . .	001		1,456,811
3	Annual Increment . . . . .	004		9,248
4	Employee Benefits . . . . .	010		399,520
5	National Governors' Association ..	123		63,580
6	Southern States Energy Board ...	124		28,732
7	Unclassified . . . . .	099		<u>586,772</u>
8	Total . . . . .		\$	2,616,663

#### 6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Account No.

Fund 0102 FY 1996 Org 0100

1	Unclassified . . . . .	099	\$	407,830
2	Capital Improvements—Mansion .	592		<u>-0-</u>
3	Total . . . . .		\$	407,830
4	To be used for current general expenses, including			

- 5 compensation of employees, household maintenance, cost  
 6 of official functions and additional household expenses  
 7 occasioned by such official functions.

**7—Governor's Office**

***Governor's Cabinet on Children and Families***

(WV Code Chapter 5)

Account No.

Fund 0104 FY 1996 Org 0100

- 1 Governor's Cabinet on Children  
 2 and Families—Total (R) . . . . . 116 \$ 325,000  
 3 Any unexpended balance remaining in the appropria-  
 4 tion (fund 0104, activity 116) at the close of the fiscal  
 5 year 1994-95 is hereby reappropriated for expenditure  
 6 during the fiscal year 1995-96.

**8—Governor's Office**

***Civil Contingent Fund***

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1996 Org 0100

- 1 Civil Contingent Fund—Total (R) . 114 \$ 1,450,000  
 2 Any unexpended balance remaining in the appropria-  
 3 tion (fund 0105, activity 114) at the close of the fiscal  
 4 year 1994-95 is hereby reappropriated for expenditure  
 5 during the fiscal year 1995-96.  
 6 From this appropriation there may be expended, at the  
 7 discretion of the governor, an amount not to exceed one  
 8 thousand dollars as West Virginia's contribution to the  
 9 interstate oil compact commission.  
 10 The above appropriation is intended to provide contin-  
 11 gency funding for accidental, unanticipated, emergency or  
 12 unplanned events which may occur during the fiscal year  
 13 and is not to be expended for the normal day-to-day op-  
 14 erations of the governor's office.

**9—Governor's Office**  
**Infrastructure Improvements**

(WV Code Chapter 5)

Account No.

Fund 0106 FY 1996 Org 0100

1 Any unexpended balance remaining in the appropria-  
2 tion for Unclassified—Total (fund 0106, activity 096) at  
3 the close of the fiscal year 1994-95 is hereby reappropri-  
4 ated for expenditure during the fiscal year 1995-96 and is  
5 to be expended to fund grants and loans for water, sewage  
6 and soil conservation projects.

**10—Auditor's Office**  
**General Administration**  
(WV Code Chapter 12)

Account No.

Fund 0116 FY 1996 Org 1200

1	Salary of Auditor . . . . .	002	\$	46,800
2	Personal Services . . . . .	001		1,646,038
3	Annual Increment . . . . .	004		34,024
4	Employee Benefits . . . . .	010		547,276
5	Unclassified (R) . . . . .	099		614,733
6	Computer Disk . . . . .	519		50,000
7	Office Automation (R) . . . . .	117		<u>790,000</u>
8	Total . . . . .		\$	3,728,871

9 Any unexpended balances remaining in the appropria-  
10 tions for Unclassified (fund 0116, activity 099) and Office  
11 Automation (fund 0116, activity 117) at the close of the  
12 fiscal year 1994-95 are hereby reappropriated for expen-  
13 diture during the fiscal year 1995-96.



*11—Auditor's Office**Family Law Masters**Administration Fund*

(WV Code Chapter 48A)

Account No.

Fund 0117 FY 1996 Org 1200

1	Unclassified—Total . . . . .	096	\$	450,000
2	The above appropriation shall be expended for the			
3	administrative expenses of the family law masters pro-			
4	gram, excluding personal services and employee benefits.			

*12—Treasurer's Office*

(WV Code Chapter 12)

Account No.

Fund 0126 FY 1996 Org 1300

1	Salary of Treasurer . . . . .	002	\$	50,400
2	Personal Services . . . . .	001		488,110
3	Annual Increment . . . . .	004		8,500
4	Employee Benefits . . . . .	010		168,725
5	Unclassified . . . . .	099		255,187
6	Abandoned Property Program . . .	118		320,900
7	Hardware/Software Upgrade . . . . .	518		54,000
8	Check Encoder (R) . . . . .	441		<u>-0-</u>
9	Total . . . . .		\$	1,345,822

10 Any unexpended balance remaining in the appropria-  
 11 tion for Check Encoder (fund 0126, activity 441) at the  
 12 close of the fiscal year 1994-95 is hereby reappropriated  
 13 for expenditure during the fiscal year 1995-96.

**13—Department of Agriculture**

(WV Code Chapter 19)

Account No.

Fund 0131 FY 1996 Org 1400

1	Salary of Commissioner . . . . .	002	\$	46,800
2	Personal Services . . . . .	001		2,808,859
3	Annual Increment . . . . .	004		43,736
4	Employee Benefits . . . . .	010		1,011,082
5	Unclassified . . . . .	099		922,396
6	Gypsy Moth Program (R). . . . .	119		773,420
7	Small Business Loan Program . . . .	587		-0-
8	Farmers Markets . . . . .	571		<u>25,000</u>
9	Total . . . . .		\$	5,631,293

10 Any unexpended balances remaining in the appropria-  
 11 tion for Gypsy Moth Program (activity 119) at the close  
 12 of the fiscal year 1994-95 are hereby reappropriated for  
 13 expenditure during the fiscal year 1995-96.

14 A portion of the Unclassified appropriation may be  
 15 transferred to a special revenue fund for the purpose of  
 16 matching federal funds for marketing and development  
 17 activities.

**14—Department of Agriculture****Soil Conservation Committee**

(WV Code Chapter 19)

Account No.

Fund 0132 FY 1996 Org 1400

1	Personal Services . . . . .	001	\$	375,700
2	Annual Increment . . . . .	004		6,912
3	Employee Benefits . . . . .	010		110,886

4	Unclassified (R) . . . . .	099	284,758
5	Maintenance of Flood		
6	Control Projects (R) . . . . .	522	1,548,914
7	Soil Conservation Projects (R) . . . .	120	<u>2,500,000</u>
8	Total . . . . .		\$ 4,827,170
9	Any unexpended balances remaining in the appropri-		
10	ations for Unclassified (fund 0132, activity 099), Infra-		
11	structure Projects—Total (fund 0538, activity 516), Main-		
12	tenance of Flood Control Projects (fund 0132, activity		
13	522) and Soil Conservation Projects (fund 0132, activity		
14	120) at the close of the fiscal year 1994-95 are hereby		
15	reappropriated for expenditure during the fiscal year		
16	1995-96.		

**15—Department of Agriculture**

***Meat Inspection***

(WV Code Chapter 19)

Account No.

Fund 0135 FY 1996 Org 1400

1	Personal Services . . . . .	001	\$ 346,579
2	Annual Increment . . . . .	004	5,994
3	Employee Benefits . . . . .	010	119,025
4	Unclassified . . . . .	099	<u>63,370</u>
5	Total . . . . .		\$ 534,968

6 Any part or all of this appropriation may be transferred  
7 to a special revenue fund for the purpose of matching  
8 federal funds for the above-named program.

**16—Department of Agriculture**

***Agricultural Awards***

(WV Code Chapter 19)

Account No.

Fund 0136 FY 1996 Org 1400

1	Agricultural Awards . . . . .	121	\$	66,066
2	Fairs and Festivals . . . . .	122		<u>301,598</u>
3	Total . . . . .		\$	367,664

**17—Attorney General**

(WV Code Chapters 5, 14, 46A and 47)

Account No.

Fund 0150 FY 1996 Org 1500

1	Salary of Attorney General . . . . .	002	\$	50,400
2	Personal Services . . . . .	001		2,047,690
3	Annual Increment . . . . .	004		20,052
4	Employee Benefits . . . . .	010		585,056
5	Unclassified (R) . . . . .	099		<u>595,648</u>
6	Total . . . . .		\$	3,298,846

7 Any unexpended balance remaining in the appropria-  
 8 tion for Unclassified (fund 0150, activity 099) at the close  
 9 of the fiscal year 1994-95 is hereby reappropriated for  
 10 expenditure during the fiscal year 1995-96.

11 When legal counsel or secretarial help is appointed by  
 12 the attorney general for any state spending unit, this ac-  
 13 count shall be reimbursed from such spending unit's spe-  
 14 cifically appropriated account or from accounts appropri-  
 15 ated by general language contained within this bill: *Pro-*  
 16 *vided*, That the spending unit shall reimburse at a rate and  
 17 upon terms agreed to by the state spending unit and the  
 18 attorney general: *Provided, however*, That if the spending  
 19 unit and the attorney general are unable to agree on the  
 20 amount and terms of the reimbursement, the spending unit  
 21 and the attorney general shall submit their proposed reim-  
 22 bursement rates and terms to the joint committee on gov-  
 23 ernment and finance for final determination.

**18—Secretary of State**

(WV Code Chapters 3, 5 and 59)

Account No.

Fund 0155 FY 1996 Org 1600

1	Salary of Secretary of State . . . . .	002	\$	43,200
2	Personal Services . . . . .	001		509,891
3	Annual Increment . . . . .	004		6,588
4	Employee Benefits . . . . .	010		186,191
5	Administrative Law			
6	Improvements . . . . .	617		38,000
7	Unclassified (R) . . . . .	099		<u>300,408</u>
8	Total . . . . .		\$	1,084,278
9	Any unexpended balance remaining in the appropria-			
10	tion for Unclassified (fund 0155, activity 099) at the close			
11	of the fiscal year 1994-95 is hereby reappropriated for			
12	expenditure during the fiscal year 1995-96.			

**19—State Elections Commission**

(WV Code Chapter 3)

Account No.

Fund 0160 FY 1996 Org 1601

1	Unclassified—Total . . . . .	096	\$	12,000
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**DEPARTMENT OF ADMINISTRATION****20—Department of Administration***Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0186 FY 1996 Org 0201

1	Unclassified—Total . . . . .	096	\$	237,072
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**21—Consolidated Public Retirement Board**

(WV Code Chapter 5)

Account No.

Fund 0195 FY 1996 Org 0205

1 The division of highways, division of motor vehicles,  
 2 bureau of employment programs, public service commis-  
 3 sion and other departments or divisions operating from  
 4 special revenue funds and/or federal funds shall pay their  
 5 proportionate share of the retirement costs for their re-  
 6 spective divisions. When specific appropriations are not  
 7 made, such payments may be made from the balances in  
 8 the various special revenue funds in excess of specific  
 9 appropriations.

**22—Division of Finance**

(WV Code Chapter 5A)

Account No.

Fund 0203 FY 1996 Org 0209

1	Personal Services . . . . .	001	\$	507,454
2	Annual Increment . . . . .	004		7,409
3	Employee Benefits . . . . .	010		141,903
4	Unclassified . . . . .	099		549,752
5	GAAP Project (R) . . . . .	125		<u>1,265,746</u>
6	Total . . . . .		\$	2,472,264

7 Any unexpended balance remaining in the appropria-  
 8 tion for GAAP Project (fund 0203, activity 125) at the  
 9 close of the fiscal year 1994-95 is hereby reappropriated  
 10 for expenditure during the fiscal year 1995-96.

**23—Division of General Services**

(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1996 Org 0211

1	Personal Services . . . . .	001	\$	444,840
2	Annual Increment . . . . .	004		14,004
3	Employee Benefits . . . . .	010		201,678
4	Unclassified . . . . .	099		699,675
5	Fire Service Fee . . . . .	126		13,440
6	Capitol Building Preservation (R) .	503		-0-
7	Capital Improvements -			
8	Capitol Complex . . . . .	593		<u>-0-</u>
9	Total . . . . .		\$	1,373,637
10	Any unexpended balance remaining in the appropria-			
11	tion for Capitol Building Preservation (fund 0230, activity			
12	503) at the close of the fiscal year 1994-95 is hereby			
13	reappropriated for expenditure during the fiscal year			
14	1995-96.			

**24—Division of Purchasing**

(WV Code Chapter 5A)

Account No.

Fund 0210 FY 1996 Org 0213

1	Personal Services . . . . .	001	\$	543,223
2	Annual Increment . . . . .	004		9,156
3	Employee Benefits . . . . .	010		156,698
4	Unclassified . . . . .	099		<u>57,342</u>
5	Total . . . . .		\$	766,419
6	The division of highways shall reimburse the Unclassi-			
7	fied appropriation (fund 0210, activity 099) within the			
8	division of purchasing for all actual expenses incurred			
9	pursuant to the provisions of section thirteen, article two-a,			
10	chapter seventeen of the code.			

**25—Commission on Uniform State Laws**

(WV Code Chapter 29)

Account No.

Fund 0214 FY 1996 Org 0217

1	Unclassified—Total . . . . .	096	\$	20,000
2	To pay expenses of members of the commission on			
3	uniform state laws.			

**26—Board of Risk and****Insurance Management**

(WV Code Chapter 29)

Account No.

Fund 0217 FY 1996 Org 0218

1	Unclassified . . . . .	099	\$	10,454,116
2	Retro Payments . . . . .	523		4,850,000
3	County Boards of			
4	Education Premium			
5	and Retro Payments . . . . .	648		<u>2,000,000</u>
6	Total . . . . .		\$	17,304,116

7 The above Unclassified appropriation includes funding  
 8 for the purpose of paying premiums, self-insurance losses,  
 9 loss adjustment expenses and loss prevention engineering  
 10 fees for property, casualty and fidelity insurance for the  
 11 various state agencies, except those operating from special  
 12 revenue funds, with such special revenue fund agencies to  
 13 be billed by the board of risk and insurance management  
 14 and with such costs to be a proper charge against such  
 15 spending units.

16 These funds may be transferred to a special account for  
 17 the payment of premiums, self-insurance losses, loss ad-  
 18 justment expenses and loss prevention engineering fees  
 19 and may be transferred to a special account for disburse-  
 20 ment for payment of premiums and insurance losses.



21 From the above appropriation for County Boards of  
 22 Education Premium and Retro Payments, one million  
 23 dollars shall be expended to reduce the unfunded liability  
 24 in the insurance fund and one million dollars shall be  
 25 allocated to the county boards of education to defray the  
 26 increased cost of premiums.

**27—Education and State Employees**

**Grievance Board**

(WV Code Chapter 18)

Account No.

Fund 0220 FY 1996 Org 0219

1	Personal Services . . . . .	001	\$	642,270
2	Annual Increment . . . . .	004		5,532
3	Employee Benefits . . . . .	010		182,524
4	Unclassified . . . . .	099		<u>166,690</u>
5	Total . . . . .		\$	997,016

**28—Ethics Commission**

(WV Code Chapter 6B)

Account No.

Fund 0223 FY 1996 Org 0220

1	Personal Services . . . . .	001	\$	163,215
2	Annual Increment . . . . .	004		756
3	Employee Benefits . . . . .	010		43,094
4	Unclassified . . . . .	099		<u>153,292</u>
5	Total . . . . .		\$	360,357

**29—Public Defender Services**

(WV Code Chapter 29)

Account No.

Fund 0226 FY 1996 Org 0221

1	Personal Services . . . . .	001	\$	244,047
2	Annual Increment . . . . .	004		2,844
3	Employee Benefits . . . . .	010		75,278
4	Unclassified (R) . . . . .	099		98,455
5	Appointed Counsel Fees and			
6	Public Defender			
7	Corporations (R) . . . . .	127		<u>14,210,905</u>
8	Total . . . . .		\$	14,631,529

9 Any unexpended balances remaining in the appropri-  
 10 tions for Unclassified (fund 0226, activity 099) and Ap-  
 11 pointed Counsel Fees and Public Defender Corporations  
 12 (fund 0226, activity 127) at the close of the fiscal year  
 13 1994-95 are hereby reappropriated for expenditure dur-  
 14 ing the fiscal year 1995-96.

**30—Committee for the Purchase of  
Commodities and Services from the Handicapped**

(WV Code Chapter 5A)

Account No.

Fund 0233 FY 1996 Org 0224

1	Unclassified—Total . . . . .	096	\$	4,656
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**31—Public Employees Insurance Agency**

(WV Code Chapter 5)

Account No.

Fund 0200 FY 1996 Org 0225

1	The division of highways, division of motor vehicles,
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2 bureau of employment programs, public service commis-  
 3 sion and other departments or divisions operating from  
 4 special revenue funds and/or federal funds shall pay their  
 5 proportionate share of the public employees health insur-  
 6 ance cost for their respective divisions. When specific  
 7 appropriations are not made, such payments may be made  
 8 from the balances in the various special revenue funds in  
 9 excess of specific appropriations.

### DEPARTMENT OF EDUCATION

#### 32—State Department of Education

##### School Lunch Program

(WV Code Chapters 18 and 18A)

Account No.

Fund 0303 FY 1996 Org 0402

1	Personal Services . . . . .	001	\$	155,000
2	Annual Increment . . . . .	004		1,921
3	Employee Benefits . . . . .	010		47,034
4	Unclassified . . . . .	099		1,694,608
5	Nutrition Program . . . . .	594		<u>-0-</u>
6	Total . . . . .		\$	1,898,563

#### 33—State FFA-FHA Camp and

##### Conference Center

(WV Code Chapters 18 and 18A)

Account No.

Fund 0306 FY 1996 Org 0402

1	Personal Services . . . . .	001	\$	97,985
2	Annual Increment . . . . .	004		3,102
3	Employee Benefits . . . . .	010		48,633
4	Unclassified . . . . .	099		157,287

5	Dam Repairs . . . . .	595	<u>25,000</u>
6	Total . . . . .		\$ 332,007

**34—State Department of Education**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1996 Org 0402

1	Personal Services . . . . .	001	\$ 2,275,660
2	Annual Increment . . . . .	004	33,487
3	Employee Benefits . . . . .	010	688,371
4	Unclassified . . . . .	099	5,110,750
5	WV Education Information		
6	System (WVEIS) . . . . .	138	2,645,842
7	34/1000 Waiver . . . . .	139	500,000
8	Increased Enrollment . . . . .	140	2,000,000
9	Coordinator—Educational		
10	Medical Services . . . . .	141	61,065
11	Computer Basic Skills (R) . . . . .	145	-0-
12	Governor's Honors Academy . . . . .	478	30,000
13	WVGC Writing Project . . . . .	482	25,000
14	Micro Computer Network . . . . .	506	150,000
15	Inclusion . . . . .	547	-0-
16	Technology and		
17	Telecommunications Initiative . . . . .	596	2,000,000
18	Professional Certification . . . . .	615	25,000
19	Adult Advisory Council . . . . .	621	261,500
20	Pickens School Support and		
21	Hacker Valley School Support . . . . .	622	300,000
22	Principals Mentorship . . . . .	649	12,000

23	Assistance for Funded		
24	Positions Errors . . . . .	650	<u>150,000</u>
25	Total . . . . .		\$ 16,268,675

26 The above appropriation includes the state board of  
27 education and their executive office.

28 Any unexpended balance remaining in the appropria-  
29 tion for Computer Basic Skills (fund 0313, activity 145) at  
30 the close of the fiscal year 1994-95 is hereby reappropri-  
31 ated for expenditure during the fiscal year 1995-96.

**35—State Department of Education**

***Aid for Exceptional Children***

(WV Code Chapters 18 and 18A)

Account No.

Fund 0314 FY 1996 Org 0402

1	Special Education—Counties . . . .	159	\$ 7,336,561
2	Special Education—Institutions . .	160	2,574,660
3	Education of Institutionalized		
4	Juveniles . . . . .	161	<u>3,464,948</u>
5	Total . . . . .		\$ 13,376,169

**36—State Department of Education**

***State Aid to Schools***

(WV Code Chapters 18 and 18A)

Account No.

Fund 0317 FY 1996 Org 0402

1	Professional Educators . . . . .	151	\$ 655,801,717
2	Service Personnel . . . . .	152	203,087,527
3	Fixed Charges . . . . .	153	74,637,473
4	Transportation . . . . .	154	28,546,855

5	Administration . . . . .	155	7,414,115
6	Other Current Expenses . . . . .	022	95,458,539
7	Improve Instructional Programs . .	156	<u>32,520,994</u>
8	Basic Foundation Allowances . . . .		1,097,467,220
9	Less Local Share . . . . .	332	<u>(220,792,182)</u>
10	Total Basic State Aid . . . . .		876,675,038
11	Public Employees		
12	Insurance Match . . . . .	012	119,135,150
13	Teachers' Retirement System . . . . .	019	180,360,958
14	School Building Authority . . . . .	453	<u>23,355,724</u>
15	Total . . . . .		\$1,199,526,870

**37—State Board of Education**

**Vocational Division**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0390 FY 1996 Org 0402

1	Personal Services . . . . .	001	\$	683,000
2	Annual Increment . . . . .	004		9,666
3	Employee Benefits . . . . .	010		214,057
4	Unclassified . . . . .	099		546,220
5	Wood Products—			
6	Forestry Vocational			
7	Program (R) . . . . .	146		63,024
8	Albert Yanni Vocational Program .	147		139,300
9	Vocational Aid . . . . .	148		10,632,831
10	Adult Basic Education . . . . .	149		2,085,524
11	Equipment Replacement . . . . .	150		1,019,750

12	Program Modernization . . . . .	598	_____	-0-
13	Total . . . . .		\$	15,393,372
14	Any unexpended balance remaining in the appropriation			
15	for Wood Products—Forestry Vocational Program			
16	(fund 0390, activity 146) at the close of the fiscal year			
17	1994-95 is hereby reappropriated for expenditure during			
18	the fiscal year 1995-96.			

**38—West Virginia Schools for the  
Deaf and the Blind**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0320 FY 1996 Org 0403

1	Personal Services . . . . .	001	\$	5,524,085
2	Annual Increment . . . . .	004		4,140
3	Employee Benefits . . . . .	010		1,827,055
4	Unclassified . . . . .	099		1,039,048
5	School Bus Purchase . . . . .	599	_____	-0-
6	Total . . . . .		\$	8,394,328

**DEPARTMENT OF EDUCATION AND THE ARTS**

**39—Department of Education and the Arts**

*Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0294 FY 1996 Org 0431

1	Unclassified (R) . . . . .	099	\$	694,881
2	Center for Professional			
3	Development (R) . . . . .	115		800,000
4	Technical Preparation			
5	Program (R) . . . . .	440		832,397

6	Arts Programs . . . . .	500	150,000
7	WV Humanities Council . . . . .	168	150,000
8	Community Schools/Mini		
9	Grants . . . . .	530	200,000
10	Marshall and West Virginia		
11	University Faculty and		
12	Course Development		
13	International Study Projects . . .	549	35,000
14	Hospitality Education . . . . .	600	-0-
15	Hospitality Training . . . . .	659	300,000
16	MA Public Health Program . . . . .	623	75,000
17	Hospitality ABE Jobs . . . . .	663	<u>250,000</u>
18	Total . . . . .		\$ 3,487,278

19 Any unexpended balances remaining in the appropria-  
20 tions for Unclassified (fund 0294, activity 099), except  
21 fiscal year 1992-93, Center for Professional Development  
22 (fund 0294, activity 115), except fiscal year 1992-93,  
23 Technical Preparation Program (fund 0294, activity 440)  
24 and Rural Health Initiative Site Support (fund 0294, activi-  
25 ty 295) at the close of the fiscal year 1994-95 are hereby  
26 reappropriated for expenditure during the fiscal year  
27 1995-96.

***40—Division of Culture and History***

(WV Code Chapter 29)

Account No.

Fund 0293 FY 1996 Org 0432

1	Personal Services . . . . .	001	\$ 1,436,585
2	Annual Increment . . . . .	004	24,354
3	Employee Benefits . . . . .	010	474,160
4	Unclassified . . . . .	099	1,705,962



5	Capital Outlay, Repairs and		
6	Equipment (R) . . . . .	589	-0-
7	Capitol Tourism Programs . . . . .	601	150,000
8	Grants for Competitive		
9	Arts Programs . . . . .	624	<u>1,000,000</u>
10	Total . . . . .		\$ 4,791,061

11 Any unexpended balance remaining in the appropria-  
 12 tion for Capital Outlay, Repairs and Equipment (fund  
 13 0293, activity 589) at the close of the fiscal year 1994-95  
 14 is hereby reappropriated for expenditure during the fiscal  
 15 year 1995-96.

16 The Unclassified appropriation includes funding for the  
 17 arts funds, department programming funds, grants, fairs  
 18 and festivals and camp Washington Carver and shall be  
 19 expended only upon authorization of the division of cul-  
 20 ture and history and in accordance with the provisions of  
 21 chapter five-a and article three, chapter twelve of the code.

22 All federal moneys received as reimbursement to the  
 23 division of culture and history for moneys expended from  
 24 the general revenue fund for the arts fund and historical  
 25 preservation are hereby reappropriated for the purposes as  
 26 originally made, including personal services, current ex-  
 27 penses and equipment.

**41—Library Commission**

(WV Code Chapter 10)

Account No.

Fund 0296 FY 1996 Org 0433

1	Personal Services . . . . .	001	\$	1,014,982
2	Annual Increment . . . . .	004		27,000
3	Employee Benefits . . . . .	010		348,532
4	Unclassified . . . . .	099		230,984
5	Books and Films . . . . .	179		150,000

6	Services to State Institutions . . . . .	180	156,310
7	Services to Blind		
8	and Handicapped . . . . .	181	42,729
9	Grants to Public Libraries . . . . .	182	6,438,884
10	Libraries—Special Projects . . . . .	625	<u>275,000</u>
11	Total . . . . .		\$ 8,684,421

***42—Educational Broadcasting Authority***

(WV Code Chapter 10)

Account No.

Fund 0300 FY 1996 Org 0439

1	Personal Services . . . . .	001	\$ 3,054,536
2	Annual Increment . . . . .	004	49,166
3	Employee Benefits . . . . .	010	899,504
4	Unclassified . . . . .	099	<u>1,232,647</u>
5	Total . . . . .		\$ 5,235,853

6 These funds may be transferred to special revenue ac-  
 7 counts for matching college, university, city, county, fed-  
 8 eral and/or other generated revenues.

***43—Board of Trustees of the University System***

***of West Virginia and Board of Directors of the***

***State College System***

***Central Office***

(WV Code Chapters 18B and 18C)

Account No.

Fund 0333 FY 1996 Org 0452

1	Unclassified . . . . .	099	\$ 1,217,409
2	Higher Education Grant		
3	Program (R) . . . . .	164	6,062,050

4	Tuition Contract Program . . . . .	165	599,940
5	Minority Doctoral Fellowship . . . .	166	100,000
6	Underwood-Smith Scholarship		
7	Program—Student Awards . . . .	167	255,000
8	WVNET . . . . .	169	2,117,072
9	Faculty and Staff Salaries		
10	and Benefits . . . . .	573	<u>171,255</u>
11	Total . . . . .		\$ 10,522,726

12 Any unexpended balance remaining in the appropria-  
 13 tion for Higher Education Grant Program (fund 0333,  
 14 activity 164) at the close of the fiscal year 1994-95 is  
 15 hereby reappropriated for expenditure during the fiscal  
 16 year 1995-96; and from this reappropriated unexpended  
 17 balance, \$50,000 shall be transferred to Concord college  
 18 for the Bonner scholars program.

**44—Board of Trustees of the  
 University System of West Virginia  
 Control Account**

(WV Code Chapter 18B)

Account No.

Fund 0327 FY 1996 Org 0461

1	Unclassified . . . . .	099	\$ 145,574,761
2	Marshall University—		
3	Southern WV Community		
4	College 2+2 Program (R) . . . . .	170	250,000
5	Marshall University—		
6	Autism Training Center . . . . .	548	400,000
7	Marshall University—		
8	Forensic Lab . . . . .	572	450,000
9	Faculty and Staff Salaries		
10	and Benefits . . . . .	573	<u>7,771,748</u>
11	Total . . . . .		\$ 154,446,509

12 Any unexpended balance remaining in the appropriation  
 13 tion for Marshall University-Southern WV Community  
 14 College 2+2 Program (fund 0327, activity 170) at the  
 15 close of the fiscal year 1994-95 is hereby reappropriated  
 16 for expenditure during the fiscal year 1995-96.

*45—Board of Trustees of the*

*University System of West Virginia*

*University of West Virginia*

*Health Sciences Account*

*Control Account*

(WV Code Chapter 18B)

Account No.

Fund 0323 FY 1996 Org 0478

1	Medical Education . . . . .	\$	-0-
2	School of Osteopathic Medicine .. 172		5,543,642
3	Marshall Medical School . . . . . 171		9,803,370
4	WVU—School of		
5	Health Sciences . . . . . 174		34,419,264
6	WVU—School of Health Sciences		
7	—Charleston Division . . . . . 175		3,494,301
8	WVU Charleston Division—		
9	Poison Control Hot Line . . . . . 510		280,000
10	Health Sciences		
11	Scholarship Fund . . . . . 176		148,500
12	Primary Health Education		
13	Program Support (R) . . . . . 177		3,960,000
14	Rural Health Initiative		
15	Site Support (R) . . . . . 295		1,980,000
16	Faculty and Staff Salaries		
17	and Benefits . . . . . 573		2,881,078

18	Marshall Medical School—Retro		
19	Payments for FY 1993-1994		
20	and FY 1994-1995 . . . . .	651	134,510
21	School of Osteopathic		
22	Medicine—Retro Payments		
23	for FY 1993-1994 and FY		
24	1994-1995 . . . . .	652	20,107
25	WVU—School of Health		
26	Sciences—Morgantown		
27	Retro Payments for		
28	FY 1993-1994 and FY		
29	1994-1995 . . . . .	653	<u>1,016,157</u>
30	Total . . . . .		\$ 63,680,929
31	Any unexpended balances remaining in the appropri-		
32	ations for Primary Health Education Program Support		
33	(fund 0323, activity 177) and Rural Health Initiative Site		
34	Support (fund 0323, activity 295) at the close of the fiscal		
35	year 1994-95 are hereby reappropriated for expenditure		
36	during the fiscal year 1995-96.		

**46—Board of Directors of the**

**State College System**

**Control Account**

(WV Code Chapter 18B)

Account No.

Fund 0330 FY 1996 Org 0481

1	Unclassified . . . . .	099	\$ 78,927,509
2	Faculty and Staff Salaries		
3	and Benefits . . . . .	573	4,621,407
4	Program Enhancements . . . . .	643	<u>-0-</u>
5	Total . . . . .		\$ 83,548,916

6 From the above appropriation for Program Enhance-  
7 ments (activity 643), the board of directors shall distribute

8 the funds to those institutions with the greatest need as  
 9 determined by the board and without these funds being  
 10 distributed through, or impacting on, the resource alloca-  
 11 tion model or policies.

**47—State Board of Rehabilitation**

**Division of Rehabilitation Services**

(WV Code Chapter 18)

Account No.

Fund 0310 FY 1996 Org 0932

1	Personal Services . . . . .	001	\$	4,014,517
2	Annual Increment . . . . .	004		89,970
3	Employee Benefits . . . . .	010		1,298,453
4	Unclassified . . . . .	099		151,165
5	Case Services . . . . .	162		2,757,289
6	Workshop Development . . . . .	163		<u>1,449,000</u>
7	Total . . . . .		\$	9,760,394

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**48—Department of Health and Human Resources**

**Office of the Secretary**

(WV Code Chapter 5F)

Account No.

Fund 0400 FY 1996 Org 0501

1	Unclassified—Total . . . . .	096	\$	145,442
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**49—Division of Health**

**Central Office**

(WV Code Chapter 16)

Account No.

Fund 0407 FY 1996 Org 0506

1	Personal Services . . . . .	001	\$	6,276,419
2	Annual Increment . . . . .	004		95,368
3	Employee Benefits . . . . .	010		2,253,000
4	Unclassified . . . . .	099		4,246,437
5	Corporate Nonprofit Community			
6	Health Centers—F.M.H.A.			
7	Mortgage Finance . . . . .	184		167,968
8	Appalachian States Low Level			
9	Radioactive Waste			
10	Commission . . . . .	185		-0-
11	Safe Drinking Water Program . . . .	187		-0-
12	State Aid to Local Agencies . . . .	209		7,517,204
13	Women, Infants and Children . . . .	210		-0-
14	Maternal and Child Health			
15	Clinics, Clinicians and			
16	Medical Contracts and Fees . . . .	575		4,423,043
17	Pediatric Dental Services . . . . .	550		100,000
18	Vaccine for Children . . . . .	551		-0-
19	Adult Influenza Vaccine . . . . .	552		-0-
20	Tuberculosis Control . . . . .	553		308,534
21	Wellness Institute . . . . .	556		-0-
22	Primary Care Uncompensated			
23	Care Fund . . . . .	213		-0-
24	Equipment and Capital Costs . . . .	576		-0-
25	Primary Care Support			
26	Program . . . . .	215		-0-
27	Epidemiology Research . . . . .	216		-0-
28	Epidemiology Support . . . . .	626		438,376
29	EMS Area Entity . . . . .	554		756,320

30	Rural Non-Profit EMS		
31	Equipment . . . . .	493	-0-
32	Rural EMS Equipment		
33	and Training . . . . .	627	460,000
34	Regional EMS Entities . . . . .	557	630,000
35	Early Intervention . . . . .	223	2,018,357
36	Cancer Registry . . . . .	225	-0-
37	Primary Care Support . . . . .	628	<u>6,510,156</u>
38	Total . . . . .		\$ 36,201,182

39 Notwithstanding the provisions of Title I, section three  
40 of this bill, the secretary of the department of health and  
41 human resources shall have the authority to transfer funds  
42 within the above account, including transfers to personal  
43 services. Such transfers, not to exceed six hundred twenty  
44 one thousand, four hundred sixty three dollars, will be for  
45 the sole purpose of funding the office of health facilities  
46 licensure and certification for the licensure cost-share to  
47 inspect nursing homes, hospitals and other health care  
48 facilities which are licensed by the State of West Virginia  
49 and which participate in the Medicaid/Medicare reim-  
50 bursement programs.

***50—Consolidated Medical Service Fund***

Account No.

Fund 0525 FY 1996 Org 0506

1	Personal Services . . . . .	001	\$	1,189,539
2	Annual Increment . . . . .	004		14,241
3	Employee Benefits . . . . .	010		14,587,978
4	Foster Grandparents			
5	Stipends/Travel . . . . .	205		-0-
6	Special Olympics . . . . .	208		26,074
7	Behavioral Health Program—			
8	Community Centers . . . . .	220		-0-



9	Behavioral Health Program—		
10	Unclassified . . . . .	219	11,457,975
11	Family Support Act . . . . .	221	1,088,605
12	Behavioral Health Medicaid		
13	Match . . . . .	492	-0-
14	Institutional Facilities		
15	Operations . . . . .	335	<u>31,901,076</u>
16	Total . . . . .		\$ 60,265,488

17 The secretary of the department of health and human  
18 resources, prior to the beginning of the fiscal year, shall  
19 file with the legislative auditor and the department of ad-  
20 ministration an expenditure schedule for each formerly  
21 separate spending unit which has been consolidated into  
22 the above account and which receives a portion of the  
23 above appropriation for Institutional Facilities Operations.  
24 The secretary shall also, within fifteen days after the close  
25 of the six-month period of said fiscal year, file with the  
26 legislative auditor and the department of administration an  
27 itemized report of expenditures made during the preced-  
28 ing six-month period.

29 Additional funds have been appropriated in fund 5156,  
30 fiscal year 1996, organization 0506, for the operation of  
31 the institutional facilities. The secretary of the department  
32 of health and human resources is authorized to utilize up  
33 to ten percent of the funds from the Institutional Facilities  
34 Operations line item to facilitate cost effective and cost  
35 saving services at the community level.

36 From the above appropriations to Institutional Facilities  
37 Operations, together with available funds from the division  
38 of health—hospital services revenue account (fund 5156,  
39 activity 335), on July 1, 1995, the sum of two hundred  
40 thousand dollars shall be transferred to the department of  
41 agriculture — land division as advance payment for the  
42 purchase of food products; actual payments for such pur-  
43 chases shall not be required until such credits have been  
44 completely expended.

**51—Commission on Aging**

(WV Code Chapter 29)

Account No.

Fund 0420 FY 1996 Org 0508

1	Personal Services . . . . .	001	\$	113,655
2	Annual Increment . . . . .	004		2,228
3	Employee Benefits . . . . .	010		51,551
4	Unclassified . . . . .	099		437,412
5	Local Programs			
6	Service Delivery Costs . . . . .	200		2,475,250
7	Senior Citizens Centers—Land			
8	Acquisition, Construction and			
9	Repairs and Alterations (R) . . . . .	201		250,000
10	Silver Haired Legislature . . . . .	202		14,400
11	Area Agencies Administration . . . . .	203		87,429
12	Ombudsman . . . . .	204		-0-
13	Foster Grandparents			
14	Stipends and Travel . . . . .	205		<u>57,734</u>
15	Total . . . . .		\$	3,489,659

16 Any unexpended balance remaining in the appropria-  
 17 tion for Senior Citizens Centers—Land Acquisition, Con-  
 18 struction and Repairs and Alterations (fund 0420, activity  
 19 201) at the close of the fiscal year 1994-95 is hereby  
 20 reappropriated for expenditure during the fiscal year  
 21 1995-96.

**52—Human Rights Commission**

(WV Code Chapter 5)

Account No.

Fund 0416 FY 1996 Org 0510

1	Personal Services . . . . .	001	\$	515,453
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Ch. 8]	APPROPRIATIONS	101
2	Annual Increment . . . . . 004	7,100
3	Employee Benefits . . . . . 010	158,395
4	Unclassified . . . . . 099	<u>148,323</u>
5	Total . . . . . \$	829,271

***53—Division of Human Services***

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 0403 FY 1996 Org 0511

1	Personal Services . . . . . 001	\$ 17,865,449
2	Annual Increment . . . . . 004	356,331
3	Employee Benefits . . . . . 010	6,128,101
4	Unclassified . . . . . 099	11,979,583
5	OSCAR and RAPIDS . . . . . 515	3,158,211
6	Medical Services . . . . . 189	162,045,670
7	In-Home Services for	
8	Senior Citizens . . . . . 224	700,000
9	Women's Commission . . . . . 191	40,000
10	Grants for Domestic	
11	Violence Shelters . . . . . 629	80,000
12	Commission on	
13	Hearing Impaired . . . . . 192	150,000
14	Public Assistance . . . . . 193	30,231,418
15	Emergency Assistance . . . . . 194	1,510,216
16	Social Services . . . . . 195	19,651,180
17	Family Preservation Program . . . . 196	1,565,000
18	JOBS Program . . . . . 197	3,730,069
19	Education Medical Services . . . . . 198	-0-

102		APPROPRIATIONS	[Ch. 8
20	Child Advocate . . . . .	602	655,883
21	Child Welfare System . . . . .	603	1,966,813
22	Child Protective Services and		
23	Medicaid Auditing . . . . .	604	1,500,000
24	Family Foster Care Payments . . . .	630	<u>4,349,168</u>
25	Total . . . . .		\$ 267,663,092

26 Notwithstanding the provisions of title one, section two  
27 of this bill, the secretary of the department of health and  
28 human resources shall have the authority to transfer funds  
29 within the above account: *Provided*, That no more than  
30 ten percent of the funds appropriated to one line may be  
31 transferred to other lines: *Provided, however*, That no  
32 funds from other lines shall be transferred to the personal  
33 services line item.

**DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY**

*54—Department of Military Affairs and*

*Public Safety—*

*Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 0430 FY 1996 Org 0601

1	Unclassified . . . . .	099	\$ 125,098
2	Federal Court Judgement -		
3	Rum Creek . . . . .	614	<u>-0-</u>
4	Total . . . . .		\$ 125,098

*55—Adjutant General—State Militia*

(WV Code Chapter 15)

## Account No.

Fund 0433 FY 1996 Org 0603

1	Personal Services . . . . .	001	\$	271,477
2	Annual Increment . . . . .	004		7,056
3	Employee Benefits . . . . .	010		98,697
4	Unclassified . . . . .	099		3,176,695
5	College Education Fund . . . . .	232		<u>798,400</u>
6	Total . . . . .		\$	4,352,325
7	The College Education Fund line item above shall be			
8	the total annual appropriation for awarding scholarships.			
9	The secretary of the department of military affairs and			
10	public safety shall devise a method to equitably reimburse			
11	all eligible participants on a pro-rata basis should the ap-			
12	propriation be insufficient to cover total annual eligible			
13	expenses.			

***56—Board of Probation and Parole***

(WV Code Chapter 62)

## Account No.

Fund 0440 FY 1996 Org 0605

1	Personal Services . . . . .	001	\$	-0-
2	Annual Increment . . . . .	004		-0-
3	Employee Benefits . . . . .	010		-0-
4	Unclassified . . . . .	099		-0-
5	Salaries of Members of			
6	Members of Board			
7	of Probation and Parole . . . . .	227		<u>-0-</u>
8	Total . . . . .		\$	-0-

**57—West Virginia Board of Parole**

(WV Code Chapter 62)

Account No.

Fund 0404 FY 1996 Org 0605

1	Personal Services . . . . .	001	\$	47,448
2	Annual Increment . . . . .	004		936
3	Employee Benefits . . . . .	010		71,665
4	Unclassified . . . . .	099		38,751
5	Salaries of Members of the West			
6	Virginia Board of Parole . . . . .	227		<u>200,000</u>
7	Total . . . . .		\$	358,800

**58—Office of Emergency Services**

(WV Code Chapter 15)

Account No.

Fund 0443 FY 1996 Org 0606

1	Personal Services . . . . .	001	\$	152,797
2	Annual Increment . . . . .	004		3,249
3	Employee Benefits . . . . .	010		57,687
4	Unclassified . . . . .	099		<u>11,546</u>
5	Total . . . . .		\$	225,279

**59—Division of Corrections****Central Office**

(WV Code Chapters 25, 28, 49 and 62)

Account No.

Fund 0446 FY 1996 Org 0608

1	Personal Services . . . . .	001	\$	346,044
2	Annual Increment . . . . .	004		6,840

3	Employee Benefits .....	010	106,500
4	Unclassified .....	099	<u>110,442</u>
5	Total .....		\$ 569,826

**60—Division of Corrections****Correctional Units**

(WV Code Chapters 25, 28, 49 and 62)

Account No.

Fund 0450 FY 1996 Org 0608

1	Personal Services .....	001	\$ 10,812,103
2	Annual Increment .....	004	164,942
3	Employee Benefits .....	010	4,148,450
4	Unclassified .....	099	6,367,692
5	Salary and Benefit Increase		
6	for Probation		
7	and Parole Officers .....	631	83,790
8	Payment to Counties and/or		
9	Regional Jails .....	229	384,000
10	Denmar Facility .....	448	2,000,000
11	WV Penitentiary Transition .....	532	222,400
12	Mt. Olive Correctional Complex ..	533	15,200,000
13	Northern Correctional Facility ...	534	4,808,834
14	Inmate Medical Expense .....	535	3,679,100
15	Capital Improvements .....	338	<u>-0-</u>
16	Total .....		\$ 47,871,311

17 The commissioner of corrections, prior to the begin-  
 18 ning of the fiscal year, shall file with the legislative auditor  
 19 and the department of administration an expenditure  
 20 schedule for each formerly separate spending unit which  
 21 has been consolidated into the above account and which

22 receives a portion of the above appropriation. The Com-  
 23 missioner shall also, within fifteen days after the close of  
 24 each six-month period of said fiscal year, file with the  
 25 legislative auditor and the department of administration an  
 26 itemized report of expenditures made during the preced-  
 27 ing six-month period. Such report shall include the total  
 28 of expenditures made for personal services, annual incre-  
 29 ment, current expenses (inmate medical expenses and  
 30 other), repairs and alterations and equipment.

31 From the above appropriation to Unclassified, on July  
 32 1, 1995, the sum of two hundred thousand dollars shall be  
 33 transferred to the department of agriculture — land divi-  
 34 sion as advance payment for the purchase of food prod-  
 35 ucts; actual payments for such purchases shall not be re-  
 36 quired until such credits have been completely expended.

**61—Division of Public Safety**

(WV Code Chapter 15)

Account No.

Fund 0453 FY 1996 Org 0612

1	Personal Services . . . . .	001	\$ 17,656,040
2	Annual Increment . . . . .	004	98,244
3	Employee Benefits . . . . .	010	3,388,576
4	Unclassified . . . . .	099	5,164,803
5	Barracks Maintenance and		
6	Construction (R) . . . . .	494	113,947
7	Communications and Other		
8	Equipment . . . . .	558	3,000,000
9	Overtime and Wage Court Awards .	568	-0-
10	Vehicle Purchase . . . . .	451	1,000,000
11	Trooper Retirement Fund . . . . .	605	<u>5,560,660</u>
12	Total . . . . .		\$ 35,982,270



13 Any unexpended balance remaining in the appropria-  
 14 tion for Barracks Maintenance and Construction (fund  
 15 0453, activity 494) at the close of the fiscal year 1994-95  
 16 is hereby reappropriated for expenditure during the fiscal  
 17 year 1995-96.

**62—Division of Veterans' Affairs**

(WV Code Chapter 9A)

Account No.

Fund 0456 FY 1996 Org 0613

1	Personal Services . . . . .	001	\$	660,539
2	Annual Increment . . . . .	004		13,284
3	Employee Benefits . . . . .	010		286,733
4	Unclassified . . . . .	099		15,919
5	Veterans' Field Offices . . . . .	228		<u>129,692</u>
6	Total . . . . .		\$	1,106,167

**63—Regional Jail and Correctional**

**Facility Authority**

(WV Code Chapter 31)

Account No.

Fund 0536 FY 1996 Org 0615

1	Regional Jail—Capital Outlay—			
2	Total (R) . . . . .	577	\$	-0-

3 Any unexpended balance remaining in the appropria-  
 4 tion (fund 0536, activity 577) at the close of the fiscal  
 5 year 1994-95 is hereby reappropriated for expenditure  
 6 during the fiscal year 1995-96.

**64—Division of Veterans' Affairs**

**Veterans' Home**

(WV Code Chapter 9A)

## Account No.

Fund 0460 FY 1996 Org 0618

1	Personal Services . . . . .	001	\$	536,699
2	Annual Increment . . . . .	004		10,764
3	Employee Benefits . . . . .	010		<u>235,789</u>
4	Total . . . . .		\$	783,252

**65—Fire Commission**

(WV Code Chapter 29)

## Account No.

Fund 0436 FY 1996 Org 0619

1	Personal Services . . . . .	001	\$	473,169
2	Annual Increment . . . . .	004		7,740
3	Employee Benefits . . . . .	010		153,949
4	Unclassified . . . . .	099		<u>136,724</u>
5	Total . . . . .		\$	771,582

**66—Division of Criminal Justice and Highway Safety**

(Executive Order)

## Account No.

Fund 0546 FY 1996 Org 0620

1	Personal Services . . . . .	001	\$	91,102
2	Annual Increment . . . . .	004		1,620
3	Employee Benefits . . . . .	010		27,782
4	Unclassified . . . . .	099		40,913
5	Statistical Analysis Program . . . . .	597		<u>50,000</u>
6	Total . . . . .		\$	211,417

**DEPARTMENT OF TAX AND REVENUE****67—Department of Tax and Revenue****Office of the Secretary**

(WV Code Chapter 5F)

Account No.

Fund 0465 FY 1996 Org 0701

1	Unclassified—Total	.....	096	\$	161,908
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**68—Tax Division**

(WV Code Chapter 11)

Account No.

Fund 0470 FY 1996 Org 0702

1	Personal Services	.....	001	\$	9,360,583
2	Annual Increment	.....	004		163,872
3	Employee Benefits	.....	010		3,041,163
4	Unclassified	.....	099		<u>5,982,889</u>
5	Total	.....		\$	18,548,507

6 Any unexpended balance remaining in the appropriation for Automation Project (fund 0470, activity 442) at  
 7 the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

**69—Division of Professional and****Occupational Licenses****State Athletic Commission**

(WV Code Chapter 29)

Account No.

Fund 0523 FY 1996 Org 0933

1	Unclassified—Total	.....	096	\$	4,719
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**DEPARTMENT OF TRANSPORTATION*****70—Department of Transportation******Office of the Secretary***

(WV Code Chapter 5F)

Account No.

Fund 0500 FY 1996 Org 0801

1	Unclassified . . . . .	099	\$	153,490
2	Civil Air Patrol . . . . .	234		86,952
3	Port Authority (R) . . . . .	443		268,200
4	Potomac Highlands			
5	Airport Authority . . . . .	444		<u>150,000</u>
6	Total . . . . .		\$	658,642
7	Any unexpended balance remaining in the appropria-			
8	tion for Port Authority (fund 0500, activity 443) at the			
9	close of the fiscal year 1994-95 is hereby reappropriated			
10	for expenditure during the fiscal year 1995-96.			

***71—State Rail Authority***

(WV Code Chapter 29)

Account No.

Fund 0506 FY 1996 Org 0804

1	Capital Improvement			
2	and Equipment . . . . .	632	\$	35,000
3	Duffield Station . . . . .	559		25,000
4	Unclassified . . . . .	099		<u>355,373</u>
5	Total . . . . .		\$	415,373
6	Any unexpended balance remaining in the appropria-			
7	tion for Capital Outlay (fund 0506, activity 309) at the			
8	close of the fiscal year 1994-95 is hereby reappropriated			
9	for expenditure during the fiscal year 1995-96.			

**72—Division of Public Transit**

(WV Code Chapter 17)

Account No.

Fund 0510 FY 1996 Org 0805

1	Unclassified—Total	..... 096	\$	872,680
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**BUREAU OF COMMERCE****73—Division of Forestry**

(WV Code Chapter 19)

Account No.

Fund 0250 FY 1996 Org 0305

1	Personal Services	..... 001	\$	1,150,152
2	Annual Increment	..... 004		22,852
3	Employee Benefits	..... 010		416,938
4	Unclassified	..... 099		<u>510,058</u>
5	Total	.....	\$	2,100,000

6 Out of the above appropriation a sum may be used to  
 7 match federal funds for cooperative studies or other funds  
 8 for similar purposes.

**74—Geological and Economic Survey**

(WV Code Chapter 29)

Account No.

Fund 0253 FY 1996 Org 0306

1	Personal Services	..... 001	\$	1,140,476
2	Annual Increment	..... 004		21,503
3	Employee Benefits	..... 010		349,992
4	Unclassified	..... 099		160,000
5	Capital Outlay and Equipment	... 542		<u>-0-</u>
6	Total	.....	\$	1,671,971

7 The above Unclassified appropriation includes funding  
 8 to secure federal and other contracts and may be trans-  
 9 ferred to a special revolving fund (fund 3105, activity  
 10 099) for the purpose of providing advance funding for  
 11 such contracts.

**75—West Virginia Development Office**

(WV Code Chapter 5B)

Account No.

Fund 0256 FY 1996 Org 0307

1	Personal Services . . . . .	001	\$	1,882,036
2	Annual Increment . . . . .	004		22,239
3	Employee Benefits . . . . .	010		509,400
4	Unclassified . . . . .	099		1,665,684
5	Partnership Grants (R) . . . . .	131		3,600,000
6	National Youth Science Camp . . . .	132		200,000
7	Local Economic Development			
8	Partnerships (R) . . . . .	133		1,000,000
9	ARC Assessment . . . . .	136		127,602
10	Guaranteed Work			
11	Force Grant (R) . . . . .	242		1,450,000
12	Leverage Technology			
13	and Small Business			
14	Development Program . . . . .	525		800,000
15	WV Film Development Office . . . .	498		100,000
16	WV Economic			
17	Development Authority . . . . .	633		-0-
18	Industrial Modernization			
19	Program . . . . .	634		<u>-0-</u>
20	Total . . . . .		\$	11,356,961
21	Any unexpended balances remaining in the appropria-			

22 tions for Partnership Grants (fund 0256, activity 131),  
 23 Competitive Grants (fund 0256, activity 130), Guaranteed  
 24 Work Force Grant (fund 0256, activity 242), Local Eco-  
 25 nomic Development Partnerships (fund 0256, activity  
 26 133) and Infrastructure (fund 0256, activity 524) at the  
 27 close of the fiscal year 1994-95 are hereby reappropriated  
 28 for expenditure during the fiscal year 1995-96.

29 The above appropriation to Local Economic Develop-  
 30 ment Partnerships shall be used by the West Virginia de-  
 31 velopment office for the award of funding assistance to  
 32 county and regional economic development corporations  
 33 or authorities created under the plan developed by the  
 34 council for community and economic development under  
 35 the provisions of section three, article two, chapter five-b  
 36 of the code. The West Virginia development office shall  
 37 award the funding assistance through a matching grant  
 38 program, based upon criteria developed under the provi-  
 39 sions of section three, article two, chapter five-b of the  
 40 code and based upon a formula whereby funding assis-  
 41 tance may not exceed twenty-five thousand dollars per  
 42 county served by a regional economic development cor-  
 43 poration or authority.

44 From the reappropriation for Infrastructure, it is the  
 45 intent of the Legislature that adequate funds be transferred  
 46 to the state revolving fund to match available federal funds  
 47 for water and sewer projects.

### *76—Division of Labor*

(WV Code Chapters 21 and 47)

Account No.

Fund 0260 FY 1996 Org 0308

1	Personal Services . . . . .	001	\$	874,063
2	Annual Increment . . . . .	004		13,879
3	Employee Benefits . . . . .	010		328,984
4	Unclassified . . . . .	099		<u>634,849</u>
5	Total . . . . .		\$	1,851,775

**77—Division of Natural Resources**

(WV Code Chapter 20)

Account No.

Fund 0265 FY 1996 Org 0310

1	Personal Services . . . . .	001	\$	7,796,060
2	Annual Increment . . . . .	004		168,624
3	Employee Benefits . . . . .	010		3,216,551
4	Unclassified . . . . .	099		22,858
5	Non-Game Wildlife . . . . .	527		550,000
6	Upper Mud River Flood			
7	Control Project . . . . .	654		<u>200,000</u>
8	Total . . . . .		\$	11,954,093

9 Any revenue derived from mineral extraction at any  
 10 state park shall be deposited in a special revenue account  
 11 of the division of natural resources, first for bond debt  
 12 payment purposes and with any remainder to be for park  
 13 operation and improvement purposes.

**78—Division of Miners' Health,****Safety and Training**

(WV Code Chapter 22)

Account No.

Fund 0277 FY 1996 Org 0314

1	Personal Services . . . . .	001	\$	3,075,183
2	Annual Increment . . . . .	004		32,796
3	Employee Benefits . . . . .	010		1,044,879
4	Unclassified . . . . .	099		<u>269,726</u>
5	Total . . . . .		\$	4,422,584



**79—Board of Coal Mine*****Health and Safety***

(WV Code Chapter 22)

Account No.

Fund 0280 FY 1996 Org 0319

1	Personal Services . . . . .	001	\$	75,000
2	Annual Increment . . . . .	004		828
3	Employee Benefits . . . . .	010		25,000
4	Unclassified . . . . .	099		<u>36,516</u>
5	Total . . . . .		\$	137,344

**80—Coal Mine Safety and*****Technical Review Committee***

(WV Code Chapter 22)

Account No.

Fund 0285 FY 1996 Org 0320

1	Unclassified—Total . . . . .	096	\$	71,303
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**BUREAU OF ENVIRONMENT****81—Environmental Quality Board**

(WV Code Chapter 20)

Account No.

Fund 0270 FY 1996 Org 0311

1	Personal Services . . . . .	001	\$	61,932
2	Annual Increment . . . . .	004		720
3	Employee Benefits . . . . .	010		18,994
4	Unclassified . . . . .	099		<u>32,210</u>
5	Total . . . . .		\$	113,856

**82—Interstate Commission on  
Potomac River Basin**

(WV Code Chapter 29)

Account No.

Fund 0263 FY 1996 Org 0313

1	West Virginia's Contribution		
2	to the Interstate Commission		
3	on Potomac River		
4	Basin—Total . . . . .	134	\$ 38,557

**83—Ohio River Valley Water**

**Sanitation Commission**

(WV Code Chapter 29)

Account No.

Fund 0264 FY 1996 Org 0313

1	West Virginia's Contribution		
2	to the Ohio River		
3	Valley Water Sanitation		
4	Commission—Total . . . . .	135	\$ 106,200

**84—Division of Environmental Protection**

(WV Code Chapter 22)

Account No.

Fund 0273 FY 1996 Org 0313

1	Personal Services . . . . .	001	\$ 4,027,782
2	Annual Increment . . . . .	004	53,537
3	Employee Benefits . . . . .	010	1,263,070
4	Unclassified . . . . .	099	675,372
5	Black Fly Control . . . . .	137	240,000
6	Dam Safety . . . . .	607	<u>123,000</u>
7	Total . . . . .		\$ 6,382,761

**85—Air Quality Board**

(WV Code Chapter 16)

Account No.

Fund 0547 FY 1996 Org 0313

1	Unclassified—Total . . . . .	096	\$	75,000
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**MISCELLANEOUS BOARDS AND COMMISSIONS****86—Board of Investments**

(WV Code Chapter 12)

Account No.

Fund 0513 FY 1996 Org 0920

1	Personal Services . . . . .	001	\$	1,176,013
2	Annual Increment . . . . .	004		14,832
3	Employee Benefits . . . . .	010		383,213
4	Unclassified . . . . .	099		<u>2,188,086</u>
5	Total . . . . .		\$	3,762,144

**87—Board of Investments—****School Building Sinking Fund**

(WV Code Chapter 12)

Account No.

Fund 0526 FY 1996 Org 0920

1	Debt Service—Total (R) . . . . .	310	\$	10,670,000
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2 Any unexpended balance remaining in the appropriation for Board of Investments—School Building Sinking Fund (fund 0526, activity 310) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

1	Total TITLE II, Section 1—			
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2	General Revenue . . . . .			<u>\$ 2,282,867,972</u>
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1     **Sec. 2. Appropriations from state road fund.**—From  
 2 the state road fund there are hereby appropriated condi-  
 3 tionally upon the fulfillment of the provisions set forth in  
 4 article two, chapter five-a of the code the following  
 5 amounts, as itemized, for expenditure during the fiscal  
 6 year one thousand nine hundred ninety-six.

**DEPARTMENT OF TRANSPORTATION**

*88—Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Account No.

Fund 9007 FY 1996 Org 0802

	<b>Activity</b>	<b>State Road Fund</b>
1	Personal Services . . . . . 001	\$ 4,192,776
2	Annual Increment . . . . . 004	52,812
3	Employee Benefits . . . . . 010	1,483,743
4	Unclassified . . . . . 099	12,351,400
5	Optic Scan System . . . . . 283	1,000,000
6	Electronic Photo Operator	
7	and License System . . . . . 284	750,000
8	International Fuel Tax Agreement 536	620,000
9	License Plate—Reissue . . . . . 579	<u>736,618</u>
10	Total . . . . .	\$ 21,187,349

*89—Division of Highways*

(WV Code Chapters 17 and 17C)

Account No.

Fund 9017 FY 1996 Org 0803

1	Debt Service . . . . . 040	\$ 45,000,000
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2	ARC Assessment . . . . .	136	729,000
3	Maintenance, Expressway,		
4	Trunkline and Feeder . . . . .	270	73,164,000
5	Maintenance, State		
6	Local Services . . . . .	271	116,603,000
7	Maintenance, Contract Paving		
8	and Secondary Road		
9	Maintenance . . . . .	272	48,500,000
10	Bridge Repair and		
11	Replacement . . . . .	273	27,000,000
12	Inventory Revolving . . . . .	275	1,250,000
13	Equipment Revolving . . . . .	276	15,000,000
14	General Operations . . . . .	277	33,400,000
15	Interstate Construction . . . . .	278	33,000,000
16	Other Federal Aid Programs . . . . .	279	100,000,000
17	Appalachian Programs . . . . .	280	60,000,000
18	Nonfederal Aid Construction . . . . .	281	25,000,000
19	Highway Litter Control . . . . .	282	<u>1,399,000</u>
20	Total . . . . .		\$ 580,045,000

21 The above appropriations are to be expended in accor-  
 22 dance with the provisions of chapters seventeen and  
 23 seventeen-c of the code.

24 The commissioner of highways shall have the authority  
 25 to operate revolving funds within the state road fund for  
 26 the operation and purchase of various types of equipment  
 27 used directly and indirectly in the construction and main-  
 28 tenance of roads and for the purchase of inventories and  
 29 materials and supplies.

30 There is hereby appropriated within the above items  
 31 sufficient money for the payment of claims, accrued or  
 32 arising during this budgetary period, to be paid in accor-  
 33 dance with sections seventeen and eighteen, article two,  
 34 chapter fourteen of the code.

35 It is the intent of the Legislature to capture and match  
 36 all federal funds available for expenditure on the Appala-  
 37 chian highway system at the earliest possible time. There-  
 38 fore, should amounts in excess of those appropriated be  
 39 required for the purposes of Appalachian programs, funds  
 40 in excess of the amount appropriated may be made avail-  
 41 able upon recommendation of the commissioner and  
 42 approval of the governor. Further, for the purpose of  
 43 Appalachian programs, funds appropriated to line items  
 44 may be transferred to other line items upon recommenda-  
 45 tion of the commissioner and approval of the governor.

**90—Division of Highways—**

***Federal Aid Highway Matching Fund***

(WV Code Chapters 17 and 17C)

Account No.

Fund 9018 FY 1996 Org 0803

1	Interstate Construction . . . . .	278	\$ 12,000,000
2	Appalachian Program . . . . .	280	80,000,000
3	Other Federal Aid Programs . . . . .	279	<u>170,000,000</u>
4	Total . . . . .		\$ 262,000,000

1 Total TITLE II, Section 2—

2 State Road Fund . . . . . \$ 863,232,349

1 **Sec. 3. Appropriations from other funds.**—From the  
 2 funds designated there are hereby appropriated condition-  
 3 ally upon the fulfillment of the provisions set forth in  
 4 article two, chapter five-a of the code the following  
 5 amounts, as itemized, for expenditure during the fiscal  
 6 year one thousand nine hundred ninety-six.

**LEGISLATIVE**

***91—Crime Victims Compensation Fund***

(WV Code Chapter 14)

Account No.

Fund 1731 FY 1996 Org 2300

	Activity	Other Funds
1	Personal Services . . . . . 001	\$ 145,096
2	Annual Increment . . . . . 004	1,044
3	Employee Benefits . . . . . 010	46,461
4	Unclassified . . . . . 099	39,000
5	Economic Loss Claim	
6	Payment Fund (R) . . . . . 334	<u>2,520,000</u>
7	Total . . . . .	\$ 2,751,601
8	Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.	

**EXECUTIVE*****92—Auditor's Office—******Land Operating Fund***

(WV Code Chapters 11A, 12 and 36)

Account No.

Fund 1206 FY 1996 Org 1200

1	Personal Services . . . . . 001	\$ 25,000
2	Employee Benefits . . . . . 010	10,836
3	Unclassified . . . . . 099	<u>64,250</u>
4	Total . . . . .	\$ 100,086
5	The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.	

**93—Auditor's Office—****Securities Regulation Fund**

(WV Code Chapter 32)

Account No.

Fund 1225 FY 1996 Org 1200

1	Personal Services . . . . .	001	\$	216,000
2	Annual Increment . . . . .	004		3,400
3	Employee Benefits . . . . .	010		61,657
4	Unclassified . . . . .	099		<u>168,943</u>
5	Total . . . . .		\$	450,000

**94—Department of Agriculture**

(WV Code Chapter 19)

Account No.

Fund 1401 FY 1996 Org 1400

1	Personal Services . . . . .	001	\$	344,091
2	Annual Increment . . . . .	004		2,052
3	Employee Benefits . . . . .	010		109,819
4	Unclassified . . . . .	099		<u>849,235</u>
5	Total . . . . .		\$	1,305,197

**95—Department of Agriculture—****West Virginia Rural Rehabilitation Program**

(WV Code Chapter 19)

Account No.

Fund 1408 FY 1996 Org 1400

1	Student and Farm Loans—Total . .	235	\$	487,937
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**96—General John McCausland Memorial Farm**

(WV Code Chapter 19)



## Account No.

Fund 1409 FY 1996 Org 1400

1	Personal Services . . . . .	001	\$	20,084
2	Annual Increment . . . . .	004		936
3	Employee Benefits . . . . .	010		11,113
4	Unclassified . . . . .	099		<u>51,493</u>
5	Total . . . . .		\$	83,626

6 The above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the code.  
7

***97—Department of Agriculture—******Farm Operating Fund***

(WV Code Chapter 19)

## Account No.

Fund 1412 FY 1996 Org 1400

1	Unclassified—Total . . . . .	096	\$	895,064
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***98—Attorney General—******Anti-Trust Enforcement***

(WV Code Chapter 47)

## Account No.

Fund 1507 FY 1996 Org 1500

1	Personal Services . . . . .	001	\$	210,400
2	Annual Increment . . . . .	004		673
3	Employee Benefits . . . . .	010		60,892
4	Unclassified . . . . .	099		<u>177,882</u>
5	Total . . . . .		\$	449,847

**DEPARTMENT OF ADMINISTRATION**

***99—Division of Information Services***

***and Communications***

(WV Code Chapter 5A)

Account No.

Fund 2220 FY 1996 Org 0210

1	Personal Services . . . . .	001	\$	4,082,348
2	Annual Increment . . . . .	004		57,150
3	Employee Benefits . . . . .	010		1,239,453
4	Unclassified . . . . .	099		<u>1,755,767</u>
5	Total . . . . .		\$	7,134,718

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of collections made by  
 8 the division of information services and communications  
 9 as provided by law.

10 There is hereby appropriated from this fund, in addi-  
 11 tion to the above appropriation, the necessary amount for  
 12 the expenditure of funds other than personal services or  
 13 employee benefits to enable the division to provide infor-  
 14 mation processing services to user agencies. These servic-  
 15 es include, but are not limited to, data processing equip-  
 16 ment, office automation and telecommunications.

17 Each spending unit operating from the general revenue  
 18 fund, from special revenue funds or receiving reimburse-  
 19 ment for postage from the federal government shall be  
 20 charged monthly for all postage meter service and shall  
 21 reimburse the revolving fund monthly for all such  
 22 amounts.

***100—Division of Purchasing—***

***Revolving Fund***

(WV Code Chapter 5A)

Account No.

Fund 2320 FY 1996 Org 0216

1	Personal Services . . . . .	001	\$	696,816
2	Annual Increment . . . . .	004		23,351
3	Employee Benefits . . . . .	010		259,278
4	Unclassified . . . . .	099		<u>746,223</u>
5	Total . . . . .		\$	1,725,668

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of collections made by  
8 the division of purchasing as provided by law.

9 There is hereby appropriated from this fund, in addi-  
10 tion to the above appropriation, the necessary amount for  
11 the expenditure of funds other than personal services or  
12 employee benefits to enable the division to provide print-  
13 ing, publishing and document services and for the pur-  
14 chase of supplies for resale to user agencies. These servic-  
15 es include, but are not limited to, offset printing, electronic  
16 duplication/copying, microfilming, records storage and the  
17 sale of general office supplies.

***101—Division of Personnel***

(WV Code Chapter 29)

Account No.

Fund 2440 FY 1996 Org 0222

1	Personal Services . . . . .	001	\$	2,039,638
2	Annual Increment . . . . .	004		42,408
3	Employee Benefits . . . . .	010		640,539
4	Unclassified . . . . .	099		<u>708,772</u>
5	Total . . . . .		\$	3,431,357

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of fees collected by the  
8 division of personnel.

**DEPARTMENT OF EDUCATION*****102—State Department of Education—******School Building Authority***

(WV Code Chapter 18)

Account No.

Fund 3959 FY 1996 Org 0402

1	Personal Services . . . . .	001	\$	389,880
2	Annual Increment . . . . .	004		3,420
3	Employee Benefits . . . . .	010		104,603
4	Unclassified . . . . .	099		<u>216,637</u>
5	Total . . . . .		\$	714,540

6 The above appropriation for the administrative expens-  
 7 es of the school building authority shall be paid from the  
 8 interest earnings on debt service reserve accounts main-  
 9 tained on behalf of said authority.

***103—State Department of Education—******FFA-FHA Conference Center***

(WV Code Chapter 18)

Account No.

Fund 3960 FY 1996 Org 0402

1	Personal Services . . . . .	001	\$	682,560
2	Annual Increment . . . . .	004		9,894
3	Employee Benefits . . . . .	010		278,609
4	Unclassified . . . . .	099		<u>910,215</u>
5	Total . . . . .		\$	1,881,278

**DEPARTMENT OF EDUCATION AND THE ARTS**

*104—Department of Education and the Arts—*

*Office of the Secretary*

*Health Care Reform Studies*

Account No.

Fund 4009 FY 1996 Org 0431

1	Personal Services . . . . .	001	\$	-0-
2	Annual Increment . . . . .	004		-0-
3	Employee Benefits . . . . .	010		-0-
4	Unclassified . . . . .	099		<u>-0-</u>
5	Total . . . . .		\$	-0-

*105—State College and University Systems—*

*State System Registration Fee—*

*Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4033 FY 1996 Org 0453

1 Any unexpended balances remaining in the prior years'  
 2 and the 1994-95 appropriations are hereby reappropriated  
 3 for expenditure during the fiscal year 1995-96.

4 The total amount of this appropriation shall be paid  
 5 from the proceeds of revenue bonds issued pursuant to  
 6 section eight, article ten, chapter eighteen-b of the code.

*106—State College and University Systems—*

*State Systems Tuition Fee—*

*Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4041 FY 1996 Org 0453

1	Marshall University—New Library		
2	Construction—Total . . . . .	644	\$ 15,000,000

3 Any unexpended balances remaining in the prior years'  
 4 and the 1994-95 appropriations are hereby reappropriated  
 5 for expenditure during the fiscal year 1995-96.

6 The above appropriation is to be financed from the sale  
 7 of up to fifteen million dollars in revenue bonds autho-  
 8 rized under article twelve-b, chapter eighteen of the code  
 9 and shall be used in conjunction with other available fund-  
 10 ing to design, construct and equip a new library facility on  
 11 the campus of Marshall university in Huntington, West  
 12 Virginia. Bonds sold for this purpose shall be redeemed  
 13 through the pledge of existing tuition fees and other avail-  
 14 able revenues from students at Marshall university in ac-  
 15 cordance with said Article.

16 The total amount of this appropriation shall be paid  
 17 from the proceeds of revenue bonds issued pursuant to  
 18 article twelve-b, chapter eighteen of the code.

*107—State University System—*

*State System Registration Fee—*

*Special Capital Improvement Fund*

*(Capital Improvement and Bond Retirement Fund)*

*Control Account*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4007 FY 1996 Org 0461

1	Debt Service (R) . . . . .	040	\$	3,879,386
2	Capital Repairs and			
3	Alterations (R) . . . . .	251		3,417,209
4	Miscellaneous Projects (R) . . . . .	252		400,000

5	Computer and Telecommunica-		
6	tions Technology (R) . . . . .	438	<u>779,146</u>
7	Total . . . . .		\$ 8,475,741

8 Any unexpended balances remaining in the prior years'  
9 and the 1994-95 appropriations are hereby reappropriated  
10 for expenditure during the fiscal year 1995-96.

11 The total amount of this appropriation shall be paid  
12 from the special capital improvement fund created in  
13 section eight, article ten, chapter eighteen-b of the code.  
14 Projects are to be paid on a cash basis and made available  
15 from the date of passage.

16 The above appropriations, except for debt service, may  
17 be transferred to special revenue funds for capital im-  
18 provement projects at university system institutions.

***108—State University System—***

***State System Tuition Fee—***

***Special Capital Improvement Fund***

***(Capital Improvement and Bond Retirement Fund)***

***Control Account***

(WV Code Chapters 18 and 18B)

Account No.

Fund 4008 FY 1996 Org 0461

1	Debt Service (R) . . . . .	040	\$ 5,079,897
2	Building and Campus		
3	Renewal (R) . . . . .	258	12,855,216
4	Facilities Planning and		
5	Administration (R) . . . . .	386	190,000
6	Computer and Telecommunica-		
7	tions Technology (R) . . . . .	438	<u>779,146</u>
8	Total . . . . .		\$ 18,904,259

9 Any unexpended balances remaining in the prior years'

10 and the 1994-95 appropriations are hereby reappropriated  
11 for expenditure during the fiscal year 1995-96.

12 The total amount of this appropriation shall be paid  
13 from the special capital improvement fund created in  
14 article twelve-b, chapter eighteen of the code. Projects are  
15 to be paid on a cash basis and made available from the  
16 date of passage.

17 The above appropriations, except for debt service, may  
18 be transferred to special revenue funds for capital im-  
19 provement projects at university system institutions.

*109—State University System—*

*West Virginia University Health Sciences Center*

*Spending Authority*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4179 FY 1996 Org 0463

1 Unclassified—Total . . . . . 096 \$ 14,974,000

2 Any unexpended balance remaining in the fiscal year  
3 1994-95 appropriation for the West Virginia university  
4 health sciences center is hereby reappropriated for expen-  
5 diture during the fiscal year 1995-96.

*110—State College System—*

*State System Registration Fee—*

*Special Capital Improvement Fund*

*(Capital Improvement and Bond Retirement Fund)*

*Control Account*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4289 FY 1996 Org 0481

1 Debt Service (R) . . . . . 040 \$ 2,071,699



2	Capital Repairs and		
3	Alterations (R) . . . . .	251	<u>1,500,000</u>
4	Total . . . . .		\$ 3,571,699

5 Any unexpended balances remaining in the prior years'  
 6 and 1994-95 appropriations except activity 345, fiscal  
 7 year 1977-78; activity 345, fiscal year 1981-82; activity  
 8 347, fiscal year 1976-77; and activity 348, fiscal year  
 9 1976-77 are hereby reappropriated for expenditure dur-  
 10 ing the fiscal year 1995-96.

11 The total amount of this appropriation shall be paid  
 12 from the special capital improvement fund created in  
 13 section eight, article ten, chapter eighteen-b of the code.  
 14 Projects are to be paid on a cash basis and made available  
 15 from the date of passage.

16 The above appropriations, except for debt service, may  
 17 be transferred to special revenue funds for capital im-  
 18 provement projects at college system institutions.

***III—State College System—***

***State System Tuition Fee—***

***Special Capital Improvement Fund***

***(Capital Improvement and Bond Retirement Fund)***

***Control Account***

(WV Code Chapters 18 and 18B)

Account No.

Fund 4290 FY 1996 Org 0481

1	Debt Service (R) . . . . .	040	\$	2,629,184
2	Capital Improvements			
3	(New) (R) . . . . .	259		1,052,492
4	Building and Campus			
5	Renewal and			
6	Facilities Planning			
7	and Administration (R) . . . . .	538		2,690,000

8	Capital Contingencies and		
9	Emergencies (R) . . . . .	537	<u>250,000</u>
10	Total . . . . .		\$ 6,621,676

11 Any unexpended balances remaining in the prior years'  
 12 and 1994-95 appropriations except activity 336, fiscal  
 13 year 1979-80; activity 339, fiscal year 1980-81; activity  
 14 339, fiscal year 1981-82; activity 355, fiscal year  
 15 1979-80; activity 356, fiscal year 1980-81; activity 359,  
 16 fiscal year 1981-82; activity 361, fiscal year 1982-83;  
 17 activity 362, fiscal year 1982-83; activity 363, fiscal year  
 18 1982-83; activity 364, fiscal year 1982-83; activity 366,  
 19 fiscal year 1982-83; activity 370, fiscal year 1982-83;  
 20 activity 371, fiscal year 1982-83; activity 372, fiscal year  
 21 1983-84; activity 373, fiscal year 1983-84; activity 374,  
 22 fiscal year 1983-84; activity 375, fiscal year 1984-85;  
 23 activity 376, fiscal year 1984-85; activity 379, fiscal year  
 24 1984-85; activity 381, fiscal year 1986-87; activity 384,  
 25 fiscal year 1986-87; and activity 386, fiscal year 1990-91  
 26 are hereby reappropriated for expenditure during the  
 27 fiscal year 1995-96.

28 The total amount of this appropriation shall be paid  
 29 from the special capital improvement fund created in  
 30 article twelve-b, chapter eighteen of the code. Projects are  
 31 to be paid on a cash basis and made available from the  
 32 date of passage.

33 The above appropriations, except for debt service, may  
 34 be transferred to special revenue funds for capital im-  
 35 provement projects at college system institutions.

***112—State Board of Rehabilitation—***

***Division of Rehabilitation Services—***

***West Virginia Rehabilitation Center***

***Special Account***

(WV Code Chapter 18)

Account No.

Fund 8664 FY 1996 Org 0932

1	Personal Services . . . . .	001	\$	350,000
2	Workshop Development . . . . .	163		450,000
3	Workshop-Supported			
4	Employment . . . . .	484		50,000
5	Medical Services Trust			
6	Fund—Transfer . . . . .	512		<u>2,000,000</u>
7	Total . . . . .		\$	2,850,000

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES***113—Board of Barbers and Cosmetologists*

(WV Code Chapters 16 and 30)

Account No.

Fund 5425 FY 1996 Org 0505

1	Personal Services . . . . .	001	\$	164,120
2	Annual Increment . . . . .	004		3,356
3	Employee Benefits . . . . .	010		56,149
4	Unclassified . . . . .	099		<u>103,550</u>
5	Total . . . . .		\$	327,175

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of collections made by  
8 the board of barbers and cosmetologists as provided by  
9 law.

*114—Division of Health—**Vital Statistics*

(WV Code Chapter 16)

Account No.

Fund 5144 FY 1996 Org 0506

1	Personal Services . . . . .	001	\$	202,000
2	Annual Increment . . . . .	004		5,690

3	Employee Benefits . . . . .	010		95,180
4	Unclassified. . . . .	099		<u>82,650</u>
5	Total . . . . .		\$	385,520

*115—Division of Health—**Hospital Services Revenue Account**(Special Fund)**(Capital Improvement, Renovation and Operations)*

(WV Code Chapter 16)

Account No.

Fund 5156 FY 1996 Org 0506

1	Debt Service (R) . . . . .	040	\$	2,740,000
2	Broad Based Provider Tax (R) . . .	566		2,750,000
3	Institutional Facilities			
4	Operations (R) . . . . .	335		36,875,683
5	Medical Services Trust			
6	Fund—Transfer (R) . . . . .	512		<u>23,300,000</u>
7	Total . . . . .		\$	65,665,683

8 Any unexpended balance remaining in the appropria-  
 9 tion for hospital services revenue account at the close of  
 10 the fiscal year 1994-95 is hereby reappropriated for ex-  
 11 penditure during the fiscal year 1995-96, except for fund  
 12 5156, activity 335 (fiscal year 1992-93), and fund 5156,  
 13 activity 040, activity 512 and activity 566 (fiscal year  
 14 1993-94), which shall expire on June 30, 1995.

15 The total amount of this appropriation shall be paid  
 16 from the hospital services revenue account special fund  
 17 created by section fifteen-a, article one, chapter sixteen of  
 18 the code, and shall be used for operating expenses and for  
 19 improvements in connection with existing facilities and  
 20 bond payments. The secretary of the department of  
 21 health and human resources is authorized to utilize up to  
 22 ten percent of the funds from the Institutional Facilities

23 Operations line item to facilitate cost effective and cost  
 24 saving services at the community level.

25 Necessary funds from the above appropriation may be  
 26 used for medical facilities operations, either in connection  
 27 with this account or in connection with the item designated  
 28 Institutional Facilities Operations in the consolidated med-  
 29 ical service fund (fund 0525, fiscal year 1996, organiza-  
 30 tion 0506).

31 From the above appropriation to Institutional Facilities  
 32 Operations, together with available funds from the consoli-  
 33 dated medical services fund (fund 0525, activity 335), on  
 34 July 1, 1995, the sum of two hundred thousand dollars  
 35 shall be transferred to the department of agriculture —  
 36 land division as advance payment for the purchase of food  
 37 products; actual payments for such purchases shall not be  
 38 required until such credits have been completely expend-  
 39 ed.

***116—Division of Health—***

***Laboratory Services***

(WV Code Chapter 16)

Account No.

Fund 5163 FY 1996 Org 0506

1	Personal Services . . . . .	001	\$	419,768
2	Annual Increment . . . . .	004		6,372
3	Employee Benefits . . . . .	010		139,040
4	Unclassified . . . . .	099		<u>300,000</u>
5	Total . . . . .		\$	865,180

***117—Division of Health—***

***Health Facility Licensing***

(WV Code Chapter 16)

Account No.

Fund 5172 FY 1996 Org 0506

1	Personal Services . . . . .	001	\$	161,152
2	Annual Increment . . . . .	004		900
3	Employee Benefits . . . . .	010		58,750
4	Unclassified . . . . .	099		<u>85,200</u>
5	Total . . . . .		\$	306,002

**118—Division of Health—****Hepatitis B Vaccine**

(WV Code Chapter 16)

Account No.

Fund 5183 FY 1996 Org 0506

1	Personal Services . . . . .	001	\$	31,000
2	Annual Increment . . . . .	004		612
3	Employee Benefits . . . . .	010		11,551
4	Unclassified. . . . .	099		1,200,000
5	Vaccine for Volunteer Squads . . .	565		<u>50,000</u>
6	Total . . . . .		\$	1,293,163

**119—Health Care Cost Review Authority**

(WV Code Chapter 16)

Account No.

Fund 5375 FY 1996 Org 0507

1	Personal Services . . . . .	001	\$	1,143,477
2	Annual Increment . . . . .	004		7,956
3	Employee Benefits . . . . .	010		384,742
4	Unclassified . . . . .	099		1,088,157
5	Vice Chancellor for Health			
6	Sciences Health Care			
7	Reform Studies—Transfer . . . .	513		<u>-0-</u>
8	Total . . . . .		\$	2,624,332

9 The above appropriation is to be expended in accor-  
 10 dance with and pursuant to the provisions of article  
 11 twenty-nine-b, chapter sixteen of the code and from the  
 12 special revolving fund designated health care cost review  
 13 fund.

*120—Division of Human Services—*

*Health Care Provider Tax*

(WV Code Chapter 11)

Account No.

Fund 5090 FY 1996 Org 0511

1 Unclassified—Total . . . . . 096 \$ 126,000,000

2 From the above appropriation, an amount not to exceed  
 3 two hundred thousand dollars shall be transferred to a  
 4 special revenue account in the treasury for use by the  
 5 department of health and human resources for administra-  
 6 tive purposes. The remainder of all moneys deposited in  
 7 the fund shall be transferred to the West Virginia medical  
 8 services fund.

*121—Division of Human Services—*

*Medical Services Trust Fund*

(WV Code Chapter 9)

Account No.

Fund 5185 FY 1996 Org 0511

1	Eligibility Expansion . . . . .	582	\$ 13,447,692
2	State Institutions DPSH		
3	Payments . . . . .	583	6,190,810
4	Hospice Services . . . . .	584	413,466
5	Match Drop . . . . .	585	<u>5,400,000</u>
6	Total . . . . .		\$ 25,451,968

7 The Match Drop line item above shall be used in con-  
 8 junction with funds appropriated to the division of human

9 services in the Medical services line item (fund 0403, ac-  
 10 tivity 189).

**DEPARTMENT OF MILITARY AFFAIRS  
 AND PUBLIC SAFETY**

*122—State Armory Board—*

*General Armory Fund*

(WV Code Chapter 15)

Account No.

Fund 6102 FY 1996 Org 0604

1 Unclassified—Total . . . . . 096 \$ 310,000

*123—West Virginia Division of Corrections*

*Parolee Supervision Fee Fund*

(WV Code Chapters 25, 28, 49 & 62)

Account No.

Fund 6362 FY 1996 Org 0608

1	Personal Services . . . . .	001	\$	82,928
2	Employee Benefits . . . . .	010		35,664
3	Current Expenses . . . . .	020		<u>115,408</u>
4	Total . . . . .		\$	234,000

*124—Division of Public Safety—*

*Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Account No.

Fund 6501 FY 1996 Org 0612

1	Personal Services . . . . .	001	\$	547,944
2	Annual Increment . . . . .	004		1,872
3	Employee Benefits . . . . .	010		147,975



4	Unclassified . . . . .	099	380,965
5	Capital Outlay and Equipment . . .	542	<u>900,000</u>
6	Total . . . . .		\$ 1,978,756

7 The total amount of this appropriation shall be paid  
 8 from the special revenue fund out of fees collected for  
 9 inspection stickers as provided by law.

***125—Division of Public Safety—***

***Drunk Driving Prevention Fund***

(WV Code Chapter 15)

Account No.

Fund 6513 FY 1996 Org 0612

1	Unclassified—Total . . . . .	096	\$ 742,052
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2 The total amount of this appropriation shall be paid  
 3 from the special revenue fund out of receipts collected  
 4 pursuant to sections nine-a and sixteen, article fifteen,  
 5 chapter eleven of the code and paid into a revolving fund  
 6 account in the state treasury.

***126—Division of Public Safety—***

***Surplus Real Property Proceeds Fund***

(WV Code Chapter 15)

Account No.

Fund 6516 FY 1996 Org 0612

1	Unclassified—Total . . . . .	096	\$ 300,000
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***127—Division of Public Safety***

***Surplus Transfer Account***

(WV Code Chapter )

Account No.

Fund 6364 FY 1996 Org 0612

1	Unclassified—Total . . . . .	096	\$ 114,400
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**128—Regional Jail and Correctional**

**Facility Authority**

(WV Code Chapter 31)

Account No.

Fund 6675 FY 1996 Org 0615

1	Personal Services . . . . .	001	\$	429,113
2	Annual Increment . . . . .	004		4,860
3	Employee Benefits . . . . .	010		146,305
4	Debt Service . . . . .	040		10,000,000
5	Unclassified . . . . .	099		<u>239,950</u>
6	Total . . . . .		\$	10,820,228

7 From the above Unclassified appropriation, the execu-  
 8 tive director of the regional jail and correctional facility  
 9 authority is hereby authorized to expend not more than  
 10 three hundred dollars per affected employee for reloca-  
 11 tion expenses incurred when a former correctional officer  
 12 with the division of corrections at the West Virginia peni-  
 13 tentiary in Moundsville accepts a position as a correctional  
 14 officer at the central regional jail. Further, the executive  
 15 director shall formulate guidelines covering the method  
 16 and those expenses eligible for reimbursement.

**129—Division of Veterans' Affairs—**

**Veterans' Home**

(WV Code Chapter 19A)

Account No.

Fund 6754 FY 1996 Org 0618

1	Unclassified—Total . . . . .	096	\$	280,000
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**130—Fire Commission—**

**Fire Marshal Fees**

(WV Code Chapter 29)

## Account No.

Fund 6152 FY 1996 Org 0619

1	Personal Services . . . . .	001	\$	367,285
2	Annual Increment . . . . .	004		3,348
3	Employee Benefits . . . . .	010		110,694
4	Unclassified . . . . .	099		<u>296,616</u>
5	Total . . . . .		\$	777,943

6 Any unexpended cash balance remaining in fund 6152  
 7 at the close of the fiscal year 1994-95 is hereby available  
 8 for expenditure as part of the fiscal year 1995-96 appro-  
 9 priation.

**DEPARTMENT OF TAX AND REVENUE***131—Division of Banking—**Lending and Credit Rate Board*

(WV Code Chapter 47A)

## Account No.

Fund 3040 FY 1996 Org 0303

1	Personal Services . . . . .	001	\$	10,586
2	Employee Benefits . . . . .	010		4,411
3	Unclassified . . . . .	099		<u>10,648</u>
4	Total . . . . .		\$	25,645

*132—Division of Banking*

(WV Code Chapter 31A)

## Account No.

Fund 3041 FY 1996 Org 0303

1	Personal Services . . . . .	001	\$	1,100,653
2	Annual Increment . . . . .	004		8,496
3	Employee Benefits . . . . .	010		330,196

4	Unclassified .....	099		<u>525,540</u>
5	Total .....		\$	1,964,885

***133—Tax Division—******Office of Chief Inspector***

(WV Code Chapter 6)

Account No.

Fund 7067 FY 1996 Org 0702

1	Personal Services .....	001	\$	1,449,000
2	Annual Increment .....	004		17,028
3	Employee Benefits .....	010		450,837
4	Unclassified .....	099		<u>483,135</u>
5	Total .....		\$	2,400,000

***134—Tax Division—******Cemetery Company Account***

(WV Code Chapter 35)

Account No.

Fund 7071 FY 1996 Org 0702

1	Personal Services .....	001	\$	16,116
2	Employee Benefits .....	010		4,964
3	Unclassified .....	099		<u>10,920</u>
4	Total .....		\$	32,000

***135—Tax Division—******Special Audit and Investigative Unit***

(WV Code Chapter 11)

Account No.

Fund 7073 FY 1996 Org 0702

1	Personal Services .....	001	\$	591,846
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2	Annual Increment . . . . .	004		1,548
3	Employee Benefits . . . . .	010		192,000
4	Unclassified . . . . .	099		<u>314,606</u>
5	Total . . . . .		\$	1,100,000

***136—Insurance Commissioner—******Examination Revolving Fund***

(WV Code Chapter 33)

Account No.

Fund 7150 FY 1996 Org 0704

1	Personal Services . . . . .	001	\$	254,000
2	Annual Increment . . . . .	004		1,440
3	Employee Benefits . . . . .	010		71,113
4	Unclassified . . . . .	099		<u>181,500</u>
5	Total . . . . .		\$	508,053

***137—Insurance Commissioner—******Consumer Advocate***

(WV Code Chapter 33)

Account No.

Fund 7151 FY 1996 Org 0704

1	Personal Services . . . . .	001	\$	73,500
2	Annual Increment . . . . .	004		288
3	Employee Benefits . . . . .	010		29,226
4	Unclassified . . . . .	099		<u>117,557</u>
5	Total . . . . .		\$	220,571

***138—Insurance Commissioner***

(WV Code Chapter 33)

Account No.

Fund 7152 FY 1996 Org 0704

1	Personal Services . . . . .	001	\$	1,479,088
2	Annual Increment . . . . .	004		18,360
3	Employee Benefits . . . . .	010		562,517
4	Unclassified . . . . .	099		<u>923,954</u>
5	Total . . . . .		\$	2,983,919

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of collections of fees and  
 8 charges as provided by law.

***139—Racing Commission******Relief Fund***

(WV Code Chapter 19)

Account No.

Fund 7300 FY 1996 Org 0707

1	Medical Expenses—Total . . . . .	245	\$	57,000
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2 The total amount of this appropriation shall be paid  
 3 from the special revenue fund out of collections of license  
 4 fees and fines as provided by law.

5 No expenditures shall be made from this account ex-  
 6 cept for hospitalization, medical care and/or funeral ex-  
 7 penses for persons contributing to this fund.

***140—Racing Commission******Administration and Promotion***

(WV Code Chapter 19)

Account No.

Fund 7304 FY 1996 Org 0707

1	Personal Services . . . . .	001	\$	53,700
2	Annual Increment . . . . .	004		576
3	Employee Benefits . . . . .	010		22,947

4	Unclassified .....	099	<u>47,408</u>
5	Total .....		\$ 124,631

***141—Racing Commission******General Administration***

(WV Code Chapter 19)

Account No.

Fund 7305 FY 1996 Org 0707

1	Personal Services .....	001	\$ 1,007,000
2	Annual Increment .....	004	10,728
3	Employee Benefits .....	010	273,343
4	Unclassified .....	099	<u>90,082</u>
5	Total .....		\$ 1,381,153

***142—Racing Commission******Administration, Promotion and Education Fund***

(WV Code Chapter 19)

Account No.

Fund 7307 FY 1996 Org 0707

1	Unclassified—Total .....	096	\$ 35,000
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***143—Alcohol Beverage Control Administration******Wine License Special Fund***

(WV Code Chapter 60)

Account No.

Fund 7351 FY 1996 Org 0708

1	Personal Services .....	001	\$ 198,908
2	Annual Increment .....	004	936
3	Employee Benefits .....	010	42,472
4	Unclassified .....	099	<u>188,906</u>
5	Total .....		\$ 431,222

***144—Alcohol Beverage Control Administration***

(WV Code Chapter 60)

Account No.

Fund 7352 FY 1996 Org 0708

1	Personal Services . . . . .	001	\$	2,427,656
2	Annual Increment . . . . .	004		50,688
3	Employee Benefits . . . . .	010		1,301,118
4	Unclassified . . . . .	099		<u>4,432,350</u>
5	Total . . . . .		\$	8,211,812

6 The total amount of this appropriation shall be paid  
7 from a special revenue fund out of liquor revenues.

8 The above appropriation includes the salary of the  
9 commissioner and the salaries, expenses and equipment of  
10 administrative offices, warehouses and inspectors.

11 There is hereby appropriated from liquor revenues, in  
12 addition to the above appropriation, the necessary amount  
13 for the purchase of liquor as provided by law.

**DEPARTMENT OF TRANSPORTATION*****145—Division of Motor Vehicles******Driver's License Reinstatement Fund***

(WV Code Chapter 17B)

Account No.

Fund 8213 FY 1996 Org 0802

1	Personal Services . . . . .	001	\$	180,068
2	Annual Increment . . . . .	004		2,916
3	Employee Benefits . . . . .	010		68,795
4	Unclassified . . . . .	099		<u>170,000</u>
5	Total . . . . .		\$	421,779



**146—Division of Motor Vehicles****Driver Rehabilitation**

(WV Code Chapter 17C)

Account No.

Fund 8214 FY 1996 Org 0802

1	Personal Services . . . . .	001	\$	51,000
2	Annual Increment . . . . .	004		648
3	Employee Benefits . . . . .	010		23,447
4	Unclassified . . . . .	099		<u>762,506</u>
5	Total . . . . .		\$	837,601

**147—Division of Motor Vehicles****Insurance Certificate Fees**

(WV Code Chapter 20)

Account No.

Fund 8215 FY 1996 Org 0802

1	Personal Services . . . . .	001	\$	550,000
2	Annual Increment . . . . .	004		9,000
3	Employee Benefits . . . . .	010		243,000
4	Unclassified . . . . .	099		<u>205,000</u>
5	Total . . . . .		\$	1,007,000

**148—Division of Motor Vehicles****Motorboat Licenses**

(WV Code Chapter 20)

Account No.

Fund 8216 FY 1996 Org 0802

1	Personal Services . . . . .	001	\$	71,500
2	Annual Increment . . . . .	004		2,163

## APPROPRIATIONS

[Ch. 8

3	Employee Benefits . . . . .	010		29,695
4	Unclassified . . . . .	099		<u>41,915</u>
5	Total . . . . .		\$	145,273

*149—Division of Motor Vehicles**Returned Check Fees*

(WV Code Chapter 17)

Account No.

Fund 8217 FY 1996 Org 0802

1	Personal Services . . . . .	001	\$	15,500
2	Annual Increment . . . . .	004		252
3	Employee Benefits . . . . .	010		5,369
4	Unclassified . . . . .	099		<u>5,000</u>
5	Total . . . . .		\$	26,121

**BUREAU OF COMMERCE***150—Division of Forestry*

(WV Code Chapter 19)

Account No.

Fund 3081 FY 1996 Org 0305

1	Personal Services . . . . .	001	\$	216,788
2	Annual Increment . . . . .	004		2,520
3	Employee Benefits . . . . .	010		55,670
4	Unclassified . . . . .	099		<u>311,172</u>
5	Total . . . . .		\$	586,150

*151—Division of Forestry**Timberland Enforcement Operations*

(WV Code Chapter 19)

Account No.

Fund 3082 FY 1996 Org 0305

1 Unclassified—Total . . . . . 096 \$ 200,000

*152—Division of Forestry**Severance Tax Operations*

(WV Code Chapter 11)

Account No.

Fund 3084 FY 1996 Org 0305

1 Unclassified—Total . . . . . 096 \$ 2,000,000

*153—Geological and Economic Survey*

(WV Code Chapter 29)

Account No.

Fund 3100 FY 1996 Org 0306

1 Personal Services . . . . . 001 \$ 30,380

2 Annual Increment . . . . . 004 291

3 Employee Benefits . . . . . 010 5,678

4 Unclassified . . . . . 099 177,983

5 Total . . . . . \$ 214,332

6 The above appropriation shall be used in accordance  
7 with section four, article two, chapter twenty-nine of the  
8 code.

*154—West Virginia Development Office*

(WV Code Chapter 5B)

Account No.

Fund 3144 FY 1996 Org 0307

1 Any unexpended balance remaining in the appropria-  
2 tion for Energy Assistance (fund 3144, activity 099) at the  
3 close of the fiscal year 1994-95 is hereby reappropriated  
4 for expenditure during the fiscal year 1995-96.

**155—Division of Labor**  
**Contractor Licensing Board Fund**  
(WV Code Chapter 21)

Account No.

Fund 3187 FY 1996 Org 0308

1	Personal Services . . . . .	001	\$	714,792
2	Annual Increment . . . . .	004		5,895
3	Employee Benefits . . . . .	010		281,012
4	Unclassified . . . . .	099		<u>781,572</u>
5	Total . . . . .		\$	1,783,271

**156—Division of Labor**  
**Elevator Safety Act**

Account No.

Fund 3188 FY 1996 Org 0308

1	Personal Services . . . . .	001	\$	183,000
2	Annual Increment . . . . .	004		1,589
3	Employee Benefits . . . . .	010		66,058
4	Unclassified . . . . .	099		<u>289,363</u>
5	Total . . . . .		\$	540,010

**157—Division of Natural Resources**  
(WV Code Chapter 20)

Account No.

Fund 3200 FY 1996 Org 0310

1	Personal Services . . . . .	001	\$	5,984,054
2	Annual Increment . . . . .	004		99,562
3	Employee Benefits . . . . .	010		2,350,377
4	Unclassified . . . . .	099		4,225,202

5	Capital Improvements and		
6	Land Purchase (R) . . . . .	248	<u>1,128,684</u>
7	Total . . . . .		\$ 13,787,879

8 The total amount of this appropriation shall be paid  
 9 from a special revenue fund out of fees collected by the  
 10 division of natural resources.

11 Any unexpended balances remaining in the appropria-  
 12 tions for Renovation of Dams (fund 3200, activity 414)  
 13 and Capital Improvements and Land Purchase (fund 3200,  
 14 activity 248) at the close of the fiscal year 1994-95 are  
 15 hereby reappropriated for expenditure during the fiscal  
 16 year 1995-96.

***158—Division of Natural Resources***

***Game, Fish and Aquatic Life Fund***

(WV Code Chapter 20)

Account No.

Fund 3202 FY 1996 Org 0310

1	Unclassified—Total . . . . .	096	\$	50,000
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***159—Division of Natural Resources***

***Nongame Fund***

(WV Code Chapter 20)

Account No.

Fund 3203 FY 1996 Org 0310

1	Personal Services . . . . .	001	\$	82,922
2	Annual Increment . . . . .	004		648
3	Employee Benefits . . . . .	010		27,464
4	Unclassified . . . . .	099		<u>31,932</u>
5	Total . . . . .		\$	142,966

***160—Division of Natural Resources  
Planning and Development Division***

(WV Code Chapter 20)

Account No.

Fund 3205 FY 1996 Org 0310

1	Personal Services . . . . .	001	\$	176,768
2	Annual Increment . . . . .	004		3,492
3	Employee Benefits . . . . .	010		67,623
4	Unclassified . . . . .	099		<u>306,060</u>
5	Total . . . . .		\$	553,943

***161—Division of Natural Resources***

***Whitewater Study and Improvement Fund***

(WV Code Chapter 20)

Account No.

Fund 3253 FY 1996 Org 0310

1	Unclassified—Total . . . . .	096	\$	95,000
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***162—Division of Natural Resources***

***Recycling Assistance Fund***

(WV Code Chapter 20)

Account No.

Fund 3254 FY 1996 Org 0310

1	Personal Services . . . . .	001	\$	99,912
2	Annual Increment . . . . .	004		1,422
3	Employee Benefits . . . . .	010		43,640
4	Unclassified (R) . . . . .	099		<u>2,653,056</u>
5	Total . . . . .		\$	2,798,030
6	Any unexpended balance remaining in the appropria-			

7 tion for Unclassified (fund 3254, activity 099) at the close  
8 of the fiscal year 1994-95 is hereby reappropriated for  
9 expenditure during the fiscal year 1995-96.

*163—Division of Natural Resources*

*Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Account No.

Fund 3256 FY 1996 Org 0310

1 Unclassified—Total . . . . . 096 \$ 20,000

**BUREAU OF EMPLOYMENT PROGRAMS**

*164—Bureau of Employment Programs*

*Workers' Compensation Fund*

(WV Code Chapter 23)

Account No.

Fund 3440 FY 1996 Org 0322

1	Personal Services . . . . .	001	\$ 14,960,357
2	Annual Increment . . . . .	004	222,282
3	Employee Benefits . . . . .	010	5,440,907
4	Unclassified (R) . . . . .	099	33,743,395
5	Capital Outlay . . . . .	511	<u>-0-</u>
6	Total . . . . .		\$ 54,366,941

7 Any unexpended balances remaining in the appropria-  
8 tions for Unclassified (fund 3440, activity 099) and Pro-  
9 gram Performance Initiative (fund 3440, activity 540) at  
10 the close of the fiscal year 1994-95 are hereby reappro-  
11 priated for expenditure during the fiscal year 1995-96.

12 There is hereby authorized to be paid out of the above  
13 appropriation the amount necessary for the premiums on  
14 bonds given by the treasurer as bond custodian for the  
15 protection of the workers' compensation fund. This sum

16 shall be transferred to the board of risk and insurance  
17 management.

**BUREAU OF ENVIRONMENT**

***165—Solid Waste Management Board***

(WV Code Chapter 20)

Account No.

Fund 3288 FY 1996 Org 0312

1	Personal Services . . . . .	001	\$	271,284
2	Annual Increment . . . . .	004		1,908
3	Employee Benefits . . . . .	010		88,850
4	Unclassified . . . . .	099		<u>1,971,931</u>
5	Total . . . . .		\$	2,333,973

***166—Division of Environmental Protection***

***Special Reclamation Fund***

(WV Code Chapter 22A)

Account No.

Fund 3321 FY 1996 Org 0313

1	Personal Services . . . . .	001	\$	287,000
2	Annual Increment . . . . .	004		4,968
3	Employee Benefits . . . . .	010		95,992
4	Unclassified . . . . .	099		<u>12,422,040</u>
5	Total . . . . .		\$	12,810,000

***167—Division of Environmental Protection***

***Oil and Gas Reclamation Trust***

(WV Code Chapter 22B)

Account No.

Fund 3322 FY 1996 Org 0313



1 Unclassified—Total . . . . . 096 \$ 465,000

**168—Division of Environmental Protection**

**Oil and Gas Operating Permits**

(WV Code Chapter 22B)

Account No.

Fund 3323 FY 1996 Org 0313

1	Personal Services . . . . .	001	\$	205,000
2	Annual Increment . . . . .	004		2,088
3	Employee Benefits . . . . .	010		65,904
4	Unclassified . . . . .	099		<u>487,466</u>
5	Total . . . . .		\$	760,458

**169—Division of Environmental Protection**

**Mines and Minerals Operations Fund**

(WV Code Chapter 22)

Account No.

Fund 3324 FY 1996 Org 0313

1	Personal Services . . . . .	001	\$	2,232,351
2	Annual Increment . . . . .	004		24,755
3	Employee Benefits . . . . .	010		687,965
4	Unclassified . . . . .	099		<u>954,929</u>
5	Total . . . . .		\$	3,900,000

**170—Division of Environmental Protection**

**Leaking Underground Storage Tanks**

**Administrative Fund**

(WV Code Chapter 20)

Account No.

Fund 3325 FY 1996 Org 0313

1	Personal Services . . . . .	001	\$	309,500
2	Annual Increment . . . . .	004		2,700
3	Employee Benefits . . . . .	010		99,848
4	Unclassified . . . . .	099		<u>143,179</u>
5	Total . . . . .		\$	555,227

***171—Division of Environmental Protection******Groundwater Planning***

(WV Code Chapter 20)

Account No.

Fund 3330 FY 1996 Org 0313

1	Unclassified—Total . . . . .	096	\$	35,468
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***172—Division of Environmental Protection******Hazardous Waste Emergency and Response Fund***

(WV Code Chapter 20)

Account No.

Fund 3331 FY 1996 Org 0313

1	Personal Services . . . . .	001	\$	341,778
2	Annual Increment . . . . .	004		4,268
3	Employee Benefits . . . . .	010		126,280
4	Unclassified . . . . .	099		<u>870,291</u>
5	Total . . . . .		\$	1,342,617

***173—Division of Environmental Protection******Solid Waste Reclamation and******Environmental Response Fund***

(WV Code Chapter 20)

Account No.

Fund 3332 FY 1996 Org 0313

Ch. 8]	APPROPRIATIONS	157
1	Personal Services . . . . . 001	\$ 154,384
2	Annual Increment . . . . . 004	1,368
3	Employee Benefits . . . . . 010	46,850
4	Unclassified . . . . . 099	<u>943,320</u>
5	Total . . . . .	\$ 1,145,922

***174—Division of Environmental Protection***

***Solid Waste Enforcement Fund***

(WV Code Chapter 20)

Account No.

Fund 3333 FY 1996 Org 0313

1	Personal Services . . . . . 001	\$ 1,772,292
2	Annual Increment . . . . . 004	18,954
3	Employee Benefits . . . . . 010	566,030
4	Unclassified . . . . . 099	1,458,710
5	Litter Control-	
6	Conservation Officers . . . . . 564	<u>200,000</u>
7	Total . . . . .	\$ 4,015,986

***175—Division of Environmental Protection***

***Fees and Operating Expenses***

(WV Code Chapter 16)

Account No.

Fund 3336 FY 1996 Org 0313

1	Personal Services . . . . . 001	\$ 2,559,500
2	Annual Increment . . . . . 004	1,620
3	Employee Benefits . . . . . 010	751,395
4	Unclassified . . . . . 099	<u>1,087,485</u>
5	Total . . . . .	\$ 4,400,000

***176—Oil and Gas Conservation Commission***

(WV Code Chapter 22)

Account No.

Fund 3371 FY 1996 Org 0315

1	Personal Services . . . . .	001	\$	148,435
2	Annual Increment . . . . .	004		792
3	Employee Benefits . . . . .	010		26,680
4	Unclassified . . . . .	099		<u>49,074</u>
5	Total . . . . .		\$	224,981

**MISCELLANEOUS BOARDS AND COMMISSIONS*****177—Hospital Finance Authority***

(WV Code Chapter 16)

Account No.

Fund 5475 FY 1996 Org 0509

1	Personal Services . . . . .	001	\$	49,619
2	Annual Increment . . . . .	004		144
3	Employee Benefits . . . . .	010		15,126
4	Unclassified. . . . .	099		<u>67,116</u>
5	Total . . . . .		\$	132,005

6 The total amount of this appropriation shall be paid  
 7 from the special revenue fund out of fees and collections  
 8 as provided by article twenty-nine-a, chapter sixteen of the  
 9 code.

***178—Municipal Bond Commission***

(WV Code Chapter 13)

Account No.

Fund 7253 FY 1996 Org 0706

1	Personal Services . . . . .	001	\$	106,270
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Ch. 8]	APPROPRIATIONS	159
2	Annual Increment . . . . . 004	1,836
3	Employee Benefits . . . . . 010	37,190
4	Unclassified . . . . . 099	<u>50,591</u>
5	Total . . . . .	\$ 195,887

***179—West Virginia Cable Television***

***Advisory Board***

(WV Code Chapter 5)

Account No.

Fund 8609 FY 1996 Org 0924

1	Personal Services . . . . . 001	\$ 176,200
2	Annual Increment . . . . . 004	3,600
3	Employee Benefits . . . . . 010	49,529
4	Unclassified . . . . . 099	<u>60,268</u>
5	Total . . . . .	\$ 289,597

***180—Public Service Commission***

(WV Code Chapter 24)

Account No.

Fund 8623 FY 1996 Org 0926

1	Personal Services . . . . . 001	\$ 5,559,220
2	Annual Increment . . . . . 004	60,000
3	Employee Benefits . . . . . 010	1,819,806
4	Unclassified . . . . . 099	2,027,000
5	750 KV Transmission	
6	Line Study . . . . . 608	<u>175,000</u>
7	Total . . . . .	\$ 9,641,026

8 The total amount of this appropriation shall be paid  
 9 from a special revenue fund out of collections for special  
 10 license fees from public service corporations as provided  
 11 by law.

***181—Public Service Commission—***

***Gas Pipeline Division***

(WV Code Chapter 24B)

Account No.

Fund 8624 FY 1996 Org 0926

1	Personal Services . . . . .	001	\$	128,613
2	Annual Increment . . . . .	004		3,000
3	Employee Benefits . . . . .	010		37,345
4	Unclassified . . . . .	099		<u>93,500</u>
5	Total . . . . .		\$	262,458

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of receipts collected for  
 8 or by the public service commission pursuant to and in the  
 9 exercise of regulatory authority over pipeline companies  
 10 as provided by law.

***182—Public Service Commission***

***Motor Carrier Division***

(WV Code Chapter 24A)

Account No.

Fund 8625 FY 1996 Org 0926

1	Personal Services . . . . .	001	\$	1,272,204
2	Annual Increment . . . . .	004		22,000
3	Employee Benefits . . . . .	010		399,616
4	Unclassified . . . . .	099		<u>670,500</u>
5	Total . . . . .		\$	2,364,320

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of receipts collected for  
 8 or by the public service commission pursuant to and in the  
 9 exercise of regulatory authority over motor carriers as  
 10 provided by law.

***183—Public Service Commission***

***Consumer Advocate***

(WV Code Chapter 24)

Account No.

Fund 8627 FY 1996 Org 0926

1	Personal Services . . . . .	001	\$	336,195
2	Annual Increment . . . . .	004		2,412
3	Employee Benefits . . . . .	010		106,332
4	Unclassified . . . . .	099		<u>366,784</u>
5	Total . . . . .		\$	811,723

6 The total amount of this appropriation shall be paid  
 7 from a special revenue fund out of collections made by  
 8 the public service commission.

***184—Real Estate Commission***

(WV Code Chapter 47)

Account No.

Fund 8635 FY 1996 Org 0927

1	Personal Services . . . . .	001	\$	267,332
2	Annual Increment . . . . .	004		2,376
3	Employee Benefits . . . . .	010		91,206
4	Unclassified . . . . .	099		<u>269,400</u>
5	Total . . . . .		\$	630,314

6 The total amount of this appropriation shall be paid out  
 7 of collections of license fees as provided by law.

**185—West Virginia Board of Examiners for  
Speech-Language Pathology and Audiology**

(WV Code Chapter 30)

Account No

Fund 8646 FY 1996 Org 0930

1	Unclassified—Total . . . . .	096	\$	60,000
2	The total amount of this appropriation shall be paid out			
3	of collections of license fees and fines as provided by law.			
1	Total TITLE II, Section 3—			
2	Other Funds . . . . .		\$	<u>475,951,531</u>

1 **Sec. 4. Appropriations from lottery net profits.**—Net  
 2 profits of the lottery, not to exceed forty-nine million, five  
 3 hundred thousand dollars, are to be deposited by the lot-  
 4 tery director to the following accounts in the amounts  
 5 indicated. The auditor shall prorate each deposit of net  
 6 profits by the lottery director among fund nos. 3067,  
 7 3267, 3951, 3963, 4030, 5405 and 5063 in the proportion  
 8 the appropriation for each account bears to the total of the  
 9 appropriations for the seven accounts.

**186—Division of Tourism**

(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1996 Org 0304

			Activity	Lottery Funds
1	Unclassified (R) . . . . .	099	\$	-0-
2	Advertising . . . . .	288		<u>-0-</u>
3	Total . . . . .		\$	-0-

4 Any unexpended balances remaining in the appropri-  
 5 ations for Unclassified (fund 3067, activity 099) and Ad-  
 6 vertising — Total (fund 3073, activity 541) at the close of  
 7 the fiscal year 1994-95 are hereby reappropriated to the



8 West Virginia development office—tourism section, Tour-  
 9 ism — Unclassified (fund 3067, activity 099) and Tourism  
 10 — Advertising (fund 3067, activity 618) for expenditure  
 11 during the fiscal year 1995-96 .

***187—West Virginia Development Office***

***Tourism Section***

(WV Code Chapter 5B)

Fund 3067 FY 1996 Org 0307

1	Tourism—Unclassified . . . . .	662	\$	2,906,092
2	Tourism—Advertising . . . . .	618		2,240,000
3	State Parks and Recreation			
4	Advertising . . . . .	619		<u>560,000</u>
5	Total . . . . .		\$	5,706,092

***188—Division of Natural Resources***

(WV Code Chapter 20)

Account No.

Fund 3267 FY 1996 Org 0310

1	Unclassified (R) . . . . .	099	\$	-0-
2	Capital Outlay —Parks (R) . . . . .	288		2,500,000
3	Coopers Rock —			
4	Land Acquisition (R) . . . . .	439		200,000
5	Parks Operations—			
6	Unclassified . . . . .	645		<u>1,473,908</u>
7	Total . . . . .		\$	4,173,908

8 Any unexpended balances remaining in the appropria-  
 9 tions for Unclassified (fund 3267, activity 099), Capital  
 10 Outlay — Parks (fund 3267, activity 288) and Coopers  
 11 Rock — Land Acquisition (fund 3267, activity 439) at the  
 12 close of the fiscal year 1994-95 are hereby reappropriated  
 13 for expenditure during the fiscal year 1995-96.

**189—State Department of Education**

(WV Code Chapters 18 and 18A)

Account No.

Fund 3951 FY 1996 Org 0402

- 1 Computer Basic Skills—  
 2 Total (R) . . . . . 567 \$ 9,000,000  
 3 Any unexpended balances remaining in the appropria-  
 4 tion for Elementary Computer Education (fund 3951,  
 5 activity 285), Computer Basic Skills — Total (fund 3951,  
 6 activity 567) and Computer Basic Skills — Total (fund  
 7 3964, activity 567) at the close of the fiscal year 1994-95  
 8 is hereby reappropriated for expenditure during the fiscal  
 9 year 1995-96.

**190—State Department of Education****School Building Authority**

(WV Code Chapter 18)

Account No.

Fund 3963 FY 1996 Org 0402

- 1 Debt Service—Total . . . . . 310 \$ 18,000,000

**191—Board of Trustees of the****University System of West Virginia and****Board of Directors of the****State College System****Control Account**

(WV Code Chapter 18B)

Account No.

Fund 4030 FY 1996 Org 0453

- 1 Unclassified—Total . . . . . 096 \$ 3,520,000

**192—Commission on Aging**

(WV Code Chapter 29)

Account No.

Fund 5405 FY 1996 Org 0508

- 1 In-Home Services for
- 2 Senior Citizens—Total . . . . . 286 \$ 600,000

**193—Division of Human Services**

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 5063 FY 1996 Org 0511

- 1 Health Care and Title
- 2 XIX Waiver for
- 3 Senior Citizens—Total . . . . . 434 \$ 8,500,000

4 The above appropriation shall be used to expand the  
5 title XIX waiver program statewide but not to increase the  
6 rates of reimbursement for services provided by title XIX  
7 providers.

- 1 Total TITLE II, Section 4—
- 2 Lottery Funds . . . . . \$ 49,500,000

1 **Sec. 5. Appropriations of federal funds.**—In accor-  
2 dance with article eleven, chapter four of the code, from  
3 federal funds there are hereby appropriated conditionally  
4 upon the fulfillment of the provisions set forth in article  
5 two, chapter five-a of the code the following amounts, as  
6 itemized, for expenditure during the fiscal year one thou-  
7 sand nine hundred ninety-six.

**LEGISLATIVE**

**194—Crime Victims Compensation Fund**

(WV Code Chapter 14)

Account No.

Fund 8738 FY 1996 Org 2300

		Activity		Federal Funds
1	Unclassified—Total	096	\$	730,000

**JUDICIAL****195—Supreme Court****General Judicial**

Account No.

Fund 8805 FY 1996 Org 2400

1	Unclassified—Total	096	\$	123,584
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**EXECUTIVE****196—Governor's Office****Governor's Cabinet on Children and Families**

(WV Code Chapter 5)

Account No.

Fund 8792 FY 1996 Org 0100

1	Unclassified—Total	096	\$	387,350
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**197—Governor's Office****Governor's Cabinet on Children and Families****Office of Economic Opportunity**

(WV Code Chapter 5)

Account No.

Fund 8797 FY 1996 Org 0100

1	Unclassified—Total	096	\$	4,228,397
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**198—Governor's Office****Commission for National and Community Service**

(WV Code Chapter 5)

Account No.

Fund 8800 FY 1996 Org 0100

1 Unclassified—Total . . . . . 096 \$ 800,000

*199—Department of Agriculture**(WV Code Chapter 19)*

Account No.

Fund 8736 FY 1996 Org 1400

1 Unclassified—Total . . . . . 096 \$ 2,742,879

*200—Department of Agriculture**Meat Inspection**(WV Code Chapter 19)*

Account No.

Fund 8737 FY 1996 Org 1400

1 Unclassified—Total . . . . . 096 \$ 598,748

**DEPARTMENT OF EDUCATION***201—State Department of Education**(WV Code Chapters 18 and 18A)*

Account No.

Fund 8712 FY 1996 Org 0402

1 Unclassified—Total . . . . . 096 \$ 7,141,500

*202—State Department of Education**School Lunch Program**(WV Code Chapters 18 and 18A)*

Account No.

Fund 8713 FY 1996 Org 0402

1 Unclassified—Total . . . . . 096 \$ 54,345,000

*203—State Board of Education**Vocational Division*

(WV Code Chapters 18 and 18A)

Account No.

Fund 8714 FY 1996 Org 0402

1 Unclassified—Total . . . . . 096 \$ 15,003,695

***204—State Department of Education******Aid for Exceptional Children***

(WV Code Chapters 18 and 18A)

Account No.

Fund 8715 FY 1996 Org 0402

1 Unclassified—Total . . . . . 096 \$ 27,300,000

**DEPARTMENT OF EDUCATION AND THE ARTS*****205—Division of Culture and History***

(WV Code Chapter 29)

Account No.

Fund 8718 FY 1996 Org 0432

1 Unclassified—Total . . . . . 096 \$ 2,997,280

***206—Library Commission***

(WV Code Chapter 10)

Account No.

Fund 8720 FY 1996 Org 0433

1 Unclassified—Total . . . . . 096 \$ 4,155,613

***207—Educational Broadcasting Authority***

(WV Code Chapter 10)

Account No.

Fund 8721 FY 1996 Org 0439

1 Unclassified—Total . . . . . 096 \$ 1,050,689

**208—State Board of Rehabilitation*****Division of Rehabilitation Services***

(WV Code Chapter 18)

Account No.

Fund 8734 FY 1996 Org 0932

1 Unclassified—Total . . . . . 096 \$ 38,360,894

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES*****209—Consolidated Medical Service Fund***

(WV Code Chapter 16)

Account No.

Fund 8723 FY 1996 Org 0506

1 Unclassified—Total . . . . . 096 \$ 2,687,290

***210—Division of Health******Central Office***

(WV Code Chapter 16)

Account No.

Fund 8802 FY 1996 Org 0506

1 Unclassified—Total . . . . . 096 \$ 46,017,161

***211—Commission on Aging***

(WV Code Chapter 29)

Account No.

Fund 8724 FY 1996 Org 0508

1 Unclassified—Total . . . . . 096 \$ 12,000,000

***212—Human Rights Commission***

(WV Code Chapter 5)

Account No.

Fund 8725 FY 1996 Org 0510

1	Unclassified—Total . . . . .	096	\$	151,352
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*213—Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 8722 FY 1996 Org 0511

1	Unclassified . . . . .	.099	\$	98,854,128
2	OSCAR and RAPIDS . . . . .	.515		-0-
3	Medical Services . . . . .	.189		852,909,126
4	Behavioral Health			
5	Medical Services . . . . .	.664		161,173,050
6	Family Law Masters . . . . .	.190		-0-
7	Public Assistance . . . . .	.193		98,100,000
8	JOBS Program . . . . .	.197		14,900,000
9	Education Medical Services . . . . .	.198		-0-
10	Child Advocate . . . . .	.602		-0-
11	Child Welfare System . . . . .	.603		-0-
12	Child Protective Services			
13	and Medicaid Auditing . . . . .	.604		-0-
14	Total . . . . .		\$	1,225,936,304

**DEPARTMENT OF MILITARY AFFAIRS****AND PUBLIC SAFETY***214—Adjutant General—State Militia*

(WV Code Chapter 15)

Account No.

Fund 8726 FY 1996 Org 0603

1	Unclassified—Total . . . . .	096	\$	7,553,467
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**215—Office of Emergency Services**

(WV Code Chapter 15)

Account No.

Fund 8727 FY 1996 Org 0606

1 Unclassified—Total . . . . . 096 \$ 1,716,231

**216—Division of Public Safety**

(WV Code Chapter 15)

Account No.

Fund 8741 FY 1996 Org 0612

1 Unclassified—Total . . . . . 096 \$ 5,116,740

**217—Division of Veterans' Affairs****Veterans' Home**

(WV Code Chapter 9A)

Account No.

Fund 8728 FY 1996 Org 0618

1 Unclassified—Total . . . . . 096 \$ 454,400

**218—Division of Criminal Justice****and Highway Safety**

(Executive Order)

Account No.

Fund 8803 FY 1996 Org 0620

1 Unclassified—Total . . . . . 096 \$ 9,692,000

**DEPARTMENT OF TAX AND REVENUE****219—Tax Division**

(WV Code Chapter 11)

Account No.

Fund 7069 FY 1996 Org 0702

1 Unclassified—Total . . . . . 096 \$ 50,000

**DEPARTMENT OF TRANSPORTATION***220—Department of Transportation**Office of the Secretary*

(WV Code Chapter 5F)

Account No.

Fund 8782 FY 1996 Org 0801

1 Unclassified—Total . . . . . 096 \$ 913,000

*221—State Rail Authority*

(WV Code Chapter 29)

Account No.

Fund 8733 FY 1996 Org 0804

1 Unclassified—Total . . . . . 096 \$ 600,000

*222—Division of Public Transit*

(WV Code Chapter 17)

Account No.

Fund 8745 FY 1996 Org 0805

1 Unclassified—Total . . . . . 096 \$ 10,321,742

**BUREAU OF COMMERCE***223—Division of Forestry*

(WV Code Chapter 19)

Account No.

Fund 8703 FY 1996 Org 0305

1 Unclassified—Total . . . . . 096 \$ 1,708,650

**224—Geological and Economic Survey**

(WV Code Chapter 29)

Account No.

Fund 8704 FY 1996 Org 0306

1 Unclassified—Total . . . . . 096 \$ 518,656

**225—West Virginia Development Office**

(WV Code Chapter 5B)

Account No.

Fund 8705 FY 1996 Org 0307

1 Unclassified—Total . . . . . 096 \$ 11,229,611

**226—Division of Labor**

(WV Code Chapters 21 and 47)

Account No.

Fund 8706 FY 1996 Org 0308

1 Unclassified—Total . . . . . 096 \$ 317,883

**227—Division of Natural Resources**

(WV Code Chapter 20)

Account No.

Fund 8707 FY 1996 Org 0310

1 Unclassified—Total . . . . . 096 \$ 5,832,737

**228—Division of Miners' Health,****Safety and Training**

(WV Code Chapter 22)

Account No.

Fund 8709 FY 1996 Org 0314

1 Unclassified—Total . . . . . 096 \$ 420,564

**BUREAU OF ENVIRONMENT****229—Division of Environmental Protection**

(WV Code Chapter 22)

Account No.

Fund 8708 FY 1996 Org 0313

1 Unclassified—Total ..... 096 \$ 113,000,000

**MISCELLANEOUS BOARDS AND COMMISSIONS****230—Public Service Commission****Motor Carrier Division**

(WV Code Chapter 24A)

Account No.

Fund 8743 FY 1996 Org 0926

1 Unclassified—Total ..... 096 \$ 885,127

**231—Public Service Commission—****Gas Pipeline Division**

(WV Code Chapter 24B)

Account No.

Fund 8744 FY 1996 Org 09261 Unclassified—Total ..... 096 \$ 254,615

2 Total TITLE II, Section 5—

3 Federal Funds ..... \$1,615,473,4171 **Sec. 6. Appropriations from federal block grants.—**2 The following items are hereby appropriated from federal  
3 block grants to be available for expenditure during the  
4 fiscal year 1995-96.

**232—Governor's Office**

***Governor's Cabinet on Children and Families***

Account No.

Fund 8799 FY 1996 Org 0100

1 Unclassified—Total . . . . . 096 \$ 7,136,077

**233—West Virginia Development Office**

***Community Development***

Account No.

Fund 8746 FY 1996 Org 0307

1 Unclassified—Total . . . . . 096 \$ 24,000,000

**234—Bureau of Employment Programs**

***Job Training Partnership Act***

Account No.

Fund 8749 FY 1996 Org 0323

1 Unclassified—Total . . . . . 096 \$ 49,670,429

**235—State Department of Education**

***Education Grant***

Account No.

Fund 8748 FY 1996 Org 0402

1 Unclassified—Total . . . . . 096 \$ 70,000,000

**236—Division of Health**

***Maternal and Child Health***

Account No.

Fund 8750 FY 1996 Org 0506

1 Unclassified—Total . . . . . 096 \$ 7,243,979

**237—Division of Health****Preventive Health**

Account No.

Fund 8753 FY 1996 Org 0506

1 Unclassified—Total . . . . . 096 \$ 1,650,000

**238—Division of Health****Substance Abuse Prevention and Treatment**

Account No.

Fund 8793 FY 1996 Org 0506

1 Unclassified—Total . . . . . 096 \$ 6,449,292

**239—Division of Health****Community Mental Health Services**

Account No.

Fund 8794 FY 1996 Org 0506

1 Unclassified—Total . . . . . 096 \$ 3,032,589

**240—Division of Human Services****Energy Assistance**

Account No.

Fund 8755 FY 1996 Org 0511

1 Unclassified—Total . . . . . 096 \$ 16,000,000

**241—Division of Human Services****Child Care and Development**

Account No.

Fund 8756 FY 1996 Org 0511

1 Unclassified—Total . . . . . 096 \$ 6,900,000

**242—Division of Human Services****Social Services**

Account No.

Fund 8757 FY 1996 Org 0511

1 Unclassified—Total . . . . . 096 \$ 22,000,000

**243—Division of Human Services****Family Preservation/Family Support**

Account No.

Fund 8801 FY 1996 Org 0511

1 Unclassified—Total . . . . . 096 \$ -0-

**244—Division of Human Services****Empowerment Zone and Enterprise Community Program**Fund 8806 FY 1996 Org 05111 Unclassified—Total . . . . . 096 \$ 8,842,104

1 Total TITLE II, Section 6—

2 Federal Block Grants . . . . . \$ 222,924,470

1 **Sec. 7. Awards for claims against the state.**—There are  
 2 hereby appropriated for the remainder of the fiscal year  
 3 1994-1995 and to remain in effect until the thirtieth day  
 4 of June, one thousand nine hundred ninety-six, from the  
 5 fund as designated, in the amounts as specified and for the  
 6 claimants named in enrolled senate bill no. 354, regular  
 7 session, one thousand nine hundred ninety-five, crime  
 8 victims compensation funds of \$197,500.00 for payment  
 9 of claims against the state.

10 There are hereby appropriated for the fiscal year  
 11 1995-1996 from the funds as designated in Title II, sec-  
 12 tion eight, appropriations from surplus accrued, in the  
 13 amounts as specified and for the claimants as named in  
 14 enrolled house bill no. 2518, regular session, one thou-  
 15 sand nine hundred ninety-five, and enrolled senate bill no.  
 16 366, regular session, one thousand nine hundred

17 ninety-five, general revenue funds in the amount of  
18 \$2,626,347.40

19 The total of general revenue funds from surplus ac-  
20 crued does not include payment for claims in the amount  
21 of \$5,760.06 from the supreme court—general judicial,  
22 account no. fund 0180, FY 1995, org 2400, specifically  
23 made payable from the appropriation for fiscal year  
24 1994-1995.

25 There are hereby appropriated for the fiscal year  
26 1995-1996 from the funds as designated, in the amounts  
27 as specified and for the claimants as named in enrolled  
28 house bill no. 2518, regular session, one thousand nine  
29 hundred ninety-five, special revenue funds in the amount  
30 of \$217,182.69; state road funds in the amount of  
31 \$230,000.57; workers' compensation funds in the amount  
32 of \$20,503.18; and federal funds in the amount of  
33 \$20,261.30.

1 **Sec. 8. Appropriations from surplus accrued.**—The  
2 following items are hereby appropriated from the state  
3 fund, general revenue, and are to be available for expendi-  
4 ture during the fiscal year 1995-96 out of surplus funds  
5 only, subject to the terms and conditions set forth in this  
6 section.

7 It is the intent and mandate of the Legislature that the  
8 following appropriations be payable only from surplus  
9 accrued as of the thirty-first day of July, one thousand  
10 nine hundred ninety-five.

11 In the event that surplus revenues available on the  
12 thirty-first day of July, one thousand nine hundred  
13 ninety-five, are not sufficient to meet all of the appropria-  
14 tions made pursuant to this section, then the appropria-  
15 tions shall be made to the extent that surplus funds are  
16 available as of the date mandated and shall be allocated  
17 first to provide the necessary funds to meet the first appro-  
18 priation of this section; next, to provide the funds neces-  
19 sary for the second appropriation of this section; and  
20 subsequently to provide the funds necessary for each  
21 appropriation in succession before any funds are provided  
22 for the next subsequent appropriation.



23 Any surplus balance remaining, after the allocation to  
24 meet the appropriations set forth in this section, and after  
25 compliance with section twenty, article two, chapter five-a,  
26 of the code, shall be transferred and made available to the  
27 school building authority for expenditure in accordance  
28 with the provisions of this section.

*245—State Department of Education*

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1996 Org 0402

1 School Building Authority—Total 665 \$ 20,000,000

2 It is the intent of the Legislature that, to the extent pos-  
3 sible, funding continue to be made available from current  
4 sources for projects submitted to the school building au-  
5 thority for funding grants. The Legislature finds that  
6 amounts to be deposited in the school construction fund  
7 exceed the funds needed therein. Therefore, in accor-  
8 dance with the provisions of subsection (c), section six,  
9 article nine-d, chapter eighteen of the code, any funds  
10 deposited to the school construction fund pursuant to  
11 subdivision (1), subsection (c), section thirty, article fif-  
12 teen, chapter eleven of the code on or before the thirtieth  
13 day of June, one thousand nine hundred ninety-six, shall  
14 be transferred to a special segregated funding account  
15 within the school building authority, which will be known  
16 as the "1995 Construction Account". In addition, the  
17 above twenty million dollar appropriation to the state  
18 department of education, plus any interest earnings there-  
19 on, shall be transferred to the school building authority to  
20 be deposited to the credit of the "1995 Construction Ac-  
21 count". Interest earnings accrued by the authority for  
22 school construction shall also be deposited to the credit of  
23 the "1995 Construction Account". Moneys deposited in  
24 the "1995 Construction Account" shall only be used to  
25 fund county projects from the school building authority's  
26 1994 needs projects funding requirements list as revised  
27 on the eighth day of December, one thousand nine hun-

28 dred ninety-four, which shall be known as the prioritized  
29 projects. The school building authority shall consider  
30 prioritized projects, which have not been funded or have  
31 been funded only in part, for funding from the "1995  
32 Construction Account" in their original staff prioritized  
33 rating. Any prioritized project which is not funded from  
34 the "1995 Construction Account" shall be considered for  
35 funding from the "1996 Construction Account" and the  
36 dollar amount necessary to fully fund the prioritized pro-  
37 ject which is being passed over for funding shall be trans-  
38 ferred to the "1996 Construction Account" from the "1995  
39 Construction Account". Any prioritized project which has  
40 been conditionally funded but is unable to meet the con-  
41 ditions of funding may resubmit the original project for  
42 funding from the "1995 Construction Account" or may  
43 modify the original project and submit the modified pro-  
44 ject for consideration for funding from the "1995 Con-  
45 struction Account".

46 The Legislature finds that amounts deposited in the  
47 school construction fund exceed the funds needed therein.  
48 Therefore, in accordance with the provisions of subsection  
49 (c), section six, article nine-d, chapter eighteen of the code,  
50 funds deposited to the school construction fund between  
51 the first day of July, one thousand nine hundred  
52 ninety-six and the thirtieth day of June, one thousand nine  
53 hundred ninety-seven, pursuant to subdivision (2), subsec-  
54 tion (c), section thirty, article fifteen, chapter eleven of the  
55 code, plus any interest earnings on said funds shall be  
56 transferred to a special segregated funding account within  
57 the school building authority, which will be known as the  
58 "1996 Construction Account". There shall also be depos-  
59 ited in the "1996 Construction Account" all surplus ac-  
60 crued which is in addition to those surplus general revenue  
61 funds which are necessary to meet all other surplus appro-  
62 priations herein enacted and in addition to those surplus  
63 general revenue funds which are necessary to comply with  
64 the provisions of section twenty, article two, chapter five-a  
65 of the code. In addition, moneys transferred from the  
66 "1995 Construction Account" as a result of a prioritized  
67 project being passed over for funding from the "1995

68 Construction Account" shall be deposited to the credit of  
69 the "1996 Construction Account". The school building  
70 authority shall expend moneys from the "1996 Construc-  
71 tion Account" to fund prioritized projects which were  
72 passed over for funding from the "1995 Construction  
73 Account": *Provided*, That these prioritized projects shall  
74 retain their original priority staff rating when considered  
75 for funding from the "1996 Construction Account". The  
76 school building authority may also accept new projects for  
77 funding: *Provided*, That these new projects may only be  
78 funded from moneys available in the "1996 Construction  
79 Account": *Provided, however*, That all new projects which  
80 are submitted must be given a staff rating in the same  
81 manner as projects submitted prior to the enactment of  
82 this bill. Projects which were passed over for funding  
83 from the "1995 Construction Account" and are modified  
84 and resubmitted for funding from the "1996 Construction  
85 Account" shall also be given a new staff rating in the man-  
86 ner as projects submitted prior to the enactment of this  
87 bill. In considering and approving projects, the school  
88 building authority may not approve any project for fund-  
89 ing from either the "1995 Construction Account" or the  
90 "1996 Construction Account" which is ranked in the bot-  
91 tom fifty percent of the staff rating on the 1994 needs  
92 projects funding requirements list as revised on the eighth  
93 day of December, one thousand nine hundred ninety-four,  
94 or as that list is modified to add new or modified projects.  
95 The school building authority shall identify and announce  
96 those projects to be funded from the "1995 Construction  
97 Account" on or before the first day of August, one thou-  
98 sand nine hundred ninety-five, and shall identify and  
99 announce those projects to be funded from the "1996  
100 Construction Account" on or before the thirty first day of  
101 December, one thousand nine hundred ninety-five.

**246—Claims Against the General Revenue Fund**

1 Claims Against the State . . . . . 666 \$ 2,626,348

**247—Division of Public Safety**

(WV Code Chapter 15)

Account No.

Fund 0453 FY 1996 Org 0612

1	Overtime and Wage Court			
2	Awards—Total . . . . .	667	\$	2,821,000

**248—State Department of Education**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1996 Org 0402

1	County Boards of Education			
2	Lawsuits—Total . . . . .	655	\$	1,500,000

**249—State Department of Education**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0390 FY 1996 Org 0402

1	Program Modernization—Total . .	598	\$	500,000
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**250—Treasurer's Office**

(WV Code Chapter 12)

Account No.

Fund 0126 FY 1996 Org 1300

1	Check Encoder . . . . .	668	\$	125,000
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**251—Adjutant General—State Militia**

(WV Code Chapter 15)

Account No.

Fund 0433 FY 1996 Org 0603

1	Armory Construction—			
2	Capital Outlay—Total . . . . .	669	\$	300,000

**252—State FFA-FHA Camp and Conference Center**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0306 FY 1996 Org 0402

1	Cedar Lakes—Total . . . . .	638	\$	400,000
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**253—Board of Trustees of the****University System of West Virginia****Control Account**

(WV Code Chapter 18B)

Account No.

Fund 0327 FY 1996 Org 0461

1	Litter to Energy Demon-			
2	stration Project—Total . . . . .	656	\$	150,000

**254—Department of Agriculture**

(WV Code Chapter 19)

Account No.

Fund 0131 FY 1996 Org 1400

1	Mingo County Surface			
2	Mine Development			
3	Project—Total . . . . .	657	\$	75,000

**255—Department of Agriculture**

(WV Code Chapter 19)

Account No.

Fund 0131 FY 1996 Org 1400

1	Small Business			
2	Loans—Total (R) . . . . .	670	\$	100,000

3 The above appropriation for Small Business Loan Pro-  
 4 gram may be transferred to a special revenue fund to  
 5 establish a revolving fund for such loan purposes.

**256—Department of Agriculture**

(WV Code Chapter 19)

Account No.

Fund 0131 FY 1996 Org 1400

1	Charleston Capitol		
2	Market Place—Total . . . . .	671	\$ 150,000

**257—Governor's Office****Civil Contingent Fund**

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1996 Org 0100

1	Unclassified—Surplus . . . . .	097	\$ 800,000
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**258—State Department of Education**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1996 Org 0402

1	Mingo County Board of		
2	Education—Total . . . . .	635	\$ 400,000

**259—Division of General Services**

(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1996 Org 0211

1	Capitol Complex		
2	Master Plan—Total . . . . .	606	\$ 500,000

**260—Educational Broadcasting Authority**

(WV Code Chapter 10)

Account No.

Fund 0300 FY 1996 Org 0402

1 Capital Improvements—Total . . . . 672 \$ 250,000

**261—Tax Division**

(WV Code Chapter 11)

Account No.

Fund 0470 Fy 1996 Org 0702

1 Automation Project—Total . . . . . 673 \$ 800,000

2 Any unexpended balance remaining in the appropria-  
 3 tion for Personal and Business Tax Automation Project  
 4 (fund 0470, activity 613) at the close of the fiscal year  
 5 1994-95 is hereby reappropriated for expenditure during  
 6 the fiscal year 1995-96.

**262—Division of Human Services**

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 0403 FY 1996 Org 0511

1 Medical Service Contracts and  
 2 Office of Managed  
 3 Care—Total . . . . . 658 \$ 1,500,000

4 Any surplus balance remaining, after the allocation to  
 5 meet the appropriations set forth in this section , and after  
 6 compliance with section twenty, article two, chapter five-a  
 7 of the code, shall be transferred and made available to the  
 8 school building authority for expenditure in accordance  
 9 with the provisions of this section.

1 Total TITLE II, Section 8—  
 2 Surplus Accrued . . . . . \$ 32,997,348

- 1     **Sec. 9. Supplemental and deficiency appropriation.—**  
 2 From the state fund, general revenue, except as otherwise  
 3 provided, there are hereby appropriated the following  
 4 amounts, as itemized, for expenditure during the fiscal  
 5 year 1994-95 to supplement the appropriations for such  
 6 fiscal year and to be available for expenditure upon date  
 7 of passage.

**263—Governor's Office**

**Civil Contingent Fund**

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1995 Org 0100

1 Civil Contingent Fund—Total . . . . 114 \$ -0-

**264—Auditor's Office**

**General Administration**

(WV Code Chapter 12)

Account No.

Fund 0116 FY 1995 Org 1200

1 Data Center Air Conditioner and  
 2 Uninterruptible Power Supply . . 609 \$ -0-

**265—Education and State Employees**

**Grievance Board**

(WV Code Chapter 18)

Account No.

Fund 0220 FY 1995 Org 0219

1	Personal Services . . . . .	001	\$	-0-
2	Employee Benefits . . . . .	010		-0-
3	Unclassified . . . . .	099		-0-
4	Total . . . . .		\$	-0-



**266—Division of Forestry**

(WV Code Chapter 19)

Account No.

Fund 0250 FY 1995 Org 0305

1 Unclassified—Total . . . . . 096 \$ -0-

**267—Geological and Economic Survey**

(WV Code Chapter 29)

Account No.

Fund 0253 FY 1995 Org 0306

1 Mineral Mapping System (R) . . . . 610 \$ -0-

2 Geographic Information System (R)611 \_\_\_\_\_ -0-

3 Total . . . . . \$ -0-

4 Any unexpended balances remaining in the appropria-  
 5 tion for Mineral Mapping System (fund 0253, activity  
 6 610) and Geographic Information System (fund 0253,  
 7 activity 611) at the close of the fiscal year 1994-95 are  
 8 hereby reappropriated for expenditure during the fiscal  
 9 year 1995-96.

**268—Division of Health**

(WV Code Chapter 16)

Account No.

Fund 0407 FY 1995 Org 0506

1 Health Facility Licensure

2 and Certification . . . . . 612 \$ -0-

**269—Division of Corrections****Correctional Units**

(WV Code Chapters 25, 28, 49 and 62)

Account No.

Fund 0450 FY 1995 Org 0608

1 Northern Correctional Facility . . . 534 \$ -0-

**270—Division of Public Safety**

(WV Code Chapter 15)

Account No.

Fund 0453 FY 1995 Org 0612

1 Trooper Class . . . . . 231 \$ -0-

**271—Tax Division**

(WV Code Chapter 11)

Account No.

Fund 0470 FY 1995 Org 0702

1 Personal and Business Tax

2 Automation Project . . . . . 613 \$ -0-

1 Total TITLE II, Section 9—

2 Supplemental and Deficiency . . . . . \$ -0-

1 **Sec. 10. Special revenue appropriations.**—There are  
 2 hereby appropriated for expenditure during the fiscal year  
 3 one thousand nine hundred ninety-six appropriations  
 4 made by general law from special revenue which are not  
 5 paid into the state fund as general revenue under the pro-  
 6 visions of section two, article two, chapter twelve of the  
 7 code: *Provided*, That none of the money so appropriated  
 8 by this section shall be available for expenditure except in  
 9 compliance with and in conformity to the provisions of  
 10 articles two and three, chapter twelve and article two, chap-  
 11 ter five-a of the code, with due consideration to the digest  
 12 of legislative intent of the budget bill prepared pursuant to  
 13 article one, chapter four, unless the spending unit has filed  
 14 with the director of the budget, the auditor and the legisla-  
 15 tive auditor prior to the beginning of each fiscal year:

16 (a) An estimate of the amount and sources of all reve-  
 17 nues accruing to such fund;

18 (b) A detailed expenditure schedule showing for what  
 19 purposes the fund is to be expended.

1     **Sec. 11. State improvement fund appropriations.—**  
2     Bequests or donations of nonpublic funds, received by the  
3     governor on behalf of the state during the fiscal year one  
4     thousand nine hundred ninety-six, for the purpose of  
5     making studies and recommendations relative to improve-  
6     ments of the administration and management of spending  
7     units in the executive branch of state government, shall be  
8     deposited in the state treasury in a separate account therein  
9     designated state improvement fund.

10    There are hereby appropriated all moneys so deposited  
11    during the fiscal year one thousand nine hundred  
12    ninety-six to be expended as authorized by the governor,  
13    for such studies and recommendations which may encom-  
14    pass any problems of organization, procedures, systems,  
15    functions, powers or duties of a state spending unit in the  
16    executive branch, or the betterment of the economic, so-  
17    cial, educational, health and general welfare of the state or  
18    its citizens.

1     **Sec. 12. Specific funds and collection accounts.—A**  
2     fund or collection account which by law is dedicated to a  
3     specific use is hereby appropriated in sufficient amount to  
4     meet all lawful demands upon the fund or collection ac-  
5     count and shall be expended according to the provisions  
6     of article three, chapter twelve of the code.

1     **Sec. 13. Appropriations for refunding erroneous pay-**  
2     **ment.—**Money that has been erroneously paid into the  
3     state treasury is hereby appropriated out of the fund into  
4     which it was paid, for refund to the proper person.

5     When the officer authorized by law to collect money  
6     for the state finds that a sum has been erroneously paid, he  
7     shall issue his or her requisition upon the auditor for the  
8     refunding of the proper amount. The auditor shall issue  
9     his warrant to the treasurer and the treasurer shall pay the  
10    warrant out of the fund into which the amount was origi-  
11    nally paid.

1     **Sec. 14. Sinking fund deficiencies.—**There is hereby  
2     appropriated to the governor a sufficient amount to meet  
3     any deficiencies that may arise in the mortgage finance  
4     bond insurance fund of the West Virginia housing devel-

5 opment fund which is under the supervision and control  
6 of the municipal bond commission as provided by section  
7 twenty-b, article eighteen, chapter thirty-one of the code,  
8 or in the funds of the municipal bond commission be-  
9 cause of the failure of any state agency for either general  
10 obligation or revenue bonds or any local taxing district  
11 for general obligation bonds to remit funds necessary for  
12 the payment of interest and sinking fund requirements.  
13 The governor is authorized to transfer from time to time  
14 such amounts to the municipal bond commission as may  
15 be necessary for these purposes.

16 The municipal bond commission shall reimburse the  
17 state of West Virginia through the governor from the first  
18 remittance collected from the West Virginia housing de-  
19 velopment fund or from any state agency or local taxing  
20 district for which the governor advanced funds, with inter-  
21 est at the rate carried by the bonds for security or payment  
22 of which the advance was made.

1 **Sec. 15. Appropriations for local governments.—**  
2 There are hereby appropriated for payment to counties,  
3 districts and municipal corporations such amounts as will  
4 be necessary to pay taxes due counties, districts and mu-  
5 nicipal corporations and which have been paid into the  
6 treasury:

- 7 (a) For redemption of lands;  
8 (b) By public service corporations;  
9 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.—**Where only a total  
2 sum is appropriated to a spending unit, the total sum shall  
3 include personal services, annual increment, employee  
4 benefits, current expenses, repairs and alterations, equip-  
5 ment and capital outlay, where not otherwise specifically  
6 provided and except as otherwise provided in TITLE  
7 I—GENERAL PROVISIONS, Sec. 3.

1 **Sec. 17. General school fund.—**The balance of the  
2 proceeds of the general school fund remaining after the  
3 payment of the appropriations made by this act is appro-  
4 priated for expenditure in accordance with section sixteen,  
5 article nine-a, chapter eighteen of the code.

**TITLE III—ADMINISTRATION.**

§1. Appropriations conditional.

§2. Constitutionality.

**TITLE III—ADMINISTRATION.**

1       **Section 1. Appropriations conditional.**—The expen-  
 2       diture of the appropriations made by this act, except those  
 3       appropriations made to the legislative and judicial branch-  
 4       es of the state government, are conditioned upon the com-  
 5       pliance by the spending unit with the requirements of  
 6       article two, chapter five-a of the code.

7       Where spending units or parts of spending units have  
 8       been absorbed by or combined with other spending units,  
 9       it is the intent of this act that reappropriations shall be to  
 10      the succeeding or later spending unit created, unless other-  
 11      wise indicated.

1       **Sec. 2. Constitutionality.**—If any part of this act is  
 2       declared unconstitutional by a court of competent juris-  
 3       diction, its decision shall not affect any portion of this act  
 4       which remains, but the remaining portion shall be in full  
 5       force and effect as if the portion declared unconstitutional  
 6       had never been a part of the act.

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## CHAPTER 9

(H. B. 2794—By Delegates Doyle, Evans, Pettit, Warner, Gallagher,  
 Leach and Kelley)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing, transferring and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of item thirteen, designated guardianship attorney fees, "former" account no. 1030, "WVFIMS" account no. fund 0180, fiscal year 1995, organization no. 2400, and certain unexpended

and unencumbered accounts of the special fund, insurance commission fund, "former" account no. 8016-99, "WVFIMS" account no. fund 7152-999, fiscal year 1995, organization no. 0704 and making a supplementary appropriation from the balance of all general revenue funds remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, and from the amounts expired to the state fund, general revenue, to the division of culture and history, "former" account no. 3510, "WVFIMS", account no. fund 0293, fiscal year 1995, organization no. 0432, increasing item five, designated capital outlay, repairs and equipment, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-five, known as the "Budget Bill".

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has therefore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the governor's executive budget document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That the sum of two hundred thousand dollars of the balances in "former" account no. 1110, "WVFIMS" account no. fund 0180, fiscal year 1995, organization no. 2400, supreme court, general judicial; the sum of seven thousand two hundred forty dollars from "former" account no. 8016-99, "WVFIMS" account

no. fund 7152-999 fiscal year 1995, organization no. 0704, insurance commission fund, and that "former" account no. 3510 "WVFIMS" account no. fund 6293, fiscal year 1995, organization no. 0432 be supplemented and amended from balances made available herein from expirations to the state fund, general revenue and from the balance of all general revenue funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, all supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, to thereafter read as follows:

1	<i>64—Division of Culture and History</i>		
2	(WV Code Chapter 29)		
3	<b>"Former" Account No. 3510</b>		
4	"WVFIMS" Account No.		
5	Fund 0293 FY 1995 Org 0432		
6	1	Personal Services . . . . .	001 \$1,436,585
7	2	Annual Increment . . . . .	004 23,220
8	3	Employee Benefits . . . . .	010 474,160
9	4	Unclassified . . . . .	099 2,302,096
10	5	Capital Outlay, Repairs and	
11	6	Equipment (R) . . . . .	542 <u>1,498,420</u>
12	7	Total . . . . .	\$5,734,481

13 The purpose of this supplementary appropriations bill  
 14 is to expire two hundred thousand dollars from "former"  
 15 account no. 1030, "WVFIMS" account no. fund 0180,  
 16 fiscal year 1995, organization no. 2400 and to expire  
 17 seven thousand two hundred forty dollars from "former"  
 18 account no. 8016-99, "WVFIMS" account no. fund  
 19 7152-999, fiscal year 1995, organization no. 0704, insur-  
 20 ance commission fund, to the state fund, general revenue  
 21 and in addition to five hundred forty-one thousand nine

22 hundred seventy dollars from the balance of all general  
23 revenue funds remaining unappropriated for the fiscal  
24 year ending the thirtieth day of June, one thousand nine  
25 hundred ninety-four, making a supplementary appropriation  
26 to the division of culture and history in the amount of  
27 seven hundred forty-nine thousand two hundred ten dol-  
28 lars.

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## CHAPTER 10

(H. B. 2577—By Delegates Kiss, Mezzatesta, Warner,  
Browning, Farris, Wallace and Miller)

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[Passed March 10, 1995; in effect from passage. Approved by the Governor]

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AN ACT supplementing, amending, reducing and causing to expire in the state fund, general revenue of the state, certain unexpended amounts from "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Activity No. 524, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, line nine, "Infrastructure", as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill"; transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 5120, "WVFIMS" Account No. Fund 0132, FY 1995, Org. 1400, Department of Agriculture - Soil Conservation Committee, line seven, "Soil Conservation Projects"; transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 1240, "WVFIMS" Account No. Fund 0105, FY 1995, Org. 0100, Governor's Office - Civil Contingent Fund, line one, Activity No. 114, "Civil Contingent Fund"; transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, line fifteen, Activity No. 242, "Guaran-



teed Work Force Grant"; transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, and creating therein a new line item, line nineteen-a, "West Virginia Economic Development Authority", and transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, creating therein a new line item, line nineteen-b, "Industrial Modernization Program," Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, creating therein a new line item, line nineteen-c, "Infrastructure Fund - Transfer" and creating a new account, "WVFIMS" Account No. Fund 3384, FY 1995, Org. 0316, West Virginia Development Office, and creating and establishing therein a new line item, line one, "Infrastructure Fund" and transferring, appropriating and making available for expenditure a portion of such expired funds under the newly created account.

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

That the sum of ten million four hundred thousand dollars be expired from "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Activity No. 524, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, line nine, Activity No. 524, "Infrastructure," as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill" be supplemented, amended, reduced and caused to expire to the general revenue fund and that such sums be transferred and reappropriated as set forth herein.

That the sum of two million two hundred fifty thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" Account No. Fund 1240, "WVFIMS" Account No. Fund 0105, FY 1995, Org. 0100, chapter one, acts of the Legislature, one thousand nine hundred

ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 6—*Governor's Office—Civil Contingent Fund*

4 (WV Code Chapter 5)

5 "Former" Account No. 1240

6 "WVFIMS" Account No.

7 Fund 0105 FY 1995 Org 0100

8 1 Civil Contingent Fund—Total (R) 114 \$ 2,250,000.00

9 Any unexpended balances remaining in the appropri-  
10 ation for Civil Contingent Fund (fund 0105, activity no.  
11 114) at the close of the fiscal year 1994-95 are hereby  
12 reappropriated for expenditure during the fiscal year  
13 1995-96.

14 That the sum of two million six hundred thousand  
15 dollars be transferred, reappropriated, made available for  
16 expenditure, and increasing "former" Account No. 5120,  
17 "WVFIMS" Account No. Fund 0132, FY 1995, Org. 1400,  
18 chapter one, acts of the Legislature, one thousand nine  
19 hundred ninety-four, known as the "Budget Bill", be sup-  
20 plemented by adding thereto the following sums to the  
21 designated line item:

22 TITLE II—APPROPRIATIONS.

23 Section 1. Appropriations from general revenue.

24 19—*Department of Agriculture*

25 *Soil Conservation Committee*

26 (WV Code Chapter 19)

27 "Former" Account No. 5120

28 "WVFIMS" Account No.

29 Fund 0132 FY 1995 Org 1400

30 7 Soil Conservation Projects . . . 120 \$ 2,600,000.00

31 Any unexpended balances remaining in the appropri-  
32 ation for Soil Conservation Projects (fund 0132, activity  
33 no. 120) at the close of the fiscal year 1994-95 are hereby  
34 reappropriated for expenditure during the fiscal year  
35 1995-96.

36 That the sum of four million two hundred twenty-five  
37 thousand dollars be transferred, reappropriated and made  
38 available for expenditure, and increasing "former" Ac-  
39 count No. Fund 1210, "WVFIMS" Account No. Fund  
40 0256, FY 1995, Org. 0307, chapter one, acts of the Legis-  
41 lature, one thousand nine hundred ninety-four, known as  
42 the "Budget Bill", be supplemented by adding thereto the  
43 following sums to the designated line items:

44 TITLE II - APPROPRIATIONS.

45 Section 1. Appropriations from general revenue.

46 35—West Virginia Development Office

47 (WV Code Chapter 5B)

48 "Former" Account No. 1210

49 "WVFIMS" Account No.

50 Fund 0256 FY 1995 Org 0307

51 15 Guaranteed Work Force

52 Grant (R) . . . . . 242 \$ 650,000.00

53 19a West Virginia Economic

54 Development Authority . . . 633 3,400,000.00

55 19b Industrial Modernization

56 Program . . . . . 634 175,000.00

57 19c Infrastructure Fund-Transfer . . 646 1,325,000.00

58 Any unexpended balances remaining in the appropri-  
59 ations for West Virginia Economic Development Authori-  
60 ty (fund 0256, activity no. 618) and Industrial Moderniza-  
61 tion Program (fund 0256, activity no. 619) at the close of

62 the fiscal year 1994-95 are hereby reappropriated for  
63 expenditure during the fiscal year 1995-96.

64 The above line item, "Infrastructure Fund - Transfer"  
65 shall be transferred, appropriated and made available for  
66 expenditure to "WVFIMS" Account No. Fund 3384, FY  
67 1995, Org. 0316, in chapter one, acts of the Legislature,  
68 one thousand nine hundred ninety-four, known as the  
69 Budget Bill, and that the sum of one million three hundred  
70 twenty-five thousand dollars be appropriated and added  
71 thereto to the designated line items:

72 TITLE II—APPROPRIATIONS.

73 Section 3. Appropriations from other funds.

74 109A—West Virginia Development Office

75 (WV Code Chapter 31)

76 "Former" Account No.

77 "WVFIMS" Account No.

78 Fund 3384 FY 1995 Org 0316

79 1 Infrastructure Fund . . . . . 620 \$ 1,325,000.00

80 Any unexpended balances remaining in the appropri-  
81 ation for West Virginia Development Office (fund 3384,  
82 activity no. 620) at the close of the FY 1994-95 is hereby  
83 reappropriated for expenditure during the fiscal year  
84 1995-96.

85 The purpose of this supplementary appropriation is to  
86 supplement, amend, reduce and cause to expire the sum of  
87 \$10,400,000.00 from the aforesaid infrastructure line item  
88 and transfer and reappropriate \$2,600,000.00 to the De-  
89 partment of Agriculture, Soil Conservation Committee,  
90 Soil Conservation Projects line item, transfer and reappro-  
91 priate the sum of \$2,250,000.00 to the Governor's Civil  
92 Contingent Liability Fund, transfer and reappropriate the  
93 sum of \$3,400,000.00 to the West Virginia Economic  
94 Development Office, transferring and reappropriating the  
95 sum of \$650,000.00 to the Governor's Work Force Grant,  
96 transferring and reappropriating the sum of \$175,000.00

97 to the Industrial Modernization, transferring and reappro-  
98 priating the sum of \$1,324,000.00 to Infrastructure Fund -  
99 Transfer and creating a new item in the Budget Bill, chap-  
100 ter one, acts of the Legislature, first extraordinary session,  
101 one thousand nine hundred ninety-four, as item one hun-  
102 dred nine-a, West Virginia Development Office, and trans-  
103 ferring and appropriating the sum of one million three  
104 hundred twenty-five thousand dollars thereto, thereby  
105 leaving a total appropriated amount of six million one  
106 hundred thousand dollars in "WVFIMS" Account No.  
107 Fund 0256, FY 1995, Org. 0307, Activity No. 524 "Infra-  
108 structure," increasing the amount appropriated for expen-  
109 diture in activity 120 of "former" Account No. 5120,  
110 "WVFIMS" Account No. Fund 0132, FY 1995, Org. 1400,  
111 Activity No. 120, Department of Agriculture - Soil Con-  
112 servation Committee, line seven, "Soil Conservation Pro-  
113 jects, to a total amount available for expenditure of five  
114 million six hundred thousand dollars, increasing the  
115 amount appropriated for expenditure in Activity No. 114  
116 of "former" Account No. 1240, "WVFIMS" Account No.  
117 Fund 0105, FY 1995, Org. 0100, Governor's Office - Civil  
118 Contingent Fund to a total amount available for expendi-  
119 ture of three million five hundred thousand dollars, in-  
120 creasing the amount appropriated for expenditure in Ac-  
121 tivity No. 242 of "former" Account No. 1210, "WVFIMS"  
122 Account No. fund 0256, FY 1995, Org. 0307, Department  
123 of Commerce, Labor and Environmental Resources - West  
124 Virginia Development Office, "Guaranteed Workforce  
125 Grant" to two million one hundred thousand dollars, in-  
126 creasing and making available for expenditure the amount  
127 appropriated to "former" Account No. 1210, "WVFIMS"  
128 Account No. Fund 0256, FY 1995, Org. 0307, Activity  
129 No. 633, Department of Commerce, Labor and Environ-  
130 mental Resources - West Virginia Development Office,  
131 "West Virginia Development Authority" to three million  
132 four hundred thousand dollars, increasing and making  
133 available for expenditure the amount appropriated to  
134 "former" Account No. 1210, "WVFIMS" Account No.  
135 Fund 0256, FY 1995, Org. 0307, Activity No. 634, De-  
136 partment of Commerce, Labor and Environmental Re-  
137 sources - West Virginia Development Office, "Industrial  
138 Modernization Program" to one hundred seventy-five

139 thousand dollars, Department of Commerce, Labor and  
 140 Environmental Resources - West Virginia Development  
 141 Office, "Infrastructure Fund - Transfer" to one million  
 142 three hundred twenty-five thousand dollars and creating a  
 143 new account, the West Virginia Development Office,  
 144 "WVFIMS" Account No. Fund 3384, FY 1995, Org. 0316,  
 145 Activity No. 620, West Virginia Development Office, and  
 146 appropriating, transferring, making available for  
 147 expenditure and adding to a line item, designated  
 148 "Infrastructure Fund" a sum of one million three hundred  
 149 twenty-five thousand dollars, thereby making available for  
 150 expenditure the total sum of one million five hundred  
 151 twenty-five thousand dollars for the fiscal year.

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## CHAPTER 11

(H. B. 2220—By Delegates Kiss, Pettit, Gallagher, Leach, Farris,  
Wallace and Miller)

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[Passed February 3, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Auditor's Office, Account No. Fund 0116 FY 1995 Org 1200, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a budget bill for fiscal year

1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That Account No. Fund 0116 FY 1995 Org 1200, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 12—Auditor's Office

4 General Administration

5 (WV Code Chapter 12)

6 "Former" Account No. 1500

7 "WVFIMS" Account No.

8 Fund 0116 FY 1995 Org 1200

9 7a Data Center Air Conditioner and

10 7b Uninterruptible Power Supply . . . 609 \$105,000

11 The purpose of this bill is to supplement the aforesaid  
 12 account and item therein, with such amount being  
 13 available for expenditure upon the effective date of this  
 14 bill and in the fiscal year 1994-95, thereby making the  
 15 amount available for expenditure from the above-  
 16 referenced account during said fiscal year ending June  
 17 thirtieth, one thousand nine hundred ninety-five, a total of  
 18 \$3,833,871.00.

## CHAPTER 12

(H. B. 2507—By Delegates Kiss, Warner, Leach, Pettit,  
Wallace, Border and Miller)

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[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Tax Division, Account No. Fund 0470 FY 1995 Org 0702, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95; and

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That Account No. Fund 0470 FY 1995 Org 0702, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:



## 1 TITLE II—APPROPRIATIONS.

## 2 Section 1. Appropriations from general revenue.

3 85—*Tax Division*

## 4 (WV Code Chapter 11)

## 5 "Former" Account No. 1800

## 6 "WVFIMS" Account No.

## 7 Fund 0470 FY 1995 Org 0702

## 8 7a Personal and Business Tax

## 9 7b Automation Project . . . . . 613 \$ 1,000,000

10 The purpose of this bill is to supplement the aforesaid  
 11 account and item therein, with such amount being  
 12 available for expenditure upon the effective date of this  
 13 bill and in the fiscal year 1994-95, thereby making the  
 14 amount available for expenditure from the above-  
 15 referenced account during said fiscal year ending June  
 16 thirtieth, one thousand nine hundred ninety-five, a total of  
 17 \$19,798,507.00. Any unexpended balance remaining in  
 18 the appropriation for Personal and Business Tax  
 19 Automation Project (fund 0470, activity 613), at the close  
 20 of the fiscal year 1994-95 is hereby reappropriated for  
 21 expenditure during the fiscal year 1995-96.

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## CHAPTER 13

(H. B. 2575—By Delegates Burke, Browning, Warner, Doyle,  
 Miller, Walters and Wallace)

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[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing, transferring and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special fund, the school building debt service fund "WVFIMS" account no. fund 3962, fiscal year 1995, organization 0402 and making a supplementary appropriation

from the state fund, general revenue in a like amount to the department of military affairs and public safety, regional jail and correctional facility authority, and supplementing, amending, reducing and transferring between items of the existing appropriations within the department of military affairs and public safety, division of corrections, correctional units, "former" account no. 3770, "WVFIMS" account no. fund 0450, fiscal year 1995, organization no. 0608, all supplementing and amending chapter one, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The Legislature has heretofore enacted a Budget Bill for fiscal year 1993-94 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-four; therefore,

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

That the amount of two million dollars of the unencumbered and unexpended balance in the special fund, the school building debt service fund, "WVFIMS" account no. fund 3962, fiscal year 1995, organization 0402, be transferred and caused to expire to the state fund general revenue and be available for further appropriation upon the effective date of this bill and that the amount of five hundred thousand dollars from the balance of all revenues remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four; and the items of the total appropriations within the department of military affairs and public safety, division of corrections, correctional units, "former" account no. 3770, "WVFIMS" account no. fund 0450 fiscal year 1995 organization no. 0608, be supplemented, amended and transferred; all amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, to thereafter read as follows:

## 1 TITLE II—APPROPRIATIONS.

## 2 Section 1. Appropriations from general revenue.

3 66—*Division of Corrections*—4 *Correctional Units*

5 (WV Code Chapters 25, 28, 49 and 62)

6 "Former" Account No. 3770

7 "WVFIMS" Account No.

8 Fund 0450 FY 1995 Org 0608

9	1	Personal Services . . . . .	001	\$ 10,189,883
10	2	Annual Increment . . . . .	004	164,942
11	3	Employee Benefits . . . . .	010	3,909,562
12	4	Unclassified . . . . .	099	5,773,628
13	5	Payment to Counties and/or		
14	6	Regional Jails . . . . .	229	3,584,000
15	7	Denmar Facility . . . . .	448	2,000,000
16	8	WV Penitentiary Transition . . . .	532	5,204,430
17	9	Mt. Olive Correctional Complex	533	9,844,798
18	10	Northern Correctional Facility .	534	4,423,440
19	10a	Capital Improvements . . . . .		2,000,000
20	11	Inmate Medical Expense . . . . .	535	<u>2,259,100</u>
21	12	Total . . . . .		\$ 49,353,783

22 The purpose of this bill is to supplement, amend,  
 23 reduce and transfer between existing line items in the  
 24 aforesaid account for the designated spending unit, and to  
 25 further supplement and amend the aforesaid account by  
 26 making a supplementary appropriation in the amount of  
 27 two million dollars from amounts expired from the unex-  
 28 pended and unencumbered balance in the school building  
 29 debt service fund and five hundred thousand dollars from  
 30 the balance of general revenue remaining unappropriated  
 31 for the fiscal year ending the thirtieth day of June, one  
 32 thousand nine hundred ninety-four.

## CHAPTER 14

(H. B. 2658—By Delegates Compton, Tomblin, Kelley, Burke, Seacrist,  
Leggett and Clements)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing, transferring and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special fund, the school building debt service fund "WVFIMS" account no. fund 3962, fiscal year 1995, organization 0402 and making a supplementary appropriation from the state fund, general revenue in a like amount to the department of military affairs and public safety, regional jail and correctional facility authority, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

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

That the sum of ten million dollars of the balances in "WVFIMS" account no. fund 3962, fiscal year 1995, organization 0402, be supplemented, amended and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation as provided herein upon the effective date of this bill and that chapter one, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill" be supplemented and amended by increasing the appropriation to "Former" Account No. 6010, "WVFIMS" account no. fund 0536, fiscal year 1995, organization no. 0615, in the amount of ten million dollars, to thereafter read as follows:

### TITLE II—APPROPRIATIONS.

#### Sec. 2. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

83—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

"Former" Account No. 6010

"WVFIMS" Account No.

Fund 0536 FY 1995 Org 0615

- 1 1 Regional Jail—Capital
- 2 2 Outlay—Total . . . . . \$20,000,000
- 3 The purpose of this supplementary appropriation bill
- 4 is to supplement, amend, reduce and cause to expire into
- 5 the state fund, general revenue the sum of ten million
- 6 dollars from "WVFIMS" account no. fund 3962, fiscal
- 7 year 1995, organization 0402. The amount shall, upon
- 8 the effective date of this bill, be immediately expired into
- 9 the state fund, general revenue, and be available for
- 10 appropriation to supplement, amend and increase the
- 11 items of total appropriation in "Former" Account No.
- 12 6010, "WVFIMS" account no. fund 0536, fiscal year 1995,
- 13 organization no. 0615 by ten million dollars. Such
- 14 amount shall be available for expenditure immediately
- 15 upon the effective date of this bill.

CHAPTER 15

(H. B. 2576—By Delegates Kiss, Warner, Doyle, Pettit, Miller, Wallace and Walters)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five,

to the Division of Health, Account No. Fund 0407 FY 1995 Org 0506, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That Account No. Fund 0407 FY 1995 Org 0506, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 66—Division of Health
- 4 (WV Code Chapter 16)
- 5 "Former" Account No. 4000
- 6 "WVFIMS" Account No.
- 7 Fund 0407 FY 1995 Org 0506

8 32a Health Facility Licensure  
9 and Certification . . . . . 612 \$ 300,000

10 The purpose of this bill is to supplement the aforesaid  
11 account and item therein, with such amount being  
12 available for expenditure upon the effective date of this  
13 bill and in the fiscal year 1994-95, thereby making the  
14 amount available for expenditure from the above-  
15 referenced account during said fiscal year ending June  
16 thirtieth, one thousand nine hundred ninety-five, a total of  
17 \$36,161,182.00.

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## CHAPTER 16

(H. B. 2508—By Delegates Kiss, Leach, Farris, Browning,  
Doyle, Wallace and Miller)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public moneys out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the Division of Rehabilitation Services, "former" Account No. 4405, "WVFIMS" Account No. Fund 0310, FY 1995, Org 0932, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenue for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95; and

WHEREAS, The Legislature has heretofore and during the first

extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriations; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended to read as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 57—*State Board of Rehabilitation*—

4 *Division of Rehabilitation Services*

5 (WV Code Chapter 18)

6 "Former" Account No. 4405

7 "WVFIMS" Account No.

8 Fund 0310 FY 1995 Org 0932

9	1	Personal Service . . . . .	001	\$ 3,773,985
10	3	Employee Benefits . . . . .	010	1,253,813

11 The purpose of this supplementary appropriation bill is  
 12 to supplement and amend this account in the budget act  
 13 for the fiscal year 1994-1995 from the unappropriated  
 14 surplus balance by increasing the appropriation to the line  
 15 item entitled personal services by one hundred sixteen  
 16 thousand eight hundred fifty-eight dollars and increase  
 17 the appropriation to the line item entitled employee



18 benefits by nineteen thousand nine hundred eighty-three  
19 dollars to the employee benefits line item, for a total  
20 increase in authorized spending of one hundred thirty-six  
21 thousand eight hundred forty-one dollars to be available  
22 for expenditure on the first day of April, one thousand  
23 nine hundred ninety-five.

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## CHAPTER 17

(H. B. 2219—By Delegates Kiss, Mezzatesta, Warner, Browning, Farris,  
Wallace and Miller)

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[Passed February 3, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Division of Forestry, Account No. Fund 0250 FY 1995 Org 0305, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the

Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That Account No. Fund 0250 FY 1995 Org 0305, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	38—Division of Forestry		
4	(WV Code Chapter 19)		
5	"Former" Account No. 4650		
6	"WVFIMS" Account No.		
7	Fund 0250 FY 1995 Org 0305		
8	1	Unclassified . . . . .	096 \$ 200,000

9 The purpose of this bill is to supplement the aforesaid  
 10 account and item therein, with such amount being avail-  
 11 able for expenditure upon the effective date of this bill  
 12 and in the fiscal year 1994-95, thereby making the  
 13 amount available for expenditure from the above-  
 14 referenced account during said fiscal year ending June  
 15 thirtieth, one thousand nine hundred ninety-five, a total of  
 16 \$2,300,000.00.

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## CHAPTER 18

(H. B. 2655—By Delegates Kiss, Warner, Leach, Pettit, Wallace,  
 Border and Miller)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended amounts from "WVFIMS" account no. 5174, fiscal year 1995, organization 0506, health and human resources; "WVFIMS" account no. 5405, fiscal year 1995, organization 0508, commission on aging; "WVFIMS" account no. 4030, fiscal year 1995, organization 0453, higher education central office; "WVFIMS" account no. 4182, fiscal year 1995, organization 0463, West Virginia University; "WVFIMS" account no. 4256, fiscal year 1995, organization 0471, Marshall University; "WVFIMS" account no. 4448, fiscal year 1995, organization 0484, Fairmont State College; "WVFIMS" account no. 4679, fiscal year 1995, organization 0487, Southern Community College; and making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the state department of education, "WVFIMS" account no. fund 0313, fiscal year 1995, organization 0402, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That the sum of two hundred fifty-eight thousand six hundred fifty-eight dollars be expired from "WVFIMS" account no. 5174, fiscal year 1995, organization 0506, health and human resources; the sum of four hundred eighty-four dollars and twenty-five cents be expired from "WVFIMS" account no. 5405, fiscal year 1995, organization 0508, commission on aging; that the sum of two hundred twenty-nine thousand seven hundred twenty-five dollars and thirty-nine cents be expired from "WVFIMS" account no. 4030, fiscal year 1995, organization 0453, higher education central office; that the sum of fifty-one thousand seven hundred nineteen dollars and seventy-eight cents be expired from "WVFIMS" account no. 4182, fiscal year 1995, organization 0463, West Virginia University; that the sum of thirty-five dollars and six cents be expired from "WVFIMS" account no. 4256, fiscal year 1995, organization 0471, Marshall University; that the sum of ninety-three cents be expired from "WVFIMS" account no. 4448, fiscal year 1995, organization 0484, Fairmont State College; and that the sum of twenty-five thousand dollars be expired from "WVFIMS" account no. 4679, fiscal year 1995, organization 0487, Southern Community College, all as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, be supplemented, amended, reduced and caused to expire and that the sum of five hundred sixty-five thousand six hundred twenty-three dollars and forty-one cents be transferred, reappropriated, made available for expenditure and increasing "WVFIMS" account no. fund 0313 fiscal year 1995, organization 0402, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", and that said "WVFIMS" account no. fund 0313 fiscal year 1995, organization 0402, be further supplemented by adding thereto the following sums to the designated line items:

- 1                    TITLE II—APPROPRIATIONS.
- 2                    **Section 1. Appropriations from general revenue.**
- 3                    *50—State Department of Education*
- 4                    (WV Code Chapters 18 and 18A)
- 5                    **"Former" Account No. 2860**
- 6                    **"WVFIMS" Account No.**

7 Fund 0313 FY 1995 Org 0402

8 12 Computer Basic Skills (R) . . . . . 145 \$ 1,000,000

9 Any unexpended balance remaining in the appropria-  
10 tion for Computer Basic Skills (fund 0313, activity 145) at  
11 the close of the fiscal year 1994-95 is hereby reappropri-  
12 ated for expenditure during the fiscal year 1995-96.

13 The purpose of this bill is to supplement the aforesaid  
14 account and item therein, with such amount being  
15 available for expenditure upon the effective date of this  
16 bill and in the fiscal year 1994-95, thereby making the  
17 amount available for expenditure from the above-  
18 referenced account during said fiscal year ending June  
19 thirtieth, one thousand nine hundred ninety-five, a total of  
20 \$14,379,538.00.

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## CHAPTER 19

(H. B. 2222—By Delegates Kiss, Doyle, Petersen, Leach, Walters,  
Wallace and Miller)

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[Passed February 3, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Geological and Economic Survey, Account No. Fund 0253 FY 1995 Org 0306, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That Account No. Fund 0253 FY 1995 Org 0306, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	46—Geological and Economic Survey		
4	(WV Code Chapter 29)		
5	"Former" Account No. 5200		
6	"WVFIMS" Account No.		
7	Fund 0253 FY 1995 Org 0306		
8	4a Mineral Mapping System (R) . . . . .	610	\$1,500,000
9	4b Geographic Information System (R) . . . . .	611	<u>500,000</u>
10	Total . . . . .		\$2,000,000

11 The purpose of this bill is to supplement the aforesaid  
 12 account and items therein, with such amount being  
 13 available for expenditure upon the effective date of this  
 14 bill and in the fiscal year 1994-95, thereby making the  
 15 amount available for expenditure from the above-re-  
 16 ferenced account during said fiscal year ending June  
 17 thirtieth, one thousand nine hundred ninety-five, a total of

18 \$3,611,971.00. Any unexpended balances remaining in  
19 the appropriation for Mineral Mapping System (fund  
20 0253, activity 610) and Geographic Information System  
21 (fund 0253, activity 611) at the close of the fiscal year  
22 1994-95 is hereby reappropriated for expenditure during  
23 fiscal year 1995-96.

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## CHAPTER 20

(H. B. 2793 —By Delegates Browning, Frederick, Farris, Gallagher,  
Miller, Leggett and Evans)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the geological and economic survey, "former" account no. 5200, "WVFIMS" account no. fund 0253 fiscal year 1995 organization 0306, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That "former" account no. 5200, "WVFIMS" account no. fund 0253, fiscal year 1995, organization 0306, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 46—*Geological and Economic Survey*

4 (WV Code Chapter 29)

5 "Former" Account No. 5200

6 "WVFIMS" Account No.

7 Fund 0253 FY 1995 Org 0306

8 4a Capital Outlay and Equipment . . . 542 \$ 134,000

9 Any unexpended balance remaining in the appropri-  
10 ation for Geological and Economic Survey, Capital Outlay  
11 and Equipment (fund 0253, activity 542) at the close of  
12 the fiscal year 1994-95 is hereby reappropriated for ex-  
13 penditure during the fiscal year 1995-96.

14 The purpose of this supplementary appropriation bill is  
15 to supplement, amend, reduce and cause to expire out of  
16 the aforesaid account the total sum of one hundred  
17 thirty-four thousand dollars and transfer, reappropriate  
18 and make available for immediate expenditure such funds  
19 upon passage of this bill.



## CHAPTER 21

(H. B. 2506—By Delegates Farris, Warner, Pettit, Doyle,  
Frederick, Border and Wallace)

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[Passed February 24, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Division of Public Safety, Account No. Fund 0453 FY 1995 Org 0612, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95; and

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

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

That Account No. Fund 0453 FY 1995 Org 0612, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

## TITLE II—APPROPRIATIONS.

**Section 1. Appropriations from general revenue.***80—Division of Public Safety*

(WV Code Chapter 15)

"Former" Account No. 5700

"WVFIMS" Account No.

Fund 0453 FY 1995 Org 0612

12a Trooper Class . . . . .	231	\$1,212,840.00
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The purpose of this bill is to supplement the aforesaid account and item therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1994-95, thereby making the amount available for expenditure from the above-referenced account during said fiscal year ending June thirtieth, one thousand nine hundred ninety-five, a total of \$30,338,851.00. Any unexpended balance remaining in the appropriation for Trooper Class (fund 0453, activity 231), at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

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## CHAPTER 22

(S. B. 593—By Senators Helmick, Whitlow, Bailey, Love,  
Plymale, Sharpe and Minear)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending and transferring between items of the existing appropriation to the department of military affairs and public safety, division of public safety, "former" account no. 5700, "WVFIMS" account no. fund 0453, fiscal year 1995, organization 0612, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

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

That the items of the total appropriation to "former" account no. 5700, "WVFIMS" account no. fund 0453, fiscal year 1995, organization 0612, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented, amended and transferred thereafter to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	80— <i>Division of Public Safety</i>		
6	(WV Code Chapter 15)		
7	"Former" Account No. 5700		
8	"WVFIMS" Account No.		
9	Fund <u>0453</u> FY <u>1995</u> Org <u>0612</u>		
10			<b>General</b>
11		<b>Act-</b>	<b>Revenue</b>
12		<b>ivity</b>	<b>Fund</b>
13	1	Personal Services . . . . . 001	\$ 15,908,330
14	2	Annual Increment . . . . . 004	95,076
15	3	Employee Benefits . . . . . 010	4,762,065
16	4	Unclassified . . . . . 099	4,246,593
17	5	Barracks Maintenance and	
18	6	Construction (R) . . . . . 494	113,947
19	7	Communications and Other	
20	8	Equipment . . . . . 558	3,000,000
21	9	Communications Equipment . 502	-0-
22	10	Equipment . . . . . 070	-0-
23	11	Court Judgment . . . . . 230	-0-
24	12	Vehicle Purchase . . . . . 451	1,000,000
25	12a	Trooper Class . . . . . 231	<u>1,212,840</u>
26	13	Total . . . . .	\$ 30,338,851

27 The purpose of this supplementary appropriation bill is  
 28 to supplement, amend and transfer certain moneys  
 29 between items of the existing appropriation for this  
 30 account in the budget act for fiscal year 1994-1995. The  
 31 amounts as now itemized shall be made available for  
 32 expenditure upon passage of this bill.

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## CHAPTER 23

(S. B. 587—By Senators Helmick, Whitlow, Bailey, Love,  
 Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriation to the department of administration, ethics commission, "former" account no. 6180, "WVFIMS" account no. fund 0223, fiscal year 1995, organization 0220, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

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

That the items of the total appropriation to "former" account no. 6180, "WVFIMS" account no. fund 0223, fiscal year 1995, organization 0220, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented, amended and transferred to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 DEPARTMENT OF ADMINISTRATION
- 4 34—*Ethics Commission*
- 5 (WV Code Chapter 6B)
- 6 "Former" Account No. 6180
- 7 "WVFIMS" Account No.
- 8 Fund 0223 FY 1995 Org 0220

			<b>General Revenue Fund</b>
1			
2		<b>Act-</b>	
3		<b>ivity</b>	
4	1	Personal Services . . . . . 001	\$ 167,422
5	2	Annual Increment . . . . . 004	612
6	3	Employee Benefits . . . . . 010	39,713
7	4	Unclassified . . . . . 099	<u>152,610</u>
8	5	Total . . . . .	\$ 360,357

9 The purpose of this supplementary appropriation bill  
 10 is to supplement, amend and transfer certain moneys  
 11 between items of the existing appropriation for this  
 12 account in the budget act for fiscal year 1994-1995. The  
 13 amounts as now itemized shall be made available for  
 14 expenditure upon passage of this bill.

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## CHAPTER 24

(S. B. 561—Originating in the Committee on Finance.)

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[Passed March 8, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of military affairs and public safety, division of corrections—correctional units—parolee's supervision fee fund, "WVFIMS" account no. fund 6362, fiscal year 1995, organization 0608, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of public moneys receivable for new programs and available for expenditure in fiscal year 1994-1995, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended by adding to title two, section three thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 157A—*Division of Corrections—*

6 *Correctional Units—*

7 *Parolee's Supervision Fee Fund*

8 (WV Code Chapters 25, 28, 49 and 62)

9 "WVFIMS" Account No.

10 Fund 6362 FY 1995 Org 0608

11			Act-	Other
12			ivity	Funds
13	1	Personal Services . . . . .	001	\$ 82,928
14	2	Employee Benefits . . . . .	010	35,664
15	3	Unclassified . . . . .	099	<u>115,408</u>
16	4	Total . . . . .		\$ 234,000

17 The purpose of this supplementary appropriation bill  
18 is to supplement the budget act for the fiscal year  
19 1994-1995 by providing for new items of appropriation  
20 to be established therein to appropriate other moneys  
21 received for expenditure in the fiscal year ending the  
22 thirtieth day of June, one thousand nine hundred  
23 ninety-five. These moneys shall be available for expendi-  
24 ture upon passage of this bill.

## CHAPTER 25

(S. B. 556—By Senators Helmick and Whitlow)

[Passed March 6, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund to the department of transportation, division of highways, "former" account no. 6700, "WVFIMS" account no. fund 9017, fiscal year 1995, organization 0803, and division of highways—federal aid highway matching fund, "former" account no. 6705, "WVFIMS" account no. fund 9018, fiscal year 1995, organization 0803, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

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

That the items of the total appropriations from the state road fund to "former" account no. 6700, "WVFIMS" account no. fund 9017, fiscal year 1995, organization 0803, and to "former" account no. 6705, "WVFIMS" account no. fund 9018, fiscal year 1995, organization 0803, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, be supplemented, amended, reduced and transferred to read as follows:

- 1                    TITLE II — APPROPRIATIONS.
- 2                    **Sec. 2. Appropriations from state road fund.**
- 3                                *90—Division of Highways*
- 4                                (WV Code Chapters 17 and 17C)
- 5                                "Former" Account No. 6700
- 6                                "WVFIMS" Account No.
- 7                                Fund 9017 FY 1995 Org 0803

			Act- ivity	State Road Fund
8				
9				
10				
11	1	Debt Service . . . . .	040	\$ 50,000,000
12	2	ARC Assessment . . . . .	136	700,000
13	3	Maintenance, Expressway		
14	4	Trunkline and Feeder . . . .	270	65,814,000
15	5	Maintenance, State		
16	6	Local Services . . . . .	271	116,603,000
17	7	Maintenance, Contract Paving		
18	8	and Secondary Road		
19	9	Maintenance . . . . .	272	51,500,000
20	10	Bridge Repair		
21	11	and Replacement . . . . .	273	27,100,000
22	12	Inventory Revolving . . . . .	275	1,250,000
23	13	Equipment Revolving . . . . .	276	15,000,000
24	14	General Operations . . . . .	277	34,400,000
25	15	Interstate Construction . . . . .	278	40,043,000
26	16	Other Federal Aid Programs ..	279	69,000,000
27	17	Appalachian Programs . . . . .	280	71,455,000
28	18	Nonfederal Aid Construction .	281	37,000,000
29	19	Highway Litter Control . . . . .	282	<u>1,390,000</u>
30	20	Total . . . . .		<u>\$581,255,000</u>

31                    *91—Division of Highways—*

32                    *Federal Aid Highway Matching Fund*

33                    (WV Code Chapters 17 and 17C)

34                    "Former" Account No. 6705

35                    "WVFIMS" Account No.

36                    Fund 9018 FY 1995 Org 0803

37	1	Interstate Construction . . . . .	278	\$ 17,750,000
38	2	Appalachian Program . . . . .	280	101,156,000
39	3	Other Federal Aid Programs ..	279	<u>174,000,000</u>
40	4	Total . . . . .		<u>\$292,906,000</u>

41                    The purpose of this supplementary appropriation bill  
 42 is to supplement, amend, reduce and transfer between  
 43 existing items in the aforesaid accounts for the designated  
 44 spending unit. The amount as itemized for expenditure in  
 45 fiscal year 1994-1995 shall be available for expenditure  
 46 upon the effective date of this bill.



# CHAPTER 26

(S. B. 557—By Senators Helmick and Whitlow)

[Passed March 6, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from state road funds to the department of transportation, division of motor vehicles, former account no. 6710, "WVFIMS" account no. fund 9007, fiscal year 1995, organization 0802, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

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

That the items of the total appropriations from the state road fund to "former" account no. 6710, "WVFIMS" account no. fund 9007, fiscal year 1995, organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, be supplemented, amended, reduced and transferred to thereafter read as follows:

1	TITLE II— APPROPRIATIONS.			
2	<b>Sec. 2. Appropriations from state road fund.</b>			
3	DEPARTMENT OF TRANSPORTATION			
4	96— <i>Division of Motor Vehicles</i>			
5	(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)			
6	<b>"Former" Account No. 6710</b>			
7	<b>"WVFIMS" Account No.</b>			
8	<b>Fund <u>9007</u> FY <u>1995</u> Org <u>0802</u></b>			
9	1	Personal Services . . . . .	001	\$ 3,506,056
10	2	Annual Increment . . . . .	004	47,213
11	3	Employee Benefits . . . . .	010	1,173,750
12	4	Unclassified . . . . .	099	11,577,400
13	5	Optic Scan System (R) . . . .	283	-0-
14	6	Electronic Photo Operator		
15	7	and License System (R) . .	284	-0-

16	8	International Fuel Tax		
17	9	Agreement . . . . .	536	620,000
18	10	License Plate—Reissue . . . . .		<u>734,160</u>
19	11	Total . . . . .		\$17,658,579

20 Any unexpended balances remaining in the  
 21 appropriations for optic scan system (fund 9007, activity  
 22 283) and electronic photo operator and license system  
 23 (fund 9007, activity 284) at the close of the fiscal year  
 24 1993-94 are hereby reappropriated for expenditure  
 25 during the fiscal year 1994-95.

26 The purpose of this bill is to transfer between items of  
 27 existing appropriation increasing the unclassified line item  
 28 and decreasing the optic scan line item and the electronic  
 29 driver's license system line item for a total decrease in the  
 30 appropriation of \$550,000.

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## CHAPTER 27

(S. B. 562—Originating in the Committee on Finance.)

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[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the governor's office—governor's cabinet on children and families—office of economic opportunity, "former" account no. 7755, "WVFIMS" account no. fund 8797, fiscal year 1995, organization 0100, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in fiscal year 1994-1995, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore"

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

That the total appropriation to "former" account no. 7755, "WVFIMS" account no. fund 8797, fiscal year 1995, organization 0100, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 EXECUTIVE

4 202—Governor's Office—  
 5 Governor's Cabinet on Children and Families—  
 6 Office of Economic Opportunity

7 (WV Code Chapter 5)

8 "Former" Account No. 7755

9 "WVFIMS" Account No.

10 Fund 8797 FY 1995 Org 0100

11	Act-	Federal
12	ivity	Funds
13 1	Unclassified—Total . . . . . 096	\$ 4,885,580

14 The purpose of this supplementary appropriation bill  
 15 is to supplement this account in the budget act for fiscal  
 16 year 1994-1995 by adding six hundred fifty-seven  
 17 thousand one hundred eighty-three dollars to the existing  
 18 appropriation for a new program to provide housing  
 19 opportunities for people with acquired immune deficiency  
 20 syndrome and for those persons having tested HIV  
 21 positive. These moneys shall be available for expenditure  
 22 upon passage of this bill.

## CHAPTER 28

(S. B. 590—By Senators Helmick, Whitlow, Bailey, Love,  
Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of education, "former" account no. 7772, "WVFIMS" account no. fund 8712, fiscal year 1995, organization 0402, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 7772, "WVFIMS" account no. fund 8712, fiscal year 1995, organization 0402, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 5. Appropriations of federal funds.**
- 3 DEPARTMENT OF EDUCATION
- 4 *214—State Department of Education*
- 5 (WV Code Chapters 18 and 18A)
- 6 "Former" Account No. 7772
- 7 "WVFIMS" Account No.
- 8 Fund 8712 FY 1995 Org 0402

		Act-	Federal
		ivity	Funds
9			
10			
11	1	Unclassified—Total . . . . .	096 \$ 6,347,640

12 The purpose of this supplementary appropriation bill is  
 13 to supplement this account in the budget act for fiscal year  
 14 1994-1995 by adding eight hundred thirty thousand six  
 15 hundred forty dollars to the existing appropriation. The  
 16 additional funds from the national science foundation for  
 17 "Project CATS", a scientific/technical grant for grades  
 18 7-10. These moneys shall be available for expenditure  
 19 upon passage of this bill.

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## CHAPTER 29

(S. B. 558—By Senators Helmick and Whitlow)

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[Passed March 8, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of commerce, labor and environmental resources, division of labor, "former" account no. 7884, "WVFIMS" account no. fund 8706, fiscal year 1995, organization 0308, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 7884, "WVFIMS" account no. fund 8706, fiscal year 1995,

organization 0308, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF COMMERCE, LABOR  
4 AND ENVIRONMENTAL RESOURCES

5 209—*Division of Labor*

6 (WV Code Chapters 21 and 47)

7 "Former" Account No. 7884

8 "WVFIMS" Account No.

9 Fund 8706 FY 1995 Org 0308

10	11	Act- ivity	Federal Funds
12	1	Unclassified—Total . . . . .	096 \$ 390,733

13 The purpose of this supplementary appropriation bill is  
14 to supplement this account in the budget act for fiscal year  
15 1994-1995 by adding seventy-two thousand eight  
16 hundred fifty dollars to the existing appropriation for the  
17 purchase of safety and communications equipment and  
18 salary increases. These moneys shall be available for  
19 expenditure upon passage of this bill.

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## CHAPTER 30

(S. B. 588—By Senators Helmick, Whitlow, Bailey, Love,  
Plymale, Sharpe and Minear)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of agriculture, "former"

account no. 7911, "WVFIMS" account no. 8736, fiscal year 1995, organization 1400, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 7911, "WVFIMS" account no. fund 8736, fiscal year 1995, organization 1400, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the budget bill, be supplemented and amended thereafter to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations of federal funds.		
3	EXECUTIVE		
4	205—Department of Agriculture		
5	(WV Code Chapter 19)		
6	"Former" Account No. 7911		
7	"WVFIMS" Account No.		
8	Fund <u>8736</u> FY <u>1995</u> Org <u>1400</u>		
9		Act-	Federal
10		ivity	Funds
11	1	Unclassified—Total . . . . .	096 \$ 2,533,569

12 The purpose of this supplementary appropriation bill  
 13 is to supplement this account in the budget act for fiscal  
 14 year 1994-1995 by adding four hundred forty thousand,  
 15 five hundred forty-four dollars to the existing appro-  
 16 priation for continuing programs in pesticide analysis,  
 17 public education in pest management and worker  
 18 protection training and gypsy moth trapping program.  
 19 These moneys shall be available for expenditure upon  
 20 passage of this bill.

# CHAPTER 31

(S. B. 586—By Senators Helmick, Whitlow, Bailey, Love,  
Plymale, Sharpe and Minear)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of transportation, division of motor vehicles, "former" account no. 7970, "WVFIMS" account no. fund 8787, fiscal year 1995, organization 0802, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 7970, "WVFIMS" account no. fund 8787, fiscal year 1995, organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 5. Appropriations of federal funds.**
- 3 DEPARTMENT OF TRANSPORTATION
- 4 234—*Division of Motor Vehicles*
- 5 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
- 6 "Former" Account No. 7970



7	"WVFIMS" Account No.		
8	Fund <u>8787</u> FY <u>1995</u> Org <u>0802</u>		
9		Act-	Federal
10		ivity	Funds
11	1	Unclassified—Total . . . . .	096 \$153,887
12	The purpose of this supplementary appropriation bill is		
13	to supplement this account in the budget act for fiscal year		
14	1994-1995 by adding one hundred twelve thousand eight		
15	hundred dollars to the existing appropriation. The		
16	additional funds are from the U.S. department of		
17	transportation for use in implementing the international		
18	fuel tax agreement, a federal mandate, and the problem		
19	driver pointer system to assure the state does not issue		
20	licenses to a person whose license is suspended or		
21	remarked in another state.		

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## CHAPTER 32

(H. B. 2657—By Delegates Kiss and Wallace)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing and causing to expire, into the general revenue fund of the state, certain unexpended amounts from "former" account no. 8014-99, "WVFIMS" account no. fund 7150, fiscal year 1995, organization 0704, insurance commission—examination fund—cash control and "former" account no. 8016-99, "WVFIMS" account no. fund 7152, fiscal year 1994, organization 0704, insurance commission—cash control, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", and transferring such amounts to the department of administration, division of general services, the line item entitled "Capitol Building Preservation" and creating a

new line item within said account entitled Capital Improvements—Capitol Complex, and transferring a portion of said funds into said newly created line item.

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

That the sum of five hundred sixty-one thousand dollars be expired from "former" account no. 8014-99, "WVFIMS" account no. fund 7150, fiscal year 1994, organization 0704, insurance commission—examination fund—cash control and the sum of one million four thousand dollars be expired from "former" account no. 8016-99, "WVFIMS" account no. fund 7152, fiscal year 1994, organization 0704, insurance commission—cash control as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented, amended, reduced and caused to expire and that the sum of one million five hundred sixty-five thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" account no. 2130, "WVFIMS" Account No. 0230, fiscal year 1995, organization 0223, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill", by adding thereto the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.		
2	<b>Section 1. Appropriations from general revenue.</b>		
3	<i>26—Division of General Services</i>		
4	(WV Code Chapter 5A)		
5	<b>"Former" Account No. 2130</b>		
6	"WVFIMS" Account No.		
7	Fund 0230 FY 1995 Org 0223		
8	6 Capitol Building Preservation (R) . . . 503	\$	500,000
9	6a Capital Improvements—		
10	Capitol Complex. . . . . 593	\$	1,065,000
11	Any unexpended balance remaining in the appropria-		

12 tion for Capitol Building Preservation (fund 0230, activity  
13 503) and Capital Improvements-Capitol Complex (fund  
14 0230, activity 593) at the close of the fiscal year 1994-95  
15 is hereby reappropriated for expenditure during the fiscal  
16 year 1995-96.

17 The purpose of this supplementary appropriation bill is  
18 to supplement, amend, reduce and cause to expire out of  
19 the aforesaid accounts the total sum of one million five  
20 hundred sixty-five thousand dollars and transfer,  
21 reappropriate and make available for immediate  
22 expenditure such funds upon passage of this bill.

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## CHAPTER 33

(H. B. 2656—By Delegates Kiss, Farris, Miller, Evans,  
Clements, Walters and Wallace)

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[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts from "former" account no. 8016-99, "WVFIMS" account no. fund 7152, fiscal year 1995, organization 0704, Insurance Commission—cash control, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", and transferring such amount to the governor's office-custodial fund, "former" account no. 1230, "WVFIMS" account no. fund 0102, fiscal year 1995, organization 0100.

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

That the sum of one hundred thousand dollars be expired from "former" account no. 8016-99, "WVFIMS" account no. fund 7152, fiscal year 1994, organization 0704, insurance commission—cash control as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hun-

dred ninety-four, known as the "Budget Bill" be supplemented, amended, reduced and caused to expire and that the sum of one hundred thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" account no. 1230, "WVFIMS" account no. 0102 fiscal year 1995 organization no. 0100, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill", by adding thereto the following sums to the designated line items:

1	TITLE II—APPROPRIATIONS.	
2	<b>Section 1. Appropriations from general revenue.</b>	
3	<i>6—Governor's Office—Custodial Fund</i>	
4	(WV Code Chapter 5)	
5	<b>"Former" Account No. 1230</b>	
6	<b>"WVFIMS" Account No.</b>	
7	<b>Fund 0102 FY 1995 Org 0100</b>	
8	1 Unclassified—Total . . . . .	096      \$ 100,000

9        Any unexpended balance remaining in the appropriation for Governor's Office-Custodial Fund, Unclassified—  
 10        Total (fund 0102, activity 096) at the close of the fiscal  
 11        year 1994-95 is hereby reappropriated for expenditure  
 12        during the fiscal year 1995-96.  
 13

14        The purpose of this supplementary appropriation bill  
 15        is to supplement, amend, reduce and cause to expire out of  
 16        the aforesaid account the total sum of one hundred thousand  
 17        dollars and transfer, reappropriate and make available  
 18        for immediate expenditure such funds upon passage  
 19        of this bill.

## CHAPTER 34

(S. B. 591—By Senators Helmick, Whitlow, Bailey, Love,  
Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of commerce, labor and environmental resources, West Virginia development office, "former" account no. 8029, "WVFIMS" account no. fund 8746, fiscal year 1995, organization 0307, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 8029, "WVFIMS" account no. 8746, fiscal year 1995, organization 0307, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 6. Appropriations of federal block grants.**
- 3 DEPARTMENT OF COMMERCE, LABOR
- 4 AND ENVIRONMENTAL RESOURCES
- 5 239—*West Virginia Development Office—*
- 6 *Community Development*

7	"Former" Account No. 8029		
8	"WVFIMS" Account No.		
9	Fund <u>8746</u> FY <u>1995</u> Org <u>0307</u>		
10		<b>Act-</b>	<b>Federal</b>
11		<b>ivity</b>	<b>Funds</b>
12	1 Unclassified—Total . . . . .	096	\$22,400,000
13	The purpose of this supplementary appropriation bill is		
14	to supplement this account in the budget act for fiscal year		
15	1994-1995 by adding two million dollars to the existing		
16	appropriation for various cities and counties for local		
17	construction projects during the months of May and June,		
18	1995. These moneys shall be available for expenditure		
19	upon passage of this bill.		

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## CHAPTER 35

**(S. B. 560—By Senators Helmick and Whitlow)**

[Passed March 8, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of commerce, labor and environmental resources, West Virginia development office, "former" account no. 8045, "WVFIMS" account no. fund 3144, fiscal year 1995, organization 0307, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8045, "WVFIMS" account no. fund 3144, fiscal year 1995, organization 0307, available for further appropriation during the fiscal year 1994-1995, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 8045, "WVFIMS" account no. fund 3144, fiscal year 1995, organization 0307, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF COMMERCE, LABOR

4 AND ENVIRONMENTAL RESOURCES

5 *109—West Virginia Development Office*

6 (WV Code Chapter 5B)

7 "Former" Account No. 8045

8 "WVFIMS" Account No.

9 Fund 3144 FY 1995 Org 0307

10		Act-	Other
11		ivity	Funds
12	1 Energy Assistance—Total . . . .	099	\$ 1,000,000

13 The purpose of this supplementary appropriation bill  
 14 is to supplement this account in the budget act for fiscal  
 15 year 1994-1995 by inserting an item of appropriation for  
 16 a continuing program. These moneys shall be available  
 17 for expenditure upon passage of this bill.

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## CHAPTER 36

(S. B. 592—By Senators Helmick, Whitlow, Bailey, Love,  
 Plymale, Sharpe and Minear)

[Passed March 11, 1955; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred

ninety-four, to the department of tax and revenue, racing commission—general administration, "former" account no. 8083, "WVFIMS" account no. fund 7305, fiscal year 1995, organization 0707, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8083, "WVFIMS" account no. fund 7305, fiscal year 1995, organization 0707, available for further appropriation during the fiscal year 1994-1995, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 8083, "WVFIMS" account no. fund 7305, fiscal year 1995, organization 0707, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	<b>Sec. 3. Appropriations from other funds.</b>		
3	DEPARTMENT OF TAX AND REVENUE		
4	<i>170—Racing Commission—</i>		
5	<i>General Administration</i>		
6	(WV Code Chapter 19)		
7	"Former" Account No. 8083		
8	"WVFIMS" Account No.		
9	Fund <u>7305</u> FY <u>1995</u> Org <u>0707</u>		
10		<b>Act-</b>	<b>Other</b>
11		<b>ivity</b>	<b>Funds</b>
12	1	Personal Services . . . . . 001	\$ 1,037,000
13	2	Annual Increment . . . . . 004	9,680
14	3	Employee Benefits . . . . . 010	279,298
15	4	Unclassified . . . . . 099	<u>90,082</u>
16	5	Total . . . . .	\$ 1,416,060



17 The purpose of this supplementary appropriation bill is  
18 to supplement this account in the budget act for fiscal year  
19 1994-1995 by adding thirty thousand dollars to the  
20 personal services line item, six thousand dollars to the  
21 employee benefits line item and twenty-two thousand four  
22 hundred eighty-four dollars to the unclassified line item,  
23 for a total increase of fifty-eight thousand four hundred  
24 eighty-four dollars. These moneys shall be available for  
25 expenditure upon passage of this bill.

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## CHAPTER 37

(S. B. 559— By Senators Helmick and Whitlow)

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[Passed March 8, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of transportation, division of motor vehicles—driver's license reinstatement fund, "former" account no. 8422, "WVFIMS" account no. fund 8213, fiscal year 1995, organization 0802, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8422, "WVFIMS" account no. fund 8213, fiscal year 1995, organization 0802, available for further appropriation during the fiscal year 1994-1995, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriations to "former" account no. 8422, "WVFIMS" account no. fund 8213, fiscal year 1995,

organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 DEPARTMENT OF TRANSPORTATION

4 *180—Division of Motor Vehicles—*

5 *Driver's License Reinstatement Fund*

6 (WV Code Chapter 17B)

7 "Former" Account No. 8422

8 "WVFIMS" Account No.

9 Fund 8213 FY 1995 Org 0802

			Act-	Other
			ivity	Funds
12	1	Personal Services . . . . .	001	\$ 190,068
13	2	Annual Increment . . . . .	004	1,944
14	3	Employee Benefits . . . . .	010	68,775
15	4	Unclassified . . . . .	099	<u>220,520</u>
16	5	Total . . . . .		\$ 481,307

17 The purpose of this supplementary appropriation bill  
 18 is to supplement this account in the budget act for fiscal  
 19 year 1994-1995 by adding ten thousand dollars to the  
 20 personal services line item and one hundred thousand  
 21 dollars to the unclassified line item, for a total increase of  
 22 one hundred ten thousand dollars. These moneys shall be  
 23 available for expenditure upon passage of this bill.

## CHAPTER 38

(S. B. 585—By Senators Helmick, Whitlow, Bailey, Love,  
Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of transportation, division of motor vehicles—insurance certificate fees, "former" account no. 8424, "WVFIMS" account no. fund 8215, fiscal year 1995, organization 0802, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8424, "WVFIMS" account no. fund 8215, fiscal year 1995, organization 0802, available for further appropriation during the fiscal year 1994-1995, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 8424, "WVFIMS" account no. fund 8215, fiscal year 1995, organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 3. Appropriations from other funds.**
- 3 DEPARTMENT OF TRANSPORTATION
- 4 *182—Division of Motor Vehicles—*
- 5 *Insurance Certificate Fees*

6	(WV Code Chapter 20)		
7	"Former" Account No. 8424		
8	"WVFIMS" Account No.		
9	Fund <u>8215</u> FY <u>1995</u> Org <u>0802</u>		
10		<b>Act-</b>	<b>Other</b>
11		<b>ivity</b>	<b>Funds</b>
12	1	Personal Services . . . . . 001	\$ 557,152
13	2	Annual Increment . . . . . 004	8,028
14	3	Employee Benefits . . . . . 010	239,485
15	4	Unclassified . . . . . 099	<u>146,872</u>
16	5	Total . . . . .	\$ 951,537

17 The purpose of this supplementary appropriation bill  
 18 is to supplement this account in the budget act for fiscal  
 19 year 1994-1995 by adding fifteen thousand dollars to the  
 20 personal services line item and to the total. These moneys  
 21 shall be available for expenditure upon passage of this  
 22 bill.

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## CHAPTER 39

(S. B. 584—By Senators Helmick, Whitlow, Bailey, Love,  
 Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of transportation, division of motor vehicles—returned check fees, "former" account no. 8426, "WVFIMS" account no. fund 8217, fiscal year 1995, organization 0802, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now

remains unappropriated a balance in "former" account no. 8426, "WVFIMS" account no. fund 8217, fiscal year 1995, organization 0802, available for further appropriation during the fiscal year 1994-1995, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 8426, "WVFIMS" account no. fund 8217, fiscal year 1995, organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF TRANSPORTATION

4 184—Division of Motor Vehicles—

5 Returned Check Fees

6 (WV Code Chapter 17)

7 "Former" Account No. 8426

8 Fund 8217 FY 1995 Org 0802

		Act-	Other
		ivity	Funds
11	1 Personal Services . . . . .	001	\$ 16,500
12	2 Annual Increment . . . . .	004	216
13	3 Employee Benefits . . . . .	010	5,394
14	4 Unclassified . . . . .	099	<u>6,500</u>
15	5 Total . . . . .		\$ 28,610

16 The purpose of this supplementary appropriation bill  
 17 is to supplement this account in the budget act for fiscal  
 18 year 1994-1995 by adding one thousand dollars to the  
 19 personal services line item and to the total. These moneys  
 20 shall be available for expenditure upon passage of this  
 21 bill.

## CHAPTER 40

(S. B. 596-By Senators Helmick, Whitlow, Bailey, Love,  
Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of commerce, labor and environmental resources, division of environmental protection—mines and minerals operations fund, "former" account no. 8540, "WVFIMS" account no. fund 3324, fiscal year 1995, organization 0313, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8540, "WVFIMS" account no. fund 3324, fiscal year 1995, organization 0313, available for further appropriation during the fiscal year 1994-1995, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation to "former" account no. 8540, "WVFIMS" account no. fund 3324, fiscal year 1995, organization 0313, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Sec. 3. Appropriations from other funds.
- 3 DEPARTMENT OF COMMERCE, LABOR AND
- 4 ENVIRONMENTAL RESOURCES
- 5 134—Division of Environmental Protection—

6	<i>Mines and Minerals Operations Fund</i>		
7	(WV Code Chapter 22)		
8	"Former" Account No. 8540		
9	"WVFIMS" Account No.		
10	Fund <u>3324</u> FY <u>1995</u> Org <u>0313</u>		
11		<b>Act-</b>	<b>Other</b>
12		<b>ivity</b>	<b>Funds</b>
13	1	Personal Services . . . . . 001	\$ 1,682,290
14	2	Annual Increment . . . . . 004	12,622
15	3	Employee Benefits . . . . . 010	467,720
16	4	Unclassified . . . . . 099	<u>1,625,382</u>
17	5	Total . . . . .	\$ 3,788,014

18 The purpose of this supplementary appropriation bill  
 19 is to supplement this account in the budget act for fiscal  
 20 year 1994-1995 by adding seven hundred thousand  
 21 dollars to the unclassified line item. These moneys shall  
 22 be available for expenditure upon passage of this bill.

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## CHAPTER 41

(S. B. 589—By Senators Helmick, Whitlow, Bailey, Love,  
 Plymale, Sharpe and Minear)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of available federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the supreme court—general judicial, "WVFIMS" account no. fund 8805, fiscal year 1995, organization 2400, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".





AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of available federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of health and human resources, division of human services, "WVFIMS" account no. fund 8806, fiscal year 1995, organization 0511, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

Whereas, The governor has established the availability of federal funds for a new program now available for expenditure in fiscal year 1994-1995, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended by adding to title two, section five thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal block grants.**

3 *249a—Division of Human Services—*

4 *Empowerment Zone and Enterprise Community Program*

5 "WVFIMS" Account No.

6 Fund 8806 FY 1995 Org 0511

	Act- ivity	Federal Funds
9 1	Unclassified—Total . . . . . 096	\$8,842,104

10 The purpose of this supplementary appropriation bill  
 11 is to supplement the budget act for the fiscal year  
 12 1994-1995 by providing for a new item of appropriation  
 13 to be established therein to appropriate federal moneys  
 14 available in the fiscal year ending the thirtieth day of June,  
 15 one thousand nine hundred ninety-five. Awards have been  
 16 granted to two areas: The rural enterprise community  
 17 grants and the urban enterprise community grants. The

18 grants are to be used for projects and long term strategies  
 19 that seek to enhance the economic, educational and  
 20 employment opportunities for their residents. These  
 21 moneys shall be available for expenditure upon passage of  
 22 this bill.

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## CHAPTER 43

(S. B. 594—By Senators Helmick, Whitlow, Bailey, Love,  
 Plymale, Sharpe and Minear)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending and transferring between items of the existing appropriation to the bureau of employment programs—workers' compensation fund, "former" account no. 9000, "WVFIMS" account no. fund 3440, fiscal year 1995, organization 0322, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

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

That the items of the total appropriation of "former" account no. 9000, "WVFIMS" account no. fund 3440, fiscal year 1995, organization 0322, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented, amended and transferred thereafter to read as follows:

1                   **TITLE II—APPROPRIATIONS.**  
 2                   **Sec. 3. Appropriations from other funds.**  
 3                   DEPARTMENT OF COMMERCE, LABOR  
 4                   AND ENVIRONMENTAL RESOURCES  
 5                   136—*Bureau of Employment Programs—*  
 6                   *Workers' Compensation Fund*  
 7                   (WV Code Chapter 23)

8		"Former" Account No. 9000		
9		"WVFIMS" Account No.		
10		Fund <u>3440</u> FY <u>1995</u> Org <u>0322</u>		
11			<b>Act-</b>	<b>Other</b>
12			<b>ivity</b>	<b>Funds</b>
13	1	Personal Services . . . . .	001	\$ 12,491,875
14	2	Annual Increment . . . . .	004	181,422
15	3	Employee Benefits . . . . .	010	4,497,463
16	4	Unclassified . . . . .	099	15,111,843
17	5	Program Performance		
18	6	Initiative . . . . .	540	13,719,526
19	7	Capital Outlay . . . . .	511	<u>500,000</u>
20	8	Total . . . . .		\$ 46,502,129

21 The purpose of this supplementary appropriation bill  
 22 is to supplement, amend and transfer certain moneys  
 23 between items of the existing appropriation for this  
 24 account in the budget act for fiscal year 1994-1995. The  
 25 amounts as now itemized shall be made available for  
 26 expenditure upon passage of this bill.

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## CHAPTER 44

(H. B. 2654—By Delegates Browning, Mezzatesta,  
 Petersen, Leach, Tomblin, Evans and Wallace)

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[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts from "former" account no. 9270, "WVFIMS" account no. fund 7352, fiscal year 1995, organization 0708, alcohol beverage control administration, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", and transferring such amount to the West Virginia schools for the deaf and blind, "former" account no. 3330, "WVFIMS" account no. fund 0320, fiscal year 1995, organization 0403.

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

That the sum of one hundred thousand dollars be expired from "former" account no. 9270, "WVFIMS" account no. fund 7532, fiscal year 1994, organization 0708, alcohol beverage control commission, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the Budget Bill, be supplemented, amended, reduced and caused to expire and that the said sum of one hundred thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" account no. 3330, "WVFIMS" account no. 0320 fiscal year 1995 organization no. 0403, acts of the Legislature, one thousand nine hundred ninety-four, known as the Budget Bill, by adding thereto the following sums to the designated line items:

1                                   **TITLE II—APPROPRIATIONS.**  
 2           **Section 1. Appropriations from general revenue.**  
 3            *55—West Virginia Schools for the Deaf and Blind*  
 4                                   (WV Code Chapter 18 and 18A)  
 5                                   **"Former" Account No. 3330**  
 6                                   **"WVFIMS" Account No.**  
 7                                   **Fund 0320 FY 1995 Org 0403**  
 8    4   Unclassified—Total . . . . . 099    \$ 100,000

9           Any unexpended balance remaining in the appropriation  
 10    tion for West Virginia School for the Deaf and Blind,  
 11    unclassified (fund 0320, activity 099) at the close of the  
 12    fiscal year 1994-95 is hereby reappropriated for expendi-  
 13    ture during the fiscal year 1995-96.

14           The purpose of this supplementary appropriation bill  
 15    is to supplement, amend, reduce and cause to expire out of  
 16    the aforesaid account the total sum of one hundred thou-  
 17    sand dollars and transfer, reappropriate and make avail-  
 18    able for immediate expenditure such funds upon passage  
 19    of this bill.

## CHAPTER 45

(H. B. 2795—By Delegates Kiss, Kelley, Seacrist, Burke, Leach,  
Tomblin and Facemyer)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts from "former" account no. 9270, "WVFIMS" account no. fund 7352, fiscal year 1995, organization 0708, alcohol beverage control administration, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, and making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the department of military affairs and public safety, office of the secretary, "former" account no. 5354, "WVFIMS" account no. fund 0430, fiscal year 1995, organization 0601, and creating therein a new line item designated "federal court judgment-rum creek."

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the governor's executive budget document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore

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

That the sum of four hundred thousand dollars be expired from "former" account no. 9270, "WVFIMS" account no. fund 7532, fiscal year 1994, organization 0708, alcohol beverage control commission, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the Budget Bill be supplemented, amended, reduced and caused to expire and that the sum of four hundred thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" account no. 5354, "WVFIMS" account no. fund 0430, fiscal year 1995, organization 0601, acts of the Legislature, one thousand nine hundred ninety-four, known as the Budget Bill, department of military affairs and public safety, office of the secretary, by creating therein a new line item, entitled "federal court judgment-rum creek", and that said account be further supplemented by adding thereto the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 79—*Department of Military Affairs and Public Safety—*

4 *Office of the Secretary*

5 (WV Code Chapter 5F)

6 "Former" Account No. 5354

7 "WVFIMS" Account No.

8 Fund 0430 FY 1995 Org 0601

9 1a Federal Court Judgment—

10 Rum Creek . . . . . 614 \$ 800,000

11 Any unexpended balance remaining in the appro-  
12 priation for the Department of Military Affairs and Public  
13 Safety-Office of the Secretary, Federal Court Judgment  
14 —Rum Creek (fund 0430, activity 614) at the close of the  
15 fiscal year 1994-95 is hereby reappropriated for expendi-  
16 ture during the fiscal year 1995-96.

17 The purpose of this supplementary appropriation bill  
18 is to supplement, amend, reduce and cause to expire out of

19 the aforesaid accounts the total sum of four hundred  
20 thousand dollars and transfer, reappropriate and make  
21 available for immediate expenditure such funds upon  
22 passage of this bill, and to further supplement said account  
23 (fund 0430, activity 614) by making a supplementary  
24 appropriation out of the public treasury in the amount of  
25 four hundred thousand dollars.

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## CHAPTER 46

(H. B. 2059 —By Delegates Douglas, Beane and Trump)

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[Passed February 17, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article three, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to consent judgments in cases involving an agency of government; stating the policy of the state as regards consent to a proposed judgment; affording an opportunity for persons to comment on proposed consent judgments; defining the terms "agency of government", "action" and "judgment"; service of copies of proposed judgment orders on the Legislature; filing of notice for publication in the state register; filing estimate of costs; receipt of comments by the attorney general; action to be taken by the attorney general upon receipt of comments; procedures to implement policy; providing for exceptions to policy; and requiring annual reports to the Legislature.

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

That article three, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-a, to read as follows:

**§5-3-2a. Consent judgments in actions against an agency of government; notice of proposed consent judgment.**

1 (a) It is hereby established as the policy of this state to  
2 consent to a proposed judgment in an action against an  
3 agency of government or its officers or employees only  
4 after or on condition that an opportunity is afforded  
5 persons (natural or corporate) who are not named as  
6 parties to the action to comment on the proposed  
7 judgment prior to its entry by the court.

8 (1) For the purposes of this section, "agency of  
9 government" means:

10 (A) A department, division, bureau, board, commission  
11 or other agency or instrumentality within the executive  
12 branch of state government which may sue or be sued; or

13 (B) A political subdivision of this state or any board,  
14 department, commission, district or special district, council  
15 or other agency or instrumentality thereof whose liability  
16 or potential liability arises from a claim which is covered  
17 by property or liability insurance provided by the state  
18 board of risk and insurance management of West Virginia  
19 pursuant to the provisions of article twelve, chapter  
20 twenty-nine of this code.

21 (2) For the purposes of this section, "action" means a  
22 civil proceeding initiated in a court of general jurisdiction  
23 and shall not mean a proceeding initiated in or before, or  
24 an appeal taken to, an administrative agency, board or  
25 commission and shall not mean an appeal taken to a court  
26 from such an administrative proceeding or appeal.

27 (3) For the purposes of this section, "judgment" means  
28 a judgment, order or decree of a court the entry of which  
29 would require or otherwise mandate:

30 (A) An expansion of, increase in, or addition to the  
31 services, duties or responsibilities of an agency of  
32 government;

33 (B) An increase in the expenditures of an agency of  
34 government above the level of expenditures approved or  
35 authorized before the entry of the proposed judgment;

36 (C) The employment or other hiring of, or the con-



37 tracting with, personnel or other entities by an agency of  
38 government in addition to the personnel or other entities  
39 employed or otherwise hired by, or contracted with or by  
40 the agency of government; or

41 (D) Payment of a claim based upon tort or contract by  
42 an agency of government as defined in paragraph (B),  
43 subdivision (1) of this subsection.

44 (b) To effectuate this policy, each proposed judgment  
45 which is within the scope of paragraph (a) of this section  
46 shall be lodged with the court as early as feasible but at  
47 least sixty days before the judgment is entered by the  
48 court, and true copies of the proposed order shall be  
49 served upon the attorney general of the state, the president  
50 of the West Virginia Senate and the speaker of the West  
51 Virginia House of Delegates. When an agency of gov-  
52 ernment proposes to consent to a judgment, it shall file  
53 with the secretary of state, for publication in the state  
54 register, a notice of the proposed order and include  
55 therein a request for comment on the proposed order.  
56 The notice shall fix a date, time and place for the receipt  
57 of written statements and documents bearing on the  
58 appropriateness, propriety or adequacy of the proposed  
59 consent order. At the time of filing the notice of its action,  
60 the agency of government shall also file with the secretary  
61 of state a true copy of the proposed order. If alternative  
62 draft proposals are being considered, the full text of the  
63 additional draft proposals shall also be filed with the  
64 secretary of state. The agency of government proposing to  
65 consent to the entry of judgment shall also file with the  
66 secretary of state an estimate of the cost of implementing  
67 the proposed judgment as the cost relates to this state and  
68 to persons affected by the proposed judgment.

69 (c) Prior to entry of the judgment, or some earlier  
70 specified date, the attorney general will receive and  
71 consider and file with the court any written comments,  
72 views or allegations relating to the proposed judgment.

73 (d) The attorney general shall reserve the right (1) to  
74 withdraw or withhold his or her consent to the proposed  
75 judgment if the comments, views and allegations received

76 concerning the proposed judgment disclose facts or  
77 considerations which indicate that the proposed judgment  
78 is inappropriate, improper or inadequate or (2) to support  
79 or oppose an attempt by any person to intervene in the  
80 action. If action which could be taken by the attorney  
81 general pursuant to the provisions of this subsection may  
82 be materially adverse to the interests of an agency of  
83 government or an officer or employee thereof whom the  
84 attorney general has previously represented in the same or  
85 a substantially related matter, the attorney general shall not  
86 proceed to act without the written consent of the agency of  
87 government or the affected officer or employee. In the  
88 absence of such consent, the attorney general shall provide  
89 for an independent special assistant attorney general to be  
90 retained to consider the comments, views and allegations  
91 received concerning the proposed judgment, and to  
92 pursue such action as may be deemed appropriate, in  
93 accordance with the provisions of this subsection.

94 (e) The attorney general may establish procedures for  
95 implementing the policy established by this section.  
96 Where it is clear that the public interest in the policy  
97 hereby established is not compromised, the attorney  
98 general may permit an exception to this policy in a  
99 specific case where extraordinary circumstances require a  
100 period shorter than sixty days or a procedure other than  
101 stated herein.

102 (f) Any agency of government which agrees to a  
103 consent judgment after the thirtieth day of June, one  
104 thousand nine hundred ninety-five, shall thereafter file an  
105 annual report, on or before the first day of November,  
106 setting forth the status of the action, the fiscal impact of  
107 the consent judgment upon the resources of the state, and  
108 the manner in which any cost to the state is met or will be  
109 met by appropriations authorized in the state budget.  
110 Such report shall be filed with the president of the West  
111 Virginia Senate and the speaker of the West Virginia  
112 House of Delegates.

## CHAPTER 47

(H. B. 2096—By Delegates Farris and Beane)

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[Passed February 23, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nineteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state banking institution reports; eliminating the requirement of publication; who bears the cost of report.

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

That section nineteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

#### §31A-4-19. Reports.

1       Every state banking institution shall make at least four  
2 reports each year to the commissioner of banking upon  
3 his or her call therefor. The reports shall be called for as  
4 nearly as conveniently may be on the dates on which the  
5 comptroller of the currency shall call for reports by  
6 national banking associations, and be in the form and  
7 contain the details as shall be prescribed by the commis-  
8 sioner of banking. The reports shall be verified by the  
9 oath of the president or active vice president or cashier  
10 and attested by the signatures of at least three directors of  
11 the banking institution. Each report shall show in detail,  
12 under appropriate heads, the resources and liabilities of  
13 the banking institution at the close of business on the date  
14 specified by the banking commissioner, and shall be  
15 transmitted to the commissioner within ten days from the  
16 receipt of the request for the report.

17       In lieu of the report, the commissioner of banking

18 shall have discretion to accept from a banking institution  
19 which is a member of the federal reserve system a report,  
20 and the publication thereof required of the banking  
21 institution by the federal reserve board, or by its agency,  
22 provided that the report shall show in detail, under  
23 appropriate heads, the resources and liabilities of the  
24 banking institution at the close of business on the day  
25 specified by the federal reserve board, or by its agency,  
26 and shall contain such further details as may be deemed  
27 necessary or desirable by the commissioner of banking.

28 Any report shall be at the expense of the banking  
29 institution.

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## CHAPTER 48

(Com. Sub. for S. B. 443—By Senators Manchin, By Request, and Helmick)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the limits to which banks can loan or extend credit to any one person or common enterprise.

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

That section twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.**

1           (a) (1) The total loans and extensions of credit made  
2 by a state-chartered banking institution to any one person  
3 or common enterprise and not fully secured, as deter-  
4 mined in a manner consistent with subdivision (2) of this  
5 subsection, shall not exceed fifteen percent of the unim-  
6 paired capital and unimpaired surplus of that state-char-  
7 tered banking institution initially determined for the peri-  
8 od such loan or extension of credit is made.

9           (2) Where the total loans and extensions of credit by a  
10 state-chartered banking institution to any one person or  
11 common enterprise are fully secured by readily market-  
12 able collateral having a market value, as determined by  
13 reliable and continuously available price quotations, at  
14 least equal to the outstanding amount of such loans and  
15 extensions, then the bank may provide such loans or ex-  
16 tensions of up to ten percent of the unimpaired capital and  
17 unimpaired surplus of that state-chartered banking institu-  
18 tion initially determined for the period such loan or exten-  
19 sion is made. This limitation shall be separate from and in  
20 addition to the limitation contained in subdivision (1) of  
21 this subsection.

22           (3) For the purposes of this subsection:

23           (A) The term "loans and extensions of credit" shall  
24 include all direct or indirect advances of funds to a person  
25 made on the basis of any obligation of that person to  
26 repay the funds or repayable from specific property  
27 pledged by or on behalf of the person and to the extent  
28 specified by the commissioner of banking, such terms  
29 shall also include any liability of a state-chartered banking  
30 institution to advance funds to or on behalf of a person  
31 pursuant to a contractual commitment;

32           (B) The term "person" shall include an individual,  
33 partnership, sole proprietorship, society, association, firm,  
34 institution, company, public or private corporation,  
35 not-for-profit corporation, state, governmental agency,  
36 bureau, department, division or instrumentality, political  
37 subdivision, county commission, municipality, trust, syndi-

38 cate, estate or any other legal entity whatsoever, formed,  
39 created or existing under the laws of this state or any other  
40 jurisdiction;

41 (C) The term "unimpaired capital and unimpaired  
42 surplus" means the amount of total equity capital out-  
43 standing as indicated in the bank's most recent quarterly  
44 report of condition and income as filed with the commis-  
45 sioner of banking pursuant to section nineteen of this  
46 article, plus the amount of the allowance for loan losses,  
47 minus the amount of goodwill or other nonmarketable  
48 intangible assets included in such quarterly report pursu-  
49 ant to generally accepted accounting principles. Unreal-  
50 ized gains and losses on the bank's securities and loan  
51 portfolios shall be included in the calculation of total  
52 equity capital to the extent required by generally accepted  
53 accounting principles and applicable federal or state law,  
54 rule or regulation; and

55 (D) The term "common enterprise" includes, but is  
56 not limited to, persons and entities who are so related by  
57 business or otherwise that the expected source of repay-  
58 ment on the loan or extension of credit is substantially the  
59 same for each person or entity.

60 (4) The limitations contained in this subsection shall  
61 be subject to the following exceptions:

62 (A) Loans or extensions of credit arising from the  
63 discount of commercial or business paper evidencing an  
64 obligation to the person negotiating it with recourse shall  
65 not be subject to any limitation based on capital and sur-  
66 plus;

67 (B) The purchase of bankers' acceptances of the kind  
68 described in section thirteen of the Federal Reserve Act  
69 and issued by other banks shall not be subject to any limi-  
70 tation based on capital and surplus;

71 (C) Loans and extensions of credit having a term of  
72 ten months or less and secured by bills of lading, ware-  
73 house receipts, or similar documents transferring or secur-

74 ing title to readily marketable staples shall be subject to a  
75 limitation of twenty percent of unimpaired capital and  
76 unimpaired surplus in addition to the general limitations  
77 set forth in subdivision (1) of this subsection, provided the  
78 market value of the staples securing each additional loan  
79 or extension of credit at all times equals or exceeds one  
80 hundred fifteen percent of the outstanding amount of  
81 such loan or extension of credit. The staples shall be fully  
82 covered by insurance whenever it is customary to insure  
83 such staples. If collateral values of the staples fall below  
84 the levels required herein, to the extent that the loan is no  
85 longer in conformance with its collateral requirements and  
86 exceeds the general fifteen percent limitation, the loan  
87 must be brought into conformance within five business  
88 days, except where judicial proceedings, regulatory actions  
89 or other extraordinary occurrences prevent the bank from  
90 taking action;

91 (D) Loans or extensions of credit secured by bonds,  
92 notes, certificates of indebtedness or treasury bills of the  
93 United States or by other such obligations fully guaran-  
94 teed as to principal and interest by the United States or by  
95 bonds, notes, certificates of indebtedness which are general  
96 obligations of the state of West Virginia or by other such  
97 obligations fully guaranteed as to principal and interest by  
98 the state of West Virginia shall not be subject to any limi-  
99 tation based on capital and surplus;

100 (E) Loans or extensions of credit to or secured by  
101 unconditional takeout commitments or guarantees of any  
102 department, agency, bureau, board, commission or estab-  
103 lishment of the United States or of the state of West Vir-  
104 ginia or any corporation wholly owned directly or indi-  
105 rectly by the United States shall not be subject to any  
106 limitation based on capital and surplus;

107 (F) Loans or extensions of credit secured by a segre-  
108 gated deposit account in the lending bank shall not be  
109 subject to any limitation based on capital and surplus;

110 (G) Loans or extensions of credit to any banking

111 institution or to any receiver, conservator or other agent in  
112 charge of the business and property of such banking insti-  
113 tution or other federally insured depository institution,  
114 when such loans or extensions of credit are approved by  
115 the commissioner of banking, shall not be subject to any  
116 limitation based on capital and surplus;

117 (H) (i) Loans and extensions of credit arising from  
118 the discount of negotiable or nonnegotiable installment  
119 consumer paper which carries a full recourse endorsement  
120 or unconditional guarantee by the person or common  
121 enterprise transferring the paper shall be subject under this  
122 section to a maximum limitation equal to twenty-five per-  
123 cent of such unimpaired capital and unimpaired surplus,  
124 notwithstanding the collateral requirements set forth in  
125 subdivision (2) of this subsection.

126 (ii) If the bank's files or the knowledge of its officers  
127 of the financial condition of each maker of such consum-  
128 er paper is reasonably adequate, and an officer of the  
129 bank designated for that purpose by the board of directors  
130 of the bank certifies in writing that the bank is relying  
131 primarily upon the responsibility of each maker for pay-  
132 ment of such loans or extensions of credit and not upon  
133 any full or partial recourse endorsement or guarantee by  
134 the transferor, the limitations of this section as to the loans  
135 or extensions of credit of each such maker shall be the  
136 sole applicable loan limitations;

137 (I) (i) Loans and extensions of credit secured by ship-  
138 ping documents or instruments transferring or securing  
139 title covering livestock or giving a lien on livestock when  
140 the market value of the livestock securing the obligation is  
141 not at any time less than one hundred fifteen percent of  
142 the face amount of the note covered, shall be subject un-  
143 der this section, to a maximum limitation equal to  
144 twenty-five percent of such unimpaired capital and unim-  
145 paired surplus, notwithstanding the collateral requirements  
146 set forth in subdivision (2) of this subsection.

147 (ii) Loans and extensions of credit which arise from



148 the discount by dealers in livestock of paper given in pay-  
149 ment for livestock, which paper carries a full recourse  
150 endorsement or unconditional guarantee of the seller and  
151 which are secured by the livestock being sold, shall be  
152 subject under this section, to a limitation of twenty-five  
153 percent of such unimpaired capital and unimpaired sur-  
154 plus, notwithstanding the collateral requirements set forth  
155 in subdivision (2) of this subsection.

156 (iii) If collateral values of the livestock documents,  
157 instruments or discount paper fall below the levels re-  
158 quired herein, to the extent that the loan is no longer in  
159 conformance with its collateral requirements and exceeds  
160 the general fifteen percent limitation, the loan must be  
161 brought into conformance within thirty business days,  
162 except where judicial proceedings, regulatory actions or  
163 other extraordinary occurrences prevent the bank from  
164 taking action;

165 (J) Loans or extensions of credit to the student loan  
166 marketing association shall not be subject to any limitation  
167 based on capital and surplus; and

168 (K) Loans or extensions of credit to a corporation  
169 owning the property in which that state-chartered banking  
170 institution is located, when that state-chartered banking  
171 institution has an unimpaired capital and surplus of not  
172 less than one million dollars or when approved in writing  
173 by the commissioner of banking, shall not be subject to  
174 any limitation based on capital and surplus.

175 (5) (A) The commissioner of banking may prescribe  
176 rules to administer and carry out the purposes of this sub-  
177 section including rules to define or further define terms  
178 used in this subsection and to establish limits or require-  
179 ments other than those specified in this subsection for  
180 particular classes or categories of loans or extensions of  
181 credit;

182 (B) The commissioner of banking may also prescribe  
183 rules to deal with loans or extensions of credit, which were

184 not in violation of this section prior to the effective date of  
185 this article, but which will be in violation of this section  
186 upon the effective date of this article; and

187 (C) The commissioner of banking also shall have  
188 authority to determine when a loan putatively made to a  
189 person shall for purposes of this subsection be attributed  
190 to another person.

191 (b) (1) Except as hereinafter provided or otherwise  
192 permitted by law, nothing herein contained shall authorize  
193 the purchase by a state-chartered banking institution for  
194 its own account of any shares of stock of any corporation:  
195 *Provided*, That a state-chartered banking institution may  
196 purchase and sell securities and stock without recourse,  
197 solely upon the order and for the account of customers.

198 (2) In no event shall the total amount of investment  
199 securities of any one obligor or maker held by a  
200 state-chartered banking institution for its own account,  
201 exceed fifteen percent of the unimpaired capital and un-  
202 impaired surplus of that state-chartered banking institu-  
203 tion.

204 (3) For purposes of this subsection:

205 (A) The term "investment securities" shall include  
206 marketable obligations, evidencing indebtedness of any  
207 person in the form of stocks, bonds, notes and/or deben-  
208 tures; "investment securities" may be further defined by  
209 regulation of the commissioner of banking;

210 (B) The term "person" shall include any individual,  
211 partnership, sole proprietorship, society, association, firm,  
212 institution, company, public or private corporation,  
213 not-for-profit corporation, state, governmental agency,  
214 bureau, department, division or instrumentality, political  
215 subdivision, county commission, municipality, trust, syndi-  
216 cate, estate or any other legal entity whatsoever, formed,  
217 created or existing under the laws of this state or any other  
218 jurisdiction; and

219 (C) The term "unimpaired capital and unimpaired  
220 surplus" shall have the same meaning as set forth in sub-  
221 section (a) of this section.

222 (4) The limitations contained in this subsection shall  
223 be subject to the following exceptions:

224 (A) Obligations of the United States or its agencies;

225 (B) General obligations of any state or of any politi-  
226 cal subdivision thereof;

227 (C) Obligations issued under authority of the federal  
228 Farm Loan Act, as amended, or issued by the thirteen  
229 banks for cooperatives or any of them or the federal home  
230 loan banks;

231 (D) Obligations which are insured by the secretary of  
232 housing and urban development under Title XI of the  
233 National Housing Act (12 USC § 1749aaa et seq.);

234 (E) Obligations which are insured by the secretary of  
235 housing and urban development hereafter in this sentence  
236 referred to as the "secretary" pursuant to Section 207 of  
237 the National Housing Act (12 USC § 1713), if the deben-  
238 tures to be issued in payment of such insured obligations  
239 are guaranteed as to principal and interest by the United  
240 States;

241 (F) Obligations, participations or other instruments of  
242 or issued by the federal national mortgage association or  
243 the government national mortgage association, or mort-  
244 gages, obligations or other securities which are or ever  
245 have been sold by the federal home loan mortgage corpo-  
246 ration pursuant to Section 305 or 306 of the federal Home  
247 Loan Mortgage Corporation Act (12 USC § 1454 or §  
248 1455);

249 (G) Obligations of the federal financing bank;

250 (H) Obligations or other instruments or securities of  
251 the student loan marketing association;

252 (I) Obligations of the environmental financing au-  
253 thority;

254 (J) Such obligations of any local public agency (as  
255 defined in Section 110(h) of the Housing Act of 1949 (42  
256 USC § 1460 (h)) as are secured by an agreement between  
257 the local public agency and the secretary of housing and  
258 urban development in which the local public agency  
259 agrees to borrow from said secretary and said secretary  
260 agrees to lend to said local public agency, moneys in an  
261 aggregate amount which (together with any other moneys  
262 irrevocably committed to the payment of interest on such  
263 obligations) will suffice to pay, when due, the interest on  
264 and all installments (including the final installment) of the  
265 principal of such obligations, which moneys under the  
266 terms of said agreement are required to be used for such  
267 payments;

268 (K) Obligations of a public housing agency as that  
269 term is defined in the United States Housing Act of 1937,  
270 as amended, (42 USC § 1437a) as are secured:

271 (i) By an agreement between the public housing agen-  
272 cy and the secretary in which the public housing agency  
273 agrees to borrow from the secretary, and the secretary  
274 agrees to lend to the public housing agency, prior to the  
275 maturity of such obligations, moneys in an amount which,  
276 together with any other moneys irrevocably committed to  
277 the payment of interest on such obligations, will suffice to  
278 pay the principal of such obligations with interest to matu-  
279 rity thereon, which moneys under the terms of said agree-  
280 ment are required to be used for the purpose of paying  
281 the principal of and the interest on such obligations at  
282 their maturity;

283 (ii) By a pledge of annual contributions under an  
284 annual contributions contract between such public hous-  
285 ing agency and the secretary if such contract shall contain  
286 the covenant by the secretary which is authorized by Sec-  
287 tion 11 (42 USC § 1437i(a)(1)(B)) of the United States  
288 Housing Act of 1937, as amended, and if the maximum

289 sum and the maximum period specified in such contract  
290 pursuant to said section, shall not be less than the annual  
291 amount and the period for payment which are requisite to  
292 provide for the payment when due of all installments of  
293 principal and interest on such obligations; or

294 (iii) By a pledge of both annual contributions under  
295 an annual contributions contract containing the covenant  
296 by the secretary which is authorized by Section 11 of the  
297 United States Housing Act of 1937 (42 USC § 1437i(a)  
298 (1)(B)) and a loan under an agreement between the local  
299 public housing agency and the secretary in which the  
300 public housing agency agrees to borrow from the secre-  
301 tary, and the secretary agrees to lend to the public housing  
302 agency, prior to the maturity of the obligations involved,  
303 moneys in an amount which, together with any other mon-  
304 eys irrevocably committed under the annual contributions  
305 contract to the payment of principal and interest on such  
306 obligations will suffice to provide for the payment when  
307 due of all installments of principal and interest on such  
308 obligations, which moneys under the terms of the agree-  
309 ment are required to be used for the purpose of paying  
310 the principal and interest on such obligations at their ma-  
311 turity; and

312 (L) Obligations of a corporation owning the property  
313 in which that state-chartered banking institution is located  
314 when that state-chartered banking institution has an unim-  
315 paired capital and unimpaired surplus of not less than one  
316 million dollars or when approved in writing by the com-  
317 missioner of banking.

318 (5) Notwithstanding any other provision in this sub-  
319 section, a state-chartered banking institution may purchase  
320 for its own account shares of stock issued by a corporation  
321 authorized to be created pursuant to Title IX of the Hous-  
322 ing and Urban Development Act of 1968 (42 USC § 3931  
323 et seq.) and may make investments in a partnership, limit-  
324 ed partnership, or joint venture formed pursuant to Sec-  
325 tion 907 (a) or 907 (c) of that act (42 USC § 3937 (a) or  
326 (c)), and may purchase shares of stock issued by any West

327 Virginia housing corporation and may make investments  
328 in loans and commitments for loans to any such corpora-  
329 tion: *Provided*, That in no event shall the total amount of  
330 such stock held for its own account and such investments  
331 in loans and commitments made by the state-chartered  
332 banking institution exceed at any time five percent of the  
333 unimpaired capital and unimpaired surplus of that  
334 state-chartered banking institution.

335 (6) Notwithstanding any other provision in this sub-  
336 section, a state-chartered banking institution may pur-  
337 chase, for its own account, shares of stock of small busi-  
338 ness investment companies chartered under the laws of this  
339 state, which are licensed under the act of Congress known  
340 as the "Small Business Investment Act of 1958", as amend-  
341 ed, and of business development corporations created and  
342 organized under the act of the Legislature known as the  
343 "West Virginia Business Development Corporation Act", as  
344 amended: *Provided*, That in no event shall any such  
345 state-chartered banking institution hold shares of stock in  
346 small business investment companies and/or business de-  
347 velopment corporations in any amount aggregating more  
348 than fifteen percent of the unimpaired capital and unim-  
349 paired surplus of that state-chartered banking institution.

350 (7) Notwithstanding any other provision of this sub-  
351 section, a state-chartered banking institution may purchase  
352 for its own account shares of stock of a bankers' bank or a  
353 bank holding company which owns or controls such  
354 bankers' bank, but in no event shall the total amount of  
355 such stock held by such state-chartered banking institution  
356 exceed at any time fifteen percent of the unimpaired capi-  
357 tal and unimpaired surplus of that state-chartered banking  
358 institution and in no event shall the purchase of such stock  
359 result in that state-chartered banking institution acquiring  
360 more than twenty percent of any class of voting securities  
361 of such bankers' bank or of the bank holding company  
362 which owns or controls such bankers' bank.

363 (8) Notwithstanding any other provision of this sub-  
364 section, a state-chartered banking institution may invest its

365 funds in any investment authorized for national banking  
366 associations. Such investments by state-chartered banking  
367 institutions shall be on the same terms and conditions  
368 applicable to national banking associations. The commis-  
369 sioner of banking may, from time to time, provide notice  
370 to state-chartered banking institutions of authorized in-  
371 vestments under this paragraph.

372 (9) The commissioner of banking may prescribe rules  
373 to administer and carry out the purposes of this subsec-  
374 tion, including rules to define or further define terms used  
375 in this subsection and to establish limits or requirements  
376 other than those specified in this subsection for particular  
377 classes or categories of investment securities.

378 (c) In the event of a material decline of unimpaired  
379 capital and unimpaired surplus of a state-chartered bank  
380 during any quarterly reporting period of more than twen-  
381 ty percent from that amount reported in the bank's most  
382 recent report of income and condition, or where there is a  
383 decrease of more than thirty percent in any twelve-month  
384 period, the bank shall review its outstanding loans, exten-  
385 sions of credit and investments and report to the commis-  
386 sioner of banking those loans, extensions and investments  
387 that exceed the limitations of this section using the bank's  
388 current re-evaluated unimpaired capital and unimpaired  
389 surplus. The report shall detail the bank's position in each  
390 such loan, extension of credit, and investment. The com-  
391 missioner may, within his or her discretion, require that  
392 such loans, extensions of credit and investments be  
393 brought into conformity with the bank's current  
394 re-evaluated legal lending and investment limitation.

395 (d) Notwithstanding any other provision of this sec-  
396 tion, in order to ensure a bank's safety and soundness, the  
397 commissioner of banking retains the authority to direct  
398 any state-chartered bank to recalculate its lending and  
399 investment limits at more frequent intervals than otherwise  
400 provided herein and to require all outstanding loans, ex-  
401 tensions of credit and investments be brought into confor-  
402 mance with the re-evaluated limitations. In such cases, the

403 commissioner will provide the bank a written notice ex-  
404 plaining briefly the specific reasons why the determination  
405 was made to require the more frequent calculations.

406 (e) Loans to directors or executive officers are subject  
407 to the following limitations:

408 (1) A director or executive officer of any banking  
409 institution may not borrow, directly or indirectly, from a  
410 banking institution with which he is connected, any sum of  
411 money without the prior approval of a majority of the  
412 board of directors or discount committee of the banking  
413 institution, or of any duly constituted committee whose  
414 duties include those usually performed by a discount  
415 committee. Such approval shall be by resolution adopted  
416 by a majority vote of such board or committee, exclusive  
417 of the director or executive officer to whom the loan is  
418 made.

419 (2) If any director or executive officer of any bank  
420 owns or controls a majority of the stock of any corpora-  
421 tion, or is a partner in any partnership, a loan to such cor-  
422 poration or partnership shall constitute a loan to such  
423 director or officer.

424 (3) For purposes of this subsection, an "executive  
425 officer" means:

426 (A) A person who participates or has authority to  
427 participate, other than in the capacity of a director, in  
428 major policy-making functions of the company or bank,  
429 regardless of any official title, salary or other compensa-  
430 tion. The chairman of the board, the president, every vice  
431 president, the cashier, the secretary and the treasurer of a  
432 company or bank are considered executive officers unless  
433 the officer is excluded, by resolution of the board of di-  
434 rectors or by the bylaws of the bank or company from  
435 participation, other than in the capacity of director, in  
436 major policy-making functions of the bank or company,  
437 and the officer does not actually participate therein.

438 (B) An executive officer of a company of which the



439 bank is a subsidiary, and any other subsidiary of that com-  
440 pany, unless the executive officer of the subsidiary is ex-  
441 cluded, by name or by title, from participation in major  
442 policy-making functions of the bank by resolutions of the  
443 boards of directors of both the subsidiary and the bank  
444 and does not actually participate in such major  
445 policy-making functions.

446 (f) The commissioner of banking and any employee  
447 of the department of banking may not borrow, directly or  
448 indirectly, any sum of money from a state-chartered bank-  
449 ing institution which is subject to examination by the com-  
450 missioner or the department.

451 (g) Securities purchased by a state-chartered banking  
452 institution shall be entered upon the books of the bank at  
453 actual cost. For the purpose of calculating the undivided  
454 profits applicable to the payment of dividends, securities  
455 shall not be valued at a valuation exceeding their present  
456 cost as determined by amortization of premiums and ac-  
457 cretion of discounts pursuant to generally accepted ac-  
458 counting principles, that is, by charging to profit and loss  
459 a sum sufficient to bring them to par at maturity: *Provid-*  
460 *ed*, That securities held for trade or permissible market-  
461 able equity securities and any other types of debt securi-  
462 ties which pursuant to generally accepted accounting prin-  
463 ciples are to be carried on the bank's books at fair market  
464 value shall have the unrealized market appreciation and  
465 depreciation included in the income and capital as permit-  
466 ted by such generally accepted accounting principles.

467 (h) The market value of securities purchased and  
468 loans extended by a state-chartered banking institution  
469 shall be reported in all public reports and quarterly reports  
470 to the commissioner pursuant to section nineteen of this  
471 article in accordance with generally accepted accounting  
472 principles and any applicable state or federal law, rule or  
473 regulation.

## CHAPTER 49

(Com. Sub. for H. B. 2574—By Delegates Thompson, Amores, Pulliam, Sprouse,  
Given and Kiss)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twelve, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing state banks parity with national bank agency powers to conduct certain business.

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

That section twelve, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.**

**§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.**

1 (a) Except as otherwise provided herein, no banking  
2 institution shall engage in business at any place other than  
3 at its principal office in this state, at a branch bank in this  
4 state permitted by this section as a customer bank commu-  
5 nication terminal permitted by section twelve-b of this  
6 article or at any loan organization office permitted by  
7 section twelve-c of this article.

8 (1) Acceptance of a deposit or allowing a withdrawal  
9 at the banking offices of any subsidiary, as defined in  
10 section two, article eight-a of this chapter, for credit or  
11 debit to the customer's account at any other subsidiary of  
12 the same bank holding company is permissible and does

13 not constitute branch banking. In addition, the conduct of  
14 activity at bank offices as an agent for any bank subsid-  
15 iary of the same bank holding company shall be permitted  
16 to the same extent allowed by federal law for national  
17 banks pursuant to 12 USC 1828, and does not constitute  
18 branch banking; nor shall such activity constitute a viola-  
19 tion of section forty-two, article four of this chapter: *Pro-*  
20 *vided*, That no banking institution may utilize that agency  
21 relationship to evade state consumer protection laws, in-  
22 cluding usury laws, or any other applicable laws of this  
23 state, or to conduct any activity that is not financially-  
24 related, as that term is defined by §31A-8C-2.

25 (2) A banking institution located in a county where  
26 there is also a higher educational institution as defined in  
27 section two, article one, chapter eighteen-b of this code,  
28 may establish a temporary business office on the campus  
29 of any such educational institution located in such county  
30 for the limited purposes of opening accounts and accept-  
31 ing deposits for a period not in excess of four business  
32 days per semester, trimester or quarter: *Provided*, That  
33 prior to opening any temporary office, a banking institu-  
34 tion must first obtain written permission from the institu-  
35 tion of higher education. The term "business days," for  
36 the purpose of this subsection, means days exclusive of  
37 Saturdays, Sundays and legal holidays as defined in sec-  
38 tion one, article two, chapter two of this code.

39 (3) Any banking institution which on January one,  
40 one thousand nine hundred eighty-four, was authorized to  
41 operate an off-premises walk-in or drive-in facility, pursu-  
42 ant to the law then in effect, may, as of the seventh day of  
43 June, one thousand nine hundred eighty-four, operate  
44 such facility as a branch bank and it shall not be neces-  
45 sary, for the continued operation of such branch bank, to  
46 obtain additional approvals, notwithstanding the provisions  
47 of subsection (d) of this section and subdivision (6), sub-  
48 section (b), section two, article three of this chapter.

49 (b) Except for a bank holding company, it shall be  
50 unlawful for any individual, partnership, society, associa-  
51 tion, firm, institution, trust, syndicate, public or private  
52 corporation, or any other legal entity, or combination of

53 entities acting in concert, to directly or indirectly own,  
54 control or hold with power to vote, twenty-five percent or  
55 more of the voting shares of each of two or more banks,  
56 or to control in any manner the election of a majority of  
57 the directors of two or more banks.

58 (c) A banking institution may establish branch banks  
59 either by:

60 (1) The construction, lease or acquisition of branch  
61 bank facilities as follows:

62 (A) After the seventh of June, one thousand nine hun-  
63 dred eighty-four, within the county in which that banking  
64 institution's principal office is located or within the county  
65 in which that banking institution had prior to January first,  
66 one thousand nine hundred eighty-four, established a  
67 branch bank, pursuant to subdivision (2) of this subsec-  
68 tion; and

69 (B) After the thirty-first of December, one thousand  
70 nine hundred eighty-six, within any county in this state; or

71 (2) The purchase of the business and assets and as-  
72 sumption of the liabilities of, or merger or consolidation  
73 with, another banking institution.

74 (d) Notwithstanding any other provision of this chap-  
75 ter to the contrary, subject to and in furtherance of the  
76 board's authority under the provisions of subdivision (6),  
77 subsection (b), section two, article three of this chapter,  
78 and subsection (g) of this section, the board may approve  
79 or disapprove the application of any state banking institu-  
80 tion to establish a branch bank.

81 (e) The principal office of a banking institution as of  
82 the seventh day of June, one thousand nine hundred  
83 eighty-four, shall continue to be the principal office of  
84 such banking institution for purposes of establishing  
85 branch banks under this section, notwithstanding any  
86 subsequent change in the location of such banking institu-  
87 tion's principal office.

88 (f) Any banking institution which is authorized to  
89 establish branch banks pursuant to this section may pro-

90 vide the same banking services and exercise the same  
91 powers at each such branch bank as may be provided and  
92 exercised at its principal banking house.

93 (g) The board shall, upon receipt of any application to  
94 establish a branch bank, provide notice of such application  
95 to all banking institutions. A banking institution may,  
96 within ten days after receipt of such notice, file a petition  
97 to intervene and shall, if it so files such petition, thereupon  
98 become a party to any hearing relating thereto before the  
99 board.

100 (h) The commissioner shall prescribe the form of the  
101 application for a branch bank and shall collect an exami-  
102 nation and investigation fee of one thousand dollars for  
103 each filed application for a branch bank that is to be es-  
104 tablished by the construction, lease or acquisition of a  
105 branch bank facility, and two thousand five hundred dol-  
106 lars for a branch bank that is to be established by the pur-  
107 chase of the business and assets and assumption of the  
108 liabilities of, or merger or consolidation with another  
109 banking institution. Notwithstanding the above, if the  
110 merger or consolidation is between an existing banking  
111 institution and a bank newly incorporated solely for the  
112 purpose of facilitating the acquisition of the existing  
113 banking institution, the commissioner shall collect an  
114 examination and investigation fee of five hundred dollars.  
115 The board shall complete the examination and investiga-  
116 tion within ninety days from the date on which such appli-  
117 cation and fee are received, unless the board request in  
118 writing additional information and disclosures concerning  
119 the proposed branch bank from the applicant banking  
120 institution, in which event such ninety-day period shall be  
121 extended for an additional period of thirty days plus the  
122 number of days between the date of such request and the  
123 date such additional information and disclosures are re-  
124 ceived.

125 (i) Upon completion of the examination and investiga-  
126 tion with respect to such application, the board shall, if a  
127 hearing be required pursuant to subsection (j) of this sec-  
128 tion, forthwith give notice and hold a hearing pursuant to  
129 the following provisions:

130 (1) Notice of such hearing shall be given to the bank-  
131 ing institution with respect to which the hearing is to be  
132 conducted in accordance with the provisions of section  
133 two, article seven, chapter twenty-nine-a of this code, and  
134 such hearing and the administrative procedures in connec-  
135 tion therewith shall be governed by all of the provisions of  
136 article five, chapter twenty-nine-a of this code, and shall be  
137 held at a time and place set by the board but shall not be  
138 less than ten nor more than thirty days after such notice is  
139 given.

140 (2) At any such hearing a party may represent himself  
141 or be represented by an attorney at law admitted to prac-  
142 tice before any circuit court of this state.

143 (3) After such hearing and consideration of all the  
144 testimony and evidence, the board shall make and enter an  
145 order approving or disapproving the application, which  
146 order shall be accompanied by findings of fact and con-  
147 clusions of law as specified in section three, article five,  
148 chapter twenty-nine-a of this code, and a copy of such  
149 order and accompanying findings and conclusions shall  
150 be served upon all parties to such hearing, and their attor-  
151 neys of record, if any.

152 (j) No state banking institution may establish a branch  
153 bank until the board, following an examination, investiga-  
154 tion, notice and hearing, enters an order approving an  
155 application for that branch bank: *Provided*, That no such  
156 hearing shall be required with respect to any application to  
157 establish a branch bank which is approved by the board  
158 unless a banking institution has timely filed a petition to  
159 intervene pursuant to subsection (g) of this section. The  
160 order shall be accompanied by findings of fact that:

161 (1) Public convenience and advantage will be promot-  
162 ed by the establishment of the proposed branch bank;

163 (2) Local conditions assure reasonable promise of  
164 successful operation of the proposed branch bank and of  
165 those banks and branches thereof already established in  
166 the community;

167 (3) Suitable physical facilities will be provided for the

168 branch bank;

169 (4) The applicant state-chartered banking institution  
170 satisfies such reasonable and appropriate requirements as  
171 to sound financial condition as the commissioner or board  
172 may from time to time establish by regulation;

173 (5) The establishment of the proposed branch bank  
174 would not result in a monopoly, nor be in furtherance of  
175 any combination or conspiracy to monopolize the busi-  
176 ness of banking in any section of this state; and

177 (6) The establishment of the proposed branch bank  
178 would not have the effect in any section of the state of  
179 substantially lessening competition, nor tend to create a  
180 monopoly or in any other manner be in restraint of trade,  
181 unless the anticompetitive effects of the establishment of  
182 that proposed branch bank are clearly outweighed in the  
183 public interest by the probable effect of the establishment  
184 of the proposed branch bank in meeting the convenience  
185 and needs of the community to be served by that pro-  
186 posed branch bank.

187 (k) Any party who is adversely affected by the order  
188 of the board shall be entitled to judicial review thereof in  
189 the manner provided in section four, article five, chapter  
190 twenty-nine-a of this code. Any such party adversely  
191 affected by a final judgment of a circuit court following  
192 judicial review as provided in the foregoing sentence may  
193 seek review thereof by appeal to the supreme court of  
194 appeals in the manner provided in article six, chapter  
195 twenty-nine-a of this code.

196 (l) Pursuant to the resolution of its board of directors  
197 and with the prior written approval of the commissioner, a  
198 state banking institution may discontinue the operation of  
199 a branch bank upon at least thirty days' prior public notice  
200 given in such form and manner as the commissioner pre-  
201 scribes.

202 (m) Any violation of any provision of this section  
203 shall constitute a misdemeanor offense punishable by  
204 applicable penalties as provided in section fifteen of this  
205 article.

## CHAPTER 50

(Com. Sub. for S. B. 254—By Senators Manchin and Helmick)

[Passed February 28, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve-c and thirteen, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for out-of-state loan production office operations in West Virginia; and allowing for limited indemnification of officers, directors and employees by banking institutions.

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

That sections twelve-c and thirteen, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.**

§31A-8-12c. Loan origination offices permitted.

§31A-8-13. Banking institution not to be surety; hypothecation and other dealings with securities and assets limited.

**§31A-8-12c. Loan origination offices permitted.**

1 (a) Origination of loans by employees or agents of a  
2 banking institution at offices other than that banking insti-  
3 tution's principal office or branch bank is permitted:  
4 *Provided*, That any such loans originating at said office  
5 are approved and made at the banking institution's princi-  
6 pal place of business or branch bank.

7 (b) Origination of loans by employees or agents of a  
8 federally-insured depository institution of banking char-  
9 tered outside the state of West Virginia at nonbranch offic-  
10 es within this state is permitted: *Provided*, That a license is



11 obtained pursuant to section five, article two of this chap-  
12 ter and that any such loans originating at the office are  
13 approved and made at the banking institution's principal  
14 place of business or branch bank: *Provided, however,*  
15 That any consumer loans made in this manner conform  
16 with state consumer protection laws. The commissioner of  
17 banking may examine the operations of such offices and  
18 collect fees for their examination in the amount of fifty  
19 dollars per hour of examiner time. A loan production  
20 office authorized under this section or by federal law may  
21 indicate its bank affiliation notwithstanding section two,  
22 article four of this chapter.

**§31A-8-13. Banking institution not to be surety; hypothecation  
and other dealings with securities and assets  
limited.**

1 No banking institution shall become or be accepted as  
2 surety on any bond or undertaking required by the laws  
3 or by the courts of this state or any other state or shall  
4 become surety or guarantor of any person for the dis-  
5 charge of any duty in any position or the performance of  
6 any contract or undertaking. No banking institution shall  
7 pledge, hypothecate or deliver any of its assets of any  
8 description whatsoever to any person to indemnify him as  
9 surety for such banking institution or as surety for any  
10 other person. But a bank may pledge, hypothecate, deliv-  
11 er or deposit securities to guarantee deposits of the United  
12 States, or any agency or instrumentality thereof, the state  
13 of West Virginia, or any agency or instrumentality thereof,  
14 or any county, district, municipal corporation or other  
15 governmental agency or instrumentality, and the deposits  
16 of a bankrupt's estate made pursuant to an order of a court  
17 of bankruptcy, and, with the consent in writing of the  
18 commissioner of banking, may pledge, hypothecate, deliv-  
19 er or deposit securities or assets to guarantee deposits  
20 made by receivers of closed or insolvent banking institu-  
21 tions; and the receiver of a closed or insolvent banking  
22 institution, if the proceeding be not in court, with the con-  
23 sent in writing of the commissioner of banking, and if the  
24 proceeding be in court, with the consent in writing of the

25 commissioner of banking and the approval of the court,  
26 may accept securities or assets of a banking institution to  
27 secure deposits made by such receiver. In every such case,  
28 the hypothecation of such securities or assets shall be by  
29 proper legal transfer as collateral security to protect and  
30 indemnify by trust any and all loss in case of any default  
31 on the part of the banking institution in its capacity as a  
32 depository for any such deposits as aforesaid, and such  
33 collateral security shall be released only by order of re-  
34 cord of the public officer or public body, or by the receiv-  
35 er of a closed or insolvent banking institution, if the pro-  
36 ceeding be not in court, with the consent in writing of the  
37 commissioner of banking, and if the proceeding be in  
38 court, with the consent in writing of the commissioner of  
39 banking and the approval of the court, when satisfied that  
40 full and faithful accounting and payment of all the mon-  
41 eys has been made under the provisions hereof. The pub-  
42 lic officer or public body, or the receiver of a closed or  
43 insolvent banking institution, shall make ample provision  
44 for the safekeeping of such hypothecated securities or  
45 assets, and the interest thereon when paid shall be turned  
46 over to the banking institution, so long as it is not in de-  
47 fault as aforesaid.

48 The foregoing shall not prevent the hypothecation of  
49 the securities or assets of any banking institution to secure  
50 the repayment of money borrowed from another banking  
51 institution; nor shall the foregoing prevent a bank's in-  
52 demnification of its officers, directors or employees by  
53 purchase of insurance or otherwise, to the extent that such  
54 indemnification is permitted to that institution under fed-  
55 eral law. Indemnification articles or bylaws must conform  
56 to, or be more restrictive than, that set forth in section nine,  
57 article one, chapter thirty-one of this code. The commis-  
58 sioner reserves the right to prohibit or limit, by regulation  
59 or order, any indemnification payment for reasons of  
60 safety and soundness or nonconformity to the bank's  
61 articles of incorporation or bylaws or to the restrictions  
62 placed on indemnification contained in this section or  
63 other applicable state law.

## CHAPTER 51

(Com. Sub. for S. B. 241—By Senators Chafin, Plymale, Ross and Anderson)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to repeal section fourteen, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fourteen, article twenty-one of said chapter; to amend and reenact sections four, ten, eleven, twelve-a, fifteen, seventeen and twenty-four, article twenty of said chapter; to amend and reenact sections four, eleven, fifteen and twenty-two, article twenty-one of said chapter; and to amend and reenact section two, article twenty-three of said chapter, all relating to licensure and reporting requirements relating to charitable bingo, raffles, raffle boards or games; repealing provisions relating to limitations on permissible amounts of rent which may be received for premises upon which bingo and raffle occasions are held; providing that certain junior firemen may assist in the conduction of bingo games; prohibiting hiring persons to advertise; allowing acceptance of personal checks by licensees; removing certain limitations on prizes awarded during duration of bingo license period; allowing twenty-five percent of gross proceeds to be used to pay expenses; increasing the number of paid employees for charitable bingo games, operating bingo games and related concessions; requiring operators to be residents of this state; limiting rent payments to the fair market value of the premises; permitting nonprofit entities holding raffle and bingo occasions receiving state or federal funds to elect annual reporting periods which coincide with the licensee's fiscal year; permitting licensed public accountants to compile and review or audit records of licensed entities holding raffle or bingo occasions; deleting requirement for audited financial reports in accordance with certain standards; permitting nonprofit social clubs to hold raffle license; removing certain limitations on awards of raffle prizes; allowing thirty percent of raffle gross proceeds from raffle license be used for payment of expenses; and providing that persons donating raffle or game items

or services without compensation are not required to be licensed as a wholesaler or distributor.

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

That section fourteen, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fourteen, article twenty-one of said chapter be repealed; that sections four, ten, eleven, twelve-a, fifteen, seventeen and twenty-four, article twenty of said chapter be amended and reenacted; that sections four, eleven, fifteen and twenty-two, article twenty-one of said chapter be amended and reenacted; and that section two, article twenty-three of said chapter be amended and reenacted, all to read as follows:

**Article**

- 20. Charitable Bingo.
- 21. Charitable Raffles.
- 23. Charitable Raffle Boards and Games.

**ARTICLE 20. CHARITABLE BINGO.**

- §47-20-4. Annual license; conditions on holding of games.
- §47-20-10. Limits on prizes awarded—General provisions.
- §47-20-11. Operator of bingo games and related concessions.
- §47-20-12a. Compensation of bingo operator; number of employees.
- §47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
- §47-20-17. Advertising.
- §47-20-24. Filing of reports.

**§47-20-4. Annual license; conditions on holding of games.**

1       A charitable or public service organization or any of  
 2       its auxiliaries or other organizations otherwise affiliated  
 3       with it may apply for an annual license. Only one license  
 4       per year in the aggregate may be granted to a charitable  
 5       or public service organization and all of its auxiliaries or  
 6       other associations or organizations otherwise affiliated  
 7       with it: *Provided*, That for purposes of this section the  
 8       various branches, chapters or lodges of any national asso-  
 9       ciation or organization or local churches of a nationally  
 10       organized church are not considered affiliates or auxilia-  
 11       ries of each other. The commissioner shall by regulation  
 12       provide for the manner for determining to which organi-

13 zation, whether the parent organization, an affiliate or an  
14 auxiliary, the one license allowed under this section is  
15 granted. An annual license is valid for one year from the  
16 date of issuance and entitles only the licensee to hold no  
17 more than two bingo occasions per week. No two or more  
18 organizations may hold a joint bingo occasion under any  
19 annual licenses. No bingo occasion held pursuant to an  
20 annual license may exceed six hours duration.

21 A licensee shall display its annual bingo license con-  
22 spicuously at the location where the bingo occasion is  
23 held.

24 All bingo occasions shall be open to the general pub-  
25 lic: *Provided*, That no licensee shall permit or allow any  
26 individual under the age of eighteen to participate in the  
27 playing of any bingo game with knowledge or reason to  
28 believe that the individual is under the age of eighteen:  
29 *Provided, however*, That an individual under the age of  
30 eighteen may attend the playing of a bingo game when  
31 accompanied by and under the supervision of an adult  
32 relative or a legal guardian of said individual: *Provided*  
33 *further*, That nothing contained herein may be construed  
34 to prohibit junior volunteer firefighters sixteen years of  
35 age or older from assisting the volunteer fire company of  
36 which such junior firefighter is a member in the conduct  
37 of an event under this article where such junior firefighter  
38 is supervised by a senior member of the same volunteer  
39 fire company who is over the age of twenty-one years.

40 Any licensee may receive and cash personal checks in  
41 an amount not to exceed one hundred dollars during the  
42 normal operation of a bingo game.

#### §47-20-10. Limits on prizes awarded — General provisions.

1 Except as otherwise provided in section twenty-two of  
2 this article, during the period of a license the average total  
3 prizes awarded by a licensee, or in the aggregate by two or  
4 more limited occasion licensees holding a joint bingo  
5 occasion, for any bingo occasion held pursuant to an  
6 annual or limited occasion license, may not exceed seven  
7 thousand five hundred dollars in value.

8 Prizes may be money or merchandise other than beer,  
9 nonintoxicating beer, wine, spirits or alcoholic liquor as  
10 defined in section five, article one, chapter sixty of this  
11 code. If the prizes are merchandise, the value assigned to  
12 them is their fair market value at the time of purchase.

**§47-20-11. Operator of bingo games and related concessions.**

1 Except as provided in sections thirteen and twenty-two  
2 of this article, only persons, as defined in section two of  
3 this article, who are residents of this state and who are  
4 active members of the licensee organization or its autho-  
5 rized auxiliary organization may participate in any man-  
6 ner in the conduct of any bingo game or operate any  
7 concession in conjunction with a bingo occasion: *Provid-*  
8 *ed,* That notwithstanding anything contained in this article  
9 to the contrary, no individual under the age of eighteen  
10 years may directly or indirectly participate in the conduct  
11 of a bingo game.

**§47-20-12a. Compensation of bingo operator; number of employees.**

1 (a) Within the guidelines set forth in subsections (b),  
2 (c) and (d) of this section, a licensee may pay a salary, not  
3 to exceed the federal minimum wage, to operators of bin-  
4 go games who are active members of the licensee organi-  
5 zation.

6 (b) If the licensee's gross receipts from bingo occa-  
7 sions equal or exceed one hundred thousand dollars for  
8 the licensee's most recently filed annual financial report, a  
9 salary may be paid to not more than five operators.

10 (c) If the licensee's gross receipts from bingo occa-  
11 sions are less than one hundred thousand dollars, but  
12 equal or exceed fifty thousand dollars for the licensee's  
13 most recently filed annual financial report, a salary may  
14 be paid to not more than three operators.

15 (d) If the licensee's gross receipts from bingo occa-  
16 sions are less than fifty thousand dollars for the licensee's  
17 most recently filed annual financial report, a salary may  
18 be paid to no more than two operators.

**§47-20-15. Payment of reasonable expenses from proceeds;  
net proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses  
2 incurred in connection with the conduct of bingo occa-  
3 sions, not to exceed twenty-five percent of the gross pro-  
4 ceeds collected during a license period, may be paid out  
5 of the gross proceeds of the conduct of bingo, including,  
6 but not limited to:

7 (1) Rent paid for the use of the premises: *Provided*,  
8 That a copy of the rental agreement was filed with the  
9 bingo license application and any changes thereto were  
10 filed within ten days of being made: *Provided, however*,  
11 That in no event may the rent paid for the use of any  
12 premises exceed the fair market value of rent for such  
13 premises;

14 (2) The cost of custodial services;

15 (3) The cost to the licensee organization for equip-  
16 ment and supplies used to conduct the bingo occasion;

17 (4) The cost to the licensee organization for advertis-  
18 ing the bingo occasion;

19 (5) The cost of hiring security personnel, licensed  
20 pursuant to the provisions of article eighteen, chapter  
21 thirty of this code; and

22 (6) The cost of providing child care services to the  
23 bingo patrons: *Provided*, That any proceeds received  
24 from the provision of child care services shall be handled  
25 the same as bingo proceeds.

26 (b) The actual cost to the licensee for prizes, not to  
27 exceed the amounts as specified in section ten of this arti-  
28 cle, may be paid out of the gross proceeds of the conduct  
29 of bingo.

30 (c) The cost of any refreshments, souvenirs or any  
31 other item sold or otherwise provided through any conces-  
32 sion to the patrons may not be paid for out of the gross  
33 proceeds from the bingo occasion. The licensee shall  
34 expend all net bingo proceeds and any interest earned  
35 thereon for the charitable or public service purposes stated  
36 in the application within one year after the expiration of  
37 the license under which the bingo occasions were conduct-  
38 ed. A licensee which does not qualify as a qualified recip-  
39 ient organization may apply to the commissioner at the  
40 time it applies for a bingo license or as provided in sub-  
41 section (e) of this section for permission to apply any or

42 all of its net proceeds to directly support a charitable or  
43 public service activity or endeavor which it sponsors.

44 (d) No gross proceeds from any bingo operation may  
45 be devoted or in any manner used by any licensee or  
46 qualified recipient organization for the construction or  
47 acquisition of real or personal property except that which  
48 is used exclusively for one or more charitable or public  
49 service purposes or as provided in subdivision (3), subsec-  
50 tion (a) of this section.

51 (e) Any licensee which, in good faith, finds itself un-  
52 able to comply with the requirements of this provision  
53 shall apply to the commissioner for permission to expend  
54 its net proceeds for one or more charitable or public ser-  
55 vice purposes other than that stated in its license applica-  
56 tion or for permission to expend its net proceeds later than  
57 the one-year time period specified in this section. The  
58 application shall be on a form furnished by the commis-  
59 sioner and shall include the particulars of the requested  
60 changes and the reasons for the changes. The application  
61 shall be filed no later than sixty days before the end of the  
62 one-year period specified in this section. In the case of an  
63 application to extend the time in which the net proceeds  
64 are to be expended for a charitable or public service pur-  
65 pose, the licensee shall file such periodic reports with the  
66 commissioner as the commissioner directs until the pro-  
67 ceeds are so expended.

#### §47-20-17. Advertising.

1 A licensee may advertise its bingo occasions in a man-  
2 ner reasonably necessary to promote the occasion: *Pro-*  
3 *vided*, That a licensee may not hire any person, as defined  
4 in section two of this article, to develop or conduct an  
5 advertising campaign to promote any bingo occasion.

#### §47-20-24. Filing of reports.

1 Each licensee holding an annual license shall file with  
2 the tax commissioner a quarterly and an annual financial  
3 report summarizing its bingo operations for the time peri-  
4 od covered by the report. Each quarterly report shall be  
5 filed within twenty days after the end of the quarter which  
6 it covers. The annual report shall be filed within thirty  
7 days after the expiration of the license under which the  
8 operations covered by the report were held. The time  
9 period covered by the annual report is the full license year



10 or, at the election of a licensee receiving state or federal  
11 funding, the most recently ended state or federal fiscal  
12 year.

13 Each licensee holding a limited occasion license or  
14 state fair license shall file with the tax commissioner a  
15 financial report summarizing its bingo operations for the  
16 license period within thirty days after the expiration of the  
17 license under which the operations covered by the report  
18 are held. The report shall contain the name, address and  
19 social security number of any individual who receives  
20 during the course of a bingo occasion prizes the aggregate  
21 value of which exceeds one hundred dollars, and other  
22 information required by the commissioner: *Provided*,  
23 That any licensee failing to file such report when due shall  
24 be liable for a penalty of twenty-five dollars for each  
25 month or fraction thereof during which the failure contin-  
26 ues, such penalty not to exceed one hundred dollars:  
27 *Provided, however*, That annual financial reports for years  
28 ending after the first day of July, one thousand nine hun-  
29 dred ninety-three, must contain a compilation and review  
30 of such financial report by a certified or licensed public  
31 accountant, or may be audited by a certified or licensed  
32 public accountant, if a licensee's gross receipts exceed fifty  
33 thousand dollars.

#### ARTICLE 21. CHARITABLE RAFFLES.

§47-21-4. Who may hold raffles; application for license; licenses not trans-  
ferable.

§47-21-11. Limits on prizes awarded—General provisions.

§47-21-15. Payment of reasonable expenses from proceeds; net proceeds  
disbursement.

§47-21-22. Filing of reports.

#### §47-21-4. Who may hold raffles; application for license; li- censes not transferable.

1 (a) Except as provided in section three of this article,  
2 only persons, as defined in section two of this article, who  
3 are residents of this state and who are active members of  
4 any charitable or public service organization which has  
5 been in existence in this state for at least one year prior to  
6 filing an application for a raffle license issued pursuant to  
7 section five or six of this article may hold raffle occasions  
8 in accordance with the provisions of this article during  
9 such time as it holds a valid license.

10 (b) Application for a raffle license shall be made to  
11 the tax commissioner and shall be on a form which shall  
12 be supplied by him. The application shall contain the  
13 information required by section eight of this article and  
14 any other information which the commissioner considers  
15 necessary. An application shall be filed not less than sixty  
16 days before the date when the applicant intends to hold its  
17 first raffle occasion. An application which is not denied  
18 within thirty days after filing is considered approved and  
19 the commissioner shall, within five days after the expira-  
20 tion of such thirty days, send to the applicant its license.

21 (c) For purposes of this article, any application for an  
22 annual license or a limited occasion license received prior  
23 to the effective date of this article is considered filed on  
24 such effective date.

25 (d) No raffle license issued pursuant to this article may  
26 be transferred.

**§47-21-11. Limits on prizes awarded — General provisions.**

1 During the period of a license, the total prizes awarded  
2 by a licensee, or in the aggregate by two or more limited  
3 occasion licensees holding a joint raffle occasion, for any  
4 raffle occasion held pursuant to a limited occasion license,  
5 may not exceed in value seven thousand five hundred  
6 dollars.

7 Prizes may be money, real or personal property or  
8 merchandise other than beer, wine, spirits or alcoholic  
9 liquor as defined in section five, article one, chapter sixty  
10 of this code. If the prizes are real or personal property or  
11 merchandise, the value assigned to them is their fair mar-  
12 ket value at the time of acquisition for the raffle or at the  
13 time of purchase.

**§47-21-15. Payment of reasonable expenses from proceeds;  
net proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses  
2 incurred in connection with the conduct of raffle occa-  
3 sions, not to exceed twenty-five percent of the gross pro-  
4 ceeds collected during a license period, may be paid out  
5 of the gross proceeds of the conduct of raffle, including,  
6 but not limited to:

7 (1) Rent paid for the use of the premises: *Provided,*  
8 That a copy of the rental agreement was filed with the

9 raffle license application with any modifications thereto  
10 be filed within ten days of being made: *Provided, howev-*  
11 *er,* That in no event may the rent paid for the use of any  
12 premises exceed the fair market value of rent for such  
13 premises;

14 (2) The cost of custodial services;

15 (3) The cost to the licensee organization for equip-  
16 ment and supplies used to conduct the raffle occasion;

17 (4) The cost to the licensee organization for advertis-  
18 ing the raffle occasion;

19 (5) The cost of hiring security personnel, licensed  
20 pursuant to the provisions of article eighteen, chapter  
21 thirty of this code; and

22 (6) The cost of providing child care services to the  
23 raffle patrons: *Provided,* That any proceeds received  
24 from the provision of child care services shall be handled  
25 the same as raffle proceeds.

26 (b) The actual cost to the licensee for prizes, not to  
27 exceed the amounts as specified in section eleven of this  
28 article, may be paid out of the gross proceeds of the con-  
29 duct of raffle.

30 (c) The cost of any refreshments, souvenirs or any  
31 other item sold or otherwise provided through any conces-  
32 sion to the patrons may not be paid for out of the gross  
33 proceeds from the raffle occasion. The licensee shall  
34 expend all net raffle proceeds and any interest earned  
35 thereon for the charitable or public service purposes stated  
36 in the application within one year after the expiration of  
37 the license under which the raffle occasions were conduct-  
38 ed. A licensee which does not qualify as a qualified recip-  
39 ient organization may apply to the commissioner at the  
40 time it applies for a raffle license or as provided in subsec-  
41 tion (e) of this section for permission to apply any or all  
42 of its net proceeds to directly support a charitable or pub-  
43 lic service activity or endeavor which it sponsors.

44 (d) No gross proceeds from any raffle operation may  
45 be devoted or in any manner used by any licensee or  
46 qualified recipient organization for the construction, ac-  
47 quisition, improvement, maintenance or repair of real or  
48 personal property except that which is used exclusively for  
49 one or more charitable or public service purposes or as

50 provided in subdivision (3), subsection (a) of this section.

51 (e) Any licensee which, in good faith, finds itself un-  
52 able to comply with the requirements of the foregoing  
53 provisions of this section shall apply to the commissioner  
54 for permission to expend its net proceeds for one or more  
55 charitable or public service purposes other than that stated  
56 in its license application or for permission to expend its  
57 net proceeds later than the one-year time period specified  
58 in this section. The application shall be on a form fur-  
59 nished by the commissioner and shall include the particu-  
60 lars of the requested changes and the reasons for the  
61 changes. The application shall be filed no later than sixty  
62 days before the end of the one-year period specified in  
63 this section. In the case of an application to extend the  
64 time in which the net proceeds are to be expended for a  
65 charitable or public service purpose, the licensee shall file  
66 such periodic reports with the commissioner as the com-  
67 missioner directs until the proceeds are so expended.

**§47-21-22. Filing of reports.**

1 Each licensee holding an annual, limited or state fair  
2 license shall file with the commissioner a financial report  
3 summarizing its raffle operations within thirty days after  
4 the expiration date of such license. The time period cov-  
5 ered by an annual report is the full license year or, at the  
6 election of a licensee receiving state or federal funding,  
7 the most recently ended state or federal fiscal year.

8 The reports required by this section shall contain the  
9 name, address and social security number of any individu-  
10 al who received during the course of a raffle occasion  
11 prizes the aggregate value of which exceeded one hundred  
12 dollars, and other information required by the commis-  
13 sioner: *Provided*, That any licensee failing to file such  
14 report when due shall be liable for a penalty of twenty-five  
15 dollars for each month or fraction thereof during which  
16 the failure continues, such penalty not to exceed one hun-  
17 dred dollars: *Provided, however*, That annual financial  
18 reports for license years ending after the first day of July,  
19 one thousand nine hundred ninety-three, must contain a  
20 compilation and review of such financial report by a certi-  
21 fied or licensed public accountant, or may be audited by a  
22 certified or licensed public accountant, if a licensee's gross  
23 receipts exceed fifty thousand dollars.

**ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.**

**§47-23-2. Definitions.**

1 For purposes of this article, unless specified otherwise:

2 (a) "Commissioner" means tax commissioner of the  
3 state of West Virginia, or his delegate.

4 (b) "Retail value" means the actual consideration paid  
5 to the wholesaler by the retailer for any raffle boards or  
6 games.

7 (c) "Person" means any individual, association, society,  
8 incorporated or unincorporated organization, firm, part-  
9 nership or other nongovernmental entity or institution.

10 (d) "Retailer" means every person engaged in the busi-  
11 ness of making retail sales of raffle chances except a char-  
12 itable or public service organization authorized to conduct  
13 raffles pursuant to section three, article twenty-one of this  
14 chapter.

15 (e) "Charitable raffle board" or "charitable raffle  
16 game" means: (1) A board or other device that has many  
17 folded printed slips to be pulled from the board or other-  
18 wise distributed without a board on payment of a nominal  
19 sum in an effort to obtain a slip or chance that entitles the  
20 player to a designated prize; (2) a series of paper cards  
21 with perforated break-open tabs, a face value of which is  
22 covered or otherwise hidden from view to conceal one or  
23 more numbers, letters or symbols, which, on payment of a  
24 nominal sum, entitles the player to obtain a chance to a  
25 designated prize; or (3) such other similar game which  
26 may be defined by the state tax commissioner by legisla-  
27 tive rule.

28 (f) "Sale" means the transfer of the ownership of tangi-  
29 ble personal property for a consideration.

30 (g) "Verification" means a unique manufacture identi-  
31 fiable serial number which is required to be printed on  
32 each ticket in a charitable raffle board or charitable raffle  
33 game or such other form of identification as may be pre-  
34 scribed by the tax commissioner upon a showing of undue  
35 hardship by the taxpayer: *Provided*, That such other form  
36 of identification shall be prescribed by rule in accordance  
37 with the provisions of article three, chapter twenty-nine-a  
38 of this code.

39 (h) "Wholesaler" or "distributor" means any person or

40 entity engaged in the wholesale distribution of charitable  
 41 raffle boards or games or similar boards or devices, as  
 42 defined by the commissioner, and licensed under the  
 43 provisions of this article, to distribute said devices to  
 44 charitable raffle boards or games retailers as defined in  
 45 this article. It also includes anyone who is engaged in the  
 46 manufacturing, packaging, preparing or repackaging of  
 47 charitable raffle boards or games for distribution in this  
 48 state: *Provided*, That no license taxes or other fees  
 49 provided for in this section may be charged to any  
 50 newspaper or other printing or duplicating operation not  
 51 regularly engaged in the business of manufacturing,  
 52 packaging, preparing or repackaging charitable raffle  
 53 boards or games where the gross sales of such printing or  
 54 duplicating operation from such activity does not exceed  
 55 seven thousand five hundred dollars per calendar year and  
 56 who is donating such items or services to a nonprofit  
 57 entity without compensation may not be considered a  
 58 "wholesaler" or "distributor" under this article.

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## CHAPTER 52

(S. B. 371—By Senators Tomblin, Mr. President, and Boley)  
 [By Request of the Executive]

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[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to industrial development and commercial development bonds; ceiling on issuance of private activity bonds, including private activity bonds for projects located in empowerment zones and enterprise communities; procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations; and carryovers.

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

That section twenty-one, article two-c, chapter thirteen of

the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.**

**§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.**

1 (a) Private activity bonds (as defined in Section 141(a)  
2 of the United States Internal Revenue Code of 1986, other  
3 than those described in Section 146(g) of the Internal  
4 Revenue Code) issued pursuant to this article, including  
5 bonds issued by the West Virginia public energy authority  
6 pursuant to subsection (11), section five, article one, chap-  
7 ter five-d of this code, or under article eighteen, chapter  
8 thirty-one of this code, during any calendar year shall not  
9 exceed the ceiling established by Section 146(d) of the  
10 United States Internal Revenue Code. It is hereby deter-  
11 mined and declared as a matter of legislative finding: (i)  
12 That, in an attempt to promote economic revitalization of  
13 distressed urban and rural areas, certain special tax incen-  
14 tives will be provided for empowerment zones and enter-  
15 prise communities to be designated from qualifying areas  
16 nominated by state and local governments, all as set forth  
17 by Section 1391 et seq. of the United States Internal Reve-  
18 nue Code; (ii) that qualified businesses operating in enter-  
19 prise communities and empowerment zones will be eligi-  
20 ble to finance property and provide other forms of finan-  
21 cial assistance as provided for in Section 1394 of the Unit-  
22 ed States Internal Revenue Code; (iii) that it is in the best  
23 interest of this state and the citizens thereof to facilitate the  
24 acquisition, construction and equipping of projects within  
25 designated empowerment zones and enterprise communi-  
26 ties by providing an orderly mechanism for the commit-  
27 ment of the annual ceiling for private activity bonds for  
28 such projects. It is hereby further determined and de-  
29 clared as a matter of legislative finding: (iv) that the pro-  
30 duction of bituminous coal in this state has resulted in coal  
31 waste, which coal waste is stored in areas generally referred  
32 to as gob piles; (v) that such gob piles are unsightly and  
33 have the potential to pollute the environment in this state;

34 (vi) that the utilization of the materials in such gob piles to  
35 produce alternative forms of energy needs to be encour-  
36 aged; (vii) that Section 142(a)(6) of the United States  
37 Internal Revenue Code of 1986, permits the financing of  
38 solid waste disposal facilities through the issuance of such  
39 private activity bonds; and (viii) that it is in the best inter-  
40 est of this state and the citizens thereof to facilitate the  
41 construction of facilities for the generation of power  
42 through the utilization of coal waste by providing an or-  
43 derly mechanism for the commitment of the annual ceil-  
44 ing for private activity bonds for such projects.

45 (b) On or before the first day of each calendar year,  
46 the executive director of the development office shall  
47 determine the state ceiling for such year based on the  
48 criteria of the United States Internal Revenue Code, which  
49 annual ceiling shall be allocated among the several issuers  
50 of bonds under this article or under article eighteen, chap-  
51 ter thirty-one of this code, as follows:

52 (1) Fifty million dollars shall be allocated to the West  
53 Virginia housing development fund for the purpose of  
54 issuing qualified mortgage bonds, qualified mortgage  
55 certificates or bonds for qualified residential rental pro-  
56 jects.

57 (2) The amount remaining after the allocation to the  
58 West Virginia housing development fund described in  
59 subdivision (1) of this subsection shall be retained by the  
60 West Virginia development office and shall be referred to  
61 in this section as the "state allocation".

62 (3) For calendar year one thousand nine hundred  
63 ninety-five, twenty-five and one-half percent of the state  
64 allocation and for all subsequent calendar years, thirty-five  
65 percent of the state allocation shall be set aside by the  
66 development office to be made available for lessees, pur-  
67 chasers or owners of proposed projects, hereafter in this  
68 section referred to as "nonexempt projects", which do not  
69 qualify as exempt facilities as defined by United States  
70 Internal Revenue Code. All reservations of private activity  
71 bonds for nonexempt projects shall be approved and  
72 awarded by the committee based upon an evaluation of  
73 general economic benefit and any rule or regulation that



74 the council for community and economic development  
75 may promulgate pursuant to section three, article two,  
76 chapter five-b of this code: *Provided*, That all requests for  
77 reservations of funds from projects described in this sub-  
78 section shall be submitted to the development office on or  
79 before the first day of November of each calendar year:  
80 *Provided, however*, That on the fifteenth day of Novem-  
81 ber of each calendar year, the uncommitted portion of this  
82 part of the state allocation, shall revert to and become part  
83 of the state allocation portion described in subsection (g)  
84 of this section.

85 (4) For calendar year one thousand nine hundred  
86 ninety-five, four and one-half percent of the state alloca-  
87 tion and for all subsequent calendar years, ten percent of  
88 the state allocation shall be made available for lessees,  
89 purchasers or owners of proposed commercial or industri-  
90 al projects which qualify as exempt facilities under Section  
91 1394 of the United States Internal Revenue Code. All  
92 reservations of private activity bonds for the projects shall  
93 be approved and awarded by the committee based upon  
94 an evaluation of general economic benefit and any rule or  
95 regulation that the council for community and economic  
96 development may promulgate pursuant to section three,  
97 article two, chapter five-b of this code.

98 (c) For calendar year one thousand nine hundred  
99 ninety-five, the remaining seventy percent and for all  
100 subsequent calendar years, the remaining fifty-five percent  
101 of the state allocation shall be made available for lessees,  
102 purchasers or owners of proposed commercial or industri-  
103 al projects which qualify as exempt facilities as defined by  
104 Section 142(a) of the United States Internal Revenue  
105 Code. All reservations of private activity bonds for ex-  
106 empt facilities shall be approved and awarded by the com-  
107 mittee based upon an evaluation of general economic  
108 benefit and any rule or regulation that the council for  
109 community and economic development may promulgate  
110 pursuant to section three, article two, chapter five-b of this  
111 code: *Provided*, That no reservation shall be in an amount  
112 in excess of fifty percent of this portion of the state alloca-  
113 tion.

114 (d) No reservation shall be made for any project until

115 the governmental body seeking the same shall submit a  
116 notice of reservation of funds as provided in subsection  
117 (e) of this section. The governmental body must first  
118 adopt an inducement resolution approving the prospective  
119 issuance of bonds and setting forth the maximum amount  
120 of bonds to be issued. Each governmental body seeking a  
121 reservation of funds following the adoption of such in-  
122 ducement resolution shall submit a notice of inducement  
123 signed by its clerk, secretary or recorder or other appro-  
124 priate official to the development office. Such notice shall  
125 include information as may be required by the develop-  
126 ment office pursuant to any rule or regulation of the  
127 council for community and economic development. Not-  
128 withstanding the foregoing, when a governmental body  
129 proposes to issue bonds for the purpose of: (i) Construct-  
130 ing, acquiring or equipping a project described in subdivi-  
131 sion (3) or (4), subsection (b) of this section; or (ii) con-  
132 structing an energy producing project which relies, in  
133 whole or in part, upon coal waste as fuel, to the extent such  
134 project qualifies as a solid waste facility under Section  
135 142(a)(6) of the United States Internal Revenue Code of  
136 1986, the project may be awarded a reservation of funds  
137 from the state allocation available for three years subse-  
138 quent to the year in which the notice of reservation of  
139 funds is submitted, at the discretion of the executive direc-  
140 tor of the development office: *Provided*, That no discre-  
141 tionary reservation may be made for any single project  
142 described in this subdivision in an amount in excess of  
143 thirty-five percent of the state allocation available for the  
144 year subsequent to the year in which the request is made.  
145 A discretionary reservation of the state allocation for a  
146 project described in this subdivision shall not be granted  
147 by the executive director of the development office unless  
148 the project for which the request is made has received a  
149 certification from the federal energy regulatory commis-  
150 sion as a qualifying facility or a cogeneration project.

151 (e) Currently with or following the submission of its  
152 notice of inducement, the governmental body at any time  
153 deemed expedient by it may submit its notice of reserva-  
154 tion of funds which shall include the following informa-  
155 tion:

156 (1) The date of the notice of reservation of funds;

157       (2) The identity of the governmental body issuing the  
158 bonds;

159       (3) The date of inducement and the prospective date  
160 of issuance;

161       (4) The name of the entity for which the bonds are to  
162 be issued;

163       (5) The amount of the bond issue or, if the amount of  
164 the bond issue for which a reservation of funds has been  
165 made has been increased, the amount of the increase;

166       (6) The type of issue; and

167       (7) A description of the project for which the bonds  
168 are to be issued.

169       (f) The development office shall accept the notice of  
170 reservation of funds no earlier than the first calendar  
171 workday of the year for which a reservation of funds is  
172 sought: *Provided*, That a notice of reservation of funds  
173 with respect to a project described in subdivision (4), sub-  
174 section (b) of this section or an energy producing project  
175 that is eligible for a reservation of funds for a year subse-  
176 quent to the year in which the notice of reservation of  
177 funds is submitted may contain an application for funds  
178 from a subsequent year's state allocation. Upon receipt of  
179 the notice of reservation of funds, the development office  
180 shall immediately note upon the face of the notice the date  
181 and time of reception.

182       (g) If the bond issue for which a reservation has been  
183 made has not been finally closed within one hundred  
184 twenty days of the date of the reservation to be made by  
185 the committee, or the thirty-first day of December follow-  
186 ing such date of reservation if sooner and a statement of  
187 bond closure which has been executed by the clerk, secre-  
188 tary, recorder or other appropriate official of the govern-  
189 mental body reserving the same has not been received by  
190 the development office within that time, then the reserva-  
191 tion shall expire and be deemed to have been forfeited  
192 and the funds so reserved shall be released and revert to  
193 the portion of the state allocation from which the funds  
194 were originally reserved and shall then be made available

195 for other qualified issues in accordance with this section  
196 and the Internal Revenue Code: *Provided*, That as to any  
197 reservation for a nonexempt project that is forfeited on or  
198 after the first day November in any calendar year, fifty  
199 percent of such reservation shall revert to the portion of  
200 the state allocation described in subsection (c) of this sec-  
201 tion and fifty percent of such reservation shall revert to the  
202 portion of the state allocation described in subdivision (4),  
203 subsection (b) of this section: *Provided, however*, That, as  
204 to any notice of reservation of funds received by the de-  
205 velopment office during the month of December in any  
206 calendar year with respect to any project qualifying as an  
207 elective carry forward pursuant to Section 146(f)(5) of the  
208 Internal Revenue Code, the notice of reservation of funds  
209 and the reservation to which the same relates shall not  
210 expire or be subject to forfeiture: *Provided further*, That  
211 any unused state ceiling as of the thirty-first day of De-  
212 cember in any year not otherwise subject to a carry for-  
213 ward pursuant to Section 146(f) of the Internal Revenue  
214 Code shall be allocated to the West Virginia housing de-  
215 velopment fund, which shall be deemed to have elected to  
216 carry forward the unused state ceiling for the purpose of  
217 issuing qualified mortgage bonds, qualified mortgage  
218 credit certificates or bonds for qualified residential rental  
219 projects, each as defined in the Internal Revenue Code.  
220 All requests for subsequent reservation of funds upon loss  
221 of a reservation pursuant to this section shall be treated in  
222 the same manner as a new notice of reservation of funds in  
223 accordance with subsections (d) and (e) of this section.

224 (h) Once a reservation of funds has been made for a  
225 project described in subdivision (4), subsection (b) of this  
226 section or for an energy producing project which relies, in  
227 whole or in part, upon coal waste as fuel and otherwise  
228 qualifies as a solid waste facility under Section 142(a)(6)  
229 of the United States Internal Revenue Code of 1986, not-  
230 withstanding the language of subsection (g) of this section,  
231 the reservation shall remain fully available with respect to  
232 such project until the first day of October in the year from  
233 which the reservation was made at which time, if the bond  
234 issue has not been finally closed, the reservation shall  
235 expire and be deemed forfeited and the funds so reserved  
236 shall be released as provided in subsection (g) of this sec-  
237 tion.

## CHAPTER 53

(H. B. 2023—By Delegates Jenkins, Amores and Kime)

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[Passed February 17, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section five, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the registration of charitable organizations with the office of the secretary of state; authorizing the secretary of state to extend the due date for the annual filing of a registration statement or report; imposing a late filing fee; setting forth limitations on such fee; and payment of late filing fee into charitable organization fund.

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

That section five, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

#### §29-19-5. Registration of charitable organizations; fee.

- 1 (a) Every charitable organization, except as provided
- 2 in section six of this article, which intends to solicit
- 3 contributions within this state or to have funds solicited on
- 4 its behalf shall, prior to any solicitation, file a registration
- 5 statement with the secretary of state upon forms prescribed
- 6 by him or her, which shall be good for one full year and
- 7 which shall be refilled in the next and each following year
- 8 in which such charitable organization is engaged in
- 9 solicitation activities. If an organization discontinues
- 10 solicitation at any time after its last registration filing, then
- 11 it must file a registration statement reflecting its activities
- 12 during its last fiscal year in which solicitation in West
- 13 Virginia took place. It shall be the duty of the president,

14 chairman or principal officer of such charitable  
15 organization to file the statements required under this  
16 article. Such statements shall be sworn to and shall  
17 contain the following information:

18 (1) The name of the organization and the purpose for  
19 which it was organized;

20 (2) The principal address of the organization and the  
21 address of any offices in this state. If the organization  
22 does not maintain an office, the name and address of the  
23 person having custody of its financial records;

24 (3) The names and addresses of any chapters,  
25 branches or affiliates in this state;

26 (4) The place where and the date when the  
27 organization was legally established, the form of its  
28 organization;

29 (5) The names and addresses of the officers, directors,  
30 trustees and the principal salaried executive staff officer;

31 (6) A copy of a balance sheet and a statement or  
32 report of income and expenses for the organization's  
33 immediately preceding fiscal year, or a financial statement  
34 reporting information showing the kind and amount of  
35 funds raised during the preceding fiscal year, the costs and  
36 expenses incidental thereto and showing how the funds  
37 were disbursed or allocated for the same fiscal year:  
38 *Provided*, That for organizations raising more than fifty  
39 thousand dollars per year in contributions, the balance  
40 sheet and income and expense statement, or financial  
41 statement provided, shall be audited by an independent  
42 public accountant. Organizations are required to report  
43 the amount of money raised in the state and the amount  
44 spent in the state for charitable purposes;

45 (7) A copy of any determination of the organization's  
46 tax exempt status under the provisions of 26 U.S.C.  
47 §501(c)(3) and a copy of the last filed Internal Revenue  
48 Service form 990 and Schedule A for every charitable

49 organization and any parent organization;

50 (8) Whether the organization intends to solicit  
51 contributions from the public directly or have such done  
52 on its behalf by others;

53 (9) Whether the organization is authorized by any  
54 other governmental authority to solicit contributions and  
55 whether it is or has ever been enjoined by any court from  
56 soliciting contributions;

57 (10) The general purpose or purposes for which the  
58 contributions to be solicited shall be used;

59 (11) The name or names under which it intends to  
60 solicit contributions;

61 (12) The names of the individuals or officers of the  
62 organization who will have final responsibility for the  
63 custody of the contributions;

64 (13) The names of the individuals or officers of the  
65 organization responsible for the final distribution of the  
66 contributions; and

67 (14) Copies of all contract documentation from  
68 professional fund-raising counsels and professional  
69 solicitors as provided for in subsection (d), section seven  
70 of this article.

71 (b) Each chapter, branch or affiliate, except an  
72 independent member agency of a federated fund-raising  
73 organization, may separately report the information  
74 required by this section, or report the information to its  
75 parent organization which shall then furnish such  
76 information as to its West Virginia affiliates, chapters and  
77 branches in a consolidated form to the secretary of state.  
78 An independent member agency of a federated fund-  
79 raising organization, as hereinbefore defined, shall comply  
80 with the provisions of this article independently. Each  
81 organization shall file a separate registration form for each  
82 name under which funds will be solicited.

83 (c) The registration forms and any other documents  
84 prescribed by the secretary of state shall be signed by an  
85 authorized officer or by an independent public accountant  
86 and by the chief fiscal officer of the charitable organiz-  
87 ation and shall be verified under oath.

88 (d) Every charitable organization collecting less than  
89 one million dollars during any year which submits an  
90 independent registration to the secretary of state shall pay  
91 an annual registration fee of fifteen dollars; every  
92 charitable organization collecting more than one million  
93 dollars during one year which submits an independent  
94 registration to the secretary of state shall pay an annual  
95 registration fee of fifty dollars; a parent organization  
96 filing on behalf of one or more chapters, branches or  
97 affiliates or a single organization filing under different  
98 names shall pay a single annual registration fee of fifty  
99 dollars for itself and such chapters, branches or affiliates  
100 included in the registration statement.

101 (e) For good cause shown, the secretary of state may  
102 extend the due date for the annual filing of a registration  
103 statement or report for a period not to exceed ninety days.  
104 During such period, the previously filed registration  
105 statement or report of the charitable organization which  
106 has been granted the extension shall remain in effect.

107 (f) In addition to the registration fee required by this  
108 section, a charitable organization which fails to file a  
109 registration statement or report by the original or  
110 extended due date therefor as required by this section  
111 shall, for each month or part of the month thereafter in  
112 which the same is not filed, pay an additional fee of  
113 twenty-five dollars: *Provided*, That the total amount of  
114 such additional fees for a registration statement or report  
115 required to be filed in any one year shall not exceed five  
116 hundred dollars. Any such additional fees received shall  
117 be paid into the charitable organization fund established  
118 pursuant to the provisions of section fifteen-b of this  
119 article.



## CHAPTER 54

(Com. Sub. for S. B. 160—By Senators Wooton, Walker, Boley, Jackson,  
Anderson, Plymale, Schoonover and Manchin)

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[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the waiver of the notification requirement to foster parents and adoptive parents in cases involving afterborn siblings.

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

That section fourteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.**

#### **§49-2-14. Criteria and procedure for removal of child from foster home; notice of child's availability for placement; limitations.**

- 1 (a) The state department may temporarily remove a
- 2 child from a foster home based on an allegation of abuse
- 3 or neglect, including sexual abuse, that occurred while the
- 4 child resided in the home. If the department determines
- 5 that reasonable cause exists to support the allegation, the
- 6 department shall remove all foster children from the ar-
- 7 rangement and preclude contact between the children and
- 8 the foster parents. If, after investigation, the allegation is
- 9 determined to be true by the department or after a judicial
- 10 proceeding a court finds the allegation to be true or if the
- 11 foster parents fail to contest the allegation in writing within
- 12 twenty calendar days of receiving written notice of said
- 13 allegations, the department shall permanently terminate all
- 14 foster care arrangements with said foster parents: *Provid-*
- 15 *ed,* That if the state department determines that the abuse

16 occurred due to no act or failure to act on the part of the  
17 foster parents and that continuation of the foster care  
18 arrangement is in the best interests of the child, the depart-  
19 ment may, in its discretion, elect not to terminate the foster  
20 care arrangement or arrangements.

21 (b) When a child has been placed in a foster care ar-  
22 rangement for a period in excess of eighteen consecutive  
23 months and the state department determines that the place-  
24 ment is a fit and proper place for the child to reside, the  
25 foster care arrangement may not be terminated unless  
26 such termination is in the best interest of the child and:

27 (1) The foster care arrangement is terminated pursuant  
28 to subsection (a) of this section;

29 (2) The foster care arrangement is terminated due to  
30 the child being returned to his or her parent or parents;

31 (3) The foster care arrangement is terminated due to  
32 the child being united or reunited with a sibling or sib-  
33 lings;

34 (4) The foster parent or parents agree to the termina-  
35 tion in writing;

36 (5) The foster care arrangement is terminated at the  
37 written request of a foster child who has attained the age  
38 of fourteen; or

39 (6) A circuit court orders the termination upon a find-  
40 ing that the state department has developed a more suit-  
41 able long-term placement for the child upon hearing evi-  
42 dence in a proceeding brought by the department seeking  
43 removal and transfer.

44 (c) When a child has been residing in a foster home  
45 for a period in excess of six consecutive months in total  
46 and for a period in excess of thirty days after the parental  
47 rights of the child's biological parents have been terminat-  
48 ed and the foster parents have not made an application to  
49 the department to establish an intent to adopt the child, the  
50 state department may terminate the foster care arrange-

51 ment if another, more beneficial, long-term placement of  
52 the child is developed: *Provided*, That if the child is  
53 twelve years of age or older, the child shall be provided  
54 the option of remaining in the existing foster care ar-  
55 rangement if the child so desires and if continuation of the  
56 existing arrangement is in the best interest of the child.

57 (d) When a child is placed into foster care or becomes  
58 eligible for adoption and a sibling or siblings have previ-  
59 ously been placed in foster care or have been adopted, the  
60 department shall notify the foster parents or adoptive  
61 parents of the previously placed or adopted sibling or  
62 siblings of the child's availability for foster care placement  
63 or adoption to determine if the foster parents or adoptive  
64 parents are desirous of seeking a foster care arrangement  
65 or adoption of the child. Where a sibling or siblings have  
66 previously been adopted, the department shall also notify  
67 the adoptive parents of a sibling of the child's availability  
68 for foster care placement in that home and a foster care  
69 arrangement entered into to place the child in the home if  
70 the adoptive parents of the sibling are otherwise qualified  
71 or can become qualified to enter into a foster care ar-  
72 rangement with the department and if such arrangement is  
73 in the best interests of the child: *Provided*, That the de-  
74 partment may petition the court to waive notification to  
75 the foster parents or adoptive parents of the child's sib-  
76 lings. This waiver may be granted, *ex parte*, upon a show-  
77 ing of compelling circumstances.

78 (e) When a child is in a foster care arrangement and is  
79 residing separately from a sibling or siblings who are in  
80 another foster home or who have been adopted by another  
81 family and the parents with whom the placed or adopted  
82 sibling or siblings reside have made application to the  
83 department to establish an intent to adopt or to enter into a  
84 foster care arrangement regarding a child so that said  
85 child may be united or reunited with a sibling or siblings,  
86 the state department shall upon a determination of the  
87 fitness of the persons and household seeking to enter into  
88 a foster care arrangement or seek an adoption which  
89 would unite or reunite siblings, and if termination and new

90 placement are in the best interests of the children, termi-  
91 nate the foster care arrangement and place the child in the  
92 household with the sibling or siblings: *Provided*, That if  
93 the department is of the opinion based upon available  
94 evidence that residing in the same home would have a  
95 harmful physical, mental or psychological effect on one  
96 or more of the sibling children or if the child has a physi-  
97 cal or mental disability which the existing foster home can  
98 better accommodate, or if the department can document  
99 that the reunification of the siblings would not be in the  
100 best interest of one or all of the children, the state depart-  
101 ment may petition the circuit court for an order allowing  
102 the separation of the siblings to continue: *Provided, how-*  
103 *ever*, That if the child is twelve years of age or older, the  
104 state department shall provide the child the option of re-  
105 maining in the existing foster care arrangement if remain-  
106 ing is in the best interests of the child. In any proceeding  
107 brought by the department to maintain separation of sib-  
108 lings, such separation may be ordered only if the court  
109 determines that clear and convincing evidence supports  
110 the department's determination. In any proceeding  
111 brought by the department seeking to maintain separation  
112 of siblings, notice shall be afforded, in addition to any  
113 other persons required by any provision of this code to  
114 receive notice, to the persons seeking to adopt a sibling or  
115 siblings of a previously placed or adopted child and said  
116 persons may be parties to any such action.

117 (f) Where two or more siblings have been placed in  
118 separate foster care arrangements and the foster parents of  
119 the siblings have made application to the department to  
120 enter into a foster care arrangement regarding the sibling  
121 or siblings not in their home or where two or more adop-  
122 tive parents seek to adopt a sibling or siblings of a child  
123 they have previously adopted, the department's determina-  
124 tion as to placing the child in a foster care arrangement or  
125 in an adoptive home shall be based solely upon the best  
126 interests of the siblings.

## CHAPTER 55

(Com. Sub. for S. B. 27—By Senators Tomblin, Mr. President, and Boley)  
[By Request of the Executive]

[Passed March 4, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, ten, thirteen, fourteen, sixteen, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the jurisdiction of courts over persons under eighteen years of age generally; the continuing jurisdiction of juvenile courts; the transfer of juvenile proceedings from juvenile jurisdiction to criminal jurisdiction of the courts; the commitment of juveniles upon disposition; the modification of dispositional orders; the transfer of juveniles from a secure facility to a penitentiary once the age of eighteen years is attained; the expungement of juvenile records; and the formulation of after-care plans for juveniles.

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

That sections two, ten, thirteen, fourteen, sixteen, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 5. JUVENILE PROCEEDINGS.

- §49-5-2. Continuing jurisdiction of court.
- §49-5-10. Waiver and transfer of jurisdiction.
- §49-5-13. Disposition; appeal.
- §49-5-14. Modification of dispositional orders.
- §49-5-16. Committing children to jail and detention facilities; standards.
- §49-5-17. Expungement of records; exceptions; no discrimination.
- §49-5-18. After-care plans; submission to the court; comments to be submitted; hearing on the plan and adoption thereof.

#### §49-5-2. Continuing jurisdiction of court.

- 1 As used in this article, a "child" shall include a person
- 2 under the age of eighteen years or a person subject to the

3 juvenile jurisdiction of the court pursuant to this section.  
4 If a child commits an act which if committed by an adult  
5 would be a crime and for such act is adjudged delinquent,  
6 the jurisdiction of the court shall continue until the child  
7 becomes twenty-one years of age with the same power  
8 over the child that the court had prior to the child's be-  
9 coming an adult and the further power to sentence such  
10 person to not more than six months in jail if the offender  
11 is over the age of eighteen years. This shall not preclude  
12 the exercise of criminal jurisdiction where the proceedings  
13 have been transferred to the criminal jurisdiction of the  
14 court pursuant to section ten of this article, or in case the  
15 offender, after becoming an adult, commits a violation of  
16 law. A child may be brought before the circuit court for  
17 proceedings under this article by the following means and  
18 no others:

19 (a) By juvenile petition praying that the child be ad-  
20 judged neglected or delinquent;

21 (b) By certification or transfer to the juvenile jurisdic-  
22 tion of the circuit court, from the criminal jurisdiction of  
23 such court, from any foreign court or any court of this  
24 state before which such child is brought charged with the  
25 commission of a crime, as provided in section one, one-a  
26 or one-b of this article;

27 (c) By warrant, capias or attachment issued by a judge,  
28 referee or magistrate returnable to the circuit court, charg-  
29 ing a child with an act of delinquency.

**§49-5-10. Waiver and transfer of jurisdiction.**

1 (a) Upon written motion of the prosecuting attorney  
2 filed at least eight days prior to the adjudicatory hearing  
3 and with reasonable notice to the child, the parents, guard-  
4 ians or custodians of the child and the child's counsel, the  
5 court shall conduct a hearing to determine if juvenile  
6 jurisdiction should or must be waived and the proceeding  
7 transferred to the criminal jurisdiction of the court. Any  
8 motion filed in accordance with this section shall state,  
9 with particularity, the grounds for the requested transfer,  
10 including the grounds relied upon set forth in subsections  
11 (d), (e), (f) and (g) of this section and the burden shall be  
12 upon the state to establish such grounds by clear and con-

13 vincible proof. Any hearing held under the provisions of  
14 this section shall be held within seven days of the filing of  
15 the motion for transfer unless it is continued for good  
16 cause.

17 (b) No inquiry relative to admission or denial of the  
18 allegations of the charge or the demand for jury trial shall  
19 be made by or before the court until a decision shall have  
20 been made relative to whether the proceeding is to be  
21 transferred to criminal jurisdiction.

22 (c) The court shall transfer a juvenile proceeding to  
23 criminal jurisdiction if a child who has attained the age of  
24 fourteen years shall make a demand on the record to be  
25 transferred to the criminal jurisdiction of the court. Such  
26 cases may then be referred to a magistrate for trial, if oth-  
27 erwise cognizable by a magistrate.

28 (d) The court shall transfer a juvenile proceeding to  
29 criminal jurisdiction if there is probable cause to believe  
30 that:

31 (1) The child is at least fourteen years of age and has  
32 committed the crime of treason under section one, article  
33 one, chapter sixty-one of this code; the crime of murder  
34 under sections one, two and three, article two of said chap-  
35 ter; the crime of robbery involving the use or presenting  
36 of firearms or other deadly weapons under section twelve  
37 of said article; and the crime of kidnapping under section  
38 fourteen-a of said article; the crime of first degree arson  
39 under section one, article three of said chapter; or the  
40 crime of sexual assault in the first degree under section  
41 three, article eight-b of said chapter; or

42 (2) The child is at least fourteen years of age and has  
43 committed an offense of violence to the person which  
44 would be a felony if the child were an adult: *Provided,*  
45 That the child has been previously adjudged delinquent  
46 for the commission of an offense of violence to the person  
47 which would be a felony if the child were an adult; or

48 (3) The child is at least fourteen years of age and has  
49 committed an offense which would be a felony if the child  
50 were an adult: *Provided,* That the child has been twice

51 previously adjudged delinquent for the commission of an  
52 offense which would be a felony if the child were an adult.

53 (e) The court may transfer a juvenile proceeding to  
54 criminal jurisdiction if there is probable cause to believe  
55 that the child would otherwise satisfy the provisions of  
56 subdivision (1), subsection (d) of this section, but who is  
57 younger than fourteen years of age.

58 (f) The court may, upon consideration of the child's  
59 mental and physical condition, maturity, emotional atti-  
60 tude, home or family environment, school experience and  
61 similar personal factors, transfer a juvenile proceeding to  
62 criminal jurisdiction if there is probable cause to believe  
63 that the child would otherwise satisfy the provisions of  
64 subdivision (2) or (3), subsection (d) of this section, but  
65 who is younger than fourteen years of age.

66 (g) The court may, upon consideration of the child's  
67 mental and physical condition, maturity, emotional atti-  
68 tude, home or family environment, school experience and  
69 similar personal factors, transfer a juvenile proceeding to  
70 criminal jurisdiction if there is probable cause to believe  
71 that:

72 (1) The child, who is at least fourteen years of age, has  
73 committed an offense of violence to the person which  
74 would be a felony if the child were an adult; or

75 (2) The child, who is at least fourteen years of age, has  
76 committed an offense which would be a felony if the child  
77 were an adult: *Provided*, That the child has been previ-  
78 ously adjudged delinquent for the commission of a crime  
79 which would be a felony if the child were an adult; or

80 (3) The child, who is at least fourteen years of age,  
81 used or presented a firearm or other deadly weapon dur-  
82 ing the commission of a felony; or

83 (4) The child has committed a violation of the provi-  
84 sions of section four hundred one, article four, chapter  
85 sixty-a of this code which would be a felony if the child  
86 were an adult involving the manufacture, delivery or pos-  
87 session with the intent to deliver a narcotic drug. For  
88 purposes of this subdivision, the term "narcotic drug" shall



89 have the same definition as that set forth in section one  
90 hundred one, article one of said chapter.

91 (h) For purposes of this section, the term "offense of  
92 violence" means an offense which involves the use or  
93 threatened use of physical force against a person.

94 (i) If, after a hearing, the court directs the transfer of  
95 any juvenile proceeding to criminal jurisdiction, it shall  
96 state on the record the findings of fact and conclusions of  
97 law upon which its decision is based or shall incorporate  
98 such findings of fact and conclusions of law in its order  
99 directing transfer.

100 (j) The child shall have the right to directly appeal an  
101 order of transfer to the supreme court of appeals of the  
102 state of West Virginia: *Provided*, That notice of intent to  
103 appeal and a request for transcript be filed within ten days  
104 from the date of the entry of any such order and the peti-  
105 tion for appeal shall be presented to the supreme court of  
106 appeals within forty-five days from the entry of such or-  
107 der, and that, in default thereof, the right of appeal and the  
108 right to object to such order of transfer shall be waived  
109 and may not thereafter be asserted. The provisions of  
110 article five, chapter fifty-eight of this code pertaining to  
111 the appeals of judgments in civil actions shall apply to  
112 appeals under this chapter except as herein modified. The  
113 court may, within forty-five days of the entry of the order  
114 of transfer, by appropriate order, extend and re-extend the  
115 period in which to file the petition for appeal for such  
116 additional time, not to exceed a total extension of sixty  
117 days, as in the court's opinion may be necessary for prepa-  
118 ration of the transcript: *Provided, however*, That the re-  
119 quest for such transcript was made by the party seeking  
120 appeal within ten days of entry of such order of transfer.  
121 In the event any such notice of intent to appeal and re-  
122 quest for transcript be timely filed, proceedings in crimi-  
123 nal court shall be stayed upon motion of the defendant  
124 pending final action of the supreme court of appeals  
125 thereon.

**§49-5-13. Disposition; appeal.**

1 (a) In aid of disposition, the juvenile probation officer

2 assigned to the court shall, upon request of the court,  
3 make an investigation of the environment of the child and  
4 the alternative dispositions possible. The court, upon its  
5 own motion, or upon request of counsel, may order a  
6 psychological examination of the child. The report of  
7 such examination and other investigative and social re-  
8 ports shall not be made available to the court until after  
9 the adjudicatory hearing. Unless waived, copies of the  
10 report shall be provided to counsel for the petitioner and  
11 counsel for the child no later than seventy-two hours prior  
12 to the dispositional hearing.

13 (b) Following the adjudication, the court shall conduct  
14 the dispositional proceeding, giving all parties an opportu-  
15 nity to be heard. In disposition the court shall not be  
16 limited to the relief sought in the petition and shall, in  
17 electing from the following alternatives, consider the best  
18 interests of the child and the welfare of the public:

19 (1) Dismiss the petition;

20 (2) Refer the child and the child's parent or custodian  
21 to a community agency for needed assistance and dismiss  
22 the petition;

23 (3) Upon a finding that the child is in need of  
24 extra-parental supervision: (A) Place the child under the  
25 supervision of a probation officer of the court or of the  
26 court of the county where the child has his or her usual  
27 place of abode or other person while leaving the child in  
28 custody of his or her parent or custodian; and (B) pre-  
29 scribe a program of treatment or therapy or limit the  
30 child's activities under terms which are reasonable and  
31 within the child's ability to perform, including participa-  
32 tion in the litter control program established pursuant to  
33 section twenty-five, article seven, chapter twenty of this  
34 code, or other appropriate programs of community ser-  
35 vice;

36 (4) Upon a finding that a parent or custodian is not  
37 willing or able to take custody of the child, that a child is  
38 not willing to reside in the custody of his parent or custo-  
39 dian, or that a parent or custodian cannot provide the  
40 necessary supervision and care of the child, the court may

41 place the child in temporary foster care or temporarily  
42 commit the child to the state department or a child welfare  
43 agency. The court order shall state that continuation in  
44 the home is contrary to the best interest of the child and  
45 why; and whether or not the state department made a rea-  
46 sonable effort to prevent the placement or that the emer-  
47 gency situation made such efforts unreasonable or impos-  
48 sible. Whenever the court transfers custody of a youth to  
49 the department of human services, an appropriate order of  
50 financial support by the parents or guardians shall be  
51 entered in accordance with section five, article seven of  
52 this chapter and guidelines promulgated by the supreme  
53 court of appeals;

54 (5) Upon a finding that the best interests of the child  
55 or the welfare of the public require it, and upon an adjudi-  
56 cation of delinquency pursuant to subdivision (1), section  
57 four, article one of this chapter, the court may commit the  
58 child to an industrial home, correctional institution for  
59 children, or other appropriate facility for the treatment,  
60 instruction and rehabilitation of juveniles: *Provided*, That  
61 the court maintains discretion to consider alternative sen-  
62 tencing arrangements. Commitments shall not exceed the  
63 maximum term for which an adult could have been sen-  
64 tenced for the same offense. The order shall state that  
65 continuation in the home is contrary to the best interests  
66 of the child and why; and whether or not the state depart-  
67 ment made a reasonable effort to prevent the placement or  
68 that the emergency situation made such efforts unreason-  
69 able or impossible;

70 (6) Upon an adjudication of delinquency pursuant to  
71 subdivision (3) or (4), section four, article one of this  
72 chapter, and upon a finding that the child is so totally  
73 unmanageable, ungovernable and antisocial that the child  
74 is amenable to no treatment or restraint short of incarceration,  
75 commit the child to a rehabilitative facility devoted  
76 exclusively to the custody and rehabilitation of children  
77 adjudicated delinquent pursuant to said subdivision.  
78 Commitments shall not exceed the maximum period of  
79 one year with discretion as to discharge to rest with the  
80 director of the institution, who may release the child and  
81 return him or her to the court for further disposition. The

82 order shall state that continuation in the home is contrary  
83 to the best interests of the child and why; and whether or  
84 not the state department made a reasonable effort to pre-  
85 vent the placement or that the emergency situation made  
86 such efforts unreasonable or impossible; or

87 (7) After a hearing conducted under the procedures  
88 set out in subsections (c) and (d), section four, article five,  
89 chapter twenty-seven of this code, commit the child to a  
90 mental health facility in accordance with the child's treat-  
91 ment plan; the director may release a child and return him  
92 to the court for further disposition. The order shall state  
93 that continuation in the home is contrary to the best inter-  
94 ests of the child and why; and whether or not the state  
95 department made a reasonable effort to prevent the place-  
96 ment or that the emergency situation made such efforts  
97 unreasonable or impossible.

98 (c) The disposition of the child shall not be affected  
99 by the fact that the child demanded a trial by jury or made  
100 a plea of denial. Any dispositional order is subject to  
101 appeal to the supreme court of appeals.

102 (d) Following disposition, it shall be inquired of the  
103 respondent whether or not appeal is desired and the re-  
104 sponse transcribed; a negative response shall not be con-  
105 strued as a waiver. The evidence shall be transcribed as  
106 soon as practicable and made available to the child or his  
107 or her counsel, if the same is requested for purposes of  
108 further proceedings. A judge may grant a stay of execu-  
109 tion pending further proceedings.

110 (e) Notwithstanding any other provision of this code  
111 to the contrary, if a child charged with delinquency under  
112 this chapter is transferred to adult jurisdiction and there  
113 tried and convicted, the court may make its disposition in  
114 accordance with this section in lieu of sentencing such  
115 person as an adult.

#### §49-5-14. Modification of dispositional orders.

1 (a) A dispositional order of the court may be modi-  
2 fied:

3 (1) Upon the motion of the probation officer, a state

4 department official or prosecuting attorney; or

5 (2) Upon the request of the child or a child's parent or  
6 custodian who alleges a change of circumstances relating  
7 to disposition of the child.

8 Upon such a motion or request, the court shall con-  
9 duct a review proceeding, except that if the last  
10 dispositional order was within the previous six months the  
11 court may deny a request for review. Notice in writing of  
12 a review proceeding shall be given to the child, the child's  
13 parent or custodian and all counsel not less than  
14 seventy-two hours prior to the proceeding. The court  
15 shall review the performance of the child, the child's par-  
16 ent or custodian, the child's social worker and other per-  
17 sons providing assistance to the child or child's family. If  
18 the motion or request for review of disposition is based  
19 upon an alleged violation of a court order, the court may  
20 modify the dispositional order to a more restrictive alter-  
21 native if it finds clear and convincing proof of substantial  
22 violation. In the absence of such proof, the court may  
23 decline to modify the dispositional order or may modify  
24 the order to one of the less restrictive alternatives set forth  
25 in section thirteen of this article. No child shall be re-  
26 quired to seek a modification order as provided in this  
27 section in order to exercise his right to seek release by  
28 habeas corpus.

29 (b) In a hearing for modification of a dispositional  
30 order, or in any other dispositional hearing, the court shall  
31 consider the best interests of the child and the welfare of  
32 the public.

**§49-5-16. Committing children to jail and detention facilities;  
standards.**

1 (a) A child under eighteen years of age shall not be  
2 committed to a jail or police station, except that any child  
3 over fourteen years of age who has been committed to an  
4 industrial home or correctional institution may be held in  
5 the juvenile department of a jail while awaiting transporta-  
6 tion to the institution for a period not to exceed ninety-six  
7 hours, and a child over fourteen years of age who is  
8 charged with a crime which would be an offense of vio-

9 lence which would be a felony if committed by an adult,  
10 may, upon an order of the circuit court, be housed in a  
11 juvenile detention portion of a county facility, but not  
12 within sight of adult prisoners. A child charged with or  
13 found to be delinquent solely under subdivision (3), (4) or  
14 (5), section four, article one of this chapter, shall not be  
15 housed in a detention or other facility wherein persons are  
16 detained for criminal offenses or for delinquency involv-  
17 ing offenses which would be crimes if committed by an  
18 adult: *Provided*, That a child who is adjudicated delin-  
19 quent under subdivision (5) of said section and who has  
20 violated an order of probation or a contempt order arising  
21 out of a proceeding wherein the child was adjudicated  
22 delinquent for an offense which would be a crime if com-  
23 mitted by an adult may not be housed in a detention or  
24 other facility wherein persons are detained who have not  
25 been adjudicated delinquent for such offenses.

26 (b) No child who has been convicted of an offense  
27 under the adult jurisdiction of the circuit court shall be  
28 held in custody in a penitentiary of this state: *Provided*,  
29 That such child may be transferred from a secure juvenile  
30 facility to a penitentiary after he shall attain the age of  
31 eighteen years if, in the judgment of the court which com-  
32 mitted such child, such transfer is appropriate: *Provided*,  
33 *however*, That any other provision of this code to the  
34 contrary notwithstanding, prior to such transfer the child  
35 shall be returned to the sentencing court for the purpose  
36 of reconsideration and modification of the imposed sen-  
37 tence, which shall be based upon a review of all records  
38 and relevant information relating to the child's rehabilita-  
39 tion since his conviction under the adult jurisdiction of the  
40 court.

**§49-5-17. Expungement of records; exceptions; no discrimina-  
tion.**

1 (a) One year after the child's eighteenth birthday, or  
2 one year after personal or juvenile jurisdiction shall have  
3 terminated, whichever is later, the records of a juvenile  
4 proceeding conducted under this chapter, including  
5 law-enforcement files and records, fingerprints, physical  
6 evidence and all other records pertaining to said proceed-

7 ing shall be expunged by operation of law. When records  
8 are expunged, they shall be returned to the court in which  
9 the case was pending and kept in a separate confidential  
10 file and not opened except upon order of the court.

11 (b) Expungement shall be accomplished by physically  
12 marking the records to show that such records have been  
13 expunged and by the secure sealing and filing of said  
14 records in such a manner that no one can determine the  
15 identity of said juvenile except as provided in subsection  
16 (d) of this section. Expungement shall have the legal  
17 effect as if the offense never occurred.

18 (c) The child's counsel, parent, guardian or custodian,  
19 the court, law-enforcement agencies and other public and  
20 private agencies, in response to a request for record infor-  
21 mation, shall reply that juvenile records are not public  
22 records and are available only by order of the circuit court  
23 in which the case was pending.

24 (d) Notwithstanding this or any other provision of this  
25 code to the contrary, after the effective date of the reenact-  
26 ment of this section juvenile records and law-enforcement  
27 records shall not be disclosed or made available for in-  
28 spection except as follows:

29 (1) If a juvenile case is transferred to the criminal  
30 jurisdiction of the court, and upon the happening of any  
31 of the following:

32 (A) The failure of the juvenile transferred to timely  
33 file an appeal of the order of transfer; or

34 (B) The refusal of the supreme court of appeals to  
35 hear the petition of the juvenile appealing the order of  
36 transfer; or

37 (C) The affirming of the order of transfer by the su-  
38 preme court of appeals, then all records of the case gener-  
39 ated thereafter shall be open to public inspection, under all  
40 of the same structures and guidelines and requirements of  
41 law as exist regarding records for the prosecution of  
42 adults.

43 (2) The court may also, by written order pursuant to a

44 written petition, permit disclosure when:

45 (A) A court having juvenile jurisdiction has the child  
46 before it in a juvenile proceeding;

47 (B) A court exercising criminal jurisdiction over the  
48 child requests such records for the purpose of a presen-  
49 tence report or other dispositional proceeding;

50 (C) The child or counsel for the child requests disclo-  
51 sure or inspection of such records;

52 (D) The officials of public institutions to which a child  
53 is committed require such records for transfer, parole or  
54 discharge considerations; or

55 (E) A person doing research requests disclosure, on  
56 the condition that information which would identify the  
57 child or family involved in the proceeding shall not be  
58 divulged.

59 (e) No individual, firm, corporation or other entity  
60 shall, on account of a person's prior involvement in a pro-  
61 ceeding under this article, discriminate against any person  
62 in access to, terms of, or conditions of employment, hous-  
63 ing, education, credit, contractual rights or otherwise.

64 (f) No records of a child convicted under the criminal  
65 jurisdiction of the court pursuant to subdivision (1), sub-  
66 section (d), section ten of this article shall be expunged.

67 (g) Any person who willfully violates this section shall  
68 be guilty of a misdemeanor, and, upon conviction thereof,  
69 shall be fined not more than one thousand dollars, or  
70 confined in jail not more than six months, or both such  
71 fine and imprisonment, and shall be liable for damages in  
72 the amount of three hundred dollars or actual damages,  
73 whichever is greater.

**§49-5-18. After-care plans; submission to the court; com-  
ments to be submitted; hearing on the plan and  
adoption thereof.**

1 (a) Forty-five days prior to the discharge of a child  
2 from any institution or facility pursuant to subdivision (5),  
3 (6) or (7), subsection (b), section thirteen of this article,



4 the director of such institution or facility shall have pre-  
5 pared and shall forward to the committing court a copy of  
6 the child's proposed after-care plan. Copies of the plan  
7 shall also be sent to: (1) The child's parents, if any, or legal  
8 guardian if the child is not living with his parents; (2) the  
9 child's lawyer; (3) the child's probation officer or commu-  
10 nity mental health center professional; (4) the prosecuting  
11 attorney of the county in which the original commitment  
12 proceedings were held; and (5) the principal of the school  
13 where the child will attend school.

14 (b) The after-care plan shall contain a detailed de-  
15 scription of the training, schooling, counseling and treat-  
16 ment received while at the institution or facility and the  
17 same proposed for the child upon his discharge. The plan  
18 shall describe any problems the child may have, the source  
19 of those problems and describe how those problems will  
20 be addressed by the after-care plan. Attached to the plan  
21 shall be a list of the persons who are to receive copies of  
22 this plan.

23 (c) Within twenty-one days of the receipt of the plan,  
24 the child's probation officer or community mental health  
25 center professional shall, and any other person who re-  
26 ceived a copy of the plan pursuant to subsection (a) of this  
27 section may, submit written comments concerning the plan  
28 to the court: *Provided*, That if any person does submit  
29 comments upon the plan, he shall also send copies of  
30 those comments to every other person who received a  
31 copy of the plan pursuant to said subsection (a) from the  
32 director.

33 (d) Within the twenty-one days provided in subsection  
34 (c) of this section it shall be the responsibility and duty of  
35 the child's probation officer or the community mental  
36 health center professional who receives a copy of the  
37 after-care plan to contact all other persons, organizations  
38 and agencies to be involved in executing the plan and to  
39 determine whether such persons, organizations and agen-  
40 cies are capable of and will be adequately prepared to  
41 execute the provisions of the plan: *Provided*, That if a  
42 hearing is held to discuss the plan as provided in subsec-  
43 tion (e) of this section, representatives of such persons,

44 organizations or agencies may be required to appear  
45 unless excused by the court.

46 (e) The judge to whom the plan was sent shall within  
47 forty-five days of receipt of the plan schedule and hold a  
48 hearing to consider the plan, including any comments or  
49 objections submitted in response thereto: *Provided*, That  
50 if no adverse comments or objections are submitted, a  
51 hearing need not be held. The court shall consider the  
52 after-care plan as submitted and shall within five days of  
53 the hearing or within forty-five days of the receipt of the  
54 plan if no hearing is held issue an order which adopts the  
55 plan as submitted or as modified in response to comments  
56 and objections: *Provided, however*, That the plan as  
57 adopted by order of the court shall be in the best interests  
58 of the child and be in conformity with the state's interest in  
59 youth as embodied in subsection (b), section thirteen of  
60 this article: *Provided further*, That the court shall appoint  
61 the child's probation officer or a community mental health  
62 center professional to act as supervisor of the plan, which  
63 supervisor shall make a report commenting on the  
64 progress of the child to the court every sixty days, or until  
65 the court shall determine that no such report is necessary,  
66 or when the court determines that after-care is no longer  
67 needed.

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## CHAPTER 56

(Com. Sub. for H. B. 2402—By Delegates Amores, Hunt, Farris and Seacrist)

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[Passed March 10, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section thirteen-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article seven-a, chapter fifty-five of said code, all relating to the liability of parents for the acts of their children; providing for parental liability for restitution not made by a juvenile; providing for parental

liability for willful, malicious or criminal acts of children; and increasing the monetary liability of parents for such acts.

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

That section thirteen-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article seven-a, chapter fifty-five of said code be amended and reenacted, all to read as follows:

#### **Chapter**

#### **49. Child Welfare.**

#### **55. Actions, Suits and Arbitration; Judicial Sale.**

### **CHAPTER 49. CHILD WELFARE.**

#### **ARTICLE 5. JUVENILE PROCEEDINGS.**

#### **§49-5-13b. Authority of the courts to order fines; revocation of vehicle privileges and restitution.**

1           (a) In addition to the methods of disposition provided  
2 in section thirteen of this article, the court may enter an  
3 order imposing one or more of the following penalties,  
4 conditions and limitations:

5           (1) Impose a fine not to exceed one hundred dollars  
6 upon such child;

7           (2) Require the child to make restitution or reparation  
8 to the aggrieved party or parties for actual damages or loss  
9 caused by the offense for which the child was found to be  
10 delinquent, or if the child does not make full restitution,  
11 require the custodial parent or parents, as defined in  
12 section two, article seven-a, chapter fifty-five, of the child  
13 to make partial or full restitution to the victim to the extent  
14 the child fails to make full restitution;

15           (3) Require the child to participate in a public service  
16 project under such conditions as the court prescribes,  
17 including participation in the litter control program  
18 established pursuant to the authority of section twenty-  
19 five, article seven, chapter twenty of this code;

20           (4) When the child is fifteen years of age or younger

21 and has been adjudged delinquent, the court may order  
22 that the child is not eligible to be issued a junior  
23 probationary operator's license or when the child is  
24 between the ages of sixteen and eighteen years and has  
25 been adjudged delinquent, the court may order that the  
26 child is not eligible to operate a motor vehicle in this state,  
27 and any junior or probationary operator's license shall be  
28 surrendered to the court. Such child's driving privileges  
29 shall be suspended for a period not to exceed two years,  
30 and the clerk of the court shall notify the commissioner of  
31 the department of motor vehicles of such order.

32 (b) Nothing herein stated shall limit the discretion of  
33 the court in disposing of a juvenile case: *Provided*, That  
34 the juvenile shall not be denied probation or any other  
35 disposition pursuant to this article because the juvenile is  
36 financially unable to pay a fine or make restitution or  
37 reparation: *Provided, however*, That all penalties, condi-  
38 tions and limitations imposed under this section shall be  
39 based upon a consideration by the court of the seriousness  
40 of the offense, the child's ability to pay, and a program of  
41 rehabilitation consistent with the best interests of the child.

42 (c) Notwithstanding any other provisions of this code  
43 to the contrary, in the event a child charged with  
44 delinquency under this chapter is transferred to adult  
45 jurisdiction and there convicted, the court may never-  
46 theless, in lieu of sentencing such person as an adult, make  
47 its disposition in accordance with this section.

## CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

### ARTICLE 7A. LIABILITY OF PARENTS.

#### §55-7A-2. Parental liability for willful, malicious or criminal acts of children.

1 The custodial parent or parents of any minor child  
2 shall be personally liable in an amount not to exceed five  
3 thousand dollars for damages which are the proximate  
4 result of any one or a combination of the following acts of  
5 the minor child:

6 (a) The malicious and willful injury to the person of

7 another; or

8 (b) The malicious and willful injury or damage to the  
9 property of another, whether the property be real, personal  
10 or mixed; or

11 (c) The malicious and willful setting fire to a forest or  
12 wooded area belonging to another; or

13 (d) The willful taking, stealing and carrying away of  
14 the property of another, with the intent to permanently  
15 deprive the owner of possession.

16 For purposes of this section, "custodial parent or  
17 parents" shall mean the parent or parents with whom the  
18 minor child is living, or a divorced or separated parent  
19 who does not have legal custody but who is exercising  
20 supervisory control over the minor child at the time of the  
21 minor child's act.

22 Persons entitled to recover damages under this article  
23 shall include, but not be limited to, the state of West  
24 Virginia, any municipal corporation, county commission  
25 and board of education, or other political subdivision of  
26 this state, or any person or organization of any kind or  
27 character. The action may be brought in magistrate or  
28 another court of competent jurisdiction. Recovery here-  
29 under shall be limited to the actual damages based upon  
30 direct out-of-pocket loss, taxable court costs, and interest  
31 from date of judgment. The right of action and remedy  
32 granted herein shall be in addition to and not exclusive of  
33 any rights of action and remedies therefor against a parent  
34 or parents for the tortious acts of his or their children  
35 heretofore existing under the provisions of any law,  
36 statutory or otherwise, or now so existing independently of  
37 the provisions of this article.

38 The provisions of this article shall be applicable to  
39 causes of action arising on and after the effective date of  
40 reenactment of this article. Causes of actions arising  
41 before the effective date of reenactment of this article and  
42 proceedings thereon shall be governed by the previously  
43 enacted provisions of this article in force at the time the  
44 cause arose.

## CHAPTER 57

(Com. Sub. for H. B. 2743—By Delegates Facemyer and Linch)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section one, article thirteen, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

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

That section one, article thirteen, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION ON NONPARTISAN MERIT BASIS.**

**§6-13-1. Preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.**

1 For positions in any agency as defined in section four,  
2 article one, chapter five-f of this code or any other  
3 political subdivision of this state in which positions are  
4 filled under civil service or any job classification system, a  
5 preference of five points in addition to the regular  
6 numerical score received on examination shall be awarded  
7 to all veterans having qualified for appointment by  
8 making a minimum passing grade; and to all veterans  
9 awarded the purple heart, or having a compensable  
10 service-connected disability, as established by any proper  
11 veterans' bureau or department of the federal government,  
12 an additional five points shall be allowed.

13 For the purpose of this article, a person is defined as a  
14 "veteran" if he or she fulfills the requirements of one of

15 the following subsections:

16 (a) Served on active duty anytime between the seventh  
17 day of December, one thousand nine hundred forty-one,  
18 and the first day of July, one thousand nine hundred  
19 fifty-five. However, any person who was a reservist called  
20 to active duty between the first day of February, one  
21 thousand nine hundred fifty-five, and the fourteenth day  
22 of October, one thousand nine hundred seventy-six, must  
23 meet condition (b) stated below;

24 (b) Served on active duty anytime between the second  
25 day of July, one thousand nine hundred fifty-five, and the  
26 fourteenth day of October, one thousand nine hundred  
27 seventy-six, or a reservist called to active duty between the  
28 first day of February, one thousand nine hundred  
29 fifty-five, and the fourteenth day of October, one  
30 thousand nine hundred seventy-six, and who served for  
31 more than one hundred eighty days;

32 (c) Entered on active duty between the fifteenth day  
33 of October, one thousand nine hundred seventy-six, and  
34 the seventh day of September, one thousand nine hundred  
35 eighty, or a reservist who entered on active duty between  
36 the fifteenth day of October, one thousand nine hundred  
37 seventy-six, and the thirteenth day of October, one  
38 thousand nine hundred eighty-two, and received a  
39 campaign badge or expeditionary medal or is a disabled  
40 veteran; or

41 (d) Enlisted in the armed forces after the seventh day  
42 of September, one thousand nine hundred eighty, or  
43 entered active duty other than by enlistment on or after  
44 the fourteenth day of October, one thousand nine hundred  
45 eighty-two; and

46 (1) Completed twenty-four months of continuous  
47 active duty or the full period called or ordered to active  
48 duty, or was discharged under 10 U.S.C. 1171, or for  
49 hardship under 10 U.S.C. 1173, and received or was  
50 entitled to receive a campaign badge or expeditionary  
51 medal; or

52 (2) Is a disabled veteran.

53 To receive veteran preference, separation from active  
 54 duty must have been under honorable conditions. This  
 55 includes honorable and general discharges. A clemency  
 56 discharge does not meet the requirements of the Veteran  
 57 Preference Act. Active duty for training in the military  
 58 reserve and national guard programs is not considered  
 59 active duty for purposes of veteran preference.

60 These awards shall be made for the benefit and  
 61 preference in appointment of all veterans who have  
 62 heretofore or who shall hereafter take examinations, but  
 63 shall not operate to the detriment of any person heretofore  
 64 appointed to a position in a department or agency.

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## CHAPTER 58

(S. B. 14—By Senators Dittmar, Anderson, Whitlow and Bailey)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to civil service system; classified-exempt service; additions to classified service; and exemptions.

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

That section four, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 6. CIVIL SERVICE COMMISSION.

#### §29-6-4. Classified-exempt service; additions to classified service; exemptions.

1 (a) The classified-exempt service includes all positions  
 2 included in the classified-exempt service on the effective  
 3 date of this article.

4 (b) Except for the period commencing on the first day  
 5 of July, one thousand nine hundred ninety-two, and



6 ending on the first Monday after the second Wednesday  
7 of the following January and except for the same periods  
8 commencing in the year one thousand nine hundred  
9 ninety-six, and in each fourth year thereafter, the governor  
10 may, by executive order, with the written consent of the  
11 state personnel board and the appointing authority  
12 concerned, add to the list of positions in the classified  
13 service, but such additions shall not include any positions  
14 specifically exempted from coverage as provided in this  
15 section.

16 (c) The following offices and positions are exempt  
17 from coverage under the classified service:

18 (1) All judges, officers and employees of the  
19 judiciary;

20 (2) All members, officers and employees of the  
21 Legislature;

22 (3) All officers elected by popular vote and employees  
23 of the officer;

24 (4) All secretaries of departments and employees  
25 within the office of a secretary;

26 (5) Members of boards and commissions and heads of  
27 departments appointed by the governor or such heads of  
28 departments selected by commissions or boards when  
29 expressly exempt by law or board order;

30 (6) Excluding the policy-making positions in an  
31 agency, one principal assistant or deputy and one private  
32 secretary for each board or commission or head of a  
33 department elected or appointed by the governor or  
34 Legislature;

35 (7) All policy-making positions;

36 (8) Patients or inmates employed in state institutions;

37 (9) Persons employed in a professional or scientific  
38 capacity to make or conduct a temporary and special  
39 inquiry, investigation or examination on behalf of the  
40 Legislature or a committee thereof, an executive  
41 department or by authority of the governor;

42 (10) All employees of the office of the governor,

43 including all employees assigned to the executive  
44 mansion;

45 (11) County road supervisors employed by the  
46 division of highways or their successors;

47 (12) Part-time professional personnel engaged in  
48 professional services without administrative duties and  
49 personnel employed for ninety days or less during a  
50 working year;

51 (13) Members and employees of the board of trustees  
52 and board of directors or their successor agencies;

53 (14) Uniformed personnel of the division of public  
54 safety; and

55 (15) Seasonal employees in the state forests, parks, and  
56 recreational areas working less than 1,733 hours per  
57 calendar year: *Provided*, That notwithstanding any  
58 provision of law to the contrary, seasonal employees shall  
59 not be considered full-time employees.

60 (d) The Legislature finds that the holding of political  
61 beliefs and party commitments consistent or compatible  
62 with those of the governor contributes in an essential way  
63 to the effective performance of and is an appropriate  
64 requirement for occupying certain offices or positions in  
65 state government, such as the secretaries of departments  
66 and the employees within their offices, the heads of  
67 agencies appointed by the governor and, for each such  
68 head of agency, a private secretary and one principal  
69 assistant or deputy, all employees of the office of the  
70 governor including all employees assigned to the  
71 executive mansion, as well as any persons appointed by  
72 the governor to fill policy-making positions, in that such  
73 offices or positions are confidential in character and/or  
74 require their holders to act as advisors to the governor or  
75 the governor's appointees, to formulate and implement the  
76 policies and goals of the governor or the governor's  
77 appointees, or to help the governor or the governor's  
78 appointees communicate with and explain their policies  
79 and views to the public, the Legislature and the press.

## CHAPTER 59

(Com. Sub. for H. B. 2585—By Delegates Staton, Seacrist,  
Farris, Manuel and Hunt)

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[Passed March 10, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section ten, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the consideration of public employees' levels of seniority as a factor when awarding benefits or withdrawing benefits under the classified service.

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

That section ten, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 6. CIVIL SERVICE COMMISSION.

#### §29-6-10. Rules of division.

1       The board shall have the authority to promulgate,  
2       amend or repeal rules, according to chapter twenty-nine-a  
3       of this code, to implement the provisions of this article:

4       (1) For the preparation, maintenance and revision of a  
5       position classification plan for all positions in the classi-  
6       fied service and a position classification plan for all posi-  
7       tions in the classified-exempt service, based upon similar-  
8       ty of duties performed and responsibilities assumed, so  
9       that the same qualifications may reasonably be required  
10      for and the same schedule of pay may be equitably ap-  
11      plied to all positions in the same class. Except for persons  
12      employed by the governing boards of higher education,  
13      all persons receiving compensation as a wage or salary,  
14      funded either in part or in whole by the state, are included  
15      in either the position classification plan for classified ser-  
16      vice or classified-exempt service. After each such classifi-

17 cation plan has been approved by the board, the director  
18 shall allocate the position of every employee in the classi-  
19 fied service to one of the classes in the classified plan and  
20 the position of every employee in the classified-exempt  
21 service to one of the positions in the classified-exempt  
22 plan. Any employee affected by the allocation of a posi-  
23 tion to a class shall, after filing with the director of person-  
24 nel a written request for reconsideration thereof in such  
25 manner and form as the director may prescribe, be given a  
26 reasonable opportunity to be heard thereon by the direc-  
27 tor. The interested appointing authority shall be given  
28 like opportunity to be heard.

29 (2) For a pay plan for all employees in the classified  
30 service, after consultation with appointing authorities and  
31 the state fiscal officers, and after a public hearing held by  
32 the board. Such pay plan shall become effective only  
33 after it has been approved by the governor after submis-  
34 sion to him by the board. Amendments to the pay plan  
35 may be made in the same manner. Each employee shall  
36 be paid at one of the rates set forth in the pay plan for the  
37 class of position in which he is employed. The principle  
38 of equal pay for equal work in the several agencies of the  
39 state government shall be followed in the pay plan as es-  
40 tablished hereby.

41 (3) For open competitive examinations to test the  
42 relative fitness of applicants for the respective positions in  
43 the classified service. Such examinations need not be held  
44 until after the rules have been adopted, the service classi-  
45 fied and a pay plan established, but shall be held not later  
46 than one year after this article takes effect. Such examina-  
47 tions shall be announced publicly at least fifteen days in  
48 advance of the date fixed for the filing of applications  
49 therefor, and may be advertised through the press, radio  
50 and other media. The director may, however, in his or her  
51 discretion, continue to receive applications and examine  
52 candidates long enough to assure a sufficient number of  
53 eligibles to meet the needs of the service and may add the  
54 names of successful candidates to existing eligible lists in  
55 accordance with their respective ratings.

56       An additional five points shall be awarded to the score  
57 of any examination successfully completed by a veteran.  
58 A disabled veteran shall be entitled to an additional ten  
59 points, rather than five points as aforesaid, upon successful  
60 completion of any examination.

61       (4) For promotions within the classified service which  
62 shall give appropriate consideration to the applicant's  
63 qualifications, record of performance, seniority and his or  
64 her score on a written examination, when such examina-  
65 tion is practicable. An advancement in rank or grade or  
66 an increase in salary beyond the maximum fixed for the  
67 class shall constitute a promotion. When any benefit such  
68 as a promotion, wage increase or transfer is to be awarded,  
69 or when a withdrawal of a benefit such as a reduction in  
70 pay, a layoff or job termination is to be made, and a  
71 choice is required between two or more employees in the  
72 classified service as to who will receive the benefit or have  
73 the benefit withdrawn, and if some or all of the eligible  
74 employees have substantially equal or similar qualifica-  
75 tions, consideration shall be given to the level of seniority  
76 of each of the respective employees as a factor in deter-  
77 mining which of the employees will receive the benefit or  
78 have the benefit withdrawn, as the case may be.

79       (5) For layoffs by classification for reason of lack of  
80 funds or work, or abolition of a position, or material  
81 changes in duties or organization, or any loss of position  
82 because of the provisions of this subdivision and for recall  
83 of employees so laid off, consideration shall be given to  
84 an employee's seniority as measured by permanent em-  
85 ployment in the classified service or a state agency. In the  
86 event that the agency wishes to lay off a more senior em-  
87 ployee, the agency must demonstrate that the senior em-  
88 ployee cannot perform any other job duties held by less  
89 senior employees within that agency in the job class or  
90 any other equivalent or lower job class for which the se-  
91 nior employee is qualified: *Provided*, That if an employ-  
92 ee refuses to accept a position in a lower job class, such  
93 employee shall retain all rights of recall as hereinafter  
94 provided.

95       (6) For recall of employees, recall shall be by reverse  
96 order of layoff to any job class that the employee has  
97 previously held or a lower class in the series within the  
98 agency as that job class becomes vacant. An employee  
99 will retain his or her place on the recall list for the same  
100 period of time as his or her seniority on the date of his or  
101 her layoff or for a period of two years, whichever is less.  
102 No new employees shall be hired for any vacancy in his or  
103 her job class or in a lower job class in the series until all  
104 eligible employees on layoff are given the opportunity to  
105 refuse that job class. An employee shall be recalled onto  
106 jobs within the county wherein his or her last place of  
107 employment is located or within a county contiguous  
108 thereto. Any laid-off employee who is eligible for a va-  
109 cant position shall be notified by certified mail of the  
110 vacancy. It shall be the responsibility of the employee to  
111 notify the agency of any change in his or her address.

112       Notwithstanding any other provision of the code to the  
113 contrary, except for the provisions of section seven, article  
114 two, chapter five-b of this code, when filling vacancies at  
115 state agencies the directors of state agencies shall, for a  
116 period of twelve months after the layoff of a permanent  
117 classified employee in another agency, give preference to  
118 qualified permanent classified employees based on senior-  
119 ity and fitness over all but existing employees of the agen-  
120 cy or its facilities: *Provided*, That employment of these  
121 persons who are qualified and who were permanently  
122 employed immediately prior to their layoff shall not su-  
123 perse the recall rights of employees who have been laid  
124 off in such agency or facility.

125       (7) For the establishment of eligible lists for appoint-  
126 ment and promotion within the classified service, upon  
127 which lists shall be placed the names of successful candi-  
128 dates in the order of their relative excellence in the respec-  
129 tive examinations. Eligibility for appointment from any  
130 such list shall continue not longer than three years. An  
131 appointing authority shall make his selection from the top  
132 ten names on the appropriate lists of eligibles, or may  
133 choose any person scoring at or above the ninetieth per-

134 centile on the examination.

135 For the establishment of eligible lists for preference as  
136 provided in subdivision (6) of this section, a list shall be  
137 provided according to seniority. An appointed authority  
138 shall make the selection of the most senior qualified per-  
139 son: *Provided*, That eligibility for appointment from any  
140 such list shall continue not longer than one year and shall  
141 cease immediately upon appointment to a classified posi-  
142 tion.

143 (8) For the rejection of candidates or eligibles within  
144 the classified service who fail to comply with reasonable  
145 requirements in regard to such factors as age, physical  
146 condition, character, training and experience who are  
147 addicted to alcohol or narcotics or who have attempted  
148 any deception or fraud in connection with an examina-  
149 tion.

150 (9) For a period of probation not to exceed one year  
151 before appointment or promotion may be made complete  
152 within the classified service.

153 (10) For provisional employment without competitive  
154 examination within the classified service when there is no  
155 appropriate eligible list available. No such provisional  
156 employment may continue longer than six months, nor  
157 shall successive provisional appointments be allowed, ex-  
158 cept during the first year after the effective date of this  
159 article, in order to avoid stoppage of orderly conduct of  
160 the business of the state.

161 (11) For keeping records of performance of all em-  
162 ployees in the classified service, which service records may  
163 be considered in determining salary increases and decreas-  
164 es provided in the pay plan; as a factor in promotion tests;  
165 as a factor in determining the order of layoffs because of  
166 lack of funds or work and in reinstatement; and as a factor  
167 in demotions, discharges and transfers.

168 (12) For discharge or reduction in rank or grade only  
169 for cause of employees in the classified service. Discharge  
170 or reduction of these employees shall take place only after

171 the person to be discharged or reduced has been presented  
172 with the reasons for such discharge or reduction stated in  
173 writing, and has been allowed a reasonable time to reply  
174 thereto in writing, or upon request to appear personally  
175 and reply to the appointing authority or his or her deputy.  
176 The statement of reasons and the reply shall be filed as a  
177 public record with the director. Notwithstanding the fore-  
178 going provisions of this subdivision, no permanent em-  
179 ployee shall be discharged from the classified service for  
180 absenteeism upon using all entitlement to annual leave and  
181 sick leave when such use has been due to illness or injury  
182 as verified by a physician's certification or for other exten-  
183 uating circumstances beyond the employee's control un-  
184 less his or her disability is of such a nature as to perma-  
185 nently incapacitate him or her from the performance of  
186 the duties of his or her position. Upon exhaustion of  
187 annual leave and sick leave credits for the reasons speci-  
188 fied herein and with certification by a physician that the  
189 employee is unable to perform his or her duties, a perma-  
190 nent employee shall be granted a leave of absence without  
191 pay for a period not to exceed six months if such employ-  
192 ee is not permanently unable to satisfactorily perform the  
193 duties of his or her position.

194 (13) For such other rules and administrative regula-  
195 tions, not inconsistent with this article, as may be proper  
196 and necessary for its enforcement.

197 (14) The board shall review and approve by rules the  
198 establishment of all classified-exempt positions to assure  
199 consistent interpretation of the provisions of this article.

200 The provisions of this section are subject to any modi-  
201 fications contained in chapter five-f of this code. The  
202 board may include in the rules provided for in this article  
203 such provisions as are necessary to conform to regulations  
204 and standards of any federal agency governing the receipt  
205 and use of federal grants-in-aid by any state agency, any-  
206 thing in this article to the contrary notwithstanding. The  
207 board and the director shall see that rules and practices  
208 meeting such standards are in effect continuously after the  
209 effective date of this article.



## CHAPTER 60

(S. B. 366—By Senators Whitlow, Blatnik, Helmick, Manchin, Sharpe and Ross)

[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

### CLAIMS AGAINST THE STATE.

**§1. Finding and declaring certain claims against the board of probation and parole; department of education; division of corrections; division of culture and history; division of human services; division of labor; geological and economical survey; regional jail and correctional facility authority; and women's commission to be moral obligations of the state and directing payments thereof.**

1       The Legislature has heretofore made findings of fact  
2 that the state has received the benefit of the commodities  
3 received and/or services rendered by certain claimants  
4 herein and has considered these claims against the state,  
5 and agencies thereof, which have arisen due to over ex-  
6 penditures of the departmental appropriations by officers  
7 of such state spending units, such claims having been  
8 previously considered by the court of claims which also  
9 found that the state has received the benefit of the com-  
10 modities received and/or services rendered by the claim-  
11 ants, but were denied by the court of claims on the purely  
12 statutory grounds that to allow such claims would be con-  
13 doning illegal acts contrary to the laws of the state. The  
14 Legislature pursuant to its findings of fact and also by the  
15 adoption of the findings of fact by the court of claims as  
16 its own, and, while not condoning such illegal acts, hereby  
17 declares it to be the moral obligation of the state to pay  
18 these claims in the amounts specified below, and directs  
19 the auditor to issue warrants upon receipt of properly  
20 executed requisitions supported by itemized invoices,

21 statements or other satisfactory documents as required by  
 22 section ten, article three, chapter twelve of the code of West  
 23 Virginia, one thousand nine hundred thirty-one, as  
 24 amended, for the payments thereof out of any fund ap-  
 25 propriated and available for the purpose.

26 (a) *Claim against the Board of Probation and Parole:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28 (1) Bell Atlantic-West Virginia, Inc. . . . . \$ 898.78

29 (b) *Claim against the Department of Education:*

30 (TO BE PAID FROM GENERAL REVENUE FUND)

31 (1) Bell Atlantic-West Virginia, Inc. . . . . \$ 14,292.08

32 (c) *Claims against the Division of Corrections:*

33 (TO BE PAID FROM GENERAL REVENUE FUND)

34 (1) ARA Health Services, Inc., dba  
 35 Correctional Medical Systems . . . . . \$ 18,197.32  
 36 (2) American Office Systems . . . . . \$ 197.00  
 37 (3) Associated Anesthesiologists, Inc . . . . \$ 645.00  
 38 (4) BMA of West Virginia, Inc.  
 39 dba BMA of Morgantown . . . . . \$ 64,354.19  
 40 (5) Ashraf Badour, M.D. . . . . \$ 100.00  
 41 (6) Raymond A. Bannan, M.D. . . . . \$ 55.00  
 42 (7) E.Y. Baysal, M.D. . . . . \$ 430.00  
 43 (8) Beckley Appalachian Regional  
 44 Healthcare . . . . . \$ 1,899.00  
 45 (9) Bell Atlantic-West Virginia, Inc. . . . . \$ 21,503.54  
 46 (10) Michael W. Blatt, M.D. . . . . \$ 820.00  
 47 (11) Bluefield Pathology Associates, Inc. . . \$ 250.00  
 48 (12) Bluefield Regional Medical Center . . . \$ 99.08  
 49 (13) John W. Byers, D.D.S. . . . . \$ 214.00  
 50 (14) Hubert H. Byron, Jr., D.D.S. . . . . \$ 1,711.00  
 51 (15) Cabell Huntington Hospital . . . . . \$ 10,001.39  
 52 (16) Camden Clark Memorial Hospital . . . . \$ 215.73  
 53 (17) Cardiocare . . . . . \$ 216.00  
 54 (18) Anthony Catania, Jr., DPM . . . . . \$ 245.00  
 55 (19) Charleston Area Medical Center . . . . \$ 1,434.79  
 56 (20) City of Grafton . . . . . \$ 9,636.00

57	(21) City of Moundsville . . . . .	\$ 5,666.50
58	(22) Joseph R. Clawson, D.D.S. . . . .	\$ 885.00
59	(23) Community Health Systems, Inc. . . . .	\$ 933.96
60	(24) Correctional Medical Services, Inc. . . . .	\$ 66,756.88
61	(25) Nancy L. Craig, M.D. . . . .	\$ 100.00
62	(26) Davis Memorial Hospital . . . . .	\$ 384.25
63	(27) John P. Donahue, M.D. . . . .	\$ 138.00
64	(28) Fairmont General Hospital . . . . .	\$ 682.41
65	(29) Shafqat P. Farooqi, M.D., FACC . . . . .	\$ 5,525.00
66	(30) Galen Health Care of WV, Inc. . . . .	\$ 42,550.12
67	(31) Gas Access Systems, Inc. . . . .	\$ 18,754.58
68	(32) General Welding Supply Company . . . . .	\$ 58.04
69	(33) Richard S. Glass, M.D. . . . .	\$ 2,262.00
70	(34) Harry Glen, M.D. . . . .	\$ 98.20
71	(35) Manuel A. Gomez, M.D. . . . .	\$ 1,157.75
72	(36) Goodwin Drug Company . . . . .	\$ 3,275.86
73	(37) Greenbrier Anesthesia Services, Inc. . . . .	\$ 3,666.00
74	(38) Greenbrier Dermatology Associates . . . . .	\$ 336.00
75	(39) Greenbrier Physicians, Inc. . . . .	\$ 14,325.00
76	(40) Greenbrier Valley Med. Ctr.	
77	dba Metro Rad. . . . .	\$ 1,017.00
78	(41) Greenbrier Valley Urology	
79	Assoc., Inc. . . . .	\$ 7,066.00
80	(42) Wilmer G. Heceta, M.D. . . . .	\$ 737.00
81	(43) I.H. Luna, M.D., Inc. . . . .	\$ 980.00
82	(44) James Archibald Jacob, M.D. . . . .	\$ 28.00
83	(45) Attila A. Lenkey, Jr., M.D. . . . .	\$ 1,520.00
84	(46) Phillip B. Mathias, M.D. . . . .	\$ 585.00
85	(47) Carl F. McComas, M.D. . . . .	\$ 240.00
86	(48) Medical Center Pharmacy and	
87	Health Service . . . . .	\$ 7,119.22
88	(49) Medical Park Anesthesiologists . . . . .	\$ 266.00
89	(50) Medical Services, Inc. . . . .	\$ 1,700.50
90	(51) Sushil K. Mehrotra, M.D. . . . .	\$ 4,333.00
91	(52) Rajesh M. Menta, M.D. . . . .	\$ 650.00
92	(53) Susan W. Miller, M.D. . . . .	\$ 85.00
93	(54) Monongalia General Hospital . . . . .	\$ 232.50
94	(55) Paul E. Nefflen, M.D. . . . .	\$ 1,084.00

95	(56) Northwood Health Systems, Inc. . . . .	\$ 275.00
96	(57) Joe O. Othman, M.D., A.C.P. . . . .	\$ 785.00
97	(58) Panos Ignatiadis, M.D., Inc. . . . .	\$ 181.00
98	(59) Fred J. Payne, M.D. . . . .	\$ 410.00
99	(60) Plastic Surgery, Inc. . . . .	\$ 129.00
100	(61) Prime Care 12 . . . . .	\$ 808.00
101	(62) Princeton Community Hospital . . . . .	\$ 1,394.37
102	(63) Princeton Emergency Physicians	
103	Billing Service . . . . .	\$ 315.00
104	(64) Professional Imaging, Inc. . . . .	\$ 848.48
105	(65) Putnam County Commission . . . . .	\$ 7,516.91
106	(66) Putnam General . . . . .	\$ 372.80
107	(67) Radiology, Inc. . . . .	\$ 1,160.00
108	(68) Reynolds Memorial Hospital . . . . .	\$ 203,690.79
109	(69) Roanoke Podiatry & Foot	
110	Surgery, PC . . . . .	\$ 1,705.50
111	(70) Roche Biomedical Laboratories, Inc. . . . .	\$ 334.25
112	(71) Alan M. Ruben, M.D. . . . .	\$ 724.00
113	(72) William L. Sapon, D.D.S. . . . .	\$ 1,650.00
114	(73) Doyle R. Sickles, M.D. . . . .	\$ 122.00
115	(74) Sistersville General Hospital . . . . .	\$ 342.93
116	(75) Lee E. Smith, M.D.,	
117	& Robert M. Jones, M.D., P.C. . . . .	\$ 160.00
118	(76) Martin T. Smith, D.O. . . . .	\$ 65.00
119	(77) St. Mary's Hospital . . . . .	\$ 5,334.00
120	(78) Michael A. Stewart, M.D. . . . .	\$ 7,260.00
121	(79) Surgical Specialists of	
122	Greenbrier Valley . . . . .	\$ 2,235.00
123	(80) T. Keith Edwards, M.D., Inc. . . . .	\$ 600.00
124	(81) Romeo B. Tan, M.D. . . . .	\$ 6,810.00
125	(82) Taylor County Emergency	
126	Squad, Inc. . . . .	\$ 395.00
127	(83) The Heart Institute of Southern WV . . . . .	\$ 1,240.00
128	(84) Thoracic & Cardiovascular	
129	Surgery, Inc. . . . .	\$ 6,335.00
130	(85) Tri-State Ambulance, Inc. . . . .	\$ 4,070.60
131	(86) Tri-State Derm. Lab., John P.	
132	Donahue, M.D. . . . .	\$ 440.00
133	(87) Unisource (Copco Papers) . . . . .	\$ 377.20
134	(88) United Hospital Center . . . . .	\$ 10,255.45

135	(89) University Health Associates		
136	Dental Practice . . . . .	\$	2,144.00
137	(90) University Health Associates, Inc. . . . .	\$	103,951.00
138	(91) Valley Comp. Comm. Mental		
139	Health Center, Inc. . . . .	\$	1,091.00
140	(92) Welch Emergency Hospital . . . . .	\$	11,207.42
141	(93) West Virginia University		
142	Hospitals, Inc. . . . .	\$	321,095.98
143	(94) Wheeling Clinic, Inc. . . . .	\$	1,476.00
144	(95) Wheeling Hospital . . . . .	\$	9,675.35
145	(96) Nazih R. Youssef, M.D. . . . .	\$	6,947.29
146	(d) <i>Claim against the Division of Culture and History:</i>		
147	(TO BE PAID FROM GENERAL REVENUE FUND)		
148	(1) Bell Atlantic-West Virginia, Inc. . . . .	\$	2,527.44
149	(e) <i>Claims against the Division of Human Services:</i>		
150	(TO BE PAID FROM GENERAL REVENUE FUND)		
151	(1) Bartlett Burdette Cox Funeral Home . .	\$	400.00
152	(2) Roane County Commission . . . . .	\$	300.00
153	(f) <i>Claim against the Division of Labor:</i>		
154	(TO BE PAID FROM GENERAL REVENUE FUND)		
155	(1) Dodson Bros. Exterminating		
156	Company, Inc. . . . .	\$	240.00
157	(g) <i>Claim against the Geological and Economical</i>		
158	<i>Survey:</i>		
159	(TO BE PAID FROM GENERAL REVENUE FUND)		
160	(1) Bell Atlantic-West Virginia, Inc. . . . .	\$	2,596.01
161	(h) <i>Claim against the Regional Jail and Correctional</i>		
162	<i>Facility Authority:</i>		
163	(TO BE PAID FROM GENERAL REVENUE FUND)		
164	(1) Correctional Medical Services, Inc. . . .	\$	25,753.63
165	(i) <i>Claim against the Women's Commission:</i>		
166	(TO BE PAID FROM GENERAL REVENUE FUND)		
167	(1) Bell Atlantic-West Virginia, Inc. . . . .	\$	376.34

## CHAPTER 61

(S. B. 354—By Senators Whitlow, Biatnik, Helmick, Manchin and Sharpe)

[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

### COMPENSATION AWARDS TO VICTIMS OF CRIMES.

#### §1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of  
2 fact and recommendations for awards reported to it by the  
3 court of claims in respect to the following named  
4 claimants who were innocent victims of crime within this  
5 state and entitled to compensation; and in respect to each  
6 of such named claimants the Legislature adopts those  
7 findings of fact as its own, hereby declares it to be the  
8 moral obligation of the state to pay each such claimant in  
9 the amount specified below and directs the auditor to issue  
10 warrants for the payment thereof out of any fund  
11 appropriated and available for the purpose.

12 *Claims for crime victims compensation awards:*

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14	(1)	Coffman, Ralph S., Sr. . . . .	\$ 7,500.00
15	(2)	Cole, William F. . . . .	\$ 10,000.00
16	(3)	Ganaway, Louis A. . . . .	\$ 7,500.00
17	(4)	Glover, Eddie D. . . . .	\$ 15,000.00
18	(5)	Harvey, Thomas C. . . . .	\$ 15,000.00
19	(6)	Lander, Dana M. . . . .	\$ 15,000.00
20	(7)	Mathews, Franklin W. . . . .	\$ 15,000.00
21	(8)	Miller, John P. . . . .	\$ 15,000.00

22	(9)	Miller, Rita . . . . .	\$	15,000.00
23	(10)	Nutter, Michael S. . . . .	\$	15,000.00
24	(11)	Pagano, Elizabeth M. . . . .	\$	10,000.00
25	(12)	Peak, Wilma J. . . . .	\$	7,500.00
26	(13)	Renick, Jackie F. . . . .	\$	15,000.00
27	(14)	Sprouse, Allen . . . . .	\$	15,000.00
28	(15)	Spurlock, Diana L. . . . .	\$	5,000.00
29	(16)	Wolfe, JoAnn R. . . . .	\$	<u>15,000.00</u>
30		TOTAL . . . . .	\$	197,500.00

31 The Legislature finds that the above moral obligations  
 32 and the appropriations made in satisfaction thereof shall  
 33 be the full compensation for all claimants herein.

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## CHAPTER 62

(H. B. 2518—By Delegates Seacrist, Compton, Burke,  
 Evans and Clements)

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[Passed March 10, 1995; in effect from passage.  
 Became law without Governor's signature.]

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AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

### CLAIMS AGAINST THE STATE.

**§1. Finding and declaring certain claims against the adjutant general; alcohol beverage control administration; attorney general; board of directors of the state college system; board of embalmers and funeral directors; board of examiners for licensed practical nurses; board of trustees of the university system of West Virginia; bureau of employment programs; center for professional development; commission on aging; consolidated medical services fund; council on vocational education; crime victims compensation fund; department of administration; department of agriculture; department of education; department of tax and revenue; development office; division of banking; division of corrections; divi-**

sion of environmental protection; division of health; division of highways; division of human services; division of labor; division of public safety; division of rehabilitation services; division of tourism and parks; division of veterans affairs; education and state employees grievance board; educational broadcasting authority; governor's cabinet on children and families; hospital finance authority; human rights commission; insurance commission; library commission; municipal bond commission; office of emergency services; office of the chief medical examiner; public service commission; racing commission; real estate commission; regional jail and correctional facility authority; school building authority; secretary of state; state fire commission; state treasurer; supreme court of appeals, and West Virginia ethics commission; to be moral obligations of the state and directing payment thereof.

1           The Legislature has considered the findings of fact  
2 and recommendations reported to it by the court of claims  
3 concerning various claims against the state and agencies  
4 thereof, and in respect to each of the following claims the  
5 Legislature adopts those findings of fact as its own, and in  
6 respect of certain claims herein, the Legislature has inde-  
7 pendently made findings of fact and determinations of  
8 award and hereby declares it to be the moral obligation of  
9 the state to pay each such claim in the amount specified  
10 below, and directs the auditor to issue warrants for the  
11 payment thereof out of any fund appropriated and avail-  
12 able for the purpose.

13           (a) *Claim against the Adjutant General:*

14                           ( TO BE PAID FROM GENERAL REVENUE FUND )

15           (1) Bell Atlantic-West Virginia, Inc. . . . \$ 2,745.32

16           (b) *Claim against the Alcohol Beverage Control Ad-*  
17 *ministration:*

18                           ( TO BE PAID FROM SPECIAL REVENUE FUND )

19           (1) Bell Atlantic-West Virginia, Inc. . . . \$ 7,755.20

20           (c) *Claims against the Attorney General:*

21                           ( TO BE PAID FROM GENERAL REVENUE FUND )



22	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$ 4,107.23
23	(2)	West Publishing Corporation . . . . .	\$ 296.25
24	(d)	<i>Claims against the Board of Directors of the State</i>	
25		<i>College System:</i>	
26		(TO BE PAID FROM SPECIAL REVENUE FUND)	
27	(1)	Lola Hicks . . . . .	\$ 151.57
28	(2)	Xerox Corporation . . . . .	\$ 4,690.03
29	(e)	<i>Claim against the Board of Embalmers and Funer-</i>	
30		<i>al Directors:</i>	
31		(TO BE PAID FROM SPECIAL REVENUE FUND)	
32	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$ 176.64
33	(f)	<i>Claim against the Board of Examiners for Licensed</i>	
34		<i>Practical Nurses:</i>	
35		(TO BE PAID FROM SPECIAL REVENUE FUND)	
36	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$ 179.54
37	(g)	<i>Claims against the Board of Trustees of the Univer-</i>	
38		<i>sity System of West Virginia:</i>	
39		(TO BE PAID FROM SPECIAL REVENUE FUND)	
40	(1)	Amber D. Dimmick . . . . .	\$ 75.00
41	(2)	Michele K. Rivera, M.D. . . . .	\$ 41,544.00
42	(3)	Xerox Corporation . . . . .	\$ 1,010.65
43	(h)	<i>Claims against the Bureau of Employment Pro-</i>	
44		<i>grams:</i>	
45		(TO BE PAID FROM SPECIAL REVENUE FUND)	
46	(1)	Bell Atlantic-West Virginia,	
47		Inc. . . . .	\$ 23,846.23
48	(2)	Frank J. Haas . . . . .	\$ 145.41
49	(3)	HCX, Inc. . . . .	\$ 23,121.55
50	(4)	The Michie Company . . . . .	\$ 211.64
51	(5)	F. Winston Polly, III . . . . .	\$ 213.00

52 (TO BE PAID FROM WORKERS' COMPENSATION FUND)

53 (6) Bell Atlantic-West Virginia, Inc. . . . \$ 20,503.18

54 (i) *Claim against the Center for Professional Develop-*  
55 *ment:*

56 (TO BE PAID FROM GENERAL REVENUE FUND)

57 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 246.72

58 (j) *Claims against the Commission on Aging:*

59 (TO BE PAID FROM GENERAL REVENUE FUND)

60 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 321.70

61 (TO BE PAID FROM SPECIAL REVENUE FUND)

62 Account No. 5403

63 (2) Bell Atlantic-West Virginia, Inc. . . . \$ 618.34

64 (k) *Claims against Consolidated Medical Services*  
65 *Fund:*

66 (TO BE PAID FROM GENERAL REVENUE)

67 (1) General Electric Company . . . . . \$ 1,460.09

68 (2) Puritan-Bennett Corporation . . . . . \$ 1,663.52

69 (3) Western District Guidance

70 Center, Inc. . . . . \$ 6,437.00

71 (l) *Claim against the Council on Vocational Educa-*  
72 *tion:*

73 (TO BE PAID FROM FEDERAL REVENUE)

74 From Account No. 8650

75 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 356.28

76 (m) *Claim against the Crime Victims Compensation*  
77 *Fund:*

78 (TO BE PAID FROM SPECIAL REVENUE FUND)

79 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 199.54

80 (n) *Claims against the Department of Administration:*

81		(TO BE PAID FROM GENERAL REVENUE FUND)	
82	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$ 47,663.59
83		(TO BE PAID FROM SPECIAL REVENUE FUND)	
84	(2)	Harper Collins Publishers . . . . .	\$ 1,025.00
85	(3)	Mountain State Temporary Serv., dba	
86		Manpower Temporary Service. . .	\$ 1,127.12
87	(o)	<i>Claim against the Department of Agriculture:</i>	
88		(TO BE PAID FROM SPECIAL REVENUE FUND)	
89		From Account No. 1401	
90	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$ 1,183.72
91	(p)	<i>Claims against the Department of Education:</i>	
92		(TO BE PAID FROM GENERAL REVENUE FUND)	
93	(1)	Steven H. Brunty . . . . .	\$ 233.00
94	(2)	Aleta Jo Crotty . . . . .	\$ 363.00
95	(3)	Myra Leigh Huffman-Runion. . . .	\$ 305.00
96	(4)	Barbara E. Maxwell . . . . .	\$ 125.00
97	(5)	William Tomblin . . . . .	\$ 433.75
98	(q)	<i>Claims against the Department of Tax and Reve-</i>	
99		<i> nue:</i>	
100		(TO BE PAID FROM GENERAL REVENUE FUND)	
101	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$ 36,609.83
102	(r)	<i>Claim against the Development Office:</i>	
103		(TO BE PAID FROM GENERAL REVENUE FUND)	
104	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$ 6,941.46
105	(s)	<i>Claims against the Division of Banking:</i>	
106		(TO BE PAID FROM SPECIAL REVENUE FUND)	
107	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$ 1,207.96
108	(2)	Gannet River Cities Publishing, dba	

109		The Herald Dispatch . . . . .	\$ 627.40
110	(t)	<i>Claims against the Division of Corrections:</i>	
111		(TO BE PAID FROM GENERAL REVENUE FUND)	
112	(1)	Boone County Commission . . . . .	\$ 3,187.80
113	(2)	Cabell County Commission . . . . .	\$ 21,075.00
114	(3)	Division of Personnel . . . . .	\$ 32,210.94
115	(4)	Doddridge County Commission . . .	\$ 4,305.00
116	(5)	Fayette County Commission . . . . .	\$ 53,235.06
117	(6)	Fuller & D'Albert, Inc . . . . .	\$ 32.52
118	(7)	Glen L. Spitznogle dba Comm. and	
119		Custom Butchering. . . . .	\$ 654.00
120	(8)	Greenbrier County Commission . . .	\$ 55,819.60
121	(9)	Hancock County Commission . . . . .	\$ 16,393.40
122	(10)	Harrison County Commission . . . . .	\$ 8,800.00
123	(11)	Jackson County Commission . . . . .	\$ 1,600.00
124	(12)	Roger P. Kinney . . . . .	\$ 10,977.84
125	(13)	Logan County Commission . . . . .	\$ 10,150.00
126	(14)	Marshall County Commission . . . . .	\$ 3,695.93
127	(15)	Mason County Commission . . . . .	\$ 1,600.00
128	(16)	McDowell County Commission . . . . .	\$ 12,765.00
129	(17)	Mercer County Commission . . . . .	\$ 9,350.00
130	(18)	Mingo County Commission . . . . .	\$ 12,209.23
131	(19)	Monongalia County Commission . .	\$ 8,775.00
132	(20)	Ohio County Commission . . . . .	\$ 15,000.00
133	(21)	Preston County Commission . . . . .	\$ 22,700.00
134	(22)	Public Employees Insurance Agency	\$ 11,906.68
135	(23)	Putnam County Commission . . . . .	\$ 9,105.40
136	(24)	Regional Jail and Correctional Facility	

137		Authority . . . . .	\$841,731.02
138	(25)	Ritchie County Commission . . . . .	\$ 5,932.12
139	(26)	Taylor County Commission . . . . .	\$ 12,600.00
140	(27)	Upshur County Commission . . . . .	\$ 20,300.00
141	(28)	Wetzel County Commission . . . . .	\$ 11,475.00
142	(29)	Wirt County Commission . . . . .	\$ 5,425.00
143	(30)	Wyoming County Commission . . . . .	\$ 2,300.00
144	(u)	<i>Claims against the Division of Environmental Protection:</i>	
145			
146		(TO BE PAID FROM SPECIAL REVENUE FUND)	
147	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$ 5,925.46
148	(2)	Merleen B. Campbell, dba Verb.	
149		Ink Court Rep. . . . .	\$ 294.00
150	(3)	Manpower Temporary Services . . . . .	\$ 178.64
151	(4)	Mountain State Temp. Serv., dba	
152		Manpower Temp . . . . .	\$ 204.16
153	(5)	Public Employees Insurance Agency	\$ 39,560.70
154	(v)	<i>Claim against Division of Health:</i>	
155		(TO BE PAID FROM GENERAL REVENUE)	
156	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$ 59,174.25
157	(2)	Canon USA, Inc. . . . .	\$ 3,707.99
158	(w)	<i>Claims against the Division of Highways:</i>	
159		(TO BE PAID FROM STATE ROAD FUND)	
160	(1)	Virgil J. Adkins . . . . .	\$ 244.88
161	(2)	William B. and Nancy J. Ball . . . . .	\$ 52.19
162	(3)	Martha Belcher . . . . .	\$ 378.00
163	(4)	Bell Atlantic-West Virginia, Inc. . . . .	\$193,611.16
164	(5)	David J. Bellamy, Jr. . . . .	\$ 500.00
165	(6)	Rod R. and Shirley Bradley . . . . .	\$ 720.79

166	(7)	Otis and Barbara Clevenger . . . . .	\$ 5,196.37
167	(8)	Billie Marlene Croaff . . . . .	\$ 115.91
168	(9)	Jennifer F. Dorsey . . . . .	\$ 179.64
169	(10)	Raymond F. Eltringham . . . . .	\$ 2,487.28
170	(11)	Robert William and Patricia	
171		Lee Fawcett . . . . .	\$ 500.00
172	(12)	Bobby Fowler . . . . .	\$ 106.20
173	(13)	Kimberly A. Freeman . . . . .	\$ 224.13
174	(14)	Virginia and Julius L. Galloway, Sr. . . . .	\$ 216.99
175	(15)	Judith P. Gibbs . . . . .	\$ 250.00
176	(16)	Doris Hall . . . . .	\$ 100.00
177	(17)	Dwight David Hall . . . . .	\$ 250.00
178	(18)	Larry L. Hill . . . . .	\$ 1,724.62
179	(19)	Robert L. and Kimberly A. Jenkins . . . . .	\$ 250.00
180	(20)	Eddie Kennedy . . . . .	\$ 181.21
181	(21)	John Lafferty . . . . .	\$ 677.00
182	(22)	Joseph F. Lynch . . . . .	\$ 80.30
183	(23)	Sonny and Sandy Massey . . . . .	\$ 229.88
184	(24)	Geraldine Newlon . . . . .	\$ 250.00
185	(25)	Michael Joseph and	
186		Beth W. Novotny . . . . .	\$ 250.00
187	(26)	Samuel R. Oliverio . . . . .	\$ 852.00
188	(27)	Raymond Anthony Pecora . . . . .	\$ 178.14
189	(28)	Linda Riggan . . . . .	\$ 130.00
190	(29)	Thomas Riggle . . . . .	\$ 297.64
191	(30)	Glenn and Kathy Rutledge . . . . .	\$ 69.15
192	(31)	Robert L. and Patricia Samms . . . . .	\$ 17.97
193	(32)	Charlotte A. Shamblin . . . . .	\$ 197.05

194	(33)	Shirley K. Strickland .....	\$ 17,812.50
195	(34)	Janet L. Terry .....	\$ 776.06
196	(35)	Leah K. Torbett .....	\$ 250.00
197	(36)	Adolfo M. Torres .....	\$ 205.96
198	(37)	Vicki L. Watters .....	\$ 187.55
199	(38)	Linda Williams .....	\$ 250.00
200	(x)	<i>Claim against Division of Human Services:</i>	
201		(TO BE PAID FROM GENERAL REVENUE)	
202	(1)	Bell Atlantic-West Virginia, Inc. ...	\$ 59,174.25
203	(y)	<i>Claims against the Division of Labor:</i>	
204		(TO BE PAID FROM GENERAL REVENUE FUND)	
205	(1)	Bell Atlantic-West Virginia, Inc. ...	\$ 1,281.91
206	(2)	Pen Holdings, Inc., on behalf of	
207		Frank Br. Mining .....	\$ 1,795.72
208	(z)	<i>Claims against the Division of Public Safety:</i>	
209		(TO BE PAID FROM GENERAL REVENUE FUND)	
210	(1)	Bell Atlantic-West Virginia, Inc. ...	\$ 26,670.50
211	(2)	Eastman Kodak Company .....	\$ 657.60
212	(3)	Safety-Kleen Corporation .....	\$ 268.50
213	(4)	West Virginia University	
214		Hospitals, Inc. ....	\$ 156.09
215	(aa)	<i>Claim against the Division of Rehabilitation Ser-</i>	
216		<i>VICES:</i>	
217		(TO BE PAID FROM FEDERAL REVENUE)	
218		From Account No. 8662	
219	(1)	Bell Atlantic-West Virginia, Inc. ...	\$ 10,184.66
220	(bb)	<i>Claim against the Division of Tourism and Parks:</i>	
221		(TO BE PAID FROM SPECIAL REVENUE FUND)	
222	(1)	Bell Atlantic-West Virginia, Inc. ...	\$ 52,540.01

223 (cc) *Claim against the Division of Veterans Affairs:*

224 (TO BE PAID FROM GENERAL REVENUE FUND)

225 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 1,441.80

226 (dd) *Claim against the Education and State Employees*  
227 *Grievance Board:*

228 (TO BE PAID FROM GENERAL REVENUE FUND)

229 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 1,523.31

230 (ee) *Claim against the Educational Broadcasting Au-*  
231 *thority:*

232 (TO BE PAID FROM GENERAL REVENUE FUND)

233 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 9,109.00

234 (2) Archie Wayne McHenry . . . . . \$ 9,000.00

235 (ff) *Claims against the Governor's Cabinet on Children*  
236 *and Families:*

237 (TO BE PAID FROM GENERAL REVENUE FUND)

238 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 830.94

239 (2) Community Council of Kanawha

240 Valley, Inc. . . . . \$ 4,024.00

241 (gg) *Claim against the Hospital Finance Authority:*

242 (TO BE PAID FROM SPECIAL REVENUE FUND)

243 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 185.64

244 (hh) *Claim against the Human Rights Commission:*

245 (TO BE PAID FROM GENERAL REVENUE FUND)

246 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 974.52

247 (ii) *Claim against the Insurance Commission:*

248 (TO BE PAID FROM SPECIAL REVENUE FUND)

249 (1) Bell Atlantic-West Virginia, Inc. . . . \$ 2,454.42

250 (jj) *Claim against the Library Commission:*

251 (TO BE PAID FROM FEDERAL FUNDS)

252 Account No. 8720



253	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$	9,720.36
254		(kk) <i>Claim against the Municipal Bond Commission:</i>		
255		(TO BE PAID FROM SPECIAL REVENUE FUND)		
256	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$	199.54
257		(ll) <i>Claim against the Office of Emergency Services:</i>		
258		(TO BE PAID FROM GENERAL REVENUE FUND)		
259	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$	1,045.20
260		(mm) <i>Claim against the Office of the Chief Medical</i>		
261		<i>Examiner:</i>		
262		(TO BE PAID FROM GENERAL REVENUE FUND)		
263	(1)	Bell Atlantic-West Virginia, Inc. . . .	\$	789.56
264		(nn) <i>Claim against the Public Service Commission:</i>		
265		(TO BE PAID FROM SPECIAL REVENUE FUND)		
266	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$	4,557.16
267		(oo) <i>Claim against the Racing Commission:</i>		
268		(TO BE PAID FROM SPECIAL REVENUE FUND)		
269	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$	98.32
270		(pp) <i>Claims against the Real Estate Commission:</i>		
271		(TO BE PAID FROM SPECIAL REVENUE FUND)		
272	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$	179.54
273	(2)	Patricia A. Mooney . . . . .	\$	720.00
274		(qq) <i>Claims against the Regional Jail and Correctional</i>		
275		<i>Facility Authority:</i>		
276		(TO BE PAID FROM GENERAL REVENUE FUND)		
277	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$	592.92
278	(2)	Timothy B. Humphrey . . . . .	\$	79.00
279	(3)	David M. Reed . . . . .	\$	240.00
280		(rr) <i>Claim against the School Building Authority of</i>		
281		<i>WV:</i>		
282		(TO BE PAID FROM SPECIAL REVENUE FUND)		

356		CLAIMS	[Ch. 62
283	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$ 975.56
284		(ss) <i>Claim against the Secretary of State:</i>	
285		(TO BE PAID FROM GENERAL REVENUE FUND)	
286	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$ 1,212.84
287		(tt) <i>Claim against the State Fire Commission:</i>	
288		(TO BE PAID FROM GENERAL REVENUE FUND)	
289	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$ 642.83
290		(uu) <i>Claims against the State Treasurer:</i>	
291		(TO BE PAID FROM GENERAL REVENUE FUND)	
292	(1)	CBM, An Ameridata Company . . . . .	\$ 3,914.00
293	(2)	Dickstein, Shapiro & Morin, L.L.P. . . . .	\$ 1,432.72
294	(3)	The Goodyear Tire and	
295		Rubber Company . . . . .	\$ 338.58
296		(vv) <i>Claim against the Supreme Court of Appeals:</i>	
297		(TO BE PAID FROM GENERAL REVENUE FUND)	
298	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$ 5,760.06
299		(ww) <i>Claim against the West Virginia Ethics Commis-</i>	
300		<i>sion:</i>	
301		(TO BE PAID FROM GENERAL REVENUE FUND)	
302	(1)	Bell Atlantic-West Virginia, Inc. . . . .	\$ 267.96
303		The Legislature finds that the above moral obligations	
304		and the appropriations made in satisfaction thereof shall	
305		be the full compensation for all claimants, and that prior	
306		to the payments to any claimant provided for in this bill,	
307		the court of claims shall receive a release from said claim-	
308		ant releasing any and all claims for moral obligations	
309		arising from the matters considered by the Legislature in	
310		the finding of the moral obligations and the making of the	
311		appropriations for said claimant. The court of claims shall	
312		deliver all releases obtained from claimants to the depart-	
313		ment against which the claim was allowed.	

## CHAPTER 63

(Com. Sub. for S. B. 22—By Senator Tomblin, Mr. President)

[By Request of the Executive]

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[Passed February 20, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating generally to the closure of the Colin Anderson Center; setting forth a closure date; requiring the secretary to prepare care, placement and transfer plans for each resident; setting forth criteria to be followed in developing plans; allowing the transfer of funds; setting limitations on transfer of funds; setting forth reporting requirements regarding transfer of funds; creating "Colin Anderson Transfer Fund"; providing for expenditure from fund; providing for the deposit of savings in medical services trust fund; requiring monthly reports to the joint committee on government and finance on the placement of residents; providing qualified employees with a hiring preference for other state government positions; requiring a feasibility study regarding the establishment of one or more permanent intermediate care facilities for the mentally retarded that could house up to thirty residents; expediting certificate of need review under specified circumstances; and creating a subcommittee of the joint committee on government and finance to monitor residents transferred from Colin Anderson Center.

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

That article two, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-b, to read as follows:

### ARTICLE 2. MENTAL HEALTH FACILITIES.

**§27-2-1b. Deinstitutionalization of residents at Colin Anderson.**

1 (a) Notwithstanding any other provisions in this code  
2 to the contrary, the secretary of the department of health  
3 and human resources shall close the Colin Anderson  
4 Center on or before the thirty-first day of December, one  
5 thousand nine hundred ninety-six: *Provided*, That prior  
6 to any transfer of any resident from Colin Anderson  
7 Center as a result of action taken pursuant to this section,  
8 the secretary must design and be able to implement a  
9 detailed plan providing for the ongoing appropriate care,  
10 placement and transfer of said resident in accordance with  
11 subsection (b) of this section.

12 (b) The plan for providing for the ongoing  
13 appropriate care, placement and transfer of each resident  
14 at Colin Anderson Center shall be designed in accordance  
15 with the criteria set forth in this subsection. Each resident  
16 must have a plan of service developed to meet his or her  
17 individual medical, physical and emotional needs. The  
18 plan of service shall be developed by a team which shall  
19 include, but not be limited to, the following persons: The  
20 resident; the immediate family of the resident, if the  
21 immediate family of the resident is willing to participate;  
22 the guardian of the resident, if the guardian is willing to  
23 participate; representatives of the Colin Anderson Center;  
24 community behavioral health service providers; and such  
25 other persons as may be appointed to the team by the  
26 secretary of the department. The plan shall not  
27 compromise the health, safety and well-being of the  
28 resident. The plan will be implemented in a timely  
29 manner. However, no plan shall be implemented until the  
30 needed services are in place, adequate staff training has  
31 been completed and an appropriate transition has been  
32 provided. Each resident, or his or her guardian, shall have  
33 access to and be informed of the written appeal process  
34 which shall be established by the department.

35 (c) In designing and implementing the placement  
36 plan, the secretary of the department of health and human  
37 resources shall transfer funds from the hospital services  
38 revenue account created pursuant to section fifteen-a,  
39 article one, chapter sixteen of this code and the  
40 consolidated medical service fund to a special revenue  
41 account created in the state treasury, designated the "Colin

42 Anderson Transfer Fund" for the specific purposes of  
43 caring for residents in alternative placement settings:  
44 *Provided*, That transfers in excess of a total of ten million  
45 dollars in any one fiscal year shall require the prior  
46 approval of the governor and shall be reported forthwith  
47 to the joint committee on government and finance.  
48 Moneys deposited in the "Colin Anderson Transfer Fund"  
49 shall be expended directly from the fund for payments  
50 related to care of persons affected by the provisions of this  
51 section and may be expended by the transfer of moneys  
52 from this fund to match the state's share of medicaid  
53 payments necessary to effectuate the purposes of this  
54 section. The secretary shall prepare a quarterly report of  
55 all transfers made from the hospital services revenue  
56 account and the consolidated medical service fund  
57 explaining the specific reason for the transfer. The  
58 reports shall be submitted to the joint committee on  
59 government and finance upon their completion. In  
60 submitting a budget to the Legislature for the fiscal year  
61 following the closure of Colin Anderson, the secretary  
62 shall include funding necessary for the continued care of  
63 each resident in the appropriate account and the authority  
64 of the secretary to transfer funds pursuant to this section  
65 shall be void and of no further effect.

66 (d) All savings accruing to the state as a result of  
67 actions taken pursuant to this section shall be deposited in  
68 the medical services trust fund established by section  
69 two-a, article four-a, chapter nine of this code.

70 (e) The secretary of the department of health and  
71 human resources shall make monthly reports to the joint  
72 committee on government and finance regarding the  
73 placement and monitoring of all residents placed from  
74 Colin Anderson Center pursuant to the provisions of this  
75 section. The report shall include, but not be limited to, the  
76 following information: (1) The types of financing and  
77 start-up funds expended for relocation; (2) the costs  
78 incurred during the month for the placement, relocation  
79 and maintenance of each resident; (3) a description of the  
80 transition process planned for each resident and the results  
81 of any trial visits by the resident; (4) a description of the  
82 facility into which any resident is to be placed; (5)

83 information regarding the dislocation of any individual  
84 presently occupying a bed at an intermediate care facility  
85 for the mentally retarded and the ultimate placement of  
86 the dislocated individual; (6) information regarding the  
87 use of day programming and employment; (7)  
88 identification of medical providers by type, prior to and  
89 following the relocation of each resident from Colin  
90 Anderson Center; (8) serious injury and mortality, other  
91 than from natural cause, reports for relocated residents,  
92 provided in a manner to protect the confidentiality of the  
93 residents; (9) a comparison of the needs assessment and  
94 medical and social resources identified for each resident  
95 prior to relocation and after relocation; and (10) such  
96 other information the secretary deems appropriate or is  
97 specifically requested by the joint committee on  
98 government and finance.

99 (f) The department of health and human resources, the  
100 bureau of employment programs, the public employees  
101 retirement system, the public employees insurance agency,  
102 any state agency or local community action agency  
103 receiving job training partnership act funds and any other  
104 agency of the state involved with benefits or services to the  
105 unemployed shall work individually with all employees  
106 whose jobs have been terminated by this section in order  
107 to recommend benefits, services, training, interagency  
108 employment transfer or other employment. The secretary  
109 of the department of health and human resources and  
110 secretaries of all other state agencies shall use best efforts  
111 to employ qualified employees who were employed at the  
112 facility immediately prior to its closure: *Provided*, That  
113 notwithstanding any other provision of this code to the  
114 contrary, in filling vacancies at other facilities or other  
115 state agencies, the secretary and the directors of other  
116 agencies shall, for a period of twelve months after the  
117 closure, give preference over all but existing employees to  
118 qualified employees who were permanently employed at  
119 the facility immediately prior to its closure: *Provided*,  
120 *however*, That qualified persons who were permanently  
121 employed at Colin Anderson immediately prior to its  
122 closure shall not supersede those employees with recall  
123 rights in other state agencies. The secretary of the

124 department of health and human resources is directed to  
125 encourage vendors providing mental health related  
126 services for the department to hire employees who were  
127 separated from service as a result of the closure of Colin  
128 Anderson.

129 (g) No later than the thirtieth day of November, one  
130 thousand nine hundred ninety-five, the department shall  
131 report to the joint committee on government and finance  
132 regarding the feasibility of establishing one or more  
133 permanent intermediate care facilities for the mentally  
134 retarded which would house up to thirty residents which is  
135 constructed and/or operated by a private contractor. Prior  
136 to preparing the report, the department shall solicit  
137 requests for proposals from private contractors who are  
138 willing to construct and/or operate such a facility within  
139 this state. In formulating the feasibility report, the  
140 department shall consider the availability of all necessary  
141 equipment at the private facility, the cost to the state of  
142 maintaining patients in the private facility and the quality  
143 of care available at the privately run facility vis-a-vis the  
144 care available at a group home in this state. The  
145 department shall also consider, when making its report, the  
146 preference of a guardian of any resident at Colin  
147 Anderson Center who prefers the more restrictive  
148 placement of that resident in an intermediate care facility  
149 for the mentally retarded. The department may also  
150 consider and report on such other factors which are  
151 relevant to the feasibility of permanently maintaining, in  
152 this state, one or more intermediate care facilities for the  
153 mentally retarded which would house up to an aggregate  
154 of thirty residents statewide.

155 (h) In order to assist the department in completing the  
156 transfer of residents at Colin Anderson Center to some  
157 other appropriate placement by the thirty-first day of  
158 December, one thousand nine hundred ninety-six, the  
159 health care cost review authority is authorized and re-  
160 quired to expedite any certificate of need review of group  
161 homes or other facilities that are necessitated as a direct  
162 result of the required closure of Colin Anderson Center.  
163 For the purposes of this subsection only, the health care  
164 cost review authority may decrease any time limitations or

1 other requirements set forth in section seven, article two-d,  
 2 chapter sixteen of this code: *Provided*, That in no event  
 3 may the health care cost review authority fail to follow any  
 4 other provision of said article. The secretary of the de-  
 5 partment of health and human resources shall provide the  
 6 health care cost review authority with a list of the applica-  
 7 tions that are to be expedited under this subsection.

8 (i) The Legislature shall establish a subcommittee of  
 9 the joint committee on government and finance to moni-  
 10 tor the placement and care of residents transferred from  
 11 Colin Anderson Center as a result of the provisions of this  
 12 section. The subcommittee shall monitor both state and  
 13 federal moneys expended as a result of the implementa-  
 14 tion of this section. The subcommittee, upon approval by  
 15 the joint committee and when the terms of the visitation  
 16 are in compliance with any applicable law or regulation  
 17 regarding confidentiality and privacy of the residents, may  
 18 visit any facility or placement location.

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## CHAPTER 64

(Com. Sub. for S. B. 402—By Senators Manchin, Wiedebusch, Wagner, Bailey,  
 Anderson, Schoonover, Wooton, Helmick, Deem, Ross, Kimble and Whitlow)

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[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact article six-b, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standards for use of replacement parts in crashed car repairs generally; legislative declaration; definitions; prohibiting the use or requirement of aftermarket crash parts on new cars without written consent; notice to the vehicle owner of the intended use of aftermarket parts; not precluding other remedies; violating article is an unfair method of competition or deceptive act or practice; and penalty.

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

That article six-b, chapter forty-six-a of the code of West



Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 6B. CONSUMER PROTECTION — AUTOMOTIVE  
CRASH PARTS.**

**§46A-6B-1. Legislative declaration.**

1 The Legislature hereby finds and declares as a matter  
2 of public policy that the purposes of this article are to  
3 require disclosure to motor vehicle owners of information  
4 on certain replacement crash parts for repairs to their  
5 motor vehicles and to prevent both motor vehicle body  
6 shops and insurance companies from requiring the use of  
7 aftermarket crash parts for repair unless the motor vehicle  
8 owner consents in writing at the time of the repair.

**§46A-6B-2. Definitions.**

1 As used in this article, the following terms shall have  
2 the meaning defined:

3 (a) "Aftermarket crash parts" means crash parts:

4 (1) Manufactured by a person other than the original  
5 manufacturer of the motor vehicle to be repaired; and

6 (2) For which the original manufacturer of the motor  
7 vehicle has not authorized the use of its name or trade-  
8 mark by the manufacturer of the crash parts;

9 (b) "Code" means the code of West Virginia, one thou-  
10 sand nine hundred thirty-one, as amended;

11 (c) "Crash parts" means exterior or interior sheet metal  
12 or fiberglass panels and parts that form the superstructure  
13 or body of a motor vehicle, including, but not limited to,  
14 fenders, bumpers, quarter panels, door panels, hoods,  
15 grills, fire walls, permanent roofs, wheel wells and front  
16 and rear lamp display panels;

17 (d) "Genuine crash parts" means crash parts:

18 (1) Manufactured by or for the original manufacturer  
19 of the motor vehicle to be repaired; and

20 (2) That are authorized to carry the name or trade-  
21 mark of the original manufacturer of the motor vehicle;

22 (e) "Motor vehicle" has the meaning stated in section  
23 one, article one, chapter seventeen-a of this code; and

24 (f) "Motor vehicle body shop" means any person or  
25 business establishment that removes, replaces, reconditions  
26 or repairs sheet metal or fiberglass motor vehicle crash  
27 parts.

**§46A-6B-3. Genuine and aftermarket crash parts.**

1 For all motor vehicles requiring repair by motor vehi-  
2 cle body shops in the year of their manufacture or in the  
3 two succeeding years thereafter, motor vehicle body shops  
4 must use genuine crash parts sufficient to maintain the  
5 manufacturer's warranty for fit, finish, structural integrity,  
6 corrosion resistance, dent resistance and crash perfor-  
7 mance unless the motor vehicle owner consents in writing  
8 at the time of the repair to the use of aftermarket crash  
9 parts. No insurance company may require the use of  
10 aftermarket crash parts when negotiating repairs of the  
11 motor vehicle with any repairer for a period of three years,  
12 the year the motor vehicle was manufactured and the two  
13 succeeding years thereafter, unless the motor vehicle own-  
14 er consents in writing at the time of the repair to the use of  
15 aftermarket crash parts.

**§46A-6B-4. Notices and written statements to be provided to  
vehicle owner.**

1 (a) Effective the first day of July, one thousand nine  
2 hundred ninety-five, before beginning repair work on  
3 crash parts, a motor vehicle body shop shall:

4 (1) Provide a list to the vehicle owner of the replace-  
5 ment crash parts that the body shop intends to use in mak-  
6 ing repairs;

7 (2) Specify whether the replacement parts are genuine  
8 crash parts; and

9 (3) Identify the manufacturer of the parts if the re-

10 placement parts are aftermarket crash parts.

11 (b) If the replacement crash parts to be used by the  
12 body shop in the repair work are aftermarket crash parts,  
13 the body shop shall include with its estimate the following  
14 written statement: "THIS ESTIMATE HAS BEEN PRE-  
15 PARED BASED ON THE USE OF AFTERMARKET  
16 CRASH PARTS THAT ARE NOT MANUFACTURED BY  
17 THE ORIGINAL MANUFACTURER OF THE VEHICLE  
18 OR BY A MANUFACTURER AUTHORIZED BY THE  
19 ORIGINAL MANUFACTURER TO USE ITS NAME OR  
20 TRADEMARK. THE USE OF AN AFTERMARKET  
21 CRASH PART MAY INVALIDATE ANY REMAINING  
22 WARRANTIES OF THE ORIGINAL MANUFACTURER  
23 ON THAT CRASH PART."

24 (c) The notices and statements required under this  
25 section shall be made in writing in a clear and conspicuous  
26 manner on a separate piece of paper in ten-point capital  
27 type.

28 (d) This section may not be construed to replace or  
29 alter any provision under article six or any other provision  
30 of this chapter.

#### **§46A-6B-5. Other remedies available.**

1 This article does not:

2 (a) Prohibit a person from filing an action for dam-  
3 ages against a body shop; or

4 (b) Require a person first to exhaust any administra-  
5 tive remedy he may have.

#### **§46A-6B-6. Violation of article an unfair method of competi- tion or deceptive act or practice; penalty.**

1 A violation of any provision of this article is an unfair  
2 or deceptive act or practice within the meaning of section  
3 one hundred two, article six of this chapter and is subject  
4 to the enforcement and penalty provisions contained in  
5 this chapter.

## CHAPTER 65

(Com. Sub. for H. B. 2492—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)  
[By Request of the Executive]

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to controlled substances monitoring and centralized information repository; establishing the controlled substances monitoring act; reporting system requirements; implementing the act; establishing a central repository for information collected; requiring certain information be reported; providing for confidentiality of records; limiting access to records; reimbursing for certain costs associated with upgrading software; retaining records; limiting civil liability; requiring promulgation of rules; and criminal penalties.

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

That chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:

### ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

- §60A-9-1. Short title.
- §60A-9-2. Establishment of program; purpose.
- §60A-9-3. Reporting system requirements; implementation; central repository requirement.
- §60A-9-4. Required information.
- §60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.
- §60A-9-6. Promulgation of rules.
- §60A-9-7. Criminal penalties.
- §60A-9-1. Short title.

1 This article shall be referred to as the controlled sub-

2 stances monitoring act.

**§60A-9-2. Establishment of program; purpose.**

1 There is hereby established a controlled substances  
2 monitoring act the purpose of which is to require the re-  
3 cordation and retention in a single repository of informa-  
4 tion regarding the prescribing, dispensing and consump-  
5 tion of certain controlled substances.

**§60A-9-3. Reporting system requirements; implementation;  
central repository requirement.**

1 (a) On or before the first day of May, one thousand  
2 nine hundred ninety-six, the board of pharmacy shall  
3 implement a program wherein a central repository is es-  
4 tablished and maintained which shall contain such infor-  
5 mation as is required by the provisions of this article re-  
6 garding Schedule II controlled substances prescriptions  
7 written or filled in this state. In implementing this pro-  
8 gram, the board of pharmacy shall consult with the divi-  
9 sion of public safety, the licensing boards of practitioners  
10 affected by this article and affected practitioners.

11 (b) The program authorized by subsection (a) of this  
12 section shall be designed to minimize inconvenience to  
13 patients, prescribing practitioners and pharmacists while  
14 effectuating the collection and storage of the required  
15 information. The board of pharmacy shall allow report-  
16 ing of the required information by electronic data transfer  
17 where feasible, and where such is infeasible, on reporting  
18 forms promulgated by the board of pharmacy. The infor-  
19 mation required to be submitted by the provisions of this  
20 article shall be required to be filed no more frequently  
21 than once in a two-month period.

22 (c) The program authorized by subsection (a) of this  
23 section shall also provide for the reimbursement in whole  
24 or in part of the costs reasonably and necessarily incurred  
25 by pharmacists or pharmacies in modifying software in  
26 conformance with the reporting requirements of this arti-

27 cle: *Provided*, That the total expenditures for reimburse-  
28 ments shall not exceed twenty-five thousand dollars. The  
29 board of pharmacy is hereby authorized to promulgate an  
30 emergency legislative rule to effectuate the reimbursement  
31 provisions of this section in accordance with the provisions  
32 of chapter twenty-nine-a of this code. The board of phar-  
33 macy shall provide for the electronic transmission of the  
34 information required to be provided by this article by and  
35 through the use of a toll-free telephone line.

**§60A-9-4. Required information.**

1 Whenever a medical services provider dispenses a  
2 controlled substance listed in the provisions of section two  
3 hundred six, article two of this chapter, or whenever a  
4 prescription for such controlled substances is filled by (i)  
5 a pharmacist or pharmacy in this state; (ii) a hospital, or  
6 other health care facility, for out-patient use; or (iii) a  
7 pharmacy or pharmacist, licensed by the board of phar-  
8 macy, but situated outside this state for delivery to a per-  
9 son residing in this state, the medical services provider,  
10 health care facility, pharmacist or pharmacy shall, in a  
11 manner prescribed by rules promulgated by the board of  
12 pharmacy under this article, report the following informa-  
13 tion, as applicable:

14 (1) The name, address, pharmacy prescription number  
15 and DEA controlled substance registration number of the  
16 dispensing pharmacy;

17 (2) The name and address of the person for whom the  
18 prescription is written;

19 (3) The name, address and drug enforcement adminis-  
20 tration controlled substances registration number of the  
21 practitioner writing the prescription;

22 (4) The name and national drug code number of the  
23 Schedule II controlled substance dispensed;

24 (5) The quantity and dosage of the Schedule II con-  
25 trolled substance dispensed;

- 26           (6) The date the prescription was filled; and  
27           (7) The number of refills, if any, authorized by the  
28   prescription.
- 29           The board of pharmacy may prescribe by rule pro-  
30   mulgated under this article the form to be used in pre-  
31   scribing a Schedule II substance if, in the determination of  
32   the board, the administration of the requirements of this  
33   section would be facilitated.

**§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.**

1           The information required by this article to be kept by  
2   the board of pharmacy shall be confidential and shall be  
3   open to inspection only by inspectors and agents of the  
4   board of pharmacy, members of the division of public  
5   safety expressly authorized by the superintendent to have  
6   access to the information, duly authorized agents of li-  
7   censing boards of practitioners authorized to prescribe  
8   Schedule II controlled substances and persons with an  
9   enforceable court order or regulatory agency administra-  
10   tive subpoena. The board shall maintain the information  
11   required by this article for a period of no less than five  
12   years. Notwithstanding any provisions of this code, data  
13   obtained under the provisions of this article may be used  
14   for compilation of educational, scholarly or statistical  
15   purposes as long as the identities of persons or entities  
16   remain confidential. No individual or entity required to  
17   report under section four of this article shall be subject to  
18   a claim for civil damages or other civil relief for the re-  
19   porting of information to the board of pharmacy as re-  
20   quired under and in accordance with the provisions of this  
21   article.

**§60A-9-6. Promulgation of rules.**

1           The board of pharmacy shall promulgate legislative  
2   rules to effectuate the purposes of this article in accor-

3 dance with the provisions of chapter twenty-nine-a of this  
4 code.

**§60A-9-7. Criminal penalties.**

1 (a) Any person who is required to submit information  
2 to the board of pharmacy pursuant to the provisions of  
3 this article who fails to do so as directed by the board shall  
4 be guilty of a misdemeanor, and, upon conviction thereof,  
5 shall be fined not less than one hundred dollars nor more  
6 than five hundred dollars.

7 (b) Any person who is required to submit information  
8 to the board of pharmacy pursuant to the provisions of  
9 this article who knowingly and willfully refuses to submit  
10 the information required by this article shall be guilty of a  
11 misdemeanor, and, upon conviction thereof, shall be con-  
12 fined in a county or regional jail not more than six  
13 months or fined not more than one thousand dollars, or  
14 both.

15 (c) Any person who is required by the provisions of  
16 this article to submit information to the board of pharma-  
17 cy and who knowingly submits thereto information known  
18 to that person to be false or fraudulent shall be guilty of a  
19 misdemeanor, and, upon conviction thereof, shall be con-  
20 fined in a county or regional jail not more than one year  
21 or fined not more than five thousand dollars, or both.

22 (d) Any person granted access to the information  
23 required by the provisions of this article to be maintained  
24 by the board of pharmacy, and who shall willfully disclose  
25 the information required to be maintained by this article  
26 in a manner inconsistent with a legitimate law-enforcement  
27 purpose, a legitimate professional regulatory purpose, the  
28 terms of a court order or as otherwise expressly authorized  
29 by the provisions of this article shall be guilty of a misde-  
30 meanor, and, upon conviction thereof, shall be confined in  
31 a county or regional jail for not more than six months or  
32 fined not more than one thousand dollars, or both.



## CHAPTER 66

(Com. Sub. for S. B. 499—By Senators Craigo, Anderson and Chafin)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to copyrighted works; legislative findings; definitions; applicability; contracts between proprietors and copyright owners; publication requirement; defense in civil action; and applicability.

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

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-a, to read as follows:

### ARTICLE 2A. COPYRIGHT PROTECTION.

§47-2A-1. Legislative findings.

§47-2A-2. Definitions.

§47-2A-3. Publication of royalty rates; notice requirement; sanctions for failure to publish.

§47-2A-4. Applicability.

#### §47-2A-1. Legislative findings.

1 The Legislature finds and declares that:

2 (a) Under the copyright laws of the United States, a  
3 copyright owner may enforce the rights thereof against  
4 the owners of restaurants, bars, retail establishments, enter-  
5 tainment and sports facilities and similar places of business  
6 where members of the public may assemble for the public  
7 performance of music and other similar copyrighted  
8 works, whether it be in person by a performing artist hired  
9 by the proprietor or on radio stations or other electronic  
10 media transmitted, received and rebroadcast by the propri-

11 etor at those places of business;

12 (b) The rights and responsibilities regarding copy-  
13 righted works are set forth in clause eight, section VIII,  
14 article I of the constitution of the United States and gov-  
15 erned statutorily by Title 17 of the United States code.  
16 The Legislature believes it is important that the state of  
17 West Virginia assist its business owners who utilize copy-  
18 righted materials and the creative artists of this state and  
19 elsewhere by ensuring that the holders of copyrights and  
20 those who use such materials are equitably treated.

**§47-2A-2. Definitions.**

1 As used in this article:

2 (1) "Copyright owner" means the owner of a copyright  
3 of a nondramatic musical or similar work, other than a  
4 motion picture or other audiovisual work, recognized and  
5 enforceable under the copyright laws of the United States  
6 pursuant to Title 17 of the United States Code, Public Law  
7 94-553.

8 (2) "Performing rights society" means an association  
9 or corporation that licenses the public performance of  
10 nondramatic musical works on behalf of copyright own-  
11 ers, such as the American society of composers, authors  
12 and publishers, broadcast music, inc., and SESAC, inc.

13 (3) "Proprietor" means the owner of a retail establish-  
14 ment, restaurant, inn, bar, tavern, sports or other entertain-  
15 ment facility or any other similar place of business located  
16 in this state in which the public may assemble to hear  
17 nondramatic musical works or similar copyrighted works  
18 be performed, broadcast or otherwise transmitted for the  
19 enjoyment of the members of the public there assembled.

20 (4) "Royalty" or "royalties" means the fees payable to  
21 the copyright owner or performing rights society for the  
22 public performance of nondramatic musical or other simi-  
23 lar work.

**§47-2A-3. Publication of royalty rates; notice requirement; sanctions for failure to publish.**

1 (a) Any copyright owner or performing rights society  
2 seeking to charge a proprietor or proprietors a royalty or  
3 fee for the performance for the public of nondramatic  
4 musical or similar works, shall, at least annually, provide  
5 notice of the royalty or fee rate and the means of its com-  
6 putation to said proprietor or proprietors.

7 (b) The notice referred to in subsection (a) of this  
8 section shall be satisfied if the copyright owner or per-  
9 forming rights society publishes the required information  
10 in a Class II-0 legal advertisement in a qualified newspaper  
11 published in this state with a bona fide circulation of forty  
12 thousand or more, or if the copyright owner or perform-  
13 ing rights society files copies of its license agreements  
14 containing the information required under subsection (a)  
15 of this section with the secretary of state's office.

16 (c) Failure of a copyright owner or performing rights  
17 society to meet the publication requirements of this sec-  
18 tion shall constitute a complete defense to any civil action  
19 brought by a copyright owner or performing rights soci-  
20 ety seeking to recover royalties in circumstances where no  
21 contract exists between such parties regarding royalties.

**§47-2A-4. Applicability.**

1 This article does not apply to contracts between copy-  
2 right owners or performing rights societies and broadcast-  
3 ers licensed by the federal communications commission,  
4 except that if a copyright owner or performing rights  
5 society is licensed by the federal communications com-  
6 mission, this article shall apply to contracts between that  
7 copyright owner or performing rights society and a pro-  
8 prietor as otherwise provided herein. This article does not  
9 apply to any conduct engaged in for the enforcement of  
10 section fifty, article three, chapter sixty-one of this code.

## CHAPTER 67

(S. B. 379—By Senators Wooton, Yoder, Wiedebusch, Dittmar and White)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven-a, relating to arrest authority for correctional officers employed by the regional jail authority.

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

That article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-seven-a, to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON  
AUTHORITY.**

**§31-20-27a. Arrest authority of correctional officers.**

1           (a) Persons employed by the regional jail authority as  
2           correctional officers are hereby authorized and  
3           empowered to make arrests of persons already charged  
4           with a violation of law who surrender themselves to such  
5           correctional officer and to arrest persons already in the  
6           custody of the regional jail authority for violations of law  
7           occurring in the officer's presence.

8           (b) Nothing in this section shall be construed as to  
9           make a correctional officer employed by the regional jail  
10          authority a law-enforcement officer as defined in section  
11          one, article twenty-nine, chapter thirty of this code.

## CHAPTER 68

(S. B. 565—By Senators Wooton, Scott, Anderson, Yoder,  
Dittmar and Bowman)

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[Passed March 6, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections three and three-cc, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to emergency communications systems; authorizing counties to establish a uniform system for the naming or renaming of roadways; increasing local telephone service fees to implement the uniform system; adopting minimum standards for emergency communications systems; and establishing standards for alarm systems.

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

That sections three and three-cc, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3. Jurisdiction, powers and duties.

§7-1-3cc. Authority of county commissions to establish enhanced emergency telephone systems, technical and operational standards for emergency communications centers, and standards for education and training of emergency communications systems personnel; standards for alarm systems; fee upon consumers of telephone service for such systems and for roadway conversion systems; authority to contract with the telephone companies for billing of such fee.

#### §7-1-3. Jurisdiction, powers and duties.

1 The county commissions, through their clerks, shall  
2 have the custody of all deeds and other papers presented  
3 for record in their counties and the same shall be pre-  
4 served therein, or otherwise disposed of as now is, or may  
5 be prescribed by law. They shall have jurisdiction in all  
6 matters of probate, the appointment and qualification of  
7 personal representatives, guardians, committees, curators  
8 and the settlement of their accounts and in all matters

9 relating to apprentices. They shall also, under such regu-  
10 lations as now are or may be prescribed by law, have the  
11 superintendence and administration of the internal police  
12 and fiscal affairs of their counties, including the establish-  
13 ment and regulation of roads, ways, streets, avenues, drives  
14 and the like, and the naming or renaming thereof, in co-  
15 operation with local postal authorities, the division of  
16 highways and the directors of county emergency commu-  
17 nications centers, to assure uniform, nonduplicative con-  
18 version of all rural routes to city-type addressing on a  
19 permanent basis, bridges, public landings, ferries and mills,  
20 with authority to lay and disburse the county levies. They  
21 shall, in all cases of contest, judge of the election, qualifi-  
22 cation and returns of their own members, and of all coun-  
23 ty and district officers, subject to appeal as prescribed by  
24 law. Such tribunals as have been heretofore established by  
25 the Legislature under and by virtue of section thirty-four,  
26 article VIII of the constitution of one thousand eight hun-  
27 dred seventy-two, for police and fiscal purposes, shall,  
28 until otherwise provided by law, remain and continue as at  
29 present constituted in the counties in which they have been  
30 respectively established, and shall be and act as to police  
31 and fiscal matters in lieu of the county commission herein  
32 mentioned, until otherwise provided by law. And until  
33 otherwise provided by law, such clerk as is mentioned in  
34 section twenty-six, article VIII of the constitution, as  
35 amended, shall exercise any powers and discharge any  
36 duties heretofore conferred on, or required of, any court  
37 or tribunal established for judicial purposes under said  
38 section of the constitution of one thousand eight hundred  
39 seventy-two, or the clerk of such court or tribunal, respec-  
40 tively, respecting the recording and preservation of deeds  
41 and other papers presented for record, matters of probate,  
42 the appointment and qualification of personal representa-  
43 tives, guardians, committees, curators and the settlement of  
44 their accounts and in all matters relating to apprentices.

**§7-1-3cc. Authority of county commissions to establish en-  
hanced emergency telephone systems, technical  
and operational standards for emergency com-  
munications centers, and standards for education  
and training of emergency communications sys-**

**tems personnel; standards for alarm systems; fee upon consumers of telephone service for such systems and for roadway conversion systems; authority to contract with the telephone companies for billing of such fee.**

1 (a) In addition to possessing the authority to establish  
2 an emergency telephone system pursuant to section four,  
3 article six, chapter twenty-four of this code, a county com-  
4 mission or the county commissions of two or more coun-  
5 ties may, instead, establish an enhanced emergency tele-  
6 phone system or convert an existing system to an en-  
7 hanced emergency system. The establishment of such a  
8 system shall be subject to the provisions of article six of  
9 said chapter. The county commission may adopt rules  
10 after receiving recommendations from the West Virginia  
11 enhanced 911 council concerning the operation of all  
12 county emergency communications centers or emergency  
13 telephone systems centers in the state, including, but not  
14 limited to, recommendations for:

15 (1) Minimum standards for emergency telephone  
16 systems and emergency communications centers;

17 (2) Minimum standards for equipment used in any  
18 center receiving telephone calls of an emergency nature  
19 and dispatching emergency service providers in response  
20 to that call and which receives 911 moneys or has basic  
21 911 service funded through its county commission; and

22 (3) Minimum standards for education and training of  
23 all personnel in emergency communications centers.

24 (b) A county commission may impose a fee upon  
25 consumers of local exchange service within that county  
26 for an enhanced emergency telephone system and associ-  
27 ated electronic equipment and for the conversion of all  
28 rural routes to city-type addressing, as provided in section  
29 three of this article. Such fee shall be utilized for the  
30 capital, installation and maintenance costs of the enhanced  
31 emergency telephone system and of the conversion to  
32 city-type addressing. The county shall reduce such fee  
33 when the capital and installation costs have been fully  
34 recovered to the level necessary to offset recurring mainte-  
35 nance and dispatcher costs only. No such fee may be

36 used for the costs associated with establishing, equipping,  
37 furnishing, operating or maintaining a county answering  
38 point.

39 (c) A county commission may contract with the  
40 telephone company or companies providing local  
41 exchange service within the county for such telephone  
42 company or companies to act as the billing agent or  
43 agents of the county commission for the billing of the fee  
44 imposed pursuant to subsection (b) of this section. The  
45 cost for such billing agent services may be included as a  
46 recurring maintenance cost of the enhanced emergency  
47 telephone system.

48 (d) A county commission of any county with an  
49 emergency communications center or emergency  
50 telephone system may establish standards for alarm  
51 systems, including security, fire and medical alarms.

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## CHAPTER 69

(Com. Sub. for H. B. 2241—By Delegates Manuel, Ryan, Lynch and Collins)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section sixteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-three, article thirteen, chapter eight of said code, all relating to the preparation, publication and disposition of financial statements; and allowing counties and municipalities to report salaries, receipts and expenditures made to deputy sheriffs and members of municipal fire companies and departments and municipal police departments only in the aggregate in those financial statements.



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

That section sixteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-three, article thirteen, chapter eight of said code be amended and reenacted, all to read as follows:

## **Chapter**

**7. County Commissions and Officers.**

**8. Municipal Corporations.**

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 5. FISCAL AFFAIRS.**

#### **§7-5-16. Preparation, publication and disposition of financial statements.**

1           (a) The county commission of every county, within  
2 sixty days after the first session held after the beginning of  
3 each fiscal year, shall prepare on a form to be prescribed  
4 by the state tax commissioner, and cause to be published a  
5 statement revealing: (1) The receipts and expenditures of  
6 the county during the previous fiscal year arranged under  
7 descriptive headings; (2) the name of each firm, corpora-  
8 tion, and person who received more than fifty dollars from  
9 any fund during the previous fiscal year, together with the  
10 amount received and the purpose for which paid; and (3)  
11 all debts of the county, the purpose for which each debt  
12 was contracted, its due date, and to what date the interest  
13 thereon has been paid. The statement shall be published  
14 as a Class I-0 legal advertisement in compliance with the  
15 provisions of article three, chapter fifty-nine of this code,  
16 and the publication area for such publication shall be the  
17 county: *Provided*, That all salaries, receipts and expendi-  
18 tures to all county employees by office or department  
19 may be published in the aggregate.

20           (b) The county commission shall transmit to any  
21 resident of the county requesting the same a copy of the

22 published statement for the fiscal year designated, supple-  
23 mented by a list of the names of each firm, corporation  
24 and person who received less than fifty dollars from any  
25 fund during such fiscal year showing the amount paid to  
26 each, the purpose for which paid and an itemization of the  
27 salaries, receipts and expenditures to all county employees  
28 by office or department otherwise published in the aggre-  
29 gate.

30 (c) If a county commission willfully fails or refuses to  
31 perform the duties hereinbefore named, every member of  
32 the commission, concurring in such failure or refusal,  
33 shall be guilty of a misdemeanor, and, upon conviction  
34 thereof, shall be fined not less than fifty nor more than  
35 one hundred dollars; and the prosecuting attorney of any  
36 county shall, when the failure or refusal shall come to his  
37 knowledge, immediately present the evidence thereof to  
38 the grand jury if in session, and if not in session, he shall  
39 institute proper criminal proceedings before a magistrate  
40 against any offender, and cause the failure or refusal to be  
41 investigated by the next succeeding grand jury.

42 (d) Where in subsections (a) and (b), salaries, receipts  
43 and expenditures are published in the aggregate, the coun-  
44 ty commission shall, upon written request, provide to any  
45 resident of the county an itemized accounting of such  
46 salaries, receipts and expenditures.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 13. TAXATION AND FINANCE.

#### PART VII. MUNICIPAL FINANCIAL STATEMENTS.

#### §8-13-23. Preparation, publication and disposition of financial statements.

1 (a) Every city, within ninety days after the beginning  
2 of each fiscal year, shall prepare on a form to be pre-  
3 scribed by the state tax commissioner and cause to be  
4 published a sworn statement revealing: (1) The receipts  
5 and expenditures of the city during the previous fiscal

6 year arranged under descriptive headings; (2) the name of  
7 each person who received more than fifty dollars from  
8 any fund during the previous fiscal year, together with the  
9 amount received and the purpose for which paid; and (3)  
10 all debts of the city, the purpose for which each debt was  
11 contracted, its due date, and to what date the interest there-  
12 on has been paid. Such statement shall be published as a  
13 Class I legal advertisement in compliance with the provi-  
14 sions of article three, chapter fifty-nine of this code, and  
15 the publication area for such publication shall be the city:  
16 *Provided*, That all salaries, receipts and expenditures to  
17 employees of municipal offices, companies and depart-  
18 ments may be published in the aggregate.

19 (b) Every city shall transmit to any resident of such  
20 city requesting the same a copy of any published state-  
21 ment for the fiscal year designated, supplemented by a  
22 document listing the names of each person who received  
23 less than fifty dollars from any fund during the fiscal  
24 year and showing the amount paid to each and the pur-  
25 pose for which paid, and an itemization of the salaries,  
26 receipts and expenditures to employees of municipal of-  
27 fices, companies and departments otherwise published in  
28 the aggregate.

29 (c) Every town or village, within one hundred twenty  
30 days after the beginning of each fiscal year, shall prepare  
31 on a form to be prescribed by the state tax commissioner a  
32 sworn statement revealing: (1) The receipts and expendi-  
33 tures of the town or village during the previous fiscal year  
34 arranged under descriptive headings; (2) the name of  
35 each person who received money from any fund during  
36 the previous fiscal year, together with the amount received  
37 and the purpose for which paid; and (3) all debts of the  
38 town or village, the purpose for which each debt was con-  
39 tracted, its due date, and to what date the interest thereon  
40 has been paid: *Provided*, That all salaries, receipts and  
41 expenditures to employees of municipal offices, compa-  
42 nies and departments may be published in the aggregate.

43           (d) Every town or village shall transmit to any resi-  
44 dent of the town or village requesting the same a copy of  
45 any statement for the fiscal year designated. Any town  
46 or village may, if the governing body thereof so elects,  
47 also publish the statement as a Class I legal advertisement  
48 in compliance with the provisions of said article three,  
49 chapter fifty-nine, and in such event, the publication area  
50 for such publication shall be the town or village.

51           (e) The statement required by subsection (a) of this  
52 section and the statement required by subsection (c) of  
53 this section shall be sworn to by the recorder of the mu-  
54 nicipality and the mayor thereof and two members of the  
55 governing body of the municipality. As soon as practica-  
56 ble following the close of the fiscal year, a copy of any  
57 statement herein required shall be filed by the municipali-  
58 ty with the state tax commissioner, and the clerk of the  
59 county commission of the county, and the clerk of the  
60 circuit court of the circuit, in which the municipality or the  
61 major portion of the territory thereof is located. If the  
62 governing body fail or refuse to perform any of the duties  
63 set forth in this section, every member of such governing  
64 body and the recorder thereof concurring in such failure  
65 or refusal shall be guilty of a misdemeanor, and, upon  
66 conviction thereof, shall be fined not less than ten nor  
67 more than one hundred dollars. If any of the provisions  
68 of this section are violated, it shall be the duty of the pros-  
69 ecuting attorney of the county in which the municipality  
70 or the major portion of the territory thereof is located to  
71 immediately present the evidence thereof to the grand jury  
72 if in session, and if not in session, he shall cause such vio-  
73 lations to be investigated by the next succeeding grand  
74 jury.

75           (f) Where in subsections (a), (b) and (c), salaries, re-  
76 cepts and expenditures are published in the aggregate, the  
77 city, town or village shall, upon written request, provide to  
78 any resident of such city, town or village, an itemized  
79 accounting of such salaries, receipts and expenditures.

# CHAPTER 70

(S. B. 550—By Senator Craigo)

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[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-b; and to amend and reenact section eleven, article nine-a, chapter eighteen of said code, all relating to the tax increment project financing act; legislative findings and purpose; definitions; tax increment financing procedures; copies of tax increment project financing order provided to assessor, sheriff and director of finance; issuance of obligations for development project costs; terminating tax increment financing; severability; and clarifying the term "assessed value".

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

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-b; and that section eleven, article nine-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

## Chapter

**7. County Commissions and Officers.**

**18. Education.**

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.**

- §7-11B-1. Short title.
- §7-11B-2. Findings and legislative purpose.
- §7-11B-3. Definitions.
- §7-11B-4. Tax increment financing procedures.
- §7-11B-5. Copies of tax increment financing order to assessor, sheriff and director of the division of finance.
- §7-11B-6. Issuance of obligations for development project costs.
- §7-11B-7. Terminating tax increment financing.
- §7-11B-8. Severability.

**§7-11B-1. Short title.**

1 This article may be known and cited as "The Tax  
2 Increment Financing Act".

**§7-11B-2. Findings and legislative purpose.**

1 It is hereby found and declared that capital  
2 improvements or facilities in any area which result in the  
3 increase in the value of property located in the area or  
4 encourage increased employment within the area will serve  
5 a public purpose for each taxing unit possessing the  
6 authority to impose ad valorem taxes in the area and that  
7 each development project developed pursuant to this  
8 article, and any leasehold interest therein, are declared to  
9 be public property, and shall be exempt from taxation by  
10 the state or any county, municipality or to other levying  
11 body as long as such development project is owned by the  
12 county commission.

**§7-11B-3. Definitions.**

1 As used in this article, the term or phrase:

2 (a) "Agency" means a county or municipal  
3 development agency established by section one, article  
4 twelve, chapter seven of this code.

5 (b) "Base assessed value" means the taxable assessed  
6 value of real and tangible personal property of a project  
7 developer within a development project area as shown  
8 upon the landbook and personal property records of the  
9 assessor on the first day of July of the year preceding the  
10 effective date of the order authorizing the tax increment  
11 financing plan.

12 (c) "Current assessed value" means the annual taxable  
13 assessed value of real and tangible personal property of a  
14 project developer within a development project area as  
15 shown upon the landbook and personal property records  
16 of the assessor.

17 (d) "Development project" means a project undertaken  
18 by a county commission in a development project area in  
19 accordance with a tax increment financing plan.

20 (e) "Development project area" means an area to be  
21 designated by one or more agencies as a development  
22 project area, which may include one or more counties,  
23 municipalities or combination thereof.

24 (f) "Private project" means any project which is subject  
25 to ad valorem property taxes in the state undertaken by a  
26 project developer in accordance with a tax increment  
27 financing plan in a development project area.

28 (g) "Project" means any facility requiring an  
29 investment of capital, including extensions, additions or  
30 improvements to existing facilities and including water or  
31 waste water facilities, but does not include performance of  
32 any governmental service by a county or municipal  
33 government or any housing facility to be rented or used as  
34 a permanent residence.

35 (h) "Project developer" means any person or  
36 corporation which engages in the development of projects  
37 in the state.

38 (i) "Tax increment" means the amount of tax  
39 attributable to the amount by which the current assessed  
40 value of a private project in a development project area  
41 exceeds the base assessed value, if any, of such private  
42 project, less the portion of tax allocated to the state.

43 (j) "Tax increment obligation" means any bond or  
44 note issued by a county commission in accordance with  
45 section six of this article.

46 (k) "Tax increment financing plan" means a plan  
47 proposed by either an agency or a project developer  
48 requesting that a specific development project be  
49 developed in conjunction with a private project of such  
50 project developer, which plan is approved by the county  
51 commission for the county in which the development  
52 project area is located in accordance with the procedures  
53 set forth in section four of this article.

54 (l) "Taxing unit" means a municipal corporation, a  
55 county commission or a county board of education.

**§7-11B-4. Tax increment financing procedures.**

1 (a) An agency or a project developer may request that  
2 a county commission adopt a tax increment financing  
3 plan with respect to a development project to be developed  
4 in conjunction with a private project of a project  
5 developer. Upon receipt of an agency's or project  
6 developer's proposed tax increment financing plan, the  
7 county commission of any county may adopt a tax  
8 increment financing plan by entering an order designating  
9 a development project area, approving a tax increment  
10 financing plan and providing that ad valorem property  
11 taxes on real property owned by the project developer in  
12 the development project area shall be assessed, collected  
13 and allocated by the taxing units in such area in the  
14 following manner for so long as any tax increment  
15 financing obligations payable from the tax increment  
16 financing fund, hereinafter authorized, are outstanding  
17 and unpaid:

18 (1) The assessor shall record in the land and personal  
19 property books both the base assessed value and the  
20 current assessed value of the real and tangible personal  
21 property of the project developer in the development  
22 project area.

23 (2) Ad valorem taxes upon real and tangible personal  
24 property of the project developer which are attributable to  
25 the lower of the base assessed value or current assessed  
26 value of real and tangible personal property located in the  
27 development project area shall be allocated to the taxing  
28 units in the same manner as applicable in the year  
29 preceding adoption of the tax increment financing order.

30 (3) The tax increment with respect to the private  
31 project of the project developer in the development  
32 project area shall be allocated and paid into a separate  
33 special fund created for each development project entitled  
34 the "Tax Increment Financing Fund" and used to pay the  
35 principal of and interest on tax increment financing  
36 obligations issued to finance the costs of such  
37 development project. Any taxing unit having a private  
38 project or any portion thereof within its borders shall  
39 allocate its tax increment to such fund, provided, however,  
40 that the portion of property taxes allocable to the state



41 shall be paid over to the state in accordance with law.

42 (4) In no event shall tax increment financing apply to  
43 any levies other than the levies provided for in article  
44 eight, chapter eleven of this code.

45 (b) Before entering an order approving a tax  
46 increment financing plan, the county commission in every  
47 county in which the development project area is located  
48 shall hold a public hearing on the need for tax increment  
49 financing in the county. Notice of the public hearing  
50 shall be published once each week for three successive  
51 weeks immediately preceding the public hearing as a Class  
52 III legal advertisement in accordance with section two,  
53 article three, chapter fifty-nine of this code. The notice  
54 shall include the time, place and purpose of the public  
55 hearing, describe in sufficient detail the tax increment  
56 financing plan, indicate the proposed boundaries of the  
57 development project area and the proposed tax increment  
58 financing obligations to be issued to finance the  
59 development project costs. All parties who appear at the  
60 hearing shall be afforded an opportunity to express their  
61 views on the proposal to undertake and finance the  
62 project.

63 (c) Proceeds from tax increment financing obligations  
64 issued under this article may be used only to pay for costs  
65 of development projects to foster economic development,  
66 including infrastructure and other public improvements  
67 prerequisite to private improvements, when such  
68 development projects would not reasonably be expected to  
69 occur without tax increment financing. There shall be a  
70 finding by any county commission which issues tax  
71 increment financing obligations that a development  
72 project is not reasonably expected to occur without the use  
73 of tax increment financing.

**§7-11B-5. Copies of tax increment financing order to assessor,  
sheriff and director of the division of finance.**

1 The county commission shall transmit to the assessor,  
2 sheriff and the director of the division of finance,  
3 department of administration, a copy of the tax increment  
4 financing order; a description of all real and tangible

5 personal property of the project developer located within  
6 the development project area; a map indicating the  
7 boundaries of the development project area; and a  
8 description of the manner of collecting and allocating  
9 property taxes pursuant to this article.

**§7-11B-6. Issuance of obligations for development project costs.**

1 (a) A county commission may issue bonds or notes  
2 for the purpose of financing the cost of acquisition and  
3 construction of one or more development projects in a  
4 development project area within the county which will be  
5 sold, leased with an option by the lessee to purchase,  
6 leased or otherwise disposed of to a project developer.  
7 Such bonds or notes shall be issued and the payment of  
8 such bonds or notes secured in the manner provided by  
9 the applicable provisions of sections seven, eight, nine, ten,  
10 eleven, twelve, thirteen, except to the extent that the  
11 provisions of said section thirteen are modified hereby  
12 with respect to the tax increment financing fund, fourteen,  
13 fifteen, seventeen, nineteen and twenty, article two-c,  
14 chapter thirteen of this code: *Provided*, That the principal  
15 and interest on such bonds or notes shall be payable out  
16 of the tax increment financing fund attributable to the  
17 related private project: *Provided, however*, That in the  
18 event the moneys on deposit in such tax increment  
19 financing fund are not sufficient to fully pay the debt  
20 service on such bonds or notes, then such bonds or notes  
21 shall be payable out of the revenues derived from the  
22 lease, lease with an option by the lessee to purchase, sale or  
23 other disposition in connection with the development  
24 project for which the bonds or notes are issued, or any  
25 other revenue derived from such project.

26 (b) No bonds or notes shall be issued under this article  
27 until all questions connected with the same shall have been  
28 first submitted to a vote of the qualified voters of the  
29 county for which the bonds or notes are to be issued, and  
30 shall have received three fifths of all the votes cast for and  
31 against the same: *Provided*, That if a development project  
32 area includes more than one county, the qualified voters in  
33 both counties must adopt the measure prior to any notes

34 or bonds being issued. The county commission referred  
35 to in this section may, by order entered of record, direct  
36 that an election be held for the purpose of submitting to  
37 the voters of the county all questions connected with the  
38 issuing of bonds or notes. Such order shall state:

39 (1) The reasons for issuing the bonds or notes;

40 (2) The purpose or purposes for which the proceeds  
41 of bonds or notes are to be expended;

42 (3) The amount of the proposed bond or note issue;

43 (4) The date of the election;

44 (5) If a special election, the names of commissioners  
45 for holding same; and

46 (6) That the tax increment attributable to the related  
47 private project shall be used to pay the principal and  
48 interest on such bonds or notes and will not be available  
49 for other purposes until such bonds or notes are paid in  
50 full.

51 Any other provision which does not violate any  
52 provision of law, or transgress any principle of public  
53 policy, may be incorporated in the order. The cost of  
54 such election, if any, shall be reimbursed by the project  
55 developer of the related private project: *Provided*, That  
56 no election is required in a municipality in which a project  
57 development area is located if the municipality is within a  
58 county holding an election. The order authorizing the  
59 issuance of tax increment obligations shall pledge all or  
60 such part of the funds deposited in the tax increment  
61 financing fund as are necessary for the payment of the  
62 debt service on such tax increment obligations.

63 (c) Any revenues in the tax increment financing fund  
64 which are not used for the payment of the principal of or  
65 interest on tax increment financing obligations issued shall  
66 be deemed "surplus funds" and at the end of each tax year  
67 shall be paid into the general funds of the taxing units in  
68 proportion to their respective contributions to the fund.

**§7-11B-7. Terminating tax increment financing.**

1 (a) Upon the retirement of all tax increment financing  
2 obligations payable from the tax increment financing  
3 fund, the county commission shall enter an order to  
4 dissolve the tax increment financing fund and to terminate  
5 the existence of a development project area. When the  
6 fund is dissolved, any and all revenue remaining in the  
7 fund after payment of all tax increment obligations  
8 payable therefrom shall be paid into the general fund of  
9 the taxing units in proportion to their respective  
10 contributions to the fund.

11 (b) Upon dissolving the tax increment financing fund,  
12 real and tangible personal property shall be assessed and  
13 taxes collected and allocated in the same manner as  
14 applicable in the year preceding the adoption of the tax  
15 increment financing order.

#### **§7-11B-8. Severability.**

1 If any provision of this article or the application  
2 thereof to any person or circumstance is held  
3 unconstitutional or otherwise invalid, such  
4 unconstitutionality or invalidity shall not affect, impair or  
5 invalidate other provisions or applications of this article  
6 and, to this end, the provisions of this article are declared  
7 to be severable.

### **CHAPTER 18. EDUCATION.**

#### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

#### **§18-9A-11. Computation of local share; appraisal and assessment of property.**

1 (a) For the fiscal year beginning on the first day of  
2 July, one thousand nine hundred ninety-three, and  
3 thereafter, on the basis of each county's certificates of  
4 valuation as to all classes of property as determined and  
5 published by the assessors pursuant to section six, article  
6 three, chapter eleven of this code for the next ensuing  
7 fiscal year in reliance upon the assessed values annually  
8 developed by each county assessor pursuant to the  
9 provisions of articles one-c and three, chapter eleven of  
10 this code, the state board shall for each county compute  
11 by application of the levies for general current expense

12 purposes, as defined in section two of this article, the  
13 amount of revenue which such levies would produce if  
14 levied upon one hundred percent of the assessed value of  
15 each of the several classes of property contained in the  
16 report or revised report of such value, made to it by the  
17 tax commissioner as follows:

18 (1) The state board shall first take ninety-five percent  
19 of the amount ascertained by applying these rates to the  
20 total assessed public utility valuation in each classification  
21 of property in the county.

22 (2) The state board shall then apply these rates to the  
23 assessed taxable value of other property in each  
24 classification in the county as determined by the tax  
25 commissioner and shall deduct therefrom five percent as  
26 an allowance for the usual losses in collections due to  
27 discounts, exonerations, delinquencies and the like. All of  
28 the amount so determined shall be added to the  
29 ninety-five percent of public utility taxes computed as  
30 provided above, and this total shall be further reduced by  
31 the amount due each county assessor's office pursuant to  
32 the provisions of section eight, article one-c, chapter  
33 eleven of this code, and this amount shall be the local  
34 share of the particular county.

35 As to any estimations or preliminary computations of  
36 local share that may be required prior to the report to the  
37 Legislature by the tax commissioner, the state board of  
38 education shall use the most recent projections or  
39 estimations that may be available from the tax department  
40 for such purpose.

41 (b) Whenever in any year a county assessor or a  
42 county commission shall fail or refuse to comply with the  
43 provisions of this section in setting the valuations of  
44 property for assessment purposes in any class or classes of  
45 property in the county, the state tax commissioner shall  
46 review the valuations for assessment purposes made by the  
47 county assessor and the county commission and shall  
48 direct the county assessor and the county commission to  
49 make such corrections in the valuations as may be  
50 necessary so that they shall comply with the requirements  
51 of chapter eleven of this code and this section, and the tax

52 commissioner shall enter the county and fix the  
53 assessments at the required ratios. Refusal of the assessor  
54 or the county commission to make such corrections shall  
55 constitute ground for removal from office.

56 (c) For the purposes of any computation made in  
57 accordance with the provisions of this section, in any  
58 taxing unit in which tax increment financing is in effect  
59 pursuant to the provisions of article eleven-b, chapter  
60 seven of this code, the assessed value of a related private  
61 project shall be the base assessed value as defined in  
62 section two of said article.

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## CHAPTER 71

(S. B. 432—By Senators Wooton, Scott, Anderson, Dittmar,  
Ross, Buckalew and Yoder)

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[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirty-seven, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections thirty-eight and thirty-nine, all relating to accounting procedures for county officers; requiring all county officers, including officials of any agency or entity created by the county commission, to deposit funds into bank accounts; authorizing such officers to determine whether to utilize interest bearing accounts; requiring the deposit of funds on the first available business day where the amount of funds is not less than five hundred dollars; excepting county assessors from deposits on the first available business day; interest to be deposited on at least a quarterly basis; county officers to issue duplicate receipts on forms approved by the chief inspector; chief inspector to prescribe minimum requirements of such forms; and providing for the removal of county officers who fail to comply with the prescribed accounting procedures."

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

That section thirty-seven, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections thirty-eight and thirty-nine, all to read as follows:

**ARTICLE 1. FEES AND ALLOWANCES.**

§59-1-37. Deposits by county officers in noninterest bearing or interest bearing accounts; payment to county general fund; annual report.

§59-1-38. County officers to issue receipts of collections.

§59-1-39. Removal of county officer.

**§59-1-37. Deposits by county officers in noninterest bearing or interest bearing accounts; payment to county general fund; annual report.**

1        Except as to any tax receipts, which shall be deposited  
2 in accordance with section four, article six, chapter seven  
3 of this code, when any fee, cost, percentage, penalty,  
4 commission, allowance, bond, deposit, surety or other cash  
5 payment or sum is to be held by the sheriff, the  
6 prosecuting attorney, the county commission, an official  
7 of an agency or entity created by the county commission,  
8 the clerk of the county commission, the clerk of the circuit  
9 court or the assessor of any county under any provision of  
10 law or proper order of the circuit court, said officer shall  
11 deposit the same in an account or accounts which may, at  
12 his or her sole discretion, be an interest bearing account or  
13 accounts in secure and properly insured banks. All  
14 money collected, including cash and checks, shall be  
15 deposited intact on the first available business day:  
16 *Provided*, That the requirement for deposits on the first  
17 available business day shall not apply to the county  
18 assessor, nor shall it apply to any county officer if the  
19 amount to be deposited is less than five hundred dollars.  
20 Any interest earned on such accounts, and not otherwise  
21 included in any refund, return or reimbursement of said  
22 fees, costs, penalties, commissions, allowances, bonds,  
23 deposits, sureties or other cash payments or sums, as  
24 directed by law or proper order of the circuit court, shall  
25 be paid into the county's general fund on a regular basis,  
26 but in no event less often than quarterly.

27 All county officers shall report to the county commis-  
 28 sion by the first day of July each year concerning his or  
 29 her election to use interest bearing accounts, amounts  
 30 currently on deposit and interest actually earned on such  
 31 accounts.

**§59-1-38. County officers to issue receipts of collections.**

1 Any county officer, as described in section  
 2 thirty-seven of this article, who receives a fee, cost, per-  
 3 centage, penalty, commission, allowance, bond, deposit,  
 4 surety or other cash payment or sum shall issue a receipt  
 5 to the payor thereof, in duplicate, on a form approved by  
 6 the chief inspector, in accordance with the provisions of  
 7 article nine, chapter six of this code. The county officer  
 8 shall issue the original of such receipt to the payor and  
 9 shall retain the copy. The chief inspector shall prescribe  
 10 the minimum information to be included on such receipt  
 11 forms.

**§59-1-39. Removal of county officer.**

1 If any county officer shall fail to comply with the  
 2 provisions of this article, the chief inspector may, in addi-  
 3 tion to any other remedies provided by law, seek the re-  
 4 moval from office of such county officer, in accordance  
 5 with provisions of section seven, article six, chapter six of  
 6 this code.

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## CHAPTER 72

(Com. Sub. for H. B. 2586—By Delegates Beane, Gallagher, Manuel and Johnson)

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[Passed March 10, 1995; in effect ninety days from passage.  
 Became law without Governor's signature.]

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AN ACT to amend and reenact section ten, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact



sections four and five, article five-a of said chapter, all relating to revising the procedures for collection against judgment debtors; providing that service of a summons against a suggestee and the return thereof is governed by the rules of civil procedure for trial courts of record; prescribing the method of service of notice of execution on a judgment debtor and of a suggestee execution on a suggestee; increasing the fee which may be charged for serving a notice on a judgment debtor; allowing service of a suggestee execution on a suggestee by certified mail or by the sheriff; permitting a clerk to issue a suggestion in the county where the judgment is entered and to mail it to the sheriff of another county for service; and making technical and grammatical corrections.

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

That section ten, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four and five, article five-a of said chapter be amended and reenacted, all to read as follows:

**Article**

**5. Proceedings in Aid of Execution; Interrogatories; Suggestion.**

**5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.**

**ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.**

**§38-5-10. Suggestion on judgment; summons against person suggested.**

- 1 (a) Upon a suggestion by the judgment creditor that a
- 2 person is indebted or liable to the judgment debtor or has
- 3 in the person's possession or control personal property
- 4 belonging to the judgment debtor, which debt or liability
- 5 could be enforced, when due, or which property could be
- 6 recovered, when it became returnable, by the judgment
- 7 debtor in a court of law, and which debt or liability or

8 property is subject to the judgment creditor's writ of fieri  
9 facias, a summons against such person may be issued out  
10 of the office of the clerk of the circuit court or of the  
11 magistrate court of the county in which the judgment  
12 creditor obtained the writ of fieri facias, requiring such  
13 person to answer the suggestion in writing and under oath.  
14 Service of a summons issued under this section may be  
15 made as provided by subdivision (1), subsection (d) of  
16 rule four of the rules of civil procedure for trial courts of  
17 record. The return day for a summons issued under this  
18 section is governed by the provisions of rule sixty-nine of  
19 the rules of civil procedure for trial courts of record.

20 (b) The suggestion by the judgment creditor provided  
21 for herein shall include, to the extent possible, the present  
22 address and social security number of the judgment debt-  
23 or, which information shall be made available to the per-  
24 son suggested for purposes of identifying the judgment  
25 debtor and facilitating a proper answer to the suggestion.

**ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PER-  
SONS ENGAGED IN PRIVATE EMPLOYMENT.**

§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.

§38-5A-5. Service of suggestee execution upon suggestee; payments in  
satisfaction of execution; action for failure or refusal to pay;  
payments to be made every ninety days.

**§38-5A-4. Notice to judgment debtor; time for service on  
suggestee; fee.**

1 A certified copy of an execution issued under this  
2 article against salary or wages shall be served upon the  
3 judgment debtor. Such service shall be made by the court  
4 or the clerk of the court who issued the execution by mail-  
5 ing the copy to the judgment debtor or his agent autho-  
6 rized to accept service of process by certified mail, return  
7 receipt requested. The day and hour of such mailing shall  
8 be clearly noted on the face of the original execution and  
9 the clerk of the court or the officer to whom it is delivered  
10 for collection shall not make service upon the suggestee

11 until the expiration of five days from that time. The fee  
12 for service of notice under this section shall be one dollar  
13 and an additional allowance for postage, certification fee,  
14 or other expenses incurred in effecting service.

**§38-5A-5. Service of suggestee execution upon suggestee;  
payments in satisfaction of execution; action for  
failure or refusal to pay; payments to be made  
every ninety days.**

1 (a) Service of a suggestee execution against salary or  
2 wages may be made by the clerk of the circuit court or the  
3 magistrate court clerk, as the case may be, by sending a  
4 copy of the suggestee execution to the suggestee by certi-  
5 fied mail, return receipt requested, with delivery restricted  
6 to the addressee. If the registered mail is unclaimed, or  
7 otherwise is not accepted or is refused by the suggestee,  
8 then service of the suggestee execution shall be made in  
9 the same manner as a summons commencing an action is  
10 served, in accordance with the rules of civil procedure for  
11 trial courts of record: *Provided*, That if the suggestee is  
12 located in a county other than the county where the  
13 suggestee execution issues, the clerk may mail the  
14 suggestee execution by first class mail to the sheriff of the  
15 other county for such service.

16 (b) If the suggestee served with the execution is in-  
17 debted or will in the future become indebted to the judg-  
18 ment debtor for salary or wages, then during the time the  
19 execution remains a lien on any indebtedness for salary  
20 and wages, the suggestee is required to pay over to the  
21 officer serving the same or to the judgment creditor the  
22 percentage of the indebtedness required by section three  
23 of this article, until the execution is wholly satisfied. The  
24 suggestee shall deduct the amounts paid from the amounts  
25 payable to the judgment debtor as salary or wages, and the  
26 deduction of these amounts is a bar to any further action  
27 by the judgment creditor against the wages or salary of the  
28 judgment debtor.

29 (c) Once every ninety days during the life of such

30 execution and any renewal execution, the suggestee upon  
31 whom the execution or any renewal execution is served  
32 shall pay over to the officer who served the same or to the  
33 judgment creditor the full amount of money held or  
34 retained pursuant to such execution or renewal execution  
35 during the preceding ninety days.

36 If the suggestee upon whom the execution is served  
37 fails or refuses to pay over to the officer serving the  
38 execution or to the judgment creditor the required  
39 percentage of the indebtedness, as aforesaid, he or she  
40 shall be liable to an action therefor by the judgment  
41 creditor named in the execution and the amount recovered  
42 in the action shall be applied in satisfaction of the  
43 execution.

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## CHAPTER 73

(S. B. 260—By Senators Wooton, Anderson, Bowman, Buckalew, Deem,  
Dittmar, Miller, Oliverio, Ross, Schoonover, Scott,  
Wagner, White, Wiedebusch and Yoder)

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[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections six, twelve, thirteen, fourteen and twenty-eight, article five, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article one, chapter fifty-nine of said code; and to amend and reenact section fourteen, article two of said chapter, all relating to the activities of the clerk of the supreme court of appeals; the time required for the clerk of the supreme court to return the record to the circuit clerk; the service of an order granting an appeal rather than a summons in actions when an appeal is granted by the supreme court; the endorsement by the clerk of the supreme court on an order or supersedeas pending the posting of a bond; the requirement of an appeal bond in cases before the supreme court; the certification of a mandate by the clerk of the supreme court; fees charged by the supreme court; and the taxation of statutory fees.

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

That sections six, twelve, thirteen, fourteen and twenty-eight, article five, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirteen, article one, chapter fifty-nine of said code be amended and reenacted; and that section fourteen, article two of said chapter be amended and reenacted, all to read as follows:

### Chapter

#### 58. Appeal and Error.

#### 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

### CHAPTER 58. APPEAL AND ERROR.

#### ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-6. Filing of petition; transmission of petition and record; deposit or bond; return of record; transcript; charges.

§58-5-12. Order granting appeal or supersedeas; service.

§58-5-13. Indorsement of writs as to bond.

§58-5-14. Appeal bond generally.

§58-5-28. Certification of mandate to lower court; stay of mandate pending rehearing.

#### §58-5-6. Filing of petition; transmission of petition and record; deposit or bond; return of record; transcript; charges.

1       Such petition, together with a copy thereof, shall be  
2 first filed in the office of the clerk of the circuit court  
3 wherein the judgment, decree or order complained of was  
4 entered, and such clerk, retaining in his office the copy of  
5 such petition, shall, as soon as may be, transmit to the clerk  
6 of the supreme court of appeals, or such judge of said  
7 court as the petitioner shall designate, if said court be not  
8 in session, by United States registered mail or valued ex-  
9 press, the original, together with the record of so much of  
10 the case wherein the judgment, decree or order is, as will  
11 enable the court or judge to whom the petition is to be  
12 presented properly to decide on such petition, and enable  
13 the court, if the petition be granted, properly to decide the  
14 questions that may arise before it. The clerk of the circuit  
15 court, before transmitting the record as aforesaid, shall

16 arrange the papers, as nearly as may be, in the order of the  
17 filing and entry thereof, numbering the pages, make and  
18 certify copies of all orders entered in the case, copies of  
19 which are not in the files, and prepare and annex to the  
20 record a table of contents or index. Before such petition  
21 and record are transmitted as aforesaid, the petitioner shall  
22 deposit with the clerk of the circuit court a sufficient sum  
23 of money to defray the expenses of the preparation and  
24 indexing of the record, fees for filing the petition and  
25 making and certifying necessary copies of orders, costs of  
26 transmission and return of the record, and the making of a  
27 transcript of the record, or file with the clerk a bond con-  
28 ditioned to pay the same, in a penalty and with sureties to  
29 be fixed and approved by such clerk, who shall indorse on  
30 the petition that such deposit has been made or such bond  
31 filed. If the appeal or writ of error prayed for be granted,  
32 the clerk of the supreme court of appeals shall return the  
33 record to the clerk of the circuit court, by mail or express,  
34 as aforesaid; and such circuit court clerk shall forthwith  
35 make a transcript of so much of the record as is required  
36 for the purposes of the appeal or writ of error and transmit  
37 the same to the clerk of the supreme court of appeals.  
38 Insofar as provision therefor is not made by existing law,  
39 the compensation of the clerk of the circuit court for ser-  
40 vices rendered hereunder shall be fixed by the judge of  
41 such court. If the prayer of the petition be not granted, the  
42 petition and record shall be returned as aforesaid, and the  
43 clerk of the circuit court shall repay to the petitioner, or  
44 his attorney, the money deposited with him, if any, less his  
45 fees and expenses.

**§58-5-12. Order granting appeal or supersedeas; service.**

1 The clerk of the appellate court shall thereupon send a  
2 copy of the order granting the appeal to the parties inter-  
3 ested, other than the petitioners, that they may be heard,  
4 and also send a copy of any supersedeas which may be  
5 awarded, which order or supersedeas may be served upon  
6 the party in person or his attorneys in the court from  
7 which the appeal or writ of error is taken.

**§58-5-13. Indorsements on writs as to bond.**

1 The clerk of the supreme court of appeals shall in-

2 dorse on the order or supersedeas that it is not to be effec-  
3 tual until the bond required by section fourteen of this  
4 article, with good personal security, be given before the  
5 clerk of the court below, who shall take such bond and  
6 indorse on the order that it has been given, and the names  
7 of the sureties therein, and forward to the clerk of the  
8 supreme court of appeals a certified copy of such bond.

#### §58-5-14. Appeal bond generally.

1 When required by the court, an appeal, writ of error or  
2 writ of supersedeas shall not take effect until bond is given  
3 by the appellants or petitioners, or one of them, or some  
4 other person, in a penalty to be fixed by the court or  
5 judge by or in which the appeal, writ of error or superse-  
6 deas is allowed or entered with condition: If a supersedeas  
7 be awarded, to abide by and perform the judgment, decree  
8 or order of affirmance, and to pay to the opposite party,  
9 and to any person injured all such costs and damages as  
10 they, or either of them, may incur or sustain by reason of  
11 said appeal, in case such judgment, decree or order, or  
12 such part, be affirmed, or the appeal, writ of error or su-  
13 persedeas be dismissed, and also, to pay all damages, costs  
14 and fees, which may be awarded against or incurred by the  
15 appellant or petitioners; and if it be an appeal from an  
16 order or decree dissolving an injunction, or dismissing a  
17 bill of injunction, with a further condition, to indemnify  
18 and save harmless the surety in the injunction bond  
19 against loss or damage in consequence of his suretyship;  
20 and with condition when no supersedeas is awarded to pay  
21 such specific damages, and such costs and fees as may be  
22 awarded or incurred: *Provided*, That whenever a writ of  
23 error, appeal or supersedeas shall be awarded in any action  
24 or suit wherein a judgment or decree for the payment of  
25 money has been entered against an insured in an action  
26 which is defended by an insurance corporation, or other  
27 insurer, on behalf of the insured under a policy of insur-  
28 ance, the limit of liability of which is less than the amount  
29 of said judgment, execution on the judgment to the extent  
30 of the policy coverage shall be stayed until final determi-  
31 nation of such appeal, writ of error or supersedeas, and no  
32 execution shall be issued, or action brought, maintained or  
33 continued against such insured, insurance corporation, or

34 other insurer, for the amount of such judgment or decree  
35 so stayed, by either the injured party, the insured, or the  
36 legal representative, heir or assigns of any of them, during  
37 the pendency of such proceeding, provided such insur-  
38 ance corporation, or other insurer, shall:

39 (1) File with the clerk of the court in which the judg-  
40 ment was entered, a sworn statement of one of its officers,  
41 describing the nature of the policy and the amount of  
42 coverage thereof;

43 (2) Give or cause to be given by the judgment debtor  
44 or some other person for him a bond in a penalty to be  
45 fixed by the court or judge by or in which the appeal, writ  
46 of error or supersedeas is allowed or entered, not to ex-  
47 ceed the amount of such insurance coverage set out in the  
48 sworn statement above required, with condition to pay the  
49 amount of such coverage upon said judgment if the judg-  
50 ment or decree or such part be affirmed or the appeal, writ  
51 of error or supersedeas be dismissed, plus interest on said  
52 sum and cost;

53 (3) Serve a copy of such sworn statement and bond  
54 upon the judgment creditor or his attorney;

55 (4) Deliver or mail to the insured at the latest address  
56 of the insured appealing upon the records of such insur-  
57 ance corporation, or other insurer, written notice that exe-  
58 cution on such judgment to the extent that it is not cov-  
59 ered by such insurance is not stayed in respect to the in-  
60 sured: *Provided*, That the filing of a bond by the insured  
61 or someone for him, conditioned upon the payment of the  
62 balance of the judgment or decree and interest not stayed  
63 by the insured as aforesaid if the judgment or decree be  
64 affirmed or the appeal, writ of error or supersedeas be  
65 dismissed, shall stay execution on the balance of said  
66 judgment not covered by such insurance: *Provided, how-*  
67 *ever*, That the filing of such statement and bond hereun-  
68 der by an insurance corporation or other insurer shall not  
69 thereby make such insurance corporation or other insurer  
70 a party to such action, either in the trial court or in the  
71 appellate court.



**§58-5-28. Certification of mandate to lower court; stay of mandate pending rehearing.**

1       The clerk of the supreme court of appeals shall certify  
2 and mail or otherwise transmit its mandate to the clerk of  
3 the court below thirty days after entry of judgment. Un-  
4 less otherwise ordered by the supreme court of appeals,  
5 judgment is not effective until issuance of the mandate. A  
6 certified copy of the judgment and a copy of the opinion  
7 of the supreme court of appeals, if any, and any direction  
8 as to costs, constitute the mandate. The timely filing of a  
9 petition for rehearing shall stay the mandate until disposi-  
10 tion of the petition unless otherwise ordered by the su-  
11 preme court of appeals. When the petition for rehearing is  
12 denied, the mandate shall issue seven days after entry of  
13 the order denying the petition: *Provided*, That the time  
14 for performance of any act under this section may be  
15 shortened or enlarged by order of the supreme court of  
16 appeals.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**Article**

1. Fees and Allowances.
2. Costs Generally.

**ARTICLE 1. FEES AND ALLOWANCES.**

**§59-1-13. Fees to be charged by clerk of supreme court of appeals.**

1       The clerk of the supreme court of appeals shall charge  
2 the following fees to be paid by the parties for whom the  
3 services are rendered:

4 For all copies of petitions, records, orders, opinions or  
5 other papers, per page . . . . .25

6 For each certificate under seal of the court . . . . . 5.00

7 For license to practice law, suitable for framing . . . . 25.00

8       For any other work or services not herein enumerated,  
9 the clerk shall charge the fees prescribed for similar ser-  
10 vices by clerks of circuit courts.

**ARTICLE 2. COSTS GENERALLY.****§59-2-14. Taxation of statute fees.**

- 1 He shall include in the costs to the prevailing party:
- 2 (a) In any civil action, ten dollars;
- 3 (b) In civil actions in any court of limited jurisdiction,
- 4 the same fees as are allowed in a circuit court for like
- 5 actions.

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## CHAPTER 74

(H. B. 2580—By Delegates Rowe and Trump)

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[Passed March 8, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating to the distribution of moneys received as a result of the commission of a crime; and providing treble civil damages for the violation thereof.

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

That chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-b, to read as follows:

**ARTICLE 2B. DISTRIBUTION OF CRIME PROFITS.**

- §14-2B-1. Short title.
- §14-2B-2. Legislative findings; purpose and intent.
- §14-2B-3. Definitions.
- §14-2B-4. Notice of contract with defendant; payment over of crime profits to prosecutor; placing of crime profits into escrow account.
- §14-2B-5. Prosecutor to commence action to distribute profits from crime; joinder of parties; statute of limitations; issues to be determined in action.

- §14-2B-6. Authority of prosecutor to make payments from escrow account for the necessary expenses of protection of moneys paid into the escrow account; payment of moneys to defendant when charges dismissed prior to filing of interpleader action.
- §14-2B-7. Prosecutor to distribute funds as ordered by court; court to order distribution of funds.
- §14-2B-8. Priorities of claims to moneys in escrow account.
- §14-2B-9. Acts to defeat intent of article void as against public policy.
- §14-2B-10. Consent to jurisdiction.
- §14-2B-11. Failure of defendant or person, firm, corporation, partnership, association or other legal entity contracting with defendant to provide notice to prosecutor or pay over moneys to prosecutor as required by this article; civil penalty of treble damages.

**§14-2B-1. Short title.**

- 1 This article shall be known and may be cited as the  
2 "West Virginia Crime Profits Act".

**§14-2B-2. Legislative findings; purpose and intent.**

- 1 The Legislature finds and declares that it is a violation  
2 of the public policy of this state to permit a person who  
3 commits a crime to thereafter gain a monetary profit from  
4 the commission of that crime. Consequently, the Legis-  
5 lature finds that when a person convicted of a crime later  
6 profits as a result of the commission of that crime, such  
7 profits should be used to compensate those crime victims  
8 who were damaged as a result of the commission of the  
9 crime, as well as the taxpayers who paid for the  
10 prosecution or incarceration of the defendant, or both.

**§14-2B-3. Definitions.**

- 1 As used in this article:
- 2 (a) "Crime" means any offense designated by the  
3 provisions of this code as a felony or misdemeanor.
- 4 (b) "Crime profits" means:
- 5 (1) Any property obtained through or income  
6 generated from the commission of a crime of which the  
7 defendant was convicted;
- 8 (2) Any property obtained by or income generated  
9 from the sale, conversion or exchange of proceeds of a

10 crime, including any gain realized by such sale,  
11 conversion or exchange; or

12 (3) Any property which the defendant obtained or  
13 income generated as a result of having committed the  
14 crime, including any assets obtained through the use of  
15 unique knowledge obtained during the commission of, or  
16 in preparation for the commission of, the crime, as well as  
17 any property obtained by or income generated from the  
18 sale, conversion or exchange of such property and any  
19 gain realized by such sale, conversion or exchange.

20 (c) "Crime victim" means the victim of the offense or  
21 the personal representative of a crime victim.

22 (d) "Defendant" means a person charged with a crime  
23 or convicted of a crime after trial, by entry of a plea of  
24 guilty or by entry of a plea of *nolo contendere* in any  
25 court in this state. The term "defendant" shall also include  
26 any person found by a court of record to be not  
27 criminally responsible for the commission of a crime by  
28 reason of mental illness, mental retardation or addiction.

29 (e) "Court" means the circuit court of the county  
30 wherein the defendant is charged with or was prosecuted  
31 for the commission of the crime.

32 (f) "Personal representative" means an attorney-in-fact  
33 or legal guardian of a living person or the executor,  
34 administrator, successor personal representative, special  
35 administrator and persons who perform substantially the  
36 same function under the law governing their status of the  
37 estate of a deceased person.

38 (g) "Prosecutor" means the prosecuting attorney of  
39 the county in which the defendant is charged with or was  
40 prosecuted for the commission of the crime.

41 (h) "Contract" means any agreement, whether reduced  
42 to writing or not, in which any person, firm, corporation,  
43 partnership, association or other legal entity contracts for,  
44 pays or agrees to pay, any crime profits to a defendant or  
45 to a defendant's personal representative.

**§14-2B-4. Notice of contract with defendant; payment over of crime profits to prosecutor; placing of crime profits into escrow account.**

1 (a) Every person, firm, corporation, partnership,  
2 association or other legal entity which knowingly contracts  
3 for, pays or agrees to pay, any crime profits, as defined in  
4 section three of this article, to a defendant shall submit a  
5 copy of such contract to the prosecutor and pay over to  
6 the prosecutor any moneys which would otherwise, by the  
7 terms of such contract, be owing to the defendant. The  
8 prosecutor shall deposit such moneys in an interest  
9 bearing escrow account and shall thereafter disburse such  
10 moneys only in accordance with the provisions of this  
11 article.

12 (b) Every defendant who contracts for, receives or  
13 agrees to receive, any crime profits, as defined in section  
14 three of this article, from any person, firm, corporation,  
15 partnership, association or other legal entity, shall submit a  
16 copy of such contract to the prosecutor and pay over to  
17 the prosecutor any moneys which would otherwise, by the  
18 terms of such contract, be owing to the defendant. The  
19 prosecutor shall deposit such moneys in an interest  
20 bearing escrow account and shall thereafter disburse such  
21 moneys only in accordance with the provisions of this  
22 article.

**§14-2B-5. Prosecutor to commence action to distribute profits from crime; joinder of parties; statute of limitations; issues to be determined in action.**

1 (a) The prosecutor shall, within six months of the  
2 receipt of any contract or moneys, bring an action in  
3 interpleader in accordance with the West Virginia rules of  
4 civil procedure for trial courts of record to determine the  
5 distribution of any crime profits which have been received  
6 or may be received in the future by the defendant. The  
7 prosecutor shall join the defendant, any instrumentality of  
8 the state or political subdivision thereof which has  
9 expended or likely will expend taxpayer funds as a result  
10 of the commission of the crime, including, without  
11 limitation, funds to prosecute or incarcerate the defendant,  
12 all known crime victims, the crime victim's compensation

13 fund and any person, firm, corporation, partnership,  
14 association or other legal entity which has paid, or agreed  
15 to pay, any crime profits to the defendant, as parties to the  
16 action.

17 (b) Notwithstanding any other provision of this code  
18 with respect to the timely bringing of an action, the  
19 prosecutor shall have the right to bring a civil action  
20 authorized by this section within three years after the  
21 prosecutor first receives notice pursuant to section four of  
22 this article. If, but for the provisions of this section, any  
23 party would be barred from bringing an action due to the  
24 expiration of the applicable statute of limitations, said  
25 party may not recover damages against the defendant in  
26 excess of the value of the crime profits allotted to said  
27 party by the court in accordance with the provisions of  
28 this article.

29 (c) A crime victim, the defendant or any instrument-  
30 ality of the state or political subdivision thereof which has  
31 expended or will likely expend taxpayer funds as the  
32 result of the commission of the crime may bring a writ of  
33 mandamus to compel the prosecutor to bring an  
34 interpleader action as authorized by this section. Any  
35 applicable statute of limitations shall be tolled during the  
36 pendency of such writ.

37 (d) Any party to the interpleader action may demand  
38 a trial by jury on the issues of entitlement to and the  
39 amount of damages arising from any claim of any  
40 instrumentality of the state or political subdivision thereof  
41 or of any crime victim, except that such claims that have  
42 already been reduced to judgment in any other civil action  
43 by a court of competent jurisdiction shall be conclusively  
44 presumed to have been established: *Provided*, That no  
45 jury trial shall be permitted on subrogation claims of the  
46 crime victim's compensation fund.

47 (e) The court may, upon motion of any party or upon  
48 its own motion, consolidate with the interpleader action  
49 any other pending civil actions by crime victims against  
50 the defendant when the basis for such other action is the  
51 same crime which has or may result in the generating of  
52 crime profits.

**§14-2B-6. Authority of prosecutor to make payments from escrow account for the necessary expenses of protection of moneys paid into the escrow account; payment of moneys to defendant when charges dismissed prior to filing of interpleader action.**

1 (a) The prosecutor may in his or her discretion, and  
2 without court approval, make such payments from the  
3 escrow account to such parties as may be necessary to  
4 preserve or maintain the moneys paid into the escrow  
5 account, provided the prosecutor finds that such payments  
6 would be in the best interests of any affected instrument-  
7 ality of the state or political subdivision thereof or of the  
8 crime victims and would not be contrary to public policy.

9 (b) If, at any time prior to the filing of an interpleader  
10 action as authorized by this article, the charges against the  
11 defendant are dismissed or the defendant is acquitted of  
12 such charges in circumstances other than a finding by a  
13 court of record that the defendant is not criminally  
14 responsible for the commission of a crime by reason of  
15 mental illness, mental retardation or addiction, the  
16 prosecutor shall immediately pay over to such defendant  
17 all moneys, including accrued interest, in the escrow  
18 account established on behalf of such defendant.

**§14-2B-7. Prosecutor to distribute funds as ordered by court; court to order distribution of funds.**

1 (a) Except as otherwise provided in this article, the  
2 prosecutor shall distribute funds which are or may later be  
3 deposited in the escrow account only in accordance with  
4 this section.

5 (b) The court or jury before which the interpleader  
6 action authorized by this article is pending shall decide all  
7 claims, except such claims that have already been reduced  
8 to judgment by a court of competent jurisdiction which  
9 shall be conclusively presumed to have been established,  
10 to such crime profits as have already been or may later be  
11 due and owing to the defendant as a result of the contract  
12 and shall thereafter order the prosecutor to distribute such  
13 moneys as are in the escrow account, or as may be later

14 paid to the defendant pursuant to the contract, in  
15 accordance with the provisions of this section. If no  
16 escrow account has been established at the time of the  
17 court's entry of judgment, the court shall provide in its  
18 final order for the distribution of any future crime profits  
19 and shall provide that any such funds be paid directly to  
20 such persons and in such proportions as the court may  
21 direct. If an escrow account is established, the court shall  
22 distribute the moneys in the escrow account and shall  
23 provide that any future funds, if any, be paid directly to  
24 such persons and in such proportions as the court may  
25 direct. If an escrow account is established and the court  
26 also finds that it is likely that future crime profits will  
27 accrue to the defendant, the court in its discretion may  
28 provide for the continuance of the escrow account and for  
29 such further hearings as may be necessary or may provide  
30 that any future funds be paid directly to such persons and  
31 in such proportions as the court may direct.

32 (c) Upon the dismissal of charges against the de-  
33 fendant or upon the acquittal of the defendant in  
34 circumstances other than a finding by a court of record  
35 that the defendant is not criminally responsible for the  
36 commission of a crime by reason of mental illness, mental  
37 retardation or addiction, the court shall order the prose-  
38 cutor to immediately pay over to such defendant the  
39 moneys, including accrued interest, in the escrow account  
40 established on behalf of such defendant.

41 (d) Upon a showing by any defendant that three years  
42 have elapsed since the prosecutor first received notice  
43 pursuant to section four of this article and that no actions  
44 are pending against such defendant pursuant to this article,  
45 the court shall order the prosecutor to immediately pay  
46 over to such defendant or his legal representative the  
47 moneys, including accrued interest, in the escrow account.

48 (e) Upon a showing by the defendant that moneys in  
49 the escrow account shall be used for the exclusive purpose  
50 of retaining legal representation at any stage of the  
51 criminal proceedings against such defendant, including  
52 the appeals process, the court shall order the prosecutor to  
53 pay over such moneys as are reasonable and necessary to



54 pay for such legal representation: *Provided*, That if the  
55 defendant at any time during such criminal proceedings  
56 has been represented by court-appointed counsel, the  
57 court shall first order that public defender services be  
58 reimbursed for any funds expended on behalf of the  
59 defendant.

**§14-2B-8. Priorities of claims to moneys in escrow account.**

1 (a) The court, in ordering relief pursuant to this article,  
2 shall distribute the moneys in the escrow account and  
3 moneys which may later be payable under the contract, in  
4 the following priority:

5 (1) Payments authorized by the court for the exclu-  
6 sive purpose of retaining legal representation at any stage  
7 of the criminal proceedings against such defendant;

8 (2) Reasonable attorneys fees and expenses incurred  
9 by the prosecutor in bringing the interpleader action;

10 (3) Civil judgments of the victims of the crime,  
11 judgments awarded to any crime victim pursuant to the  
12 interpleader action authorized by this article and  
13 subrogation claims of the crime victim's compensation  
14 fund;

15 (4) Unpaid criminal fines owed to the state by the  
16 defendant as a result of the defendant's conviction for any  
17 crime;

18 (5) Expenses incurred by any other instrumentality of  
19 the state or political subdivision thereof as a result of the  
20 commission of the crime, including, without limitation,  
21 any county or regional jail or penitentiary in which the  
22 defendant was incarcerated: *Provided*, That for the  
23 purposes of this subdivision, the term "instrumentality of  
24 the state or political subdivision thereof" shall not include  
25 the crime victim's compensation fund; and

26 (6) The defendant.

27 (b) No payment shall be made out of the escrow  
28 account where such payment would be in derogation of  
29 claims, either presented or pending, entitled to a higher  
30 priority under this subdivision. If insufficient moneys

31 exist to pay all claims entitled to equal priority, the court  
32 shall equitably allot such moneys as are available among  
33 the several claimants. Notwithstanding any provision in  
34 this article to the contrary, when the court considers other  
35 civil judgments rendered against the defendant for any  
36 crime victim for the purposes of equitably allotting  
37 moneys, the court shall review such judgment and shall  
38 consider for allotment only that portion of the civil  
39 judgment which relates to the crime which produced the  
40 crime profits.

41 (c) Moneys in the escrow account shall not be subject  
42 to execution, levy, attachment or lien except in accordance  
43 with the priority of claims established in this subdivision.

**§14-2B-9. Acts to defeat intent of article void as against public policy.**

1 Any action taken by any defendant, whether by way  
2 of execution of a power of attorney, creation of corporate  
3 entities or otherwise, to defeat the purpose of this article  
4 shall be null and void as against the public policy of this  
5 state.

**§14-2B-10. Consent to jurisdiction.**

1 A person who commits a crime in this state submits to  
2 the jurisdiction of the courts of this state for a proceeding  
3 brought under this article. A person, firm, corporation,  
4 partnership, association or other legal entity which know-  
5 ingly contracts for, pays or agrees to pay any profit to a  
6 defendant who commits a crime in this state submits to the  
7 jurisdiction of the courts of this state for a proceeding  
8 brought under this article. For purposes of this section,  
9 service of process may be perfected in accordance with the  
10 West Virginia rules of civil procedure for trial courts of  
11 record.

**§14-2B-11. Failure of defendant or person, firm, corporation, partnership, association or other legal entity contracting with defendant to provide notice to prosecutor or pay over moneys to prosecutor as required by this article; civil penalty of treble damages.**

1       Notwithstanding any provision of this article to the  
2 contrary, if any defendant or any person, firm, cor-  
3 poration, partnership, association or other legal entity  
4 which knowingly contracts for, pays, or agrees to pay to a  
5 defendant, any crime profits, as defined in section one of  
6 this article, fails to submit a copy of such contract to the  
7 prosecutor of the county in which the defendant is  
8 charged with or is being prosecuted or was prosecuted for  
9 the commission of the crime, or fails to pay over to the  
10 prosecutor any moneys which would otherwise, by the  
11 terms of such contract, be owing to the defendant, such  
12 defendant or such person, firm, corporation, partnership,  
13 association or other legal entity shall be civilly liable in the  
14 interpleader action authorized by this article for treble  
15 damages to each party in whose favor judgment is entered.

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## CHAPTER 75

(Com. Sub. for S. B. 442—By Senators Walker, Helmick, Anderson,  
Bailey, Plymale and Ross)

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[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven-a, relating to required reporting of burns.

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

That article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-seven-a, to read as follows:

### ARTICLE 2. CRIMES AGAINST THE PERSON.

#### §61-2-27a. Required reporting of burns.

1 (a) Any health care provider who examines or renders  
2 medical treatment to a person suffering from an injury  
3 caused by a burn resulting from fire or a chemical, where  
4 the circumstances under which the examination is made or  
5 treatment is rendered, or where the condition of the injury  
6 gives the health care provider reasonable cause to suspect  
7 that the injury occurred during the commission, or  
8 attempted commission, of an arson as defined in article  
9 three of this chapter, shall report the same to the office of  
10 the state fire marshal. A written report shall be made by  
11 the provider, or by an employee or agent of the provider  
12 at the direction of the provider, to the office of the state  
13 fire marshal within forty-eight hours after the initial  
14 report: *Provided*, That where two or more health care  
15 providers participate in the examination or treatment of  
16 such injury, the obligation to report imposed by this  
17 section applies only to the attending physician or, if none,  
18 to the person primarily responsible for providing medical  
19 treatment for the injury.

20 (b) Any health care provider who in good faith makes  
21 or causes to be made a report pursuant to subsection (a) of  
22 this section is immune from any civil liability which may  
23 otherwise arise as the result of making such report.

24 (c) Within available funding and as may be  
25 determined necessary by the state fire marshal, the state  
26 fire marshal shall conduct educational programs for  
27 persons required to report injuries under this section.

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## CHAPTER 76

(S. B. 574—By Senators Wooton, Bowman, Dittmar, Buckalew, White, Wagner,  
Anderson, Deem, Scott, Ross, Miller and Oliverio)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four-d, relating to fraudulent schemes; cumulation of amounts where common scheme exists; and penalties.

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

That article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-four-d, to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-24d. Fraudulent schemes; cumulation of amounts where common scheme exists; penalties.**

1 (a) Any person who willfully deprives another of any  
2 money, goods, property or services by means of fraudu-  
3 lent pretenses, representations or promises shall be guilty  
4 of the larceny thereof.

5 (b) In determining the value of the money, goods,  
6 property or services referred to in subsection (a) of this  
7 section, it shall be permissible to cumulate amounts or  
8 values where such money, goods, property or services were  
9 fraudulently obtained as part of a common scheme or  
10 plan.

11 (c) A violation of law may be prosecuted under this  
12 section notwithstanding any other provision of this code.

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## CHAPTER 77

(S. B. 261—By Senators Wooton, Oliverio, Bowman, Buckalew, Scott,  
White, Anderson and Dittmar)

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[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fifty, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; and definition.

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

That section fifty, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.****§61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition.**

1 (a) No person shall knowingly and willfully for com-  
2 mercial advantage or private financial gain transfer by  
3 electronic or mechanical means or cause to be transferred  
4 by electronic or mechanical means with intent to sell for  
5 profit the recorded sounds contained on any phonograph  
6 record, disc, tape, film or other device without the permis-  
7 sion of the owner of such recorded sounds or his autho-  
8 rized representative, or to knowingly, or with reasonable  
9 grounds to know, sell or possess with intent to sell any  
10 phonograph record, disc, tape, film or other device con-  
11 taining such unauthorized transferred recorded sounds.  
12 This paragraph applies to sound recordings initially fixed  
13 prior to the fifteenth day of February, one thousand nine  
14 hundred seventy-two.

15 No person shall knowingly and willfully for commer-  
16 cial advantage or private financial gain offer for sale, sell,  
17 rent, transport, cause the sale, resale, rental or transporta-  
18 tion of or possess for one or more of these purposes a  
19 recording of a live performance with the knowledge that  
20 the live performance has been recorded or fixed without  
21 the consent of the owner.

22 No person shall knowingly and willfully for commer-  
23 cial advantage or private financial gain record or fix or  
24 cause to be recorded or fixed on any type of recording  
25 device a live performance with the knowledge that the live  
26 performance is being recorded or fixed without the con-  
27 sent of the owner.

28 No person shall knowingly and willfully for commer-  
29 cial advantage or private financial gain offer for sale, sell,  
30 rent, transport, or cause the sale, resale, rental or transpor-  
31 tation of or possess for one or more of these purposes, any  
32 phonograph record, disc, tape, film, video tape, video cas-  
33 sette or other device which fails to clearly and conspicu-  
34 ously disclose the actual name and address of the manu-  
35 facturer thereof.

36 (b) Any owner of such recorded sounds, images or  
37 any audio-visual combination and any person lawfully  
38 transferring such sounds by agreement with such owner  
39 shall have a cause of action for the unauthorized transfer-  
40 ral of such sounds and shall be entitled to treble damages  
41 resulting therefrom.

42 (c) (1) For the purpose of this section, the term "own-  
43 er" means the person vested with the rights to and owner-  
44 ship of the original fixation of sounds, images or any  
45 audio-visual combination embodied in the master phono-  
46 graph record, master disc, master tape, master film or other  
47 device used for transferring sounds or images on phono-  
48 graph records, discs, tapes, films, video tapes or video  
49 cassettes or other similar articles upon which sounds, im-  
50 ages or any audio-visual combination are recorded and  
51 from which the transferred recorded sounds and/or images  
52 are directly derived.

53 In the absence of a written agreement or law to the  
54 contrary, the performer or performers of a live perfor-  
55 mance are presumed to own the rights to record or fix the  
56 sounds, images or any audio-visual combination of a live  
57 performance. A person who is authorized to maintain  
58 custody and control over business records that reflect  
59 whether or not the owner or owners of a live performance  
60 consented to having a live performance recorded or fixed  
61 is a proper witness in a proceeding regarding the issue of  
62 consent.

63 (2) For the purposes of this section, the term "manu-  
64 facturer" means the person who transfers, authorizes or  
65 causes the transfer of a recording of sounds, images or  
66 any audio-visual combination to a phonograph record,  
67 disc, tape, film, video tape, video cassette or other device.

68 (d) (1) Any person convicted of an offense under this  
69 section involving less than one hundred unlawful sound  
70 recordings or less than twenty unlawful audio-visual re-  
71 cordings shall be guilty of a misdemeanor, and, upon  
72 conviction thereof, shall be fined not more than one thou-  
73 sand dollars, or imprisoned for not more than one year in  
74 jail or both fined and imprisoned.

75 (2) Any person convicted of an offense under this  
76 section involving at least one hundred but less than one  
77 thousand unlawful sound recordings or at least twenty but  
78 less than sixty-five audio-visual recordings shall be guilty  
79 of a felony, and, upon conviction thereof, shall be fined  
80 not less than one thousand dollars nor more than five  
81 thousand dollars, or imprisoned for not more than two  
82 years in the penitentiary or both fined and imprisoned.

83 (3) Any person convicted of an offense under this  
84 section involving at least one thousand unlawful sound  
85 recordings or at least sixty-five unlawful audio-visual  
86 recordings shall be guilty of a felony, and, upon conviction  
87 thereof, shall be fined not less than five thousand  
88 dollars nor more than ten thousand dollars, or imprisoned  
89 for not more than five years in the penitentiary or both  
90 fined and imprisoned.

91 (4) Any person convicted of a second or subsequent  
92 offense under this section shall be guilty of a felony, and,  
93 upon conviction thereof, shall be fined not less than one  
94 thousand dollars nor more than ten thousand dollars, or  
95 imprisoned for not more than five years or both fined and  
96 imprisoned.

97 (5) Any unauthorized recorded sounds or images  
98 produced in violation of this section and any equipment  
99 used for such purpose shall be confiscated by the appropriate  
100 law-enforcement agency.

101 If a person is convicted of any violation under this  
102 chapter, the court in its judgment of conviction shall order  
103 the forfeiture and destruction or release to a law-enforcement  
104 agency for use in official agency business of all  
105 infringing recordings and of any equipment or components  
106 used or intended to be used in the production of the  
107 recordings. All infringing phonograph records, discs,  
108 tapes, films, video tapes, video cassettes or other devices  
109 shall be destroyed once they are no longer needed for  
110 court proceedings. Nothing contained herein shall apply  
111 to televisions and radio stations licensed by the federal  
112 communications commission or to educational institutions,  
113 when the purpose of such reproduction is limited and used  
114 for criticism, comments, news reporting, archival or educational  
115 purposes.



## CHAPTER 78

(H. B. 2835—By Delegates Staton, Amores, Collins, Douglas,  
Whitman, Hunt and Kime)

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[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to computer fraud; prohibiting the knowing and willful access to any data stored in a computer owned by the Legislature; limitation of defenses; criminal penalties; and regulations.

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

That section four, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-4. Computer fraud; access to Legislature computer; criminal penalties.**

1 (a) Any person who, knowingly and willfully, directly  
2 or indirectly, accesses or causes to be accessed any com-  
3 puter, computer services or computer network for the  
4 purpose of (1) executing any scheme or artifice to de-  
5 fraud or (2) obtaining money, property or services by  
6 means of fraudulent pretenses, representations or promises  
7 is guilty of a felony, and, upon conviction thereof, shall be  
8 fined not more than ten thousand dollars or imprisoned in  
9 the penitentiary for not more than ten years, or both fined  
10 and imprisoned.

11 (b)(1) Any person who, knowingly and willfully, di-  
12 rectly or indirectly, accesses, attempts to access, or causes  
13 to be accessed any data stored in a computer owned by the  
14 Legislature without authorization is guilty of a felony, and,  
15 upon conviction thereof, shall be fined not more than five  
16 thousand dollars or imprisoned in the penitentiary for not  
17 more than five years, or both fined and imprisoned.

1           (2) Notwithstanding the provisions of section  
 2 seventeen of this article to the contrary, in any criminal  
 3 prosecution under this subsection against an employee or  
 4 member of the Legislature, it shall not be a defense (A)  
 5 that the defendant had reasonable grounds to believe that  
 6 he or she had authorization to access the data merely  
 7 because of his or her employment or membership, or (B)  
 8 that the defendant could not have reasonably known he or  
 9 she did not have authorization to access the data:  
 10 *Provided*, That the joint committee on government and  
 11 finance shall promulgate rules for the respective houses of  
 12 the Legislature regarding appropriate access of members  
 13 and staff and others to the legislative computer system.

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## CHAPTER 79

(Com. Sub. for H. B. 2034—By Delegates Lynch, Pino, Trump and Staton)

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[Passed February 17, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section ten, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating penalties for escape from a county sheriff, the director of the regional jail authority, representatives of said persons, from a law-enforcement officer, court bailiff, or from any institution, facility, or any alternative sentence of confinement.

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

That section ten, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

#### §61-5-10. Persons in custody of institutions or officers.

1           Whoever escapes or attempts to escape by any means  
 2 from the custody of a county sheriff, the director of the

3 regional jail authority, an authorized representative of said  
4 persons, a law-enforcement officer, court bailiff, or from  
5 any institution, facility, or any alternative sentence  
6 confinement, by which he or she is lawfully confined,  
7 shall, if the custody or confinement is by virtue of a  
8 charge or conviction for a felony, be guilty of a felony,  
9 and, upon conviction thereof, shall be confined in the  
10 penitentiary for not more than five years; and if the  
11 custody or confinement is by virtue of a charge or  
12 conviction for a misdemeanor, shall be guilty of a  
13 misdemeanor, and, upon conviction thereof, he or she  
14 shall be confined in the jail for not more than one year.

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## CHAPTER 80

(Com. Sub. for H. B. 2702—By Delegate Beane)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section seventeen, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that fleeing from an officer attempting to make a lawful arrest is a misdemeanor; and providing for penalties.

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

That section seventeen, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

#### §61-5-17. Obstructing officer; fleeing from officer; penalty.

1 (a) Any person who by threats, menaces, acts or  
2 otherwise, shall forcibly or illegally hinder, obstruct or  
3 oppose, or attempt to obstruct or oppose, or shall counsel,  
4 advise or invite others to hinder, obstruct or oppose any  
5 officer in this state (whether civil or military) in the lawful

6 exercise or discharge of his official duty, shall, for every  
7 such offense, be guilty of a misdemeanor, and, upon  
8 conviction thereof, shall be fined not less than fifty nor  
9 more than five hundred dollars, and may, in the discretion  
10 of the court, be imprisoned not exceeding one year.

11 (b) If any person intentionally flees from or attempts  
12 to flee from any officer in this state (whether civil or  
13 military) who is attempting to make a lawful arrest of such  
14 person, and the person knows or reasonably believes that  
15 the officer is attempting to arrest him or her, he or she is  
16 guilty of a misdemeanor, and, upon conviction thereof,  
17 shall be fined not less than fifty nor more than five  
18 hundred dollars, and may, in the discretion of the court, be  
19 imprisoned for a term not exceeding twelve months.

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## CHAPTER 81

(Com. Sub. for H. B. 2331—By Delegates Fantasia and Rowe)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section twenty-seven, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against public justice; providing for the criminal offense of impeding or obstructing the administration of justice by an officer or member of any court or of impairing the testimony of any person or the production of any document by use of intimidation, physical force or threats or attempts thereof; providing for the criminal offense of retaliating against an officer or member of any court or against a witness or other party testifying or producing documentary evidence; establishing criminal penalties; defining the term "official proceeding" for purposes of section; and clarifying the applicability of the provisions.

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

That section twenty-seven, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

**§61-5-27. Obstructing administration of justice; intimidation of judicial officer, jurors and witnesses; retaliation against judicial officers, jurors and witnesses; penalty.**

1 (a) It shall be unlawful for any person to use intimidation,  
2 physical force or threats of such, or to attempt to do  
3 so, against any person, with the intent to:

4 (1) Impede or obstruct the administration of justice  
5 by any judge, family law master, magistrate, juror, arbitrator,  
6 or officer or member of any court in the discharge of  
7 that person's duties as such in an official proceeding;

8 (2) Influence, delay, or prevent the testimony of any  
9 person in an official proceeding; or

10 (3) Cause or induce any person to (A) withhold testimony,  
11 or withhold a record, document, or other object,  
12 from an official proceeding; (B) alter, destroy, mutilate,  
13 or conceal an object with intent to impair the object's integrity  
14 or availability for use in an official proceeding; (C)  
15 evade legal process summoning that person to appear as a  
16 witness, or to produce a record, document, or other object  
17 in an official proceeding; or (D) be absent from an official  
18 proceeding to which such person has been summoned  
19 by legal process.

20 (b) It shall be unlawful for any person to engage in  
21 any conduct and thereby cause bodily injury to another  
22 person or to damage the tangible property of another  
23 person, or to threaten or to attempt to do so, with intent to  
24 retaliate against any person:

25 (1) For that person's discharge of duties as a judge,

26 family law master, magistrate, juror, arbitrator, or officer  
27 or member of any court in an official proceeding; or

28 (2) For the attendance of a witness or party at an  
29 official proceeding, or for any testimony given or for the  
30 production of any record, document, or other object pro-  
31 duced by a witness in an official proceeding.

32 (c) Any person who violates the provisions of this  
33 section:

34 (1) In the case of an official proceeding involving any  
35 felony charge, is guilty of a felony, and upon conviction  
36 thereof, shall be imprisoned for a definite term of not less  
37 than one year nor more than five years or fined not more  
38 than one thousand dollars, or both;

39 (2) In the case of an official proceeding involving any  
40 misdemeanor charge and no felony charge, or of an offi-  
41 cial proceeding which is a civil proceeding, is guilty of a  
42 misdemeanor, and upon conviction thereof, shall be con-  
43 fined in jail for not more than one year or fined not more  
44 than five hundred dollars, or both; or

45 (3) In the case of any official proceeding, where the  
46 violation of the provisions of this section is directed at a  
47 judge, family law master or magistrate, is guilty of a felo-  
48 ny, and upon conviction thereof, shall be imprisoned for a  
49 definite term of not less than one year nor more than five  
50 years or fined not more than one thousand dollars, or  
51 both.

52 (d) For the purposes of this section, the term "official  
53 proceeding" means a proceeding pending before the su-  
54 preme court of appeals or before any judge, magistrate,  
55 family law master, court, or grand jury of the state of West  
56 Virginia, and the testimony given or to be given, or the  
57 record, document or other object produced or to be pro-  
58 duced need not be admissible in evidence or free of a  
59 claim of privilege at the time of the commission of any  
60 unlawful act as provided in this section.

## CHAPTER 82

(Com. Sub. for H. B. 2298—By Delegates Gallagher, Compton, Staton, Kiss, Trump, Burke and Rowe)

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[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nineteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enhanced and additional criminal penalties for convictions of animal cruelty; required evaluation; conditions of probation.

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

That section nineteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-19. Cruelty to animals; penalties; exclusions.**

1 (a) If any person cruelly mistreats, abandons or  
2 withholds proper sustenance, including food, water, shelter  
3 or medical treatment necessary to sustain normal health  
4 and fitness or to end suffering or abandons any animal to  
5 die, or uses, trains or possesses any domesticated animal  
6 for the purpose of seizing, detaining or mistreating any  
7 other domesticated animal, he or she is guilty of a  
8 misdemeanor, and, upon conviction thereof, shall be fined  
9 not less than one hundred nor more than one thousand  
10 dollars, or confined in the county jail not more than six  
11 months, or both so fined and confined.

12 (b) Any person, other than a licensed veterinarian or a  
13 person acting under the direction or with the approval of a  
14 licensed veterinarian, who knowingly and willfully  
15 administers or causes to be administered to any animal

16 participating in any contest any controlled substance or  
17 any other drug for the purpose of altering or otherwise  
18 affecting said animal's performance is guilty of a  
19 misdemeanor, and, upon conviction thereof, shall be fined  
20 not less than one hundred nor more than one thousand  
21 dollars.

22 (c) Any person convicted of a violation of this section  
23 shall forfeit his or her interest in any such animal and all  
24 interest in such animal shall vest in the humane society or  
25 county pound of the county in which said conviction was  
26 rendered, and such person shall, in addition to any fine  
27 imposed, be liable for any costs incurred or to be incurred  
28 by the humane society or county pound as a result.

29 (d) For the purpose of this section, the term  
30 "controlled substance" shall have the same meaning  
31 ascribed to it by subsection (d), section one hundred one,  
32 article one, chapter sixty-a of this code.

33 (e) The provisions of this section do not apply to  
34 lawful acts of hunting, fishing, trapping or animal training  
35 or farm livestock, poultry, gaming fowl or wildlife kept in  
36 private or licensed game farms if kept and maintained  
37 according to usual and accepted standards of livestock,  
38 poultry, gaming fowl or wildlife or game farm production  
39 and management, nor to humane use of animals or  
40 activities regulated under and in conformity with the  
41 provisions of 7 U.S.C. § 2131 et seq. and the regulations  
42 promulgated thereunder, as both such statutes and  
43 regulations are in effect on the effective date of this  
44 section.

45 (f) Notwithstanding the provisions of subsection (a) of  
46 this section, any person convicted of a second violation of  
47 said subsection is guilty of a misdemeanor and shall be  
48 confined in jail for a period of not less than ninety days  
49 nor more than one year, fined not less than five hundred  
50 dollars nor more than one thousand dollars, or both. The  
51 incarceration set forth in this subsection shall be  
52 mandatory unless the provisions of subsection (g) are  
53 complied with.



54 (g) Notwithstanding any provision of this code to the  
55 contrary, no person who has been convicted of a second  
56 or subsequent violation of the provisions of subsection (a)  
57 of this section may be granted probation until the  
58 defendant has undergone a complete psychiatric or  
59 psychological evaluation and the court has reviewed such  
60 evaluation. Unless the defendant is determined by the  
61 court to be indigent, he or she shall be responsible for the  
62 cost of said evaluation.

63 (h) In addition to any other penalty which can be  
64 imposed for a violation of this section, a court may, as a  
65 condition of probation, prohibit any person so convicted  
66 from possessing or owning any animal or type of animal  
67 during the period of probation.

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## CHAPTER 83

(Com. Sub. for H. B. 2339—By Delegates Prezioso, Gallagher, Staton, Douglas,  
Jenkins, Leach and Mezzatesta)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal sections twelve, thirteen and fourteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the requirement that the clerk of the circuit court annually prepare a list of fines imposed in criminal matters for the state auditor; penalty for failure to prepare and transmit such report to the auditor; and the use of the list by the auditor.

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

### ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

**§1. Repeal of sections relating to preparing of list of fines by circuit clerk for auditor; penalty for failure to prepare and transmit such report; use of list by auditor.**

1 Sections twelve, thirteen and fourteen, article four,  
2 chapter sixty-two of the code of West Virginia, one  
3 thousand nine hundred thirty-one, as amended, are hereby  
4 repealed.

## CHAPTER 84

(H. B. 2599—By Delegates Hutchins and Varner)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to circuit court jurisdiction over crimes committed by convicts.

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

That section three, article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST CONVICTS.**

**§62-8-3. Venue of trials of convicts.**

1 All criminal proceedings against convicts in the  
 2 custody of the commissioner of corrections shall be in the  
 3 circuit court in the county where the crime is committed.

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## CHAPTER 85

(Com. Sub. for S. B. 252—By Senators Plymale, Wagner, Wooton, Buckalew, Scott, Schoonover and Chafin)

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[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to repeal section twenty-four-a, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter fifteen of said code by adding thereto a new article, designated article two-b, relating generally to blood sampling

and analyses for DNA database and databank act of 1995; policy of DNA database; definitions; division of public safety to implement database; division to inspect facilities; cooperative agreements; promulgation of legislative rules; compatibility of state program with federal guidelines; requirement of blood sample upon conviction of certain crimes and for certain prisoners; tests; maintenance of records and samples; procedures for drawing blood; the database exchange; disclosure of record; expungement of DNA records; confidentiality, unauthorized use of databank, neglect of duties, destruction of samples; and penalties.

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

That section twenty-four-a, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article two-b, to read as follows:

**ARTICLE 2B. DNA DATA.**

- §15-2B-1. Short title.
- §15-2B-2. Policy.
- §15-2B-3. Definitions.
- §15-2B-4. Division of public safety to establish and administer DNA identification system; inspection of laboratories.
- §15-2B-5. Authority of division to enter into cooperative agreements.
- §15-2B-6. Blood sample required for DNA analysis upon conviction; blood sample required for certain prisoners.
- §15-2B-7. Tests to be performed on blood sample.
- §15-2B-8. Maintenance of DNA samples and records.
- §15-2B-9. Procedure for withdrawal of blood sample for DNA analysis and for conducting analysis.
- §15-2B-10. DNA data base exchange.
- §15-2B-11. Expungement.
- §15-2B-12. Confidentiality; unauthorized uses of DNA databank; penalties.
- §15-2B-13. Neglect of duties; destruction of samples; penalties.

**§15-2B-1. Short title.**

- 1 This article may be cited as the "DNA Database and
- 2 Databank Act of 1995".

**§15-2B-2. Policy.**

1 It is the policy of this state to assist federal, state and  
2 local criminal justice and law-enforcement agencies in the  
3 identification, detection and exclusion of individuals who  
4 are subjects of the investigation or prosecution of violent  
5 crimes, sex-related crimes and other crimes against the  
6 person. In furtherance of such assistance, the Legislature  
7 finds:

8 That the analysis of DNA contained in biological  
9 evidence that may be recovered from a crime scene facili-  
10 tates such identification, detection and exclusion;

11 That the comparison of DNA data recovered from a  
12 crime scene with existing DNA records maintained in a  
13 central DNA database further facilitates such identifica-  
14 tion, detection and exclusion; and

15 That requiring individuals convicted of certain crimes  
16 to provide a blood sample for DNA analysis with the re-  
17 sulting DNA records maintained in a central DNA data-  
18 base will likewise further facilitate the aforementioned  
19 identification, detection and exclusion and may serve to  
20 discourage recidivism.

21 Therefore, the Legislature finds that assisting federal,  
22 state and local criminal justice and law-enforcement agen-  
23 cies through the use and development of DNA analysis is  
24 of the utmost importance and urgency in this state and  
25 that a DNA identification system shall be established as  
26 described in this article.

### **§15-2B-3. Definitions.**

1 As used in this article the following terms have the  
2 meanings specified:

3 (a) "DNA" means deoxyribonucleic acid. DNA is  
4 located in the nucleus of cells and provides an individual's  
5 personal genetic blueprint. DNA encodes genetic infor-  
6 mation that is the basis of human heredity and forensic  
7 identification.

8 (b) "DNA record" means DNA identification informa-  
9 tion stored in any state DNA database pursuant to this  
10 article. The DNA record is the result obtained from DNA

11 typing tests. The DNA record is comprised of the charac-  
12 teristics of a DNA sample which are of value in establish-  
13 ing the identity of individuals. The results of all DNA  
14 identification tests on an individual's DNA sample are also  
15 included as a "DNA record".

16 (c) "DNA sample" means the DNA extracted from a  
17 blood sample provided by any person convicted of of-  
18 fenses covered by this article or submitted to the division  
19 laboratory for analysis pursuant to a criminal investiga-  
20 tion.

21 (d) "FBI" means the federal bureau of investigation.

22 (e) "State DNA database" means all DNA identification  
23 records included in the system administered by the West  
24 Virginia division of public safety.

25 (f) "State DNA databank" means the repository of  
26 DNA samples collected under the provisions of this article.

27 (g) "Division" means the West Virginia division of  
28 public safety.

**§15-2B-4. Division of public safety to establish and administer  
DNA identification system; inspection of labora-  
tories.**

1 (a) The division shall establish a DNA identification  
2 system consisting of a state DNA database and a state  
3 DNA databank compatible with the procedures specified  
4 by the FBI.

5 (b) The division shall be the administrator of the state  
6 DNA databank and database and the DNA identification  
7 system.

8 (c) The division shall supervise all DNA forensic labo-  
9 ratories in this state to ensure that such laboratories are  
10 acting in compliance with applicable provisions of state  
11 and federal law. The division may inspect or monitor  
12 such facilities and may prohibit any such laboratory from  
13 participating in the exchange of information when the  
14 division finds that the facility has not acted in conformity  
15 with state and federal laws. The superintendent of the

16 division shall further promulgate a legislative rule pursu-  
17 ant to chapter twenty-nine-a of this code regarding the  
18 monitoring, inspection and prohibition on the exchange  
19 of information.

20 (d) The superintendent of the division shall further  
21 establish standards for testing and quality assurance of  
22 DNA testing and the exchange of information through the  
23 promulgation of a legislative rule pursuant to chapter  
24 twenty-nine-a of this code.

25 (e) The superintendent of the division of public safety  
26 shall promulgate additional legislative rules pursuant to  
27 chapter twenty-nine-a of this code necessary to establish  
28 and administer the DNA database and databank consistent  
29 with the requirements of state and federal law and consis-  
30 tent with the systems employed by the FBI.

**§15-2B-5. Authority of division to enter into cooperative agreements.**

1 The division may enter into cooperative agreements  
2 with public or private agencies or entities to provide any  
3 service or facility associated with the administration of the  
4 DNA database and databank: *Provided*, That the division  
5 is authorized only to contract services and/or facilities for  
6 DNA typing, testing and research with Marshall Universi-  
7 ty.

**§15-2B-6. Blood sample required for DNA analysis upon conviction; blood sample required for certain prisoners.**

1 (a) Any person convicted of an offense described in  
2 section one, two, three, four, seven, nine, nine-a (when that  
3 offense constitutes a felony), ten, ten-a, ten-b, twelve, four-  
4 teen or fourteen-a, article two, chapter sixty-one of this  
5 code or section twelve, article eight of said chapter (when  
6 that offense constitutes a felony), shall provide a blood  
7 sample to be used for DNA analysis as described in this  
8 article. Further, any person convicted of any offense  
9 described in article eight-b or eight-d of said chapter shall  
10 provide a blood sample to be used for DNA analysis as  
11 described in this article.

12 (b) All persons incarcerated in the state penitentiary or  
13 any regional jail in this state who are incarcerated due to  
14 the conviction of any offense listed in subsection (a) of  
15 this section who are incarcerated on the first day of July,  
16 one thousand nine hundred ninety-five, or who are con-  
17 victed of any such offense on or after the first day of July,  
18 one thousand nine hundred ninety-five, shall have a blood  
19 sample drawn for purposes of analysis and storage of the  
20 DNA.

21 (c) When a person who is required to submit to blood  
22 testing as required by this section refuses to comply with  
23 any blood testing, the state shall apply to a circuit court  
24 for an order requiring the prisoner to permit a blood sam-  
25 ple to be withdrawn for the purpose of DNA typing and  
26 testing. The circuit court shall order the prisoner to sub-  
27 mit to blood testing in conformity with the provisions of  
28 this article.

**§15-2B-7. Tests to be performed on blood sample.**

1 The tests to be performed on each blood sample shall  
2 analyze and type the genetic markers contained in or  
3 derived from the DNA sample in accordance with rules  
4 promulgated under this article. Any such rule regarding  
5 the typing and analysis of the blood sample shall be con-  
6 sistent with any specifications required by federal law.

**§15-2B-8. Maintenance of DNA samples and records.**

1 DNA records and samples shall be stored and main-  
2 tained by the division in the state DNA database and  
3 databank, respectively. DNA samples, without personal  
4 identifying information, may also be stored in any DNA  
5 typing, testing and research laboratory selected by the  
6 division pursuant to section five of this article.

**§15-2B-9. Procedures for withdrawal of blood sample for  
DNA analysis and for conducting analysis.**

1 (a) Upon incarceration, the division of corrections,  
2 regional jails, county jails and felon facilities shall ensure  
3 that the blood is drawn from all persons described in sec-  
4 tion six of this article. When any person convicted of an

5 offense described in said section is not incarcerated, the  
6 sheriff in such county where the person is convicted shall  
7 ensure that blood is drawn from such person at the region-  
8 al facility: *Provided*, That blood may be drawn at a county  
9 jail or at a prison, regional facility or local hospital unit  
10 when so ordered by the sentencing court. The sheriff  
11 shall transport such persons who are not incarcerated to  
12 the facility where the blood is drawn.

13 (b) The superintendent of the division shall promul-  
14 gate a legislative rule pursuant to chapter twenty-nine-a of  
15 this code establishing which persons may withdraw blood  
16 and further establishing procedures to withdraw blood. At  
17 a minimum, these procedures shall require that when  
18 blood is withdrawn for the purpose of DNA identification  
19 testing, a previously unused and sterile needle and sterile  
20 vessel shall be used, the withdrawal shall otherwise be in  
21 strict accord with accepted medical practices and in accor-  
22 dance with any recognized medical procedures employing  
23 universal precautions as may be outlined by the national  
24 centers for disease control and prevention. No civil liabili-  
25 ty attaches to any person when the blood was drawn ac-  
26 cording to recognized medical procedures employing  
27 such universal precautions. No person is relieved of liabil-  
28 ity for negligence in the drawing of blood for purposes of  
29 DNA testing.

30 (c) The superintendent of the division shall promul-  
31 gate legislative rules pursuant to chapter twenty-nine-a of  
32 this code governing the procedures to be used in the with-  
33 drawal of blood samples, submission, identification, analy-  
34 sis and storage of DNA samples and typing results of  
35 DNA samples submitted under this article which shall be  
36 compatible with recognized federal standards.

#### **§15-2B-10. DNA database exchange.**

1 (a) The division shall receive DNA samples, store,  
2 analyze, classify and file the DNA records consisting of all  
3 identification characteristics of DNA profiles from blood  
4 samples submitted pursuant to the procedures for con-  
5 ducting DNA analysis of blood samples.



6 (b) The division may furnish DNA records to autho-  
7 rized law-enforcement and governmental agencies of the  
8 United States and its territories, of foreign countries duly  
9 authorized to receive the same, of other states within the  
10 United States and of the state of West Virginia upon prop-  
11 er request stating that the DNA records requested will be  
12 used solely:

13 (1) For law-enforcement identification purposes by  
14 criminal justice agencies;

15 (2) In judicial proceedings, if otherwise expressly  
16 permitted by state or federal laws; or

17 (3) If personal identifying information is removed, for  
18 a population statistics database, for identification research  
19 and protocol development purposes, or for quality control  
20 purposes.

21 (c) The superintendent of the division shall promul-  
22 gate further legislative rules pursuant to chapter  
23 twenty-nine-a of this code governing the methods by  
24 which any law-enforcement agency or other authorized  
25 entity may obtain information from the state DNA data-  
26 base consistent with this section and federal law.

27 (d) The division may release DNA samples, without  
28 personal identifying information, to any agency or entity  
29 with which the division contracts pursuant to section five  
30 of this article.

#### §15-2B-11. Expungement.

1 (a) Any person whose DNA record or profile has been  
2 included in the state database and whose DNA sample is  
3 stored in the state databank or the state's designated DNA  
4 typing, testing and research laboratory may apply for  
5 expungement on the grounds that the felony conviction  
6 that resulted in the inclusion of the person's DNA record  
7 or profile in the state database or the inclusion of the per-  
8 son's DNA sample in the state databank has been reversed  
9 and the case dismissed. The person requesting  
10 expungement, either individually or through an attorney,  
11 may apply to the court for expungement of the record. A

12 copy of the application for expungement shall be served  
13 on the prosecuting attorney for the judicial district in  
14 which the felony conviction was obtained not less than  
15 twenty days prior to the date of the hearing on the appli-  
16 cation. A certified copy of the order reversing and dis-  
17 missing the conviction shall be attached to an order of  
18 expungement.

19 (b) Upon receipt of an order of expungement, the  
20 division shall purge the DNA record and all other identifi-  
21 able information from the state database and the DNA  
22 sample stored in the state databank covered by the order.  
23 If the individual has more than one entry in the state data-  
24 base and databank, then only the entry covered by the  
25 expungement order shall be deleted from the state data-  
26 base or databank.

**§15-2B-12. Confidentiality; unauthorized uses of DNA  
databank; penalties.**

1 (a) All DNA profiles and samples submitted to the  
2 division of public safety pursuant to this article shall be  
3 treated as confidential except as provided in this article.

4 (b) Any person who, by virtue of employment or  
5 official position, has possession of or access to individual-  
6 ly identifiable DNA information contained in the state  
7 DNA database or databank and who willfully discloses it  
8 in any manner to any person or agency not entitled to  
9 receive it is guilty of a misdemeanor, and, upon conviction  
10 thereof, shall be fined not less than fifty dollars nor more  
11 than five hundred dollars or be imprisoned in the county  
12 or regional jails for a period not to exceed one year, or  
13 both fined and imprisoned.

14 (c) Any person who, without authorization, willfully  
15 obtains individually identifiable DNA information from  
16 the state DNA database or databank is guilty of a  
17 misdemeanor, and, upon conviction thereof, shall be fined  
18 not less than fifty dollars nor more than five hundred  
19 dollars or be imprisoned in the county or regional jails for  
20 a period not to exceed one year, or both fined and  
21 imprisoned.

**§15-2B-13. Neglect of duties; destruction of samples; penalties.**

1 (a) Any person who neglects or refuses to do or perform  
2 any act on his or her part to be done or performed in  
3 connection with the operation of this article is guilty of a  
4 misdemeanor, and, upon conviction thereof, shall be fined  
5 not less than fifty dollars nor more than two hundred  
6 dollars or be imprisoned in the county or regional jail for  
7 a period of not more than sixty days, or both fined and  
8 imprisoned. Further, such neglect constitutes misfeasance  
9 in office and may subject that person to removal from  
10 office.

11 (b) Any person who willfully removes, destroys or  
12 mutilates any of the DNA samples, records or other  
13 information acquired or stored pursuant to this article is  
14 guilty of a misdemeanor, and, upon conviction thereof,  
15 shall be fined not less than fifty dollars nor more than five  
16 hundred dollars or imprisoned in the county or regional  
17 jail not to exceed one year, or both fined and imprisoned.

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## CHAPTER 86

(Com. Sub. for H. B. 2263—By Delegates Yeager, Rowe, Manuel,  
Frederick, Adkins, Henderson and Burke)

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[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to causing death or injury to any trained dog or horse used by law-enforcement officials in the performance of their official duties; criminal penalties; and restitution.

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

That article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-four, to read as follows:

**ARTICLE 20. DOGS AND CATS.**

**§19-20-24. Causing death or injury to animals used by law-enforcement officials; criminal penalties.**

1 Any person who, without justification, and with the  
2 unlawful intent to inflict serious physical injury or death,  
3 causes the death of any trained dog or horse used by  
4 law-enforcement officials in the performance of their  
5 official duties is guilty of a felony, and, upon conviction  
6 thereof, shall be fined not less than five hundred dollars  
7 nor more than one thousand dollars and imprisoned in the  
8 penitentiary for a definite term of not more than three  
9 years.

10 Any person who, without justification, willfully and  
11 unlawfully causes physical injury to any trained dog or  
12 horse used by law-enforcement officials in the perform-  
13 ance of their official duties is guilty of a misdemeanor,  
14 and, upon conviction thereof, shall be fined not more than  
15 five hundred dollars, or confined in the county jail not  
16 more than six months, or both.

17 Any person convicted of a violation of this section  
18 shall be ordered to make restitution to the law-enforce-  
19 ment agency owning the animal for any veterinary bills  
20 and replacement costs of any disabled or killed animal.

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## CHAPTER 87

(Com. Sub. for H. B. 2233—By Delegates Douglas, Manuel, Faircloth, Doyle  
and Evans)

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[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eight, article twenty-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dogs and cats being permitted to run at large, subject to any quarantine established by the commissioner of agriculture; subject to such ordinances or rules relating to the control and management of dogs as may be promulgated by a county commission or municipality, with limited exemptions for hunting and farm dogs and dogs engaged in lawful training activity.

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

That section eight, article twenty-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.**

**§19-20A-8. Vaccinated dogs and cats may run at large; confinement may be required by the commissioner of agriculture within the limits of any quarantine area or locality; and ordinances or rules may be promulgated by any county commission or municipality relating to the control and management of dogs within the county; providing limited exemption for hunting and farm dogs from county commission or municipality action.**

1 Dogs or cats vaccinated in compliance with the  
2 provisions of this article may run at large in any area or  
3 locality: *Provided*, That the commissioner of agriculture  
4 may, pursuant to article nine of this chapter, exercise his  
5 discretion to establish a quarantined area or locality and to  
6 require all dogs and cats within the limits of any  
7 quarantined area or locality to be confined as provided in  
8 article nine: *Provided, however*, That a county commis-  
9 sion or a municipality may adopt and enforce ordinances  
10 not inconsistent with the provisions of article twenty of this  
11 chapter of the code, as it considers necessary or conve-

12 nient for the control and management of all dogs in the  
13 county, or a portion thereof, vaccinated or not, except as  
14 further provided herein: *Provided further*, That any coun-  
15 ty commission or municipality may not adopt any ordi-  
16 nance which purports to keep any vaccinated dog from  
17 running at large while engaged in any lawful hunting  
18 activity; from running at large while engaged in any law-  
19 ful training activity; or from running at large while en-  
20 gaged in any lawful herding or other farm related activity:  
21 *And provided further*, That the provisions of this section  
22 shall not exempt any dog from any quarantine established  
23 by or any confinement order required by the commission-  
24 er relating to the establishment of a quarantine.

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## CHAPTER 88

(S. B. 567—By Senators Wooton, Wiedebusch, Anderson, Bowman, Buckalew,  
Dittmar, Grubb, Miller, Ross, Scott, Wagner, White and Yoder)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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

forty-eight-a of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact article two of said chapter; to amend article three of said chapter by adding thereto a new section, designated section eleven; to amend and reenact section twenty-two, article four of said chapter; to amend and reenact sections one, three and eight, article five of said chapter; to amend and reenact sections one, three, four, five and six, article six of said chapter; to amend and reenact sections twelve and thirty-six, article seven of said chapter; and to amend and reenact section one, article two, chapter fifty-nine of said code, all relating generally to reorganizing the functions and offices of administrative agencies responsible for obtaining and enforcing support orders and establishing paternity; providing for the transfer and incorporation of agencies and boards and changing references from the child advocate office to the child support enforcement division; providing for the confidentiality and disclosure of tax returns and return information and changing references from the child advocate office to the child support enforcement division; authorizing the promulgation of legislative rules ensuring adequate care and accommodations for consumers of birthing centers and requiring birthing centers to implement a program for establishment of paternity; limiting the use of social security numbers by the division of vital statistics; requiring hospitals and institutions to implement a program for establishment of paternity as a condition of licensure; requiring public and private hospitals and birthing centers to establish a hospital-based paternity program; defining certain terms related to public defender services and removing a requirement that public defender services be provided in paternity actions; providing for the payment of prizes under the state lottery act to be made to the child support enforcement division; providing for medical support enforcement and changing references from the child advocate office to the child support enforcement division; providing for the withholding from income of amounts due as support and changing references from the child advocate office to the child support enforcement division; providing for the calculation of interest on support obligations arising from domestic relations actions; defining certain terms related to the enforcement of family obligations; providing for the calculation of interest on support obligations arising from actions to establish and enforce support orders; estab-

lishing the West Virginia support enforcement commission; prescribing the membership of the commission and qualifications and eligibility for membership; describing terms of office and conditions of membership; requiring members to subscribe to an oath of office; providing for a commission chairman; providing for compensation and expenses of commission members; prescribing meeting requirements; authorizing the governor to remove commission members for cause; prescribing the general duties of the commission; describing the general powers of the commission; requiring certain rule making by the commission; establishing the child support enforcement division within the department of health and human resources; providing for the appointment of a director of the division; providing for organization of the division and its employees; fixing supervisory responsibilities within the division; prescribing the general powers and duties of the division; requiring the promulgation of legislative rules establishing guidelines for child support awards; creating a "child support enforcement fund" in the state treasury; prescribing certain fees to be assessed in actions related to establishing and enforcing support orders; requiring certain provisions to be included in contracts for providing services to the division; providing that attorneys employed by the division or providing services to the division under contract represent the state or the division; requiring establishment of a parent locator service; requiring cooperation with other states in the enforcement of support obligations; providing for the disbursement of amounts collected as support; requiring support payments to be made to the division; authorizing the establishment of a data processing and retrieval system by the division; establishing procedures for obtaining support from federal tax refunds, state income tax refunds, and unemployment compensation benefits; requiring the division to provide obligees and obligors with statements of account; establishing a central registry of child support orders; authorizing the division to issue administrative subpoenas; requiring periodic investigation and review of support orders; providing for a form to identify child support payments; providing for billing of fees and costs; assenting to the purpose of federal laws; requiring the publicizing of the availability of support enforcement services; providing for the confidentiality of records of the division; prescribing when access may be had to information of the division; authorizing the governor, by executive order to



transfer the division and the commission to the department of tax and revenue or the department of administration; providing for the repeal of article three, chapter forty-eight-a by operation of law upon the promulgation by the commission of emergency legislative rules; providing for the budget of the family law master system; prescribing actions which may be brought to obtain an order of support; providing for the withholding from income of amounts payable as support; providing for procedures before a family law master if a person contests action proposed to be taken against him; prescribing a civil action to establish paternity; providing for medical testing procedures to aid in the determination of paternity and allocating the costs of such tests; providing for the establishment of paternity and the duty to support; providing for the representation of the parties in a paternity action; providing for the establishment of paternity through an acknowledgement by the natural father; providing that in interstate support proceedings, attorneys employed by the division and contract attorneys represent the division or the state; and providing for the waiver of payment of fees and costs by persons financially unable to pay.

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

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

be amended and reenacted; that article three of said chapter be amended by adding thereto a new section, designated section eleven; that section twenty-two, article four of said chapter be amended and reenacted; that sections one, three and eight, article five of said chapter be amended and reenacted; that sections one, three, four, five and six, article six of said chapter be amended and reenacted; that sections twelve and thirty-six, article seven of said chapter be amended and reenacted; and that section one, article two, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

### **Chapter**

- 4. The Legislature.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 11. Taxation.**
- 16. Public Health.**
- 29. Miscellaneous Boards and Officers.**
- 48. Domestic Relations.**
- 48A. Enforcement of Family Obligations.**
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

## **CHAPTER 4. THE LEGISLATURE.**

### **ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.**

#### **\*§4-10-5. Termination of agencies or boards following preliminary performance reviews.**

1       The following agencies or boards shall be terminated  
 2       on the date indicated, but no agency or board shall be  
 3       terminated under this section unless a preliminary perfor-  
 4       mance review has been conducted upon such agency or  
 5       board:

6       (1) On the first day of July, one thousand nine hun-  
 7       dred ninety-four: Farm management commission; state  
 8       structural barriers compliance board; share in your future  
 9       commission.

10       (2) On the first day of July, one thousand nine hun-  
 11       dred ninety-five: Emergency medical services advisory  
 12       council; commission on charitable organizations; informa-

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\*Clerk's Note: This section was also amended by S. B. 579 (Chapter 219), which passed subsequent to this act.

13 tion system advisory commission; West Virginia  
14 labor-management council; board of social work examiners;  
15 the rural health initiative advisory panel; the marketing  
16 and development divisions of the department of agriculture;  
17 real estate commission; juvenile facilities review  
18 panel; office of water resources; center for professional  
19 development; board of architects; state building commission;  
20 family law masters system; public employees insurance agency;  
21 public employees insurance agency finance board; division of  
22 rehabilitation services.

23 (3) On the first day of July, one thousand nine hundred  
24 ninety-six: U.S. geological survey program and whitewater  
25 commission within the division of natural resources; state  
26 geological and economic survey; workers' compensation;  
27 unemployment compensation; office of judges of workers'  
28 compensation; board of investments.

29 (4) On the first day of July, one thousand nine hundred  
30 ninety-seven: The driver's licensing advisory board; West  
31 Virginia health care cost review authority; governor's cabinet  
32 on children and families; oil and gas conservation commission;  
33 child support enforcement division; West Virginia contractors'  
34 licensing board.

35 (5) On the first day of July, one thousand nine hundred  
36 ninety-eight: State lottery commission; the following  
37 divisions or programs of the department of agriculture:  
38 Meat inspection program and soil conservation committee;  
39 women's commission; state board of risk and insurance  
40 management; board of examiners of land surveyors; commission  
41 on uniform state laws; council of finance and administration;  
42 forest management review commission; West Virginia's  
43 membership in the interstate commission on the Potomac  
44 river basin; legislative oversight commission on education  
45 accountability; board of examiners in counseling; board of  
46 examiners in speech pathology and audiology.  
47

48 (6) On the first day of July, one thousand nine hundred  
49 ninety-nine: Board of banking and financial institutions;  
50 capitol building commission; tree fruit industry self-improvement  
51 assessment program; public service commission.  
52

53           (7) On the first day of July, two thousand: Family  
54 protection services board; environmental quality board;  
55 West Virginia's membership in the Ohio river valley water  
56 sanitation commission; ethics commission; oil and gas  
57 inspectors' examining board; veterans' council; West Vir-  
58 ginia's membership in the southern regional education  
59 board.

## **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  
2 of the allied, advisory, affiliated or related entities and  
3 funds associated with any such agency or board, are here-  
4 by transferred to and incorporated in and shall be admin-  
5 istered as a part of the 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) Council of finance and administration provided  
12 for in article one, chapter five-a of this code;

13           (4) Employee suggestion award board provided for in  
14 article one-a, chapter five-a of this code;

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

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

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

- 23       (8) Board of risk and insurance management provided  
24 for in article twelve, chapter twenty-nine of this code;
- 25       (9) Boundary commission provided for in article  
26 twenty-three, chapter twenty-nine of this code;
- 27       (10) Public defender services provided for in article  
28 twenty-one, chapter twenty-nine of this code;
- 29       (11) Division of personnel provided for in article six,  
30 chapter twenty-nine of this code;
- 31       (12) The West Virginia ethics commission provided  
32 for in article two, chapter six-b of this code;
- 33       (13) Consolidated public retirement board provided  
34 for in article ten-d, chapter five of this code; and
- 35       (14) The child support enforcement division designat-  
36 ed in chapter forty-eight-a of this code.
- 37       (b) The department of commerce, labor and environ-  
38 mental resources and the office of secretary of the depart-  
39 ment of commerce, labor and environmental resources are  
40 hereby abolished. For purposes of administrative support  
41 and liaison with the office of the governor, the following  
42 agencies and boards, including all allied, advisory and  
43 affiliated entities shall be grouped under three bureaus as  
44 follows:
- 45       (1) Bureau of commerce:
- 46       (A) Division of labor provided for in article one, chap-  
47 ter twenty-one of this code, which shall include:
- 48       (i) Occupational safety and health review commission  
49 provided for in article three-a, chapter twenty-one of this  
50 code; and
- 51       (ii) Board of manufactured housing construction and  
52 safety provided for in article nine, chapter twenty-one of  
53 this code;
- 54       (B) Office of miners' health, safety and training pro-  
55 vided for in article one, chapter twenty-two-a of this code.  
56 The following boards are transferred to the office of min-  
57 ers' health, safety and training for purposes of administra-

58 tive support and liaison with the office of the governor:

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

62 (ii) Board of miner training, education and certifica-  
63 tion provided for in article seven, chapter twenty-two-a of  
64 this code; and

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

67 (C) The West Virginia development office provided  
68 for in article two, chapter five-b of this code, which shall  
69 include:

70 (i) Enterprise zone authority provided for in article  
71 two-b, chapter five-b of this code; and

72 (ii) Economic development authority provided for in  
73 article fifteen, chapter thirty-one of this code;

74 (D) Division of natural resources and natural resources  
75 commission provided for in article one, chapter twenty of  
76 this code. The Blennerhassett historical state park provid-  
77 ed for in article eight, chapter twenty-nine of this code  
78 shall be under the division of natural resources;

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

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

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

85 (2) Bureau of employment programs provided for in  
86 article one, chapter twenty-one-a of this code.

87 (3) Bureau of environment:

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

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

- 92 (C) Environmental quality board, or its successor  
93 board, provided for in article three, chapter twenty-two-b  
94 of this code;
- 95 (D) Division of environmental protection provided for  
96 in article one, chapter twenty-two of this code;
- 97 (E) Surface mine board of review provided for in  
98 article four, chapter twenty-two-b of this code;
- 99 (F) Oil and gas inspectors' examining board provided  
100 for in article seven, chapter twenty-two-c of this code;
- 101 (G) Shallow gas well review board provided for in  
102 article eight, chapter twenty-two-c of this code; and
- 103 (H) Oil and gas conservation commission provided for  
104 in article nine, chapter twenty-two-c of this code.
- 105 (c) The following agencies and boards, including all  
106 of the allied, advisory, affiliated or related entities and  
107 funds associated with any such agency or board, are here-  
108 by transferred to and incorporated in and shall be admin-  
109 istered as a part of the department of education and the  
110 arts:
- 111 (1) Library commission provided for in article one,  
112 chapter ten of this code;
- 113 (2) Educational broadcasting authority provided for in  
114 article five, chapter ten of this code;
- 115 (3) University of West Virginia board of trustees pro-  
116 vided for in article two, chapter eighteen-b of this code;
- 117 (4) Board of directors of the state college system pro-  
118 vided for in article three, chapter eighteen-b of this code;
- 119 (5) Joint commission for vocational-technical-occu-  
120 pational education provided for in article three-a, chapter  
121 eighteen-b of this code;
- 122 (6) Division of culture and history provided for in  
123 article one, chapter twenty-nine of this code; and
- 124 (7) Division of rehabilitation services provided for in  
125 section two, article ten-a, chapter eighteen of this code.

126 (d) The following agencies and boards, including all  
127 of the allied, advisory, affiliated or related entities and  
128 funds associated with any such agency or board, are here-  
129 by transferred to and incorporated in and shall be admin-  
130 istered as a part of the department of health and human  
131 resources:

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

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

136 (3) Division of health provided for in article one,  
137 chapter sixteen of this code;

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

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

143 (6) Commission on aging provided for in article four-  
144 teen, chapter twenty-nine of this code;

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

147 (8) Women's commission provided for in article twen-  
148 ty, chapter twenty-nine of this code; and

149 (9) The child support enforcement division designated  
150 in chapter forty-eight-a of this code.

151 (e) The following agencies and boards, including all  
152 of the allied, advisory, affiliated or related entities and  
153 funds associated with any such agency or board, are here-  
154 by transferred to and incorporated in and shall be admin-  
155 istered as a part of the department of military affairs and  
156 public safety:

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

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



- 161 (3) Military awards board provided for in article  
162 one-g, chapter fifteen of this code;
- 163 (4) Division of public safety provided for in article  
164 two, chapter fifteen of this code;
- 165 (5) Office of emergency services and disaster recovery  
166 board provided for in article five, chapter fifteen of this  
167 code and emergency response commission provided for in  
168 article five-a of said chapter;
- 169 (6) Sheriffs' bureau provided for in article eight, chap-  
170 ter fifteen of this code;
- 171 (7) Division of corrections provided for in chapter  
172 twenty-five of this code;
- 173 (8) Fire commission provided for in article three,  
174 chapter twenty-nine of this code;
- 175 (9) Regional jail and correctional facility authority  
176 provided for in article twenty, chapter thirty-one of this  
177 code;
- 178 (10) Board of probation and parole provided for in  
179 article twelve, chapter sixty-two of this code; and
- 180 (11) Division of veterans' affairs and veterans' council  
181 provided for in article one, chapter nine-a of this code.
- 182 (f) The following agencies and boards, including all of  
183 the allied, advisory, affiliated or related entities and funds  
184 associated with any such agency or board, are hereby  
185 transferred to and incorporated in and shall be adminis-  
186 tered as a part of the department of tax and revenue:
- 187 (1) Tax division provided for in article one, chapter  
188 eleven of this code;
- 189 (2) Appraisal control and review commission provided  
190 for in article one-a, chapter eleven of this code;
- 191 (3) Racing commission provided for in article  
192 twenty-three, chapter nineteen of this code;
- 193 (4) Lottery commission and position of lottery direc-  
194 tor provided for in article twenty-two, chapter twenty-nine

195 of this code;

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

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

201 (7) Division of professional and occupational licenses  
202 which may be hereafter created by the Legislature;

203 (8) Board of banking and financial institutions provid-  
204 ed for in article three, chapter thirty-one-a of this code;

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

207 (10) Division of banking provided for in article two,  
208 chapter thirty-one-a of this code; and

209 (11) The child support enforcement division as desig-  
210 nated in chapter forty-eight-a of this code.

211 (g) The following agencies and boards, including all  
212 of the allied, advisory, affiliated or related entities and  
213 funds associated with any such agency or board, are here-  
214 by transferred to and incorporated in and shall be admin-  
215 istered as a part of the department of transportation:

216 (1) Road commission provided for in article two,  
217 chapter seventeen of this code;

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

220 (3) Parkways, economic development and tourism  
221 authority provided for in article sixteen-a, chapter seven-  
222 teen of this code;

223 (4) Division of motor vehicles provided for in article  
224 two, chapter seventeen-a of this code;

225 (5) Driver's licensing advisory board provided for in  
226 article two, chapter seventeen-b of this code;

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

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

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

233 (h) Except for such powers, authority and duties as  
234 have been delegated to the secretaries of the departments  
235 by the provisions of section two of this article, the exist-  
236 tence of the position of administrator and of the agency  
237 and the powers, authority and duties of each administrator  
238 and agency shall not be affected by the enactment of this  
239 chapter.

240 (i) Except for such powers, authority and duties as  
241 have been delegated to the secretaries of the departments  
242 by the provisions of section two of this article, the exist-  
243 tence, powers, authority and duties of boards and the  
244 membership, terms and qualifications of members of such  
245 boards shall not be affected by the enactment of this chap-  
246 ter and all boards which are appellate bodies or were oth-  
247 erwise established to be independent decision makers shall  
248 not have their appellate or independent decision-making  
249 status affected by the enactment of this chapter.

250 (j) Any department previously transferred to and in-  
251 corporated in a department created in section two, article  
252 one of this chapter by prior enactment of this section in  
253 chapter three, acts of the Legislature, first extraordinary  
254 session, one thousand nine hundred eighty-nine, and sub-  
255 sequent amendments thereto, shall henceforth be read,  
256 construed and understood to mean a division of the ap-  
257 propriate department so created. Wherever elsewhere in  
258 this code, in any act, in general or other law, in any rule or  
259 regulation, or in any ordinance, resolution or order, refer-  
260 ence is made to any department transferred to and incor-  
261 porated in a department created in section two, article one  
262 of this chapter, such reference shall henceforth be read,  
263 construed and understood to mean a division of the ap-  
264 propriate department so created, and any such reference  
265 elsewhere to a division of a department so transferred and  
266 incorporated shall henceforth be read, construed and un-  
267 derstood to mean a section of the appropriate division of  
268 the department so created.

269 (k) When an agency, board or commission is trans-  
270 ferred under a bureau or agency other than a department  
271 headed by a secretary pursuant to this section, that transfer  
272 shall be construed to be solely for purposes of administra-  
273 tive support and liaison with the office of the governor, a  
274 department secretary or a bureau. The bureaus created by  
275 the Legislature upon the abolishment of the department of  
276 commerce, labor and environmental resources in the year  
277 one thousand nine hundred ninety-four shall be headed  
278 by a commissioner or other statutory officer of an agency  
279 within that bureau. Nothing in this section shall be con-  
280 strued to extend the powers of department secretaries  
281 under section two of this article to any person other than a  
282 department secretary and nothing herein shall be con-  
283 strued to limit or abridge the statutory powers and duties  
284 of statutory commissioners or officers pursuant to this  
285 code. Upon the abolishment of the office of secretary of  
286 the department of commerce, labor and environmental  
287 resources, the governor may appoint a statutory officer  
288 serving functions formerly within that department to a  
289 position which was filled by the secretary ex officio.

## CHAPTER 11. TAXATION.

### ARTICLE 10. PROCEDURE AND ADMINISTRATION.

#### §11-10-5d. Confidentiality and disclosure of returns and re- turn information.

1 (a) *General rule.* — Except when required in an offi-  
2 cial investigation by the tax commissioner into the amount  
3 of tax due under any article administered under this article  
4 or in any proceeding in which the tax commissioner is a  
5 party before a court of competent jurisdiction to collect or  
6 ascertain the amount of such tax and except as provided in  
7 subsections (d) through (n) of this section, it shall be un-  
8 lawful for any officer or employee of this state to divulge  
9 or make known in any manner the tax return, or any part  
10 thereof, of any person or disclose information concerning  
11 the personal affairs of any individual or the business of  
12 any single firm or corporation, or disclose the amount of  
13 income, or any particulars set forth or disclosed in any  
14 report, declaration or return required to be filed with the  
15 tax commissioner by any article of this chapter imposing

16 any tax administered under this article or by any rule or  
17 regulation of the tax commissioner issued thereunder, or  
18 disclosed in any audit or investigation conducted under  
19 this article.

20 (b) *Definitions.* — For purposes of this section:

21 (1) *Background file document.* — The term "back-  
22 ground file document", with respect to a written determi-  
23 nation, includes the request for that written determination,  
24 any written material submitted in support of the request  
25 and any communication (written or otherwise) between the  
26 state tax department and any person outside the state tax  
27 department in connection with the written determination  
28 received before issuance of the written determination.

29 (2) *Disclosure.* — The term "disclosure" means the  
30 making known to any person in any manner whatsoever a  
31 return or return information.

32 (3) *Inspection.* — The terms "inspection" and "inspect-  
33 ed" mean any examination of a return or return informa-  
34 tion.

35 (4) *Return.* — The term "return" means any tax or  
36 information return or report, declaration of estimated tax,  
37 claim or petition for refund or credit or petition for reas-  
38 sessment that is required by, or provided for, or permitted  
39 under the provisions of this article (or any article of this  
40 chapter administered under this article) which is filed with  
41 the tax commissioner by, on behalf of, or with respect to  
42 any person, and any amendment or supplement thereto,  
43 including supporting schedules, attachments or lists which  
44 are supplemental to, or part of, the return so filed.

45 (5) *Return information.* — The term "return informa-  
46 tion" means:

47 (A) A taxpayer's identity; the nature, source or amount  
48 of his income, payments, receipts, deductions, exemptions,  
49 credits, assets, liabilities, net worth, tax liability, tax with-  
50 held, deficiencies, overassessments or tax payments, wheth-  
51 er the taxpayer's return was, is being, or will be examined  
52 or subject to other investigation or processing, or any  
53 other data received by, recorded by, prepared by, fur-

54 nished to or collected by the tax commissioner with re-  
55 spect to a return or with respect to the determination of the  
56 existence, or possible existence, of liability (or the amount  
57 thereof) or by any person under the provisions of this  
58 article (or any article of this chapter administered under  
59 this article) for any tax, additions to tax, penalty, interest,  
60 fine, forfeiture or other imposition or offense; and

61 (B) Any part of any written determination or any  
62 background file document relating to such written deter-  
63 mination. "Return information" does not include, howev-  
64 er, data in a form which cannot be associated with, or oth-  
65 erwise identify, directly or indirectly, a particular taxpayer.  
66 Nothing in the preceding sentence, or in any other provi-  
67 sion of this code, shall be construed to require the disclo-  
68 sure of standards used or to be used for the selection of  
69 returns for examination or data used or to be used for  
70 determining such standards.

71 (6) *Tax administration.* — The term "tax administra-  
72 tion" means:

73 (A) The administration, management, conduct, direc-  
74 tion and supervision of the execution and application of  
75 the tax laws or related statutes of this state and the devel-  
76 opment and formulation of state tax policy relating to  
77 existing or proposed state tax laws, and related statutes of  
78 this state; and

79 (B) Includes assessment, collection, enforcement, liti-  
80 gation, publication and statistical gathering functions un-  
81 der the laws of this state.

82 (7) *Taxpayer identity.* — The term "taxpayer identity"  
83 means the name of a person with respect to whom a return  
84 is filed, his mailing address, his taxpayer identifying num-  
85 ber or a combination thereof.

86 (8) *Taxpayer return information.* — The term "taxpay-  
87 er return information" means return information as de-  
88 fined in subdivision (5) of this subsection which is filed  
89 with, or furnished to, the tax commissioner by or on be-  
90 half of the taxpayer to whom such return information  
91 relates.

92 (9) *Written determination.* — The term "written deter-  
93 mination" means a ruling, determination letter, technical  
94 advice memorandum or letter or administrative decision  
95 issued by the tax commissioner.

96 (c) *Criminal penalty.* — Any officer or employee (or  
97 former officer or employee) of this state who violates this  
98 section shall be guilty of a misdemeanor, and, upon con-  
99 viction thereof, shall be fined not more than one thousand  
100 dollars or imprisoned for not more than one year, or both,  
101 together with costs of prosecution.

102 (d) *Disclosure to designee of taxpayer.* — Any person  
103 protected by the provisions of this article may, in writing,  
104 waive the secrecy provisions of this section for such pur-  
105 pose and such period as he shall therein state. The tax  
106 commissioner may, subject to such requirements and con-  
107 ditions as he may prescribe, thereupon release to designat-  
108 ed recipients such taxpayer's return or other particulars  
109 filed under the provisions of the tax articles administered  
110 under the provisions of this article, but only to the extent  
111 necessary to comply with a request for information or  
112 assistance made by the taxpayer to such other person.  
113 However, return information shall not be disclosed to such  
114 person or persons if the tax commissioner determines that  
115 such disclosure would seriously impair administration of  
116 this state's tax laws.

117 (e) *Disclosure of returns and return information for*  
118 *use in criminal investigations.* —

119 (1) *In general.* — Except as provided in subdivision  
120 (3) of this subsection, any return or return information  
121 with respect to any specified taxable period or periods  
122 shall, pursuant to and upon the grant of an ex parte order  
123 by a federal district court judge, federal magistrate or  
124 circuit court judge of this state, under subdivision (2) of  
125 this subsection, be open (but only to the extent necessary  
126 as provided in such order) to inspection by, or disclosure  
127 to, officers and employees of any federal agency, or of  
128 any agency of this state, who personally and directly en-  
129 gaged in:

130 (A) Preparation for any judicial or administrative

131 proceeding pertaining to the enforcement of a specifically  
132 designated state or federal criminal statute to which this  
133 state, the United States or such agency is or may be a par-  
134 ty;

135 (B) Any investigation which may result in such a pro-  
136 ceeding; or

137 (C) Any state or federal grand jury proceeding per-  
138 taining to enforcement of such a criminal statute to which  
139 this state, the United States or such agency is or may be a  
140 party.

141 Such inspection or disclosure shall be solely for the  
142 use of such officers and employees in such preparation,  
143 investigation, or grand jury proceeding.

144 (2) *Application of order.* — Any United States attor-  
145 ney, any special prosecutor appointed under Section 593  
146 of Title 28, United States Code, or any attorney in charge  
147 of a United States justice department criminal division  
148 organized crime strike force established pursuant to Sec-  
149 tion 510 of Title 28, United States Code, may authorize an  
150 application to a circuit court judge or magistrate, as appro-  
151 priate, for the order referred to in subdivision (1) of this  
152 subsection. Any prosecuting attorney of this state may  
153 authorize an application to a circuit court judge of this  
154 state for the order referred to in subdivision (1) of this  
155 subsection. Upon such application, such judge or magis-  
156 trate may grant such order if he determines on the basis of  
157 the facts submitted by the applicant that:

158 (A) There is reasonable cause to believe, based upon  
159 information believed to be reliable, that a specific criminal  
160 act has been committed;

161 (B) There is reasonable cause to believe that the return  
162 or return information is or may be relevant to a matter  
163 relating to the commission of such act; and

164 (C) The return or return information is sought exclu-  
165 sively for use in a state or federal criminal investigation or  
166 proceeding concerning such act, and the information  
167 sought to be disclosed cannot reasonably be obtained,  
168 under the circumstances, from another source.



169 (3) The tax commissioner shall not disclose any return  
170 or return information under subdivision (1) of this subsection  
171 if he determines and certifies to the court that such  
172 disclosure would identify a confidential informant or  
173 seriously impair a civil or criminal tax investigation.

174 (f) *Disclosure to person having a material interest.* —  
175 The tax commissioner may, pursuant to legislative regula-  
176 tions promulgated by him, and upon such terms as he may  
177 require, disclose a return or return information to a person  
178 having a material interest therein: *Provided*, That such  
179 disclosure shall only be made if the tax commissioner  
180 determines, in his discretion, that such disclosure would  
181 not seriously impair administration of this state's tax laws.

182 (g) *Statistical use.* — This section shall not be con-  
183 strued to prohibit the publication or release of statistics so  
184 classified as to prevent the identification of particular  
185 returns and the items thereof.

186 (h) *Disclosure of amount of outstanding lien.* — If  
187 notice of lien has been recorded pursuant to section twelve  
188 of this article, the amount of the outstanding obligation  
189 secured by such lien may be disclosed to any person who  
190 furnishes written evidence satisfactory to the tax commis-  
191 sioner that such person has a right in the property subject  
192 to such lien or intends to obtain a right in such property.

193 (i) *Reciprocal exchange.* — The tax commissioner  
194 may, pursuant to written agreement, permit the proper  
195 officer of the United States, or the District of Columbia or  
196 any other state, or any political subdivision of this state, or  
197 his authorized representative, who is charged by law with  
198 responsibility for administration of a similar tax, to inspect  
199 reports, declarations or returns filed with the tax commis-  
200 sioner or may furnish to such officer or representative a  
201 copy of any such document, provided such other jurisdic-  
202 tion grants substantially similar privileges to the tax com-  
203 missioner or to the attorney general of this state. Such  
204 disclosure shall be only for the purpose of, and only to the  
205 extent necessary in, the administration of tax laws: *Pro-*  
206 *vided*, That such information shall not be disclosed to the  
207 extent that the tax commissioner determines that such  
208 disclosure would identify a confidential informant or

209 seriously impair any civil or criminal tax investigation.

210 (j) *Inspection of business and occupation tax returns*  
211 *by municipalities.* — The tax commissioner shall, upon  
212 the written request of the mayor of any West Virginia  
213 municipality having a business and occupation tax or  
214 privilege tax, allow the duly authorized agent of such  
215 municipality to inspect and make copies of the state busi-  
216 ness and occupation tax return filed by taxpayers of such  
217 municipality. Such inspection or copying shall only be  
218 for the purposes of securing information for municipal  
219 tax purposes and shall only be allowed if such municipali-  
220 ty allows the tax commissioner the right to inspect or  
221 make copies of the municipal business and occupation tax  
222 returns of such municipality.

223 (k) *Release of administrative decisions.* — The tax  
224 commissioner shall release to the public his administrative  
225 decisions, or a summary thereof: *Provided,* That unless  
226 the taxpayer appeals the administrative decision to circuit  
227 court or waives in writing his rights to confidentiality, any  
228 identifying characteristics or facts about the taxpayer shall  
229 be omitted or modified to such an extent so as to not dis-  
230 close the name or identity of the taxpayer.

231 (l) *Release of taxpayer information.* —

232 (1) If the tax commissioner believes that enforcement  
233 of the tax laws administered under this article will be facil-  
234 itated and enhanced thereby, he shall disclose, upon re-  
235 quest, the names and address of persons:

236 (A) Who have a current business registration certifi-  
237 cate.

238 (B) Who are licensed employment agencies.

239 (C) Who are licensed collection agencies.

240 (D) Who are licensed to sell drug paraphernalia.

241 (E) Who are distributors of gasoline or special fuel.

242 (F) Who are contractors.

243 (G) Who are transient vendors.

244 (H) Who are authorized by law to issue a sales or use  
245 tax exemption certificate.

246 (I) Who are required by law to collect sales or use  
247 taxes.

248 (J) Who are foreign vendors authorized to collect use  
249 tax.

250 (K) Whose business registration certificate has been  
251 suspended or canceled or not renewed by the tax commis-  
252 sioner.

253 (L) Against whom a tax lien has been recorded under  
254 section twelve of this article (including any particulars  
255 stated in the recorded lien).

256 (M) Against whom criminal warrants have been issued  
257 for a criminal violation of this state's tax laws.

258 (N) Who have been convicted of a criminal violation  
259 of this state's tax laws.

260 (m) *Disclosure of return information to child support*  
261 *enforcement division.* —

262 (1) *State return information.* — The tax commissioner  
263 may, upon written request, disclose to the child support  
264 enforcement division created by article two, chapter  
265 forty-eight-a of this code:

266 (A) Available return information from the master files  
267 of the tax department relating to the social security ac-  
268 count number, address, filing status, amounts and nature  
269 of income and the number of dependents reported on any  
270 return filed by, or with respect to, any individual with  
271 respect to whom child support obligations are sought to be  
272 enforced; and

273 (B) Available state return information reflected on any  
274 state return filed by, or with respect to any individual de-  
275 scribed in paragraph (A) of this subdivision, relating to the  
276 amount of such individual's gross income, but only if such  
277 information is not reasonably available from any other  
278 source.

279           (2) *Restrictions on disclosure.* — The tax commission-  
280 er shall disclose return information under subdivision (1)  
281 of this subsection only for purposes of, and to the extent  
282 necessary in, collecting child support obligations from,  
283 and locating individuals owing such obligations.

284           (n) *Disclosure of names and addresses for purposes of*  
285 *jury selection.* —

286           The tax commissioner shall, at the written request of a  
287 circuit court or the chief judge thereof, provide to the  
288 circuit court within thirty calendar days a list of the names  
289 and addresses of individuals residing in the county or  
290 counties comprising the circuit who have filed a state per-  
291 sonal income tax return for the preceding tax year. The  
292 list provided shall set forth names and addresses only.  
293 The request shall be limited to counties within the jurisdic-  
294 tion of the requesting court.

295           The court, upon receiving the list or lists, shall direct  
296 the jury commission of the appropriate county to merge  
297 the names and addresses with other lists used in compiling  
298 a master list of residents of the county from which pro-  
299 spective jurors are to be chosen. Immediately after the  
300 master list is compiled, the jury commission shall cause the  
301 list provided by the tax commissioner and all copies there-  
302 of to be destroyed and shall certify to the circuit court and  
303 to the tax commissioner that the lists have been destroyed.

## CHAPTER 16. PUBLIC HEALTH.

### Article.

2E. Birthing Centers.

5. Vital Statistics.

5B. Hospitals and Similar Institutions.

### ARTICLE 2E. BIRTHING CENTERS.

#### §16-2E-3. State director of health to establish rules and regu- lations; legislative findings; emergency filing.

1           The director of health shall promulgate rules and  
2 regulations not in conflict with any provision of this arti-  
3 cle, as it finds necessary in order to ensure adequate care  
4 and accommodations for consumers of birthing centers.  
5 In promulgating such regulations the director shall be

6 limited to simple, necessary provisions which shall not  
7 have the effect of hampering the development and licen-  
8 sure of birthing centers. Such regulations shall not ad-  
9 dress acceptable site characteristics such as the number of  
10 minutes of travel time between a birthing center and a  
11 hospital, or physical environment, such as acceptable levels  
12 of temperature of any refrigerator found in a birthing  
13 center, or clinical equipment, such as the number and kind  
14 of clocks which a birthing center must have on the premis-  
15 es. Such regulations shall require that all birthing centers  
16 submit satisfactory evidence that the center has imple-  
17 mented the paternity program created pursuant to section  
18 thirteen of this article along with any application for licen-  
19 sure.

20 The Legislature hereby finds and declares that it is in  
21 the public interest to encourage the development of  
22 birthing centers for the purpose of providing an alterna-  
23 tive method of birth and therefore, in order to provide for  
24 the licensing of such birthing centers to prevent substantial  
25 harm to the public interest because of preexisting delay,  
26 within sixty days of passage of this article, the director of  
27 health shall proceed to promulgate such rules and regula-  
28 tions under the provisions of section fifteen, article three,  
29 chapter twenty-nine-a of this code.

#### ARTICLE 5. VITAL STATISTICS.

##### **§16-5-18b. Limitation on use of social security numbers.**

1 (a) A social security account number obtained in ac-  
2 cordance with the provisions of this article with respect to  
3 the filing of: (1) A certificate of birth; (2) an application  
4 for a delayed registration of birth; (3) a judicial order  
5 establishing a record of birth; (4) an adoption order or  
6 decree; or (5) a certificate of paternity shall not be trans-  
7 mitted to a clerk of the county commission. Such social  
8 security account number shall not appear upon the public  
9 record of the register of births or upon any certificate of  
10 birth registration issued by the state registrar, local regis-  
11 trar, county clerk or other issuing authority, if any. Such  
12 social security account numbers shall be made available  
13 by the state registrar to the child support enforcement  
14 division created by article forty-eight-a upon the request

15 of the division, to be used solely in connection with the  
16 enforcement of child support orders.

17 (b) A parent who desires not to furnish a social securi-  
18 ty account number as required by the provisions of this  
19 article or article six, chapter forty-eight-a of this code shall  
20 file with the person responsible for obtaining personal  
21 data from the parent, a request that he or she not be re-  
22 quired to furnish such number. The request shall be made  
23 on a form prescribed by the state registrar of vital statistics  
24 or in a substantially similar instrument and shall set forth  
25 the reasons that the parent declines or is unable to furnish  
26 such number. Supplies of a form for the request shall be  
27 made available to hospitals, circuit clerks and other per-  
28 sons responsible for obtaining personal data from parents,  
29 and shall be provided to any parent who states that he or  
30 she desires not to be required to furnish such number. A  
31 request, when received, shall be transmitted in the same  
32 manner as a record of a social security account number.  
33 The board of health shall promulgate legislative rules in  
34 accordance with the provisions of chapter twenty-nine-a of  
35 this code which shall establish the procedural means and  
36 substantive criteria by which the state registrar may deter-  
37 mine whether there exists good cause for not requiring the  
38 furnishing of such number. In proposing the promulga-  
39 tion of such rules, the board of health shall give due con-  
40 sideration to related regulations prescribed by the secre-  
41 tary of health and human services of the United States.

#### **ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

§16-5B-2. Hospitals and institutions to obtain license; qualifications of applicant.

§15-5B-13. Hospital-based paternity program.

#### **§16-5B-2. Hospitals and institutions to obtain license; qualifications of applicant.**

1 No person, partnership, association, corporation or any  
2 local governmental unit or any division, department, board  
3 or agency thereof may continue to operate an existing  
4 ambulatory health care facility, ambulatory surgical facili-  
5 ty, hospital or extended care facility operated in connec-  
6 tion with a hospital, or open an ambulatory health care

7 facility, ambulatory surgical facility, a hospital or extend-  
8 ed care facility operated in connection with a hospital,  
9 unless such operation shall have been approved and regu-  
10 larly licensed by the state as hereinafter provided. Licens-  
11 es shall be issued for a particular number by type of beds  
12 and/or type of services. Any change in the number by  
13 type of bed and/or type of services shall require the issu-  
14 ance of a new license.

15 Before a license shall be issued under this article, the  
16 person applying, if an individual, shall submit evidence  
17 satisfactory to the state department of health that he is not  
18 less than eighteen years of age, of reputable and responsi-  
19 ble character and otherwise qualified. In the event the  
20 applicant is an association, corporation or governmental  
21 unit, like evidence shall be submitted as to the members  
22 thereof and the persons in charge.

23 Every applicant shall, in addition, submit satisfactory  
24 evidence of his ability to comply with the minimum stan-  
25 dards and with all rules and regulations lawfully promul-  
26 gated. Every applicant shall further submit satisfactory  
27 evidence that he has implemented the paternity program  
28 created pursuant to section thirteen of this article.

**§16-5B-13. Hospital-based paternity program.**

1 (a) Every public and private hospital licensed pursuant  
2 to section two of this article and every birthing center  
3 licensed pursuant to section two, article two-e of this chap-  
4 ter, that provides obstetrical services in West Virginia shall  
5 participate in the hospital-based paternity program.

6 (b) The child support enforcement division as de-  
7 scribed in section twelve, article two, chapter forty-eight-a  
8 of this code shall provide all public and private hospitals  
9 and all birthing centers providing obstetric services in this  
10 state with:

11 (1) Information regarding the establishment of pater-  
12 nity;

13 (2) An affidavit of paternity fulfilling the require-  
14 ments of section six, article six, chapter forty-eight-a of  
15 this code; and

16 (3) The telephone contact number for the child sup-  
 17 port enforcement division that a parent may call for fur-  
 18 ther information regarding the establishment of paternity.

19 (c) Prior to the discharge from any facility included in  
 20 this section of any mother who has given birth to a live  
 21 infant, the administrator, or his or her assignee, shall en-  
 22 sure that the following materials are provided to any un-  
 23 married woman and any person holding himself out to be  
 24 the natural father of the child:

25 (1) Information regarding the establishment of pater-  
 26 nity;

27 (2) An affidavit of paternity fulfilling the require-  
 28 ments of section six, article six, chapter forty-eight-a of  
 29 this code; and

30 (3) The telephone contact number for the child sup-  
 31 port enforcement division that a parent may call for fur-  
 32 ther information regarding the establishment of paternity.

33 (d) The child support enforcement division shall noti-  
 34 fy the state department of health of any failure of any  
 35 hospital or birthing center to conform with the require-  
 36 ments of this section.

37 (e) Any hospital or birthing center described in this  
 38 article should provide the information detailed in subsec-  
 39 tion (c) of this section at any time when such facility is  
 40 providing obstetrical services.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **Article.**

- 21. **Public Defender Services.**
- 22. **State Lottery Act.**

### **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

#### **§29-21-2. Definitions.**

1 As used in this article, the following words and phrases  
 2 are hereby defined:

- 3 (1) "Eligible client": Any person who meets the re-



4 quirements established by this article to receive publicly  
5 funded legal representation in an eligible proceeding as  
6 defined herein;

7 (2) "Eligible proceeding": Criminal charges which  
8 may result in incarceration, juvenile proceedings, proceed-  
9 ings to revoke parole or probation if the revocation may  
10 result in incarceration, contempt of court, child abuse and  
11 neglect proceedings which may result in a termination of  
12 parental rights, mental hygiene commitment proceedings,  
13 extradition proceedings, proceedings brought in aid of an  
14 eligible proceeding and appeals from or post conviction  
15 challenges to the final judgment in an eligible proceeding.  
16 Legal representation provided pursuant to the provisions  
17 of this article is limited to the court system of the state of  
18 West Virginia, but does not include representation in mu-  
19 nicipal courts unless the accused is at risk of incarceration;

20 (3) "Legal representation": The provision of any legal  
21 services or legal assistance consistent with the purposes  
22 and provisions of this article;

23 (4) "Private practice of law": The provision of legal  
24 representation by a public defender or assistant public  
25 defender to a client who is not entitled to receive legal  
26 representation under the provisions of this article, but does  
27 not include, among other activities, teaching;

28 (5) "Public defender": The staff attorney employed  
29 on a full-time basis by a public defender corporation who,  
30 in addition to providing direct representation to eligible  
31 clients, has administrative responsibility for the operation  
32 of the public defender corporation. The public defender  
33 may be a part-time employee if the board of directors of  
34 the public defender corporation finds efficient operation  
35 of the corporation does not require a full-time attorney  
36 and the executive director approves such part-time em-  
37 ployment;

38 (6) "Assistant public defender": A staff attorney pro-  
39 viding direct representation to eligible clients whose salary  
40 and status as a full-time or part-time employee are fixed  
41 by the board of directors of the public defender corpora-  
42 tion;

43 (7) "Public defender corporation": A corporation  
 44 created under section eight of this article for the sole pur-  
 45 pose of providing legal representation to eligible clients;  
 46 and

47 (8) "Public defender office": An office operated by a  
 48 public defender corporation to provide legal representa-  
 49 tion under the provisions of this article.

#### ARTICLE 22. STATE LOTTERY ACT.

##### §29-22-27a. Payment of prizes to the child support enforce- ment division.

1 (a) Upon notification by the child support enforce-  
 2 ment division created by article two, chapter forty-eight-a  
 3 of this code that a person entitled to a prize or any win-  
 4 ning ticket is delinquent in the payment of child support  
 5 or spousal support, the director shall forward to said child  
 6 support enforcement division such portion of any prize  
 7 distributed directly from the state lottery office and that is  
 8 available to pay all or any portion of the delinquent sup-  
 9 port payment.

10 (b) The director shall enter into a written agreement  
 11 with the child support enforcement division for the pur-  
 12 pose of establishing a procedure for the collection of  
 13 prizes as set forth in subsection (a) of this section which  
 14 shall include a method by which the child support en-  
 15 forcement division may receive the names of lottery win-  
 16 ners as expeditiously as possible.

#### CHAPTER 48. DOMESTIC RELATIONS.

##### ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15a. Medical support enforcement.

§48-2-15b. Withholding from income.

§48-2-37. Calculation of interest.

##### §48-2-15a. Medical support enforcement.

1 (a) For the purposes of this section:

2 (1) "Custodian for the children" means a parent, legal  
 3 guardian, committee or other third party appointed by

4 court order as custodian of child or children for whom  
5 child support is ordered.

6 (2) "Obligated parent" means a natural or adoptive  
7 parent who is required by agreement or order to pay for  
8 insurance coverage and medical care, or some portion  
9 thereof, for his or her child.

10 (3) "Insurance coverage" means coverage for medical,  
11 dental, including orthodontic, optical, psychological, psy-  
12 chiatric or other health care service.

13 (4) "Child" means a child to whom a duty of child  
14 support is owed.

15 (5) "Medical care" means medical, dental, optical,  
16 psychological, psychiatric or other health care service for  
17 children in need of child support.

18 (6) "Insurer" means any company, health maintenance  
19 organization, self-funded group, multiple employer wel-  
20 fare arrangement, hospital or medical services corporation,  
21 trust, group health plan, as defined in 29 U.S.C. §1167,  
22 Section 607(1) of the Employee Retirement Income Secu-  
23 rity Act of 1974 or other entity which provides insurance  
24 coverage or offers a service benefit plan.

25 (b) In every action to establish or modify an order  
26 which requires the payment of child support, the court  
27 shall ascertain the ability of each parent to provide medi-  
28 cal care for the children of the parties. In any temporary  
29 or final order establishing an award of child support or  
30 any temporary or final order modifying a prior order  
31 establishing an award of child support, the court shall  
32 order one or more of the following:

33 (1) The court shall order either parent or both parents  
34 to provide insurance coverage for a child, if such insur-  
35 ance coverage is available to that parent on a group basis  
36 through an employer or through an employee's union. If  
37 similar insurance coverage is available to both parents, the  
38 court shall order the child to be insured under the insur-  
39 ance coverage which provides more comprehensive bene-  
40 fits. If such insurance coverage is not available at the time  
41 of the entry of the order, the order shall require that if

42 such coverage thereafter becomes available to either party,  
43 that party shall promptly notify the other party of the  
44 availability of insurance coverage for the child.

45 (2) If the court finds that insurance coverage is not  
46 available to either parent on a group basis through an  
47 employer, multi-employer trust or employees' union, or  
48 that the group insurer is not accessible to the parties, the  
49 court may order either parent or both parents to obtain  
50 insurance coverage which is otherwise available at a rea-  
51 sonable cost.

52 (3) Based upon the respective ability of the parents to  
53 pay, the court may order either parent or both parents to  
54 be liable for reasonable and necessary medical care for a  
55 child. The court shall specify the proportion of the medi-  
56 cal care for which each party shall be responsible.

57 (4) If insurance coverage is available, the court shall  
58 also determine the amount of the annual deductible on  
59 insurance coverage which is attributable to the children  
60 and designate the proportion of the deductible which each  
61 party shall pay.

62 (5) The order shall require the obligor to continue to  
63 provide the child support enforcement division created by  
64 article two, chapter forty-eight-a of this code with infor-  
65 mation as to his or her employer's name and address and  
66 information as to the availability of employer-related  
67 insurance programs providing medical care coverage so  
68 long as the child continues to be eligible to receive sup-  
69 port.

70 (c) The cost of insurance coverage shall be considered  
71 by the court in applying the child support guidelines pro-  
72 vided for in section seventeen, article two, chapter  
73 forty-eight-a of this code.

74 (d) Within thirty days after the entry of an order re-  
75 quiring the obligated parent to provide insurance coverage  
76 for the children, that parent shall submit to the custodian  
77 for the child written proof that the insurance has been  
78 obtained or that an application for insurance has been  
79 made. Such proof of insurance coverage shall consist of,

80 at a minimum:

81 (1) The name of the insurer;

82 (2) The policy number;

83 (3) An insurance card;

84 (4) The address to which all claims should be mailed;

85 (5) A description of any restrictions on usage, such as  
86 prior approval for hospital admission, and the manner in  
87 which to obtain such approval;

88 (6) A description of all deductibles; and

89 (7) Five copies of claim forms.

90 (e) The custodian for the child shall send the insurer  
91 or the obligated parent's employer the children's address  
92 and notice that the custodian will be submitting claims on  
93 behalf of the children. Upon receipt of such notice, or an  
94 order for insurance coverage under this section, the obli-  
95 gated parent's employer, multi-employer trust or union  
96 shall, upon the request of the custodian for the child, re-  
97 lease information on the coverage for the children, includ-  
98 ing the name of the insurer.

99 (f) A copy of the court order for insurance coverage  
100 shall not be provided to the obligated parent's employer or  
101 union or the insurer unless ordered by the court, or unless:

102 (1) The obligated parent, within thirty days of receiv-  
103 ing effective notice of the court order, fails to provide to  
104 the custodian for the child written proof that the insurance  
105 has been obtained or that an application for insurance has  
106 been made;

107 (2) The custodian for the child serves written notice by  
108 mail at the obligated parent's last known address of inten-  
109 tion to enforce the order requiring insurance coverage for  
110 the child; and

111 (3) The obligated parent fails within fifteen days after  
112 the mailing of the notice to provide written proof to the  
113 custodian for the child that the child has insurance cover-  
114 age.

115 (g) (1) Upon service of the order requiring insurance  
116 coverage for the children, the employer, multi-employer  
117 trust or union shall enroll the child as a beneficiary in the  
118 group insurance plan and withhold any required premium  
119 from the obligated parent's income or wages.

120 (2) If more than one plan is offered by the employer,  
121 multi-employer trust or union, the child shall be enrolled  
122 in the same plan as the obligated parent at a reasonable  
123 cost.

124 (3) Insurance coverage for the child which is ordered  
125 pursuant to the provisions of this section shall not be ter-  
126 minated except as provided in subsection (j) of this sec-  
127 tion.

128 (h) Where a parent is required by a court or adminis-  
129 trative order to provide health coverage, which is available  
130 through an employer doing business in this state, the em-  
131 ployer is required:

132 (1) To permit the parent to enroll under family cover-  
133 age any child who is otherwise eligible for coverage with-  
134 out regard to any enrollment season restrictions;

135 (2) If the parent is enrolled but fails to make applica-  
136 tion to obtain coverage of the child, to enroll the child  
137 under family coverage upon application by the child's  
138 other parent, by the state agency administering the medic-  
139 aid program or by the child support enforcement division;

140 (3) Not to disenroll or eliminate coverage of any such  
141 child unless the employer is provided satisfactory written  
142 evidence that:

143 (A) The court or administrative order is no longer in  
144 effect;

145 (B) The child is or will be enrolled in comparable  
146 coverage which will take effect no later than the effective  
147 date of disenrollment; or

148 (C) The employer has eliminated family health cover-  
149 age for all of its employees;

150 (4) To withhold from the employee's compensation

151 the employee's share, if any, of premiums for health cov-  
152 erage and to pay this amount to the insurer: *Provided*,  
153 That the amount so withheld may not exceed the maxi-  
154 mum amount permitted to be withheld under 15 U.S.C.  
155 §1673, Section 303(b) of the Consumer Credit Protection  
156 Act.

157 (i) (1) The signature of the custodian for the child  
158 shall constitute a valid authorization to the insurer for the  
159 purposes of processing an insurance payment to the pro-  
160 vider of medical care for the child.

161 (2) No insurer, employer or multi-employer trust in  
162 this state may refuse to honor a claim for a covered service  
163 when the custodian for the child or the obligated parent  
164 submits proof of payment for medical bills for the child.

165 (3) The insurer shall reimburse the custodian for the  
166 child or the obligated parent who submits copies of medi-  
167 cal bills for the child with proof of payment.

168 (4) All insurers in this state shall comply with the pro-  
169 visions of section sixteen, article fifteen, chapter  
170 thirty-three of this code and section eleven, article sixteen  
171 of said chapter and shall provide insurance coverage for  
172 the child of a covered employee notwithstanding the  
173 amount of support otherwise ordered by the court and  
174 regardless of the fact that the child may not be living in  
175 the home of the covered employee.

176 (j) When an order for insurance coverage for a child  
177 pursuant to this section is in effect and the obligated par-  
178 ent's employment is terminated, or the insurance coverage  
179 for the child is denied, modified or terminated, the insurer  
180 shall in addition to complying with the requirements of  
181 article sixteen-a, chapter thirty-three of this code, within  
182 ten days after the notice of change in coverage is sent to  
183 the covered employee, notify the custodian for the child  
184 and provide an explanation of any conversion privileges  
185 available from the insurer.

186 (k) A child of an obligated parent shall remain eligible  
187 for insurance coverage until the child is emancipated or  
188 until the insurer under the terms of the applicable insur-

189 ance policy terminates said child from coverage, whichever  
190 er is later in time, or until further order of the court.

191 (l) If the obligated parent fails to comply with the  
192 order to provide insurance coverage for the child, the  
193 court shall:

194 (1) Hold the obligated parent in contempt for failing  
195 or refusing to provide the insurance coverage or for fail-  
196 ing or refusing to provide the information required in  
197 subsection (d) of this section;

198 (2) Enter an order for a sum certain against the obli-  
199 gated parent for the cost of medical care for the child and  
200 any insurance premiums paid or provided for the child  
201 during any period in which the obligated parent failed to  
202 provide the required coverage;

203 (3) In the alternative, other enforcement remedies  
204 available under sections two and three, article five, chapter  
205 forty-eight-a of this code, or otherwise available under law,  
206 may be used to recover from the obligated parent the cost  
207 of medical care or insurance coverage for the child; and

208 (4) In addition to other remedies available under law,  
209 the child support enforcement division may garnish the  
210 wages, salary or other employment income of, and with-  
211 hold amounts from state tax refunds to any person who:

212 (A) Is required by court or administrative order to  
213 provide coverage of the cost of health services to a child  
214 eligible for medical assistance under medicaid; and

215 (B) Has received payment from a third party for the  
216 costs of such services but has not used the payments to  
217 reimburse either the other parent or guardian of the child  
218 or the provider of the services, to the extent necessary to  
219 reimburse the state medicaid agency for its costs: *Provid-*  
220 *ed*, That claims for current and past due child support  
221 shall take priority over these claims.

222 (m) Proof of failure to maintain court ordered insur-  
223 ance coverage for the child constitutes a showing of sub-  
224 stantial change in circumstances or increased need pursu-  
225 ant to section fifteen of this article, and provides a basis



226 for modification of the child support order.

**§48-2-15b. Withholding from income.**

1 (a) Every order entered or modified under the provi-  
2 sions of this article, not described in subsection (d) of this  
3 section, which requires the payment of child support or  
4 spousal support shall include a provision for automatic  
5 withholding from income of the obligor, in order to facili-  
6 tate income withholding as a means of collecting support.

7 (b) Every such order as described in subsection (a) of  
8 this section shall contain language authorizing income  
9 withholding to commence without further court action, as  
10 follows:

11 (1) The order shall provide that income withholding  
12 will begin immediately, without regard to whether there is  
13 an arrearage: (A) When a child for whom support is or-  
14 dered is included or becomes included in a grant of assis-  
15 tance from the division of human services or a similar  
16 agency of a sister state for aid to families with dependent  
17 children benefits, medical assistance only benefits or foster  
18 care benefits; or (B) when the support obligee has applied  
19 for services from the child support enforcement division  
20 created pursuant to article two, chapter forty-eight-a of  
21 this code, or the support enforcement agency of another  
22 state or is otherwise receiving services from the child sup-  
23 port enforcement division as provided for in said chapter.  
24 In any case where one of the parties demonstrates, and the  
25 court finds, that there is good cause not to require imme-  
26 diate income withholding, or in any case where there is  
27 filed with the court a written agreement between the parties  
28 which provides for an alternative arrangement, such order  
29 shall not provide for income withholding to begin imme-  
30 diately.

31 (2) The order shall also provide that income withhold-  
32 ing will begin immediately upon the occurrence of any of  
33 the following:

34 (A) When the payments which the obligor has failed to  
35 make under the order are at least equal to the support  
36 payable for one month, if the order requires support to be

37 paid in monthly installments;

38 (B) When the payments which the obligor has failed to  
39 make under the order are at least equal to the support  
40 payable for four weeks, if the order requires support to be  
41 paid in weekly or biweekly installments;

42 (C) When the obligor requests the child support en-  
43 forcement division to commence income withholding; or

44 (D) When the obligee requests that such withholding  
45 begin, if the request is approved by the court in accor-  
46 dance with procedures and standards established by rules  
47 and regulations promulgated by the commission pursuant  
48 to this section and to chapter twenty-nine-a of this code.

49 (c) On and after the first day of January, one thousand  
50 nine hundred ninety-four, the wages of an obligor shall be  
51 subject to withholding, regardless of whether child support  
52 payments are in arrears, on the date the order for child  
53 support is entered: *Provided*, That where one of the par-  
54 ties demonstrates, and the court finds, that there is good  
55 cause not to require immediate income withholding, or in  
56 any case where there is filed with the court a written agree-  
57 ment between the parties which provides for an alternative  
58 arrangement, such order shall not provide for income  
59 withholding to begin immediately.

60 (d) The supreme court of appeals shall make available  
61 to the circuit courts standard language to be included in  
62 all such orders, so as to conform such orders to the appli-  
63 cable requirements of state and federal law regarding the  
64 withholding from income of amounts payable as support.

65 (e) Every support order entered by a circuit court of  
66 this state prior to the effective date of this section shall be  
67 considered to provide for an order of income withholding,  
68 by operation of law, which complies with the provisions of  
69 this section, notwithstanding the fact that such support  
70 order does not in fact provide for such order of withhold-  
71 ing.

72 (f) The court shall consider the best interests of the  
73 child in determining whether "good cause" exists under  
74 this section. The court may also consider the obligor's

75 payment record in determining whether "good cause" has  
76 been demonstrated.

77 (g) The commission as defined in section one, article  
78 two, chapter forty-eight-a of this code shall promulgate  
79 legislative rules pursuant to chapter twenty-nine-a of this  
80 code further defining the duties of the child support en-  
81 forcement division and the employer in wage withholding.

#### §48-2-37. Calculation of interest.

1 If an obligation to pay interest arises under this chap-  
2 ter and the rate is not specified, the rate is that specified in  
3 section thirty-one, article six, chapter fifty-six of this code.  
4 On or after the effective date of this section, interest shall  
5 accrue only upon the outstanding principal of such obli-  
6 gation. This section shall be construed to permit the accu-  
7 mulation of simple interest, and may not be construed to  
8 permit the compounding of interest. Interest which has  
9 accrued on unpaid installments accruing before the effec-  
10 tive date of this section may not be modified by any court,  
11 irrespective of whether such installment accrued simple or  
12 compound interest: *Provided*, That unpaid installments  
13 upon which interest was compounded before the effective  
14 date of this section shall accrue only simple interest there-  
15 on on and after the effective date of this section.

### CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

#### Article.

1. General Provisions.
2. West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.
3. Children's Advocate.
4. Proceeding Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitation.
6. Establishment of Paternity.
7. Revised Uniform Reciprocal Enforcement of Support Act.

#### ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Definitions.

§48A-1-3a. Calculation of interest.

**§48A-1-3. Definitions.**

1 As used in this chapter:

2 (1) "Automatic data processing and retrieval system"  
3 means a computerized data processing system designed to  
4 do the following:

5 (A) To control, account for and monitor all of the  
6 factors in the support enforcement collection and paterni-  
7 ty determination process, including, but not limited to:

8 (i) Identifiable correlation factors (such as social secu-  
9 rity numbers, names, dates of birth, home addresses and  
10 mailing addresses of any individual with respect to whom  
11 support obligations are sought to be established or en-  
12 forced and with respect to any person to whom such sup-  
13 port obligations are owing) to assure sufficient compatibil-  
14 ity among the systems of different jurisdictions to permit  
15 periodic screening to determine whether such individual is  
16 paying or is obligated to pay support in more than one  
17 jurisdiction;

18 (ii) Checking of records of such individuals on a peri-  
19 odic basis with federal, interstate, intrastate and local agen-  
20 cies;

21 (iii) Maintaining the data necessary to meet applicable  
22 federal reporting requirements on a timely basis; and

23 (iv) Delinquency and enforcement activities;

24 (B) To control, account for and monitor the collection  
25 and distribution of support payments (both interstate and  
26 intrastate) the determination, collection and distribution of  
27 incentive payments (both interstate and intrastate), and the  
28 maintenance of accounts receivable on all amounts owed,  
29 collected and distributed;

30 (C) To control, account for and monitor the costs of  
31 all services rendered, either directly or by exchanging  
32 information with state agencies responsible for maintain-  
33 ing financial management and expenditure information;

34 (D) To provide access to the records of the department  
35 of health and human resources or aid to families with  
36 dependent children in order to determine if a collection of  
37 a support payment causes a change affecting eligibility for  
38 or the amount of aid under such program;

39 (E) To provide for security against unauthorized ac-  
40 cess to, or use of, the data in such system;

41 (F) To facilitate the development and improvement of  
42 the income withholding and other procedures designed to  
43 improve the effectiveness of support enforcement through  
44 the monitoring of support payments, the maintenance of  
45 accurate records regarding the payment of support and  
46 the prompt provision of notice to appropriate officials  
47 with respect to any arrearage in support payments which  
48 may occur; and

49 (G) To provide management information on all cases  
50 from initial referral or application through collection and  
51 enforcement.

52 (2) "Chief judge" means the following:

53 (A) The circuit judge in a judicial circuit having only  
54 one circuit judge; or

55 (B) The chief judge of the circuit court in a judicial  
56 circuit having two or more circuit judges.

57 (3) "Child advocate office" and "child support en-  
58 forcement division" mean the agency created under the  
59 provisions of article two of this chapter, or any public or  
60 private entity or agency contracting to provide a service.  
61 The "child advocate office" or "child support enforcement  
62 division" is that agency intended by the Legislature to be  
63 the single and separate organizational unit of state govern-  
64 ment administering programs of child and spousal support  
65 enforcement and meeting the staffing and organizational  
66 requirements of the secretary of the federal department of  
67 health and human services.

68 (4) "Children's advocate" or "advocate" means any  
69 public or private agency, entity or person providing child  
70 support enforcement services required by this chapter.

71 The term includes those persons or agencies or entities  
72 providing services under the direction of or pursuant to a  
73 contract with the child support enforcement division as  
74 provided for in article two of this chapter and in any such  
75 contract.

76 (5) "Court" means a circuit court of this state, unless  
77 the context in which such term is used clearly indicates  
78 that reference to some other court is intended.

79 (6) "Court of competent jurisdiction" means a circuit  
80 court within this state or a court or administrative agency  
81 of another state having jurisdiction and due legal authority  
82 to deal with the subject matter of the establishment and  
83 enforcement of support obligations. Whenever in this  
84 chapter reference is made to an order of a court of com-  
85 petent jurisdiction, or similar wording, such language shall  
86 be interpreted so as to include orders of an administrative  
87 agency entered in a state where enforceable orders may by  
88 law be properly made and entered by such administrative  
89 agency.

90 (7) "Custodial parent" or "custodial parent of a child"  
91 means a parent who has been granted custody of a child  
92 by a court of competent jurisdiction. "Noncustodial par-  
93 ent" means a parent of a child with respect to whom custo-  
94 dy has been adjudicated with the result that such parent  
95 has not been granted custody of the child.

96 (8) "Director" means any person appointed pursuant  
97 to section thirteen, article two of this chapter, who directs  
98 all child support establishment and enforcement services  
99 for the child support enforcement division.

100 (9) "Domestic relations matter" means any circuit  
101 court proceeding involving child custody, child visitation,  
102 child support or alimony.

103 (10) "Earnings" means compensation paid or payable  
104 for personal services, whether denominated as wages, sala-  
105 ry, commission, bonus or otherwise, and includes periodic  
106 payments pursuant to a pension or retirement program.  
107 "Disposable earnings" means that part of the earnings of  
108 any individual remaining after the deduction from those

109 earnings of any amounts required by law to be withheld.

110 (11) "Employer" means any individual, sole propri-  
111 etorship, partnership, association, public or private corpo-  
112 ration, the United States or any federal agency, this state or  
113 any political subdivision of this state, any other state or a  
114 political subdivision of another state and any other legal  
115 entity which hires and pays an individual for his services.

116 (12) "Guardian of the property of a child" means a  
117 person lawfully invested with the power, and charged with  
118 the duty, of managing and controlling the estate of a  
119 child.

120 (13) "Income" includes, but is not limited to, the fol-  
121 lowing:

122 (A) Commissions, earnings, salaries, wages and other  
123 income due or to be due in the future to an obligor from  
124 his employer and successor employers;

125 (B) Any payment due or to be due in the future to an  
126 obligor from a profit-sharing plan, a pension plan, an  
127 insurance contract, an annuity, social security, unemploy-  
128 ment compensation, supplemental employment benefits,  
129 workers' compensation benefits, state lottery winnings and  
130 prizes and overtime pay;

131 (C) Any amount of money which is owing to the obli-  
132 gor as a debt from an individual, partnership, association,  
133 public or private corporation, the United States or any  
134 federal agency, this state or any political subdivision of  
135 this state, any other state or a political subdivision of an-  
136 other state or any other legal entity which is indebted to  
137 the obligor.

138 (14) "Individual entitled to support enforcement ser-  
139 vices under the provisions of this chapter and the provi-  
140 sions of Title IV-D of the federal Social Security Act"  
141 means:

142 (A) An individual who has applied for or is receiving  
143 services from the child support enforcement division and  
144 who is the custodial parent of a child, or the primary care-  
145 taker of a child, or the guardian of the property of a child

146 when:

147 (i) Such child has a parent and child relationship with  
148 an obligor who is not such custodial parent, primary care-  
149 taker or guardian; and

150 (ii) The obligor with whom the child has a parent and  
151 child relationship is not meeting an obligation to support  
152 the child, or has not met such obligation in the past; or

153 (B) An individual who has applied for or is receiving  
154 services from the child support enforcement division and  
155 who is an adult or an emancipated minor whose spouse or  
156 former spouse has been ordered by a court of competent  
157 jurisdiction to pay spousal support to the individual,  
158 whether such support is denominated alimony or separate  
159 maintenance, or is identified by some other terminology,  
160 thus establishing a support obligation with respect to such  
161 spouse, when the obligor required to pay such spousal  
162 support is not meeting the obligation, or has not met such  
163 obligation in the past; or

164 (C) Any individual who is an obligee in a support  
165 order, entered by a court of competent jurisdiction after  
166 the thirty-first day of December, one thousand nine hun-  
167 dred ninety-three.

168 (15) "Master" or "family law master" means a person  
169 appointed to such position under the provisions of section  
170 one, article four of this chapter.

171 (16) "Obligee" means:

172 (A) An individual to whom a duty of support is or is  
173 alleged to be owed or in whose favor a support order has  
174 been issued or a judgment determining parentage has  
175 been rendered;

176 (B) A state or political subdivision to which the rights  
177 under a duty of support or support order have been as-  
178 signed or which has independent claims based on financial  
179 assistance provided to an individual obligee; or

180 (C) An individual seeking a judgment determining  
181 parentage of the individual's child.



182 (17) "Obligor" means an individual or the estate of a  
183 decedent:

184 (A) Who owes or is alleged to owe a duty of support;

185 (B) Who is alleged, but has not been adjudicated, to be  
186 a parent of a child; or

187 (C) Who is liable under a support order.

188 (18) "Office of the children's advocate" or "child sup-  
189 port enforcement division" means the agency created in  
190 section twelve, article two of this chapter or any public or  
191 private entity or agency contracting with the child support  
192 enforcement division to provide these services pursuant to  
193 article two of this chapter.

194 (19) "Primary caretaker of a child" means a parent or  
195 other person having actual physical custody of a child  
196 without a court order granting such custody and who has  
197 been primarily responsible for exercising parental rights  
198 and responsibilities with regard to such child.

199 (20) "Secretary" means the secretary of the department  
200 in which the child support enforcement division is located  
201 according to section forty-two, article two of this chapter.

202 (21) "Source of income" means an employer or suc-  
203 cessor employer or any other person who owes or will owe  
204 income to an obligor.

205 (22) "Support" means the payment of money includ-  
206 ing interest:

207 (A) For a child or spouse, ordered by a court of com-  
208 petent jurisdiction, whether the payment is ordered in an  
209 emergency, temporary, permanent or modified order,  
210 decree or judgment of such court, and the amount of  
211 unpaid support shall bear simple interest from the date it  
212 accrued, at a rate of ten dollars upon one hundred dollars  
213 per annum, and proportionately for a greater or lesser  
214 sum, or for a longer or shorter time;

215 (B) To third parties on behalf of a child or spouse,  
216 including, but not limited to, payments to medical, dental  
217 or educational providers, payments to insurers for health

**§48A-2-1. Creation of support enforcement commission; number of members.**

1           The West Virginia support enforcement commission,  
2 consisting of nine members, is hereby created in the de-  
3 partment of health and human resources and may use the  
4 administrative support and services of that department.  
5 The commission is not subject to control, supervision or  
6 direction by the department of health and human resourc-  
7 es, but is an independent, self-sustaining commission that  
8 shall have the powers and duties specified in this chapter  
9 and all other powers necessary and proper to establish  
10 policies and procedures for fully and effectively carrying  
11 out the purposes of administering, regulating, overseeing  
12 and enforcing the provisions of this chapter and chapter  
13 forty-eight of this code which relate to the establishment  
14 and enforcement of support obligations.

15           The commission is a part-time commission whose  
16 members make policy and have such other powers and  
17 perform such other duties as specified in this chapter or  
18 set forth in legislative rules promulgated by the commis-  
19 sion. The ministerial duties of the commission shall be  
20 administered and carried out by the director of the child  
21 support enforcement division, with the assistance of such  
22 staff of the department of health and human resources as  
23 the secretary may assign.

24           Each member of the commission shall devote the  
25 time necessary to carry out the duties and obligations of  
26 the office and the six members appointed by the governor  
27 may pursue and engage in another business, occupation or  
28 gainful employment that is not in conflict with the duties  
29 of the commission.

30           While the commission is self-sustaining and indepen-  
31 dent, it, its members, its employees and the director are  
32 subject to article nine-a of chapter six, chapter six-b, chap-  
33 ter twenty-nine-a and chapter twenty-nine-b of this code.

**§48A-2-2. Appointment of members of support enforcement commission; qualifications and eligibility.**

1           (a) Of the nine members of the commission, three

2 shall be members by virtue of the public offices which  
3 they hold, and the remaining six members are to be ap-  
4 pointed by the governor. No more than five members of  
5 the commission may belong to the same political party:

6 (1) One member is to be the secretary of the depart-  
7 ment of health and human resources;

8 (2) One member is to be the secretary of the depart-  
9 ment of tax and revenue;

10 (3) One member is to be the secretary of the depart-  
11 ment of administration;

12 (4) One member is to be a lawyer licensed by, and in  
13 good standing with, the West Virginia state bar, with at  
14 least five years of professional experience in domestic  
15 relations law and the establishment and enforcement of  
16 support obligations;

17 (5) One member is to be a person experienced as a  
18 public administrator in the supervision and regulation of a  
19 governmental agency;

20 (6) One member is to be an employer experienced  
21 in withholding support payments from the earnings of  
22 obligors;

23 (7) One member is to be a person selected from a list  
24 of nominees submitted by the West Virginia judicial asso-  
25 ciation: *Provided*, That the list of nominees shall not in-  
26 clude any person currently exercising the powers of the  
27 judicial department; and

28 (8) Two members are to be representatives of the  
29 public at large.

30 (b) Each member of the commission is to be a citi-  
31 zen of the United States, a resident of the state of West  
32 Virginia and at least twenty-one years of age.

**§48A-2-3. Terms of commission members; conditions of mem-  
bership.**

1 (a) The term of office for each member of the com-  
2 mission who serves as a member by virtue of the public

3 office held is for a period concurrent with that person's  
4 tenure in the office. The term of office for each member  
5 of the commission appointed by the governor is four  
6 years, except that for an initial period, the terms of office  
7 of the initial six commission members appointed by the  
8 governor commence from an initial date of appointment  
9 not later than the first day of July, one thousand nine  
10 hundred ninety-five, and run as follows:

11 (1) Two members shall be appointed for a term  
12 ending on the thirtieth day of June, one thousand nine  
13 hundred ninety-seven;

14 (2) Two members shall be appointed for terms end-  
15 ing on the thirtieth day of June, one thousand nine hun-  
16 dred ninety-eight; and

17 (3) Two members shall be appointed for terms end-  
18 ing on the thirtieth day of June, one thousand nine hun-  
19 dred ninety-nine.

20 (b) After the initial appointments made pursuant to  
21 the provisions of subdivisions (1), (2) and (3), subsection  
22 (a) of this section, members appointed by the governor  
23 shall thereafter be appointed or reappointed for terms of  
24 office which end on the thirtieth day of June in the fourth  
25 year following the expiration date of the previous term or  
26 terms.

27 (c) Appointments to fill vacancies on the commis-  
28 sion are for the unexpired term of the member replaced.

29 (d) At the expiration of a member's term, the mem-  
30 ber shall continue to serve until a successor is appointed  
31 and qualified.

#### **§48A-2-4. Oath.**

1 Before entering upon the discharge of the duties as  
2 commissioner, each commissioner shall take and subscribe  
3 to the oath of office prescribed in section five, article IV  
4 of the constitution of West Virginia.

#### **§48A-2-5. Commission chairman.**

1 In making the initial appointments to the commis-

2 sion, the governor shall designate a member to serve as  
3 chairman for a term ending on the thirtieth day of June,  
4 one thousand nine hundred ninety-six. The member so  
5 designated shall serve in such capacity until his or her  
6 successor as chairman is elected by the commission as  
7 hereinafter provided.

8 Following the term of the initial chairman, thereafter  
9 the chairman shall be elected by the commission from  
10 among its members, and the member so elected shall: (1)  
11 Serve as chairman for a term of two years and until his or  
12 her successor shall have been elected; or (2) shall serve in  
13 such capacity throughout his or her service as a member  
14 of the commission, whichever period is shorter. In the  
15 event that a successor chairman is not elected by the com-  
16 mission members within ninety calendar days after the  
17 expiration of a chairman's term, a vacancy shall be  
18 deemed to exist, and the governor shall designate a chair-  
19 man from among the members of the commission. A  
20 member may not serve more than two consecutive terms as  
21 chairman.

**§48A-2-6. Compensation of members; reimbursement for expenses.**

1 (a) Each member of the commission shall receive  
2 one hundred dollars for each day or portion thereof spent  
3 in the discharge of his or her official duties.

4 (b) Each member of the commission shall be reim-  
5 bursed for all actual and necessary expenses and disburse-  
6 ments involved in the execution of official duties.

**§48A-2-7. Meeting requirements.**

1 (a) The commission shall meet within the state at  
2 least once per calendar quarter and at such other times as  
3 the chairman may decide. The commission shall also  
4 meet upon a call of five or more members upon  
5 seventy-two hours written notice to each member.

6 (b) Five members of the commission are a quorum  
7 for the transaction of any business and for the perfor-  
8 mance of any duty.

9 (c) A majority vote of the members present is re-  
10 quired for any final determination by the commission.

11 (d) The commission may elect to meet in executive  
12 session after an affirmative vote of a majority of its mem-  
13 bers present according to section four, article nine-a, chap-  
14 ter six of this code.

15 (e) The commission shall keep a complete and accu-  
16 rate record of all its meetings according to section five,  
17 article nine-a, chapter six of this code.

**§48A-2-8. Removal of commission members.**

1 Notwithstanding the provisions of section four, article  
2 six, chapter six of this code, the governor may remove any  
3 commission member for incompetence, misconduct, gross  
4 immorality, misfeasance, malfeasance or nonfeasance in  
5 office.

**§48A-2-9. General duties of support enforcement commission.**

1 The support enforcement commission shall have  
2 general responsibility for establishing policies and proce-  
3 dures for obtaining and enforcing support orders and  
4 establishing paternity according to this chapter, as herein-  
5 after provided, including, without limitation, the responsi-  
6 bility for the following:

7 (a) To propose for promulgation, according to the  
8 provisions of chapter twenty-nine-a of this code, such  
9 legislative rules as in its judgment may be necessary to  
10 fulfill the policies of this chapter;

11 (b) To undertake directly, or by contract, legal or  
12 policy research related to obtaining and enforcing support  
13 orders and establishing paternity;

14 (c) To serve as a clearinghouse for information;

15 (d) To keep a record of all commission proceedings  
16 available for public inspection;

17 (e) To file a written annual report to the governor,  
18 the president of the Senate and the speaker of the House  
19 of Delegates on or before the thirtieth day of January of

20 each year, and such additional reports as the governor or  
21 Legislature may request.

**§48A-2-10. General powers of support enforcement commission.**

1 In establishing policies and procedures for enforcing  
2 the provisions of this chapter, the commission shall have  
3 the following power and authority:

4 (1) To establish and maintain procedures under  
5 which expedited processes, administrative or judicial, are  
6 in effect for obtaining and enforcing support orders and  
7 establishing paternity according to this chapter;

8 (2) To monitor the child support enforcement sys-  
9 tem of this state and from time to time to advise the child  
10 support enforcement division and other agencies of the  
11 state of West Virginia regarding the establishment and  
12 enforcement of child support orders;

13 (3) To promulgate all emergency and legislative  
14 rules pursuant to chapter twenty-nine-a of this code as are  
15 required by this chapter: *Provided*, That all rules which  
16 are in effect at the time of the implementation of this sec-  
17 tion shall continue in full force and effect until the com-  
18 mission promulgates a rule or rules regarding the same  
19 subject matter;

20 (4) To promulgate legislative rules pursuant to chap-  
21 ter twenty-nine-a of this code establishing guidelines for  
22 child support awards;

23 (5) To promulgate legislative rules pursuant to chap-  
24 ter twenty-nine-a of this code relating to the structure of  
25 the child support enforcement division, including, but not  
26 limited to, the designation of administrative and legal tasks  
27 and the location of offices for the division throughout the  
28 state. This rule shall constitute an emergency rule within  
29 the meaning of section fifteen, article three, chapter  
30 twenty-nine-a of this code;

31 (6) To adopt standards for staffing, recordkeeping,  
32 reporting, intergovernmental cooperation, training, physi-  
33 cal structures and time frames for case processing;

34 (7) To review the state plan for child and spousal  
35 support to determine its conformance or nonconformance  
36 with the provisions of 42 U.S.C. §654, and make recom-  
37 mendations or to promulgate legislative rules based upon  
38 such review;

39 (8) To cooperate with judicial organizations and the  
40 private bar to provide training to persons involved in the  
41 establishment and enforcement of child support orders;

42 (9) To study the issues involving retroactive and  
43 reimbursement child support payments which are ordered  
44 following the establishment of paternity and to make a  
45 recommendation to the Legislature on or before the first  
46 day of December, one thousand nine hundred ninety-five,  
47 regarding any statutory or regulatory action which should  
48 be implemented to ensure that fathers are not ordered to  
49 pay retroactive or reimbursement child support or medical  
50 expenses when such payments would be unconscionable  
51 or inequitable given the totality of the circumstances aris-  
52 ing from the facts of a given case; and

53 (10) To promulgate such further legislative rules  
54 pursuant to chapter twenty-nine-a of this code which may  
55 aid the child support enforcement division in the establish-  
56 ment and enforcement of child support orders. In addi-  
57 tion to the specific designation of such rules that constitute  
58 emergency rules within the meaning of section fifteen,  
59 article three, chapter twenty-nine-a of this code, the com-  
60 mission may promulgate other rules as emergency rules  
61 when such rule is necessary to ensure that the state is  
62 awarded federal funds for the actions described in the rule  
63 or when the promulgation of such rule is necessary to  
64 prevent substantial harm to the public interest by ensuring  
65 that child support is timely collected and disbursed.

**§48A-2-11. Required rule making.**

1 The commission shall, without limitation on the pow-  
2 ers conferred in section ten of this article, include within  
3 its legislative rules the following specific provisions ac-  
4 cording to the provisions of this chapter:



5           (1) Prescribing the methods and forms of proposal  
6 that a prospective contractor shall follow and complete  
7 before consideration of a proposal by the commission,  
8 which rules shall require such plans as shall assure the  
9 commission that the proposal conforms with the require-  
10 ments of this chapter and all applicable federal statutes  
11 and regulations;

12           (2) Prescribing standards and guidelines for contrac-  
13 tors providing professional services to ensure the mainte-  
14 nance of the highest quality of service and professional  
15 standards, the preservation of the attorney-client relation-  
16 ship, and the protection of the integrity of the adversarial  
17 process from any impairment in furnishing legal represen-  
18 tation;

19           (3) Requiring the division, and any contractors pro-  
20 viding professional services or collection services to the  
21 division, to adopt procedures for the provision of such  
22 services which will best advance the needs and interests of  
23 the obligees and dependents who seek assistance in obtain-  
24 ing and enforcing support orders and establishing paterni-  
25 ty according to this chapter, without regard to whether  
26 such procedures optimize or maximize the profits derived  
27 by the contractor or result in the payment of reimburse-  
28 ments or financial incentives to the division;

29           (4) Prescribing standards and guidelines for contrac-  
30 tors providing professional services to ensure that appro-  
31 priate training and support services are provided to em-  
32 ployees of the contractor who are engaged in activities to  
33 obtain and enforce support orders and establish paternity  
34 according to this chapter;

35           (5) Prescribing minimum procedures for the exer-  
36 cise of effective control over the internal fiscal affairs of a  
37 contractor providing collection services, including provi-  
38 sions for the safeguarding of support payments, the re-  
39 cording of receipts and evidence of nonpayment by  
40 obligors, and the maintenance of reliable records, accounts  
41 and reports of transactions, operations and events, includ-  
42 ing reports to the commission;

43           (6) Providing for a minimum uniform standard of

44 accounting methods, procedures and forms; a uniform  
45 code of accounts and accounting classifications; and other  
46 standard operating procedures, as may be necessary to  
47 assure consistency, comparability and effective disclosure  
48 of all financial information by a contractor providing  
49 collection services; and

50 (7) Requiring periodic financial reports and the  
51 form thereof, including an annual audit prepared by a  
52 certified public accountant licensed to do business in this  
53 state, attesting to the financial condition of a contractor  
54 providing collection services and disclosing whether the  
55 accounts, records and control procedures examined are  
56 maintained by the contractor as required by this chapter.

**§48A-2-12. Establishment of the child support enforcement  
division; cooperation with the division of human  
services.**

1 (a) Effective the first day of July, one thousand nine  
2 hundred ninety-five, there is hereby established in the  
3 department of health and human resources the child sup-  
4 port enforcement division. The division is under the im-  
5 mediate supervision of the director, who is responsible for  
6 the exercise of the duties and powers assigned to the divi-  
7 sion under the provisions of this chapter. The division is  
8 designated as the single and separate organizational unit  
9 within this state to administer the state plan for child and  
10 spousal support according to 42 U.S.C. §654(3).

11 (b) The division of human services shall cooperate  
12 with the child support enforcement division. At a mini-  
13 mum, such cooperation shall require that the division of  
14 human services:

15 (1) Notify the child support enforcement division  
16 when the division of human services proposes to terminate  
17 or provide public assistance payable to any obligee;

18 (2) Receive support payments made on behalf of a  
19 former or current recipient to the extent permitted by Title  
20 IV-D, Part D of the Social Security Act; and

21 (3) Accept the assignment of the right, title or inter-  
22 est in support payments and forward a copy of the assign-

23 ment to the child support enforcement division.

**§48A-2-13. Appointment of director; duties; compensation.**

1 (a) There is hereby created the position of director  
2 whose duties include the ministerial management and  
3 administration of the office of the support enforcement  
4 commission. The director shall:

5 (1) Be appointed by the secretary;

6 (2) Serve at the will and pleasure of the secretary;

7 (3) Serve on a full-time basis and shall not engage in  
8 any other profession or occupation, including the holding  
9 of a political office in the state either by election or ap-  
10 pointment, while serving as director;

11 (4) Be a lawyer licensed by, and in good standing  
12 with, the West Virginia state bar; and

13 (5) Have responsible administrative experience, pos-  
14 sess management skills, and have knowledge of the law as  
15 it relates to domestic relations and the establishment and  
16 enforcement of support obligations.

17 Before entering upon the discharge of the duties as  
18 commissioner, the director shall take and subscribe to the  
19 oath of office prescribed in section five, article IV of the  
20 constitution of West Virginia.

21 (b) The duties of the director shall include the fol-  
22 lowing:

23 (1) To direct and administer the daily operations of  
24 the commission;

25 (2) To administer the child support enforcement  
26 fund created pursuant to section eighteen of this article;

27 (3) To keep the records and papers of the commis-  
28 sion, including a record of each proceeding;

29 (4) To prepare, issue and submit reports of the com-  
30 mission; and

31 (5) To perform any other duty that the commission  
32 directs.

33 (c) All payments to the director as compensation  
34 shall be made from the child support enforcement fund.  
35 The director is entitled to:

36 (1) A reasonable and competitive compensation  
37 package to be established by the secretary; and

38 (2) Reimbursement for expenses under the standard  
39 state travel regulations.

**§48A-2-14. Organization and employees.**

1 (a) The director shall organize the work of the divi-  
2 sion in such offices or other organizational units as he or  
3 she may determine to be necessary for effective and effi-  
4 cient operation.

5 (b) The secretary may transfer employees and re-  
6 sources of the department to the child support enforce-  
7 ment division as may be necessary to fulfill the duties and  
8 responsibilities of the division under this chapter: *Provid-*  
9 *ed*, That the secretary may not transfer employees of other  
10 divisions and agencies within the department to the child  
11 support enforcement division without a prior finding that  
12 the office or position held by the employee may be elimi-  
13 nated and until the office or position is, in fact, eliminated.  
14 On the first day of July, one thousand nine hundred  
15 ninety-five, the secretary shall transfer and allocate to the  
16 division all functions, offices, personnel and equipment of  
17 the child advocate office previously created within the  
18 division of human services by the prior enactment of sec-  
19 tion one of this article.

20 (c) The director, if he or she deems such action nec-  
21 essary, may hire legal counsel for the division, notwith-  
22 standing the provisions of section two, article three, chap-  
23 ter five of this code or any other code provision to the  
24 contrary, or may request the attorney general to appoint  
25 assistant attorneys general who shall perform such duties  
26 as may be required by the division. The attorney general,  
27 in pursuance of such request, may select and appoint assis-  
28 tant attorneys general, to serve during the will and pleasure  
29 of the attorney general, and such assistants shall be paid  
30 out of any funds allocated and appropriated to the child

31 support enforcement fund.

32 (d) The director may employ such staff or employ-  
33 ees as may be necessary to administer and enforce this  
34 chapter.

**§48A-2-15. Supervisory responsibilities within the child support enforcement division.**

1 The director shall have control and supervision of the  
2 child support enforcement division and shall be responsi-  
3 ble for the work of each of its organizational units. Each  
4 organizational unit shall be headed by an employee of the  
5 division appointed by the director who shall be responsi-  
6 ble to the director for the work of his or her organization-  
7 al unit.

**§48A-2-16. General duties and powers of the child support enforcement division.**

1 In carrying out the policies and procedures for en-  
2 forcing the provisions of this chapter, the division shall  
3 have the following power and authority:

4 (1) To undertake directly, or by contract, activities to  
5 obtain and enforce support orders and establish paternity;

6 (2) To undertake directly, or by contract, activities to  
7 establish paternity for minors for whom paternity has not  
8 been acknowledged by the father or otherwise established  
9 by law;

10 (3) To undertake directly, or by contract, activities to  
11 collect and disburse support payments;

12 (4) To contract for professional services with any  
13 person, firm, partnership, professional corporation, associ-  
14 ation or other legal entity to provide representation for the  
15 division and the state in administrative or judicial proceed-  
16 ings brought to obtain and enforce support orders and  
17 establish paternity;

18 (5) To ensure that activities of a contractor under a  
19 contract for professional services are carried out in a man-  
20 ner consistent with attorneys' professional responsibilities  
21 as established in the rules of professional conduct as pro-

22 mulgated by the supreme court of appeals;

23 (6) To contract for collection services with any per-  
24 son, firm, partnership, corporation, association or other  
25 legal entity to collect and disburse amounts payable as  
26 support;

27 (7) To ensure the compliance of contractors and  
28 their employees with the provisions of this chapter and  
29 legislative rules promulgated pursuant to this chapter, and  
30 to terminate, after notice and hearing, the contractual rela-  
31 tionship between the division and a contractor who fails to  
32 comply;

33 (8) To require a contractor to take appropriate reme-  
34 dial or disciplinary action against any employee who has  
35 violated or caused the contractor to violate the provisions  
36 of this chapter, in accordance with procedures prescribed  
37 in legislative rules promulgated by the commission;

38 (9) To locate parents who owe a duty to pay child  
39 support;

40 (10) To cooperate with other agencies of this state  
41 and other states to search their records to help locate ab-  
42 sent parents;

43 (11) To cooperate with other states in establishing  
44 and enforcing support obligations;

45 (12) If the child support enforcement division is  
46 transferred to the department of tax and revenue pursuant  
47 to section forty-two of this article, the director of the child  
48 support enforcement division may exercise any power  
49 available to him or her as director, or to the tax commis-  
50 sioner, in order to accomplish the purposes of this chapter,  
51 including, but not limited to, the powers associated with  
52 gaining access to all information gained and maintained  
53 by the department of tax and revenue in the collection of  
54 taxes, and any and all powers to levy, through distraint or  
55 seizure by any means, upon all property or rights to prop-  
56 erty without the need to obtain a separate court order for  
57 the attachment;

58 (13) To exercise such other powers as may be neces-

59 sary to effectuate the provisions of this chapter.

§48A-2-17. Guidelines for child support awards.

1 (a) The commission shall, by legislative rule promul-  
2 gated pursuant to chapter twenty-nine-a of this code, es-  
3 tablish guidelines for child support award amounts so as to  
4 ensure greater uniformity by those persons who make  
5 child support recommendations and enter child support  
6 orders and to increase predictability for parents, children  
7 and other persons who are directly affected by child sup-  
8 port orders. There shall be a rebuttable presumption, in  
9 any proceeding before a family law master or circuit court  
10 judge for the award of child support, that the amount of  
11 the award which would result from the application of such  
12 guidelines is the correct amount of child support to be  
13 awarded. A written finding or specific finding on the  
14 record that the application of the guidelines would be  
15 unjust or inappropriate in a particular case shall be suffi-  
16 cient to rebut the presumption in that case. The guidelines  
17 shall not be followed:

18 (1) When the child support award proposed to be  
19 made pursuant to the guidelines has been disclosed to the  
20 parties and each party has made a knowing and intelligent  
21 waiver of said amount, and the support obligors have en-  
22 tered into an agreement which provides for the custody  
23 and support of the child or children of the parties; or

24 (2) When the child support award proposed to be  
25 made pursuant to the guidelines would be contrary to the  
26 best interests of the child or children, or contrary to the  
27 best interests of the parties.

28 (b) The Legislature, by the enactment of this article,  
29 recognizes that children have a right to share in their natu-  
30 ral parents' level of living. Accordingly, guidelines pro-  
31 mulgated under the provisions of this section shall not be  
32 based upon any schedule of minimum costs for rearing  
33 children based upon subsistence level amounts set forth by  
34 various agencies of government. The Legislature recog-  
35 nizes that expenditures in families are not made in accor-  
36 dance with subsistence level standards, but are rather made  
37 in proportion to household income, and as parental in-

38 comes increase or decrease, the actual dollar expenditures  
39 for children also increase or decrease correspondingly. In  
40 order to ensure that children properly share in their par-  
41 ents' resources, regardless of family structure, the guide-  
42 lines shall be structured so as to provide that after a con-  
43 sideration of respective parental incomes, that child sup-  
44 port will be related, to the extent practicable, to the level of  
45 living which such children would enjoy if they were living  
46 in a household with both parents present.

47 (c) The guidelines promulgated under the provisions  
48 of this section shall take into consideration the financial  
49 contributions of both parents. The Legislature recognizes  
50 that expenditures in households are made in aggregate  
51 form and that total family income is pooled to determine  
52 the level at which the family can live. The guidelines shall  
53 provide for examining the financial contributions of both  
54 parents in relationship to total income, so as to establish  
55 and equitably apportion the child support obligation.  
56 Under the guidelines, the child support obligation of each  
57 parent will vary proportionately according to their individ-  
58 ual incomes.

59 (d) The guidelines shall be structured so as to take  
60 into consideration any preexisting support orders which  
61 impose additional duties of support upon an obligor out-  
62 side of the instant case and shall provide direction in cases  
63 involving split or shared custody.

64 (e) The guidelines shall have application to cases of  
65 divorce, paternity, actions for support and modifications  
66 thereof.

67 (f) In determining the child support obligation of a  
68 parent whose employment income consists, in part, of  
69 compensation for overtime hours worked, the guidelines  
70 shall provide for a child support order which includes a  
71 consideration of such overtime compensation, balancing  
72 the interest of children to share in the resources of such  
73 parent with the interest of the parent in not being penal-  
74 ized for accepting overtime work. Any formula which is  
75 used to compute anticipated overtime compensation shall  
76 allow for the irregular nature of such compensation.



77 (g) In determining the child support obligation of a  
78 parent whose employment income consists of compensa-  
79 tion for seasonal employment, the guidelines shall provide  
80 for discretionary use of alternative payment schedules  
81 which may vary the periodic amounts required to be paid.

82 (h) The guidelines promulgated shall provide that in  
83 determining the child support obligation of a parent  
84 whose support obligation extends to the children of more  
85 than one family, the guidelines shall be structured so as to  
86 equitably provide for all children to whom the obligor  
87 owes a duty of support. The commission, in promulgating  
88 guidelines in conformity to this section, shall formulate a  
89 policy regarding whether a remarried parent's spouse's  
90 income affects a support obligation, and a policy regard-  
91 ing the consideration to be given to the costs of multiple  
92 family child raising obligations, other than the costs for  
93 those children for whom the support action was brought.  
94 The policy of the commission shall be declared explicitly  
95 in the guidelines, and if it is the policy of the commission  
96 that the amount of support ordered should be altered  
97 because of a consideration of these factors, then the for-  
98 mula for calculating the alteration under the guidelines  
99 shall be explicitly stated.

100 (i) The guidelines shall incorporate standards for the  
101 computation of child support payments for persons when  
102 the parent's combined monthly net income is less than six  
103 hundred dollars or more than ten thousand dollars. The  
104 guidelines shall provide for crediting third party payments  
105 as child support when such third party payments are or-  
106 dered by a court in a child support order.

107 (j) In promulgating the legislative rule provided for  
108 under the provisions of this section, the commission shall  
109 be directed by the following legislative findings:

110 (1) That amounts to be fixed as child support should  
111 not include awards for alimony, notwithstanding the fact  
112 that any amount fixed as child support may impact upon  
113 the living conditions of custodial parents;

114 (2) That parental expenditures on children represent  
115 a relatively constant percentage of family consumption as

116 family consumption increases, so that as family income  
117 increases, the family's level of consumption increases, and  
118 the children should share in and benefit from this in-  
119 crease;

120 (3) That parental expenditures on children represent  
121 a declining proportion of family income as the gross in-  
122 come of the family increases, so that while total dollar  
123 outlays for children have a positive relationship to the  
124 family's gross income, the proportion of gross family  
125 income allotted for the children has a negative relationship  
126 to gross income;

127 (4) That expenditures on children vary according to  
128 the number of children in the family, and as the number  
129 of children in the family increases, the expenditures for  
130 the children as a group increase and the expenditures on  
131 each individual child decrease; so that due to increasing  
132 economies of scale and the increased sharing of resources  
133 among family members, spending will not increase in  
134 direct proportion to the number of children; and

135 (5) That as children grow older, expenditures on  
136 children increase, particularly during the teenage years.

137 (k) Prior to the first day of May, one thousand nine  
138 hundred ninety-six, the commission shall review the  
139 guidelines and propose a legislative rule for promulgation  
140 in accordance with the provisions of article three, chapter  
141 twenty-nine of this code to amend and update the guide-  
142 lines required by this section. Such proposed rule shall  
143 include, but not be limited to, provisions which specifically  
144 address the requirements set forth in subsections (f), (g)  
145 and (h) of this section. In preparing such legislative rule  
146 to be proposed for promulgation, the commission is di-  
147 rected to study the feasibility and desirability of basing  
148 support guidelines on an income shares formula. Not-  
149 withstanding the provisions of this section to the contrary,  
150 the commission may, in its discretion, propose for promul-  
151 gation support guidelines based on an income shares for-  
152 mula. In preparing such legislative rule to be proposed  
153 for promulgation, the commission is directed to study the  
154 feasibility and desirability of limiting the maximum  
155 amount to be paid as child support in cases involving a

156 parent or parents with high incomes, and to also study the  
157 possible alternative disposition of available income to an  
158 educational trust or other investment through which the  
159 child or children hold the beneficial interest, and the com-  
160 mission may, in its discretion, propose for promulgation  
161 support guidelines which address these issues.

162 (l) The commission shall review the guidelines at least  
163 once every four years to ensure that their application re-  
164 sults in the determination of appropriate child support  
165 awards. Such four-year period shall begin on the first day  
166 of July, two thousand.

**§48A-2-18. Creation of child support enforcement fund; pur-  
pose; funding; disbursements.**

1 (a) There is hereby created in the state treasury a  
2 separate special revenue account, which shall be an interest  
3 bearing account, to be known as the "child support en-  
4 forcement fund". The special revenue account shall con-  
5 sist of all incentive payments paid by the federal govern-  
6 ment pursuant to 42 U.S.C §658 as a percentage of the  
7 total amount of support collected directly or by contract  
8 by the child support enforcement division, all amounts  
9 appropriated by the Legislature to maintain and operate  
10 the child support enforcement division according to this  
11 chapter, and all interest or other earnings from moneys in  
12 the fund. Any agency or entity receiving federal match-  
13 ing funds for services of the child support enforcement  
14 division shall enter into an agreement with the secretary  
15 whereby all federal matching funds paid to and received  
16 by that agency or entity for the activities of the child sup-  
17 port enforcement division shall be paid into the child  
18 support enforcement fund. Said agreement shall provide  
19 for advance payments into the fund by such agencies,  
20 from available federal funds, pursuant to Title IV-D of the  
21 Social Security Act and in accordance with federal regula-  
22 tions. No expenses incurred under this section shall be a  
23 charge against the general funds of the state.

24 (b) Moneys in the special revenue account shall be  
25 appropriated to the department and used exclusively, in  
26 accordance with appropriations by the Legislature, to pay  
27 costs, fees and expenses incurred, or to be incurred for the

28 following purpose: The provision of child support serv-  
29 ces authorized pursuant to Title VI, Part D of the Social  
30 Security Act and any further duty as set forth in this chap-  
31 ter, including, but not limited to, the duties assigned to the  
32 division by virtue of its being designated as the single and  
33 separate organizational unit within this state to administer  
34 the state plan for child and spousal support according to  
35 section twelve of this article.

36 (c) Any balance remaining in the special revenue  
37 account at the end of any state fiscal year shall not revert  
38 to the general revenue fund but shall remain in the special  
39 revenue account and shall be used solely in a manner  
40 consistent with this section: *Provided*, That for the three  
41 succeeding fiscal years after the effective date of this sec-  
42 tion, any appropriation made to the special revenue ac-  
43 count from general revenue shall be repaid to the general  
44 revenue fund from moneys available in the special reve-  
45 nue account.

46 (d) Disbursements from the special revenue account  
47 shall be authorized by the director.

#### §48A-2-19. Fees.

1 (a) When the child support enforcement division  
2 provides child support collection services either to a public  
3 assistance recipient or to a party who does not receive  
4 public assistance, the child support enforcement division  
5 shall, upon written notice to the obligor, charge a monthly  
6 collection fee equivalent to the full monthly cost of the  
7 services, in addition to the amount of child support which  
8 was ordered by the court. The fee shall be deposited in  
9 the child support enforcement fund. The service fee as-  
10 sessed may not exceed ten percent of the monthly court  
11 ordered child support and may not be assessed against any  
12 obligor who is current in payment of the monthly court  
13 ordered child support payments: *Provided*, That this fee  
14 may not be assessed when the obligor is also a recipient of  
15 public assistance.

16 (b) Except for those persons applying for services  
17 provided by the child support enforcement division who  
18 are applying for or receiving public assistance from the

19 division of human services or persons for whom fees are  
20 waived pursuant to a legislative rule promulgated pursuant  
21 to this section, all applicants shall pay an application fee of  
22 twenty-five dollars.

23 (c) Fees imposed by state and federal tax agencies for  
24 collection of overdue support shall be imposed on the  
25 person for whom these services are provided. Upon writ-  
26 ten notice to the obligee the child support enforcement  
27 division shall assess a fee of twenty-five dollars to any  
28 person not receiving public assistance for each successful  
29 federal tax interception. The fee shall be withheld prior to  
30 the assistance for each successful federal tax interception.  
31 The fee shall be withheld prior to the release of the funds  
32 received from each interception and deposited in the child  
33 support enforcement fund established pursuant to section  
34 eighteen of this article.

35 (d) In any action brought by the child support en-  
36 forcement division, the family law master shall order that  
37 the obligor shall pay attorney fees for the services of the  
38 attorney representing the child support enforcement divi-  
39 sion in an amount calculated at a rate similar to the rate  
40 paid to court appointed attorneys paid pursuant to section  
41 thirteen-a, article twenty-one, chapter twenty-nine of this  
42 code, and all court costs associated with the action: *Pro-*  
43 *vided*, That no such award shall be made when the family  
44 law master or circuit judge finds that the award of attor-  
45 neys fees would create a substantial financial hardship on  
46 the obligor or when the obligor is a recipient of public  
47 assistance. Further, the child support enforcement division  
48 may not collect such fees until the obligor is current in the  
49 payment of child support. No court may order the child  
50 support enforcement division to pay attorney's fees to any  
51 party in any action brought pursuant to this chapter or  
52 chapter forty-eight of this code.

53 (e) This section shall not apply to the extent it is  
54 inconsistent with the requirements of federal law for re-  
55 ceiving funds for the program under Title IV-A and Title  
56 IV-D of the Social Security Act, United States Code, article  
57 three, Title 42, Sections 601 to 613 and United States  
58 Code, Title 42, Sections 651 to 662.

59 (f) The commission shall, by legislative rule promul-  
60 gated pursuant to chapter twenty-nine-a of this code, de-  
61 scribe the circumstances under which fees charged by the  
62 child support enforcement division may be modified or  
63 waived, and such rule shall provide for the waiver of any  
64 fee, in whole or in part, when such fee would otherwise be  
65 required to be paid under the provisions of this chapter.  
66 Further, such rule shall initially be promulgated as an  
67 emergency rule pursuant to section fifteen, article three,  
68 chapter twenty-nine-a of this code.

**§48A-2-20. Contracts for services.**

1 (a) Contracts with persons, firms, partnerships, cor-  
2 porations, associations or other legal entities to provide  
3 services to the child support enforcement division shall, at  
4 a minimum:

5 (1) Provide for the employment and training of per-  
6 sonnel necessary to perform the services;

7 (2) Provide that any federal incentive payment that is  
8 payable shall be payable to the fund established pursuant  
9 to section eighteen of this article;

10 (3) Delegate responsibility that is consistent with the  
11 rules promulgated pursuant to this article;

12 (4) Include any and all provisions required by state  
13 or federal law and specifically include terms regarding  
14 cancellation and renewal of the contract;

15 (5) Provide for the assessment of penalties for the  
16 failure to fully or timely provide services included in the  
17 agreement;

18 (6) Prohibit the assignment of the contract or the  
19 subcontracting of services to be provided under the con-  
20 tract without first obtaining the express written approval of  
21 the director;

22 (7) Provide that the contractor consents to perfor-  
23 mance audits of its operations by the performance evalua-  
24 tion and research division, legislative auditor's office of the  
25 West Virginia Legislature; and

26           (8) Establish reasonable administrative and fiscal  
27 requirements for providing and continuing services and  
28 reimbursement.

29           (b) Prior to entering into such agreement, the director  
30 shall provide all proposals to the members of the commis-  
31 sion who may review and comment on those proposals.

32           (c) The director shall enter into such agreement only  
33 when the director finds that based upon the information  
34 provided to the director and upon the comments made by  
35 members of the commission, that the provider of services  
36 is capable of carrying out the responsibilities of the agree-  
37 ment.

38           (d) All contracts entered into pursuant to this section  
39 shall meet all requirements for such agreements as detailed  
40 in article three, chapter five-a of this code: *Provided*, That  
41 when the commission, after reviewing any contract, finds  
42 that the contract meets all requirements as set forth in this  
43 section and further that the child support enforcement  
44 division should enter into such contract, the contract shall  
45 not be subject to the requirements as detailed in article  
46 three, chapter five-a of this code.

47           (e) Any agreement entered into pursuant to this  
48 section may include a provision relating to the loan of  
49 equipment in the possession of the child support enforce-  
50 ment division.

**§48A-2-21. Attorneys representing state.**

1           (a) Attorneys employed by the child support en-  
2 forcement division may represent this state or another state  
3 in an action brought under the authority of federal law of  
4 this chapter.

5           (b) An attorney employed by the child support en-  
6 forcement division or employed by a person or agency or  
7 entity pursuant to a contract with the child support en-  
8 forcement division represents the interest of the state or  
9 the division and not the interest of any other party. The  
10 child support enforcement division shall, at the time an  
11 application for child support services is made, inform the  
12 applicant that any attorney who provides services for the

13 child support enforcement division is the attorney for the  
14 state of West Virginia and that the attorney providing  
15 those services does not provide legal representation to the  
16 applicant.

17 (c) An attorney employed by the child support en-  
18 forcement division or pursuant to a contract with the child  
19 support enforcement division may not be appointed or act  
20 as a guardian ad litem or attorney ad litem for a child or  
21 another party.

**§48A-2-22. Establishment of parent locator service.**

1 (a) The child support enforcement division shall  
2 establish a parent locator service to locate obligors, utiliz-  
3 ing all sources of information and available records and  
4 the parent locator service in the federal department of  
5 health and human services. Any person, agency or entity  
6 providing services to the child support enforcement divi-  
7 sion pursuant to a contract shall have access to such ser-  
8 vice when the contract includes a provision to ensure that  
9 the confidentiality of such information is maintained.

10 (b) Upon entering into an agreement with the secre-  
11 tary of the federal department of health and human servic-  
12 es for the use of that department's parent locator service,  
13 the child support enforcement division shall accept and  
14 transmit to the secretary of the department of health and  
15 human services requests for information to be furnished  
16 by such federal parent locator service to authorized per-  
17 sons. The child support enforcement division shall charge  
18 a reasonable fee sufficient to cover the costs to the state  
19 and to the federal department of health and human servic-  
20 es incurred by reason of such requests, and shall transfer  
21 to that department from time to time, so much of the fees  
22 collected as are attributable to the costs incurred by that  
23 department.

**§48A-2-23. Cooperation with other states in the enforcement  
of child support.**

1 (a) The child support enforcement division shall  
2 cooperate with any other state in the following:

3 (1) In establishing paternity;



4           (2) In locating an obligor residing temporarily or  
5 permanently in this state, against whom any action is being  
6 taken for the establishment of paternity or the enforce-  
7 ment of child and spousal support;

8           (3) In securing compliance by an obligor residing  
9 temporarily or permanently in this state, with an order  
10 issued by a court of competent jurisdiction against such  
11 obligor for the support and maintenance of a child or  
12 children or the parent of such child or children; and

13           (4) In carrying out other functions necessary to a  
14 program of child and spousal support enforcement.

15           (b) The commission shall, by legislative rule, estab-  
16 lish procedures necessary to extend the child support  
17 enforcement divisions' system of withholding under sec-  
18 tion three, article five of this chapter so that such system  
19 may include withholding from income derived within this  
20 state in cases where the applicable support orders were  
21 issued in other states, in order to assure that child support  
22 owed by obligors in this state or any other state will be  
23 collected without regard to the residence of the child for  
24 whom the support is payable or the residence of such  
25 child's custodial parent.

**§48A-2-24. Disbursements of amounts collected as support.**

1           (a) Amounts collected as child or spousal support by  
2 the child support enforcement division shall be distributed  
3 within ten days of receipt, except as otherwise specifically  
4 provided in this chapter. Such amounts shall, except as  
5 otherwise provided under the provisions of subsection (c)  
6 of this section, be distributed as follows:

7           (1) The first fifty dollars of such amounts as are  
8 collected periodically which represent monthly support  
9 payments shall be paid to the obligee without affecting the  
10 eligibility of such person's family for assistance from the  
11 department of health and human resources or decreasing  
12 any amount otherwise payable as assistance to such family  
13 during such month;

14           (2) Such amounts as are collected periodically which  
15 are in excess of any amount paid to the family under

16 subdivision (1) of this subsection and which represent  
17 monthly support payments shall be paid by the child sup-  
18 port enforcement division to the appropriate administra-  
19 tive unit of the department of health and human resources  
20 to reimburse it for assistance payments to the family dur-  
21 ing such period (with appropriate reimbursement of the  
22 federal government to the extent of its participation in the  
23 financing);

24 (3) Such amounts as are in excess of amounts re-  
25 quired to reimburse the department of health and human  
26 resources under subdivision (2) of this subsection and are  
27 not in excess of the amount required to be paid during  
28 such period to the family by a court order shall be paid to  
29 the obligee; and

30 (4) Such amounts as are in excess of amounts re-  
31 quired to be distributed under subdivisions (1), (2) and (3)  
32 of this subsection shall be: (A) Paid by the child support  
33 enforcement division to the appropriate administrative unit  
34 of the department of health and human resources (with  
35 appropriate reimbursement of the federal government to  
36 the extent of its participation in the financing) as reim-  
37 bursement for any past assistance payments made to the  
38 family for which the department has not been reimbursed;  
39 or (B) if no assistance payments have been made by the  
40 department which have not been repaid, such amounts  
41 shall be paid to the obligee.

42 (b) (1) Whenever a family for whom support pay-  
43 ments have been collected and distributed under the provi-  
44 sions of this chapter ceases to receive assistance from the  
45 department of health and human resources, the child sup-  
46 port enforcement division shall provide notice to the fami-  
47 ly of their rights with regard to a continuation of services.  
48 Unless notified by the family that services are no longer  
49 desired, the child support enforcement division shall con-  
50 tinue to collect amounts of support payments which repre-  
51 sent monthly support payments from the obligor and pay  
52 any amount so collected, which represents monthly sup-  
53 port payments, to the family (without requiring any for-  
54 mal reapplication and without the imposition of any appli-  
55 cation fee) on the same basis as in the case of other

56 obligees who are not receiving assistance from the depart-  
57 ment of health and human resources.

58 (2) So much of any amounts of support so collected  
59 as are in excess of the payments required to be made in  
60 subdivision (1) of this subsection shall be paid, first, to the  
61 obligee until all past due support owed to the family by  
62 the obligor has been paid. After all arrearages owing to  
63 the family have been paid, any amounts of support col-  
64 lected which are in excess of the required support pay-  
65 ments shall be distributed in the manner provided by para-  
66 graphs (A) and (B), subdivision (4), subsection (a) of this  
67 section with respect to excess amounts described in said  
68 subsection.

69 (c) (1) Notwithstanding the preceding provisions of  
70 this section, amounts collected by the child support en-  
71 forcement division as child support for months in any  
72 period on behalf of a child for whom the department of  
73 health and human resources is making foster care mainte-  
74 nance payments shall:

75 (A) Be paid by the child support enforcement divi-  
76 sion to the appropriate administrative unit of the depart-  
77 ment of health and human resources to the extent neces-  
78 sary to reimburse the department for foster care mainte-  
79 nance payments made with respect to the child during  
80 such period (with appropriate reimbursement of the feder-  
81 al government to the extent of its participation in financ-  
82 ing);

83 (B) Be paid to the appropriate administrative unit of  
84 the department of health and human resources to the ex-  
85 tent that the amounts collected exceed the foster care  
86 maintenance payments made with respect to the child  
87 during such period but do not exceed the amounts re-  
88 quired by a court order to be paid as support on behalf of  
89 the child during such period; and the department of health  
90 and human resources may use the payments in the manner  
91 it determines will serve the best interests of the child, in-  
92 cluding setting such payments aside for the child's future  
93 needs or making all or a part thereof available to the per-  
94 son responsible for meeting the child's day-to-day needs;  
95 and

96 (C) Be paid to the appropriate administrative unit of  
97 the department of health and human resources if any  
98 portion of the amounts collected remains after making the  
99 payments required under paragraphs (A) and (B) of this  
100 subdivision, to the extent that such portion is necessary to  
101 reimburse the department of health and human resources  
102 (with appropriate reimbursement to the federal govern-  
103 ment to the extent of its participation in the financing), for  
104 any past foster care maintenance payments, or payments  
105 of aid to families with dependent children which were  
106 made with respect to the child (and with respect to which  
107 past collections have not previously been retained);

108 (2) Any balance of the amounts required to be paid  
109 under the provisions of subdivision (1) of this subsection  
110 shall be paid to the appropriate administrative unit of the  
111 department of health and human resources, for use by the  
112 department in accordance with paragraph (B) of said sub-  
113 division.

114 (d) Any payment required to be made under the  
115 provisions of this section to a family shall be made to the  
116 resident parent, legal guardian or caretaker relative having  
117 custody of or responsibility for the child or children.

118 (e) The commission shall establish bonding require-  
119 ments for employees of the child support enforcement  
120 division who receive, disburse, handle or have access to  
121 cash.

122 (f) The director shall maintain methods of adminis-  
123 tration which are designed to assure that employees of the  
124 child support enforcement division or any persons em-  
125 ployed pursuant to a contract who are responsible for  
126 handling cash receipts do not participate in accounting or  
127 operating functions which would permit them to conceal  
128 in the accounting records the misuse of cash receipts:  
129 *Provided*, That the director may provide for exceptions to  
130 this requirement in the case of sparsely populated areas in  
131 this state where the hiring of unreasonable additional staff  
132 in the local office would otherwise be necessary.

133 (g) No penalty or fee may be collected by or distrib-  
134 uted to a recipient of child support enforcement division

135 services from the state treasury or from the child support  
136 enforcement fund when child support is not distributed to  
137 the recipient in accordance with the time frames estab-  
138 lished herein.

**§48A-2-25. Payment of support to the child support enforce-  
ment division.**

1 All support payments owed to an obligee who is an  
2 applicant for or recipient of the services of the child sup-  
3 port enforcement division shall be paid to the child sup-  
4 port enforcement division. Any other obligee owed a  
5 duty of support under the terms of a support order en-  
6 tered by a court of competent jurisdiction may request  
7 that the support payments be made to the child support  
8 enforcement division. In such case, the child support  
9 enforcement division shall proceed to receive and disburse  
10 such support payments to or on behalf of the obligee as  
11 provided by law.

**§48A-2-26. Authorization for data processing and retrieval  
system.**

1 In accordance with an initial and annually updated  
2 advance data processing planning document approved by  
3 the secretary of the federal department of health and hu-  
4 man services, the child support enforcement division may  
5 establish an automatic data processing and retrieval system  
6 designed effectively and efficiently to assist the director in  
7 carrying out the provisions of this chapter.

**§48A-2-27. Obtaining support from federal tax refunds.**

1 The commission shall, by legislative rule promulgat-  
2 ed pursuant to chapter twenty-nine-a of this code, place in  
3 effect procedures necessary for the child support enforce-  
4 ment division to obtain payment of past due support from  
5 federal tax refunds from overpayments made to the secre-  
6 tary of the treasury of the United States. The child support  
7 enforcement division shall take all steps necessary to im-  
8 plement and utilize such procedures.

**§48A-2-28. Obtaining support from state income tax refunds.**

1 (a) The tax commissioner shall establish procedures

2 necessary for the child support enforcement division to  
3 obtain payment of past due support from state income tax  
4 refunds from overpayment made to the tax commissioner  
5 pursuant to the provisions of article twenty-one, chapter  
6 eleven of this code.

7 (b) The commission shall, by legislative rule promul-  
8 gated pursuant to chapter twenty-nine-a of this code, es-  
9 tablish procedures necessary for the child support en-  
10 forcement division to enforce a support order through a  
11 notice to the tax commissioner which will cause any re-  
12 fund of state income tax which would otherwise be pay-  
13 able to an obligor to be reduced by the amount of over-  
14 due support owed by such obligor.

15 (1) Such legislative rule shall, at a minimum, pre-  
16 scribe:

17 (A) The time or times at which the child support  
18 enforcement division shall serve on the obligor or submit  
19 to the tax commissioner notices of past due support;

20 (B) The manner in which such notices shall be served  
21 on the obligor or submitted to the tax commissioner;

22 (C) The necessary information which shall be con-  
23 tained in or accompany the notices;

24 (D) The amount of the fee to be paid to the tax com-  
25 missioner for the full cost of applying the procedure  
26 whereby past due support is obtained from state income  
27 tax refunds; and

28 (E) Circumstances when the child support enforce-  
29 ment division may deduct a twenty-five dollar fee from  
30 the obligor's state income tax refund. Such rule may not  
31 require that an applicant who is a recipient of assistance  
32 from the department of human services in the form of aid  
33 to families with dependent children.

34 (2) Withholding from state income tax refunds may  
35 not be pursued unless the child support enforcement divi-  
36 sion has examined the obligor's pattern of payment of  
37 support and the obligee's likelihood of successfully pursu-  
38 ing other enforcement actions, and has determined that the

39 amount of past due support which will be owed, at the time  
40 the withholding is to be made, will be one hundred dollars  
41 or more. In determining whether the amount of past due  
42 support will be one hundred dollars or more, the child  
43 support enforcement division shall consider the amount  
44 of all unpaid past due support, including that which may  
45 have accrued prior to the time that the child support en-  
46 forcement division first agreed to enforce the support  
47 order.

48 (c) The director of the child support enforcement  
49 division shall enter into agreements with the secretary of  
50 the treasury and the tax commissioner, and other appro-  
51 priate governmental agencies, to secure information relat-  
52 ing to the social security number or numbers and the  
53 address or addresses of any obligor, in order to provide  
54 notice between such agencies to aid the child support  
55 enforcement division in requesting state income tax de-  
56 ductions, and to aid the tax commissioner in enforcing  
57 such deductions. In each such case, the tax commissioner,  
58 in processing the state income tax deduction, shall notify  
59 the child support enforcement division of the obligor's  
60 home address and social security number or numbers.  
61 The child support enforcement division shall provide this  
62 information to any other state involved in processing the  
63 support order.

64 (d) For the purposes of this section, "past due sup-  
65 port" means the amount of unpaid past due support owed  
66 under the terms of a support order to or on behalf of a  
67 child, or to or on behalf of a minor child and the parent  
68 with whom the child is living, regardless of whether the  
69 amount has been reduced to judgment or not.

70 (e) The child support enforcement division may,  
71 under the provisions of this section, enforce the collection  
72 of past due support on behalf of a child who has reached  
73 the age of majority.

74 (f) The legislative rule promulgated by the commis-  
75 sion pursuant to the provisions of this section and pursu-  
76 ant to chapter twenty-nine-a of this code, shall, at a mini-  
77 mum, provide that prior to notifying the tax commissioner  
78 of past due support, a notice to the obligor as prescribed

79 under subsection (a) of this section shall:

80 (1) Notify the obligor that a withholding will be  
81 made from any refund otherwise payable to such obligor;

82 (2) Instruct the obligor of the steps which may be  
83 taken to contest the determination of the child support  
84 enforcement division that past due support is owed or the  
85 amount of the past due support; and

86 (3) Provide information with respect to the proce-  
87 dures to be followed, in the case of a joint return, to pro-  
88 tect the share of the refund which may be payable to an-  
89 other person.

90 (g) If the child support enforcement division is noti-  
91 fied by the tax commissioner that the refund from which  
92 withholding is proposed to be made is based upon a joint  
93 return, and if the past due support which is involved has  
94 not been assigned to the department of human services,  
95 the child support enforcement division may delay distri-  
96 bution of the amount withheld until such time as the tax  
97 commissioner notifies the child support enforcement divi-  
98 sion that the other person filing the joint return has re-  
99 ceived his or her proper share of the refund, but such  
100 delay shall not exceed six months.

101 (h) In any case in which an amount is withheld by the  
102 tax commissioner under the provisions of this section and  
103 paid to the child support enforcement division, if the  
104 child support enforcement division subsequently deter-  
105 mines that the amount certified as past due was in excess  
106 of the amount actually owed at the time the amount with-  
107 held is to be distributed, the agency shall pay the excess  
108 amount withheld to the obligor thought to have owed the  
109 past due support, or, in the case of amounts withheld on  
110 the basis of a joint return, jointly to the parties filing such  
111 return.

112 (i) The commission shall, by legislative rule promul-  
113 gated pursuant to chapter twenty-nine-a, structure the time  
114 and method by which all amounts received by the child  
115 support enforcement division, as payments of past due  
116 support from state income tax refunds, are distributed. In



117 a case where an obligee is an applicant for the services of  
118 the child support enforcement division, but is not a current  
119 recipient of assistance from the department of human  
120 services in the form of aid to families with dependent  
121 children, such method of distribution shall give priority to  
122 the obligee and the family of the obligee by paying such  
123 amounts to the obligee first rather than using them first to  
124 reimburse the department of human services.

**§48A-2-29. Obtaining support from unemployment compensation benefits.**

1 (a) The director shall determine on a periodic basis  
2 whether individuals receiving unemployment compensation  
3 owe child support obligations which are being en-  
4 forced or have been requested to be enforced by the child  
5 support enforcement division. If an individual is receiving  
6 such compensation and owes any such child support obli-  
7 gation which is not being met, the child support enforce-  
8 ment division shall enter into an agreement with such  
9 individual to have specified amounts withheld otherwise  
10 payable to such individual, and shall submit a copy of  
11 such agreement to the bureau of employment programs.  
12 In the absence of such agreement, the child support en-  
13 forcement division shall bring legal process to require the  
14 withholding of amounts from such compensation.

15 (b) The secretary shall enter into a written agreement  
16 with the bureau of employment programs for the purpose  
17 of withholding unemployment compensation from indi-  
18 viduals with unmet support obligations being enforced by  
19 the child support enforcement division. The child support  
20 enforcement division shall agree only to a withholding  
21 program that it expects to be cost effective, and, as to re-  
22 imbursement, shall agree only to reimburse the bureau of  
23 employment programs for its actual, incremental costs of  
24 providing services to the child support enforcement divi-  
25 sion.

26 (c) The commission shall promulgate a procedural  
27 rule for selecting cases to pursue through the withholding  
28 of unemployment compensation for support purposes.  
29 This rule shall be designed to ensure maximum case selec-  
30 tion and minimal discretion in the selection process.

31 (d) The director shall, not less than annually, provide  
32 a receipt to an individual who requests a receipt for the  
33 support paid through the withholding of unemployment  
34 compensation, if receipts are not provided through other  
35 means.

36 (e) The director shall, through direct contact with the  
37 bureau of employment programs, process cases through  
38 the bureau of employment programs in this state, and shall  
39 process cases through support enforcement agencies in  
40 other states. The director shall receive all amounts with-  
41 held by the bureau of employment programs in this state,  
42 forwarding any amounts withheld on behalf of support  
43 enforcement agencies in other states to those agencies.

44 (f) At least one time per year, the commission shall  
45 review and document program operations, including case  
46 selection criteria established under subsection (c) of this  
47 section, and the costs of the withholding process versus the  
48 amounts collected and, as necessary, modify procedures  
49 and renegotiate the services provided by the bureau of  
50 employment programs to improve program and cost ef-  
51 fectiveness.

52 (g) For the purposes of this section:

53 (1) "Legal process" means a writ, order, summons or  
54 other similar process in the nature of garnishment which  
55 is issued by a court of competent jurisdiction or by an  
56 authorized official pursuant to an order to such court or  
57 pursuant to state or local law.

58 (2) "Unemployment compensation" means any com-  
59 pensation under state unemployment compensation law  
60 (including amounts payable in accordance with agree-  
61 ments under any federal unemployment compensation  
62 law). It includes extended benefits, unemployment com-  
63 pensation for federal employees, unemployment compen-  
64 sation for ex-servicemen, trade readjustment allowances,  
65 disaster unemployment assistance, and payments under the  
66 Federal Redwood National Park Expansion Act.

**§48A-2-30. Statements of account.**

1 The child support enforcement division shall provide

2 annual statements of their account to each obligor and  
3 obligee without charge. Additional statements of account  
4 shall be provided at a fee of five dollars, unless such fee is  
5 waived pursuant to a rule promulgated by the commission.  
6 Statements provided under this subsection are in addition  
7 to statements provided for judicial hearings. The director  
8 shall establish procedures whereby an obligor or obligee  
9 can contest or correct a statement of account.

**§48A-2-31. Providing information to consumer reporting agencies.**

1 (a) For purposes of this section, the term "consumer  
2 reporting agency" means any person who, for monetary  
3 fees, dues, or on a cooperative nonprofit basis, regularly  
4 engages, in whole or in part, in the practice of assembling  
5 or evaluating consumer credit information or other infor-  
6 mation on consumers for the purpose of furnishing con-  
7 sumer reports to third parties.

8 (b) The commission shall propose and adopt a proce-  
9 dural rule in accordance with the provisions of sections  
10 four and eight, article three, chapter twenty-nine of this  
11 code, establishing procedures whereby information re-  
12 garding the amount of overdue support owed by an obli-  
13 gor residing in this state will be made available by the  
14 child support enforcement division to any consumer re-  
15 porting agency, upon the request of such consumer re-  
16 porting agency.

17 (c) (1) When the amount of any overdue support is  
18 equal to or less than the amount of arrearage which would  
19 cause the mailing of a notice as provided for in subsection  
20 (b), section three, article five of this chapter, information  
21 regarding such amount may not be made available;

22 (2) When the amount of any overdue support ex-  
23 ceeds the amount of arrearage which would cause the  
24 mailing of a notice as provided for in subsection (b), sec-  
25 tion three, article five of this chapter, information regard-  
26 ing such amount shall be made available.

27 (d) The procedural rule proposed and adopted shall  
28 provide that any information with respect to an obligor

29 shall be made available only after notice has been sent to  
30 such obligor of the proposed action, and such obligor has  
31 been given a reasonable opportunity to contest the accuracy  
32 of such information.

33 (e) The procedural rule proposed and adopted shall  
34 afford the obligor with procedural due process prior to  
35 making information available with respect to the obligor.

36 (f) The information made available to the requesting  
37 consumer reporting agency regarding overdue support  
38 may be in the same form as information submitted to the  
39 secretary of the treasury of the United States.

40 (g) The child support enforcement division may  
41 impose a fee for furnishing such information, not to exceed  
42 the actual cost thereof.

**§48A-2-32. Establishment of central registry.**

1 The child support enforcement division shall establish and maintain a central registry of child support orders. All orders in cases when any party receives any service provided by the child support enforcement division shall be included in the registry. Any other support order shall be included upon the request of any party.  
7 The child support enforcement division, upon receipt of  
8 any information regarding a new hire provided pursuant  
9 to section three, article five of this chapter shall compare  
10 information received to determine if the new hire's income  
11 is subject to wage withholding and notify the employer  
12 pursuant to that section.

**§48A-2-33. Subpoenas.**

1 In order to obtain financial and medical insurance  
2 information pursuant to the establishment, enforcement  
3 and modification provisions set forth in this chapter or  
4 chapter forty-eight of this code, the child support enforcement division may serve, by certified mail or personal service, an administrative subpoena on any person, corporation, partnership, financial institution, labor union or state agency, for an appearance or for production of financial or medical insurance information. In case of  
9 disobedience to the subpoena, the child support enforcement

11 ment division may invoke the aid of any circuit court in  
12 requiring the appearance or production of records and  
13 financial documents.

**§48A-2-34. Employment and income reporting.**

1 (a) Except as provided in subsections (b) and (c) of  
2 this section, all employers doing business in the state of  
3 West Virginia shall report to the child support enforce-  
4 ment division:

5 (1) The hiring of any person who resides or works in  
6 this state to whom the employer anticipates paying earn-  
7 ings; and

8 (2) The rehiring or return to work of any employee  
9 who resides or works in this state.

10 (b) Employers are not required to report the hiring,  
11 rehiring or return to work of any person who:

12 (1) Is employed for less than one month's duration;  
13 or

14 (2) Is employed sporadically so that the employee  
15 will be paid for less than three hundred fifty hours during  
16 a continuous six-month period; or

17 (3) Has gross earnings of less than three hundred  
18 dollars per month.

19 (c) The commission may establish additional exemp-  
20 tions to reduce unnecessary or burdensome reporting  
21 through promulgation of a legislative rule pursuant to  
22 chapter twenty-nine-a of this code.

23 (d) Employers shall report by mailing to the child  
24 support enforcement division a copy of the employee's  
25 W-4 form. However, an employer may transmit such  
26 information through another means if approved in writing  
27 by the child support enforcement division prior to the  
28 transmittal.

29 (e) Employers shall submit a report within fourteen  
30 days of the date of the hiring, rehiring or return to work  
31 of the employee. The report shall include the employee's

32 name, address, social security number and date of birth  
33 and the employer's name and address, any different ad-  
34 dress of the payroll office and the employer's federal tax  
35 identification number.

36 (f) An employer of an obligor shall provide to the  
37 child support enforcement division, upon its written re-  
38 quest, information regarding the obligor's employment,  
39 wages or salary, medical insurance and location of em-  
40 ployment.

41 (g) Any employer who fails to report in accordance  
42 with the provisions of this section shall be guilty of a mis-  
43 demeanor, and, upon conviction thereof, shall be fined not  
44 less than five hundred dollars nor more than one thousand  
45 dollars.

46 (h) Employers required to report under this section  
47 may assess each employee so reported one dollar for the  
48 administrative costs of reporting.

**§48A-2-35. Investigations of support orders; notice and hear-  
ing upon modifications; petition for change.**

1 (a) Every three years after the entry of a final judg-  
2 ment containing a child support order has been entered in  
3 a domestic relations matter, the child support enforcement  
4 division shall examine the records and conduct any inves-  
5 tigation considered necessary to determine whether the  
6 child support amount should be increased or decreased in  
7 view of a temporary or permanent change in physical  
8 custody of the child which the court has not ordered, in-  
9 creased need of the child or changed financial conditions.

10 (b) Upon the written request by an obligee or obli-  
11 gor, the child support enforcement division shall examine  
12 the record and conduct any investigation considered nec-  
13 essary to determine whether the child support amount  
14 should be increased or decreased in view of a temporary  
15 or permanent change in physical custody of the child  
16 which the court has not ordered, increased need of the  
17 child or other financial conditions.

18 (c) Notwithstanding the requirements imposed by  
19 this section, the child support enforcement division is not

20 required to review the matter when:

21 (1) The child is being supported, in whole or in part,  
22 by assistance payments from the division of human servic-  
23 es, the child support enforcement division has determined  
24 that such a review would not be in the best interests of the  
25 child and neither parent has requested a review; or

26 (2) Neither parent has requested a review.

27 (d) The child support enforcement division shall  
28 notify both parents of their right to request a review of a  
29 child support order, and shall give each parent at least  
30 thirty days' notice before commencing any review, and  
31 shall further notify each parent, upon completion of a  
32 review, of the results of the review, whether of a proposal  
33 to petition to seek modification or of a proposal that there  
34 should be no change.

35 (e) When the result of the review is a proposal to  
36 petition to seek modification, then each parent shall be  
37 given thirty days' notice of the hearing on the petition, the  
38 notice to be directed to the last known address of each  
39 party by first class mail.

40 When the result of the review is a proposal that there  
41 be no change, then any parent disagreeing with that pro-  
42 posal may, within thirty days of the notice of the results of  
43 the review, file with the court a petition for modification  
44 setting forth in full the grounds therefor.

45 (f) The child support enforcement division shall  
46 petition the court for modification of the amount of a  
47 child support order if modification is determined to be  
48 necessary under subsection (a) of this section. A written  
49 report and recommendation shall accompany the petition.

50 (g) As used in this section, "changed financial condi-  
51 tions" means increases or decreases in the resources avail-  
52 able to either party from any source. Changed financial  
53 conditions includes, but is not limited to, the application  
54 for or receipt of any form of public assistance payments,  
55 unemployment compensation and workers' compensation.

**§48A-2-36. Adoption of form to identify payments.**

1           The commission shall recommend to the secretary a  
2 form for the purpose of identification of child support  
3 payments which shall include, at a minimum, any amount  
4 of child support obligation paid under an income with-  
5 holding order, the name and address of the payee, and the  
6 availability of health insurance. The form may include  
7 other information needed to ensure the proper credit and  
8 distribution of such payments. The secretary shall adopt  
9 any revised form no later than the first day of July, one  
10 thousand nine hundred ninety-six, which shall include all  
11 information listed herein. Following the adoption of such  
12 form, the commission shall promulgate such legislative  
13 rules pursuant to chapter twenty-nine-a as may be neces-  
14 sary to ensure that all information provided on the form is  
15 correct. This rule shall constitute an emergency rule with-  
16 in the meaning of section fifteen, article three, chapter  
17 twenty-nine-a of this code.

**§48A-2-37. Billing for fees and costs.**

1           (a) When any filing, copying or other service is pro-  
2 vided to the child support enforcement division, the state  
3 or county official or the clerk of any court providing such  
4 fee for a charge, shall bill the child support enforcement  
5 division monthly.

6           (b) When any filing, copying or other service is pro-  
7 vided to a person, agency or entity who is providing ser-  
8 vices for the child support enforcement division pursuant  
9 to a contract, the state or county official or the clerk of  
10 any court providing such fee for a charge, shall bill the  
11 entity, agency, person or child support enforcement divi-  
12 sion monthly, in accord with the terms of the contract.  
13 The child support enforcement division shall provide the  
14 relevant terms of such agreement to those officials upon  
15 implementation of any agreement.

16           (c) A state or county official and the clerk of any  
17 court who charges a deposit, library fee, filing fee for  
18 filing and copying documents or their service, if the filing,  
19 copying or services is for the child support enforcement  
20 division or for a person, entity or agency providing servic-  
21 es pursuant to a contract as described in this article, shall  
22 bill the child support enforcement division monthly or the



23 person, entity or agency providing such services monthly,  
24 in accord with the terms of any contract.

**§48A-2-38. Acceptance of federal purposes; compliance with federal requirements and standards.**

1 (a) The state assents to the purposes of the federal  
2 laws regarding child support and establishment of paterni-  
3 ty and agrees to accept federal appropriations and other  
4 forms of assistance made under or pursuant thereto, and  
5 authorizes the receipt of such appropriations into the state  
6 treasury and the receipt of other forms of assistance by the  
7 child support enforcement division for expenditure, dis-  
8 bursement and distribution by the division in accordance  
9 with the provisions of this chapter and the conditions im-  
10 posed by applicable federal laws, rules and regulations.

11 (b) Insofar as such actions are consistent with the laws  
12 of this state granting authority to the division and the  
13 director, the division shall comply with such requirements  
14 and standards as the secretary of the federal department of  
15 health and human services may have determined, as of the  
16 effective date of this section, to be necessary for the estab-  
17 lishment of an effective program for locating obligors,  
18 establishing paternity, obtaining support orders and col-  
19 lecting support payments.

**§48A-2-39. Publicizing child support enforcement services.**

1 The child support enforcement division shall regular-  
2 ly and frequently publicize, through public service an-  
3 nouncements, the availability of child support enforce-  
4 ment services under the provisions of this chapter and  
5 otherwise, including information as to any application fees  
6 for such services and a toll-free telephone number and a  
7 postal address at which further information may be ob-  
8 tained.

**§48A-2-40. Access to records, confidentiality.**

1 (a) All records in the possession of the child support  
2 enforcement division, including records in the possession  
3 of the division concerning an individual case of child or  
4 spousal support, shall be kept confidential and shall not be  
5 released except as provided below:

6 (1) Records shall be disclosed or withheld as required  
7 by federal law or regulations promulgated thereunder  
8 notwithstanding other provisions of this section.

9 (2) The phone number, address, employer and other  
10 information regarding the location of the obligor, the  
11 obligee and the child shall only be disclosed: (A) Upon  
12 his or her written consent, to the person whom the consent  
13 designates; or (B) notwithstanding subdivision (3) of this  
14 subsection, to the obligee, the obligor, the child or the  
15 caretaker or representative of the child, upon order of a  
16 court if the court finds that the disclosure is for a bona  
17 fide purpose, is not contrary to the best interest of a child  
18 and does not compromise the safety of any party: *Provid-*  
19 *ed*, That the identity and location of the employer may be  
20 disclosed on the letters, notices and pleadings of the divi-  
21 sion as necessary and convenient for the determination of  
22 support amounts and the establishment, investigation,  
23 modification, enforcement, collection and distribution of  
24 support.

25 (3) Information and records other than the phone  
26 number, address, employer and information regarding the  
27 location of the obligor, the obligee and the child shall be  
28 disclosed to the obligor, the obligee, the child or the care-  
29 taker of the child or his or her duly authorized representa-  
30 tive, upon his or her written request: *Provided*, That when  
31 the obligor requests records other than collection and  
32 distribution records, financial records relevant to the deter-  
33 mination of the amount of support pursuant to the guide-  
34 lines, or records the obligor has supplied, the division shall  
35 mail a notice by first class mail to the last known address  
36 of the obligee notifying him or her of the request. The  
37 notice shall advise the obligee of his or her right to object  
38 to the release of records on the grounds that the records  
39 are not relevant to the determination of the amount of  
40 support, or the establishment, modification, enforcement,  
41 collection or distribution of support. The notice shall also  
42 advise the obligee of his or her right to disclosure of re-  
43 cords provided in this section in order to determine what  
44 records the child support enforcement division may have.  
45 In the event of any objection, the division shall determine  
46 whether or not the information shall be released.

47 (4) Information in specific cases may be released as  
48 is necessary or to determine the identity, location, employ-  
49 ment, income and assets of an obligor.

50 (5) Information and records may be disclosed to the  
51 department of vital statistics, department of employment  
52 security, the department of workers' compensation, state  
53 tax department and the internal revenue service, or other  
54 state or federal agencies or departments as may be neces-  
55 sary or desirable in obtaining any address, employment,  
56 wage or benefit information for the purpose of determin-  
57 ing the amount of support or establishing, enforcing, col-  
58 lecting and distributing support.

59 (b) Any person who willfully violates this section  
60 shall be guilty of a misdemeanor, and, upon conviction  
61 thereof, shall be fined not less than one hundred nor more  
62 than one thousand dollars, or confined in jail not more  
63 than six months, or both fined and imprisoned.

**§48A-2-41. Access to information.**

1 (a) All state, county and municipal agencies, offices  
2 and employers receiving a request for information and  
3 assistance from the child support enforcement division  
4 shall cooperate with the division in the location of parents  
5 who have abandoned and deserted children and shall pro-  
6 vide the division with all available pertinent information  
7 concerning the location, income and property of those  
8 parents.

9 (b) Notwithstanding any other provision of law to the  
10 contrary, any entity conducting business in this state or  
11 incorporated under the laws of this state shall, upon certifi-  
12 cation by the division that the information is needed to  
13 locate a parent for the purpose of collecting child support,  
14 provide the division with the following information about  
15 the parent: Full name, social security number, date of  
16 birth, home address, wages and number of dependents  
17 listed for income tax purposes: *Provided*, That no entity  
18 may provide any information obtained in the course of  
19 providing legal services, medical treatment or medical  
20 services.

**§48A-2-42. Authorization for transfer of functions, offices and equipment of the support enforcement commission and the child support enforcement division.**

1           The governor may, by executive order, transfer and  
2 reallocate all of the functions, offices and equipment of  
3 the commission and the child support enforcement divi-  
4 sion to the department of tax and revenue or the depart-  
5 ment of administration, with such transfer and reallocation  
6 to take effect on the first day of December, one thousand  
7 nine hundred ninety-five. The authority to make transfers  
8 and reallocations by executive order as provided for in  
9 this section shall expire on the first day of December, one  
10 thousand nine hundred ninety-five.

**ARTICLE 3. CHILDREN'S ADVOCATE.**

**§48A-3-11. Repeal of article.**

1           All procedures and requirements established in the  
2 previous enactment of sections one, two, three, seven and  
3 eight of this article shall continue in effect until the pro-  
4 mulgation of an emergency rule by the commission re-  
5 garding the duties of child support enforcement division,  
6 their salary and their location throughout the state. Upon  
7 promulgation of this rule and the filing of such rule with  
8 the secretary of state in accord with section fifteen, article  
9 three, chapter twenty-nine-a of this code, this article and  
10 any rule promulgated pursuant to those sections of this  
11 article shall be repealed.

**ARTICLE 4. PROCEEDING BEFORE A MASTER.**

**§48A-4-22. Budget of the family law master system.**

1           The budget for the payment of the salaries and bene-  
2 fits of the family law masters and clerical and secretarial  
3 assistants shall be included in the appropriation for the  
4 supreme court of appeals. The family law master adminis-  
5 tration fund is hereby created and shall be a special ac-  
6 count in the state treasury. The fund shall operate as a  
7 special fund administered by the state auditor which shall  
8 be appropriated by line item by the Legislature for pay-  
9 ment of administrative expenses of the family law master

10 system. All agencies or entities receiving federal matching  
11 funds for the services of family law masters and their staff,  
12 including, but not limited to, the director of the child sup-  
13 port enforcement division and the secretary of the depart-  
14 ment of health and human resources, shall enter into an  
15 agreement with the administrative office of the supreme  
16 court of appeals whereby all federal matching funds paid  
17 to and received by said agencies or entities for the activi-  
18 ties by family law masters and staff of the program shall  
19 be paid into the family law master administration fund.  
20 Said agreement shall provide for advance payments into  
21 the fund by such agencies, from available federal funds  
22 pursuant to Title IV-D of the Social Security Act and in  
23 accordance with federal regulations.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT  
OBLIGATIONS AND VISITATION.**

§48A-5-1. Action to obtain an order for support of minor child.

§48A-5-3. Withholding from income of amounts payable as support.

§48A-5-8. Procedures before the child support enforcement division.

**§48A-5-1. Action to obtain an order for support of minor  
child.**

1 (a) An action may be brought in circuit court to  
2 obtain an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship  
4 with an obligor;

5 (2) Such obligor is not the primary caretaker or  
6 guardian of the child;

7 (3) The obligor is not meeting an obligation to sup-  
8 port the child;

9 (4) An enforceable order for the support of the child  
10 by the obligor has not been entered by a court of compe-  
11 tent jurisdiction; and

12 (5) There is no pending action for divorce, separate  
13 maintenance or annulment in which the obligation of  
14 support owing from the obligor to the child is at issue.

15 (b) An action may be brought under the provisions

16 of subsection (a) of this section by:

17 (1) A custodial parent of a child, when the divorce  
18 order or other order which granted custody did not make  
19 provision for the support of the child by the obligor;

20 (2) A primary caretaker of a child;

21 (3) A guardian of the property of a child or the com-  
22 mittee for a child; or

23 (4) The child support enforcement division, on be-  
24 half of the state, when the department of health and hu-  
25 man resources is providing assistance on behalf of the  
26 child in the form of aid to families with dependent chil-  
27 dren, and an assignment of any right to support has been  
28 assigned to the department or any other case wherein a  
29 party has applied for child support enforcement services  
30 from the child support enforcement division.

31 (c) An action under the provisions of this section  
32 may be brought in the county where the obligee, the obli-  
33 gor or the child resides.

34 (d) When an action for child support is brought un-  
35 der the provisions of this section by an obligee against his  
36 or her spouse, such obligee may also seek spousal support  
37 from the obligor, unless such support has been previously  
38 waived by agreement or otherwise.

39 (e) Every order of support heretofore or hereafter  
40 entered or modified under the provisions of this section  
41 shall include a provision for the income withholding in  
42 accordance with the provisions of section fifteen-a or  
43 fifteen-b, article two, chapter forty-eight of this code.

44 (f) At any time after the entry of an order for sup-  
45 port, the court may, upon the verified petition of an obli-  
46 gee or the obligor, revise or alter such order, and make a  
47 new order, as the altered circumstances or needs of a  
48 child, an obligee, or the obligor may render necessary to  
49 meet the ends of justice.

**§48A-5-3. Withholding from income of amounts payable as support.**

1           (a) The withholding from an obligor's income of  
2 amounts payable as spousal or child support shall be en-  
3 forced by the child support enforcement division in accor-  
4 dance with the provisions of section fifteen-a or fifteen-b,  
5 article two, chapter forty-eight of this code. Every support  
6 order heretofore or hereafter entered by a circuit court or  
7 a magistrate of this state and every support order entered  
8 by a court of competent jurisdiction of another state shall  
9 be considered to provide for an order of income withhold-  
10 ing in accordance with the provisions of said sections,  
11 notwithstanding the fact that such support order does not  
12 in fact provide for such an order of withholding.

13           (b) When immediate income withholding is not re-  
14 quired due to the findings required by subsection (c),  
15 section fifteen-b, article two, chapter forty-eight of this  
16 code, the child support enforcement division shall mail a  
17 notice to the obligor pursuant to this section when the  
18 support payments required by the order are in arrears in  
19 an amount equal to:

20           (1) One month's support, if the order requires sup-  
21 port to be paid in monthly installments;

22           (2) Four weeks' support, if the order requires support  
23 to be paid in weekly or biweekly installments; or

24           (3) Two biweekly installments, if biweekly payments  
25 are provided.

26           (c) When notice required by subsection (b) of this  
27 section is appropriate, the child support enforcement divi-  
28 sion shall determine the time for a meeting between the  
29 obligor and the child support enforcement division and  
30 the time for a hearing before the family law master, and  
31 shall then set forth in such notice the times and places at  
32 which the meeting and hearing will be held if withholding  
33 is contested. The meeting and hearing may be scheduled  
34 on the same date, but in no case shall the meeting with the  
35 child support enforcement division be scheduled less than  
36 fifteen days after the date the notice is mailed nor shall the  
37 hearing before the master be scheduled more than  
38 twenty-one days after the date the notice is mailed. The  
39 child support enforcement division shall send such notice

40 by first class mail to the delinquent obligor. The notice  
41 shall inform the delinquent obligor of the following:

42 (1) The amount owed;

43 (2) That it is proposed that there be withholding from  
44 the obligor's income of amounts payable as support, and  
45 that if withholding is uncontested, or is contested but de-  
46 termined appropriate, the amount withheld will be equal to  
47 the amount required under the terms of the current sup-  
48 port order, plus amounts for any outstanding arrearage;

49 (3) The definition of "income" as defined in section  
50 three, article one of this chapter;

51 (4) That the withholding will apply to the obligor's  
52 present source of income and to any future source of  
53 income;

54 (5) That any action by the obligor to purposefully  
55 minimize his or her income will result in the enforcement  
56 of support being based upon potential and not just actual  
57 earnings;

58 (6) That payment of the arrearage after the date of  
59 the notice is not a bar to such withholding;

60 (7) That if the obligor fails to appear at the meeting,  
61 withholding will automatically occur as described in the  
62 notice;

63 (8) That a mistake of fact exists only when there is an  
64 error in the amount of current or overdue support claimed  
65 in the notice, or there is a mistake as to the identity of the  
66 obligor;

67 (9) That matters such as lack of visitation, inappropri-  
68 ateness of the support award, or changed financial circum-  
69 stances of the obligee or the obligor will not be considered  
70 at any hearing held pursuant to the notice, but may be  
71 raised by the filing of a separate petition;

72 (10) That if the obligor contests the withholding, in  
73 writing, a meeting with the child support enforcement  
74 division will be held at a time and place set forth in the  
75 notice, for the purpose of attempting to settle any issues



76 which are contested, and that a hearing before the family  
77 law master cannot be held until after the meeting with the  
78 child support enforcement division occurs;

79 (11) That if the meeting with the child support en-  
80 forcement division fails to resolve the issues being contest-  
81 ed, a hearing before the family law master shall be held at  
82 a time and place set forth in the notice, and that following  
83 such hearing, the master will make a recommended order  
84 to the circuit court;

85 (12) That a master's recommended order as to with-  
86 holding will become effective when it is confirmed and  
87 entered by the circuit court, and that if the obligor dis-  
88 agrees with the master's recommended order, he or she will  
89 be given the opportunity to make objections known to the  
90 circuit court; and

91 (13) That if, while the withholding is being contested,  
92 it is determined that the obligor is in arrears in an amount  
93 equal to or greater than one month's support obligation,  
94 but the amount of the arrearage is disputed, then income  
95 withholding for the current payment of support will be  
96 instituted, and may not be stayed pending a final determi-  
97 nation as to the amount of arrearage due.

98 (d) Withholding shall occur when the support order  
99 provides for immediate income withholding, or if immedi-  
100 ate income withholding is not so provided, and the with-  
101 holding is contested, then after entry of the master's rec-  
102 ommended order by the circuit court. When withholding  
103 is ordered or otherwise required, the source of income  
104 shall withhold so much of the obligor's income as is nec-  
105 essary to comply with the order authorizing such with-  
106 holding, up to the maximum amount permitted under  
107 applicable law. Such withholding, unless otherwise termi-  
108 nated under the provisions of this section, shall apply to  
109 any subsequent source of income or any subsequent peri-  
110 od of time during which income is received by the obli-  
111 gor.

112 (e) Notwithstanding any other provision of this code  
113 to the contrary which provides for a limitation upon the  
114 amount which may be withheld from earnings through

115 legal process, the amount of an obligor's aggregate dispos-  
116 able earnings for any given workweek which may be  
117 withheld as support payments is to be determined in ac-  
118 cordance with the provisions of this subsection, as follows:

119 (1) After ascertaining the status of the payment re-  
120 cord of the obligor under the terms of the support order,  
121 the payment record shall be examined to determine  
122 whether any arrearage is due for amounts which should  
123 have been paid prior to a twelve-week period which ends  
124 with the workweek for which withholding is sought to be  
125 enforced.

126 (2) When none of the withholding is for amounts  
127 which came due prior to such twelve-week period, then:

128 (A) When the obligor is supporting another spouse or  
129 dependent child other than the spouse or child for whom  
130 the proposed withholding is being sought, the amount  
131 withheld may not exceed fifty percent of the obligor's  
132 disposable earnings for that week; and

133 (B) When the obligor is not supporting another  
134 spouse or dependent child as described in paragraph (A)  
135 of this subdivision, the amount withheld may not exceed  
136 sixty percent of the obligor's disposable earnings for that  
137 week.

138 (3) When a part of the withholding is for amounts  
139 which came due prior to such twelve-week period, then:

140 (A) Where the obligor is supporting another spouse  
141 or dependent child other than the spouse or child for  
142 whom the proposed withholding is being sought, the  
143 amount withheld may not exceed fifty-five percent of the  
144 obligor's disposable earnings for that week; and

145 (B) Where the obligor is not supporting another  
146 spouse or dependent child as described in paragraph (A)  
147 of this subdivision, the amount withheld may not exceed  
148 sixty-five percent of the obligor's disposable earnings for  
149 that week.

150 (4) In addition to the percentage limitations set forth  
151 in subdivisions (2) and (3) of this subsection, it shall be a

152 further limitation that when current payments plus  
153 arrearages are being withheld from salaries or wages in no  
154 case shall the total amounts withheld for current payments  
155 plus arrearage exceed the amounts withheld for current  
156 payments by an amount greater than ten percent of the  
157 obligor's disposable income.

158 (5) The provisions of this subsection shall apply  
159 directly to the withholding of disposable earnings of an  
160 obligor regardless of whether the obligor is paid on a  
161 weekly, biweekly, monthly or other basis.

162 (6) When an obligor acts so as to purposefully mini-  
163 mize his or her income and to thereby circumvent the  
164 provisions of this section which provide for withholding  
165 from income of amounts payable as support, the amount  
166 to be withheld as support payments may be based upon  
167 the obligor's potential earnings rather than his or her actu-  
168 al earnings, and such obligor may not rely upon the per-  
169 centage limitations set forth in this subsection which limit  
170 the amount to be withheld from disposable earnings.

171 (f) The source of income of any obligor who is sub-  
172 ject to withholding, upon being given notice of withhold-  
173 ing, shall withhold from such obligor's income the amount  
174 specified by the notice and pay such amount to the child  
175 support enforcement division for distribution. The notice  
176 given to the source of income shall contain only such  
177 information as may be necessary for the source of income  
178 to comply with the withholding order. Such notice to the  
179 source of income shall include, at a minimum, the follow-  
180 ing:

181 (1) The amount to be withheld from the obligor's  
182 disposable earnings, and a statement that the amount to be  
183 withheld for support and other purposes, including the fee  
184 specified under subdivision (3) of this subsection, may not  
185 be in excess of the maximum amounts permitted under  
186 Section 303(b) of the federal Consumer Credit Protection  
187 Act or limitations imposed under the provisions of this  
188 code;

189 (2) That the source of income shall send the amount  
190 to be withheld from the obligor's income along with such

191 identifying information as may be required by the child  
192 support enforcement division to the child support enforce-  
193 ment division the same day that the obligor is paid;

194 (3) That, in addition to the amount withheld under  
195 the provisions of subdivision (1) of this subsection, the  
196 source of income may deduct a fee, not to exceed one  
197 dollar, for administrative costs incurred by the source of  
198 income, for each withholding;

199 (4) That withholding is binding on the source of  
200 income until further notice by the child support enforce-  
201 ment division or until the source of income notifies the  
202 child support enforcement division of a termination of the  
203 obligor's employment in accordance with the provisions of  
204 subsection (1) of this section;

205 (5) That the source of income is subject to a fine for  
206 discharging an obligor from employment, refusing to  
207 employ, or taking disciplinary action against any obligor  
208 because of the withholding;

209 (6) That when the source of income fails to withhold  
210 income in accordance with the provisions of the notice, the  
211 source of income is liable for the accumulated amount the  
212 source of income should have withheld from the obligor's  
213 income;

214 (7) That the withholding under the provisions of this  
215 section shall have priority over any other legal process  
216 under the laws of this state against the same income, and  
217 shall be effective despite any exemption that might other-  
218 wise be applicable to the same income;

219 (8) That when an employer has more than one em-  
220 ployee who is an obligor who is subject to wage withhold-  
221 ing from income under the provisions of this code, the  
222 employer may combine all withheld payment to the child  
223 support enforcement division when the employer properly  
224 identifies each payment with the information listed in this  
225 section. A source of income is liable to an obligee, in-  
226 cluding the state of West Virginia or the department of  
227 health and human resources where appropriate, for any  
228 amount which the source of income fails to identify with

229 the information required by this section and is therefore  
230 not received by the obligee;

231 (9) That the source of income shall implement with-  
232 holding no later than the first pay period or first date for  
233 payment of income that occurs after fourteen days follow-  
234 ing the date the notice to the source of income was mailed;  
235 and

236 (10) That the source of income shall notify the child  
237 support enforcement division promptly when the obligor  
238 terminates his or her employment or otherwise ceases  
239 receiving income from the source of income, and shall  
240 provide the obligor's last known address and the name and  
241 address of the obligor's new source of income, if known.

242 (g) The commission shall, by administrative rule,  
243 establish procedures for promptly refunding to obligors  
244 amounts which have been improperly withheld under the  
245 provisions of this section.

246 (h) After implementation in accordance with the  
247 provisions of subsection (k) of this section, a source of  
248 income shall send the amount to be withheld from the  
249 obligor's income to the child support enforcement division  
250 and shall notify the child support enforcement division of  
251 the date of withholding, the same date that the obligor is  
252 paid.

253 (i) In addition to any amounts payable as support  
254 withheld from the obligor's income, the source of income  
255 may deduct a fee, not to exceed one dollar, for administra-  
256 tive costs incurred by the source of income, for each with-  
257 holding.

258 (j) Withholding of amounts payable as support under  
259 the provisions of this section is binding on the source of  
260 income until further notice by the child support enforce-  
261 ment division or until the source of income notifies the  
262 child support enforcement division of a termination of the  
263 obligor's employment in accordance with the provisions of  
264 subsection (l) of this section.

265 (k) Every source of income who receives a notice of  
266 withholding under the provisions of this section shall im-

267 plement withholding no later than the first pay period or  
268 first date for the payment of income which occurs after  
269 fourteen days following the date the notice to the source  
270 of income was mailed.

271 (l) A source of income who employs or otherwise  
272 pays income to an obligor who is subject to withholding  
273 under the provisions of this section shall notify the child  
274 support enforcement division promptly when the obligor  
275 terminates employment or otherwise ceases receiving in-  
276 come from the source of income, and shall provide the  
277 child support enforcement division with the obligor's last  
278 known address and the name and address of the obligor's  
279 new source of income, if known.

280 (m) When an employer has more than one employee  
281 who is an obligor who is subject to wage withholding from  
282 income for amounts payable as support, the employer  
283 may combine all withheld payments to the child support  
284 enforcement division when the employer properly identi-  
285 fies each payment with the information listed in this sec-  
286 tion. A source of income is liable to an obligee, including  
287 the state of West Virginia or the department of health and  
288 human resources where appropriate, for any amount  
289 which the source of income fails to identify in accordance  
290 with this section and is therefore not received by the obli-  
291 gee.

292 (n) A source of income is liable to an obligee, includ-  
293 ing the state of West Virginia or the department of health  
294 and human resources where appropriate, for any amount  
295 which the source of income fails to withhold from income  
296 due an obligor following receipt by such source of in-  
297 come of proper notice under subsection (f) of this section:  
298 *Provided*, That a source of income shall not be required to  
299 vary the normal pay and disbursement cycles in order to  
300 comply with the provisions of this section.

301 (o) Any source of income who knowingly and will-  
302 fully conceals the fact that the source of income is paying  
303 income to an obligor, with the intent to avoid withholding  
304 from the obligor's income of amounts payable as support,  
305 is guilty of a misdemeanor, and, upon conviction thereof,  
306 shall be fined not more than one hundred dollars.

307 (p) When the child support enforcement division  
308 makes a written request to a source of income to provide  
309 information as to whether the source of income has paid  
310 income to a specific obligor, within the preceding  
311 sixty-day period, the source of income shall, within four-  
312 teen days thereafter, respond to such request, itemizing all  
313 such income, if any, paid to the obligor during such  
314 sixty-day period. A source of income shall not be liable,  
315 civilly or criminally, for providing such information in  
316 good faith.

317 (q) Support collection under the provisions of this  
318 section shall have priority over any other legal process  
319 under the laws of this state against the same income, and  
320 shall be effective despite any exemption that might other-  
321 wise be applicable to the same income.

322 (r) Any source of income who discharges from em-  
323 ployment, refuses to employ, or takes disciplinary action  
324 against any obligor subject to income withholding re-  
325 quired by this section because of the existence of such  
326 withholding and the obligations or additional obligations  
327 which it imposes on the source of income, shall be guilty  
328 of a misdemeanor, and, upon conviction thereof, shall be  
329 fined not less than five hundred dollars nor more than one  
330 thousand dollars.

**§48A-5-8. Procedures before the child support enforcement division.**

1 (a) In any case arising under the provisions of this  
2 article wherein a notice is served upon a person requiring  
3 him or her to notify the child support enforcement divi-  
4 sion if the person is contesting action proposed to be tak-  
5 en against him:

6 (1) If the person so notified does not submit written  
7 reasons for contesting the action within the time set to  
8 contest the proposed action, and does not request a meet-  
9 ing with the child support enforcement division, then the  
10 child support enforcement division shall proceed with the  
11 proposed action; or

12 (2) If the person so notified does submit written rea-

13 sons for contesting the action within the time set to contest  
 14 the proposed action, and requests a meeting with the child  
 15 support enforcement division, then the child support en-  
 16 forcement division shall schedule a meeting at the earliest  
 17 practicable time with the person and attempt to resolve the  
 18 matter informally.

19 (b) If the matter cannot be resolved informally, the  
 20 child support enforcement division shall make a determi-  
 21 nation as to whether the proposed action is proper and  
 22 should actually occur.

23 (c) The determination of the child support enforce-  
 24 ment division shall be made within forty-five days from  
 25 the date of the notice which first apprised the person of  
 26 the proposed action. Upon making the determination, the  
 27 child support enforcement division shall inform the parties  
 28 as to whether or not the proposed action will occur, and, if  
 29 it is to occur, of the date on which it is to begin, and in the  
 30 case of withholding from income, shall furnish the obligor  
 31 with the information contained in any notice given to an  
 32 employer under the provisions of subsection (h), section  
 33 three of this article with respect to such withholding.

#### ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.

§48A-6-3. Medical testing procedures to aid in the determination of patern-  
 ity.

§48A-6-4. Establishment of paternity and duty of support.

§48A-6-5. Representation of parties.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

##### §48A-6-1. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child  
 2 and to obtain an order of support for the child may be  
 3 instituted, by verified complaint, in the circuit court of the  
 4 county where the child resides: *Provided*, That if such  
 5 venue creates a hardship for the parties, or either of them,  
 6 or if judicial economy requires, the court may transfer the  
 7 action to the county where either of the parties resides.

8 (b) A "paternity proceeding" is a summary proceed-  
 9 ing, equitable in nature and within the domestic relations



10 jurisdiction of the courts, wherein a circuit court upon the  
11 petition of the state or another proper party may intervene  
12 to determine and protect the respective personal rights of a  
13 child for whom paternity has not been lawfully estab-  
14 lished, of the mother of the child and of the putative father  
15 of the child.

16 (c) The sufficiency of the statement of the material  
17 allegations in the complaint set forth as grounds for relief  
18 and the grant or denial of the relief prayed for in a partic-  
19 ular case shall rest in the sound discretion of the court, to  
20 be exercised by the court according to the circumstances  
21 and exigencies of the case, having due regard for prece-  
22 dent and the provisions of the statutory law of this state.

23 (d) A decree or order made and entered by a court in  
24 a paternity proceeding shall include a determination of the  
25 filial relationship, if any, which exists between a child and  
26 his or her putative father, and, if such relationship is estab-  
27 lished, shall resolve dependent claims arising from family  
28 rights and obligations attendant to such filial relationship.

29 (e) A paternity proceeding may be brought by any  
30 of the following persons:

31 (1) An unmarried woman with physical or legal cus-  
32 tody of a child to whom she gave birth;

33 (2) A married woman with physical or legal custody  
34 of a child to whom she gave birth, if the complaint alleges  
35 that:

36 (A) The married woman lived separate and apart  
37 from her husband preceding the birth of the child;

38 (B) The married woman did not cohabit with her  
39 husband at any time during such separation and that such  
40 separation has continued without interruption; and

41 (C) The defendant, rather than her husband, is the  
42 father of the child;

43 (3) The state of West Virginia, including the child  
44 support enforcement division defined in article two of this  
45 chapter;

46 (4) Any person who is not the mother of the child,  
47 but who has physical or legal custody of the child;

48 (5) The guardian or committee of the child;

49 (6) The next friend of the child when the child is a  
50 minor;

51 (7) By the child in his own right at any time after the  
52 child's eighteenth birthday but prior to the child's  
53 twenty-first birthday; or

54 (8) A man purporting to be the father of a child born  
55 out of wedlock, when there has been no prior judicial  
56 determination of paternity.

57 (f) Blood or tissue samples taken pursuant to the  
58 provisions of this article may be ordered to be taken in  
59 such locations as may be convenient for the parties so  
60 long as the integrity of the chain of custody of the sam-  
61 ples can be preserved.

62 (g) A person who has sexual intercourse in this state  
63 submits to the jurisdiction of the courts of this state for a  
64 proceeding brought under this article with respect to a  
65 child who may have been conceived by that act of inter-  
66 course. Service of process may be perfected according to  
67 the rules of civil procedure.

68 (h) When the person against whom the proceeding is  
69 brought has failed to plead or otherwise defend the action  
70 after proper service has been obtained, judgment by de-  
71 fault shall be issued by the court as provided by the rules  
72 of civil procedure.

**§48A-6-3. Medical testing procedures to aid in the determina-  
tion of paternity.**

1 (a) The court may, on its own motion, or shall upon  
2 the motion of any party, order the mother, her child and  
3 the man to submit to blood tests or tissue tests to aid the  
4 court in proving or disproving paternity. Such motion  
5 may be made, upon ten days' written notice to the mother  
6 and alleged father, without the necessity of filing a com-  
7 plaint. When the tests are ordered, the court shall direct  
8 that the inherited characteristics, including, but not limited

9 to, blood types be determined by appropriate testing pro-  
10 cedures at a hospital, independent medical institution or  
11 independent medical laboratory duly licensed under the  
12 laws of this state, or any other state, and shall appoint an  
13 expert qualified as an examiner of genetic markers to  
14 analyze and interpret the results and to report to the court.  
15 The court shall consider the results as follows:

16 (1) Blood or tissue test results which exclude the man  
17 as the father of the child are admissible and shall be clear  
18 and convincing evidence of nonpaternity and the court  
19 shall, upon considering such evidence, dismiss the action.

20 (2) Blood or tissue test results which show a statistical  
21 probability of paternity of less than ninety-eight percent  
22 are admissible and shall be weighed along with other evi-  
23 dence of the defendant's paternity.

24 (3) Undisputed blood or tissue test results which show  
25 a statistical probability of paternity of more than  
26 ninety-eight percent shall, when filed with the court, legal-  
27 ly establish the man as the father of the child for all pur-  
28 poses and child support may be established pursuant to  
29 the provisions of this chapter.

30 (4) When the defendant desires to challenge the re-  
31 sults of the blood or tissue tests or the expert's analysis of  
32 inherited characteristics, he shall file a written protest with  
33 the family law master or circuit court within thirty days of  
34 the filing of such test results and serve a copy of such  
35 protest upon the other party. The written protest shall be  
36 filed at least thirty days prior to any hearing involving the  
37 test results. The court, upon reasonable request of a party,  
38 shall order that additional tests be made by the same labo-  
39 ratory or another laboratory within thirty days of the entry  
40 of the order, at the expense of the party requesting addi-  
41 tional testing. When the results of the blood or tissue tests  
42 or the expert's analysis which show a statistical probability  
43 of paternity of more than ninety-eight percent are con-  
44 firmed by the additional testing, then the results are admis-  
45 sible evidence which is clear and convincing evidence of  
46 paternity. The admission of the evidence creates a pre-  
47 sumption that the defendant is the father.

48 (b) Documentation of the chain of custody of the

49 blood or tissue specimens is competent evidence to estab-  
50 lish the chain of custody. A verified expert's report shall  
51 be admitted at trial unless a challenge to the testing proce-  
52 dures or a challenge to the results of test analysis has been  
53 made before trial. The costs and expenses of making the  
54 tests shall be paid by the parties in proportions and at  
55 times determined by the court.

56 (c) When a blood test is ordered pursuant to this  
57 section, the moving party shall initially bear all costs asso-  
58 ciated with the blood test unless that party is determined  
59 by the court to be financially unable to pay those costs.  
60 This determination shall be made following the filing of  
61 an affidavit pursuant to section one, article two, chapter  
62 fifty-nine of this code. When the court finds that the mov-  
63 ing party is unable to bear that cost, the cost shall be borne  
64 by the state of West Virginia. Following the finding that a  
65 person is the father based on the results of a blood test  
66 ordered pursuant to this section, the court shall order that  
67 the father be ordered to reimburse the moving party for  
68 the costs of the blood tests unless the court determines,  
69 based upon the factors set forth in this section, that the  
70 father is financially unable to pay those costs.

**§48A-6-4. Establishment of paternity and duty of support.**

1 (a) When the defendant, by verified responsive  
2 pleading, admits that the man is the father of the child and  
3 owes a duty of support, or if after a trial on the merits, the  
4 court shall find, by clear and convincing evidence that the  
5 man is the father of the child, the court shall order support  
6 in accordance with the provisions of this section.

7 (b) The court shall give full faith and credit to a de-  
8 termination of paternity made by any other state, based  
9 on the laws of that state, whether established through vol-  
10 untary acknowledgment or through administrative or  
11 judicial process.

**§48A-6-5. Representation of parties.**

1 Notwithstanding any provision of this code to the  
2 contrary, no parent in any proceeding brought pursuant to  
3 this article may have counsel appointed for them accord-  
4 ing to section two, article twenty-one, chapter twenty-nine

5 of this code or otherwise receive legal services provided  
6 solely by the state in such action. The child support en-  
7 forcement division providing representation to the state of  
8 West Virginia shall solely represent the state of West Vir-  
9 ginia and does not provide any representation to any par-  
10 ty.

**§48A-6-6. Establishing paternity by acknowledgment of natu-  
ral father.**

1 (a) A written, notarized acknowledgment by both the  
2 man and woman that the man is the father of the named  
3 child legally establishes the man as the father of the child  
4 for all purposes and child support may be established  
5 under the provisions of this chapter. The acknowledg-  
6 ment of paternity is irrevocable from the time of execu-  
7 tion, unless a court of competent jurisdiction finds that  
8 such acknowledgment was obtained by fraud or duress.

9 (b) The written acknowledgment shall include:

10 (1) Filing instructions;

11 (2) The parents' social security numbers and address-  
12 es; and

13 (3) A statement regarding the rights and obligations  
14 of acknowledging paternity, including, but not limited to,  
15 the duty to support a child.

16 (c) Failure or refusal to include all information re-  
17 quired by subsection (b) of this section shall not affect the  
18 validity of the written acknowledgment, in the absence of a  
19 finding by a court of competent jurisdiction that the ac-  
20 knowledgment was obtained by fraud or duress.

21 (d) The original written acknowledgment should be  
22 filed with the state registrar of vital statistics. Upon receipt  
23 of any acknowledgment executed pursuant to this section,  
24 the registrar shall forward the copy of the acknowledg-  
25 ment to the child support enforcement division and the  
26 parents, if the address of the parents is known to the regis-  
27 trar. If a birth certificate for the child has been previously  
28 issued which is incorrect or incomplete, a new birth certifi-  
29 cate shall be issued.

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT**

**OF SUPPORT ACT.**

§48A-7-12. Child support enforcement division to represent the state.

§48A-7-36. Attorney for child support enforcement division to represent state.

**§48A-7-12. Child support enforcement division to represent the state.**

1           When this state is acting as an initiating state, any  
2 attorney employed by the child support enforcement  
3 division or agency or entity pursuant to article two of this  
4 chapter, represents the interest of the state and not the  
5 interest of any other party. The provision of services by  
6 an attorney under this chapter does not create an  
7 attorney-client relationship between the attorney and any  
8 other party. The child support enforcement division shall,  
9 at the time an application for child support services is  
10 made, inform the applicant that any attorney who provides  
11 services for the child support enforcement division is the  
12 attorney for the state of West Virginia and that the attor-  
13 ney providing those services does not provide legal repre-  
14 sentation to the applicant.

**§48A-7-36. Attorney for child support enforcement division to represent state.**

1           When this state is acting either as a rendering or a  
2 registering state, any attorney employed by the child  
3 support enforcement division or agency or entity pursuant  
4 to a contract with the division pursuant to article two of  
5 this chapter, represents the interest of the state and not the  
6 interest of any other party. The provision of services by  
7 an attorney under this chapter does not create an  
8 attorney-client relationship between the attorney and any  
9 other party.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;  
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

**ARTICLE 2. COSTS GENERALLY.**

**§59-2-1. Suits by persons financially unable to pay.**

1           (a) A natural person who is financially unable to pay  
2 the fees or costs attendant to the commencement, prosecu-

3 tion or defense of any civil action or proceeding, or an  
4 appeal therein, is permitted to proceed without prepay-  
5 ment in any court of this state, after filing with the court  
6 an affidavit that he or she is financially unable to pay the  
7 fees or costs or give security therefor.

8 (1) The clerk of the court and all other officers of the  
9 court shall issue and serve all process and perform all  
10 duties in such cases.

11 (2) Judgment may be rendered for costs at the con-  
12 clusion of the action, where otherwise authorized by law,  
13 and be taxable against a losing party who has not been  
14 determined to be financially unable to pay.

15 (3) Upon the filing of an affidavit in accordance with  
16 this subsection, seeking an appeal in a civil case from a  
17 circuit court to the supreme court of appeals, the supreme  
18 court of appeals may direct payment by the administrative  
19 office of the supreme court of appeals of the expenses of  
20 duplicating the record on appeal after it is transmitted by  
21 the clerk of the circuit court. The transcript of proceed-  
22 ings before the circuit court, if the petition for appeal is to  
23 be filed with the transcript, shall be provided by the court  
24 reporter without cost: *Provided*, That actual expenses of  
25 the court reporter for supplies used in preparing the tran-  
26 script may be paid when authorized by the director of the  
27 administrative office of the supreme court of appeals.

28 (b) The supreme court of appeals or the chief justice  
29 thereof shall establish and periodically review and update  
30 financial guidelines for determining the eligibility of civil  
31 litigants to proceed in forma pauperis.

32 (c) The supreme court of appeals shall adopt a finan-  
33 cial affidavit form for use by persons seeking a waiver of  
34 fees, costs or security pursuant to the provisions of this  
35 section. Copies of the form shall be available to the public  
36 in the offices of the clerk of any court of this state. The  
37 affidavit shall state the nature of the action, defense or  
38 appeal and the affiant's belief that he or she is entitled to  
39 redress. The form shall elicit information from the affiant  
40 which will enable the court in which it is filed to consider  
41 the following factors in determining whether the affiant is

42 financially unable to pay fees, costs or security:

43 (1) Current income prospects, taking into account  
44 seasonal variations in income;

45 (2) Liquid assets, assets which may provide collateral  
46 to obtain funds and other assets which may be liquidated  
47 to provide funds to pay fees, costs or security;

48 (3) Fixed debts and obligations, including federal,  
49 state and local taxes and medical expenses;

50 (4) Child care, transportation and other expenses  
51 necessary for employment;

52 (5) Age or physical infirmity of resident family  
53 members;

54 (6) Whether the person has paid or will pay counsel  
55 fees, or whether counsel will be provided by a private  
56 attorney on a contingent fee basis, an attorney pro bono, a  
57 legal services attorney, or some other attorney at no cost  
58 or a reduced cost to the affiant; and

59 (7) The consequences for the individual if a waiver of  
60 fees, costs or security is denied.

61 (d) When the information set forth in the affidavit or  
62 the evidence submitted in the action reveals that the person  
63 filing the affidavit is financially able to pay the fees and  
64 costs, the court or the family law master may order the  
65 person to pay the fees and costs in the action.

66 (e) No other party in any proceeding may initiate an  
67 inquiry by motion or other pleading or participate in any  
68 proceeding relevant to the issues raised pursuant to this  
69 section.

70 (f) The making of an affidavit subject to inquiry  
71 under this section does not in any event give rise to crimi-  
72 nal remedies against the affiant nor occasion any civil  
73 action against the affiant except for the recovery of costs  
74 as in any other case where costs may be recovered and the  
75 recovery of the value of services, if any, provided pursuant  
76 to this section. A person who has made an affidavit know-  
77 ing the contents thereof to be false may be prosecuted for  
78 false swearing as provided by law.



## CHAPTER 89

(Com. Sub. for H. B. 2376—By Delegates Linch, Kuhn and Collins)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to allowing school bus drivers to present their complaints directly to a magistrate without first presenting the complaint to the prosecuting attorney or other law-enforcement agency.

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

That article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine, to read as follows:

### **ARTICLE 12. SPECIAL STOPS REQUIRED.**

#### **§17C-12-9. School bus drivers may present complaint directly to magistrate.**

1 Notwithstanding any other provision of this code to the  
2 contrary, a person authorized by law to operate a school  
3 bus, as that term is defined in section seven, article one,  
4 chapter seventeen-c, may submit a complaint directly to a  
5 magistrate without first presenting the complaint to the  
6 prosecuting attorney or other law-enforcement agency, if  
7 the complaint is based upon a violation of subsection (a),  
8 section seven, article twelve, chapter seventeen-c.

9 The complaint shall be in the form of a written  
10 statement of the essential facts constituting the offense  
11 charged. The complaint shall be presented to and sworn  
12 before a magistrate in the county where the offense is  
13 alleged to have occurred.

14 If it appears from the complaint, or from an affidavit

15 or affidavits filed with the complaint, that there is probable  
16 cause to believe that an offense has been committed and  
17 that the defendant committed it, a warrant for the arrest of  
18 the defendant shall be issued to any officer authorized by  
19 law to arrest persons charged with offenses against the  
20 state.

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## CHAPTER 90

(Com. Sub. for H. B. 2073—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)  
[By Request of the Executive]

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-d; to amend and reenact section twenty-six of said article; to amend article five of said chapter by adding thereto three new sections, designated sections fifteen-f, forty-two and forty-three; to amend and reenact section two, article five-a of said chapter; to amend and reenact sections one and one-a, article five, chapter eighteen-a of said code; to amend article two, chapter sixty-one of said code by adding thereto two new sections, designated sections nine-b and fourteen-f; and to amend and reenact section eleven-a, article seven of said chapter, all relating to education generally; the duty of the state board to report guidelines for productive and safe schools to the governor and the Legislature; requiring regional educational service agencies to submit a monthly report on turnaround time and be responsible for computer installation, maintenance and repair; the duty of the parent to affirm, upon registration, that their child is not currently under suspension or expulsion; the creation of a county-wide council on productive and safe schools; the duty of the county board of education to report the county-wide plans to

the state board of education; the involvement of the local school improvement councils in the productive and safe school plans; the authority of teachers and other school personnel to exclude students from the classroom or school bus; the implementation of the responsible students program and the peer mediation program by the county board of education; the suspension and expulsion, discretionary and mandatory, of pupils from the school or school bus; the due process requirements for suspension and expulsion; the authority of the county board of education to lessen mandatory periods of expulsion; the temporary removal of a disabled child from the school; the re-enrollment of students who have been expelled from school, whether such expulsion was in state or out of state; the penalties for malicious assault of a child near a school; the penalties for abduction of a child near a school; the possession of firearms or deadly weapons on premises of educational facilities.

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

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-d; that section twenty-six of said article be amended and reenacted; that article five of said chapter be amended by adding thereto three new sections, designated sections fifteen-f, forty-two and forty-three; that section two, article five-a of said chapter be amended and reenacted; that sections one and one-a, article five, chapter eighteen-a of said code be amended and reenacted; that article two, chapter sixty-one of said code be amended by adding thereto two new sections, designated sections nine-b and fourteen-f; and that section eleven-a, article seven of said chapter be amended and reenacted, all to read as follows:

**Chapter**

**18. Education.**

**18A. School Personnel.**

**61. Crimes and Their Punishment.**

**CHAPTER 18. EDUCATION.**

**Article**

- 2. **State Board of Education.**
- 5. **County Board of Education.**
- 5A. **Local School Involvement.**

**ARTICLE 2. STATE BOARD OF EDUCATION.**

- §18-2-5d. Duty of board to report guidelines for productive and safe schools.
- §18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

**§18-2-5d. Duty of board to report guidelines for productive and safe schools.**

1           On or before the first day of December, one thousand  
 2 nine hundred ninety-five, the board shall assess and report  
 3 to the governor and to the legislative oversight commis-  
 4 sion on education accountability the guidelines adopted  
 5 by the county boards of education, as described in section  
 6 forty-three, article five, chapter eighteen of this code. The  
 7 board shall report the estimated costs associated for alter-  
 8 native instructional proposals stated in such guidelines.  
 9 The board shall further incorporate its recommendations  
 10 for the use of the peer mediation program in cases involv-  
 11 ing school violence.

**§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.**

1           (a) In order to consolidate and administer more effec-  
 2 tively existing educational programs and services so indi-  
 3 vidual districts will have more discretionary moneys for  
 4 educational improvement and in order to equalize and  
 5 extend educational opportunities, the state board of educa-  
 6 tion shall establish multicounty regional educational ser-  
 7 vice agencies for the purpose of providing high quality,  
 8 cost effective educational programs and services to the  
 9 county school systems, and shall make such rules as may  
 10 be necessary for the effective administration and operation  
 11 of such agencies: *Provided*, That the legislative oversight  
 12 commission on education accountability shall commission  
 13 a comprehensive feasibility study of the regional educa-

14 tional service agencies which shall be completed and re-  
15 ported to the legislative oversight commission on educa-  
16 tion accountability no later than the tenth day of January,  
17 one thousand nine hundred ninety-five.

18 (b) In furtherance of these purposes, it is the duty of  
19 the board of directors of each regional educational ser-  
20 vice agency to continually explore possibilities for the  
21 delivery of services on a regional basis which will facilitate  
22 equality in the educational offerings among counties in its  
23 service area, permit the delivery of high quality education-  
24 al programs at a lower per student cost, strengthen the cost  
25 effectiveness of education funding resources, reduce ad-  
26 ministrative and/or operational costs, including the consol-  
27 idation of administrative, coordinating and other county  
28 level functions into region level functions, and promote  
29 the efficient administration and operation of the public  
30 school systems generally.

31 Technical, operational, programmatic or professional  
32 services would be among the types of services appropriate  
33 for delivery on a regional basis.

34 (c) In addition to performing the services and func-  
35 tions required by the provisions of this or any other sec-  
36 tion of this code, a regional educational service agency  
37 may implement regional programs and services by a  
38 majority vote of its board of directors. When said vote is  
39 not unanimous, the board of directors shall file a plan for  
40 the service or program delivery with the state board de-  
41 scribing the program or service, the manner of delivery  
42 and the projected savings and/or the improved quality of  
43 the program or service. The state board shall promulgate  
44 rules requiring a county board that declines to participate  
45 in such programs or services to show just cause for not  
46 participating and the estimated savings accruing to the  
47 county therefrom. If a county board fails to show that  
48 savings will accrue to the county or that the quality of the  
49 program will be significantly and positively affected as a  
50 result of its decision not to participate, the state board shall  
51 withhold from the county's foundation allowance for ad-

52 ministrative cost the lesser of the amount of the estimated  
53 savings or the allocation for the county's foundation al-  
54 lowance for administrative cost.

55 (d) The state board, in conjunction with the various  
56 regional educational service agencies, shall develop an  
57 effective model for the regional delivery of instruction in  
58 subjects where there exists low student enrollment or a  
59 shortage of certified teachers or where such delivery meth-  
60 od substantially improves the quality of an instructional  
61 program. Such model shall incorporate an interactive  
62 electronic classroom approach to instruction. To the ex-  
63 tent funds are appropriated or otherwise available, county  
64 boards or regional educational service agencies may adopt  
65 and utilize the model for the delivery of such instruction.

66 (e) Each regional educational service agency shall  
67 conduct a study setting forth how the following services  
68 and functions may be performed by the agency for public  
69 schools and school districts within the region without  
70 terminating the employment of personnel employed by  
71 school districts prior to the effective date of this subsec-  
72 tion: Accounting, purchasing, food service, transportation,  
73 delivery of high cost services to low incidence student  
74 populations, audiovisual material distribution, facilities  
75 planning, federal program coordination, personnel recruit-  
76 ing and an integrated regional computer information  
77 system. On or before the tenth day of January, one thou-  
78 sand nine hundred ninety, each regional educational ser-  
79 vice agency shall submit the study to the state board, to the  
80 standing committees on education and finance of the  
81 West Virginia Senate and House of Delegates and to the  
82 secretary of education and the arts: *Provided*, That in the  
83 event such study is implemented those individuals em-  
84 ployed prior to the effective date thereof shall not have  
85 their employment terminated as a result of the study.

86 (f) Each regional educational service agency shall  
87 commence implementation of a uniform integrated re-  
88 gional computer information system as recommended by  
89 the state board of education on or before the first day of

90 January, one thousand nine hundred ninety-one. Each  
91 county board of education shall use the computer infor-  
92 mation system for data collection and reporting to the  
93 state department of education beginning no later than the  
94 first day of July, one thousand nine hundred ninety-four.  
95 County boards of education shall bear the cost of and  
96 fully participate in the implementation of the system by:  
97 (1) Acquiring necessary, compatible equipment to partici-  
98 pate in the regional computer information system; or (2)  
99 following receipt of a waiver from the state superintendent,  
100 operating a comparable management information system  
101 at a lower cost which provides at least all uniform integrat-  
102 ed regional computer information system software mod-  
103 ules and allows on-line, interactive access for schools and  
104 the county board of education office onto the statewide  
105 communications network. All data formats shall be the  
106 same as for the uniform integrated regional information  
107 system and will reside at the regional computer. Any  
108 county granted a waiver shall receive periodic notification  
109 of any incompatibility or deficiency in its system. Contin-  
110 ued inability of any county to meet the above criteria  
111 shall, upon notification to the county no later than the first  
112 day of April, one thousand nine hundred ninety-five,  
113 require the county to use the uniform integrated regional  
114 computer information system no later than the first day of  
115 July, one thousand nine hundred ninety-five. No county  
116 shall expand any system either through the purchase of  
117 additional software or hardware that does not advance the  
118 goals and implementation of the uniform integrated re-  
119 gional computer information system as recommended by  
120 the state board: *Provided*, That nothing contained herein  
121 shall prevent the state superintendent from granting a  
122 one-year extension to those counties projected to have  
123 budget deficits for the school year beginning on the first  
124 day of July, one thousand nine hundred ninety-four.

125 (g) Each regional educational service agency shall  
126 submit a report and evaluation of the services provided  
127 and utilized by the schools within each respective region.  
128 Furthermore, each school shall submit an evaluation of the

129 services provided by the regional educational service  
 130 agency, which shall include an evaluation of the regional  
 131 educational service agency program, suggestions as to how  
 132 to improve utilization and the individual school's plan as  
 133 to development of new programs and enhancement of  
 134 existing programs. The reports shall be due by the first  
 135 day of January of each year commencing with the year  
 136 one thousand nine hundred ninety-one and shall be made  
 137 available to the state board of education, standing commit-  
 138 tees on education of the West Virginia Senate and House  
 139 of Delegates and to the secretary of education and the arts.

140 (h) A regional board shall be empowered to receive  
 141 and disburse funds from the state and federal govern-  
 142 ments, member counties, gifts and grants.

143 (i) Notwithstanding any other provision of the code to  
 144 the contrary, employees of regional educational service  
 145 agencies shall be reimbursed for travel, meals and lodging  
 146 at the same rate as state employees under the travel man-  
 147 agement office of the department of administration.

148 (j) Regional educational service agencies shall hold at  
 149 least one half of their regular meetings during hours other  
 150 than those of a regular school day.

151 (k) Regional educational service agencies shall serve  
 152 as the lead agency for computer installation, maintenance  
 153 and repair for the Basic Skills Computer Program. By the  
 154 first day of October, one thousand nine hundred  
 155 ninety-five, and quarterly thereafter, each regional educa-  
 156 tional service agency shall submit a status report on turn  
 157 around time for computer installation, maintenance and  
 158 repair to the state superintendent of schools who shall then  
 159 submit a report to the legislative oversight commission on  
 160 education accountability. The above-mentioned status  
 161 report for turn around time for computer installation,  
 162 maintenance and repair shall be based on the following  
 163 suggested time schedules:

164 Network File Servers. . . . . forty-eight hours



165	Local Area Networks . . . . .	forty-eight hours
166	West Virginia Education	
167	Information System . . . . .	twenty-four hours
168	Computer workstations . . . . .	three to five days
169	Printers . . . . .	three to five days
170	Other peripherals . . . . .	three to five days
171	Regional educational service agencies shall also submit an	
172	audit report to the legislative oversight commission on	
173	education accountability each year.	

#### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

§18-5-42. County-wide council on productive and safe schools.

§18-5-43. Duty of the county board of education to report the county-wide productive and safe school plans to the West Virginia board of education.

#### **§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.**

1 (a) Prior to the admission of a pupil to any public  
 2 school in West Virginia, the county superintendent shall  
 3 require the pupil's parent(s), guardian(s) or custodian(s) to  
 4 provide, upon registration, a sworn statement or affirma-  
 5 tion indicating whether the student is, at the time, under  
 6 suspension or expulsion from attendance at a private or  
 7 public school in West Virginia or another state. Any per-  
 8 son willfully making a materially false statement or affir-  
 9 mation shall be guilty of a misdemeanor, and upon con-  
 10 viction the penalty shall be the same as provided for "false  
 11 swearing" pursuant to section three, article five, chapter  
 12 sixty-one of this code.

13 (b) Notwithstanding any other provision of this code  
 14 to the contrary, any pupil who has been suspended or  
 15 expelled from school pursuant to section one-a, article  
 16 five, chapter eighteen-a of this code, or who has been

17 suspended or expelled from a public or private school in  
18 another state, due to actions described in section one-a,  
19 article five, chapter eighteen-a of this code, may not be  
20 admitted to any public school within the state of West  
21 Virginia until the period of suspension or expulsion has  
22 expired.

**§18-5-42. County-wide council on productive and safe schools.**

1 (a) On or before the thirtieth day of April, one thou-  
2 sand nine hundred ninety-five, each county shall develop  
3 a county-wide council on productive and safe schools,  
4 which shall be comprised of the following members:

5 (1) The county superintendent, who shall serve as the  
6 chair of the county-wide council on productive and safe  
7 schools;

8 (2) One representative from each local school im-  
9 provement council, to be elected by a majority vote of  
10 each local school improvement council;

11 (3) The prosecuting attorney or his or her designee;

12 (4) A representative of the department of health and  
13 human resources created pursuant to the provisions of  
14 section two, article one, chapter five-f of this code, to be  
15 appointed in a manner determined by the secretary of the  
16 department;

17 (5) A representative of the law-enforcement agencies  
18 situated in the county in which the school is situated to be  
19 recommended by the county sheriff;

20 (6) A representative of the county board of education  
21 for the county in which the school is situated to be ap-  
22 pointed by the president of the county board of educa-  
23 tion;

24 (7) The county board of education's supervisor of  
25 transportation; and

26 (8) A representative of the regional comprehensive  
27 behavioral health center as designated by the office of

28 behavioral health services in which the county school  
29 system is situated, to be appointed by the executive direc-  
30 tor of the center.

31 (9) When the members listed in subdivisions (1)  
32 through (8) do not include at least two classroom teachers,  
33 then the county superintendent shall appoint additional  
34 members so that at least two classroom teachers are mem-  
35 bers of the county-wide council.

36 (10) When the members listed in subdivisions (1)  
37 through (8) do not include at least two school principals,  
38 then the county superintendent shall appoint additional  
39 members so that at least two school principals are mem-  
40 bers of the county-wide council.

41 (b) The county superintendent shall call an organiza-  
42 tional meeting of the council as soon as practicable after  
43 the effective date of this section.

44 (c) On or before the first day of October, one thou-  
45 sand nine hundred ninety-five, the council shall compile  
46 the local school improvement council's guidelines devel-  
47 oped pursuant to subsection (f), section two, article five-a  
48 of this chapter and shall report and deliver such guidelines  
49 to the county board of education, along with the council's  
50 assessment and recommendations regarding the guide-  
51 lines. The council also shall provide a report of the esti-  
52 mated cost for any proposed alternative settings or pro-  
53 grams.

54 (d) No meetings of the county-wide council shall be  
55 held during instructional time.

**§18-5-43. Duty of the county board of education to report the  
county-wide productive and safe school plans to  
the West Virginia board of education.**

1 On or before the first day of November, one thousand  
2 nine hundred ninety-five, each county board of education  
3 shall deliver, together with its assessment, the recommen-  
4 dations and guidelines developed by the county-wide

5 council on productive and safe schools to the West Virgin-  
6 ia board of education.

**ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

**§18-5A-2. Local school improvement councils; election.**

1 (a) A local school improvement council shall be estab-  
2 lished at every school consisting of the following:

3 (1) The principal, who shall serve as an ex officio  
4 member of the council and be entitled to vote;

5 (2) Three teachers elected by the faculty senate of the  
6 school;

7 (3) Two school service personnel elected by the school  
8 service personnel employed at the school;

9 (4) Three parent(s), guardian(s) or custodian(s) of  
10 students enrolled at the school elected by the parent(s),  
11 guardian(s) or custodian(s) members of the school's par-  
12 ent teacher organization: *Provided*, That if there is no  
13 parent teacher organization, the parent(s), guardian(s) or  
14 custodian(s) members shall be elected by the parent(s),  
15 guardian(s) or custodian(s) of students enrolled at the  
16 school in such manner as may be determined by the prin-  
17 cipal;

18 (5) Two at-large members appointed by the principal,  
19 one of whom resides in the school's attendance area and  
20 one of whom represents business or industry, neither of  
21 whom is eligible for membership under any of the other  
22 elected classes of members;

23 (6) In the case of vocational-technical schools, the  
24 vocational director: *Provided*, That if there is no voca-  
25 tional director, then the principal may appoint no more  
26 than two additional representatives, one of whom repre-  
27 sents business and one of whom represents industry;

28 (7) In the case of a school with students in grade seven  
29 or higher, the student body president or other student in

30 grade seven or higher elected by the student body in those  
31 grades.

32 (b) The principal shall arrange for such elections to be  
33 held prior to the fifteenth day of September of each  
34 school year to elect a council and shall give notice of the  
35 elections at least one week prior to the elections being  
36 held. To the extent practicable, all elections to select  
37 council members shall be held within the same week.  
38 Parent(s), guardian(s) or custodian(s), teachers and service  
39 personnel elected to the council shall serve a two-year  
40 term, and elections shall be arranged in such a manner that  
41 no more than two teachers, no more than two parent(s),  
42 guardian(s) or custodian(s), and no more than one service  
43 person are elected in a given year. All other non-  
44 ex-officio members shall serve one-year terms. Council  
45 members may only be replaced upon death, resignation,  
46 failure to appear at three consecutive meetings of the  
47 council for which notice was given, or a change in person-  
48 al circumstances so that the person is no longer represen-  
49 tative of the class of members from which appointed. In  
50 the case of replacement, an election shall be held to elect  
51 another qualified person to serve the unexpired term of  
52 the person being replaced.

53 (c) As soon as practicable after the election of council  
54 members, and no later than the first day of October of  
55 each school year, the principal shall convene an organiza-  
56 tional meeting of the school improvement council. The  
57 principal shall notify each member in writing at least two  
58 employment days in advance of the organizational meet-  
59 ing. At this meeting, the principal shall provide each  
60 member with a copy of the current applicable section of  
61 this code and any state board rule or regulation promul-  
62 gated pursuant to the operation of these councils. The  
63 council shall elect from its membership a chair and two  
64 members to assist the chair in setting the agenda for each  
65 council meeting. The chair shall serve a term of one year  
66 and no person may serve as chair for more than two con-  
67 secutive terms. If the chair's position becomes vacant for

68 any reason, the principal shall call a meeting of the council  
69 to elect another qualified person to serve the unexpired  
70 term.

71 (d) Once elected, the chair is responsible for notifying  
72 each member of the school improvement council in writing  
73 two employment days in advance of any council meeting.  
74

75 School improvement councils shall meet at least once  
76 every nine weeks or equivalent grading period at the call  
77 of the chair or by three fourths of its members.

78 (e) School improvement councils shall be considered  
79 for the receipt of school of excellence awards under section  
80 three of this article and competitive grant awards  
81 under section twenty-nine, article two of this chapter, and  
82 may receive and expend such grants for the purposes  
83 provided in such section.

84 In any and all matters which may fall within the scope  
85 of both the school improvement councils and the school  
86 curriculum teams authorized in section five of this article,  
87 the school curriculum teams shall be deemed to have jurisdiction.  
88

89 In order to promote innovations and improvements in  
90 the environment for teaching and learning at the school, a  
91 school improvement council shall receive cooperation  
92 from the school in implementing policies and programs it  
93 may adopt to:

94 (1) Encourage the involvement of parent(s), guardian(s)  
95 or custodian(s) in their child's educational process  
96 and in the school;

97 (2) Encourage businesses to provide time for their  
98 employees who are parent(s), guardian(s) or custodian(s)  
99 to meet with teachers concerning their child's education;

100 (3) Encourage advice and suggestions from the business  
101 community;

102       (4) Encourage school volunteer programs and  
103 mentorship programs; and

104       (5) Foster utilization of the school facilities and  
105 grounds for public community activities.

106       (f) On or before the eighth day of June, one thousand  
107 nine hundred ninety-five, each local school improvement  
108 council shall develop and deliver a report to the  
109 county-wide council on productive and safe schools. The  
110 report shall include guidelines for the instruction and  
111 rehabilitation of pupils who have been excluded from the  
112 classroom, suspended from the school, or expelled from  
113 the school, the description and recommendation of  
114 in-school suspension programs, a description of possible  
115 alternative settings, schedules for instruction, and alterna-  
116 tive education programs and an implementation schedule  
117 for such guidelines. The guidelines shall include the fol-  
118 lowing:

119       (1) A system to provide for effective communication  
120 and coordination between school and local emergency  
121 services agencies;

122       (2) A preventive discipline program which may in-  
123 clude the responsible students program devised by the  
124 West Virginia board of education as adopted by the coun-  
125 ty board of education, pursuant to the provisions of sub-  
126 section (e), section one, article five, chapter eighteen-a of  
127 this code; and

128       (3) A student involvement program, which may in-  
129 clude the peer mediation program or programs devised by  
130 the West Virginia board of education as adopted by the  
131 county board of education, pursuant to the provisions of  
132 subsection (e), section one, article five, chapter eighteen-a  
133 of this code.

134       (g) The council may include in its report to the  
135 county-wide council on productive and safe schools provi-  
136 sions of the state board of education policy 4373, Student  
137 Code of Conduct, or any expansion of such policy which

138 increases the safety of students in schools in this state and  
139 is consistent with the policies and other laws of this state.

140 (h) Councils may adopt their own guidelines estab-  
141 lished under this section. In addition, the councils may  
142 adopt all or any part of the guidelines proposed by other  
143 local school improvement councils, as developed under  
144 this section, which are not inconsistent with the laws of this  
145 state, the policies of West Virginia board of education or  
146 the policies of the county board of education.

147 (i) The state board of education shall provide assis-  
148 tance to a local school improvement council upon receipt  
149 of a reasonable request for that assistance.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception.

**§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.**

1 (a) The teacher shall stand in the place of the parent  
2 (s), guardian(s) or custodian(s) in exercising authority  
3 over the school, and shall have control of all pupils en-  
4 rolled in the school from the time they reach the school  
5 until they have returned to their respective homes, except  
6 that where transportation of pupils is provided, the driver  
7 in charge of the school bus or other mode of transporta-  
8 tion shall exercise such authority and control over the  
9 children while they are in transit to and from the school.



10           (b) Subject to the rules of the state board of education,  
11 the teacher shall exclude from the school any pupil or  
12 pupils known to have or suspected of having any infec-  
13 tious disease, or any pupil or pupils who have been ex-  
14 posed to such disease, and shall immediately notify the  
15 proper health officer, or medical inspector, of such exclu-  
16 sion. Any pupil so excluded shall not be readmitted to the  
17 school until such pupil has complied with all the require-  
18 ments of the rules governing such cases, or has presented a  
19 certificate of health signed by the medical inspector or  
20 other proper health officer.

21           (c) The teacher shall have authority to exclude from  
22 his or her classroom or school bus, any pupil who is guilty  
23 of disorderly conduct; who in any manner interferes with  
24 an orderly educational process; who threatens, abuses, or  
25 otherwise intimidates or attempts to intimidate a school  
26 employee or a pupil; or who willfully disobeys a school  
27 employee; or who uses abusive or profane language di-  
28 rected at a school employee. Any pupil excluded shall be  
29 placed under the control of the principal of the school or  
30 a designee. The excluded pupil may be admitted to the  
31 classroom or school bus only when the principal, or a  
32 designee, provides written certification to the teacher that  
33 the pupil may be readmitted and specifies the specific type  
34 of disciplinary action, if any, which was taken. If the prin-  
35 cipal finds that disciplinary action is warranted, he shall  
36 provide written and, if possible, telephonic notice of such  
37 action to the parent(s), guardian(s) or custodian(s). When  
38 a teacher excludes the same pupil from his or her class-  
39 room or from a school bus three times in one school year,  
40 and after exhausting all reasonable methods of classroom  
41 discipline provided in the school discipline plan, the pupil  
42 may be readmitted to the teacher's classroom only after  
43 the principal, teacher and, if possible, the parent(s), guard-  
44 ian(s) or custodian(s) of the pupil have held a conference  
45 to discuss the pupil's disruptive behavior patterns, and the  
46 teacher and the principal agree on a course of discipline  
47 for the pupil and inform the parent(s), guardian(s) or  
48 custodian(s) of the course of action. Thereafter, if the

49 pupil's disruptive behavior persists, upon the teacher's  
50 request, the principal may, to the extent feasible, transfer  
51 the pupil to another setting.

52 (d) Corporal punishment of any pupil by a school  
53 employee is prohibited.

54 (e) The West Virginia board of education and county  
55 boards of education shall adopt policies consistent with the  
56 provisions of this section encouraging the use of alterna-  
57 tives to corporal punishment, providing for the training of  
58 school personnel in alternatives to corporal punishment  
59 and for the involvement of parent(s), guardian(s) or custo-  
60 dian(s) in the maintenance of school discipline. The  
61 county boards of education shall provide for the immedi-  
62 ate incorporation and implementation in the schools of a  
63 preventive discipline program, which may include the  
64 responsible student program, and a student involvement  
65 program, which may include the peer mediation program,  
66 devised by the West Virginia board of education. Each  
67 board may modify such programs to meet the particular  
68 needs of the county. The county boards shall provide  
69 in-service training for teachers and principals relating to  
70 assertive discipline procedures and conflict resolution. The  
71 county boards of education may also establish coopera-  
72 tives with private entities to provide middle educational  
73 programs, which may include programs focusing on de-  
74 veloping individual coping skills, conflict resolution, anger  
75 control, self-esteem issues, stress management, and deci-  
76 sion making for students and any other program related to  
77 preventive discipline.

78 (f) For the purpose of this section: (1) "Pupil or stu-  
79 dent" shall include any child, youth or adult who is en-  
80 rolled in any instructional program or activity conducted  
81 under board authorization and within the facilities of or in  
82 connection with any program under public school direc-  
83 tion: *Provided*, That in the case of adults the pupil-teacher  
84 relationship shall terminate when the pupil leaves the  
85 school or other place of instruction or activity; (2) "teach-  
86 er" shall mean all professional educators as defined in

87 section one, article one of this chapter and shall include  
88 the driver of a school bus or other mode of transportation.

89 (g) Teachers shall exercise such other authority and  
90 perform such other duties as may be prescribed for them  
91 by law or by the rules of the state board of education not  
92 inconsistent with the provisions of this chapter and chapter  
93 eighteen of this code.

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception.**

1 (a) A principal shall suspend a pupil from school or  
2 from transportation to or from the school on any school  
3 bus if the pupil, in the determination of the principal, after  
4 an informal hearing pursuant to subsection (d) of this  
5 section, has: (i) Violated the provisions of subsection (b),  
6 section fifteen, article two, chapter sixty-one of this code;  
7 (ii) violated the provisions of subsection (b), section  
8 eleven-a, article seven, chapter sixty-one of this code; or  
9 (iii) sold a narcotic drug, as defined in section one hundred  
10 one, article one, chapter sixty-a of this code, on the  
11 premises of an educational facility, at a school-sponsored  
12 function or on a school bus. If a student has been suspended  
13 pursuant to this subsection, the principal shall,  
14 within twenty-four hours, request that the county superintendent  
15 recommend to the county board of education that  
16 the student be expelled. Upon such a request by a principal,  
17 the county superintendent shall recommend to the  
18 county board of education that the student be expelled.  
19 Upon such recommendation, the county board of education  
20 shall conduct a hearing in accordance with subsections  
21 (e) and (f) of this section to determine if the student  
22 committed the alleged violation. If the county board of  
23 education finds that the student did commit the alleged

24 violation, the county board of education shall expel the  
25 student.

26 (b) A principal shall suspend a pupil from school, or  
27 from transportation to or from the school on any school  
28 bus, if the pupil, in the determination of the principal after  
29 an informal hearing pursuant to subsection (d) of this  
30 section, has: (i) Committed an act or engaged in conduct  
31 that would constitute a felony under the laws of this state if  
32 committed by an adult; or (ii) unlawfully possessed on the  
33 premises of an educational facility or at a school-spon-  
34 sored function a controlled substance governed by the  
35 Uniform Controlled Substances Act as described in chap-  
36 ter sixty-a of this code. If a student has been suspended  
37 pursuant to this subsection, the principal may request that  
38 the superintendent recommend to the county board of  
39 education that the student be expelled. Upon such recom-  
40 mendation by the county superintendent, the county  
41 school board may hold a hearing in accordance with the  
42 provisions of subsections (e) and (f) of this section to  
43 determine if the student committed the alleged violation.  
44 If the county board of education finds that the student did  
45 commit the alleged violation, the county board of educa-  
46 tion may expel the student.

47 (c) A principal may suspend a pupil from school, or  
48 transportation to or from the school on any school bus, if  
49 the pupil, in the determination of the principal after an  
50 informal hearing pursuant to subsection (d) of this sec-  
51 tion: (i) Threatened to injure, or in any manner injured, a  
52 pupil, teacher, administrator or other school personnel; (ii)  
53 willfully disobeyed a teacher; (iii) possessed alcohol in an  
54 educational facility, on school grounds, a school bus, or at  
55 any school-sponsored function; (iv) used profane lan-  
56 guage directed at a school employee or pupil; (v) inten-  
57 tionally defaced any school property; (vi) participated in  
58 any physical altercation with another person while under  
59 the authority of school personnel; or (vii) habitually vio-  
60 lated school rules or policies. If a student has been sus-  
61 pended pursuant to this subsection, the principal may

62 request that the superintendent recommend to the county  
63 board of education that the student be expelled. Upon  
64 such recommendation by the county superintendent, the  
65 county school board may hold a hearing in accordance  
66 with the provisions of subsections (e) and (f) of this sec-  
67 tion to determine if the student committed the alleged  
68 violation. If the county board of education finds that the  
69 student did commit the alleged violation, the county board  
70 of education may expel the student.

71 (d) The actions of any pupil which may be grounds  
72 for his or her suspension or expulsion under the provi-  
73 sions of this section shall be reported immediately to the  
74 principal of the school in which the pupil is enrolled. If  
75 the principal determines that the alleged actions of the  
76 pupil would be grounds for suspension, he or she shall  
77 conduct an informal hearing for the pupil immediately  
78 after the alleged actions have occurred. The hearing shall  
79 be held before the pupil is suspended unless the principal  
80 believes that the continued presence of the pupil in the  
81 school poses a continuing danger to persons or property  
82 or an ongoing threat of disrupting the academic process,  
83 in which case the pupil shall be suspended immediately  
84 and a hearing held as soon as practicable after the suspen-  
85 sion.

86 The pupil and his or her parent(s), guardian(s) or  
87 custodian(s), as the case may be, shall be given telephonic  
88 notice, if possible, of this informal hearing, which notice  
89 shall briefly state the grounds for suspension.

90 At the commencement of the informal hearing, the  
91 principal shall inquire of the pupil as to whether he or she  
92 admits or denies the charges. If the pupil does not admit  
93 the charges, he or she shall be given an explanation of the  
94 evidence possessed by the principal and an opportunity to  
95 present his or her version of the occurrence. At the con-  
96 clusion of the hearing or upon the failure of the noticed  
97 student to appear, the principal may suspend the pupil for  
98 a maximum of ten school days, including the time prior to  
99 the hearing, if any, for which the pupil has been excluded

100 from school.

101 The principal shall report any suspension the same  
102 day it has been decided upon, in writing, to the parent(s),  
103 guardian(s) or custodian(s) of the pupil by certified mail,  
104 return receipt requested, to the county superintendent and  
105 to the faculty senate of the school at the next meeting after  
106 the suspension.

107 (e) Prior to a hearing before the county board of  
108 education, the county board of education shall cause a  
109 written notice, which states the charges and the recom-  
110 mended disposition, to be served upon the pupil and his or  
111 her parent(s), guardian(s) or custodian(s), as the case may  
112 be. Such notice shall set forth a date and time at which  
113 such hearing shall be held, which date shall be within the  
114 ten-day period of suspension imposed by the principal.

115 (f) The board of education shall hold the scheduled  
116 hearing to determine if the pupil should be reinstated or  
117 should, or under the provisions of this section, must be  
118 expelled from school. At this hearing the pupil may be  
119 represented by counsel, may call his or her own witnesses  
120 to verify his or her version of the incident and may con-  
121 front and cross-examine witnesses supporting the charge  
122 against him or her. The hearing shall be recorded by  
123 mechanical means, unless recorded by a certified court  
124 reporter. The hearing may be postponed for good cause  
125 shown by the pupil but he or she shall remain under sus-  
126 pension until after the hearing. The state board of educa-  
127 tion may adopt other supplementary rules of procedure to  
128 be followed in these hearings. At the conclusion of the  
129 hearing the county board of education either shall order  
130 the pupil reinstated immediately or at the end of his or her  
131 initial suspension or shall suspend the pupil for a further  
132 designated number of days or shall expel the pupil from  
133 the public schools of such county.

134 (g) Pupils may be expelled pursuant to the provisions  
135 of this section for a period not to exceed one school year,  
136 except that if a pupil is determined to have violated the

137 provisions of subsection (a) of this section the pupil shall  
138 be expelled for a period of not less than twelve consecu-  
139 tive months: *Provided*, That the county superintendent  
140 may lessen the mandatory period of twelve consecutive  
141 months for the expulsion of the pupil if the circumstances  
142 of the pupil's case demonstrably warrant. Upon the reduc-  
143 tion of the period of expulsion, the county superintendent  
144 shall prepare a written statement setting forth the circum-  
145 stances of the pupil's case which warrant the reduction of  
146 the period of expulsion. The county superintendent shall  
147 submit the statement to the county board of education, the  
148 principal, the faculty senate and the local school improve-  
149 ment council for the school from which the pupil was  
150 expelled.

151 (h) Notwithstanding the preceding provisions of this  
152 section, if a pupil has prior to the actions complained of  
153 being classified as or is eligible to be classified as an ex-  
154 ceptional child, other than gifted, under the provisions of  
155 section one, article twenty, chapter eighteen of this code,  
156 special consideration shall be given to such pupil as here-  
157 inafter provided.

158 An exceptional child may not be suspended or ex-  
159 pelled for conduct that is the proximate result of the  
160 child's disability: *Provided*, That an exceptional child may  
161 be temporarily removed from school for his own protec-  
162 tion, the protection of school personnel, or the protection  
163 of other pupils.

164 An exceptional child may be temporarily removed,  
165 suspended or expelled for a period in excess of three  
166 consecutive school days or ten cumulative school days  
167 only when such student has committed an act involving  
168 the possession of a firearm, as defined in section two, arti-  
169 cle seven, chapter sixty-one of this code. Such child may  
170 be placed in an alternative educational setting by the indi-  
171 vidualized education program committee, as described in  
172 section one, article twenty, chapter eighteen of this code,  
173 for a period of not more than forty-five days. During this  
174 time, the parent(s), guardian(s) or custodian(s) may re-

175 quest a hearing to contest such placement of the child.  
176 Said child shall remain in the alternative placement until  
177 the hearing is held notwithstanding any provisions of the  
178 code to the contrary.

179 For purposes of this section, exceptional child does  
180 not include gifted children.

181 (i) In all hearings under this section, facts shall be  
182 found by a preponderance of the evidence.

183 (j) For purposes of this section, nothing herein shall  
184 be construed to be in conflict with the federal provisions  
185 of the Individuals with Disabilities Education Act of 1990  
186 (PL 101-476).

187 (k) Principals may exercise any other authority and  
188 perform any other duties to discipline pupils consistent  
189 with state and federal law, including policies of the state  
190 board of education.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### Article

- 2. Crimes Against the Person.
- 7. Dangerous Weapons.

### ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9b. Penalties for malicious or unlawful assault or assault of a child near a school.

§61-2-14f. Penalties for abduction of a child near a school.

#### **§61-2-9b. Penalties for malicious or unlawful assault or assault of a child near a school.**

1 Any person who, under the provisions of section nine  
2 of this article, maliciously assaults a child sixteen years of  
3 age or under within one thousand feet of a school is guilty  
4 of a felony, and, upon conviction, shall be punished by  
5 confinement in the penitentiary not less than five nor  
6 more than fifteen years.

**§61-2-14f. Penalties for abduction of a child near a school.**



1 Any person who, under the provisions of section four-  
2 teen of this article, abducts a child sixteen years of age or  
3 under within one thousand feet of a school is guilty of a  
4 felony, and, upon conviction, shall be punished by con-  
5 finement in the penitentiary not less than five nor more  
6 than fifteen years.

#### ARTICLE 7. DANGEROUS WEAPONS.

##### **§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver license; possessing deadly weapons on premises housing courts of law and in offices of family law master.**

1 (a) The Legislature hereby finds that the safety and  
2 welfare of the citizens of this state are inextricably depen-  
3 dent upon assurances of safety for children attending, and  
4 the persons employed by, schools in this state and for  
5 those persons employed with the judicial department of  
6 this state. It is for the purpose of providing such assuranc-  
7 es of safety, therefore, that subsections (b), (g) and (h) of  
8 this section are enacted as a reasonable regulation of the  
9 manner in which citizens may exercise those rights ac-  
10 corded to them pursuant to section twenty-two, article  
11 three of the Constitution of the state of West Virginia.

12 (b) (1) It shall be unlawful for any person to possess  
13 any firearm or any other deadly weapon on any school  
14 bus as defined in section one, article one, chapter  
15 seventeen-a of this code, or in or on any public or private  
16 primary or secondary education building, structure, facili-  
17 ty or grounds thereof, including any vocational education  
18 building, structure, facility or grounds thereof where sec-  
19 ondary vocational education programs are conducted or at  
20 any school-sponsored function.

21 (2) This subsection shall not apply to:

22 (A) A law-enforcement officer acting in his or her  
23 official capacity;

24 (B) A person specifically authorized by the board of

25 education of the county or principal of the school where  
26 the property is located to conduct programs with valid  
27 educational purposes;

28 (C) A person who, as otherwise permitted by the provi-  
29 sions of this article, possesses an unloaded firearm or  
30 deadly weapon in a motor vehicle, or leaves an unloaded  
31 firearm or deadly weapon in a locked motor vehicle;

32 (D) Programs or raffles conducted with the approval  
33 of the county board of education or school which include  
34 the display of unloaded firearms; or

35 (E) The official mascot of West Virginia University,  
36 commonly known as "The Mountaineer", acting in his or  
37 her official capacity.

38 (3) Any person violating this subsection shall be guilty  
39 of a felony, and, upon conviction thereof, shall be impris-  
40 oned in the penitentiary of this state for a definite term of  
41 years of not less than two years nor more than ten years,  
42 or fined not more than five thousand dollars, or both.

43 (c) It shall be the duty of the principal of each school  
44 subject to the authority of the state board of education to  
45 report any violation of subsection (b) of this section dis-  
46 covered by such principal to the state superintendent of  
47 schools within seventy-two hours after such violation oc-  
48 curs. The state board of education shall keep and main-  
49 tain such reports and may prescribe rules establishing  
50 policy and procedures for the making and delivery of the  
51 same as required by this subsection. In addition, it shall  
52 be the duty of the principal of each school subject to the  
53 authority of the state board of education to report any  
54 violation of subsection (b) of this section discovered by  
55 such principal to the appropriate local office of the divi-  
56 sion of public safety within seventy-two hours after such  
57 violation occurs.

58 (d) In addition to the methods of disposition provided  
59 by article five, chapter forty-nine of this code, any court  
60 which adjudicates a person who is fourteen years of age or

61 older as delinquent for a violation of subsection (b) of this  
62 section may, in its discretion, order the division of motor  
63 vehicles to suspend any driver's license or instruction per-  
64 mit issued to such person for such period of time as the  
65 court may deem appropriate, such suspension, however,  
66 not to extend beyond such person's nineteenth birthday;  
67 or, where such person has not been issued a driver's license  
68 or instruction permit by this state, order the division of  
69 motor vehicles to deny such person's application for the  
70 same for such period of time as the court may deem ap-  
71 propriate, such denial, however, not to extend beyond such  
72 person's nineteenth birthday. Any suspension ordered by  
73 the court pursuant to this subsection shall be effective  
74 upon the date of entry of such order. Where the court  
75 orders the suspension of a driver's license or instruction  
76 permit pursuant to this subsection, the court shall confis-  
77 cate any driver's license or instruction permit in the adju-  
78 dicated person's possession and forward the same to the  
79 division of motor vehicles.

80 (e) (1) If a person eighteen years of age or older is  
81 convicted of violating subsection (b) of this section, and if  
82 such person does not act to appeal such conviction within  
83 the time periods described in subdivision (2) of this sub-  
84 section, such person's license or privilege to operate a  
85 motor vehicle in this state shall be revoked in accordance  
86 with the provisions of this section.

87 (2) The clerk of the court in which the person is con-  
88 victed as described in subdivision (1) of this subsection  
89 shall forward to the commissioner a transcript of the judg-  
90 ment of conviction. If the conviction is the judgment of a  
91 magistrate court, the magistrate court clerk shall forward  
92 such transcript when the person convicted has not request-  
93 ed an appeal within twenty days of the sentencing for such  
94 conviction. If the conviction is the judgment of a circuit  
95 court, the circuit clerk shall forward such transcript when  
96 the person convicted has not filed a notice of intent to file

97 a petition for appeal or writ of error within thirty days  
98 after the judgment was entered.

99 (3) If, upon examination of the transcript of the judg-  
100 ment of conviction, the commissioner shall determine that  
101 the person was convicted as described in subdivision (1) of  
102 this subsection, the commissioner shall make and enter an  
103 order revoking such person's license or privilege to oper-  
104 ate a motor vehicle in this state for a period of one year,  
105 or, in the event the person is a student enrolled in a sec-  
106 ondary school, for a period of one year or until the per-  
107 son's twentieth birthday, whichever is the greater period.  
108 The order shall contain the reasons for the revocation and  
109 the revocation period. The order of suspension shall ad-  
110 vise the person that because of the receipt of the court's  
111 transcript, a presumption exists that the person named in  
112 the order of suspension is the same person named in the  
113 transcript. The commissioner may grant an administrative  
114 hearing which substantially complies with the require-  
115 ments of the provisions of section two, article five-a, chap-  
116 ter seventeen-c of this code upon a preliminary showing  
117 that a possibility exists that the person named in the notice  
118 of conviction is not the same person whose license is being  
119 suspended. Such request for hearing shall be made within  
120 ten days after receipt of a copy of the order of suspension.  
121 The sole purpose of this hearing shall be for the person  
122 requesting the hearing to present evidence that he or she is  
123 not the person named in the notice. In the event the com-  
124 missioner grants an administrative hearing, the commis-  
125 sioner shall stay the license suspension pending the com-  
126 missioner's order resulting from the hearing.

127 (4) For the purposes of this subsection, a person is  
128 convicted when such person enters a plea of guilty or is  
129 found guilty by a court or jury.

130 (f) (1) It shall be unlawful for any parent(s), guard-  
131 ian(s) or custodian(s) of a person less than eighteen years  
132 of age who knows that said person is in violation of sub-

133 section (b) of this section, or who has reasonable cause to  
134 believe that said person's violation of said subsection is  
135 imminent, to fail to immediately report such knowledge or  
136 belief to the appropriate school or law-enforcement offi-  
137 cials.

138 (2) Any person violating this subsection shall be guilty  
139 of a misdemeanor, and, upon conviction thereof, shall be  
140 fined not more than one thousand dollars, or shall be  
141 confined in jail not more than one year, or both.

142 (g) (1) It shall be unlawful for any person to possess  
143 any firearm or any other deadly weapon on any premises  
144 which houses a court of law or in the offices of a family  
145 law master.

146 (2) This subsection shall not apply to:

147 (A) A law-enforcement officer acting in his or her  
148 official capacity; and

149 (B) A person exempted from the provisions of this  
150 subsection by order of record entered by a court with  
151 jurisdiction over such premises or offices.

152 (3) Any person violating this subsection shall be guilty  
153 of a misdemeanor, and, upon conviction thereof, shall be  
154 fined not more than one thousand dollars, or shall be  
155 confined in jail not more than one year, or both.

156 (h) (1) It shall be unlawful for any person to possess  
157 any firearm or any other deadly weapon on any premises  
158 which houses a court of law or in the offices of a family  
159 law master with the intent to commit a crime.

160 (2) Any person violating this subsection shall be guilty  
161 of a felony, and, upon conviction thereof, shall be impris-  
162 oned in the penitentiary of this state for a definite term of  
163 years of not less than two years nor more than ten years,  
164 or fined not more than five thousand dollars, or both.

165 (i) Nothing in this section may be construed to be in  
166 conflict with the provisions of federal law.

# CHAPTER 91

(S. B. 237—By Senators Jackson, Miller, Blatnik, Grubb,  
Schoonover, Oliverio, Plymale and Helmick)

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[Passed March 2, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section five, article five-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-c, three and five, article twenty of said chapter, all relating to extending the deadlines for plans for inclusion; and the requirements as to the assistance, training and information to be provided to the affected classroom teacher.

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

That section five, article five-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-c, three and five, article twenty of said chapter be amended and reenacted, all to read as follows:

## **ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

### **§18-5A-5. Public school faculty senates established; election of officers; powers and duties.**

1 (a) There is established at every public school in this  
 2 state a faculty senate which shall be comprised of all per-  
 3 manent, full-time professional educators employed at the  
 4 school who shall all be voting members. Professional  
 5 educators as used in this section means professional edu-  
 6 cators as defined in chapter eighteen-a of this code. A  
 7 quorum of more than one half of the voting members of  
 8 the faculty shall be present at any meeting of the faculty  
 9 senate at which official business is conducted. Prior to the  
 10 beginning of the instructional term each year, but within  
 11 the employment term, the principal shall convene a meet-  
 12 ing of the faculty senate to elect a chair, vice chair and  
 13 secretary and discuss matters relevant to the beginning of  
 14 the school year. The vice chair shall preside at meetings  
 15 when the chair is absent. Meetings of the faculty senate

16 shall be held on a regular basis as determined by a sched-  
17 ule approved by the faculty senate and amended from  
18 time to time if needed. Emergency meetings may be held  
19 at the call of the chair or a majority of the voting members  
20 by petition submitted to the chair and vice chair. An  
21 agenda of matters to be considered at a scheduled meeting  
22 of the faculty senate shall be available to the members at  
23 least two employment days prior to the meeting, and in the  
24 case of emergency meetings, as soon as possible prior to  
25 the meeting. The chair of the faculty senate may appoint  
26 such committees as may be desirable to study and submit  
27 recommendations to the full faculty senate, but the acts of  
28 the faculty senate shall be voted upon by the full body.

29 (b) In addition to any other powers and duties con-  
30 ferred by law, or authorized by policies adopted by the  
31 state or county board of education or bylaws which may  
32 be adopted by the faculty senate not inconsistent with law,  
33 the powers and duties listed in this subsection are specifi-  
34 cally reserved for the faculty senate. The intent of these  
35 provisions is neither to restrict nor to require the activities  
36 of every faculty senate to the enumerated items except as  
37 otherwise stated. Each faculty senate shall organize its  
38 activities as it deems most effective and efficient based on  
39 school size, departmental structure and other relevant  
40 factors.

41 (1) Each faculty senate shall control funds allocated to  
42 the school from legislative appropriations pursuant to  
43 section nine, article nine-a of this chapter. From such  
44 funds, each classroom teacher and librarian shall be allot-  
45 ted fifty dollars for expenditure during the instructional  
46 year for academic materials, supplies or equipment which  
47 in the judgment of the teacher or librarian will assist him  
48 or her in providing instruction in his or her assigned aca-  
49 demic subjects, or shall be returned to the faculty senate:  
50 *Provided*, That nothing contained herein shall prohibit  
51 such funds from being used for programs and materials  
52 that, in the opinion of the teacher, enhance student behav-  
53 ior, increase academic achievement, improve self-esteem  
54 and address the problems of students at-risk. The remain-  
55 der of funds shall be expended for academic materials,  
56 supplies or equipment in accordance with a budget ap-

57 proved by the faculty senate. Notwithstanding any other  
58 provisions of the law to the contrary, funds not expended  
59 in one school year shall be available for expenditure in the  
60 next school year: *Provided, however,* That the amount of  
61 county funds budgeted in a fiscal year shall not be re-  
62 duced throughout the year as a result of the faculty appro-  
63 priations in the same fiscal year for such materials, sup-  
64 plies and equipment. Accounts shall be maintained of the  
65 allocations and expenditures of such funds for the pur-  
66 pose of financial audit. Academic materials, supplies or  
67 equipment shall be interpreted broadly, but shall not in-  
68 clude materials, supplies or equipment which will be used  
69 in or connected with interscholastic athletic events.

70 (2) A faculty senate may establish a process for facul-  
71 ty members to interview new prospective professional  
72 educators and paraprofessional employees at the school  
73 and submit recommendations regarding employment to  
74 the principal, who may also make independent recommen-  
75 dations, for submission to the county superintendent:  
76 *Provided,* That such process must permit the timely em-  
77 ployment of persons to perform necessary duties.

78 (3) A faculty senate may nominate teachers for recog-  
79 nition as outstanding teachers under state and local teacher  
80 recognition programs and other personnel at the school,  
81 including parents, for recognition under other appropriate  
82 recognition programs and may establish such programs  
83 for operation at the school.

84 (4) A faculty senate may submit recommendations to  
85 the principal regarding the assignment scheduling of sec-  
86 retaries, clerks, aides and paraprofessionals at the school.

87 (5) A faculty senate may submit recommendations to  
88 the principal regarding establishment of the master curric-  
89 ulum schedule for the next ensuing school year.

90 (6) A faculty senate may establish a process for the  
91 review and comment on sabbatical leave requests submit-  
92 ted by employees at the school pursuant to section eleven,  
93 article two of this chapter.

94 (7) Each faculty senate shall elect three faculty repre-



95 sentatives to the local school improvement council estab-  
96 lished pursuant to section two of this article.

97 (8) Each faculty senate may nominate a member for  
98 election to the county staff development council pursuant  
99 to section eight, article three, chapter eighteen-a of this  
100 code.

101 (9) Each faculty senate shall have an opportunity to  
102 make recommendations on the selection of faculty to  
103 serve as mentors for beginning teachers under beginning  
104 teacher internship programs at the school.

105 (10) A faculty senate may solicit, accept and expend  
106 any grants, gifts, bequests, donations and any other funds  
107 made available to the faculty senate: *Provided*, That the  
108 faculty senate shall select a member who shall have the  
109 duty of maintaining a record of all funds received and  
110 expended by the faculty senate, which record shall be kept  
111 in the school office and shall be subject to normal audit-  
112 ing procedures.

113 (11) On or after the first day of January, one thousand  
114 nine hundred ninety-two, any faculty senate may review  
115 the evaluation procedure as conducted in their school to  
116 ascertain whether such evaluations were conducted in  
117 accordance with the written system required pursuant to  
118 section twelve, article two, chapter eighteen-a of this code  
119 and the general intent of this Legislature regarding mean-  
120 ingful performance evaluations of school personnel. If a  
121 majority of members of the faculty senate determine that  
122 such evaluations were not so conducted, they shall submit  
123 a report in writing to the state board of education: *Provid-*  
124 *ed*, That nothing herein shall create any new right of ac-  
125 cess to or review of any individual's evaluations.

126 (12) Each faculty senate shall be provided by its local  
127 board of education at least a two-hour per month block of  
128 noninstructional time within the school day: *Provided*,  
129 That any such designated day shall constitute a full in-  
130 structional day. This time may be utilized and determined  
131 at the local school level and shall include, but not be limit-  
132 ed to, faculty senate meetings.

133 (13) Each faculty senate shall develop a strategic plan  
134 to manage the integration of special needs students into  
135 the regular classroom at their respective schools and sub-  
136 mit said strategic plan to the superintendent of the county  
137 board of education by the thirtieth day of June, one thou-  
138 sand nine hundred ninety-five, and periodically thereafter  
139 pursuant to guidelines developed by the state department  
140 of education. Each faculty senate shall encourage the  
141 participation of local school improvement councils, par-  
142 ents and the community at large in the development of the  
143 strategic plan for each school.

144 Each strategic plan developed by the faculty senate  
145 shall include at least: (A) A mission statement; (B) goals;  
146 (C) needs; (D) objectives and activities to implement plans  
147 relating to each goal; (E) work in progress to implement  
148 the strategic plan; (F) guidelines for the placement of  
149 additional staff into integrated classrooms to meet the  
150 needs of exceptional needs students without diminishing  
151 the services rendered to the other students in integrated  
152 classrooms; (G) guidelines for implementation of collabo-  
153 rative planning and instruction; and (H) training for all  
154 regular classroom teachers who serve students with excep-  
155 tional needs in integrated classrooms.

#### **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

##### **§18-20-1c. Integrated classrooms serving students with excep- tional needs; and requirements as to the assis- tance, training and information to be provided to the affected classroom teacher.**

1 The regular classroom teacher shall be entitled to the  
2 following when placing a student with exceptional needs  
3 into an integrated classroom when the student's individual-  
4 ized education program requires an adjustment in either  
5 the curriculum, instruction or service to be provided by  
6 the regular classroom teacher:

7 (1) Training provided pursuant to the integrated class-  
8 room program and additional individualized training,  
9 pursuant to the rules developed by the state board of edu-  
10 cation, if requested by the regular classroom teacher to  
11 prepare the teacher to meet the exceptional needs of indi-

12 vidual students. Whenever possible, such training shall be  
13 provided prior to such placement. Where prior training is  
14 not possible, such training shall be commenced no later  
15 than ten days following the placement of said student into  
16 the regular classroom. Unavoidable delays in the provi-  
17 sion of training shall not result in the exclusion of a spe-  
18 cial needs student from any class in the event said training  
19 cannot be provided in said ten days;

20 (2) A signed copy of the individualized education  
21 program for the special education student prior to the  
22 placement of the student into the regular classroom. The  
23 receiving and referring teachers shall participate in the  
24 development of that student's individualized education  
25 program and shall also sign the individualized education  
26 program as developed. In all cases the teacher shall receive  
27 a copy of the individualized education program for the  
28 special education student prior to or at the time of the  
29 placement of the student into the regular classroom. Any  
30 teacher disagreeing with the individualized education  
31 program committee's recommendation shall file a written  
32 explanation outlining his or her disagreement or recom-  
33 mendation;

34 (3) Participation by referring teachers in all eligibility  
35 committees and participation by referring and receiving  
36 teachers in all individualized education program commit-  
37 tees which involve possible placement of an exceptional  
38 student in an integrated classroom;

39 (4) Opportunity to reconvene the committee responsi-  
40 ble for the individualized education program of the stu-  
41 dent with special needs assigned to the regular classroom  
42 teacher. The meeting shall include all persons involved in  
43 a student's individualized education program and shall be  
44 held within twenty-one days of the time the request is  
45 made;

46 (5) Assistance from persons trained or certified to deal  
47 with a student's exceptional needs whenever such assis-  
48 tance is part of the student's individualized education pro-  
49 gram as necessary to promote accomplishment of the  
50 program's goals and objectives: *Provided*, That aides in  
51 the area of special education cannot be reassigned to more

52 than one school without the employee's consent.

**§18-20-3. County reports.**

1 Each county shall, after having received from the  
2 faculty senates in its schools the strategic plans mandated  
3 by subsection (13), section five, article five-a of this chap-  
4 ter, develop a county strategic plan to manage the integra-  
5 tion of special needs students into the regular classroom  
6 and submit said strategic plan to the state superintendent  
7 of schools prior to the first day of October, one thousand  
8 nine hundred ninety-five.

9 Counties maintaining special schools, classes, regular  
10 class programs, integrated classroom strategic plans and  
11 training related to integrated education, basic and special-  
12 ized health care procedures including the administration  
13 of medications, home-teaching or visiting services and  
14 receiving or requesting reimbursement from state appro-  
15 priated funds shall file with the state superintendent of  
16 schools on forms supplied by his office, applications,  
17 annual reports and such other reports as he may require.

**§18-20-5. Powers and duties of state superintendent.**

1 The state superintendent of schools shall organize,  
2 promote, administer and be responsible for:

3 (1) Stimulating and assisting county boards of educa-  
4 tion in establishing, organizing and maintaining special  
5 schools, classes, regular class programs, home-teaching  
6 and visiting-teacher services.

7 (2) Cooperating with all other public and private agen-  
8 cies engaged in relieving, caring for, curing, educating and  
9 rehabilitating exceptional children, and in helping coordi-  
10 nate the services of such agencies.

11 (3) Preparing the necessary rules, regulations, formula  
12 for distribution of available appropriated funds, reporting  
13 forms and procedures necessary to define minimum stan-  
14 dards in providing suitable facilities for education of ex-  
15 ceptional children and ensuring the employment, certifica-  
16 tion and approval of qualified teachers and therapists  
17 subject to approval by the state board of education.

18 (4) Receiving from county boards of education their  
19 applications, annual reports and claims for reimbursement  
20 from such moneys as are appropriated by the Legislature,  
21 auditing such claims and preparing vouchers to reimburse  
22 said counties the amounts reimbursable to them.

23 (5) Assuring that all exceptional children in the state,  
24 including children in mental health facilities, residential  
25 institutions, private schools and correctional facilities as  
26 provided in section thirteen-f, article two of this chapter  
27 receive an education in accordance with state and federal  
28 laws: *Provided*, That the state superintendent shall also  
29 assure that adults in correctional facilities and regional  
30 jails shall receive an education to the extent funds are  
31 provided therefor.

32 (6) Performing such other duties and assuming such  
33 other responsibilities in connection with this program as  
34 may be needed.

35 (7) Receive the county plan for integrated classroom  
36 submitted by the county boards of education and submit a  
37 state plan, approved by the state board of education, to the  
38 legislative oversight commission on education account-  
39 ability no later than the first day of December, one thou-  
40 sand nine hundred ninety-five.

41 Nothing herein contained shall be construed to pre-  
42 vent any county board of education from establishing and  
43 maintaining special schools, classes, regular class pro-  
44 grams, home-teaching or visiting-teacher services out of  
45 funds available from local revenue.

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## CHAPTER 92

(Com. Sub. for H. B. 2600—By Delegates Browning and Kiss)

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[Passed March 10, 1995; in effect from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact sections seven and nine, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to teachers' retirement systems; providing for reentry into the defined benefit plan; and authorizing a study of the feasibility of allowing members to make additional voluntary contributions to the teachers' defined benefit contribution retirement system.

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

That sections seven and nine, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers' retirement system.

§18-7B-9. Members' contributions; annuity account established.

**§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers' retirement system.**

1       Beginning the first day of July, one thousand nine  
 2       hundred ninety-one, the teachers' defined contribution  
 3       retirement system shall be the single retirement program  
 4       for all new employees whose employment commences on  
 5       or after that date. No additional new employees except as  
 6       may be provided herein may be admitted to the existing  
 7       retirement system. Members of the existing retirement  
 8       system whose employment continues beyond the first day  
 9       of July, one thousand nine hundred ninety-one, are not  
 10      affected by this article and shall continue to contribute  
 11      and participate in the existing system without change in  
 12      provisions or benefits.

13      Notwithstanding the provisions of section twenty-three,

14 article seven-a of this chapter, any employee whose em-  
15 ployment terminates after the thirtieth day of June, one  
16 thousand nine hundred ninety-one, who is later reem-  
17 ployed by an employer shall be eligible for membership  
18 only in the teachers' defined contribution system: *Provid-*  
19 *ed*, That if such reemployment with an existing employer  
20 occurs not more than six months after the employee's  
21 previous employment, he or she shall be entitled to read-  
22 mission to the existing retirement system in which he or  
23 she was originally a member: *Provided, however*, That if  
24 such employee has five or more years of credited service  
25 in the existing retirement system, he or she shall be enti-  
26 tled to readmission into the existing retirement system in  
27 which he or she was originally a member so long as he or  
28 she has not withdrawn his or her contributions from the  
29 existing retirement system: *Provided further*, That if such  
30 employee has withdrawn his or her contribution from the  
31 existing retirement system, then readmission shall not be  
32 permitted and the employee will be entitled only to the  
33 defined contribution system.

34 An employee whose employment with an employer  
35 was suspended or terminated while he or she served as an  
36 officer with a statewide professional teaching association is  
37 eligible for readmission to the existing retirement system  
38 in which he or she was a member. Any employee reem-  
39 ployed with an employer on or after the first day of July,  
40 one thousand nine hundred ninety-one, who had five or  
41 more years credited service in the teachers' defined benefit  
42 retirement system may elect readmission to the teachers'  
43 defined benefit retirement system in which he or she was  
44 originally a member. Any employee reemployed between  
45 the first day of July, one thousand nine hundred  
46 ninety-one, and the first day of July, one thousand nine  
47 hundred ninety-five, and who was required to participate  
48 in the teachers' defined contribution system but now elects,  
49 pursuant to the provisions of this section, readmission to  
50 the teachers' defined benefit retirement system shall pay  
51 an additional contribution to the teachers' defined benefit

52 retirement system equal to one and one-half percent of his  
53 or her annual gross compensation earned for each year he  
54 or she participated in the teachers' defined contribution  
55 system and shall transfer all member and employer contri-  
56 butions and investment earnings therefrom from the  
57 teacher defined contribution system to the teachers' de-  
58 fined benefit retirement system and shall receive service  
59 credit for the time the member participated in the defined  
60 contribution system as if that participation had been in the  
61 teachers' defined benefit retirement system. Any member  
62 making an election under the provisions of this section to  
63 reenter the teachers' defined benefit retirement system who  
64 is currently a member of the defined contribution retire-  
65 ment system must do so on or before the first day of Janu-  
66 ary, one thousand nine hundred ninety-six. Any other  
67 member reemployed must make the election as to the  
68 retirement system that he or she will be a member of at the  
69 time he or she is reemployed.

70 An employee whose employment with an employer or  
71 an existing employer is suspended as a result of an ap-  
72 proved leave of absence, approved maternity or paternity  
73 break in service, or any other approved break in service  
74 authorized by the board, is eligible for readmission to the  
75 existing retirement system in which he or she was a mem-  
76 ber.

77 In all cases where a question exists as to readmission to  
78 membership in the existing retirement system, the board  
79 shall decide the question.

**§18-7B-9. Members' contributions; annuity account estab-  
lished.**

1 Each employee who is a member of the defined con-  
2 tribution system shall contribute four and one-half percent  
3 of his or her gross compensation by salary reduction.  
4 Such salary reductions shall be made by the employer at  
5 the normal payroll intervals and shall be remitted within  
6 five working days to the private pension, insurance, annu-



7 ity, mutual fund, or other qualified company or compa-  
8 nies designated by the board to administer the day-to-day  
9 operations of the system.

10 All member contributions shall be immediately depos-  
11 ited to an account or accounts established in the name of  
12 the member and held in trust for the benefit of the mem-  
13 ber. An account agreement shall be issued to each mem-  
14 ber setting forth the terms and conditions under which  
15 contributions are received, and the investment and retire-  
16 ment options available to the member. The board shall  
17 promulgate by the thirtieth day of June, one thousand  
18 nine hundred ninety-one, pursuant to section six of this  
19 article, rules defining the minimum requirements for the  
20 investment and retirement options to be provided to the  
21 members.

22 The consolidated public employees retirement board  
23 shall study the feasibility of employees making personal  
24 contributions to the defined contribution system in addi-  
25 tion to those required by this section and the impact of the  
26 United States Internal Revenue Code of one thousand nine  
27 hundred eighty-six, as amended, upon such contributions.  
28 The results of said study and recommendations for legisla-  
29 tion to authorize such additional payments shall be pre-  
30 sented to the committee on pensions and retirement of  
31 each house of the Legislature on or before the first day of  
32 October, one thousand nine hundred ninety-six.

33 Such rules, to the extent not inconsistent with the ap-  
34 plicable provisions of the Internal Revenue Code of the  
35 United States, shall provide for varied retirement options  
36 including, but not limited to:

- 37 (1) Lump sum distributions;
- 38 (2) Joint and survivor annuities;
- 39 (3) Other annuity forms in the discretion of the board;
- 40 (4) Variable annuities which gradually increase  
41 monthly retirement payments: *Provided*, That said in-

42 creased payments are funded solely by the existing  
43 current value of the member's account at the time the  
44 member's retirement payments commencement and not, to  
45 any extent, in a manner which would require additional  
46 employer or employee contributions to any member's  
47 account after retirement or after the cessation of  
48 employment; and

49 (5) The instances in which, if any, distributions or loans  
50 can be made to members from their annuity account  
51 balances prior to having attained the age of fifty-five.

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## CHAPTER 93

(H. B. 2020—By Delegate Leach)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory school attendance and home instruction; and correcting an error made in the last amendment to this section.

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

That section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

#### **§18-8-1. Commencement and termination of compulsory school attendance; exemptions.**

1 Compulsory school attendance shall begin with the  
2 school year in which the sixth birthday is reached prior to  
3 the first day of September of such year or upon enrolling

4 in a publicly supported kindergarten program and  
5 continue to the sixteenth birthday.

6 Exemption from the foregoing requirements of  
7 compulsory public school attendance shall be made on  
8 behalf of any child for the following causes or conditions,  
9 each such cause or condition being subject to  
10 confirmation by the attendance authority of the county:

11 *Exemption A. Instruction in a private, parochial or*  
12 *other approved school.* — Such instruction shall be in a  
13 school approved by the county board of education and  
14 for a time equal to the school term of the county for the  
15 year. In all such schools it shall be the duty of the  
16 principal or other person in control, upon the request of  
17 the county superintendent of schools, to furnish to the  
18 county board of education such information and records  
19 as may be required with respect to attendance, instruction  
20 and progress of pupils enrolled between the entrance age  
21 and sixteen years;

22 *Exemption B. Instruction in home or other approved*  
23 *place.* — (a) Such instruction shall be in the home of such  
24 child or children or at some other place approved by the  
25 county board of education and for a time equal to the  
26 school term of the county. If such request for home  
27 instruction is denied by the county board of education,  
28 good and reasonable justification for such denial must be  
29 furnished in writing to the applicant by the county board  
30 of education. The instruction in such cases shall be  
31 conducted by a person or persons who, in the judgment of  
32 the county superintendent and county board of education,  
33 are qualified to give instruction in subjects required to be  
34 taught in the free elementary schools of the state. It shall  
35 be the duty of the person or persons providing the  
36 instruction, upon request of the county superintendent, to  
37 furnish to the county board of education such information  
38 and records as may be required from time to time with  
39 respect to attendance, instruction and progress of pupils  
40 enrolled between the entrance age and sixteen years  
41 receiving such instruction. The state department of

42 education shall develop guidelines for the homeschooling  
43 of special education students including alternative  
44 assessment measures to assure that satisfactory academic  
45 progress is achieved.

46 (b) Notwithstanding the provisions of subsection (a) of  
47 this Exemption B, the person or persons providing home  
48 instruction meet the requirements for Exemption B when  
49 the conditions of this subsection are met: *Provided*, That  
50 the county superintendent shall have the right to seek  
51 from the circuit court of the county an order denying the  
52 home instruction, which order may be granted upon a  
53 showing of clear and convincing evidence that the child  
54 will suffer educational neglect or that there are other  
55 compelling reasons to deny home instruction.

56 (1) The person or persons providing home instruction  
57 present to the county superintendent or county board of  
58 education a notice of intent to provide home instruction  
59 and the name and address of any child of compulsory  
60 school age to be instructed: *Provided*, That if a child is  
61 enrolled in a public school, notice of intent to provide  
62 home instruction shall be given at least two weeks prior to  
63 withdrawing such child from public school;

64 (2) The person or persons providing home instruction  
65 submit satisfactory evidence of: (i) A high school diploma  
66 or equivalent; and (ii) formal education at least four years  
67 higher than the most academically advanced child for  
68 whom the instruction will be provided;

69 (3) The person or persons providing home instruction  
70 outline a plan of instruction for the ensuing school year;  
71 and

72 (4) The person or persons providing home instruction  
73 shall annually obtain an academic assessment of the child  
74 for the previous school year. This shall be satisfied in one  
75 of the following ways:

76 (i) Any child receiving home instruction annually  
77 takes a standardized test, to be administered at a public

78 school in the county where the child resides, or  
79 administered by a licensed psychologist or other person  
80 authorized by the publisher of the test, or administered by  
81 a person authorized by the county superintendent or  
82 county board of education. The child shall be adminis-  
83 tered a test which has been normed by the test publisher  
84 on that child's age or grade group. In no event may the  
85 child's parent or legal guardian administer the test. Where  
86 a test is administered outside of a public school, the child's  
87 parent or legal guardian shall pay the cost of adminis-  
88 tering the test. The public school or other qualified person  
89 shall administer to children of compulsory school age the  
90 Comprehensive Test of Basic Skills, the California  
91 Achievement Test, the Stanford Achievement Test, or the  
92 Iowa Tests of Basic Skills, achievement and proficiency, or  
93 an individual standardized achievement test that is  
94 nationally normed and provides statistical results which  
95 test will be selected by the public school, or other person  
96 administering the test, in the subjects of language, reading,  
97 social studies, science and mathematics; and shall be  
98 administered under standardized conditions as set forth by  
99 the published instructions of the selected test. No test shall  
100 be administered if the publication date is more than ten  
101 years from the date of the administration of the test. Each  
102 child's test results shall be reported as a national percentile  
103 for each of the five subjects tested. Each child's test results  
104 shall be made available on or before the thirtieth day of  
105 June of the school year in which the test is to be  
106 administered to the person or persons providing home  
107 instruction, the child's parent or legal guardian and the  
108 county superintendent. Upon request of a duly authorized  
109 representative of the West Virginia department of edu-  
110 cation, each child's test results shall be furnished by the  
111 person or persons providing home instruction, or by the  
112 child's parent or legal guardian, to the state superintendent  
113 of schools. Upon notification of the mean of the child's  
114 test results for any single year has fallen below the fortieth  
115 percentile, the county board of education shall notify the  
116 parents or legal guardian of said child, in writing, of the  
117 services available to assist in the assessment of the child's

118 eligibility for special education services: *Provided*, That  
119 the identification of a disability shall not preclude the  
120 continuation of home schooling.

121       If the mean of the child's test results for any single  
122 year for language, reading, social studies, science and  
123 mathematics fall below the fortieth percentile on the  
124 selected tests, then the person or persons providing home  
125 instruction shall initiate a remedial program to foster  
126 achievement above that level and the student shall show  
127 improvement. If, after two calendar years, the mean of the  
128 child's test results fall below the fortieth percentile level,  
129 home instruction shall no longer satisfy the compulsory  
130 school attendance requirement exemption; or

131       (ii) The county superintendent is provided with a  
132 written narrative indicating that a portfolio of samples of  
133 the child's work has been reviewed and that the child's  
134 academic progress for the year is in accordance with the  
135 child's abilities. This narrative shall be prepared by a  
136 certified teacher or other person mutually agreed upon by  
137 the parent or legal guardian and the county super-  
138 intendent. It shall be submitted on or before the thirtieth  
139 day of June of the school year covered by the portfolio.  
140 The parent or legal guardian shall be responsible for  
141 payment of fees charged for the narrative; or

142       (iii) Evidence of an alternative academic assessment of  
143 the child's proficiency mutually agreed upon by the  
144 parent or legal guardian and the county superintendent is  
145 submitted to the county superintendent by the thirtieth  
146 day of June of the school year being assessed. The parent  
147 or legal guardian shall be responsible for payment of fees  
148 charged for the assessment.

149       The superintendent or a designee shall offer such  
150 assistance, including textbooks, other teaching materials  
151 and available resources, as may assist the person or  
152 persons providing home instruction subject to their  
153 availability. Any child receiving home instruction may,  
154 upon approval of the county board of education, exercise

155 the option to attend any class offered by the county board  
156 of education as the person or persons providing home  
157 instruction may deem appropriate subject to normal  
158 registration and attendance requirements;

159 *Exemption C. Physical or mental incapacity.* —  
160 Physical or mental incapacity shall consist of incapacity  
161 for school attendance and the performance of school  
162 work. In all cases of prolonged absence from school due  
163 to incapacity of the child to attend, the written statement of  
164 a licensed physician or authorized school nurse shall be  
165 required under the provisions of this article: *Provided,*  
166 That in all cases incapacity shall be narrowly defined and  
167 in no case shall the provisions of this article allow for the  
168 exclusion of the mentally, physically, emotionally or  
169 behaviorally handicapped child otherwise entitled to a free  
170 appropriate education;

171 *Exemption D. Residence more than two miles from*  
172 *school or school bus route.* — The distance of residence  
173 from a school, or school bus route providing free  
174 transportation, shall be reckoned by the shortest  
175 practicable road or path, which contemplates travel  
176 through fields by right of permission from the  
177 landholders or their agents. It shall be the duty of the  
178 county board of education, subject to written consent of  
179 landholders, or their agents, to provide and maintain safe  
180 foot bridges across streams off the public highways where  
181 such are required for the safety and welfare of pupils  
182 whose mode of travel from home to school or to school  
183 bus route must necessarily be other than along the public  
184 highway in order for said road or path to be not over two  
185 miles from home to school or to school bus providing free  
186 transportation;

187 *Exemption E. Hazardous conditions.* — Conditions  
188 rendering school attendance impossible or hazardous to  
189 the life, health or safety of the child;

190 *Exemption F. High school graduation.* — Such  
191 exemption shall consist of regular graduation from a

192 standard senior high school;

193 *Exemption G. Granting work permits.* — The county  
194 superintendent may, after due investigation, grant work  
195 permits to youths under sixteen years of age, subject to  
196 state and federal labor laws and regulations: *Provided,*  
197 That a work permit may not be granted on behalf of any  
198 youth who has not completed the eighth grade of school;

199 *Exemption H. Serious illness or death in the*  
200 *immediate family of the pupil.* — It is expected that the  
201 county attendance director will ascertain the facts in all  
202 cases of such absences about which information is  
203 inadequate and report same to the county superintendent  
204 of schools;

205 *Exemption I. Destitution in the home.* — Exemption  
206 based on a condition of extreme destitution in the home  
207 may be granted only upon the written recommendation of  
208 the county attendance director to the county superin-  
209 tendent following careful investigation of the case. A copy  
210 of the report confirming such condition and school  
211 exemption shall be placed with the county director of  
212 public assistance. This enactment contemplates every  
213 reasonable effort that may properly be taken on the part  
214 of both school and public assistance authorities for the  
215 relief of home conditions officially recognized as being so  
216 destitute as to deprive children of the privilege of school  
217 attendance. Exemption for this cause shall not be allowed  
218 when such destitution is relieved through public or private  
219 means;

220 *Exemption J. Church ordinances; observances of*  
221 *regular church ordinances.* — The county board of  
222 education may approve exemption for religious  
223 instruction upon written request of the person having legal  
224 or actual charge of a child or children: *Provided,* That  
225 such exemption shall be subject to the rules prescribed by  
226 the county superintendent and approved by the county  
227 board of education;

228 *Exemption K. Alternative private, parochial, church*



229 *or religious school instruction.* — In lieu of the provisions  
230 of Exemption A hereinabove, exemption shall be made  
231 for any child attending any private school, parochial  
232 school, church school, school operated by a religious  
233 order, or other nonpublic school which elects to comply  
234 with the provisions of article twenty-eight, chapter  
235 eighteen of the code of West Virginia.

236 The completion of the eighth grade shall not exempt any  
237 child under sixteen years of age from the compulsory  
238 attendance provision of this article: *Provided*, That there  
239 is a public high school or other public school of advanced  
240 grades or a school bus providing free transportation to  
241 any such school, the route of which is within two miles of  
242 the child's home by the shortest practicable route or path  
243 as hereinbefore specified under Exemption D of this  
244 section.

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## CHAPTER 94

(Com. Sub. for H. B. 2085—By Delegates Smiri, Johnson, Jenkins and Hubbard)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section eleven, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring school attendance as condition for licensing for privilege of operation of motor vehicle; and providing that enrollment in an institution of higher education qualifies a person under the age of eighteen to be issued a license or instruction permit.

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

That section eleven, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.****§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.**

1 (a) In accordance with the provisions of sections three  
2 and five, article two, chapter seventeen-b of this code, the  
3 division of motor vehicles shall deny a license or  
4 instruction permit for the operation of a motor vehicle to  
5 any person under the age of eighteen who does not at the  
6 time of application present a diploma or other certificate  
7 of graduation issued to the person from a secondary high  
8 school of this state or any other state or documentation  
9 that the person: (1) Is enrolled and making satisfactory  
10 progress in a course leading to a general educational  
11 development certificate (GED) from a state approved  
12 institution or organization, or has obtained such certifi-  
13 cate; (2) is enrolled in a secondary school of this state or  
14 any other state; (3) is excused from such requirement due  
15 to circumstances beyond his or her control; or (4) is  
16 enrolled in an institution of higher education as a full-time  
17 student in this state or any other state.

18 (b) The attendance director or chief administrator  
19 shall provide documentation of enrollment status on a  
20 form approved by the department of education to any  
21 student sixteen years of age or older upon request who is  
22 properly enrolled in a school under the jurisdiction of said  
23 official for presentation to the division of motor vehicles  
24 on application for or reinstatement of an instruction  
25 permit or license to operate a motor vehicle. Whenever a  
26 student sixteen years of age or older withdraws from  
27 school, except as provided in subsection (d) of this section,  
28 the attendance director or chief administrator shall notify  
29 the division of motor vehicles of such withdrawal not later  
30 than five days from the withdrawal date. Within five days  
31 of receipt of such notice, the division of motor vehicles  
32 shall send notice to the licensee that the license will be  
33 suspended under the provisions of section three, article  
34 two, chapter seventeen-b of this code on the thirtieth day  
35 following the date the notice was sent unless docu-

36 mentation of compliance with the provisions of this  
37 section is received by the division of motor vehicles before  
38 such time.

39 (c) For the purposes of this section, withdrawal shall  
40 be defined as more than ten consecutive or fifteen days  
41 total unexcused absences during a single semester. For the  
42 purposes of this section, suspension or expulsion from  
43 school or imprisonment in a jail or a penitentiary is not a  
44 circumstance beyond the control of such person.

45 (d) Whenever the withdrawal from school of such  
46 student, or such student's failure to enroll in a course  
47 leading to or to obtain a GED or high school diploma, is  
48 beyond the control of such student, or is for the purpose  
49 of transfer to another school as confirmed in writing by  
50 the student's parent or guardian, no such notice shall be  
51 sent to the division of motor vehicles to suspend the  
52 student's motor vehicle operator's license, and if the  
53 student is applying for a license, the attendance director or  
54 chief administrator shall provide the student with docu-  
55 mentation to present to the division of motor vehicles to  
56 excuse such student from the provisions of this section.  
57 The school district superintendent (or the appropriate  
58 school official of any private secondary school) with the  
59 assistance of the county attendance director and any other  
60 staff or school personnel shall be the sole judge of  
61 whether such withdrawal is due to circumstances beyond  
62 the control of such person.

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## CHAPTER 95

**(H. B. 2559—By Delegates J. Martin, Varner, Givens, Thompson,  
Sprouse and Calvert)**

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[Passed March 10, 1995; in effect July 1, 1995. Approved by the Governor.]

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AN ACT to amend and reenact section six-a, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring inter-governmental transfers from the West Virginia rehabilitation center special revenue account to the medical services trust fund.

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

That section six-a, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 10A. VOCATIONAL REHABILITATION.**

**§18-10A-6a. West Virginia rehabilitation center special account; expenditures.**

1           (a) There is hereby established in the state treasury a  
2 separate account which shall be designated the "West  
3 Virginia rehabilitation center special account." The  
4 director of vocational rehabilitation shall deposit promptly  
5 into the account all fees received for services provided by  
6 the West Virginia rehabilitation center from whatever  
7 source, including the federal government, state  
8 government or from other third-party payers or personal  
9 payments.

10          (b) A five-year West Virginia rehabilitation center  
11 long-range plan shall be developed by the director and  
12 shall be adopted by the secretary of education and the  
13 arts. The West Virginia rehabilitation center's long-range  
14 plan shall be updated and revised at least every two years.

15          (c) The director is authorized to expend the moneys  
16 deposited in the West Virginia rehabilitation center special  
17 account in accordance with federal laws and regulations,  
18 and with the laws of this state as is necessary for the  
19 development of the five-year center long-range plan and  
20 subsequent revisions: *Provided*, That all disproportionate  
21 share hospital funds received into the account shall be  
22 transferred by intergovernmental transfer to the medical  
23 services trust fund created in section two-a, article four-a,  
24 chapter nine of this code, except for funds appropriated

25 by the Legislature for other purposes within the annual  
26 budget bill.

27 (d) Except for disproportionate share hospital funds  
28 transferred pursuant to subsection (c) of this section, the  
29 director is authorized to expend the moneys deposited in  
30 the West Virginia rehabilitation center special account as  
31 provided in the center's long-range plan at such times and  
32 in such amounts as the director determines to be necessary  
33 for the purpose of maintaining or improving the delivery  
34 of rehabilitation center services or for the purpose of  
35 maintaining or obtaining certification at the rehabilitation  
36 center: *Provided*, That during the budget preparation  
37 period which occurs prior to the convening of the Legisla-  
38 ture, the director shall submit for inclusion in the execu-  
39 tive budget document and budget bill his recommended  
40 capital expenditures, recommended priorities, estimated  
41 costs and request for appropriations for maintaining or  
42 improving the delivery of vocational rehabilitation services  
43 and for maintaining or obtaining certification at the reha-  
44 bilitation center in such amounts as the director deter-  
45 mines to be necessary to implement the five-year rehabili-  
46 tation center long-range plan and any subsequent revi-  
47 sions thereto.

48 (e) The director shall make an annual report to the  
49 Legislature on the status of the rehabilitation center reve-  
50 nue account, including the previous year's expenditures  
51 and projected expenditures for the next year.

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## CHAPTER 96

(Com. Sub. for S. B. 53—By Senators Blatnik, Bowman, Oliverio, Dugan,  
Grubb, Helmick, Miller and White)

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[Passed March 7, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relat-

ing to education; higher education; creating the antihazing law; providing definitions; prohibiting hazing; providing for enforcement by institutions; and providing civil and criminal penalties.

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

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen, to read as follows:

**ARTICLE 16. ANTIHAZING LAW.**

§18-16-1. Short title.

§18-16-2. Definitions.

§18-16-3. Hazing prohibited.

§18-16-4. Enforcement by institution.

**§18-16-1. Short title.**

1 This article shall be known and may be cited as the  
2 "Antihazing Law".

**§18-16-2. Definitions.**

1 (a) "Hazing" means to cause any action or situation  
2 which recklessly or intentionally endangers the mental or  
3 physical health or safety of another person or persons or  
4 causes another person or persons to destroy or remove  
5 public or private property for the purpose of initiation or  
6 admission into or affiliation with, or as a condition for  
7 continued membership in, any organization operating  
8 under the sanction of or recognized as an organization by  
9 an institution of higher education. The term includes, but  
10 is not limited to, any brutality of a physical nature, such as  
11 whipping, beating, branding, forced consumption of any  
12 food, liquor, drug or other substance, or any other forced  
13 physical activity which could adversely affect the physical  
14 health and safety of the individual or individuals, and  
15 includes any activity which would subject the individual or  
16 individuals to extreme mental stress, such as sleep depriva-  
17 tion, forced exclusion from social contact, forced conduct  
18 which could result in extreme embarrassment, or any other  
19 forced activity which could adversely affect the mental

20 health or dignity of the individual or individuals, or any  
21 willful destruction or removal of public or private proper-  
22 ty: *Provided*, That the implied or expressed consent or  
23 willingness of a person or persons to hazing shall not be a  
24 defense under this section.

25 (b) "Institution of higher education" or "institution"  
26 means any public or private institution as defined in sec-  
27 tion two, article one, chapter eighteen-b of this code.

### §18-16-3. Hazing prohibited.

1 Any person or persons who causes hazing is guilty of  
2 a misdemeanor, and, upon conviction thereof, shall be  
3 fined not less than one hundred dollars nor more than one  
4 thousand dollars, or confined in a county or regional jail,  
5 not more than nine months, or both fined and imprisoned:  
6 *Provided*, That if the act would otherwise be deemed a  
7 felony as defined in this code, the person committing such  
8 act may be found guilty of such felony and be subject to  
9 penalties provided for such felony.

### §18-16-4. Enforcement by institution.

1 (a) *Antihazing policy*. — The university of West Vir-  
2 ginia board of trustees created pursuant to article two,  
3 chapter eighteen-b of this code and the board of directors  
4 of the state college system created pursuant to article three  
5 of said chapter shall by the first day of August, one thou-  
6 sand nine hundred ninety-five, promulgate guidelines for  
7 antihazing policies.

8 (b) *Enforcement and penalties*. —

9 (1) Each institution shall provide a program for the  
10 enforcement of such rules and shall adopt appropriate  
11 penalties for violations of such rules to be administered by  
12 the person or agency at the institution responsible for the  
13 sanctioning or recognition of such organizations.

14 (2) In the case of an organization which authorizes  
15 hazing in blatant disregard of such rules, penalties may  
16 also include rescision of permission for that organization to  
17 operate on campus property or to otherwise operate under  
18 the sanction or recognition of the institution.

19 (3) All penalties imposed under the authority of this  
 20 section shall be in addition to any penalty imposed for  
 21 violation of section three of this article or of any of the  
 22 criminal laws of this state or for violation of any other  
 23 institutional rule to which the violator may be subject.

24 (4) Rules adopted pursuant hereto apply to acts  
 25 conducted on or off campus whenever such acts are  
 26 deemed to constitute hazing.

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## CHAPTER 97

(Com. Sub. for H. B. 2050—By Delegate Kiss) (By Request)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article twenty-eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting private, parochial and religious schools who exclusively service special education students or students with learning disabilities from complying with the requirements that they administer only group tests and that achievement be above the fortieth percentile.

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

That section three, article twenty-eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**§18-28-3. Standardized testing requirements.**

1 (a) Each private, parochial or church school or school  
 2 of a religious order or other nonpublic school electing to  
 3 operate under this statute in lieu of the approval require-  
 4 ments set forth as part of section one, article eight, chapter  
 5 eighteen, exemption A shall administer on an annual basis  
 6 during each school year to every child enrolled therein  
 7 between the ages of seven and sixteen years either the



8 comprehensive test of basic skills, the California achieve-  
9 ment test, the Stanford achievement test or the Iowa tests  
10 of basic skills tests of achievement and proficiency, which  
11 test will be selected by the chief administrative officer of  
12 each school in the subjects of English, grammar, reading,  
13 social studies, science and mathematics; and shall be  
14 administered under standardized conditions as set forth by  
15 the published instructions of the selected test: *Provided*,  
16 That any private, parochial, church school, school of a  
17 religious order or other nonpublic school that exclusively  
18 teaches special education students or children with learn-  
19 ing disabilities shall not be required to comply with this  
20 subsection or subsection (d) of this section, but shall  
21 academically assess every child enrolled therein between  
22 the ages of seven and sixteen years on an annual basis  
23 during each school year by one or more of the following  
24 methods: (1) A standardized group achievement test; (2)  
25 a standardized individual achievement test; (3) a written  
26 narrative of an evaluation of a portfolio of samples of a  
27 child's work; (4) an alternative academic assessment of the  
28 child's proficiency as mutually agreed by the county  
29 superintendent, parent(s) or legal guardian(s) and the  
30 school.

31 (b) Each child's testing results and the school compos-  
32 ite test results shall be made available to such child's  
33 parents or legal guardians. Upon request of a duly  
34 authorized representative of the West Virginia department  
35 of education, the school composite test results shall be  
36 furnished by the school or by a parents organization  
37 composed of the parents or guardians of children enrolled  
38 in said school to the state superintendent of schools.

39 (c) Each school to which this article applies shall:

40 (1) Establish curriculum objectives, the attainment of  
41 which will enable students to develop the potential for  
42 becoming literate citizens.

43 (2) Provide an instructional program that will make  
44 possible the acquisition of competencies necessary to  
45 become a literate citizen.

46 (d) If such school composite test results for any single  
47 year for English, grammar, reading, social studies, science  
48 and mathematics fall below the fortieth percentile on the  
49 selected tests, the school as herein described shall initiate a  
50 remedial program to foster achievement above that level.  
51 If after two consecutive calendar years school composite  
52 test results are not above the fortieth percentile level,  
53 attendance at the school may no longer satisfy the  
54 compulsory school attendance requirement exemption of  
55 exemption K, section one, article eight, chapter eighteen,  
56 until such time as the percentile standards herein set forth  
57 are met.

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## CHAPTER 98

(H. B. 2700—By Delegate Prezioso)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend article three, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-d, relating to beginning principal internship programs.

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

That article three, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-d, to read as follows:

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**

**§18A-3-2d. Beginning principal internships.**

1 (a) Every person hired for the first time in a county  
2 school system as an assistant principal, principal or voca-  
3 tional administrator after the first day of July, one thou-  
4 sand nine hundred ninety-five, shall complete a one

5 school year, beginning principal internship program un-  
6 der the provisions of this section.

7 (b) The beginning principal internship program is a  
8 county school system based program intended to provide  
9 appropriate orientation activities and supervision to begin-  
10 ning assistant principals, principals or vocational adminis-  
11 trators of this state. The beginning principal internship  
12 shall consist of the following components:

13 (1) An orientation program to be conducted prior to  
14 the beginning of the instructional term, but within the em-  
15 ployment term, developed by the county school system:  
16 *Provided*, That if a beginning principal is hired during the  
17 instructional term the orientation program shall be con-  
18 ducted during the instructional term;

19 (2) The scheduling of no less than three regular meet-  
20 ings per semester during the school year between the men-  
21 tor and beginning principal. Topics for each meeting  
22 may consist of, but are not limited to, the following: Eval-  
23 uation of personnel, budgeting, scheduling, instructional  
24 leadership, discipline, public relations, conferencing skills  
25 or other topics determined by the mentor and intern;

26 (3) The provision of necessary release time from regu-  
27 lar duties for the mentor as agreed to by the county super-  
28 intendent and the beginning principal and a stipend of at  
29 least six hundred dollars for the mentor for duties as a  
30 mentor, to be paid by the state department of education;  
31 and

32 (4) Documentation of the beginning principal intern-  
33 ship recorded on the evaluation form currently developed  
34 by the local county school district.

35 (c) Mentors are selected by the county superintendent  
36 and must have a minimum of five years of administrative  
37 experience as an assistant principal, principal or vocational  
38 administrator. Mentors must complete a staff develop-  
39 ment program approved by the West Virginia department  
40 of education prior to their employment as a mentor. The  
41 mentor must not be responsible for or a participant in any  
42 evaluation or supervision of the beginning principal in-  
43 tern.

## CHAPTER 99

**(Com. Sub. for S. B. 547—By Senators Tomblin, Mr. President, and Boley)  
[By Request of the Executive]**

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to repeal section four, article three-a, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section forty-eight, article three, chapter five-a of said code; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and reenact section four, article twenty-nine, chapter eighteen of said code; to amend and reenact sections one-a, one-b, two, eight and eight-a, article one, chapter eighteen-b of said code; to further amend said article by adding thereto two new sections, designated sections one-c and one-d; to amend and reenact sections one, three and four, article three of said chapter; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact section one, article four of said chapter; to amend and reenact sections four, five, six and seven, article five of said chapter; to further amend said article by adding thereto three new sections, designated sections two-b, two-c and eight; to amend and reenact section one, article six of said chapter; to amend and reenact section one, article seven of said chapter; to further amend said article by adding thereto a new section, designated section eleven; to amend and reenact sections two and twelve, article nine of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact section one, article ten of said chapter; to amend article eleven of said chapter by adding thereto a new section, designated section five; and to amend article fourteen of said chapter by adding thereto a new section, designated section five, all relating to achieving goals for higher education; exempting higher education governing boards and their institutions from rules relating to travel and purchase of vehicles; ex-

tending default provision at level one for grievances and requiring dual filing for cases relating to higher education; deleting obsolete language; expressing goals relating to relevance and quality for post-secondary education and expressing goals for student access, entrepreneurial programs and good citizenship; requiring governing boards to report strategic plans relating to salary targets and resource allocation exceptions; increasing flexibility and capacity for change relating to retirement and separation incentives, pilot flexibility initiatives and consolidation of administrative functions; revising definitions; updating powers and duties of governing boards generally and authorizing employment of legal counsel; requiring governing boards to adopt rules providing for the collection, analysis and dissemination of higher education report cards; adding three members to the board of directors of the state college system; establishing community and technical college education; creating positions of vice chancellor for instructional technology and vice chancellor for community and technical education; updating purchasing and bidding procedures for institutions of higher education; extending terms for members of the institutional board of advisors for faculty and classified employees; retaining bumping rights for classified employees involuntarily transferred; eliminating the five-percent salary provision for probationary employees; providing compensatory time off in lieu of overtime for employees of governing boards; creating an institute for instructional technology; and authorizing governing boards to sell property.

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

That section four, article three-a, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section forty-eight, article three, chapter five-a of said code be amended and reenacted; that section eleven, article three, chapter twelve of said code be amended and reenacted; that section four, article twenty-nine, chapter eighteen of said code be amended and reenacted; that sections one-a, one-b, two, eight and eight-a, article one, chapter eighteen-b of said code be amended and reenacted; that said article be further amended by adding thereto two new sections,

designated sections one-c and one-d; that sections one, three and four, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section three-a; that section one, article four of said chapter be amended and reenacted; that sections four, five, six and seven, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections two-b, two-c and eight; that section one, article six of said chapter be amended and reenacted; that section one, article seven of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven; that sections two and twelve, article nine of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six; that section one, article ten of said chapter be amended and reenacted; that article eleven of said chapter be amended by adding thereto a new section, designated section five; and that article fourteen of said chapter be amended by adding thereto a new section, designated section five, all to read as follows:

#### **Chapter**

- 5A. Department of Administration.**
- 12. Public Moneys and Securities.**
- 18. Education.**
- 18B. Higher Education.**

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

#### **ARTICLE 3. PURCHASING DIVISION.**

##### **\*§5A-3-48. Travel rules; exceptions.**

- 1 The secretary of administration shall promulgate rules
- 2 relating to the ownership, purchase, use, storage, mainte-
- 3 nance and repair of all motor vehicles and aircraft owned
- 4 by the state of West Virginia and in the possession of any
- 5 department, institution or agency thereof: *Provided*, That
- 6 the provisions of sections forty-eight through fifty-three

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**\*Clerk's Note:** This section was also amended by H. B. 2242 (Chapter 117), which passed prior to this act.

7 of this article shall not apply to the division of highways  
8 of the department of transportation, the division of public  
9 safety of the department of military affairs and public  
10 safety, the division of natural resources, the division of  
11 forestry, the department of agriculture and the higher  
12 education governing boards and their institutions: *Provid-*  
13 *ed, however,* That the higher education governing boards  
14 and their institutions shall report annually to the secretary  
15 of education and the arts and the legislative oversight  
16 commission on education accountability in a form and  
17 manner as required by the secretary of education and the  
18 arts. Such report shall include at least the following: The  
19 number of vehicles purchased and the purchase price, the  
20 number of donated vehicles, and the cost of lease agree-  
21 ments on leased vehicles.

22 If, in the judgment of the secretary of administration,  
23 economy or convenience indicate the expediency thereof,  
24 the secretary may require all vehicles and the aircraft sub-  
25 ject to regulation by this article, or such of them as he or  
26 she may designate, to be kept in such garages, and other  
27 places of storage, and to be made available in such manner  
28 and under such terms for the official use of such depart-  
29 ments, institutions, agencies, officers, agents and employ-  
30 ees of the state as the secretary may designate by any such  
31 rule as he or she may from time to time promulgate. The  
32 secretary also has the authority to administer the travel  
33 regulations promulgated by the governor in accordance  
34 with section eleven, article three, chapter twelve of this  
35 code, unless otherwise determined by the governor.

36 Provisions of this section relating to the governing  
37 boards of higher education and the institutions under their  
38 jurisdiction shall expire on the first day of July, two thou-  
39 sand one, unless the continuation thereof is authorized by  
40 the legislative oversight commission on education ac-  
41 countability.

## CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

**ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

**§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for West Virginia higher education governing boards; moving expenses of employees of West Virginia higher education governing boards.**

1       The governor shall promulgate rules and regulations  
2 concerning out-of-state travel by state officials and em-  
3 ployees, except those in the legislative and judicial branch-  
4 es of the state government and except for the attorney  
5 general, auditor, secretary of state, treasurer, board of  
6 investments, commissioner of agriculture and their em-  
7 ployees, and the higher education governing boards and  
8 institutions under their jurisdiction. The Legislature, the  
9 supreme court of appeals and the attorney general, audi-  
10 tor, secretary of state, treasurer, board of investments, com-  
11 missioner of agriculture and the higher education govern-  
12 ing boards shall promulgate rules and regulations con-  
13 cerning out-of-state travel for their respective branches  
14 and departments of state government. Copies of such  
15 rules and regulations shall be filed with the auditor, and  
16 the secretary of state. It shall be unlawful for the auditor  
17 to issue a warrant in payment of any claim for out-of-state  
18 travel expenses incurred by a state officer or employee  
19 unless such claim meets all the requirements of the rules  
20 and regulations so filed.

21       Payment for dues or membership in annual or other  
22 voluntary organizations shall be made from the proper  
23 item or appropriation after an itemized schedule of such  
24 organizations, together with the amount of such dues or  
25 membership, has been submitted to the budget director  
26 and approved by the governor.

27       It shall be lawful for a higher education governing  
28 board to authorize the payment of traveling expenses  
29 incurred by any person invited to visit the campus of any



30 state institution of higher education or any other facility  
31 under control of the board to be interviewed concerning  
32 his possible employment by the board or agent thereof.

33 It shall be lawful for a higher education governing  
34 board to authorize payment of: (1) All or part of the  
35 reasonable expense incurred by a person newly employed  
36 by the board in moving his household furniture, effects  
37 and immediate family to his place of employment; and (2)  
38 all or part of the reasonable expense incurred by an em-  
39 ployee of the board in moving his household furniture,  
40 effects and immediate family as a result of a reassignment  
41 of the employee which is considered desirable, advanta-  
42 geous to and in the best interest of the state: *Provided,*  
43 That no part of the moving expenses of any one such  
44 employee shall be paid more frequently than once in  
45 twelve months.

46 Provisions of this section relating to the governing  
47 boards of higher education and the institutions under their  
48 control shall expire on the first day of July, two thousand  
49 one, unless the continuation thereof is authorized by the  
50 legislative oversight commission on education account-  
51 ability.

## CHAPTER 18. EDUCATION.

### ARTICLE 29. GRIEVANCE PROCEDURE.

#### §18-29-4. Procedural levels and procedure at each level.

1 (a) Level one.

2 (1) Before a grievance is filed and within fifteen days  
3 following the occurrence of the event upon which the  
4 grievance is based, or within fifteen days of the date on  
5 which the event became known to the grievant or within  
6 fifteen days of the most recent occurrence of a continuing  
7 practice giving rise to a grievance, the grievant or the des-  
8 ignated representative shall schedule a conference with the  
9 immediate supervisor to discuss the nature of the griev-  
10 ance and the action, redress or other remedy sought.

11 The conference with the immediate supervisor con-  
12 cerning the grievance shall be conducted within ten days  
13 of the request therefor, and any discussion shall be by the  
14 grievant in the grievant's own behalf or by both the griev-  
15 ant and the designated representative.

16 (2) The immediate supervisor shall respond to the  
17 grievance within ten days of the conference.

18 (3) Within ten days of receipt of the response from the  
19 immediate supervisor following the informal conference, a  
20 written grievance may be filed with said supervisor, or in  
21 the case where the grievance involves an event under the  
22 jurisdiction of a state institution of higher education, the  
23 grievance shall be filed with said supervisor and the office  
24 of personnel, by the grievant or the designated representa-  
25 tive on a form furnished by the employer or agent.

26 (4) The immediate supervisor shall state the decision  
27 to such filed grievance within ten days after the grievance  
28 is filed.

29 (b) Level two.

30 Within five days of receiving the decision of the im-  
31 mediate supervisor, the grievant may appeal the decision  
32 to the chief administrator, and such administrator or his or  
33 her designee shall conduct a hearing in accordance with  
34 section six of this article within five days of receiving the  
35 appeal and shall issue a written decision within five days of  
36 such hearing. Such decision may affirm, modify or re-  
37 verse the decision appealed from. Level four hearing  
38 examiners or the chief administrator shall have the author-  
39 ity to subpoena witnesses and documents for level two and  
40 level three hearings in accordance with the provision of  
41 section one, article five, chapter twenty-nine-a of this code,  
42 and may issue a subpoena upon the written request of any  
43 party to the grievance.

44 (c) Level three.

45        Within five days of receiving the decision of the chief  
46 administrator, the grievant may appeal the decision to the  
47 governing board of the institution or may proceed directly  
48 to level four. An appeal to the governing board shall set  
49 forth the reasons why the grievant is seeking a level three  
50 review of the decision of the chief administrator. Within  
51 five days of receiving the appeal, such governing board  
52 may conduct a hearing in accordance with section six of  
53 this article, may review the record submitted by the chief  
54 administrator and render a decision based on such record  
55 or may waive the right granted herein and shall notify the  
56 grievant of such waiver. Any decision by the governing  
57 board, including a decision to waive participation in the  
58 grievance, shall be in writing and shall set forth the reasons  
59 for such decision, including the decision to waive partici-  
60 pation in the grievance. If a hearing is held under the  
61 provisions of this subsection, the governing board shall  
62 issue a decision affirming, modifying or reversing the  
63 decision of the chief administrator within five days of such  
64 hearing.

65        (d) Level four.

66        (1) If the grievant is not satisfied with the action taken  
67 by the chief administrator or, if appealed to level three, the  
68 action taken by the governing board, within five days of  
69 the written decision the grievant may request, in writing,  
70 on a form furnished by the employer, that the grievance  
71 be submitted to a hearing examiner as provided for in  
72 section five of this article, such hearing to be conducted in  
73 accordance with section six of this article within ten days  
74 following the request therefor: *Provided*, That such hear-  
75 ing may be held within thirty days following the request  
76 or within such time as is mutually agreed upon by the  
77 parties, if the hearing examiner gives reasonable cause, in  
78 writing, as to the necessity for such delay.

79        (2) Within thirty days following the hearing, the hear-  
80 ing examiner shall render a decision in writing to all par-  
81 ties setting forth findings and conclusions on the issues

82 submitted. Subject to the provisions of section seven of  
 83 this article, the decision of the hearing examiner shall be  
 84 final upon the parties and shall be enforceable in circuit  
 85 court.

86 All information and data generated by the board and  
 87 in its custody relative to level four decisions and copies of  
 88 such decisions shall be provided at reasonable cost to any  
 89 individual requesting it.

## CHAPTER 18B. HIGHER EDUCATION.

### Article

1. Governance.
3. Board of Directors of the State College System.
4. General Administration.
5. Higher Education Budgets and Expenditures.
6. Other Boards and Advisory Councils.
7. Personnel Generally.
9. Classified Employee Salary and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.
11. Miscellaneous Institutes and Centers.
14. Miscellaneous.

### ARTICLE 1. GOVERNANCE.

§18B-1-1a. Goals for post-secondary education.

§18B-1-1b. Implementation of findings, directives, goals and objectives.

§18B-1-1c. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.

§18B-1-1d. Increasing flexibility and capacity for change.

§18B-1-2. Definitions.

§18B-1-8. Powers and duties of governing boards generally.

§18B-1-8a. Higher education accountability; institutional and statewide report cards.

#### §18B-1-1a. Goals for post-secondary education.

- 1 (a) *Findings and directives.* — The Legislature finds
- 2 that higher education is a vital force in the future of West
- 3 Virginia. For the state to realize its considerable potential
- 4 in the twenty-first century, West Virginia should invest in
- 5 its people through a strong and dynamic higher education
- 6 system.

7       The Legislature further finds that the people of West  
8 Virginia have demonstrated their support for this finding  
9 through their involvement and comments at meetings held  
10 throughout the state pursuant to Senate Concurrent Reso-  
11 lution No. 30 adopted at the regular session of the West  
12 Virginia Legislature, one thousand nine hundred  
13 ninety-two. The Legislature, also, endorses the report sub-  
14 mitted by the higher education advocacy team pursuant to  
15 said resolution and directs the affected educational agen-  
16 cies to implement unified strategies for accomplishing the  
17 needed improvements.

18       (b) *Goals and objectives.* — In the pursuance of the  
19 above findings, the following goals and objectives are  
20 hereby adopted with respect to the investments which are  
21 necessary for higher education in West Virginia to con-  
22 tribute fully to the growth, development and quality of life  
23 of the state and its citizens:

24       (1) Students should be better prepared in high school  
25 to meet college standards jointly agreed upon by higher  
26 education and the public schools as required under sub-  
27 section (c), section five of this article. Those standards  
28 should be conveyed to students prior to entering tenth  
29 grade;

30       (2) More students should obtain education that is both  
31 high quality and relevant, beyond the high school level for  
32 our individual and collective economic development:

33       (A) The awareness of post-secondary educational  
34 opportunities among the state's citizens should be expand-  
35 ed and their motivation to take advantage of available  
36 opportunities should be enhanced;

37       (B) Assistance in overcoming the financial barriers to  
38 post-secondary education should be provided;

39       (C) A student-friendly environment should be created  
40 within post-secondary education to encourage and expand  
41 participation for the increasingly diverse student popula-  
42 tion;

43 (D) All West Virginians, whether traditional or nontra-  
44 ditional students, displaced workers or those currently  
45 employed should have access to post-secondary educa-  
46 tional opportunities through their community and techni-  
47 cal colleges, colleges and universities which is relevant,  
48 affordable, allows them to gain transferrable credits and  
49 associate or higher level degrees, provides quality techni-  
50 cal education and skill training, and is responsive to busi-  
51 ness, industry, labor and community needs;

52 (E) The development of entrepreneurial skills through  
53 such programs as the rural entrepreneurialship through  
54 action learning (REAL) should be encouraged, including  
55 skills assessment, needs analysis and business plan devel-  
56 opment; and

57 (F) More opportunities should be available for ad-  
58 vanced high school students to obtain college credit prior  
59 to high school graduation;

60 (3) Students should be prepared to practice good  
61 citizenship to compete in a global economy in which the  
62 good jobs will require an advanced education and level of  
63 skill which far surpasses former requirements:

64 (A) Academic preparation should be improved to  
65 ensure that students enrolling in programs of  
66 post-secondary education are adequately prepared to be  
67 successful in their selected fields of study and career  
68 plans;

69 (B) College graduates should meet or exceed national  
70 and international standards for skill levels in reading, oral  
71 and written communications, mathematics, critical think-  
72 ing, science and technology, research and human rela-  
73 tions;

74 (C) College graduates should meet or exceed national  
75 and international standards for performance in their fields  
76 through national accreditation of programs and through  
77 outcomes assessment of graduates;

78 (D) The faculties in higher education should include

79 elements of citizenship development across the curriculum  
80 in core areas, including practical applications such as com-  
81 munity service, civic involvement and participation in  
82 charitable organizations or in the many opportunities for  
83 the responsible exercise of citizenship that higher educa-  
84 tion institutions provide;

85 (4) Resources should be focused on programs and  
86 courses which offer the greatest opportunities for students  
87 and the greatest opportunity for job creation and retention  
88 in the state:

89 (A) An entrepreneurial spirit and flexibility should be  
90 created within higher education to respond to the needs of  
91 the current work force and other nontraditional students  
92 for college-level skills upgrading and retraining;

93 (B) A focus should be created on programs supportive  
94 of West Virginia employment opportunities and the  
95 emerging high technology industries;

96 (C) Closer linkages should be established among high-  
97 er education and business, labor, government, community  
98 and economic development organizations;

99 (5) Resources should be used to their maximum po-  
100 tential and faculty and technology should be combined in  
101 a way that makes West Virginia higher education more  
102 productive than similar institutions in other states:

103 (A) Institutional missions should be clarified and re-  
104 sources should be shifted to programs which meet the  
105 current and future work force needs of the state;

106 (B) Program duplication necessary for geographic  
107 access should be determined and unnecessary duplication  
108 should be eliminated;

109 (C) Systematic ongoing mechanisms should be estab-  
110 lished for each state institution of higher education to set  
111 goals, measure the extent to which those goals are met and  
112 use results of quantitative evaluation processes to improve  
113 institutional effectiveness;

114 (D) Institutional productivity and administrative effi-  
115 ciency standards should be established to ensure that state  
116 institutions of higher education are more productive and  
117 efficient than similar institutions in other states; and

118 (6) The compensation of faculty, staff and administra-  
119 tors should be established at competitive levels to attract  
120 and keep quality personnel at state institutions of higher  
121 education:

122 (A) Faculty and staff classification and compensation  
123 at state institutions of higher education should be competi-  
124 tive with relevant market levels;

125 (B) Available revenues should be distributed in an  
126 equitable fashion which enables each state institution of  
127 higher education to fulfill its mission and reward its em-  
128 ployees appropriately; and

129 (C) It is the goal for post-secondary education to  
130 move faculty salaries to one hundred percent of peer aver-  
131 ages. As part of this long-term strategy the state should  
132 make every effort to provide funds to assist the institutions  
133 in moving to that goal.

**§18B-1-1b. Implementation of findings, directives, goals and objectives.**

1 The governing boards shall develop a plan for imple-  
2 mentation of the legislative findings, directives, goals and  
3 objectives set forth in section one-a of this article, includ-  
4 ing benchmarks to ensure accountability in achieving said  
5 findings, directives, goals and objectives, in consultation  
6 with the secretary of education and the arts, the president  
7 of the state board of education, the president of the West  
8 Virginia association of private colleges, the president of  
9 the joint commission for vocational-technical-occupation-  
10 al education and the president of the West Virginia eco-  
11 nomic development council. A written report of the plan  
12 required by this section, including the plans required of  
13 the state institutions of higher education pursuant to sec-  
14 tion one-c of this article and any resource allocation ex-



15 ceptions granted thereunder, shall be submitted to the  
16 governor and the legislative oversight commission on  
17 education accountability by the first day of December,  
18 one thousand nine hundred ninety-five, and thereafter.  
19 Progress toward achieving said goals and objectives shall  
20 be reported in the higher education report card required  
21 pursuant to section eight-a of this article. The secretary  
22 shall conduct an ongoing review of the plans submitted by  
23 the governing boards and the strategic plans submitted by  
24 the institutions and shall annually report to the Legislature  
25 his or her opinion as to the progress of the governing  
26 boards and institutions in accomplishing the goals and  
27 objectives set forth in the plan. The secretary shall also  
28 report to the Legislature any plans which do not, in the  
29 opinion of the secretary, set appropriate goals and objec-  
30 tives and any institutions which are not in compliance with  
31 their plan.

**§18B-1-1c. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.**

1 (a) To achieve the goals for post-secondary education  
2 as set forth in section one-a of this article, each of the  
3 following state institutions of higher education shall pre-  
4 pare a strategic plan of change to refocus its mission and  
5 leadership, and restructure its existing resources and pro-  
6 grams: Bluefield state college; Concord college; Glenville  
7 state college; Fairmont state college; Marshall university;  
8 West Virginia northern community college; Potomac state  
9 college of West Virginia university; Shepherd college;  
10 southern West Virginia community college; West Liberty  
11 state college; the West Virginia graduate college; West  
12 Virginia institute of technology; West Virginia university  
13 at Parkersburg; West Virginia school of osteopathic medi-  
14 cine; West Virginia state college; West Virginia university;  
15 and all branch campuses of these institutions of higher  
16 education. Such plans shall specifically state how the insti-  
17 tution will, over a five-year period, refocus its mission and  
18 leadership and restructure its existing resources and pro-

19 grams to achieve the goals for post-secondary education  
20 including, but not limited to, the following: (1) Increase  
21 average faculty salaries at the institution, not including  
22 health sciences, to a level at least equal to ninety-five per-  
23 cent of the average faculty salaries at peer institutions in  
24 the southern regional education board region: *Provided*,  
25 That West Virginia university, excluding West Virginia  
26 university at Parkersburg and Potomac state college of  
27 West Virginia university shall state specifically how it will  
28 increase average faculty salaries at that institution, not  
29 including health sciences, to a level at least equal to ninety  
30 percent of the average faculty salaries at peer institutions  
31 in the southern regional education board region; (2)  
32 achieve full funding of the uniform employee classifica-  
33 tion system and salary policy for classified employees  
34 adopted by the respective governing boards pursuant to  
35 section four, article nine of this chapter; (3) eliminate  
36 duplicative programs and services, acting alone or in con-  
37 junction with another institution, and eliminate  
38 under-utilized or unnecessary programs; (4) may combine  
39 administrative functions among other institutions; and (5)  
40 use admission and exit standards for students, incentives  
41 and staff development for assuring quality teaching and  
42 learning and the critical assessment of programs to meet  
43 the goals. The plan shall also state the manner in which  
44 any pay increases will be funded, the sources of any funds  
45 used for pay increases, and the savings and costs associat-  
46 ed with achieving any other goals specified in the plan and  
47 how the funds are to be redirected. The faculty senate,  
48 classified staff council and the student government associ-  
49 ation shall be consulted prior to the submission of the plan  
50 and their recommendations included in the presidents  
51 report to the board. Beginning the first day of July, one  
52 thousand nine hundred ninety-six, the budgets of state  
53 institutions of higher education shall reflect movement to  
54 the salary targets for faculty and classified staff as set forth  
55 in this section and any other goals specified in their strate-  
56 gic plan for change.

57 (b) The president or administrative head of each state

58 institution of higher education shall submit the plan for  
59 the institution to its respective governing board on or  
60 before the first day of November, one thousand nine hun-  
61 dred ninety-five: *Provided*, That community and techni-  
62 cal college education shall not be required to be segregat-  
63 ed in such plan until the first day of November, one thou-  
64 sand nine hundred ninety-six. The governing boards shall  
65 approve or disapprove such plans within sixty days of  
66 receipt and notify the institution president or administra-  
67 tive head of its decision: *Provided, however*, That if the  
68 plan submitted by the institution includes retirement and  
69 separation incentives pursuant to section one-d of this  
70 article, such portion of the plan shall be submitted by the  
71 governing board to the legislative joint standing commit-  
72 tee on pensions and retirement, and the time required for  
73 review by such committee shall not be included in the  
74 sixty days. If disapproved, the governing board shall re-  
75 turn the plan to the institution president or administrative  
76 head stating its reasons for disapproval. The institution  
77 president or administrative head may modify and resubmit  
78 a plan which was disapproved at any time and the govern-  
79 ing board shall approve or disapprove such resubmitted  
80 plan within sixty days and notify the institution president  
81 or administrative head as herein provided for the original  
82 plan. If such plans have not been approved on or before  
83 the first day of March following the November submission  
84 date, the board is authorized to develop a plan for such  
85 institutions. The president or administrative head of every  
86 state institution of higher education with an approved plan  
87 shall update such plan on an annual basis to reflect perfor-  
88 mance during the preceding year and make any necessary  
89 modifications. Such updated plans shall be submitted on  
90 the first day of November in each of the subsequent years  
91 that the plan is in effect and the governing board shall  
92 follow the same procedures for approval or disapproval as  
93 herein provided for the original plan. Upon the approval  
94 of a plan or plan update which includes the elimination of  
95 a program, the institution president or administrative head  
96 shall immediately notify affected students, faculty and  
97 staff.

98           (c) Any state institution of higher education with an  
99 approved plan may apply to its governing board for an  
100 exception under the resource allocation model and poli-  
101 cies to retain funding for student enrollments that decline  
102 due to planned program reductions or elimination under  
103 the strategic plan. The number of student enrollments  
104 subject to the exception shall be based on the average  
105 full-time equivalent enrollments over the five preceding  
106 years in such program. The allocation exception shall  
107 become effective in the next ensuing allocation cycle  
108 following approval by the governing board and notifica-  
109 tion of affected faculty, students and staff of the program  
110 reduction or elimination, and shall remain effective for the  
111 number of years normally required for students to com-  
112 plete the full program from beginning enrollment to grad-  
113 uation, subject to annual review by the governing board of  
114 the actual decline in program enrollments. Notwithstand-  
115 ing any other provision of this section, any program sus-  
116 pended or discontinued by action of the governing board  
117 on or after the first day of September, one thousand nine  
118 hundred ninety-four, and prior to the effective date of this  
119 section, which program is being eliminated pursuant to  
120 said action, is eligible for an exception under the resource  
121 allocation model and policies pursuant to this section for  
122 the fiscal year one thousand nine hundred ninety-six.

123           (d) Any state institution of higher education with an  
124 approved plan may apply to its governing board for an  
125 exception under the resource allocation model and poli-  
126 cies to retain funding for student enrollments that decline  
127 due to the planned reductions for the purpose of enhanc-  
128 ing the quality of a particular program. The number of  
129 student enrollments subject to the exception shall be based  
130 on the average full-time equivalent enrollments over the  
131 preceding five years in such program. Money allocated to  
132 the institution as a result of this exception shall be used to  
133 enhance the quality of that particular program. The allo-  
134 cation exception shall become effective in the next ensu-  
135 ing allocation cycle following approval by the governing  
136 board and notification of affected faculty, students and

137 staff of the program reduction and shall remain in effect  
138 subject to biennial review by the governing board of the  
139 actual decline in program enrollments and enhancements  
140 in quality of the program.

141 (e) The application for an exception in subsections (c)  
142 and (d) of this section shall be submitted by the institution  
143 president or administrative head and state how the funds  
144 will be redirected to achieve the purposes of the institu-  
145 tion's approved plan including, but not limited to, salary  
146 increases to attract and retain quality faculty and staff,  
147 expand and improve the quality of existing programs,  
148 make additional investments in technology and increased  
149 access, and, in the exemption provided in subsection (c) of  
150 this section, begin new programs. The governing board  
151 shall approve or disapprove the application within sixty  
152 days of receipt and if disapproved, shall return the appli-  
153 cation to the institution president or administrative head  
154 stating the reasons for disapproval. The institution presi-  
155 dent or administrative head may modify and resubmit an  
156 application which was disapproved at any time and the  
157 governing board shall approve or disapprove such resub-  
158 mitted application within sixty days and notify the institu-  
159 tion president or administrative head as herein provided  
160 for the original plan.

161 (f) An exception to the resource allocation model and  
162 policies granted under this section and any differential  
163 approved for an institution by its governing board to re-  
164 flect the high costs of a program within the institution's  
165 mission shall be removed from the institutions base budget  
166 and, to the extent included therein, from the indicated  
167 level of state support for the purposes of subsection (d),  
168 section two, article five of this chapter, and any governing  
169 board rule to the contrary is hereby specifically modified.

170 (g) It is the expressed intent of the Legislature, subject  
171 to the availability of funds and appropriations therefor, to  
172 increase state appropriated funds for state institutions of  
173 higher education in each of the five fiscal years, one thou-  
174 sand nine hundred ninety-seven, through and including,

175 fiscal year two thousand one, at a rate of at least three and  
176 twenty-five one-hundredths percent per year to assist the  
177 institutions in achieving their strategic plan of change,  
178 subject to demonstrated effort by the institutions as deter-  
179 mined by the Legislature to refocus and restructure their  
180 missions, leadership, resources and programs to meet said  
181 plans in accordance with this section. In any fiscal year in  
182 which the state appropriated funds are less than such ex-  
183 pressed intent, the governing boards may adjust the targets  
184 set forth in the strategic plans for change by a like propor-  
185 tion. Beginning with legislative appropriations under this  
186 subsection for the fiscal year one thousand nine hundred  
187 ninety-seven—ninety-eight, the Legislature shall appropri-  
188 ate such funds, if any, to a separate account known as the  
189 "Higher Education Efficiency Fund" in the state budget.  
190 Appropriations to the fund shall be allocated to the institu-  
191 tions that are in compliance with their strategic plan for  
192 change as certified by the secretary of education and the  
193 arts pursuant to section one, article ten of this chapter.  
194 Such allocations shall be made in accordance with the  
195 resource allocation model and policies. Any portion of the  
196 fund which is not so allocated shall be appropriated to the  
197 higher education grant program, pursuant to article five,  
198 chapter eighteen-c of this code, or if such program is fully  
199 funded, for expenditure among all institutions for scholar-  
200 ships and student grant programs.

**§18B-1-1d. Increasing flexibility and capacity for change.**

1       (a) *Retirement and separation incentives.* — Notwith-  
2 standing any other provisions of this code to the contrary,  
3 each state institution of higher education may include in  
4 their strategic plans, pursuant to section one-c of this arti-  
5 cle, policies that offer various incentives for voluntary,  
6 early or phased retirement of employees, or voluntary  
7 separation from employment, when necessary to imple-  
8 ment programmatic changes effectively pursuant to the  
9 findings, directives, goals and objectives of this article:  
10 *Provided,* That such incentives for voluntary, early or  
11 phased retirement of employees, or voluntary separation

12 from employment must be submitted by the governing  
13 board to the legislative joint committee on pensions and  
14 retirement and approved before such policies are adopted  
15 as part of the institution's strategic plan. The policies may  
16 include the following provisions:

17 (1) Payment of a lump sum to an employee to resign  
18 or retire;

19 (2) Continuation of full salary to an employee for a  
20 predetermined period of time prior to the employee's  
21 resignation or retirement and a reduction in the employ-  
22 ee's hours of employment during the predetermined peri-  
23 od of time;

24 (3) Continuation of insurance coverage pursuant to  
25 the provisions of article sixteen, chapter five of this code  
26 for a predetermined period;

27 (4) Continuation of full employer contributions to an  
28 employee's retirement plan during a phased retirement  
29 period; and

30 (5) That an employee retiring pursuant to an early or  
31 phased retirement plan may begin collecting an annuity  
32 from the employee's retirement plan prior to the statutori-  
33 ly designated retirement date without terminating their  
34 service with the institution.

35 No incentive provided for in this section shall be  
36 granted except in furtherance of programmatic changes  
37 undertaken pursuant to the findings, directives, goals and  
38 objectives set forth in this article.

39 No incentive proposed by an institution pursuant to  
40 this section shall become a part of the institution's ap-  
41 proved strategic plan or be implemented without approval  
42 of the legislative joint committee on pensions and retire-  
43 ment.

44 Any costs associated with any incentive adopted or  
45 implemented in accordance with this section shall be  
46 borne entirely by the institutions and no incentive shall be

47 granted that imposes costs on the retirement systems of the  
48 state or the public employees insurance agency unless  
49 those costs are paid entirely by the institutions.

50 The Legislature further finds and declares that there is  
51 a compelling state interest in restricting the availability and  
52 application of these incentives to individual employees  
53 determined by the institutions to be in furtherance of the  
54 aims of this section and nothing herein shall be interpreted  
55 as granting a right or entitlement of any such incentive to  
56 any individual or group of individuals. Any employee  
57 granted incentives shall be ineligible for reemployment by  
58 the institutions during or after the negotiated period of  
59 their incentive concludes including contract employment  
60 in excess of five thousand dollars per fiscal year.

61 (b) *Pilot flexibility initiative.* — The board of directors  
62 is directed to submit a plan for a pilot flexibility initiative  
63 to the legislative oversight commission on education ac-  
64 countability on or before the first day of October, one  
65 thousand nine hundred ninety-five. The plan shall in-  
66 clude at least the following: (1) A system whereby the  
67 state institutions of higher education in the state college  
68 system may apply to the board of directors for a waiver of  
69 board policies and rules; (2) A detailed application for  
70 institutions seeking to participate in the pilot flexibility  
71 initiative which shall set forth at a minimum: (i) A state-  
72 ment of the specific goals and objectives that the institu-  
73 tion proposes to accomplish if the application is approved;  
74 (ii) the specific board policies and rules which the institu-  
75 tion seeks to have waived for all or a portion of the waiver  
76 period; and (iii) proposed rules and policies under which  
77 the institution would operate during the period of waiver;  
78 (3) The process by which the board of directors will re-  
79 view the application; (4) The person or body who shall  
80 have the final authority to approve the application of not  
81 more than two institutions; (5) The time period for which  
82 the waiver will be granted; (6) The specific board policies  
83 and rules which the institution may request to have waived;  
84 (7) The process by which the rules and policies of the



85 institutions participating in the pilot flexibility initiative  
86 may modify its rules and policies; and (8) The person or  
87 body to whom the institutions shall be reporting during  
88 the period of waiver.

89 (c) It is the intent of this Legislature to review the pilot  
90 flexibility plan and after such review to establish a pilot  
91 flexibility initiative in the legislative session of one thou-  
92 sand nine hundred ninety-six.

#### §18B-1-2. Definitions.

1 The following words when used in this chapter and  
2 chapter eighteen-c of this code shall have the meaning  
3 hereinafter ascribed to them unless the context clearly  
4 indicates a different meaning:

5 (a) "Governing board" or "board" means the university  
6 of West Virginia board of trustees or the board of direc-  
7 tors of the state college system, whichever is applicable  
8 within the context of the institution or institutions referred  
9 to in this chapter or in other provisions of law;

10 (b) "Governing boards" or "boards" means both the  
11 board of trustees and the board of directors;

12 (c) "Freestanding community colleges" means south-  
13 ern West Virginia community and technical college and  
14 West Virginia northern community and technical college,  
15 which shall not be operated as branches or off-campus  
16 locations of any other state institution of higher education;

17 (d) "Community college" or "community colleges"  
18 means community and technical college or colleges as  
19 those terms are defined in this section;

20 (e) "Community and technical college", in the singular  
21 or plural, means the freestanding community and techni-  
22 cal colleges, community and technical education programs  
23 at branch campuses of West Virginia university, and divi-  
24 sions of state institutions of higher education which have a  
25 defined community and technical college district and  
26 offer community and technical college education in ac-

27 cordance with the provisions of section three-a, article  
28 three of this chapter;

29 (f) "Community and technical college education"  
30 means the programs, faculty, administration and funding  
31 associated with the mission of community and technical  
32 colleges as provided in section three-a, article three of this  
33 chapter, and also shall include post-secondary vocational  
34 education programs in the state as those terms are defined  
35 in this section. Community and technical college educa-  
36 tion shall be delivered through a system which includes  
37 eleven community and technical college districts assigned  
38 to state institutions of higher education under the jurisdic-  
39 tion of the board of directors and the board of trustees,  
40 respectively;

41 (g) "Directors" or "board of directors" means the  
42 board of directors of the state college system created pur-  
43 suant to article three of this chapter or the members there-  
44 of;

45 (h) "Higher educational institution" means any institu-  
46 tion as defined by Sections 401(f), (g) and (h) of the fed-  
47 eral Higher Education Facilities Act of 1963, as amended;

48 (i) "Post-secondary vocational education programs"  
49 means any college-level course or program beyond the  
50 high school level provided through an institution of high-  
51 er education which results in or may result in the awarding  
52 of a two-year associate degree, under the jurisdiction of  
53 the board of directors;

54 (j) "Rule" or "rules" means a regulation, standard,  
55 policy or interpretation of general application and future  
56 effect;

57 (k) "Senior administrator" means the person hired by  
58 the governing boards in accordance with section one,  
59 article four of this chapter, with such powers and duties as  
60 may be provided for in section two of said article;

61 (l) "State college" means Bluefield state college, Con-  
62 cord college, Fairmont state college, Glenville state college,

63 Shepherd college, West Liberty state college, West Virginia  
64 institute of technology or West Virginia state college;

65 (m) "State college system" means the state colleges  
66 and community and technical colleges, and also shall  
67 include post-secondary vocational education programs in  
68 the state as those terms are defined in this section;

69 (n) "State college system community and technical  
70 colleges" means the freestanding community and technical  
71 colleges and community and technical colleges operated  
72 on the campuses of state colleges under the jurisdiction of  
73 the board of directors of the state college system and all of  
74 their associated branches, centers and off-campus loca-  
75 tions;

76 (o) "State institution of higher education" means any  
77 university, college or community and technical college in  
78 the state university system or the state college system as  
79 those terms are defined in this section;

80 (p) "Trustees" and "board of trustees" means the uni-  
81 versity of West Virginia board of trustees created pursuant  
82 to article two of this chapter or the members thereof;

83 (q) "University", "university of West Virginia" and  
84 "state university system" means the multi-campus, integrat-  
85 ed university of the state, consisting of West Virginia uni-  
86 versity, including West Virginia university at Parkersburg,  
87 Potomac state college of West Virginia university and the  
88 West Virginia university school of medicine; Marshall  
89 university, including the Marshall university school of  
90 medicine and the Marshall university community and  
91 technical college; the West Virginia graduate college; and  
92 the West Virginia school of osteopathic medicine;

93 (r) "University system community and technical col-  
94 leges" means Marshall university community and technical  
95 college, community and technical education programs at  
96 West Virginia university at Parkersburg and community  
97 and technical education programs at Potomac state college  
98 of West Virginia university under the jurisdiction of the

99 university of West Virginia board of trustees and all their  
100 associated branches, centers and off-campus locations.

**§18B-1-8. Powers and duties of governing boards generally.**

1 (a) Each governing board shall separately have the  
2 power and duty to:

3 (1) Determine, control, supervise and manage the  
4 financial, business and educational policies and affairs of  
5 the state institutions of higher education under its jurisdic-  
6 tion;

7 (2) Prepare a master plan for the state institutions of  
8 higher education under its jurisdiction, setting forth the  
9 goals, missions, degree offerings, resource requirements,  
10 physical plant needs, state personnel needs, enrollment  
11 levels and other planning determinates and projections  
12 necessary in such a plan to assure that the needs of the  
13 state for a quality system of higher education are address-  
14 ed: *Provided*, That the master plan for post-secondary-  
15 vocational education is subject to approval by the joint  
16 commission for vocational-technical-occupational educa-  
17 tion. The plan shall also address the roles and missions of  
18 private post-secondary education providers in the state.  
19 Each board shall involve the executive and legislative  
20 branches of state government and the general public in the  
21 development of all segments of the plan for post-second-  
22 ary education in the state. The plan shall be established  
23 for periods of not less than five nor more than ten years  
24 and shall be periodically revised as necessary, including  
25 the addition or deletion of degree programs as, in the  
26 discretion of the boards, may be necessary. Whenever a  
27 state institution of higher education desires to establish a  
28 new degree program, such program proposal shall not be  
29 implemented until the same is filed with both governing  
30 boards. Upon objection thereto within sixty days by ei-  
31 ther governing board, such program proposal shall be  
32 filed with the secretary of education and the arts, who shall  
33 approve or disapprove such proposal within one year of  
34 the filing of said program proposal;

35       (3) Prescribe and allocate among the state institutions  
36 of higher education under its jurisdiction, in accordance  
37 with its master plan, specific functions and responsibilities  
38 to meet the higher education needs of the state and to  
39 avoid unnecessary duplication;

40       (4) Consult with the executive branch and the Legisla-  
41 ture in the establishment of funding parameters, priorities  
42 and goals;

43       (5) Establish guidelines for and direct the preparation  
44 of budget requests for each of the state institutions of  
45 higher education under its jurisdiction, such requests to  
46 relate directly to missions, goals and projections in its state  
47 master plan;

48       (6) Consider, revise and submit to the appropriate  
49 agencies of the executive and legislative branches of state  
50 government separate budget requests on behalf of the state  
51 institutions of higher education under its jurisdiction or a  
52 single budget for the state institutions of higher education  
53 under its jurisdiction: *Provided*, That when a single bud-  
54 get is submitted, that budget shall be accompanied by a  
55 tentative schedule of proposed allocations of funds to the  
56 separate state institutions of higher education under its  
57 jurisdiction;

58       (7) Prepare and submit to the speaker of the House of  
59 Delegates and the president of the Senate, no later than the  
60 first day of each regular session of the Legislature and to  
61 any member of the Legislature upon request, an analysis  
62 of the budget request submitted under subdivision (6) of  
63 this subsection. The analysis shall summarize all amounts  
64 and sources of funds outside of the general revenue fund  
65 anticipated to be received by each state institution of high-  
66 er education under its jurisdiction and the effect of such  
67 funds on the budget request;

68       (8) Prepare and submit to the legislative auditor, no  
69 later than the first day of July of each year, the approved  
70 operating budgets of each state institution of higher edu-  
71 cation under its jurisdiction for the fiscal year beginning

72 on that date and, no later than the first day of August, a  
73 summary of federal and other external funds received at  
74 each such institution during the previous fiscal year;

75 (9) Establish a system of information and data man-  
76 agement that can be effectively utilized in the develop-  
77 ment and management of higher education policy, mis-  
78 sion and goals;

79 (10) Review, at least every five years, all academic  
80 programs offered at the state institutions of higher educa-  
81 tion under its jurisdiction. The review shall address the  
82 viability, adequacy and necessity of the programs in rela-  
83 tion to its master plan and the educational and work force  
84 needs of the state. As a part of such review, each govern-  
85 ing board shall require each of its institutions to conduct  
86 periodic studies of its graduates and their employers to  
87 determine placement patterns and the effectiveness of the  
88 educational experience. Where appropriate, these studies  
89 should make use of the studies required of many academ-  
90 ic disciplines by their accrediting bodies. The governing  
91 boards shall also ensure that the sequence and availability  
92 of academic programs and courses is such that students  
93 have the maximum opportunity to complete programs in  
94 the time frame normally associated with program comple-  
95 tion, that the needs of nontraditional college age students  
96 are appropriately addressed, and that core course work  
97 completed at any state institution of higher education is  
98 transferable to another state institution of higher education  
99 for credit with the grade earned. Notwithstanding any  
100 other provision of this code to the contrary, after the ef-  
101 fective date of this section the appropriate governing  
102 board shall have the exclusive authority to approve the  
103 teacher education programs offered in the institutions  
104 under their control. In order to permit graduates of teach-  
105 er education programs to receive a degree from a nation-  
106 ally accredited program and in order to prevent expensive  
107 duplication of program accreditation, the boards may  
108 select and utilize one nationally recognized teacher educa-  
109 tion program accreditation standard as the appropriate

- 110 standard for program evaluation;
- 111 (11) Utilize faculty, students and classified staff in  
112 institutional level planning and decision making when  
113 those groups are affected;
- 114 (12) Administer a uniform system of personnel classi-  
115 fication and compensation for all employees other than  
116 faculty and policy level administrators;
- 117 (13) Establish a uniform system for the hearing of  
118 employee grievances and appeals therefrom, so that ag-  
119 grieved parties may be assured of timely and objective  
120 review;
- 121 (14) Solicit and utilize or expend voluntary support,  
122 including financial contributions and support services, for  
123 the state institutions of higher education;
- 124 (15) Appoint a president or other administrative head  
125 for each institution of higher education from candidates  
126 submitted by the search and screening committees of the  
127 institutional boards of advisors pursuant to section one,  
128 article six of this chapter;
- 129 (16) Conduct written performance evaluations of each  
130 institution's president in every fourth year of employment  
131 as president, recognizing unique characteristics of the  
132 institution and utilizing institutional personnel, institution-  
133 al boards of advisors, staff of the appropriate governing  
134 board and persons knowledgeable in higher education  
135 matters who are not otherwise employed by a governing  
136 board;
- 137 (17) Submit to the joint committee on government  
138 and finance, no later than the first day of December of  
139 each year, an annual report of the performance of the  
140 system of higher education under its jurisdiction during  
141 the previous fiscal year as compared to stated goals in its  
142 master plan and budget appropriations for that fiscal year;  
143 and
- 144 (18) The governing boards shall have the power and

145 authority to enter into contracts or consortium agreements  
146 with the public schools, private schools or private industry  
147 to provide technical, vocational, college preparatory, reme-  
148 dial and customized training courses at locations either on  
149 campuses of public institutions of higher education or at  
150 off-campus locations in such institutions' regional educa-  
151 tional service areas. To accomplish this goal, the boards  
152 are permitted to share resources among the various groups  
153 in the community. The governing boards shall promul-  
154 gate uniform legislative rules providing for entering into  
155 said contracts and consortium agreements and for deter-  
156 mining and granting credit for work experience for cours-  
157 es offered by the consortium.

158 (b) The power, herein given to each governing board  
159 to prescribe and allocate among the state institutions of  
160 higher education under its jurisdiction specific functions  
161 and responsibilities to meet the higher educational needs  
162 of the state and avoid unnecessary duplication, shall not be  
163 restricted by any provision of law assigning specified  
164 functions and responsibilities to designated state institu-  
165 tions of higher education, and such power shall supersede  
166 any such provision of law: *Provided*, That each governing  
167 board may delegate, with prescribed standards and limita-  
168 tions, such part of its power and control over the business  
169 affairs of a particular state institution of higher education  
170 to the president or other administrative head of such state  
171 institution of higher education in any case where it deems  
172 such delegation necessary and prudent in order to enable  
173 such institution to function in a proper and expeditious  
174 manner: *Provided, however*, That such delegation shall  
175 not be interpreted to include classification of employees,  
176 lawful appeals made by students in accordance with the  
177 appropriate governing board's policy, lawful appeals made  
178 by faculty or staff or final review of new or established  
179 academic or other programs. Any such delegation of  
180 power and control may be rescinded by the appropriate  
181 governing board at any time, in whole or in part.

182 (c) The governing boards shall promulgate uniform



183 legislative rules by the first day of September, one thou-  
184 sand nine hundred ninety-three, setting forth standards for  
185 acceptance of advanced placement credit for their respec-  
186 tive institutions. Individual departments at institutions of  
187 higher education may, upon approval of the institutional  
188 faculty senate, require higher scores on the advanced  
189 placement test than scores designated by the appropriate  
190 governing board when the credit is to be used toward  
191 meeting a requirement of the core curriculum for a major  
192 in that department.

193 (d) Each governing board and/or an individual ap-  
194 pointed by the president of each institution shall consult,  
195 cooperate and work with the state treasurer and the state  
196 auditor to develop an efficient and cost-effective system  
197 for the financial management and expenditure of special  
198 revenue and appropriated state funds for higher education  
199 that ensures that properly submitted requests for payment  
200 be paid on or before due date, but in any event, within  
201 fifteen days of receipt in the state auditor's office. The  
202 system shall be established and implemented as soon as  
203 practical and the governing boards shall report to the  
204 legislative oversight commission on education account-  
205 ability prior to the first day of January, one thousand nine  
206 hundred ninety-four, regarding the efficacy of the system.

207 (e) The governing boards in consultation with the  
208 secretary of the department of administration shall devel-  
209 op a plan and report such plan to the legislative oversight  
210 commission on education accountability by the first day  
211 of December, one thousand nine hundred ninety-five.  
212 Such plan shall establish a consistent method of conduct-  
213 ing personnel transactions including, but not limited to,  
214 hiring, dismissal, promotions and transfers at all institu-  
215 tions under their jurisdiction. Each such personnel trans-  
216 action shall be accompanied by the appropriate standard-  
217 ized system or forms which will be submitted to the re-  
218 spective governing boards, and the department of finance  
219 and administration. Such plan shall be developed with a  
220 contemplated target implementation date of the first day

221 of July, one thousand nine hundred ninety-six.

222 (f) Notwithstanding any other provision of this code to  
223 the contrary, the governing boards and the secretary of  
224 education and the arts shall have the authority to transfer  
225 funds from any account specifically appropriated for their  
226 use to any corresponding line item in a general revenue  
227 account at any agency or institution under their jurisdic-  
228 tion as long as such transferred funds are used for the  
229 purposes appropriated. The governing boards also shall  
230 have the authority to transfer funds from appropriated  
231 special revenue accounts for capital improvements under  
232 their jurisdiction to special revenue accounts at agencies or  
233 institutions under their jurisdiction as long as such trans-  
234 ferred funds are used for the purposes appropriated.

235 (g) Notwithstanding any other provision of this code  
236 to the contrary, the governing boards or senior administra-  
237 tor may acquire such legal services as are deemed neces-  
238 sary, including representation of the governing boards,  
239 their institutions, employees and officers before any court  
240 or administrative body. Such counsel may be employed  
241 either on a salaried basis or on a reasonable fee basis. In  
242 addition, the governing boards or senior administrator  
243 may, but are not required to, call upon the attorney gener-  
244 al for legal assistance and representation as provided by  
245 law.

**§18B-1-8a. Higher education accountability; institutional and  
statewide report cards.**

1 (a) The governing boards are directed to make infor-  
2 mation available to parents, students, faculty, staff, state  
3 policymakers and the general public on the quality and  
4 performance of public higher education. This informa-  
5 tion shall be consistent and comparable between and  
6 among the state institutions of higher education and, if  
7 applicable, comparable with information from peer institu-  
8 tions in the region and nation.

9 (b) On or before the first day of November, one thou-  
10 sand nine hundred ninety-five, the governing boards are

11 directed to adopt a rule pursuant to the provisions of arti-  
12 cle three-a, chapter twenty-nine-a of this code, providing  
13 for the collection, analysis and dissemination of data and  
14 information on the performance of the state institutions of  
15 higher education, including health sciences education, in  
16 relation to the findings, directives, goals and objectives set  
17 forth in sections one-a and one-b of this article and in  
18 comparison to their peers in the region and nation. In  
19 developing the rule, the governing boards shall consult  
20 with the governor, the legislative oversight commission on  
21 education accountability and the state department of edu-  
22 cation regarding the relevant areas of data and informa-  
23 tion deemed necessary for inclusion in a higher education  
24 report card. Upon approval of the rule by the legislative  
25 oversight commission on education accountability, and the  
26 effective date of the rule, the provisions of subsection (c)  
27 of this section shall be null and void: *Provided*, That the  
28 statewide report card due on the first day of December,  
29 one thousand nine hundred ninety-five, pursuant to said  
30 section, shall be compiled and disseminated pursuant to  
31 said subsection. Such legislative rules shall provide the  
32 legislative oversight commission on education account-  
33 ability with full and accurate information while minimiz-  
34 ing the institutional burden of recordkeeping and report-  
35 ing. Such legislative rules shall include uniform defini-  
36 tions for the various indicators of student and institutional  
37 performance and guidelines for the collection and report-  
38 ing of data and the preparation, printing and distribution  
39 of report cards under this section. The report card forms  
40 shall provide for brief, concise reporting in nontechnical  
41 language of required information. Any technical or ex-  
42 planatory material which an institution or governing board  
43 wishes to include shall be contained in a separate appendix  
44 available to the general public upon request.

45 (c) The president or chief executive officer of each  
46 public college, university or community college shall  
47 prepare and submit annually all requested data to the  
48 appropriate governing board at such time as the governing  
49 board may establish. The governing boards shall prepare

50 institutional report cards for institutions under their juris-  
51 diction and systemwide report cards which shall include  
52 the information required in the following subdivisions:

53       (1) For all undergraduate students and for all institu-  
54 tions having undergraduate programs, the institution shall  
55 report the following as available and applicable: Average  
56 scores of incoming freshmen and transfer students on the  
57 American college test (ACT) or scholastic aptitude test  
58 (SAT); percentage of incoming freshmen enrolled in  
59 developmental classes; student performance as measured  
60 by grade point average and/or appropriate testing mea-  
61 sures; the graduation or completion rate as may be de-  
62 fined by federal law or regulation for the student body as  
63 a whole and separately for students at the institution who  
64 received athletically-related student aid categorized by sex  
65 and athletic program; the rate at which individuals who  
66 complete or graduate from the program of an institution  
67 pass applicable licensure or certification examinations  
68 required for employment in a particular vocation, trade or  
69 professional field; student mobility (transfers in, transfers  
70 out and withdrawals); number and percentage of student  
71 body receiving tuition fee waivers; and number, percent-  
72 age and dollar value of tuition fee waivers categorized by  
73 whether such waiver is for athletic participation or is an  
74 academic waiver and by whether the recipient is a resident  
75 or nonresident of this state.

76       (2) For professional schools, defined for the purposes  
77 of this section as academic programs leading to profes-  
78 sions in which licensing is normally required and for  
79 which an undergraduate degree is a general prerequisite,  
80 the institution shall report the following as available and  
81 applicable: Average scores of beginning students and  
82 transfer students on standardized entrance examinations;  
83 number and percentage of student body receiving tuition  
84 fee waivers; number, percentage and dollar value of tuition  
85 fee waivers categorized by whether the recipient is a resi-  
86 dent or nonresident of this state; the number of degrees  
87 granted; the graduation or completion rate as may be

88 defined by federal law or regulation for the student body  
89 as a whole; the rate at which individuals who complete or  
90 graduate from the program of an institution pass applica-  
91 ble licensure or certification examinations required for  
92 employment in the particular professional field; the total  
93 number of students in each program, including the per-  
94 centage of those students who are state residents, the per-  
95 centage of students who are nonresidents of the state, the  
96 percentage of students who are women and the percentage  
97 of students who are minorities as the term is defined by  
98 federal law; and the ratio of expenditures per pupil direct-  
99 ly attributable to students enrolled in the professional  
100 school as compared to expenditures per pupil calculated  
101 as to students enrolled in the institution as a whole.

102 (3) For graduate schools, defined for the purposes of  
103 this section as academic programs leading to advanced  
104 degrees (masters or doctorates of philosophy in fields for  
105 which bachelor's degree programs are available) and for  
106 which an undergraduate degree is a general prerequisite,  
107 the institution shall report the following as available and  
108 applicable: Average scores of beginning students and  
109 transfer students on standardized entrance examinations;  
110 number and percentage of student body receiving tuition  
111 fee waivers; number, percentage and dollar value of tuition  
112 fee waivers categorized by whether the recipient is a resi-  
113 dent or nonresident of this state; the number of degrees  
114 granted; the graduation or completion rate as may be  
115 defined by federal law or regulation for the student body  
116 as a whole; the rate at which individuals who complete or  
117 graduate from the program of an institution pass applica-  
118 ble licensure or certification examinations required for  
119 employment; and the total number of students in each  
120 program, including the percentage of those students who  
121 are state residents, the percentage of students who are  
122 nonresidents of the state, the percentage of students who  
123 are women and the percentage of students who are minori-  
124 ties as the term is defined by federal law.

125 (4) In addition to any and all information required by

126 subdivision (2) of this subsection, each health sciences  
127 school shall assist the vice chancellor for health sciences in  
128 providing information for the institutional and statewide  
129 report cards, which shall include reports on the following:

130 (A) Information on graduates, including, but not limit-  
131 ed to, placement of interns and residents, retention rates in  
132 the state, retention rates in underserved areas as deter-  
133 mined by the division of health, the percentage practicing  
134 in primary care in this state to be defined as family medi-  
135 cine, internal medicine, pediatrics and obstetrics/gynecolo-  
136 gy, and other information pertinent to health sciences  
137 education as it relates to health care delivery in this state  
138 such as recruitment programs to attract health care provid-  
139 ers to West Virginia; reasons obtained from graduate sur-  
140 veys as to why health care graduates are leaving West Vir-  
141 ginia; programs developed to direct graduates into prima-  
142 ry care practices and specialty shortage areas in this state;  
143 and ways in which the health sciences schools intend to  
144 assist in meeting the projected health care needs of this  
145 state, including specialty and subspecialty health care  
146 professional needs and where such needs are expected to  
147 arise, as those needs are defined by the division of health  
148 or such other state agency as the division of health may  
149 deem appropriate;

150 (B) Contractual and financial arrangements between  
151 the health sciences schools and such nonprofit and  
152 for-profit entities receiving moneys from the health sci-  
153 ences schools that the board of trustees determines have a  
154 significant impact on the provision of health sciences  
155 education in this state, such report to state the entity, the  
156 amount of funds paid to such entity and what the payment  
157 is for;

158 (C) The roles and missions of the health sciences  
159 schools and evaluation of each school's performance in  
160 accordance with outcome measures developed to evaluate  
161 the attainment of the roles, missions and programs devel-  
162 oped for each school;

163 (D) The annual audit of the expenditures of each  
164 health sciences school and any audit received by the board  
165 from such nonprofit and for-profit entities determined by  
166 the board of trustees to have a significant affiliation to any  
167 health sciences school;

168 (E) Findings regarding management and operation of  
169 the health sciences schools, such findings to be based on  
170 the annual audits and to include proposals for and barriers  
171 to improving efficiency and generating cost savings in  
172 health sciences education;

173 (F) The quality of health sciences education, includ-  
174 ing, but not limited to, a review of any accrediting agen-  
175 cy's report on health sciences education at any  
176 state-funded health sciences school;

177 (G) The clinical health care services and programs  
178 offered or delivered by the health sciences schools, includ-  
179 ing, but not limited to, programs which use existing state  
180 facilities for the purposes of clinical rotations;

181 (H) Matters relating to the funding and budgeting of  
182 health sciences education in this state, including, but not  
183 limited to, ways in which such budget effectuates the roles  
184 and missions of the health sciences schools;

185 (I) The financing of health sciences education subse-  
186 quent to an annual, comprehensive review thereof, which  
187 report shall include anticipated capital costs, projected  
188 operating expenses and future growth and recommenda-  
189 tions on the allocation of any state or other tax dedicated  
190 to the funding of health sciences education; and

191 (J) Such other administrative, budgetary, financial,  
192 educational and other concerns as the board of trustees  
193 may deem necessary or helpful in providing information  
194 about the health sciences schools pursuant to this subsec-  
195 tion.

196 (5) For all public institutions of higher education in  
197 the state, the following indicators of institutional perfor-  
198 mance in comparison with the aggregate of all other insti-

199 tutions in the state, region and nation as applicable and to  
200 the extent comparison data are available: Student-faculty  
201 ratio by school; student-administrator ratio; faculty turn-  
202 over by school; educational and general expenditure per  
203 full-time equivalent (FTE) student; expenditure by fund in  
204 graphic display; the academic rank and years of experi-  
205 ence of the faculty and administrators at the institution;  
206 percentage minorities comprise of faculty and major ad-  
207 ministrative staff; percentage women comprise of faculty  
208 and major administrative staff; percentage of classes  
209 taught by adjunct or part-time faculty; statistics concern-  
210 ing the occurrence on campus during the most recent  
211 school year and during the preceding school years for  
212 which data are available of criminal offenses reported to  
213 campus security authorities or local police; and statistics  
214 concerning the number of arrests for crimes occurring on  
215 campus during the most recent school year and during the  
216 preceding school years for which data are available.

217       The statewide report card shall include the data for  
218 each institution for each separately listed applicable indi-  
219 cator and the aggregate of the data for all institutions  
220 under the jurisdiction of the board of trustees of the uni-  
221 versity of West Virginia and for all institutions under the  
222 jurisdiction of the board of directors of the state college  
223 system for each indicator.

224       The statewide report cards shall be prepared using  
225 actual institutional, state, regional and national data as  
226 applicable and available indicating the present perfor-  
227 mance of the individual institutions and the state systems  
228 of higher education and shall also include goals and  
229 trends for the institutions and the higher education sys-  
230 tems. Each governing board as part of its assessment of  
231 the individual institutions under its jurisdiction shall in-  
232 clude the number and gross dollar amount of grants re-  
233 ceived for academic research for each institution and a  
234 succinct review of research projects including a brief de-  
235 scription of each project and the numbers of faculty, grad-  
236 uate and undergraduate students involved in each project.



237 In assessing progress toward meeting goals and in devel-  
238 oping trend information, the governing boards shall re-  
239 view report card data in relation to previously adopted  
240 board goals, five-year plans, regional and national higher  
241 education trends and the resource allocation model.

242 (d) The higher education central office staff under the  
243 direction of the senior administrator shall provide techni-  
244 cal assistance to each institution and governing board in  
245 data collection and reporting and shall be responsible for  
246 assembling the statewide report card from information  
247 submitted by each governing board.

248 Each governing board shall prepare report card infor-  
249 mation in accordance with the guidelines set forth in this  
250 section and rules promulgated hereunder. The statewide  
251 report card shall be presented at a regular board meeting  
252 of the appropriate governing board subject to applicable  
253 notice requirements.

254 The statewide report cards shall be completed and  
255 disseminated with copies to the legislative oversight com-  
256 mission on education accountability prior to the first day  
257 of December, one thousand nine hundred ninety-two, and  
258 each year thereafter. Statewide report cards shall be based  
259 upon information for the current school year or for the  
260 most recent school year for which such information is  
261 available, in which case such year shall be clearly footnot-  
262 ed.

263 The governing boards shall make copies of both the  
264 institutional and statewide report cards available to any  
265 individual requesting them.

### **ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.**

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-3-3. Additional duties of board of directors.

§18B-3-3a. Community and technical college education; establishment; state level governance; formation of districts; college level adminis-

tration and governance; programs; district consortia; implementation process; and implementation team.

§18B-3-4. Community and technical colleges; tuition and fees; memoranda of agreements; and joint administrative boards.

**§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.**

1 (a) The board of directors of the state college system  
2 shall consist of twenty persons, of whom one shall be the  
3 chancellor of the university of West Virginia board of  
4 trustees, ex officio, who shall not be entitled to vote; one  
5 shall be the state superintendent of schools, ex officio, who  
6 shall not be entitled to vote; one shall be the chair of the  
7 joint commission for vocational-technical-occupational  
8 education, ex officio, who shall not be entitled to vote; one  
9 shall be the chairman of the advisory council of students,  
10 ex officio, who shall be entitled to vote; one shall be the  
11 chairman of the advisory council of faculty, ex officio,  
12 who shall be entitled to vote; and one shall be the chair-  
13 man of the advisory council of classified employees, ex  
14 officio, who shall be entitled to vote. The other fourteen  
15 directors shall be citizens of the state, appointed by the  
16 governor, by and with the advice and consent of the Sen-  
17 ate.

18 Each of the directors appointed to the board by the  
19 governor shall represent the public interest and shall be  
20 especially qualified in the field of higher education by  
21 virtue of the person's knowledge, learning, experience or  
22 interest in the field. The relative enrollments of baccalau-  
23 reate and community and technical students in the state  
24 college system shall be considered by the governor when  
25 making such appointments and the governor shall use his  
26 or her best efforts to achieve a balance among the mem-  
27 bers who reflect the various interests, goals and concerns  
28 reflected by the relative enrollments.

29 Except for the ex officio directors, no person shall be  
30 eligible for appointment to membership on the board of  
31 directors who is an officer, employee or member of an

32 advisory board of any state college or university, an offi-  
33 cer or member of any political party executive committee,  
34 the holder of any other public office or public employ-  
35 ment under the government of this state or any of its polit-  
36 ical subdivisions, or an appointee or employee of the  
37 board of trustees or board of directors: *Provided*, That if  
38 there are no ethical restrictions under state or federal law, a  
39 federal employee may serve as a member of the board of  
40 directors. Of the fourteen directors appointed by the  
41 governor from the public at large, not more than seven  
42 thereof shall belong to the same political party and at least  
43 two directors of the board shall be appointed from each  
44 congressional district: *Provided, however*, That after the  
45 effective date of this section, the governor shall make  
46 appointments so that, as soon as practicable, at least four  
47 directors of the board shall be appointed from each con-  
48 gressional district.

49       Except as provided in this section, no other person  
50 may be appointed to the board.

51       (b) The governor shall appoint twelve directors as  
52 soon after the first day of July, one thousand nine hun-  
53 dred eighty-nine, as is practicable, and the original terms  
54 of all directors shall commence on that date. The terms of  
55 the directors appointed by the governor shall be for over-  
56 lapping terms of six years, except, of the original appoint-  
57 ments, four shall be appointed to terms of two years, four  
58 shall be appointed to terms of four years and four shall be  
59 appointed to terms of six years: *Provided*, That the gover-  
60 nor shall appoint two additional directors on or before the  
61 first day of July, one thousand nine hundred ninety-five,  
62 and their original terms shall commence on the first day  
63 of July, one thousand nine hundred ninety-five, and be for  
64 five years. Each subsequent appointment which is not for  
65 the purpose of filling a vacancy in an unexpired term shall  
66 be appointed to a term of six years.

67       The governor shall appoint a director to fill any va-  
68 cancy among the twelve directors appointed by the gover-  
69 nor, by and with the advice and consent of the Senate,

70 which director appointed to fill such vacancy shall serve  
71 for the unexpired term of the vacating director. The gov-  
72 ernor shall fill the vacancy within sixty days of the occur-  
73 rence of the vacancy.

74 All directors appointed by the governor shall be eligi-  
75 ble for reappointment: *Provided*, That a person who has  
76 served as a director or trustee during all or any part of two  
77 consecutive terms shall be ineligible to serve as a director  
78 for a period of three years immediately following the  
79 second of the two consecutive terms.

80 The chairman of the advisory council of students, ex  
81 officio; the chairman of the advisory council of faculty, ex  
82 officio; and the chairman of the advisory council of classi-  
83 fied employees, ex officio, shall serve the terms for which  
84 they were elected by their respective advisory councils.  
85 These members shall be eligible to succeed themselves.

86 (c) Before exercising any authority or performing any  
87 duties as a director, each director shall qualify as such by  
88 taking and subscribing to the oath of office prescribed by  
89 section five, article IV of the constitution of West Virginia,  
90 and the certificate thereof shall be filed with the secretary  
91 of state.

92 (d) No director appointed by the governor shall be  
93 removed from office by the governor except for official  
94 misconduct, incompetence, neglect of duty or gross im-  
95 morality, and then only in the manner prescribed by law  
96 for the removal by the governor of the state elective offi-  
97 cers.

### §18B-3-3. Additional duties of board of directors.

1 (a) The board of directors of the state college system  
2 shall govern the state college system.

3 (b) The board of directors shall determine programs  
4 to be offered by state institutions of higher education  
5 under its jurisdiction, shall clarify the missions of the insti-  
6 tutions under its jurisdiction and, in so doing, ensure that  
7 Fairmont state and West Virginia institute of technology

8 are given primary responsibility for technical preparation  
9 teacher training programs.

10 (c) The board of directors shall govern state college  
11 system community and technical colleges in accordance  
12 with the provisions of section three-a of this article.

13 (d) The board of directors shall adopt a faculty salary  
14 program with an overall goal of attaining salaries equal to  
15 the average faculty salaries within similar groups of disci-  
16 plines and program levels at comparable peer institutions  
17 within member states of the southern regional education  
18 board.

**§18B-3-3a. Community and technical college education; estab-  
lishment; state level governance; formation of  
districts; college level administration and gover-  
nance; programs; district consortia; implemen-  
tation process; and implementation team.**

1 (a) *General.* — The purpose of this section is to estab-  
2 lish community and technical college education that is  
3 well articulated with the public schools and four year col-  
4 leges; that makes maximum use of shared facilities, facul-  
5 ty, staff, equipment and other resources; that encourages  
6 traditional and nontraditional students and adult learners  
7 to pursue a life-time of learning; that serves as an instru-  
8 ment of economic development; and that has the indepen-  
9 dence and flexibility to respond quickly to changing  
10 needs. The respective governing boards shall provide for  
11 community and technical college education at state institu-  
12 tions of higher education under their jurisdiction to have  
13 the administrative, programmatic and budgetary control  
14 necessary to allow maximum flexibility and responsive-  
15 ness to district and community needs consistent with the  
16 goal of sharing facilities, faculty, staff, equipment and  
17 other resources within and among the districts, the other  
18 systems of public and higher education and other educa-  
19 tion and training programs.

20 (b) *State level governance.* — The board of directors  
21 and the board of trustees shall jointly employ a vice chan-

22 cellor for community and technical college education.  
23 The vice chancellor for community and technical college  
24 education shall report directly to and provide assistance to  
25 the board of directors and the board of trustees on matters  
26 related to community and technical college education and  
27 shall serve at their will and pleasure. The vice chancellor  
28 for community and technical college education shall ad-  
29 vise, assist and consult regularly with the administrative  
30 heads, institutional boards of advisors, and district consor-  
31 tia committees of each state institution of higher education  
32 involved in community and technical college education.

33 In appointing members to the institutional boards of  
34 advisors within the state college system pursuant to section  
35 one, article six of this chapter, the board of directors shall  
36 consider the relative distribution of baccalaureate and  
37 community and technical college enrollments of the re-  
38 spective institutions and shall make up to three of such  
39 appointments from the membership of district consortia  
40 committee on the basis of such proportional enrollments.  
41 All appointments shall be reflective of the economic, in-  
42 dustrial, educational, community and employment charac-  
43 teristics of the institution's region and be geographically  
44 dispersed to the extent practical.

45 (c) *Formation of community and technical college*  
46 *districts.* — The eleven community and technical college  
47 districts shall be comprised of contiguous areas of the state  
48 which have similar economic, industrial, educational, com-  
49 munity and employment characteristics to facilitate spe-  
50 cialization in mission and programming. For the purposes  
51 of initial implementation and organization, the districts  
52 shall be comprised as follows:

53 (1) Ohio, Brooke, Hancock, Marshall, Tyler and  
54 Wetzel counties;

55 (2) Wood, Jackson, Pleasants, Ritchie, Roane, Tyler and  
56 Wirt counties;

57 (3) Kanawha, Putnam and Clay counties;

- 58       (4) Cabell, Mason, Putnam and Wayne counties;  
59       (5) Fayette, Clay, Kanawha, Raleigh and Nicholas  
60 counties;  
61       (6) Logan, Boone, Lincoln, McDowell, Mingo, Raleigh  
62 and Wyoming counties;  
63       (7) Mercer, Greenbrier, McDowell, Monroe,  
64 Pocahontas, Raleigh and Summers counties;  
65       (8) Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis,  
66 Nicholas, Upshur and Webster counties;  
67       (9) Marion, Doddridge, Harrison, Monongalia,  
68 Preston, Randolph, Taylor, Barbour and Tucker counties;  
69       (10) Jefferson, Berkeley, Grant, Hardy and Morgan  
70 counties;  
71       (11) Mineral, Grant, Hampshire, Hardy and Pendleton  
72 counties.

73       It is the intent of the Legislature that counties which  
74 are listed in more than one district shall be served by the  
75 associated community and technical colleges as a coopera-  
76 tive service area, or shall be divided as the board of direc-  
77 tors determines. The boundaries of the eleven districts  
78 may be modified from time to time by the board of direc-  
79 tors upon request of the affected community and technical  
80 colleges to better serve the needs within the districts. Such  
81 modifications are not required to follow county bound-  
82 aries.

83       Subject to any restrictions imposed by the board of  
84 directors, the district boundaries shall not be employed to  
85 restrict other state institutions of higher education from  
86 offering programs of strength to meet underserved needs,  
87 consistent with the objective of not duplicating efforts as  
88 determined by the governing boards: *Provided*, That  
89 nothing herein shall be construed to prevent state institu-  
90 tions of higher education from offering courses at  
91 off-campus centers or locations now operating or estab-

92 lished in the future which are not duplicative. Distance  
93 learning technology, resource networking and other coop-  
94 erative and collaborative efforts shall be used to the maxi-  
95 mum extent prudent and practical to avoid unnecessary  
96 duplication of program development and delivery.

97 The main campus of the community and technical  
98 college shall be identified under the name of the commu-  
99 nity and technical college for the district and the district  
100 shall be known as the "community and technical college  
101 district". In addition, the name of all branches, centers and  
102 programs shall reflect the name of the district.

103 (d) *Allocation of resources and budgets.* — All funds  
104 for community and technical college education shall be  
105 appropriated by the Legislature in an institutional control  
106 account under the jurisdiction of the board of directors.  
107 The board of directors shall establish by rule a formula  
108 for the allocation of such funds to the individual universi-  
109 ty system and state college system community and techni-  
110 cal colleges, which rule shall include uniform guidelines  
111 for the allocation and reporting of student enrollments,  
112 costs, reimbursements and revenues for community and  
113 technical colleges located on the campus of another state  
114 institution of higher education.

115 (e) *College level administration and governance.* —  
116 The administrative head of a state college system commu-  
117 nity and technical college shall be the president, in the  
118 case of the freestanding community and technical colleg-  
119 es, and the provost of the community and technical col-  
120 lege in the case of all other state college system communi-  
121 ty and technical colleges. Such provost shall be employed  
122 by the president of the state institution of higher education  
123 upon which the main campus of the community and tech-  
124 nical college is located and the provost shall serve at the  
125 will and pleasure of the president. The administrative  
126 head shall be responsible for coordination and other ad-  
127 ministrative arrangements with the host institution and  
128 other duties assigned pursuant to this section. Nothing in  
129 this section shall prohibit a current employee in communi-



130 ty and technical education from being employed as a  
131 provost. The administrative and business offices and  
132 functions of community and technical colleges, except  
133 freestanding, shall be consolidated with those of the host  
134 institution to the extent practical. To enhance program  
135 flexibility and mobility, to enhance program coordination  
136 and delivery in the public schools and to take advantage  
137 of the expertise and experience of persons in business and  
138 industry, community and technical colleges shall make  
139 extensive use of combined courses with four-year colleges  
140 and universities, employ by contract or other arrange-  
141 ments college and university faculty to teach community  
142 and technical college courses, employ qualified public  
143 school teachers as adjunct professors and employ quali-  
144 fied business, industry and labor persons as adjunct pro-  
145 fessors in technical areas.

146 (f) *Community and technical college programs.* —  
147 The mission of each community and technical college  
148 shall include the following programs which may be of-  
149 fered on or off campus, at the work site, in the public  
150 schools and at other locations at times that are convenient  
151 for the intended population:

152 (1) Career and technical education certificate, associate  
153 of applied science and selected associate of science degree  
154 programs for students seeking immediate employment,  
155 individual entrepreneurship skills; occupational develop-  
156 ment, skill enhancement and career mobility;

157 (2) Transfer education associate of arts and associate  
158 of science degree programs for students whose education-  
159 al goal is to transfer into a baccalaureate degree program;

160 (3) Developmental/remedial education courses, tutori-  
161 als, skills development labs and other services for students  
162 who need to improve their skills in mathematics, English,  
163 reading, study skills, computers and other basic skill areas;

164 (4) Work force training and retraining contract educa-  
165 tion with business and industry to train or retrain employ-  
166 ees;

167 (5) Continuing development assistance and education  
168 credit and noncredit courses for professional and  
169 self-development, certification and licensure and literacy  
170 training; and

171 (6) Community service workshops, lectures, seminars,  
172 clinics, concerts, theatrical performances and other  
173 noncredit activities to meet the cultural, civic and personal  
174 interests and needs of the community.

175 All administrative, programmatic and budgetary con-  
176 trol over community and technical education within the  
177 district shall be vested in the administrative head and the  
178 institutional board of advisors of state college system com-  
179 munity and technical colleges, subject to rules adopted by  
180 the board of directors. The administrative head and insti-  
181 tutional board of advisors shall be responsible for the  
182 regular review, revision, elimination and establishment of  
183 programs within the district to assure that the needs of the  
184 district for community and technical college programs are  
185 met. It is the intent of the Legislature that the program  
186 review and approval process for community and technical  
187 education be separate and distinct from baccalaureate  
188 education. The administrative head and institutional board  
189 of advisors shall seek assistance from and utilize a district  
190 consortia committee in fulfilling this responsibility.

191 (g) *District consortia committee.* — The administrative  
192 head of each university system and state college system  
193 community and technical college shall form a district  
194 consortia committee which shall include representatives  
195 distributed geographically to the extent practical of the  
196 major community college branches, vocational technical  
197 centers, comprehensive high schools, four-year colleges  
198 and universities, community service or cultural organiza-  
199 tions, economic development organizations, business,  
200 industry, labor, elected public officials and employment  
201 and training programs and offices within the district. The  
202 consortia committee shall be chaired by the administrative  
203 head or his or her designee and shall advise and assist the  
204 administrative head with the following:

- 205 (1) Completing a comprehensive assessment of the  
206 district to determine what education and training programs  
207 are necessary to meet the short and long term work force  
208 development needs of the district;
- 209 (2) Coordinating efforts with regional labor market  
210 information systems that identify the ongoing needs of  
211 business and industry, both current and projected, and  
212 provide information to assist in an informed program of  
213 planning and decision making;
- 214 (3) Planning and development of a unified effort to  
215 meet the documented work force development needs of  
216 the district through individual and cooperative programs,  
217 shared facilities, faculty, staff, equipment and other re-  
218 sources and the development and use of distance learning  
219 and other educational technologies;
- 220 (4) Increasing the integration of secondary and  
221 post-secondary curriculum and programs that are targeted  
222 to meet regional labor market needs, including the plan-  
223 ning and implementation of a comprehensive school-to-  
224 work transition system that helps students focus on career  
225 objectives, builds upon current programs such as high  
226 schools that work, tech prep associate degree programs,  
227 registered apprenticeships and rural entrepreneurship  
228 through action learning and addresses the needs of at-risk  
229 students and school dropouts;
- 230 (5) Planning and implementation of integrated profes-  
231 sional development activities for secondary and post-  
232 secondary faculty, staff and administrators and other con-  
233 sortia partners throughout the district;
- 234 (6) Ensuring that program graduates have attained the  
235 competencies required for successful employment  
236 through the involvement of business, industry and labor in  
237 establishing student credentialing;
- 238 (7) Performance assessment of student knowledge and  
239 skills which may be gained from multiple sources so that  
240 students gain credit toward program completion and ad-

241 vance more rapidly without repeating coursework in which  
242 they already possess competency;

243 (8) Establishing one-stop-shop career centers with  
244 integrated employment and training and labor market  
245 information systems that enable job seekers to assess their  
246 skills, identify and secure needed education training and  
247 secure employment and employers to locate available  
248 workers;

249 (9) Increasing the integration of adult literacy, adult  
250 basic education, federal job opportunities and basic skills,  
251 and community and technical college programs and ser-  
252 vices to expedite the transition of adults from welfare to  
253 gainful employment; and

254 (10) Establish a single point of contact for employers  
255 and potential employers to access education and training  
256 programs throughout the district.

257 (h) *Implementation process.* — The implementation of  
258 community and technical college education as set forth in  
259 this article shall be accomplished over a three-year period.  
260 Major program elements shall be accomplished within the  
261 following time frames:

262 (1) One thousand nine hundred ninety-five—  
263 ninety-six.

264 (i) Form necessary governance structures and make  
265 necessary appointments;

266 (ii) Form consortia committees and complete a survey  
267 of the educational and training needs of the community  
268 college district;

269 (iii) Establish the information necessary to separately  
270 budget the community and technical college education for  
271 fiscal year one thousand nine hundred ninety-six—  
272 ninety-seven, including the rules required pursuant to  
273 subsection (d) of this section;

274 (iv) Establish an ongoing method of providing fund-

275 ing for appropriate staff from the public schools and the  
276 community and technical colleges for personnel and other  
277 costs related to shared facility projects, including recom-  
278 mendations for any necessary legislative enactments;

279 (v) Make recommendations to the governor and Leg-  
280 islature as may be necessary.

281 (2) One thousand nine hundred ninety-six—ninety-  
282 seven.

283 (i) Begin separate budgeting;

284 (ii) Begin full operations of the community and tech-  
285 nical colleges as provided in this article.

286 (3) One thousand nine hundred ninety-seven—  
287 ninety-eight.

288 (i) Review and evaluation.

289 (i) *Implementation team.* — There is hereby estab-  
290 lished an implementation team to monitor and oversee  
291 implementation of the community and technical college  
292 education in accordance with the provisions of this article.  
293 The implementation team shall report to the governor and  
294 the legislative oversight commission on education ac-  
295 countability no later than the first day of December, in the  
296 years one thousand nine hundred ninety-five, one thou-  
297 sand nine hundred ninety-six and one thousand nine hun-  
298 dred ninety-seven on the status of such implementation  
299 and any further needs for legislative enactment. The im-  
300 plementation oversight team shall be composed of the  
301 secretary of education and the arts, one representative of  
302 public education, one representative of community and  
303 technical colleges, one representative of four-year colleg-  
304 es, one representative of the private sector, one representa-  
305 tive of employment and training programs, one represen-  
306 tative of vocational-technical-occupational education, four  
307 members of the Senate and four members of the House of  
308 Delegates, all appointed by the governor. The secretary of  
309 education and the arts shall be responsible for staffing the  
310 implementation oversight team utilizing existing person-

311 nel, equipment and offices of the affected agencies.

**§18B-3-4. Community and technical colleges; tuition and fees; memoranda of agreements; and joint administrative boards.**

1 (a) Effective the first day of July, one thousand nine  
2 hundred eighty-nine, the following institutions are hereby  
3 established or continued as freestanding community and  
4 technical colleges: Southern West Virginia community and  
5 technical college and West Virginia northern community  
6 and technical college. Such freestanding community and  
7 technical colleges shall not be operated as branches or  
8 off-campus locations of any other state institution of high-  
9 er education.

10 (b) The directors, in accordance with article two-b,  
11 chapter eighteen of this code, shall cooperate with the state  
12 board of education, the state council of vocational-techni-  
13 cal education and the joint commission for vocational-  
14 technical-occupational education to develop a comprehen-  
15 sive system of academic, vocational, technical and career  
16 development programs to serve the educational needs of  
17 adults for college preparatory, two-year associate degree,  
18 continuing education, work force training and retraining  
19 and other such programs within the state. The board of  
20 directors shall delegate such authority as they deem pru-  
21 dent to the community and technical college presidents,  
22 provosts or other administrative heads, to work with district  
23 consortia committees to assess the work force needs of  
24 business and industry within their service areas, regularly  
25 review and revise curricula to ensure that the work force  
26 needs are met, develop new programs and phase out or  
27 modify existing programs as appropriate to meet such  
28 needs, provide professional development opportunities for  
29 faculty and staff, establish cooperative programs and stu-  
30 dent internships with business and industry, streamline  
31 procedures for designing and implementing customized  
32 training programs and to accomplish such other comple-  
33 ments of a quality comprehensive community and techni-  
34 cal college. In developing such a system, the various edu-

35 cational agencies shall establish cooperative relationships  
36 to utilize existing community and technical colleges and  
37 programs, public school vocational centers and other ex-  
38 isting facilities to serve the identified needs within the  
39 community and technical college district.

40 (c) A separate division of community and technical  
41 colleges shall be established under the board of directors.  
42 Unless approved by the board, programs at community  
43 and technical colleges shall be two years or less in dura-  
44 tion.

45 (d) The board of directors may fix tuition and estab-  
46 lish and set such other fees to be charged students at state  
47 college system community and technical colleges as it  
48 deems appropriate, and shall pay such tuition and fees  
49 collected into a revolving fund for the partial or full sup-  
50 port, including the making of capital improvements, of  
51 any state college system community and technical college.  
52 Funds collected at any such community and technical  
53 college may be used only for the benefit of that commu-  
54 nity and technical college. The board of directors may  
55 also establish special fees for such purposes as, including,  
56 but not limited to, health services, student activities, student  
57 recreation, athletics or any other extracurricular purposes.  
58 Such special fees shall be paid into special funds in the  
59 state treasury and used only for the purposes for which  
60 collected.

61 (e) The board of directors may allocate funds from  
62 the appropriations for the state college system for the  
63 operation of individual university system and state college  
64 system community and technical colleges in accordance  
65 with rules adopted by the board pursuant to the provisions  
66 of subsection (d), section three-a of this article, and for the  
67 capital improvement of any state college system commu-  
68 nity and technical college. The board of directors may  
69 accept federal grants and funds from county boards of  
70 education, other local governmental bodies, corporations  
71 or persons. The directors may enter into memoranda of  
72 agreements with such governmental bodies, corporations

73 or persons for the use or acceptance of local facilities  
74 and/or the acceptance of grants or contributions toward  
75 the cost of the acquisition or construction of such facili-  
76 ties. Such local governmental bodies may convey capital  
77 improvements, or lease the same without monetary consid-  
78 eration, to the board of directors for the use by the com-  
79 munity and technical college and the board of directors  
80 may accept such facilities, or the use or lease thereof, and  
81 grants or contributions for such purposes from such gov-  
82 ernmental bodies, the federal government or any corpora-  
83 tion or person.

84 (f) To facilitate the administration, operation and fi-  
85 nancing of programs in shared facilities of the state col-  
86 lege system or the university of West Virginia system and  
87 a county board or boards of education, the affected gov-  
88 erning board and county board or boards of education  
89 may appoint a joint administrative board consisting of  
90 such membership and possessing such delegated authori-  
91 ties as the respective boards deem necessary and prudent  
92 for the operation of such shared facilities. Such joint  
93 administrative board may consist of five members to be  
94 appointed as follows: The county board of education  
95 shall appoint two members in consultation with the county  
96 superintendent of schools; the appropriate governing  
97 board shall appoint two members in consultation with the  
98 president of the affected state institution of higher educa-  
99 tion; and one at-large member, who shall chair the joint  
100 administrative board, shall be appointed by mutual agree-  
101 ment of the respective boards in consultation with their  
102 superintendent and president. When two or more county  
103 boards of education are participating in such shared pro-  
104 gram, such county board appointments shall be made by  
105 mutual agreement of each of the participating county  
106 boards in consultation with their respective superinten-  
107 dents. Members shall serve for staggered terms of three  
108 years. With respect to initial appointments, one member  
109 appointed by the county board or boards of education  
110 and one member appointed by the governing board shall  
111 serve for one year, one member appointed by the county



112 board or boards of education and one member appointed  
113 by the governing board shall serve for two years and the  
114 at-large member shall serve for three years. Subsequent  
115 appointments shall be for three years. A member may not  
116 serve more than two consecutive terms. Members shall be  
117 reimbursed for reasonable and necessary expenses actual-  
118 ly incurred in the performance of their duties as board  
119 members from funds allocated to the shared facility, ex-  
120 cept that members who are employed by a board of edu-  
121 cation, governing board or state institution of higher edu-  
122 cation shall be reimbursed by their employer.

**ARTICLE 4. GENERAL ADMINISTRATION.**

**§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.**

1 (a) At its annual meeting in June of each year, each  
2 governing board shall elect from its members appointed  
3 by the governor a president and such other officers as it  
4 may deem necessary or desirable: *Provided*, That the  
5 initial annual meeting shall be held during July, one thou-  
6 sand nine hundred eighty-nine. The president and such  
7 other officers shall be elected for a one-year term com-  
8 mencing on the first day of July following the annual  
9 meeting and ending on the thirtieth day of June of the  
10 following year. The president of the board shall serve no  
11 more than two consecutive terms.

12 (b) Each governing board shall employ a chancellor  
13 who shall serve at the will and pleasure of the employing  
14 board and shall assist the governing board in the perfor-  
15 mance of its duties and responsibilities. No chancellor  
16 may hold or retain any other administrative position with-  
17 in the system of higher education while employed as  
18 chancellor. Each chancellor is responsible for carrying  
19 out the directives of the governing board by which em-  
20 ployed and shall work with such board in developing  
21 policy options. For the purpose of developing or evaluat-  
22 ing policy options, the chancellors may request the assis-  
23 tance of the presidents and other administrative heads of

24 the institutions under their jurisdiction and their staffs.  
25 The respective chancellors shall jointly agree to and shall  
26 hire one senior administrator who shall serve at their will  
27 and pleasure in accordance with section two of this article.

28 (c) The director of health shall serve as the vice chan-  
29 cellor for health affairs, who shall coordinate the West  
30 Virginia university school of medicine, the Marshall uni-  
31 versity school of medicine and the West Virginia school of  
32 osteopathic medicine. The vice chancellor for health  
33 affairs shall conduct a special study of the West Virginia  
34 university school of medicine, the Marshall university  
35 school of medicine and the West Virginia school of osteo-  
36 pathic medicine to determine the role and mission of said  
37 institutions in the reorganized system of higher education  
38 in the state. The special study shall include, but is not  
39 limited to, coordinating medical education, training and  
40 delivery of health services in the state; preparing  
41 nurse-midwives, nurse practitioners, medical technologists  
42 and other members of the allied health professions; and  
43 providing for rural health care. The vice chancellor shall  
44 submit a report on said study to the governor and to the  
45 Legislature by the first day of December, one thousand  
46 nine hundred eighty-nine.

47 (d) Suitable offices for the senior administrator and  
48 other staff shall be provided in Charleston.

49 (e) The governing boards shall jointly employ a vice  
50 chancellor for instructional technology to establish a plan  
51 and funding recommendations for development and im-  
52 plementation of a multifaceted instructional technology  
53 strategy that includes, but is not limited to, a goal that  
54 every full-time freshman student beginning in the fall  
55 semester, one thousand nine hundred ninety-six, and  
56 thereafter, and as many other students and faculty as pos-  
57 sible will own or lease a computer, and alternatively that  
58 computers be available for part-time students through  
59 on-site labs; integrating computer usage into all course  
60 work; involving faculty in the development and use of  
61 technology-based instruction and instructional courseware

62 for community and technical colleges, colleges and uni-  
63 versities; and expanding distance learning and technology  
64 networks throughout the higher education systems to  
65 enhance teaching and learning, promote access to quality  
66 educational offerings with minimum duplication of effort,  
67 increase the delivery of instruction to nontraditional stu-  
68 dents, provide services to business and industry, and in-  
69 crease the management capabilities of the higher educa-  
70 tion system. The plan shall be submitted to the Legisla-  
71 ture on or before the first day of January, one thousand  
72 nine hundred ninety-six.

73 The vice chancellor for instructional technology shall  
74 supervise the administration, oversight, coordination and  
75 implementation of such plan, or portions thereof, subject  
76 to the availability of funds and the direction of the gov-  
77 erning boards. In addition, the vice chancellor shall re-  
78 view all technology related matters within the department  
79 of education and the arts and suggest appropriate integra-  
80 tion and compatibility of the technology systems within  
81 the department and the institutions governed by the board.

82 (f) The governing boards shall jointly employ a vice  
83 chancellor for community and technical education pursu-  
84 ant to the terms of section three-a, article three of this  
85 chapter.

#### ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDI- TURES.

- §18B-5-2b. Resource allocation policy relief.
- §18B-5-2c. Review of resource allocation model and policies.
- §18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.
- §18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.
- §18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.
- §18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.
- §18B-5-8. Report card on West Virginia business.

**§18B-5-2b. Resource allocation policy relief.**

1 For fiscal year one thousand nine hundred ninety-six  
2 only, the board of directors of the state college system  
3 may use all special priority funds, as identified and distrib-  
4 uted by legislative rule title 131, series 5, effective the  
5 twenty-eighth day of March, one thousand nine hundred  
6 ninety-four, to help relieve state institutions of higher  
7 education of the financial obligation created by the re-  
8 quirement that each institution increase faculty salaries  
9 pursuant to section three-a, article eight of this chapter,  
10 and increase classified employee salaries pursuant to sec-  
11 tion eleven, article nine of this chapter.

**§18B-5-2c. Review of resource allocation model and policies.**

1 The Legislature hereby finds that the establishment  
2 and development of community and technical education,  
3 the restructuring and refocusing of institutional missions  
4 and programs to respond to change and the necessity of  
5 achieving the goals established for post-secondary educa-  
6 tion by the citizens of West Virginia will require a review  
7 of the methods for distributing higher education funding.

8 It is the intent of the Legislature that increased state  
9 appropriated funds shall be allocated using the resource  
10 allocation model and resource allocation policies in effect  
11 at the time of each appropriation. Given the changes of  
12 institutional missions, leadership, resources and programs,  
13 as well as the establishment of targets and goals for faculty  
14 and staff salaries, the Legislature recognizes the need for a  
15 comprehensive review of the resource allocation model  
16 and resource allocation policies. The governing boards  
17 shall review and recommend changes to the resource allo-  
18 cation model and resource allocation policies contained in  
19 article five of this chapter. The governing boards shall  
20 submit a written report describing this review and the rec-  
21 ommended changes to the legislative oversight commis-  
22 sion on education accountability by the first day of De-  
23 cember, one thousand nine hundred ninety-five.

**§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.**

1 (a) Each governing board, through the senior adminis-  
2 trator, shall purchase or acquire all materials, supplies,  
3 equipment and printing required for that board, and the  
4 state institutions of higher education under its jurisdiction.  
5 The governing boards shall adopt rules governing and  
6 controlling acquisitions and purchases in accordance with  
7 the provisions of this section. Such rules shall assure that  
8 the governing board: (1) Shall not preclude any person  
9 from participating and making sales thereof to the board  
10 except as otherwise provided in section five of this article:  
11 *Provided*, That the providing of consultant services such  
12 as strategic planning services will not preclude or inhibit  
13 the governing boards from considering any qualified bid  
14 or response for delivery of a product or a commodity  
15 because of the rendering of those consultant services; (2)  
16 shall establish and prescribe specifications, in all proper  
17 cases, for materials, supplies, equipment and printing to be  
18 purchased; (3) shall adopt and prescribe such purchase  
19 order, requisition or other forms as may be required; (4)  
20 shall negotiate for and make purchases and acquisitions in  
21 such quantities, at such times and under contract, in the  
22 open market or through other accepted methods of gov-  
23 ernmental purchasing as may be practicable in accordance  
24 with general law; (5) shall advertise for bids on all pur-  
25 chases exceeding fifteen thousand dollars, to purchase by  
26 means of sealed bids and competitive bidding or to effect  
27 advantageous purchases through other accepted govern-  
28 mental methods and practices: *Provided, however*, That  
29 for printing services, bids shall be advertised by written  
30 notification of such bids to any print shop, affiliated with  
31 an institution of higher education and operated by classi-  
32 fied employees, on all purchases exceeding five thousand  
33 dollars; (6) shall post notices of all acquisitions and pur-  
34 chases for which competitive bids are being solicited in the  
35 purchasing office of the specified institution involved in  
36 the purchase, at least two weeks prior to making such pur-  
37 chases and ensure that the notice is available to the public  
38 during business hours; (7) shall provide for purchasing in  
39 the open market; (8) shall make provision for vendor  
40 notification of bid solicitation and emergency purchasing;

41 and (9) provide that competitive bids shall not be required  
42 for purchases of one thousand dollars or less.

43 (b) Each governing board, through the senior admin-  
44 istrator, may issue a check in advance to a company sup-  
45 plying postage meters for postage used by that board and  
46 by the state institutions of higher education under its juris-  
47 diction.

48 (c) When a purchase is to be made by bid, any or all  
49 bids may be rejected. However, all purchases based on  
50 advertised bid requests shall be awarded to the lowest re-  
51 sponsible bidder taking into consideration the qualities of  
52 the articles to be supplied, their conformity with specifica-  
53 tions, their suitability to the requirements of the governing  
54 boards and delivery terms: *Provided*, That the preference  
55 for resident vendors as provided in section thirty-seven,  
56 article three, chapter five-a of this code shall apply to the  
57 competitive bids made pursuant to this section.

58 (d) The governing boards shall maintain a purchase  
59 file, which shall be a public record and open for public  
60 inspection. After the award of the order or contract, the  
61 governing boards shall indicate upon the successful bid  
62 that it was the successful bid, and shall further indicate  
63 why bids are rejected and, if the mathematical low vendor  
64 is not awarded the order or contract, the reason therefor.  
65 No records in the purchase file shall be destroyed without  
66 the written consent of the legislative auditor. Those files  
67 in which the original documentation has been held for at  
68 least one year and in which the original documents have  
69 been reproduced and archived on microfilm or other  
70 equivalent method of duplication may be destroyed with-  
71 out the written consent of the legislative auditor. All files,  
72 no matter the storage method, shall be open for inspection  
73 by the legislative auditor upon request.

74 (e) The governing boards shall also adopt rules to  
75 prescribe qualifications to be met by any person who is to  
76 be employed as a buyer pursuant to this section. These  
77 rules shall require that no person shall be employed as a

78 buyer unless that person, at the time of employment, either  
79 is: (1) A graduate of an accredited college or university;  
80 or (2) has at least four years' experience in purchasing for  
81 any unit of government or for any business, commercial  
82 or industrial enterprise. Any person making purchases  
83 and acquisitions pursuant to this section shall execute a  
84 bond in the penalty of fifty thousand dollars, payable to  
85 the state of West Virginia, with a corporate bonding or  
86 surety company authorized to do business in this state as  
87 surety thereon, in form prescribed by the attorney general  
88 and conditioned upon the faithful performance of all  
89 duties in accordance with sections four through eight of  
90 this article and the rules of the governing boards. In lieu  
91 of separate bonds for such buyers, a blanket surety bond  
92 may be obtained. Any such bond or bonds shall be filed  
93 with the secretary of state. The cost of any such bond or  
94 bonds shall be paid from funds appropriated to the appli-  
95 cable governing board.

96 (f) All purchases and acquisitions shall be made in  
97 consideration and within limits of available appropriations  
98 and funds and in accordance with applicable provisions of  
99 article two, chapter five-a of this code, relating to expendi-  
100 ture schedules and quarterly allotments of funds.

101 (g) The governing boards may make requisitions  
102 upon the auditor for a sum to be known as an advance  
103 allowance account, in no case to exceed five percent of the  
104 total of the appropriations for the board, and the auditor  
105 shall draw a warrant upon the treasurer for such accounts;  
106 and all such advance allowance accounts shall be account-  
107 ed for by the applicable governing board once every thir-  
108 ty days or more often if required by the state auditor.  
109 Such authority shall not be delegated to any state institu-  
110 tion under the control and supervision of the board.

111 (h) Contracts entered into pursuant to this section shall  
112 be signed by the applicable governing board in the name  
113 of the state and shall be approved as to form by the attor-  
114 ney general: *Provided*, That a contract or a change order  
115 for that contract which in total does not exceed fifteen

116 thousand dollars and which uses terms and conditions or  
117 standardized forms previously approved by the attorney  
118 general and does not make substantive changes in the  
119 terms and conditions of the contract does not require  
120 approval by the attorney general: *Provided, however,*  
121 That the attorney general shall make a list of those chang-  
122 es which he or she deems to be substantive and the list, and  
123 any changes thereto, shall be published in the state regis-  
124 ter. A contract that exceeds fifteen thousand dollars shall  
125 be filed with the state auditor: *Provided further,* That  
126 upon request, the governing boards shall make all con-  
127 tracts available for inspection by the state auditor. The  
128 governing board shall prescribe the amount of deposit or  
129 bond to be submitted with a bid or contract, if any, and the  
130 amount of deposit or bond to be given for the faithful  
131 performance of a contract. If the governing board pur-  
132 chases or contracts for materials, supplies, equipment and  
133 printing contrary to the provisions of sections four  
134 through seven of this article or the rules pursuant thereto,  
135 such purchase or contract shall be void and of no effect.

136 (i) Either governing board may request the director of  
137 purchases to make available, from time to time, the facili-  
138 ties and services of that department to the board in the  
139 purchase and acquisition of materials, supplies, equipment  
140 and printing, and the director of purchases shall cooperate  
141 with that governing board in all such purchases and acqui-  
142 sitions upon such request.

143 (j) Each governing board shall permit private institu-  
144 tions of higher education to join as purchasers on pur-  
145 chase contracts for materials, supplies and equipment  
146 entered into by that governing board. Any private school  
147 desiring to join as purchasers on such purchase contracts  
148 shall file with that governing board an affidavit signed by  
149 the president of the institution of higher education or a  
150 designee requesting that it be authorized to join as pur-  
151 chaser on purchase contracts of that governing board and  
152 agreeing that it will be bound by such terms and condi-  
153 tions as that governing board may prescribe, and that it



154 will be responsible for payment directly to the vendor  
155 under each purchase contract.

156 (k) Notwithstanding any other provision of this code  
157 to the contrary, the governing boards may make purchases  
158 from the federal government or from federal government  
159 contracts if the materials, supplies, equipment or printing  
160 to be purchased is available from the federal government  
161 or from a federal contract and purchasing from the feder-  
162 al government or from a federal government contract  
163 would be the most financially advantageous manner of  
164 making the purchase.

165 (l) An independent performance audit of all purchas-  
166 ing functions and duties which are performed at any insti-  
167 tution of higher education shall be performed each fiscal  
168 year. The joint committee on government and finance  
169 shall conduct the performance audit and the governing  
170 boards shall be responsible for paying the cost of the audit  
171 from funds appropriated to the governing boards.

172 (m) The governing boards shall require each institu-  
173 tion under their respective jurisdiction to notify and in-  
174 form every vendor doing business with that institution of  
175 the provisions of section fifty-four, article three, chapter  
176 five-a of this code, also known as the "Prompt Pay Act of  
177 1990".

178 (n) Consultant services, such as strategic planning  
179 services, shall not preclude or inhibit the governing boards  
180 from considering any qualified bid or response for deliv-  
181 ery of a product or a commodity because of the rendering  
182 of those consultant services.

**§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.**

1 (a) Every person, firm or corporation selling or offer-  
2 ing to sell to the governing boards, upon competitive bids  
3 or otherwise, any materials, equipment or supplies in ex-  
4 cess of fifteen thousand dollars shall comply with all of  
5 the provisions of section twelve, article three, chapter five-a

6 of this code and shall file with the director of the purchas-  
7 ing division of the state of West Virginia the affidavit re-  
8 quired herein: *Provided*, That every such person, firm or  
9 corporation who is presently in compliance with said sec-  
10 tion shall not be required to requalify thereunder to be  
11 able to transact business with the governing boards.

12 (b) Any person, firm or corporation failing or refus-  
13 ing to comply with said statute as herein required shall be  
14 ineligible to sell or offer to sell commodities or printing to  
15 the governing boards as hereinafter set forth: *Provided*,  
16 That any person suspended under the provisions of sec-  
17 tion thirty-nine, article three, chapter five-a of this code  
18 shall not be eligible to sell or offer to sell commodities or  
19 printing to the governing boards: *Provided, however*,  
20 That the governing boards shall have the power and au-  
21 thority to suspend, for a period not to exceed one year, the  
22 right and privilege of a person to bid on purchases of the  
23 governing boards when there is reason to believe that such  
24 person has violated any of the provisions in sections four  
25 through seven of this article or the rules of the governing  
26 boards pursuant thereto. Every person whose right to bid  
27 has been so suspended shall be notified thereof by a letter  
28 posted by registered mail containing the reason for such  
29 suspension and shall have the right to have the appropriate  
30 governing board's action reviewed in accordance with  
31 section forty, article three, chapter five-a of this code.

**§18B-5-6. Other code provisions relating to purchasing not  
controlling; exceptions; criminal provisions and  
penalties; financial interest of governing boards,  
etc.; receiving anything of value from interested  
party and penalties therefor; application of  
bribery statute.**

1 The provisions of article three, chapter five-a of this  
2 code shall not control or govern the purchase, acquisition  
3 or other disposition of any equipment, materials, supplies  
4 or printing by the governing boards, except as provided in  
5 sections four through seven of this article: *Provided*, That  
6 sections twenty-nine, thirty and thirty-one, article three,

7 chapter five-a of this code shall apply to all purchasing  
8 activities of the governing boards.

9 Neither the governing boards, nor any employee of  
10 the governing boards, shall be financially interested, or  
11 have any beneficial personal interest, directly or indirectly,  
12 in the purchase of any equipment, materials, supplies or  
13 printing, nor in any firm, partnership, corporation or asso-  
14 ciation furnishing them. Neither the governing boards  
15 nor any employee of said boards shall accept or receive  
16 directly or indirectly from any person, firm or corpora-  
17 tion, known by the governing boards or such employee to  
18 be interested in any bid, contract or purchase, by rebate,  
19 gift or otherwise, any money or other thing of value what-  
20 soever or any promise, obligation or contract for future  
21 reward or compensation.

22 A person who violates any of the provisions of this  
23 section shall be guilty of a misdemeanor, and, upon con-  
24 viction thereof, shall be imprisoned in jail not less than  
25 three months nor more than one year, or fined not less  
26 than fifty nor more than one thousand dollars, or both  
27 imprisoned and fined, in the discretion of the court: *Pro-*  
28 *vided*, That any person who violates any of such provi-  
29 sions by receiving money or other thing of value under  
30 circumstances constituting the crime of bribery under the  
31 provisions of section three, article five-a, chapter sixty-one  
32 of this code, shall, upon conviction of bribery, be pun-  
33 ished as provided in section nine of said article.

**§18B-5-7. Disposition of obsolete and unusable equipment,  
surplus supplies and other unneeded materials.**

1 The governing boards shall dispose of obsolete and  
2 unusable equipment, surplus supplies and other unneeded  
3 materials, either by transfer to other governmental agen-  
4 cies or institutions, by exchange or trade, or by sale as  
5 junk or otherwise. The governing boards shall adopt rules  
6 governing and controlling the disposition of all such  
7 equipment, supplies and materials. At least ten days prior

8 to the disposition, the governing boards shall advertise, by  
9 newspaper publication as a Class II legal advertisement in  
10 compliance with the provisions of article three, chapter  
11 fifty-nine of this code, in the county in which the equip-  
12 ment, supplies and materials are located the availability or  
13 sales of such disposable equipment, supplies and materials  
14 and may sell the disposable equipment, supplies and mate-  
15 rials, in whole or in part, at public auction or by sealed bid,  
16 or may transfer, exchange or trade same to other govern-  
17 mental agencies or institutions (if by exchange or trade,  
18 then without advertising), in whole or in part, as sound  
19 business practices may warrant under existing circum-  
20 stances and conditions.

**§18B-5-8. Report card on West Virginia business.**

1 The governing boards shall make an annual report to  
2 the finance committees of the House of Delegates and the  
3 Senate regarding the entities with which the governing  
4 boards contracted in the previous year. This report shall  
5 be submitted on or before the fifteenth day of January of  
6 each year and shall be cumulative in nature. The report  
7 shall include, but not be limited to, information regarding  
8 the number of out-of-state entities with which the govern-  
9 ing board contracted, the number of in-state firms with  
10 which the governing board contracted, the dollar amount  
11 of each contract; the equipment, commodity or service for  
12 which the contract was let; the governing board's recom-  
13 mendations, if any, on the manner in which the purchasing  
14 procedures could be improved.

**ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.**

**§18B-6-1. Institutional boards of advisors.**

1 (a) There shall be established at each state institution  
2 of higher education, hereinafter referred to as the "institu-  
3 tion", excluding centers and branches thereof, an institu-  
4 tional board of advisors. The board of advisors shall con-  
5 sist of eleven members, including an administrative officer  
6 of the institution appointed by the president of the institu-  
7 tion; a full-time member of the faculty with the rank of

8 instructor or above duly elected by the faculty; a member  
9 of the student body in good academic standing, enrolled  
10 for college credit work and duly elected by the student  
11 body; a member of the institutional classified staff duly  
12 elected by the classified staff; and, appointed by the ap-  
13 propriate governing board, seven lay citizens of the state  
14 who have demonstrated a sincere interest in and concern  
15 for the welfare of that institution and who are representa-  
16 tive of its population and fields of study, including at least  
17 two alumni of the institution. Of the seven lay citizen  
18 members, no more than four may be of the same political  
19 party.

20 The administrative officer and student member shall  
21 serve for a term of one year; the faculty member and the  
22 classified staff member shall serve for a term of two years  
23 and the seven lay citizen members shall serve terms of  
24 four years each. All members, except the administrative  
25 officer, shall be eligible to succeed themselves for no more  
26 than one additional term. A vacancy in an unexpired term  
27 of a member shall be filled within sixty days of the occur-  
28 rence thereof in the same manner as the original appoint-  
29 ment or election. Except in the case of a vacancy, all  
30 elections shall be held and all appointments shall be made  
31 no later than the thirtieth day of April preceding the com-  
32 mencement of the term.

33 Each board of advisors shall hold a regular meeting at  
34 least quarterly, commencing in July of each year. Addi-  
35 tional meetings may be held upon the call of the chair-  
36 man, president of the institution or upon the written re-  
37 quest of at least four members. A majority of the mem-  
38 bers shall constitute a quorum for conducting the business  
39 of the board of advisors.

40 (b) One of the seven lay citizen members shall be  
41 elected as chairman by the board of advisors in July of  
42 each year: *Provided*, That no member shall serve as chair-  
43 man for more than two consecutive years at a time.

44 The president of the institution shall make available

45 resources of the institution for conducting the business of  
46 the board of advisors. The members of the board of advi-  
47 sors shall be reimbursed for all reasonable and necessary  
48 expenses actually incurred in the performance of their  
49 official duties under this section upon presentation of an  
50 itemized sworn statement thereof. All expenses incurred  
51 by the board of advisors and the institution under this  
52 section shall be paid from funds allocated to the institution  
53 for such purpose.

54 (c) The board of advisors shall review, prior to the  
55 submission by the president to its governing board, all  
56 proposals of the institution in the areas of mission, aca-  
57 demic programs, budget, capital facilities and such other  
58 matters as requested by the president of the institution or  
59 its governing board or otherwise assigned to it by law.  
60 The board of advisors shall comment on each such pro-  
61 posal in writing, with such recommendations for concur-  
62 rence therein or revision or rejection thereof as it deems  
63 proper. Such written comments and recommendations  
64 shall accompany the proposal to the governing board and  
65 the governing board shall include such comments and  
66 recommendations in its consideration of and action on the  
67 proposal. The governing board shall promptly acknowl-  
68 edge receipt of the comments and recommendations and  
69 shall notify the board of advisors in writing of any action  
70 taken thereon.

71 (d) The board of advisors shall review, prior to their  
72 implementation by the president, all proposals regarding  
73 institution-wide personnel policies. The board of advisors  
74 may comment on such proposals in writing.

75 (e) The board of advisors shall provide advice and  
76 assistance to the president in establishing closer connec-  
77 tions between higher education and business, labor, gov-  
78 ernment, community and economic development organi-  
79 zations to give students greater opportunities to experience  
80 the world of work, such as business and community ser-  
81 vice internships, apprenticeships and cooperative pro-  
82 grams; to communicate better and serve the current work

83 force and work force development needs of their service  
84 area, including the needs of nontraditional students for  
85 college-level skills upgrading and retraining and the needs  
86 of employers for specific programs of limited duration;  
87 and to assess the performance of the institution's graduates  
88 and assist in job placement. The administrative officer of  
89 the institution serving on the advisory council may be  
90 assigned the responsibility for coordinating the institu-  
91 tion's activities related to economic development.

92 (f) Upon the occurrence of a vacancy in the office of  
93 president of the institution, the board of advisors shall  
94 serve as a search and screening committee for candidates  
95 to fill the vacancy under guidelines established by its gov-  
96 erning board. When serving as a search and screening  
97 committee, the board of advisors and its governing board  
98 are each authorized to appoint up to three additional per-  
99 sons to serve on the committee as long as the search and  
100 screening process is in effect. The three additional ap-  
101 pointees of the board of advisors shall be faculty members  
102 of the institution. Only for the purposes of the search and  
103 screening process, such additional members shall possess  
104 the same powers and rights as the regular members of the  
105 board of advisors, including reimbursement for all reason-  
106 able and necessary expenses actually incurred. Following  
107 the search and screening process, the committee shall  
108 submit the names of at least three candidates to the gov-  
109 erning board for consideration and appointment. If the  
110 governing board rejects all candidates so submitted, the  
111 committee shall submit the names of at least three addi-  
112 tional candidates, and this process shall be repeated until  
113 the governing board appoints one of the candidates so  
114 submitted. The governing board shall provide all neces-  
115 sary staff assistance to the board of advisors in its role as a  
116 search and screening committee.

#### **ARTICLE 7. PERSONNEL GENERALLY.**

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

§18B-7-11. Compensatory time off in lieu of overtime; written agreement; other conditions.

**§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.**

1           (a) Definitions for terms used in this section shall be in  
2 accordance with those provided in section two, article nine  
3 of this chapter except that the provisions of this section  
4 shall apply only to classified employees whose employ-  
5 ment, if continued, shall accumulate to a minimum total of  
6 one thousand forty hours during a calendar year and  
7 extend over at least nine months of a calendar year: *Pro-*  
8 *vided*, That this section shall also apply for one year to  
9 any classified employee who is involuntarily transferred to  
10 a position in nonclassified status for which he or she did  
11 not apply.

12           (b) All decisions by the appropriate governing board  
13 or their agents at state institutions of higher education  
14 concerning reductions in work force of full-time classified  
15 personnel, whether by temporary furlough or permanent  
16 termination, shall be made in accordance with this section.  
17 For layoffs by classification for reason of lack of funds or  
18 work, or abolition of position or material changes in duties  
19 or organization and for recall of employees so laid off,  
20 consideration shall be given to an employee's seniority as  
21 measured by permanent employment in the service of the  
22 state system of higher education. In the event that the  
23 institution wishes to lay off a more senior employee, the  
24 institution must demonstrate that the senior employee  
25 cannot perform any other job duties held by less senior  
26 employees of that institution in the same job class or any  
27 other equivalent or lower job class for which the senior  
28 employee is qualified: *Provided*, That if an employee  
29 refuses to accept a position in a lower job class, such em-  
30 ployee shall retain all rights of recall hereinafter provided.  
31 If two or more employees accumulate identical seniority,  
32 the priority shall be determined by a random selection  
33 system established by the employees and approved by the



34 institution.

35 (c) Any employee laid off during a furlough or re-  
36 duction in work force shall be placed upon a preferred  
37 recall list and shall be recalled to employment by the insti-  
38 tution on the basis of seniority. An employee's listing with  
39 an institution shall remain active for a period of one calen-  
40 dar year from the date of termination or furlough or from  
41 the date of the most recent renewal. If an employee fails  
42 to renew the listing with the institution, the employee's  
43 name may be removed from the list. An employee placed  
44 upon the preferred list shall be recalled to any position  
45 opening by the institution within the classification(s) in  
46 which the employee had previously been employed or to  
47 any lateral position for which the employee is qualified.  
48 An employee on the preferred recall list shall not forfeit  
49 the right to recall by the institution if compelling reasons  
50 require such employee to refuse an offer of reemploy-  
51 ment by the institution.

52 The institution shall be required to notify all employ-  
53 ees maintaining active listings on the preferred recall list  
54 of all position openings that from time to time exist. Such  
55 notice shall be sent by certified mail to the last known  
56 address of the employee. It shall be the duty of each  
57 employee listed to notify the institution of any change in  
58 address and to timely renew the listing with the institution.  
59 No position openings shall be filled by the institution,  
60 whether temporary or permanent, until all employees on  
61 the preferred recall list have been properly notified of  
62 existing vacancies and have been given an opportunity to  
63 accept reemployment.

64 (d) A nonexempt classified employee, including a  
65 nonexempt employee who has not accumulated a mini-  
66 mum total of one thousand forty hours during the calen-  
67 dar year or whose contract does not extend over at least  
68 nine months of a calendar year, who meets the minimum  
69 qualifications for a job opening at the institution where the  
70 employee is currently employed, whether the job be a  
71 lateral transfer or a promotion, and applies for same shall

72 be transferred or promoted before a new person is hired  
73 unless such hiring is affected by mandates in affirmative  
74 action plans or the requirements of Public Law 101-336,  
75 the Americans with Disabilities Act. If more than one  
76 qualified, nonexempt classified employee applies, the  
77 best-qualified nonexempt classified employee shall be  
78 awarded the position. In instances where such classified  
79 employees are equally qualified, the nonexempt classified  
80 employee with the greatest amount of continuous seniority  
81 at that state institution of higher education shall be award-  
82 ed the position. A nonexempt classified employee is one  
83 to whom the provisions of the federal Fair Labor Stan-  
84 dards Act, as amended, apply.

**§18B-7-11. Compensatory time off in lieu of overtime; written agreement; other conditions.**

1 (a) Notwithstanding any other provision of this code  
2 to the contrary, employees of the governing boards may  
3 receive in lieu of overtime compensation, compensatory  
4 time off at a rate not less than one and one-half hours for  
5 each hour of employment. Said employees may receive  
6 compensatory time only pursuant to written agreements  
7 arrived at between the employer and the employee before  
8 the performance of the work, and recorded in the employ-  
9 er's record of hours worked, and if the employee has not  
10 accrued compensatory time in excess of the limits pre-  
11 scribed herein. Any written agreement may be modified  
12 at the request of either the employer or employee, but  
13 under no circumstances shall changes in the agreement  
14 deny an employee compensatory time heretofore ac-  
15 quired.

16 (b) An employee may accrue up to four hundred  
17 eighty hours of compensatory time if the employee's work  
18 is a public safety activity, an emergency response activity  
19 or a seasonal activity. An employee engaged in other  
20 work for the governing board may accrue up to two hun-  
21 dred forty hours of compensatory time. Any such em-  
22 ployee who has accrued four hundred eighty or two hun-  
23 dred forty hours of compensatory time, as the case may

24 be, shall, for additional overtime hours of work, be paid  
25 overtime compensation. If compensation is paid to an  
26 employee for accrued compensatory time off, such com-  
27 pensation shall be paid at the regular rate earned by the  
28 employee at the time the employee received such pay-  
29 ment.

30 (c) An employee who has accrued compensatory time  
31 off pursuant to this section, shall, upon termination of  
32 employment, be paid for the unused compensatory time at  
33 a rate of compensation not less than:

34 (1) The average regular rate received by such employ-  
35 ee during the first three years of the employee's employ-  
36 ment; or

37 (2) The final regular rate received by such employee,  
38 whichever is higher.

39 (d) An employee of the governing boards who has  
40 accrued compensatory time off authorized to be provided  
41 under this section, and who has requested the use of com-  
42 pensatory time, shall be permitted by the employee's em-  
43 ployer to use such time within a reasonable time after  
44 making the request if the use of the compensatory time  
45 does not unduly disrupt the operation of the employing  
46 agency. Compensatory time must be used within one year  
47 from the time it is accrued.

48 (e) For purposes of this section, the terms "compensa-  
49 tory time" and "compensatory time off" mean hours dur-  
50 ing which the employee is not working, which are not  
51 counted as hours worked toward during the applicable  
52 work week or other work period for purposes of overtime  
53 compensation, and for which the employee is compensat-  
54 ed at the employee's regular rate.

#### **ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.**

§18B-9-2. Definitions.

§18B-9-6. Biennial review of equitable system of job classifications.

§18B-9-12. Probationary employees.

**§18B-9-2. Definitions.**

1 As used in this article:

2 (a) "Classified employee or employee" means any  
3 regular full-time or regular part-time employee of a gov-  
4 erning board, including all employees of the West Virginia  
5 network for educational telecomputing and beginning the  
6 first day of July, one thousand nine hundred ninety, in-  
7 cludes employees at the central office of the governing  
8 boards, who hold a position that is assigned a particular  
9 job title and pay grade in accordance with the personnel  
10 classification system established by the appropriate gov-  
11 erning board and shall include all employees of the West  
12 Virginia network for educational telecomputing;

13 (b) "Nonclassified employee" means an individual who  
14 is responsible for policy formation at the department or  
15 institutional level or reports directly to the president:  
16 *Provided*, That the percentage of personnel placed in the  
17 category of "nonclassified" at any given institution shall  
18 not exceed ten percent of the total number of employees  
19 of that institution who are eligible for membership in any  
20 state retirement system of the state of West Virginia or  
21 other retirement plan authorized by the state. Final ap-  
22 proval of such placement shall be with the appropriate  
23 governing board;

24 (c) "Job description" means the specific listing of du-  
25 ties and responsibilities as determined by the appropriate  
26 governing board and associated with a particular job title;

27 (d) "Job title" means the name of the position or job as  
28 defined by the appropriate governing board;

29 (e) "Merit increases and salary adjustments" means the  
30 amount of additional salary increase allowed on a merit  
31 basis or to rectify salary inequities or accommodate com-  
32 petitive market conditions in accordance with rules estab-  
33 lished by the appropriate governing board;

34 (f) "Pay grade" means the number assigned by the  
35 appropriate governing board to a particular job title and

36 refers to the vertical column heading of the salary sched-  
37 ule established in section three of this article;

38 (g) "Personnel classification system" means the process  
39 of job categorization adopted by the appropriate govern-  
40 ing board by which job title, job description, pay grade  
41 and placement on the salary schedule are determined;

42 (h) "Salary" means the amount of compensation paid  
43 through the state treasury per annum to a classified em-  
44 ployee;

45 (i) "Schedule" or "salary schedule" means the grid of  
46 annual salary figures established in section three of this  
47 article; and

48 (j) "Years of experience" means the number of years a  
49 person has been an employee of the state of West Virginia  
50 and refers to the horizontal column heading of the salary  
51 schedule established in section three of this article. For  
52 the purpose of placement on the salary schedule pursuant  
53 to said section, employment for nine months or more shall  
54 equal one year of experience, but no classified employee  
55 may accrue more than one year of experience during any  
56 given fiscal year. Employment for less than full time or  
57 less than nine months during any fiscal year shall be pro-  
58 rated. For the purpose of determining the amount of  
59 annual salary increase pursuant to subsection (b), section  
60 five of this article, employment for less than twelve months  
61 during any fiscal year shall be prorated. In accordance  
62 with rules established by the appropriate governing board,  
63 a classified employee may be granted additional years of  
64 experience not to exceed the actual number of years of  
65 prior, relevant work or experience at accredited institutions  
66 of higher education other than state institutions of higher  
67 education.

**§18B-9-6. Biennial review of equitable system of job classifica-  
tions.**

1 The secretary of education and the arts shall, on or  
2 before the first day of July, one thousand nine hundred

3 ninety-six, conduct a review of the progress made on im-  
4 plementation of the equitable system of job classifications  
5 established by board rule pursuant to the provisions of  
6 section four of this article. A similar review shall be con-  
7 ducted biennially thereafter until the secretary determines  
8 that the goals of the rule establishing the system have been  
9 achieved.

**§18B-9-12. Probationary employees.**

1 Each full-time classified employee hired by the gov-  
2 erning boards shall serve an initial six-month probationary  
3 period. At the end of said probationary period the em-  
4 ployee shall receive a written evaluation of his or her per-  
5 formance. The employee's supervisor shall meet with the  
6 employee and explain the contents of said evaluation and  
7 whether the employee is being offered regular employ-  
8 ment.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT  
STATE INSTITUTIONS OF HIGHER EDUCA-  
TION.**

**§18B-10-1. Enrollment, tuition and other fees at educational  
institutions; refund of fees.**

1 (a) Each governing board shall fix tuition and other  
2 fees for each school term for the different classes or cate-  
3 gories of students enrolling at each state institution of  
4 higher education under its jurisdiction and may include  
5 among such fees any one or more of the following: (1)  
6 Health service fees; (2) infirmary fees; (3) student activi-  
7 ties, recreational, athletic and extracurricular fees, which  
8 said fees may be used to finance a student's attorney to  
9 perform legal services for students in civil matters at such  
10 institutions: *Provided*, That such legal services shall be  
11 limited to only those types of cases, programs or services  
12 approved by the administrative head of such institution  
13 where such legal services are to be performed; and (4)  
14 graduate center fees and branch college fees, or either, if  
15 the establishment and operations of graduate centers or  
16 branch colleges are otherwise authorized by law. All fees

17 collected at any graduate center or at any branch college  
18 shall be paid into special funds and shall be used solely  
19 for the maintenance and operation of the graduate center  
20 or branch college at which they were collected: *Provided,*  
21 *however,* That the governing boards shall use the median  
22 of the average tuition and required fees at similarly classi-  
23 fied institutions in member states of the southern regional  
24 education board as a goal in establishing tuition and re-  
25 quired fee levels for residents at state institutions of higher  
26 education under their jurisdiction: *Provided further,* That  
27 the governing boards shall use the actual instructional cost  
28 as the same shall be determined in accordance with board  
29 rule, in establishing nonresident undergraduate fees, with  
30 the goal of having tuition and fees cover the actual cost by  
31 fiscal year one thousand nine hundred ninety-six: *And*  
32 *provided further,* That students enrolled in undergraduate  
33 courses offered at off-campus locations shall pay an  
34 off-campus instruction fee and shall not pay the athletic  
35 fee and the student activity fee. The off-campus instruc-  
36 tion fee shall be used solely for the support of off-campus  
37 courses offered by the institution. Off-campus locations  
38 for each institution shall be defined by the appropriate  
39 governing board. The schedule of all fees, and any  
40 changes therein, shall be entered in the minutes of the  
41 meeting of the appropriate governing board, and the  
42 board shall file with the legislative auditor a certified copy  
43 of such schedule and changes.

44 (b) In addition to the fees mentioned in the preceding  
45 paragraph, each governing board may impose and collect  
46 a student union building fee. All such building fees col-  
47 lected at an institution shall be paid into a special student  
48 union building fund for such institution, which is hereby  
49 created in the state treasury, and shall be used only for the  
50 construction, operation and maintenance of a student  
51 union building or a combination student union and dining  
52 hall building or for the payment of the principal of and  
53 interest on any bond issued to finance part or all of the  
54 construction of a student union building or a combination  
55 student union and dining hall building or the renovation

56 of an existing structure for use as a student union building  
57 or a combination student union and dining hall building,  
58 all as more fully provided in section ten of this article.  
59 Any moneys in such funds not immediately needed for  
60 such purposes may be invested in any such bonds or other  
61 securities as are now or hereafter authorized as proper  
62 investments for state funds.

63 (c) The boards shall establish the rates to be charged  
64 full-time students enrolled during a regular academic  
65 term. For fee purposes a full-time undergraduate student  
66 shall be one enrolled for twelve or more credit hours in a  
67 regular term, and a full-time graduate student shall be one  
68 enrolled for nine or more credit hours in a regular term.  
69 Undergraduate students taking fewer than twelve credit  
70 hours in a regular term shall have their fees reduced pro  
71 rata based upon one twelfth of the full-time rate per credit  
72 hour, and graduate students taking fewer than nine credit  
73 hours in a regular term shall have their fees reduced pro  
74 rata based upon one ninth of the full-time rate per credit  
75 hour.

76 Fees for students enrolled in summer terms or other  
77 nontraditional time periods shall be prorated based upon  
78 the number of credit hours for which the student enrolls in  
79 accordance with the above provisions.

80 (d) All fees are due and payable by the student upon  
81 enrollment and registration for classes except as provided  
82 for in this subsection:

83 (1) The governing boards shall permit fee payments to  
84 be made in up to three installments over the course of the  
85 academic term. The payments shall include interest at a  
86 rate set by the governing board: *Provided*, That all fees  
87 must be paid prior to the awarding of course credit at the  
88 end of the academic term.

89 (2) The governing boards shall also authorize the  
90 acceptance of credit cards or other payment methods  
91 which may be generally available to students for the pay-  
92 ment of fees: *Provided*, That the governing boards may



93 charge the students for the reasonable and customary  
94 charges incurred in accepting credit cards and other meth-  
95 ods of payment.

96 (3) If a governing board determines that any student  
97 was adversely, financially affected by a legal work stop-  
98 page that commenced on or after the first day of January,  
99 one thousand nine hundred ninety-three, it may allow the  
100 student an additional six months to pay the fees for any  
101 academic term: *Provided*, That the governing board shall  
102 determine if a student was adversely, financially affected  
103 on a case-by-case basis.

104 (e) The governing boards shall establish legislative  
105 rules regarding the refund of any fees upon the voluntary  
106 or involuntary withdrawal from classes of any student  
107 which rules shall comply with all applicable state and fed-  
108 eral laws and shall be uniformly applied throughout the  
109 systems.

110 (f) The governing boards shall establish legislative  
111 rules using the fee structure or other penalties to provide a  
112 disincentive for students to register for classes in excess of  
113 the typical full-time course load, that being from twelve to  
114 eighteen credit hours for an undergraduate student and  
115 from nine to fifteen credit hours for a graduate student,  
116 and then to withdraw from such excess classes after the  
117 semester has begun.

118 (g) In addition to the fees mentioned in the preceding  
119 subsections, each governing board may impose, collect  
120 and distribute a fee to be used to finance a nonprofit,  
121 student-controlled public interest research group: *Provid-*  
122 *ed*, That the students at such institution demonstrate sup-  
123 port for the increased fee in a manner and method estab-  
124 lished by that institution's elected student government:  
125 *Provided, however*, That such fees shall not be used to  
126 finance litigation against the institution.

127 (h) Any proposed fee increase which would become  
128 effective on or after the first day of July, one thousand  
129 nine hundred ninety-seven, which has been approved by

130 the governing boards, shall then be submitted by the gov-  
131 erning boards to the secretary of education and the arts  
132 for approval. Such approval shall only be granted upon  
133 the certification that such institution requesting a fee in-  
134 crease is in compliance with the strategic plans required to  
135 be submitted, pursuant to section one-b, article one of this  
136 chapter. Notice, in the form of a report, shall be provided  
137 by the secretary to the legislative oversight commission on  
138 education accountability describing such fee increases and  
139 showing of how such increases compare with the average  
140 tuition and fees charged at comparable peer institutions in  
141 member states of the southern regional education board.

**ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.**

**§18B-11-5. Institute for instructional technology.**

1 The governing boards are hereby authorized to create  
2 an institute for instructional technology which shall be  
3 located within the higher education central office. The  
4 governing boards are hereby authorized to enter into  
5 research agreements pursuant to article twelve of this  
6 chapter with respect to the institute for instructional tech-  
7 nology. The vice chancellor for instructional technology  
8 shall perform such functions, tasks and duties as may be  
9 prescribed by law and shall share resources with the higher  
10 education central office, the state institutions of higher  
11 education and other agencies to the extent practical to  
12 avoid unnecessary duplication of staff and other adminis-  
13 trative efforts.

**ARTICLE 14. MISCELLANEOUS.**

**§18B-14-5. Authorization to sell property generally.**

1 Notwithstanding any other provisions of this code to  
2 the contrary, the governing boards are hereby authorized  
3 and empowered to sell any surplus real property and de-  
4 posit the net proceeds into a special revenue account in the  
5 state treasury to be appropriated by the Legislature for the  
6 purchase of additional real property or technology, or for  
7 capital improvements at the institution that sold the surplus

8 real property: *Provided*, That prior to such action the  
9 appropriate governing board shall have the property  
10 appraised by two licensed appraisers and shall not sell the  
11 property for less than the average of the two appraisals:  
12 *Provided, however*, That before such action, the governing  
13 boards shall provide notice to the public by a Class II legal  
14 advertisement as defined in section two, article three,  
15 chapter fifty-nine of this code and shall hold a public  
16 hearing on the issue.

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## CHAPTER 100

(H. B. 2548—By Delegates Proudfoot, Ball, Ennis, Kallal,  
Yeager and Anderson)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section five, article six, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to boot camp; internal policy development; and authorizing the state board of education and the state superintendent of schools to establish educational programs therein.

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

That section five, article six, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 6. BOOT CAMP.

#### §25-6-5. Internal policy development.

- 1 (a) The division of corrections shall promulgate
- 2 operational procedures and policies for the program
- 3 which shall require that the pilot program be established at
- 4 one site, which site shall then be under the control and
- 5 authority of the division of corrections. The program shall

6 consist of all of the following for each eligible offender  
7 whom the division permits to serve his or her sentence as a  
8 sentence to boot camp:

9 (1) A period of imprisonment at the boot camp of not  
10 more than twelve months which period of imprisonment  
11 shall consist of a military style combination of discipline,  
12 physical training and physical labor, substance abuse  
13 education, employment skills training, social skills train-  
14 ing, and psychological evaluation and treatment. Addi-  
15 tionally, the state board of education and state superin-  
16 tendent of schools, pursuant to section five, article twenty,  
17 chapter eighteen of this code, respectively, may, as funds  
18 are available, establish an education program for those  
19 eligible offenders who are not recipients of a high school  
20 diploma or a certificate of high school equivalence.

21 (2) Upon successful completion of the boot camp  
22 program, and notwithstanding any other provisions for  
23 determining parole eligibility, an inmate shall be released  
24 on parole in accordance with this article. Except as  
25 otherwise provided in this article, a release on parole under  
26 this section shall require that the eligible offender be  
27 under intensive supervision by the adult parole authority  
28 and may provide for supervision of the offender by the  
29 adult parole authority subsequent to the expiration of his  
30 or her period of boot camp incarceration under any terms  
31 and for any period of time prescribed by the provisions of  
32 article twelve, chapter sixty-two of this code.

33 (b) The policies and procedures for the boot camp  
34 program also shall include, but are not limited to, all of the  
35 following:

36 (1) Policies and procedures identifying the facilities  
37 under the control and authority of the division of  
38 corrections designated by the commissioner of corrections  
39 that will be used for prisoners serving a sentence to boot  
40 camp;

41 (2) Policies and procedures governing academic  
42 education, or psychological testing and evaluation,  
43 discipline, physical training and labor for eligible  
44 offenders serving a sentence to boot camp based upon the

45 offender's physical conditions and needs: *Provided*, That  
46 the education program shall be administered by the state  
47 board of education and state superintendent of schools in  
48 accordance with section thirteen-f, article two, chapter  
49 eighteen and section five, article twenty, chapter eighteen  
50 of this code, respectively;

51 (3) Policies and procedures establishing additional  
52 criteria the commissioner deems necessary to determine  
53 the eligibility of offenders to serve their sentence as a  
54 sentence to boot camp;

55 (4) Policies and procedures establishing a method of  
56 intensive supervision for an eligible offender who is  
57 released on parole of the type described in this section for  
58 the remainder of his or her parole sentence, and rules  
59 governing the supervision of the offender subsequent to  
60 the expiration of his or her parole sentence;

61 (5) Policies and procedures to effectuate notification  
62 to sentencing courts of the performance of eligible  
63 offenders serving their sentence of imprisonment as a  
64 sentence to boot camp;

65 (6) Any other policies and procedures that are  
66 necessary for the proper operation of the program.

67 (c) An eligible offender who does not satisfactorily  
68 complete the entire period of boot camp incarceration, he  
69 or she shall be removed from the program of boot camp  
70 and shall be required to serve the remainder of the  
71 original sentence of imprisonment which would have been  
72 available to the sentencing court had boot camp not been  
73 directed by the circuit court or allowed by the com-  
74 missioner.

75 (d) If the circuit court directs or the division permits  
76 an eligible offender to serve his or her sentence of  
77 imprisonment as a sentence to boot camp, the eligible  
78 offender shall commence a period of parole of the type  
79 described in this article. If an eligible offender violates  
80 the conditions of parole, he or she may be declared a  
81 parole violator and his or her parole shall be subject to  
82 revocation pursuant to the provision of article twelve,  
83 chapter sixty-two of this code.

## CHAPTER 101

(S. B. 573—By Senators Dittmar, Wooton, White, Grubb,  
Oliverio, Wagner, Bowman and Anderson)

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[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections five and six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said chapter by adding thereto a new article, designated article one-b; to amend and reenact sections five and ten, article two of said chapter; to amend and reenact section eleven-a, article four-a of said chapter; to amend and reenact sections five, five-a, five-b, five-d, six, seven, nine, eleven and twelve, article eight of said chapter; and to further amend said article by adding thereto three new sections, designated sections two-a, four-a and ten, all relating to elections and campaign practices; authorizing the state election commission to promulgate legislative rules for the regulation and control of elections; redefining the authority of the secretary of state to promulgate legislative rules for the administration of elections; requiring the submission and resubmission of rules to the legislative rule-making review committee; providing for the expiration of the force and effect of rules not submitted; codifying the code of fair campaign practices; legislative findings; defining certain terms; state election commission to issue advisory opinions, distribute information and investigate noncompliance with the code; hearings before the commission; prescribing the contents of the code; filing officers to retain signed forms; when candidate may be released from spending limitations; authority of commission to increase spending limitations by legislative rule; information required on voter registration form; the payment of postage when mailing voter registration form; the color of election ballots; reporting requirements for inaugural committees; providing for the termination of political committees; when reporting requirements applicable to organizations which publish, distribute or disseminate certain information within sixty days of an election; submission of information to commis-

sion to determine when reporting required; expanding the methods by which payment for campaign contributions of more than fifty dollars may be made; the filing of financial statements of candidates for legislative offices with the secretary of state; permitting the filing of financial statements by facsimile or other means of electronic transmission; establishing filing date for financial statements based upon postmark or the date of hand delivery or delivery by electronic transmission; prescription and promulgation of form for financial statements by commission; duty to furnish form on computer disc or other magnetic media; providing for the assessment of civil penalties for the late filing or the filing of a grossly incomplete or grossly inaccurate financial statement; duties of secretary of state and county clerks; clarifying purposes for which election expenditures may be made; permitting certain expenditures of excess contributions and requiring the state election commission to promulgate legislative rules with respect thereto; removing the prohibition against solicitation of candidates; authorizing contributions of up to one thousand dollars per calendar year to state executive committees of political parties; adopting technical revisions; and providing criminal penalties.

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

That sections five and six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article one-b; that sections five and ten, article two of said chapter be amended and reenacted; that section eleven-a, article four-a of said chapter be amended and reenacted; that sections five, five-a, five-b, five-d, six, seven, nine, eleven and twelve, article eight of said chapter be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections two-a, four-a and ten, all to read as follows:

**Article**

- 1A. State Election Commission and Secretary of State.**
- 1B. Fair Campaign Practices.**
- 2. Registration of Voters.**
- 4A. Electronic Voting Systems.**
- 8. Regulation and Control of Elections.**

**ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.**

§3-1A-5. Powers and duties of commission; legislative rules.

§3-1A-6. Powers and duties of secretary of state; exercise of powers by appointees.

**§3-1A-5. Powers and duties of commission; legislative rules.**

1 (a) The commission shall have the power and duty to  
2 approve or disapprove applications for approval of any  
3 voting machine as provided in section seven, article four  
4 of this chapter.

5 (b) The commission also shall serve as a body advisory  
6 to the secretary of state, and, as such, shall have the  
7 following powers and duties:

8 (1) To recommend policies and practices pertaining to  
9 the registration of voters and the conduct of elections  
10 generally;

11 (2) To review the work of the office of secretary of  
12 state pertaining to the duties of that office with respect to  
13 elections, and for this purpose to have access at reasonable  
14 times to pertinent records, books, papers and documents;

15 (3) To consider and study the election practices of  
16 other jurisdictions, with a view to determining the tech-  
17 niques used in eliminating fraud in elections and in sim-  
18 plifying election procedures;

19 (4) To advise or make recommendations to the gover-  
20 nor relative to election practices and policy in the state;  
21 and

22 (5) To keep minutes of the transactions of each meet-  
23 ing of the commission, which shall be public records and  
24 filed with the secretary of state.

25 (c) It shall be the commission's further duty to pre-  
26 pare and distribute in its name, within available appropri-  
27 ations and upon the recommendation of the secretary of  
28 state, nonpartisan educational material to inform voters of  
29 the importance of voting, to encourage voters to vote, to  
30 inform voters of election laws and procedures, and to



31 inform voters of the effect of any public question, consti-  
32 tutional amendment or bond issue that is to be voted upon  
33 by all the voters of the state and that has been authorized  
34 to be placed upon the ballot by the Legislature, and manu-  
35 als to assist county commissions, ballot commissioners,  
36 circuit and county clerks and other election officials in the  
37 proper performance of their duties in the conduct of elec-  
38 tions.

39 (d) The commission shall promulgate such legislative  
40 rules, in accordance with the provisions of chapter  
41 twenty-nine-a of this code, as may be necessary to stan-  
42 dardize and make effective the administration of the pro-  
43 visions of article eight of this chapter, and may promul-  
44 gate such other rules, in accordance with the provisions of  
45 chapter twenty-nine-a of this code, relating to the conduct  
46 and administration of elections as the commission may  
47 determine to be advisable. All rules required or permitted  
48 to be promulgated by the commission by the provisions of  
49 this section shall be submitted on or before the first day of  
50 August, one thousand nine hundred ninety-five, to the  
51 Legislature for review by the legislative rule-making re-  
52 view committee and approval by the Legislature.

**§3-1A-6. Powers and duties of secretary of state; exercise of powers by appointees.**

1 The secretary of state shall be the chief election offi-  
2 cial of the state. Except for those rules required by the  
3 provisions of section five of this article to be promulgated  
4 by the commission, the secretary of state shall have the  
5 authority, after consultation with the state election com-  
6 mission, of which he is a member, to make, amend and  
7 rescind such orders and to promulgate such legislative  
8 rules, in accordance with the provisions of chapter  
9 twenty-nine-a of this code, as may be necessary to stan-  
10 dardize and make effective the provisions of this chapter.  
11 Any rule proposed for promulgation by the secretary of  
12 state pursuant to the provisions of this section, and all rules  
13 heretofore adopted or in any way represented to govern  
14 the administration or enforcement of the provisions of this  
15 chapter by the secretary of state, shall be submitted on or  
16 before the first day of August, one thousand nine hundred

17 ninety-five, to the Legislature for review by the legislative  
18 rule-making review committee and approval by the Legis-  
19 lature. All rules which have not been submitted and ap-  
20 proved as aforesaid shall be of no further force and effect  
21 as of the first day of April, one thousand nine hundred  
22 ninety-six. It shall be the duty of all election officials,  
23 county commissions, clerks of county commissions, clerks  
24 of circuit courts, boards of ballot commissioners, election  
25 commissioners and poll clerks to abide by such orders as  
26 may be issued and such legislative rules as may be pro-  
27 mulgated by the secretary of state and the commission.

28 The secretary of state also shall have authority to re-  
29 quire collection and report of statistical information and to  
30 require other reports by county commissions, clerks of  
31 county commissions and clerks of circuit courts.

32 It shall be his further duty to advise with election offi-  
33 cials; to furnish to the election officials a sufficient num-  
34 ber of indexed copies of the current election laws of West  
35 Virginia and the administrative orders and rules issued or  
36 promulgated thereunder; to investigate the administration  
37 of election laws, frauds and irregularities in any registra-  
38 tion or election; to report violations of election laws to the  
39 appropriate prosecuting officials; and to prepare an annu-  
40 al report.

41 The secretary of state shall also have the power to  
42 administer oaths and affirmations, issue subpoenas for the  
43 attendance of witnesses, issue subpoena duces tecum to  
44 compel the production of books, papers, records, registra-  
45 tion records and other evidence, and fix the time and place  
46 for hearing any matters relating to the administration and  
47 enforcement of this chapter, or the rules promulgated by  
48 the state election commission or by the secretary of state  
49 as the chief election official of the state. In case of dis-  
50 obedience to a subpoena or subpoena duces tecum, he  
51 may invoke the aid of any circuit court in requiring the  
52 attendance, evidence and testimony of witnesses and the  
53 production of papers, books, records, registration records  
54 and other evidence.

55 All powers and duties vested in the secretary of state  
56 pursuant to the provisions of this article may be exercised

- 57 by appointees of the secretary of state at his discretion, but  
58 the secretary of state shall be responsible for their acts.

#### **ARTICLE 1B. FAIR CAMPAIGN PRACTICES.**

- §3-1B-1. Legislative findings, purpose, declaration and intent.  
§3-1B-2. Definitions.  
§3-1B-3. Powers and duties of the commission.  
§3-1B-4. Hearing; disposition; sanctions.  
§3-1B-5. Code of fair campaign practices.  
§3-1B-6. Forms.  
§3-1B-7. Retention of forms; public inspection.  
§3-1B-8. Voluntary subscription to the code.  
§3-1B-9. Release from subscription to the code.  
§3-1B-10. Adjustment of spending limitations.

#### **§3-1B-1. Legislative findings, purpose, declaration and intent.**

1 The Legislature hereby finds and declares that every  
2 candidate for public office in this state should follow the  
3 basic principles of decency, honesty and fairness in the  
4 course of their campaign practices.

5 The Legislature hereby further declares that the code  
6 of fair campaign practices, as contained in this article, is a  
7 standard to which all candidates for public office should  
8 aspire and is a guideline for voters to determine fair play  
9 in the conduct of campaigns for public office.

10 It is the further goal of the Legislature that every can-  
11 didate for public office in this state will voluntarily sub-  
12 scribe and adhere to the code of campaign practices.

#### **§3-1B-2. Definitions.**

1 For purposes of this article:

2 (a) "Campaign advertising or communication" means a  
3 communication authorized by a candidate or a candidate's  
4 committee for the purpose of advocating the nomination,  
5 election or defeat of a candidate;

6 (b) "Candidate for public office" means an individual  
7 who has filed a pre-candidacy statement pursuant to the  
8 provisions of section five-e, article eight of this chapter,  
9 has qualified to have his or her name listed on the ballot  
10 of any election, or who has declared his or her intention to

11 seek nomination or election through a petition or write-in  
12 procedure for any state, regional, county, municipal or  
13 district office which is to be filled at an election;

14 (c) "Code" means the code of fair campaign practices  
15 as set forth in this article;

16 (d) "Commission" means the state election commission  
17 created pursuant to the provisions of article one-a of this  
18 chapter; and

19 (e) "Political committee" means all of those persons  
20 and entities required to keep accounts and file financial  
21 statements pursuant to the provisions of section five, article  
22 eight of this chapter.

### **§3-1B-3. Powers and duties of the commission.**

1 In addition to the powers and duties of the commis-  
2 sion as prescribed in section five, article one-a of this  
3 chapter, the commission has:

4 (a) The power to issue advisory opinions on whether  
5 an action or proposed action of a subscribing candidate  
6 violates the code of fair campaign practices;

7 (b) The duty to prepare and distribute copies of the  
8 code of fair campaign practices to voters, circuit clerks,  
9 county clerks and other election officials;

10 (c) The duty to receive, investigate and act on com-  
11 plaints or other information concerning noncompliance  
12 with the code by candidates for public office who sub-  
13 scribe to the code; and

14 (d) The duty to make public the name and identity of  
15 candidates subscribing to the code and the findings of  
16 compliance or noncompliance with the code upon the  
17 conclusion of a hearing conducted pursuant to section  
18 four of this article.

### **§3-1B-4. Hearing; disposition; sanctions.**

1 If a majority of the commission determines that there  
2 is a reasonable likelihood that a candidate for public of-  
3 fice who subscribes to the code of fair campaign practices

4 has violated a provision of the code, then the commission  
5 shall inform the candidate in writing and notify the candi-  
6 date in writing that the candidate has ten days from receipt  
7 of the notice to request a hearing. If the candidate re-  
8 quests a hearing, then one shall be scheduled within ten  
9 days after such request. Said hearing may be continued  
10 only for good cause shown. If a majority of the commis-  
11 sion determines, based upon clear and convincing evi-  
12 dence, after a hearing or after a candidate has declined to  
13 request a hearing, that such candidate has violated a provi-  
14 sion of the code, the commission may issue a public opin-  
15 ion stating the candidate has committed a violation of the  
16 code. If the commission does not find by clear and con-  
17 vincing evidence that a subscribing candidate has violated  
18 a provision of the code, then the commission shall issue a  
19 public statement that the candidate has not violated the  
20 code. Said statement shall be issued on the same day of  
21 the hearing.

### §3-1B-5. Code of fair campaign practices.

1 At the time an individual files his or her pre-candidacy  
2 statement, certificate of announcement, nominating peti-  
3 tion, and other paper evidencing an intention to be a can-  
4 didate for public office, or when an individual files the  
5 statement of organization of a political committee, the  
6 circuit clerk, county clerk or secretary of state receiving  
7 such filing shall furnish the individual with a form con-  
8 taining the text of the code of fair campaign practices  
9 which shall read as follows:

#### 10 CODE OF FAIR CAMPAIGN PRACTICES

11 I SHALL CONDUCT this campaign openly and pub-  
12 licly, discussing the issues as I see them, presenting posi-  
13 tions and policies with sincerity and frankness, and criti-  
14 cizing without fear or favor the record and policies of  
15 candidates or political parties which merit such criticism.

16 I SHALL NOT USE OR PERMIT the use of character  
17 defamation, whispering campaigns, libel, slander or scurri-  
18 lous attacks on any candidate or his or her personal family  
19 life.

20 I SHALL CONDEMN the use of campaign advertising  
21 or communication of any sort which misrepresents, dis-  
22 torts, or otherwise falsifies the facts regarding any candi-  
23 date or issue raised in my campaign.

24 I SHALL NOT USE OR PERMIT any appeal to nega-  
25 tive prejudice based on race, sex, religion, national origin,  
26 physical disability or age.

27 I SHALL NOT USE OR PERMIT any dishonest or  
28 unethical practice which tends to corrupt or undermine  
29 our system of free elections, or which hampers or prevents  
30 the full and free expression of the will of the voters in-  
31 cluding acts intended to hinder, prevent, or discourage any  
32 eligible person from registering to vote, or from voting, or  
33 which is intended to affect voting through the buying of  
34 influence or votes.

35 I SHALL NOT COERCE election help or campaign  
36 contributions for myself or my committee or for any  
37 other candidate or any ballot issue from my employees or  
38 from any person under my authority, influence or control.

39 I SHALL IMMEDIATELY AND PUBLICLY REPU-  
40 DIATE support on behalf of or in opposition to any candi-  
41 didacy deriving from any individual or group which re-  
42 sorts to the methods and tactics which I condemn. I shall  
43 accept responsibility to take firm action against any subor-  
44 dinate or associate who violates any provisions of this code  
45 or the laws governing elections.

46 I PERSONALLY SUPPORT a limit on campaign ex-  
47 penditures that when reasonable, sufficient and fairly ap-  
48 plied, does not limit or restrict the expression of ideas of  
49 the candidate or others on behalf of the candidate, but  
50 instead challenges individuals to engage in open dialogue  
51 on the issues rather than merely to purchase the excessive  
52 repetition of images and slogans.

53 ACCORDINGLY, IF I AM A CANDIDATE for one of  
54 the offices listed below, I will, in conjunction with the  
55 committee or committees organized on my behalf, adhere  
56 to the following limitations on campaign spending speci-  
57 fied for the office I seek:

	<u>PRIMARY</u>	<u>GENERAL</u>
58		
59 Governor	1,000,000	1,000,000
60 Constitutional Officers	150,000	150,000
61 Supreme Court of Appeals	150,000	150,000
62 State Senate	50,000	50,000
63 House of Delegates	25,000	25,000
64 Circuit Judge	50,000	50,000

65 Expenditures which do not exceed the limits designat-  
66 ed for the primary election may not be added to the limits  
67 for the general election.

68 I SHALL DEFEND AND UPHOLD the right of every  
69 qualified voter to full and equal participation in the elec-  
70 toral process.

71 I, the undersigned, a candidate for election to public  
72 office in the State of West Virginia, or the chairperson of a  
73 political committee supporting one or more candidates for  
74 election, hereby voluntarily endorse, subscribe to, and  
75 solemnly pledge myself to conduct this campaign in ac-  
76 cordance with the above principles and practices. I under-  
77 stand that subscription and adherence to the code is volun-  
78 tary.

79

80

Date

Signature

81

82

83 Candidate for/Committee Name

Address and City

### §3-1B-6. Forms.

1 The secretary of state in consultation with the election  
2 commission, shall prescribe the forms containing the text  
3 of the code and shall furnish the forms to the circuit  
4 clerks, county clerks and municipal clerks or recorders in  
5 quantities and at times requested by the clerks.

**§3-1B-7. Retention of forms; public inspection.**

1 The officer receiving the filing shall accept, at all times  
 2 prior to the election, all completed forms evidencing sub-  
 3 scription to the code.

4 Forms filed with the circuit clerk shall be immediately  
 5 forwarded to the county clerk. The county clerk, secre-  
 6 tary of state, and municipal recorder or clerk shall retain  
 7 such forms filed with them for public inspection until one  
 8 hundred eighty days after the general election.

**§3-1B-8. Voluntary subscription to the code.**

1 Subscription to and adherence to the provisions of the  
 2 code set forth in this article is voluntary and in no event  
 3 may any person be required to subscribe to, adhere to or  
 4 endorse the code.

**§3-1B-9. Release from subscription to the code.**

1 In the event that an opponent to a subscribing candi-  
 2 date exceeds the voluntary campaign spending limitations  
 3 set forth in section five of this article, the subscribing candi-  
 4 date who has not exceeded the spending limitations shall  
 5 be automatically released from that portion of the code  
 6 establishing the campaign spending limitations, and the  
 7 commission shall make public the fact of such release.

**§3-1B-10. Adjustment of spending limitations.**

1 The commission may from time to time increase the  
 2 voluntary campaign spending limitations established in  
 3 this article pursuant to legislative rule promulgated pursu-  
 4 ant to the provisions of chapter twenty-nine-a of this code.

**ARTICLE 2. REGISTRATION OF VOTERS.**

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

§3-2-10. Application for registration by mail.

**§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.**

1 (a) (1) All state forms for application for voter regis-



2 tration shall be prescribed by the secretary of state and  
3 shall conform with the requirements of the "National Voter  
4 Registration Act of 1993" (42 U.S.C. 1973gg) and the  
5 requirements of the provisions of this article. Separate  
6 application forms may be prescribed for voter registration  
7 conducted by the clerk of the county commission, registra-  
8 tion by mail, registration in conjunction with an appli-  
9 cation for motor vehicle driver's license and registration at  
10 designated agencies. These forms may consist of one or  
11 more parts, may be combined with other forms for use in  
12 registration by designated agencies or in conjunction with  
13 driver licensing, and may be revised and reissued as re-  
14 quired by the secretary of state to provide for the efficient  
15 administration of voter registration. After the first day of  
16 January, one thousand nine hundred ninety-five, all state  
17 forms issued for the purpose of voter registration shall be  
18 those prescribed pursuant to the provisions of this article,  
19 and no form used or issued for voter registration pursuant  
20 to laws in effect before that date shall be provided to any  
21 person for the purpose of registration.

22 (2) Notwithstanding any provisions of subdivision (1)  
23 of this subsection to the contrary, the federal postcard  
24 application for voter registration issued pursuant to the  
25 "Uniformed and Overseas Citizens Absentee Voting Act of  
26 1986" (42 U.S.C. 1973 et seq.), and the mail voter regis-  
27 tration application form prescribed by the Federal Elec-  
28 tion Commission pursuant to the "National Voter Registra-  
29 tion Act of 1993" (42 U.S.C. 1973gg) shall be accepted as  
30 a valid form of application for registration pursuant to the  
31 provisions of this article.

32 (b) Each application form for registration shall in-  
33 clude:

34 (1) A statement specifying the eligibility requirements  
35 for registration and an attestation that the applicant meets  
36 each eligibility requirement;

37 (2) Any specific notice or notices required for a spe-  
38 cific type or use of application by the "National Voter  
39 Registration Act of 1993" (42 U.S.C. 1973gg);

40 (3) A notice that a voter may be permitted to vote the

41 partisan primary election ballot of a political party only if  
42 the voter has designated that political party on the applica-  
43 tion for registration, unless the political party has deter-  
44 mined otherwise; and

45 (4) Any other instructions or information essential to  
46 complete the application process.

47 (c) Each application form shall require that the follow-  
48 ing be provided by the applicant, under oath, and any  
49 application which does not contain each of the following  
50 shall be considered incomplete:

51 (1) The applicant's legal name, including the first  
52 name, middle or maiden name, if any, and last name;

53 (2) The month, day and year of the applicant's birth;

54 (3) The applicant's residence address, including the  
55 number and street or route and city and county of resi-  
56 dence except:

57 (A) In the case of a person eligible to register under  
58 the provisions of the "Uniformed and Overseas Citizens  
59 Absentee Voting Act", (42 U.S.C. 1973ff), the address at  
60 which he or she last resided before leaving the United  
61 States or entering the uniformed services, or if a depen-  
62 dent child of such a person, the address at which his or her  
63 parent last resided; and

64 (B) In the case of a homeless person having no fixed  
65 residence address who nevertheless resides and remains  
66 regularly within the county, the address of a shelter, assis-  
67 tance center or family member with whom he or she has  
68 regular contact, or other specific location approved by the  
69 clerk of the county commission for the purposes of estab-  
70 lishing a voting residence; and

71 (4) The applicant's signature, under penalty of perjury,  
72 as provided in section thirty-six of this article, to the attes-  
73 tation of eligibility to register to vote and to the truth of  
74 the information given.

75 (d) The applicant shall be requested to provide the  
76 following information, but no application shall be rejected  
77 for lack of this information:

- 78 (1) An indication whether the application is for a new  
79 registration, change of address, change of name or change  
80 of party affiliation;
- 81 (2) The applicant's choice of political party affiliation,  
82 if any, or an indication of no affiliation: *Provided*, That  
83 any applicant who does not enter any choice of political  
84 party affiliation shall be listed as having no party affilia-  
85 tion on the voting record;
- 86 (3) The applicant's home mailing address, if different  
87 than the residence address;
- 88 (4) The last four digits of the applicant's social securi-  
89 ty number;
- 90 (5) The applicant's telephone number;
- 91 (6) The address at which the applicant was last regis-  
92 tered to vote, if any, for the purpose of canceling or trans-  
93 ferring the previous registration;
- 94 (7) The applicant's gender; and
- 95 (8) The date the application is signed.
- 96 (e) The secretary of state shall prescribe the printing  
97 specifications of each type of voter registration application  
98 and the voter registration application portion of any form  
99 which is part of a combined agency form.
- 100 (f) Application forms prescribed in this section may  
101 refer to various public officials by title or official position,  
102 but in no case may the actual name of any officeholder be  
103 printed on the voter registration application or on any  
104 portion of a combined application form.
- 105 (g) No later than the first day of July of each  
106 odd-numbered year, the secretary of state shall submit the  
107 specifications of the voter registration application by mail  
108 for statewide bidding for a contract period beginning the  
109 first day of September of each odd-numbered year and  
110 continuing for two calendar years. The successful bidder  
111 shall produce and supply the required mail voter registra-  
112 tion forms at the contract price to all purchasers of the  
113 form for the period of the contract.

**§3-2-10. Application for registration by mail.**

1 (a) Any qualified person may apply to register,  
2 change, transfer or correct his or her voter registration by  
3 mail. Application shall be made on a prescribed form as  
4 provided by section five of this article.

5 (b) To the extent possible with funds allocated annual-  
6 ly for such purpose, the secretary of state shall make state  
7 mail registration forms available for distribution through  
8 governmental and private entities and organized voter  
9 registration programs. The secretary of state shall make a  
10 record of all requests by entities or organizations for ten  
11 or more forms with a description of the dates and loca-  
12 tions in which the proposed registration drive is to be  
13 conducted. The secretary of state may limit the distribu-  
14 tion to a reasonable amount per group.

15 (c) The clerk of the county commission shall provide  
16 up to four mail registration forms to any resident of the  
17 county upon request. To the extent possible with funds  
18 allocated annually for the purpose, the clerk of the county  
19 commission shall make state mail registration forms avail-  
20 able for distribution through organized voter registration  
21 programs within the county. The clerk of the county  
22 commission shall make a record of all requests by entities  
23 or organizations for ten or more forms with a description  
24 of the dates and locations in which the proposed registra-  
25 tion drive is to be conducted. The clerk may limit the  
26 distribution to a reasonable amount per group.

27 (d) The applicant shall provide all required informa-  
28 tion and only after completing the information, sign the  
29 prescribed applicant's oath under penalty of perjury, as  
30 provided in section thirty-six of this article. No person  
31 may alter or add any entry or make any mark which  
32 would alter any material information on the voter registra-  
33 tion application after the applicant has signed the oath:  
34 *Provided*, That the clerk of the county commission may  
35 correct any entry upon the request of the applicant pro-  
36 vided the request is properly documented and the correc-  
37 tion is dated and initialed by the clerk.

38 (e) Completed applications shall be mailed or deliv-

39 ered to the clerk of the county commission of the county  
40 in which the voter resides. If a clerk receives a completed  
41 mail application form from a voter whose residence ad-  
42 dress is located in another county, the clerk shall forward  
43 that application within three days to the clerk of the coun-  
44 ty commission of the county of the applicant's residence.

45 (f) Upon receipt of the application for registration by  
46 the appropriate clerk of the county commission, the clerk  
47 shall:

48 (1) Attempt to establish whether the residence address  
49 given is within the boundaries of an incorporated municipi-  
50 pality and, if so, make the proper entry required for mu-  
51 nicipal residents to be properly identified for municipal  
52 voter registration purposes; and

53 (2) Immediately begin the verification process re-  
54 quired by the provisions of section sixteen of this article.

55 (g) Any person who registers by mail pursuant to this  
56 section shall be required to make his or her first vote in  
57 person at the polls or in person at the office of the clerk of  
58 the circuit court to vote an absentee ballot in order to  
59 make the registration valid: *Provided*, That any person  
60 who has applied for an absentee ballot pursuant to the  
61 provisions of subdivision (1), subsection (d), section one,  
62 article three of this chapter or paragraph (B), subdivision  
63 (2) of said subsection or subdivision (3) of said subsection  
64 or of subsection (e) of said section shall not have his or  
65 her ballot in that election challenged for failure to appear  
66 in person or for failure to present identification.

67 (h) Any person required by this section to make his or  
68 her first vote in person shall present valid identification  
69 and proof of age to the clerks at the poll or at the office of  
70 the clerk of the circuit court or the clerk of the county  
71 commission of the county in which he or she is registered  
72 before casting the first ballot.

73 (i) Any person who submits a state mail voter registra-  
74 tion application to the clerk of the county commission in  
75 the county in which he or she is currently registered for  
76 the purpose of entering a change of address within the

77 county, making a change of party affiliation or recording  
78 a change of legal name shall not be required to make his  
79 or her first vote in person or to present identification or  
80 proof of age.

#### ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

##### **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.**

1 (a) The board of ballot commissioners in counties  
2 using ballots upon which votes may be recorded by means  
3 of marking with electronically sensible ink or pencil and  
4 which marks are tabulated electronically shall cause the  
5 ballots to be printed for use in elections.

6 (b) (1) The heading of the ballot, the arrangement of  
7 offices in columns, the spaces for marking votes, the print-  
8 ing of offices, instructions and candidates names shall  
9 conform as nearly as possible to that prescribed in this  
10 chapter for paper ballots, except that the secretary of state  
11 may prescribe necessary modifications to accommodate  
12 the tabulating system. Nonpartisan elections for board of  
13 education and any question to be voted upon shall be  
14 separated from the partisan ballot and separately headed  
15 in display type with a title clearly identifying the purpose  
16 of the election, and such separate section shall constitute a  
17 separate ballot wherever a separate ballot is required under  
18 the provisions of this chapter.

19 (2) Both the face and the reverse side of the ballot  
20 may contain the names of candidates, only if means to  
21 ensure the secrecy of the ballot are provided and lines for  
22 the signatures of the poll clerks on the ballot are printed  
23 on a portion of the ballot which is deposited in the ballot  
24 box and upon which marks do not interfere with the prop-  
25 er tabulation of the votes.

26 (3) The arrangement of candidates within each office  
27 shall be determined in the same manner as for other elec-  
28 tronic voting systems, as prescribed in this chapter. On the  
29 general election ballot for all offices, and on the primary  
30 election ballot only for those offices to be filled by elec-  
31 tion, except delegate to national convention, lines for en-  
32 tering write-in votes shall be provided below the names of

33 candidates for each office, and the number of lines pro-  
34 vided for any office shall equal the number of persons to  
35 be elected, or three, whichever is fewer. The words  
36 "WRITE-IN, IF ANY" shall be printed directly under each  
37 line for write-ins. Such lines shall be opposite a position  
38 to mark the vote.

39 (c) The primary election ballots shall be printed in the  
40 color of ink specified by the secretary of state for the  
41 various political parties, and the general election ballot  
42 shall be printed in black ink. All ballots shall be printed  
43 on white paper suitable for automatic tabulation and shall  
44 contain a perforated stub at the top or bottom of the ballot  
45 which shall be numbered sequentially in the same manner  
46 as provided in this article for ballots upon which votes are  
47 recorded by means of perforating. The number of ballots  
48 printed and the packaging of ballots for the precincts shall  
49 conform to the requirements for paper ballots as provided  
50 in this chapter.

51 (d) In addition to the official ballots, the ballot com-  
52 missioners shall provide all other materials and equipment  
53 necessary to the proper conduct of the election.

#### ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

- §3-8-2a. Detailed accounts and verified financial statements for certain inaugural events.
- §3-8-4a. Termination of political committees.
- §3-8-5. Detailed accounts and verified financial statements required.
- §3-8-5a. Information required in financial statement.
- §3-8-5b. Where financial statements shall be filed; filing date prescribed.
- §3-8-5d. Offenses and penalties.
- §3-8-6. Financial statement forms; filing; disposition.
- §3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.
- §3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.
- §3-8-10. Use of certain contributions.
- §3-8-11. Specific acts forbidden; penalties.
- §3-8-12. Additional acts forbidden; circulation of written matters; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

**§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events.**

1 (a) Any inaugural committee soliciting or receiving  
2 contributions for the funding of all or any part of an inau-  
3 gural event for any person elected to any state public  
4 office that receives an individual contribution in excess of  
5 two hundred fifty dollars for any such event shall file and  
6 retain detailed records of any such contribution.

7 (b) For purposes of this section:

8 (1) "Inaugural committee" includes any person, orga-  
9 nization or group of persons soliciting or receiving contri-  
10 butions for the purpose of funding an inaugural event for  
11 an elected state official; and

12 (2) "Inaugural event" means any event or events held  
13 between the date of the general election for a state public  
14 office and a date ninety days after the date of the general  
15 election, whether the event is sponsored by the inaugural  
16 committee or the state political party committee represent-  
17 ing the party of the elected official and for which the  
18 elected official is a prominent participant or for which  
19 solicitations of contributions include the name of the  
20 elected official in prominent display.

21 (c) Any inaugural committee, financial agent or any  
22 person or officer acting on behalf of such committee  
23 which is subject to the provisions of this section, shall file a  
24 verified financial statement with the secretary of state on a  
25 form prescribed by the state election commission within  
26 forty-five days following the event. The financial state-  
27 ment shall contain information as may be required by the  
28 provisions of subsection (a) of this section relating to any  
29 contribution in excess of two hundred fifty dollars. The  
30 secretary of state shall file and retain such statements as  
31 public records.

**§3-8-4a. Termination of political committees.**

1 (a) A political committee may terminate by filing a  
2 written request, in accordance with the provisions of sec-  
3 tion four of this article, and by stating in the request that it  
4 will no longer receive any contributions or make any



5 disbursements and that it has no outstanding debts or  
6 obligations. At such time, any excess funds of the com-  
7 mittee may be transferred to a political committee estab-  
8 lished by the same candidate pursuant to the provisions of  
9 section four or five-e of this article.

10 (b) The provisions of this section may not be con-  
11 strued to eliminate or limit the authority of the secretary  
12 of state, in consultation with the state election commission,  
13 to establish procedures for: (1) The determination of in-  
14 solvency with respect to any political committee; (2) the  
15 orderly liquidation of an insolvent political committee and  
16 the orderly application of its assets for the reduction of  
17 outstanding debts; and (3) the termination of an insolvent  
18 political committee after such liquidation and application  
19 of assets.

**§3-8-5. Detailed accounts and verified financial statements  
required.**

1 (a) Every candidate, financial agent, person and asso-  
2 ciation of persons, organization of any kind, including  
3 every corporation, directly or indirectly, supporting a  
4 political committee established pursuant to paragraph (C),  
5 subdivision (1), subsection (b), section eight of this article  
6 or engaging in other activities permitted by said section  
7 and also including the treasurer or equivalent officer of  
8 such association or organization, advocating or opposing  
9 the nomination, election or defeat of any candidate or the  
10 passage or defeat of any issue, thing or item to be voted  
11 upon, and the treasurer of every political party committee  
12 shall keep detailed accounts of every sum of money or  
13 other thing of value received by him, including all loans  
14 of money or things of value, and of all expenditures and  
15 disbursements made, liabilities incurred, by such candi-  
16 date, financial agent, person, association or organization or  
17 committee, for political purposes, or by any of the officers  
18 or members of such committee, or any person acting un-  
19 der its authority or on its behalf.

20 (b) Every person or association of persons required to  
21 keep detailed accounts under this section shall file with the  
22 officers hereinafter prescribed a detailed itemized state-  
23 ment, subscribed and sworn to before an officer autho-

24 rized to administer oaths, according to the following pro-  
25 visions and times:

26 (1) On the last Saturday in March or within fifteen  
27 days thereafter next preceding the primary election day  
28 whenever the total of all financial transactions relating to  
29 an election exceed five hundred dollars a statement which  
30 shall include all financial transactions which have taken  
31 place by the date of that statement, subsequent to any  
32 previous statement filed within the previous five years  
33 under this section, or if no previous statement was filed, all  
34 financial transactions made within the preceding five  
35 years; and

36 (2) Not less than seven nor more than ten days preced-  
37 ing each primary or other election, a statement which shall  
38 include all financial transactions which have taken place  
39 by the date of such statement, subsequent to the previous  
40 statement, if any; and

41 (3) Not less than twenty-five nor more than thirty days  
42 after each primary or other election, a statement which  
43 shall include all financial transactions which have taken  
44 place by the date of such statement, subsequent to the  
45 previous statement; and

46 (4) On the first day of July, one thousand nine hun-  
47 dred eighty-five, and thereafter on the last Saturday in  
48 March or within fifteen days thereafter annually, whenever  
49 contributions or expenditures relating to an election ex-  
50 ceed five hundred dollars or whenever any loans are out-  
51 standing, a statement which shall include all financial  
52 transactions which have taken place by the date of such  
53 report, subsequent to any previous report.

54 (c) Every person who shall announce as a write-in  
55 candidate for any elective office and his financial agent or  
56 election organization of any kind shall comply with all of  
57 the requirements of this section after public announce-  
58 ment of such person's candidacy has been made.

59 (d) For purposes of this section, the term "financial  
60 transactions" includes all contributions or loans received  
61 and all repayments of loans or expenditures made to pro-

62 mote the candidacy of any person by any candidate or  
63 any organization advocating or opposing the nomination,  
64 election or defeat of any candidate or to promote the  
65 passage or defeat of any issue, thing or item to be voted  
66 on.

67 (e)(1) Except as provided in subdivision (2) of this  
68 subsection, any person, association, organization, corpora-  
69 tion or other legal entity who publishes, distributes or  
70 disseminates any scorecard, voter guide or other written  
71 analysis of a candidate's position or votes on specific is-  
72 sues within sixty days of an election is presumed to be  
73 engaging in such activity for the purpose of advocating or  
74 opposing the nomination, election or defeat of any candi-  
75 date.

76 (2) The provisions of subdivision (1) of this subsec-  
77 tion shall not apply to:

78 (A) The publication, distribution or dissemination of  
79 such materials in the form of a news release to broadcast  
80 or print media;

81 (B) Persons who engage in news or feature reporting  
82 activities and editorial comment as working members of  
83 the press, radio, or television, and persons who publish,  
84 distribute or disseminate such news, features or editorial  
85 comment through a newspaper, book, regularly published  
86 periodical, radio station, or television station;

87 (C) The members of a nonprofit corporation or other  
88 organization who have such membership in accordance  
89 with the provisions of the articles of incorporation, bylaws  
90 or other instruments creating its form of organization and  
91 who have bona fide rights and privileges in the organiza-  
92 tion such as the right to vote, to elect officers, directors  
93 and issues, to hold office or otherwise as ordinarily con-  
94 ferred on members of such organizations who publish,  
95 distribute or disseminate materials described in subdivision  
96 (1) of this subsection to other such members; or

97 (D) The employees of a church or synagogue which  
98 currently holds or is eligible to hold an exemption as a  
99 church issued by the internal revenue service under the

100 provisions of §26 U.S.C. 501(c)(3) who publish, distribute  
101 or disseminate materials described in subdivision (1) of  
102 this subsection within the membership of the church or  
103 synagogue or upon the premises of any facility owned or  
104 controlled by the church or synagogue: *Provided*, That  
105 the exemption from the presumption provided by this  
106 subparagraph shall not apply to such employees of a  
107 church when the church or synagogue otherwise advocates  
108 or opposes the nomination, election or defeat of any can-  
109 didate, or the passage of any issue, thing or item to be  
110 voted upon.

111 (f) No scorecard, voter guide or other written analysis  
112 of a candidate's position or votes on specific issues shall be  
113 published, distributed or disseminated within sixty days of  
114 an election unless it shall state thereon the name of the  
115 person, association, organization, corporation or other  
116 legal entity authorizing its publication, distribution or  
117 dissemination.

**§3-8-5a. Information required in financial statement.**

1 (a) Each financial statement required by the provisions  
2 of this article shall contain the following information:

3 (1) The first name, middle initial, if any, and last name,  
4 residence and mailing address and telephone number of  
5 each candidate, financial agent, treasurer or person, and  
6 the full name, address and telephone number of each  
7 association, organization or committee filing a financial  
8 statement.

9 (2) The balance of cash and any other sum of money  
10 on hand at the beginning and the end of the period cov-  
11 ered by the financial statement.

12 (3) The first name, middle initial, if any, and the last  
13 name in the case of an individual, and the full name of  
14 each firm, association or committee, and the amount of  
15 such contribution of such individual, firm, association or  
16 committee, and, if the aggregate of the sum or sums con-  
17 tributed by any one such individual, firm, association or  
18 committee exceeds two hundred fifty dollars, there shall  
19 also be reported the residence and mailing address and, in

20 the case of an individual, the major business affiliation and  
21 occupation. A contribution totaling more than fifty dol-  
22 lars of currency of the United States or currency of any  
23 foreign country by any one contributor is prohibited and  
24 a violation of this provision is subject to section five-d of  
25 this article.

26 (4) The total amount of contributions received during  
27 the period covered by the financial statement.

28 (5) The first name, middle initial, if any, and the last  
29 name, residence and mailing address of any individual or  
30 the full name and mailing address of each firm, associa-  
31 tion or committee making or cosigning a loan and the  
32 amount of any loan received, the date and terms of the  
33 loan, including interest and repayment schedule, along  
34 with a copy of the loan agreement.

35 (6) The first name, middle initial, if any, and the last  
36 name, residence and mailing address of any individual or  
37 the full name and mailing address of each firm, associa-  
38 tion or committee having previously made or cosigned a  
39 loan for which payment is made or a balance is outstand-  
40 ing at the end of the period, together with the amount of  
41 repayment on the loan made during the period and the  
42 balance at the end of the period.

43 (7) The total outstanding balance of all loans at the  
44 end of the period.

45 (8) The first name, middle initial, if any, and the last  
46 name, residence and mailing address of any individual, or  
47 the full name and mailing address of each firm, associa-  
48 tion or committee to whom each expenditure was made or  
49 liability incurred, together with the amount and purpose of  
50 each expenditure or liability incurred and the date of each  
51 transaction.

52 (9) The total expenditure for the nomination, election  
53 or defeat of a candidate or any person or organization  
54 advocating or opposing the nomination, election or defeat  
55 of any candidate, or the passage or defeat of any issue,  
56 thing or item to be voted upon, in whose behalf an expen-  
57 diture was made or a contribution was given for the prima-

58 ry or other election.

59 (10) The total amount of expenditures made during  
60 the period covered by the financial statement.

61 (b) Any unexpended balance at the time of making  
62 the financial statements herein provided for shall be prop-  
63 erly accounted for in that financial statement and shall  
64 appear as a balance in the next following financial state-  
65 ment.

66 (c) Each financial statement required by this section  
67 shall contain a separate section setting forth the following  
68 information for each fund-raising event held during the  
69 period covered by the financial statement:

70 (1) The type of event, date held, and address and  
71 name, if any, of the place where the event was held.

72 (2) All of the information required by subdivision (3),  
73 subsection (a) of this section.

74 (3) The total of all moneys received at the  
75 fund-raising event.

76 (4) The expenditures incident to the fund-raising  
77 event.

78 (5) The net receipts of the fund-raising event.

79 (d) When any lump sum payment is made to any ad-  
80 vertising agency or other disbursing person who does not  
81 file a report of detailed accounts and verified financial  
82 statements as required in this section, such lump sum ex-  
83 penditures shall be accounted for in the same manner as  
84 provided for herein.

85 (e) Any contribution or expenditure made by or on  
86 behalf of a candidate for public office, to any other candi-  
87 date, or committee for a candidate for any public office in  
88 the same election shall be accounted for in accordance  
89 with the provisions of this section.

90 (f) No person, firm, association or committee may  
91 make any contribution except from their own funds, un-  
92 less such person, firm, association or committee discloses

93 in writing to the person required to report under this sec-  
94 tion the first name, middle initial, if any, and the last name  
95 in the case of an individual, or the full name in case of a  
96 firm, association or committee, residence and mailing  
97 address and the major business affiliation and occupation  
98 of the person, firm, association or committee which fur-  
99 nished the funds to such contributor. All such disclosures  
100 shall be included in the statement required by this section.

101 (g) Any firm, association, committee or fund permit-  
102 ted by section eight of this article to be a political commit-  
103 tee shall disclose on the financial statement its corporate or  
104 other affiliation.

105 (h) No contribution may be made, directly or indi-  
106 rectly, in a fictitious name, anonymously or by one person  
107 through an agent, relative or other person so as to conceal  
108 the identity of the source of the contribution or in any  
109 other manner so as to effect concealment of the contribu-  
110 tor's identity.

111 (i) No person, firm, association or committee may  
112 accept any contribution for the purpose of influencing the  
113 nomination, election or defeat of a candidate or for the  
114 passage or defeat of any issue or thing to be voted upon  
115 unless the identity of the donor and the amount of the  
116 contribution is known and reported.

117 (j) When any candidate, organization, committee or  
118 person receives any anonymous contribution which can-  
119 not be returned because the donor cannot be identified,  
120 that contribution shall be donated to the general revenue  
121 fund of the state. Any anonymous contribution shall be  
122 recorded as such on the candidate's financial statement,  
123 but may not be expended for election expenses. At the  
124 time of filing, the financial statement shall include a state-  
125 ment of distribution of anonymous contributions, which  
126 total amount shall equal the total of all anonymous contri-  
127 butions received during the period.

128 (k) Any membership organization which raises funds  
129 for political purposes by payroll deduction assessing  
130 them as part of its membership dues or as a separate as-  
131 sessment may report the amount raised as follows:

132       (1) If the portion of dues or assessments designated  
133 for political purposes equals twenty-five dollars or less per  
134 member over the course of a calendar year, the total  
135 amount raised for political purposes through membership  
136 dues or assessments during the period is reported by  
137 showing the amount required to be paid by each member  
138 and the number of members.

139       (2) If the total payroll deduction for political purposes  
140 of each participating member equals twenty-five dollars or  
141 less over the course of a calendar or fiscal year, as speci-  
142 fied by the organization, the organization shall report the  
143 total amount received for political purposes through such  
144 payroll deductions during the reporting period, and to the  
145 maximum extent possible, the amount of each yearly  
146 payroll deduction contribution level and the number of  
147 members contributing at each such specified level. The  
148 membership organization shall maintain records of the  
149 name and yearly payroll deduction amounts of each par-  
150 ticipating member.

151       (3) If any member contributes to the membership  
152 organization through individual voluntary contributions  
153 by means other than payroll deduction, membership dues,  
154 or assessments as provided in this subsection, the reporting  
155 requirements of subdivision (3), subsection (a) of this  
156 section shall apply. Funds raised for political purposes  
157 must be segregated from the funds for other purposes and  
158 listed in its report.

159       (1) For purposes of this section:

160       (1) "Political purposes" means advocating or opposing  
161 the nomination, election or defeat of one or more candi-  
162 dates, supporting the retirement of the debt of a candidate  
163 or activities of an established political party or an organi-  
164 zation which has declared itself a political party, support-  
165 ing the administration or activities of a political committee  
166 or advocating or opposing the passage of a ballot issue.

167       (2) "Membership organization" means a group that  
168 grants bona fide rights and privileges, such as the right to  
169 vote, to elect officers or directors, and the ability to hold  
170 office, to its members, and which uses a majority of its



171 membership dues for purposes other than political pur-  
172 poses. This term shall not include organizations that grant  
173 membership upon receiving a contribution.

174 (3) "Fund-raising event" means an event such as a  
175 dinner, reception, testimonial, cocktail party, auction or  
176 similar affair through which contributions are solicited or  
177 received by such means as the purchase of a ticket, pay-  
178 ment of an attendance fee or by the purchase of goods or  
179 services.

180 (m) Notwithstanding the provisions of section five of  
181 this article or of the provisions of this section to the con-  
182 trary, an alternative reporting procedure may be followed  
183 by a political party executive committee or a political  
184 action committee representing a political party in filing  
185 financial reports for fund-raising events if the total profit  
186 does not exceed five thousand dollars per year. A politi-  
187 cal party executive committee or a political action com-  
188 mittee representing a political party may report gross  
189 receipts for the sale of food, beverages, services, novelty  
190 items, raffle tickets or memorabilia, except that any receipt  
191 of more than fifty dollars from an individual or organiza-  
192 tion shall be reported as a contribution. A political party  
193 executive committee or a political action committee repre-  
194 senting a political party using this alternative method of  
195 reporting shall report: (i) The name of the committee; (ii)  
196 the type of fund-raising activity undertaken; (iii) the loca-  
197 tion where the activity occurred; (iv) the date of the fund  
198 raiser; (v) the name of any individual who contributed  
199 more than fifty dollars worth of items to be sold; (vi) the  
200 name and amount received from any person or organiza-  
201 tion purchasing more than fifty dollars worth of food,  
202 beverages, services, novelty items, raffle tickets or memo-  
203 rabilia; (vii) the gross receipts of the fund raiser; and (viii)  
204 the date, amount, purpose and name and address of each  
205 person or organization from whom items with a fair mar-  
206 ket value of more than fifty dollars were purchased for  
207 resale.

**§3-8-5b. Where financial statements shall be filed; filing date prescribed.**

1 (a) The sworn financial statements provided for in this

2 article shall be filed, by or on behalf of candidates, with  
3 the secretary of state for legislative offices and for state  
4 and other offices to be nominated or elected by the voters  
5 of a political division greater than a county, and with the  
6 clerk of the county commission by all other candidates for  
7 offices to be nominated or elected.

8 (b) The statements may be filed by mail, in person, or  
9 by facsimile or other electronic means of transmission.

10 (c) For purposes of this article, the filing date of a  
11 financial statement shall, in the case of mailing, be the date  
12 of the postmark of the United States postal service, and in  
13 the case of hand delivery or delivery by facsimile or other  
14 electronic means of transmission, the date delivered to the  
15 office of the secretary of state or to the office of the clerk  
16 of the county commission, in accordance with the provi-  
17 sions of subsection (a) of this section, during regular busi-  
18 ness hours of such office.

#### **§3-8-5d. Offenses and penalties.**

1 (a) Any person who makes or receives a contribution  
2 of currency of the United States or currency of any for-  
3 eign country of more than fifty dollars in value is guilty  
4 of a misdemeanor, and, upon conviction, shall be fined a  
5 sum equal to three times the amount of the contribution.

6 (b) Notwithstanding any provision of section  
7 twenty-four, article nine of this chapter to the contrary, a  
8 criminal prosecution or civil action for a violation of this  
9 article may be commenced within five years after the vio-  
10 lation occurred.

11 (c) No person required to report under this article  
12 shall be found in violation of this article if any person,  
13 firm, association or committee making a contribution has  
14 provided false information to such person: *Provided,*  
15 That any person, firm, association or committee who pro-  
16 vides false information to a person required to report  
17 under this article is guilty of a misdemeanor and subject to  
18 the penalties provided in section twenty-three, article nine  
19 of this chapter.

#### **§3-8-6. Financial statement forms; filing; disposition.**

1 Blank forms for all financial statements required un-  
2 der this article shall be provided by the state election com-  
3 mission. The content of the forms shall be as prescribed  
4 by legislative rule promulgated in accordance with the  
5 provisions of chapter twenty-nine-a of this code. Pending  
6 legislative approval of such legislative rule, the state elec-  
7 tion commission may by emergency rule prescribe the  
8 contents of the forms. Copies thereof, together with a  
9 copy of this article, shall be furnished through the county  
10 clerk or otherwise, as the secretary of state may deem  
11 expedient, to all treasurers of political committees, to all  
12 political financial agents, and to all candidates for nomina-  
13 tion or election to any office, upon the filing of a petition  
14 or announcement for nomination, and to all other persons  
15 required by law to file such statements who shall apply  
16 therefor. The form shall also be furnished, at a nominal  
17 cost, on computer disc or magnetic media. All statements  
18 filed in accordance with the provisions of this article shall  
19 be received, endorsed and filed by the secretary of state  
20 and county clerks, and shall be preserved for five years,  
21 after which time they may be destroyed, if not required to  
22 be further preserved by the order of any court.

**§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.**

1 (a) Any candidate, financial agent or treasurer of a  
2 political party committee, who fails to file a sworn, item-  
3 ized statement within the time limitations specified in this  
4 article, or who willfully files a grossly incomplete or gross-  
5 ly inaccurate statement, shall be guilty of a misdemeanor,  
6 and, upon conviction thereof, shall be fined not less than  
7 five hundred dollars, or imprisoned in the county jail for  
8 not more than one year, or both, in the discretion of the  
9 court. Forty days after any such primary or other elec-  
10 tion, the secretary of state, or county clerk, as the case may  
11 be, shall give notice of any failure to file such sworn state-  
12 ment or the filing of any grossly incomplete or grossly  
13 inaccurate statement by any candidate, financial agent or  
14 treasurer of a political party committee and forward copies  
15 of any grossly incomplete or grossly inaccurate statement,  
16 to the prosecuting attorney of the county where such can-  
17 didate, agent or treasurer resides.

18 (b) (1) Any candidate, financial agent or treasurer of a  
19 political party committee who fails to file a sworn, item-  
20 ized statement as provided in this article, or who files a  
21 grossly incomplete or grossly inaccurate statement, may  
22 be assessed a civil penalty by the secretary of state of  
23 twenty-five dollars a day for each day after the due date  
24 the statement is delinquent, grossly incomplete or grossly  
25 inaccurate. Forty days after any such primary or other  
26 election the county clerk shall give notice to the secretary  
27 of state of any failure to file such sworn statement or the  
28 filing of any grossly incomplete or grossly inaccurate  
29 statement by any candidate, financial agent or treasurer of  
30 a political party committee and forward copies of such  
31 delinquent, incomplete or inaccurate statements to the  
32 secretary of state.

33 (2) A civil penalty assessed pursuant to the provisions  
34 of this section shall be payable to the state of West Virgin-  
35 ia and is collectable in any manner authorized by law for  
36 the collection of debts.

37 (3) The secretary of state may negotiate and enter into  
38 settlement agreements for the payment of civil penalties  
39 assessed as a result of the filing of a delinquent, grossly  
40 incomplete or inaccurate statement.

41 (4) The secretary of state and county clerk may review  
42 and audit any sworn statement required to be filed pursu-  
43 ant to the provisions of this article. The state election  
44 commission shall propose legislative rule for promulga-  
45 tion, in accordance with the provisions of chapter  
46 twenty-nine-a of this code, to establish procedures for the  
47 assessment of civil penalties as provided in this section.

48 (c) No candidate nominated at a primary election, who  
49 has failed to file a sworn statement, as required by the  
50 provisions of this article, shall have his name placed on the  
51 official ballot for the ensuing election, unless there has  
52 been filed by or on behalf of such candidate, or by his  
53 financial agent, if any, the financial statement relating to  
54 nominations required by this article. It is unlawful to issue  
55 a commission or certificate of election, or to administer  
56 the oath of office, to any person elected to any public  
57 office who has failed to file a sworn statement as required

58 by the provisions of this article, and no such person may  
59 enter upon the duties of his office until he has filed such  
60 statement, nor may he receive any salary or emolument  
61 for any period prior to the filing of such statement.

**§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.**

1 (a) No candidate, financial agent or treasurer of a  
2 political party committee shall pay, give or lend, either  
3 directly or indirectly, any money or other thing of value  
4 for any election expenses, except for the following pur-  
5 poses:

6 (1) For rent, maintenance and furnishing of offices to  
7 be used as political headquarters and for the payment of  
8 necessary clerks, stenographers, typists, janitors and mes-  
9 sengers actually employed therein;

10 (2) In the case of a candidate who does not maintain a  
11 headquarters, for reasonable office expenses, including,  
12 but not limited to, filing cabinets and other office equip-  
13 ment and furnishings, computers, computer hardware and  
14 software, scanners, typewriters, calculators, audio visual  
15 equipment, or the rental of the use of the same, and for the  
16 payment of necessary clerks, stenographers and typists,  
17 actually employed;

18 (3) For printing and distributing books, pamphlets,  
19 circulars and other printed matter and radio and television  
20 broadcasting and painting, printing and posting signs,  
21 banners and other advertisements, all relating to political  
22 issues and candidates;

23 (4) For renting and decorating halls for public meet-  
24 ings and political conventions, for advertising public meet-  
25 ings, and for the payment of traveling expenses of speak-  
26 ers and musicians at such meetings;

27 (5) For the necessary traveling and hotel expenses of  
28 candidates, political agents and committees, and for statio-  
29 nery, postage, telegrams, telephone, express, freight and  
30 public messenger service;

31 (6) For preparing, circulating and filing petitions for  
32 nomination of candidates;

33 (7) For examining the lists of registered voters, secur-  
34 ing copies thereof, investigating the right to vote of the  
35 persons listed therein and conducting proceedings to pre-  
36 vent unlawful registration or voting;

37 (8) For conveying voters to and from the polls;

38 (9) For securing publication in newspapers and by  
39 radio and television broadcasting of documents, articles,  
40 speeches, arguments and any information relating to any  
41 political issue, candidate or question or proposition sub-  
42 mitted to a vote;

43 (10) For conducting public opinion poll or polls. For  
44 the purpose of this section, the phrase "conducting of  
45 public opinion poll or polls" shall mean and be limited to  
46 the gathering, collection, collation and evaluation of infor-  
47 mation reflecting public opinion, needs and preferences as  
48 to any candidate, group of candidates, party, issue or is-  
49 sues. No such poll shall be deceptively designed or inten-  
50 tionally conducted in a manner calculated to advocate the  
51 election or defeat of any candidate or group of candidates  
52 or calculated to influence any person or persons so polled  
53 to vote for or against any candidate, group of candidates,  
54 proposition or other matter to be voted on by the public at  
55 any election: *Provided*, That nothing herein shall prevent  
56 the use of the results of any such poll or polls to further,  
57 promote or enhance the election of any candidate or  
58 group of candidates or the approval or defeat of any  
59 proposition or other matter to be voted on by the public at  
60 any election;

61 (11) For legitimate advertising agency services, includ-  
62 ing commissions, in connection with any campaign activi-  
63 ty for which payment is authorized by subdivisions (3),  
64 (4), (5), (6), (7), (9) and (10) of this subsection;

65 (12) For the purchase of memorials, flowers or cita-  
66 tions by political party executive committees or political  
67 action committees representing a political party; and

68 (13) For the purchase of nominal noncash expressions

69 of appreciation following the close of the polls of an elec-  
70 tion or within thirty days thereafter.

71 (b) Every liability incurred and payment made shall  
72 be at a rate and for a total amount which is proper and  
73 reasonable and fairly commensurate with the services  
74 rendered.

75 (c) Every advertising agency subject to the provisions  
76 of this article shall file, in the manner and form required  
77 by section five-a of this article, the financial statements  
78 required by section five of this article at the times required  
79 therein and include therein, in itemized detail, all receipts  
80 from and expenditures made on behalf of a candidate,  
81 financial agent or treasurer of a political party committee.

82 (d) Any candidate may designate a financial agent by  
83 a writing duly subscribed by him which shall be in such  
84 form and filed in accordance with the provisions of sec-  
85 tion four of this article.

#### **§3-8-10. Use of certain contributions.**

1 Amounts received by a candidate as contributions that  
2 are in excess of any amount necessary to defray his or her  
3 expenditures may be used by the candidate to defray any  
4 ordinary and necessary expenses incurred in connection  
5 with his or her duties as a holder of public office, may be  
6 contributed to any charitable organization, or may be  
7 transferred, without limitation, to any national, state or  
8 local committee of any political party.

9 The state election commission shall promulgate legis-  
10 lative rules, in accordance with the provisions of chapter  
11 twenty-nine-a of this code, to establish guidelines for the  
12 administration of this section.

#### **§3-8-11. Specific acts forbidden; penalties.**

1 (a) Any person who shall, directly or indirectly, by  
2 himself, or by any other person on his behalf, make use  
3 of, or threaten to make use of, any force, violence or re-  
4 straint, or inflict, or threaten to inflict, any damage, harm  
5 or loss, upon or against any person, or by any other means  
6 attempt to intimidate or exert any undue influence, in

7 order to induce such person to vote or refrain from voting,  
8 or on account of such person having voted or refrained  
9 from voting, at any election, or who shall, by abduction,  
10 duress or any fraudulent device or contrivance, impede or  
11 prevent the free exercise of the suffrage by any elector, or  
12 shall thereby compel, induce or prevail upon any elector  
13 either to vote or refrain from voting for or against any  
14 particular candidate or measure; or

15 (b) Any person who, being an employer, or acting for  
16 or on behalf of any employer, shall give any notice or  
17 information to his employees, containing any threat, either  
18 express or implied, intended or calculated to influence the  
19 political view or actions of the workmen or employees; or

20 (c) Any person who shall, knowingly, make or publish,  
21 or cause to be made or published, any false statement in  
22 regard to any candidate, which statement is intended or  
23 tends to affect any voting at any election whatever; or

24 (d) Any person who shall pay any owner, publisher,  
25 editor or employee or any newspaper or other periodical,  
26 to advocate or oppose editorially, any candidate for nomi-  
27 nation or election, or any political party, or any measure  
28 to be submitted to the vote of the people; or any owner,  
29 publisher, editor or employee, who shall solicit or accept  
30 such payment:

31 Is guilty of a misdemeanor, and, on conviction there-  
32 of, shall be fined not more than ten thousand dollars, or  
33 confined in jail for not more than one year, or, in the  
34 discretion of the court, shall be subject to both such fine  
35 and imprisonment.

**§3-8-12. Additional acts forbidden; circulation of written mat-  
ter; newspaper advertising; solicitation of contri-  
butions; intimidation and coercion of employees;  
promise of employment or other benefits; limita-  
tions on contributions; public contractors; penalty.**

1 (a) No person shall publish, issue or circulate, or cause  
2 to be published, issued or circulated, any anonymous  
3 letter, circular, placard, or other publication tending to  
4 influence voting at any election.



5 (b) No owner, publisher, editor or employee of a  
6 newspaper or other periodical shall insert, either in its  
7 advertising or reading columns, any matter, paid for or to  
8 be paid for, which tends to influence the voting at any  
9 election, unless directly designating it as a paid advertise-  
10 ment and stating the name of the person authorizing its  
11 publication and the candidate in whose behalf it is pub-  
12 lished.

13 (c) No person shall, in any room or building occupied  
14 for the discharge of official duties by any officer or em-  
15 ployee of the state or a political subdivision thereof, solicit  
16 orally or by written communication delivered therein, or  
17 in any other manner, any contribution of money or other  
18 thing of value for any party or political purpose, from any  
19 postmaster or any other officer or employee of the federal  
20 government, or officer or employee of the state, or a polit-  
21 ical subdivision thereof. No officer, agent, clerk or em-  
22 ployee of the federal government, or of this state, or any  
23 political subdivision thereof, who may have charge or  
24 control of any building, office or room, occupied for any  
25 official purpose, shall knowingly permit any person to  
26 enter the same for the purpose of therein soliciting or  
27 receiving any political assessments from, or delivering or  
28 giving written solicitations for, or any notice of, any politi-  
29 cal assessments to, any officer or employee of the state, or  
30 a political subdivision thereof.

31 (d) Except as provided in section eight of this article,  
32 no person entering into any contract with the state or its  
33 subdivisions, or any department or agency thereof, either  
34 for rendition of personal services or furnishing any mate-  
35 rial, supplies or equipment or selling any land or building  
36 to the state, or its subdivisions, or any department or agen-  
37 cy thereof, if payment for the performance of such con-  
38 tract or payment for such material, supplies, equipment,  
39 land or building is to be made in whole or in part from  
40 public funds shall, during the period of negotiation for or  
41 performance under such contract or furnishing of materi-  
42 als, supplies, equipment, land or buildings, directly or  
43 indirectly make any contribution to any political party,  
44 committee or candidate for public office or to any person  
45 for political purposes or use; nor shall any person or firm

46 solicit any contributions for any such purpose during any  
47 such period.

48 (e) No person shall, directly or indirectly, promise any  
49 employment, position, work, compensation or other bene-  
50 fit provided for, or made possible, in whole or in part by  
51 act of the Legislature, to any person as consideration,  
52 favor or reward for any political activity for the support of  
53 or opposition to any candidate, or any political party in  
54 any election.

55 (f) No person shall, directly or indirectly, make any  
56 contribution in excess of the value of one thousand dollars  
57 in connection with any campaign for nomination or elec-  
58 tion to or on behalf of any statewide or national elective  
59 office, or in excess of the value of one thousand dollars, in  
60 connection with any other campaign for nomination or  
61 election to or on behalf of any other elective office in the  
62 state or any of its subdivisions, or in connection with or on  
63 behalf of any committee or other organization or person  
64 engaged in furthering, advancing or advocating the nomi-  
65 nation or election of any candidate for any such office.

66 (g) (1) Notwithstanding the provisions of subsection  
67 (f) of this section to the contrary, the aggregate contribu-  
68 tions made to a state party executive committee shall be  
69 permitted only pursuant to the limitations imposed by the  
70 provisions of this subsection.

71 (2) No person shall, directly or indirectly, make con-  
72 tributions to a state party executive committee which, in  
73 the aggregate, exceed the value of one thousand dollars in  
74 any calendar year.

75 (h) No person shall solicit any contribution from any  
76 nonelective salaried employee of the state government or  
77 of any of its subdivisions or coerce or intimidate any such  
78 employee into making such contribution. No person shall  
79 coerce or intimidate any nonsalaried employee of the state  
80 government or any of its subdivisions into engaging in  
81 any form of political activity. The provisions hereof shall  
82 not be construed to prevent any such employee from  
83 making such a contribution or from engaging in political  
84 activity voluntarily, without coercion, intimidation or solici-  
85 tation.

86 (i) No person shall solicit a contribution from any  
87 other person without informing such other person at the  
88 time of such solicitation of the amount of any  
89 commission, remuneration or other compensation that the  
90 solicitor or any other person will receive or expect to  
91 receive as a direct result of such contribution being  
92 successfully collected. Nothing in this subsection shall be  
93 construed to apply to solicitations of contributions made  
94 by any person serving as an unpaid volunteer.

95 (j) Any person violating any provision of this section  
96 is guilty of a misdemeanor, and, upon conviction thereof,  
97 shall be fined not more than one thousand dollars, or  
98 confined in jail for not more than one year, or, in the  
99 discretion of the court, be subject to both such fine and  
100 confinement.

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## CHAPTER 102

(S. B. 216—By Senator Scott)

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[Passed March 6, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article seven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to elections; contested elections; and providing that when a contested election involves a member of a county commission that member may not participate in judging the election, qualifications and returns.

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

That section six, article seven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. CONTESTED ELECTIONS.****§3-7-6. County and district contests; notices; time.**

1 In all cases of contested elections, the county  
2 commission shall be the judge of the election,  
3 qualifications and returns of their own members and of all  
4 county and district officers: *Provided*, That a member of  
5 the county commission whose election is being contested  
6 may not participate in judging the election, qualifications  
7 and returns.

8 A person intending to contest the election of another  
9 to any county or district office, including judge of any  
10 criminal, intermediate, common pleas or other inferior  
11 court, or any office that shall hereafter be created to be  
12 filled by the voters of the county or of any magisterial or  
13 other district therein, shall, within ten days after the result  
14 of the election is declared, give the contestee notice in  
15 writing of such intention, and a list of the votes he will  
16 dispute, with the objections to each, and of the votes  
17 rejected for which he will contend. If the contestant  
18 objects to the legality of the election, or the qualification  
19 of the person returned as elected, the notice shall set forth  
20 the facts on which such objection is founded. The person  
21 whose election is so contested shall, within ten days after  
22 receiving such notice, deliver to the contestant a like list of  
23 the votes he will dispute, with the objections to each, and  
24 of the rejected votes for which he will contend; and, if he  
25 has any objection to the qualification of the contestant, he  
26 shall specify in writing the facts on which the objection is  
27 founded. Each party shall append to his notice an  
28 affidavit that he verily believes the matters and things set  
29 forth to be true. If new facts be discovered by either party  
30 after he has given notice as aforesaid, he may, within ten  
31 days after such discovery, give an additional notice to his  
32 adversary, with the specifications and affidavit prescribed  
33 in this section.

## CHAPTER 103

(Com. Sub. for H. B. 2523—By Delegates Staton  
(By Request), Ashley, Rowe and Riggs)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the director of the division of environmental protection to employ legal counsel.

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

That section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

#### §22-1-6. Director of the division of environmental protection.

1 (a) The director is the chief executive officer of the  
2 division. Subject to section seven of this article and other  
3 provisions of law, the director shall organize the division  
4 into such offices, sections, agencies and other units of  
5 activity as may be found by the director to be desirable  
6 for the orderly, efficient and economical administration of  
7 the division and for the accomplishment of its objects and  
8 purposes. The director may appoint assistants, hearing  
9 officers, clerks, stenographers and other officers, technical  
10 personnel and employees needed for the operation of the  
11 division and may prescribe their powers and duties and fix  
12 their compensation within amounts appropriated therefor.

13 (b) The director has the power to and may designate  
14 supervisory officers or other officers or employees of the  
15 division to substitute for him or her on any board or  
16 commission established under this code or to sit in his or

17 her place in any hearings, appeals, meetings or other  
18 activities with such substitute having the same powers,  
19 duties, authority and responsibility as the director.  
20 Additionally, the director has the power to delegate, as he  
21 or she considers appropriate, to supervisory officers or  
22 other officers or employees of the division his or her  
23 powers, duties, authority and responsibility relating to  
24 issuing permits, hiring and training inspectors and other  
25 employees of the division, conducting hearings and  
26 appeals and such other duties and functions set forth in  
27 this chapter or elsewhere in this code.

28 (c) The director has responsibility for the conduct of  
29 the intergovernmental relations of the division, including  
30 assuring: (1) That the division carries out its functions in  
31 a manner which supplements and complements the  
32 environmental policies, programs and procedures of the  
33 federal government, other state governments and other  
34 instrumentalities of this state; and (2) that appropriate  
35 officers and employees of the division consult with  
36 individuals responsible for making policy relating to  
37 environmental issues in the federal government, other state  
38 governments and other instrumentalities of this state  
39 concerning differences over environmental policies,  
40 programs and procedures and concerning the impact of  
41 statutory law and rules upon the environment of this state.

42 (d) In addition to other powers, duties and  
43 responsibilities granted and assigned to the director by this  
44 chapter, the director is hereby authorized and empowered  
45 to:

46 (1) Sign and execute in the name of the state by the  
47 "division of environmental protection" any contract or  
48 agreement with the federal government or its departments  
49 or agencies, subdivisions of the state, corporations,  
50 associations, partnerships or individuals: *Provided*, That  
51 the powers granted to the director to enter into agreements  
52 or contracts and to make expenditures and obligations of  
53 public funds under this subdivision shall not exceed or be  
54 interpreted as authority to exceed the powers heretofore

55 granted by the Legislature to the various commissioners,  
56 directors or board members of the various departments,  
57 agencies or boards that comprise and are incorporated  
58 into each secretary's department pursuant to the provisions  
59 of chapter five-f of this code;

60 (2) Conduct research in improved environmental  
61 protection methods and disseminate information to the  
62 citizens of this state;

63 (3) Enter private lands to make surveys and  
64 inspections for environmental protection purposes; to  
65 investigate for violations of statutes or rules which the  
66 division is charged with enforcing; to serve and execute  
67 warrants and processes; to make arrests; issue orders,  
68 which for the purposes of this chapter include consent  
69 agreements; and to otherwise enforce the statutes or rules  
70 which the division is charged with enforcing;

71 (4) Acquire for the state in the name of the "division  
72 of environmental protection" by purchase, condemnation,  
73 lease or agreement, or accept or reject for the state, in the  
74 name of the division of environmental protection, gifts,  
75 donations, contributions, bequests or devises of money,  
76 security or property, both real and personal, and any  
77 interest in such property;

78 (5) Provide for workshops, training programs and  
79 other educational programs, apart from or in cooperation  
80 with other governmental agencies, necessary to insure  
81 adequate standards of public service in the division. The  
82 director may also provide for technical training and  
83 specialized instruction of any employee. Approved  
84 educational programs, training and instruction time may  
85 be compensated for as a part of regular employment. The  
86 director is further authorized to pay out of federal or state  
87 funds, or both, as such funds are available, fees and  
88 expenses incidental to such educational programs,  
89 training, and instruction. Eligibility for participation by  
90 employees will be in accordance with guidelines  
91 established by the director;

92 (6) Issue certifications required under 33 U.S.C.  
93 §1341. Prior to issuing any such certification the director  
94 shall solicit from the division of natural resources reports  
95 and comments concerning the possible certification. The  
96 reports and comments shall be directed from the division  
97 of natural resources to the director for consideration; and

98 (7) Notwithstanding any provisions of this code to the  
99 contrary, employ in-house counsel to perform all legal  
100 services for the director and the division, including, but  
101 not limited to, representing the director, any chief, the  
102 division or any office thereof in any administrative  
103 proceeding or in any proceeding in any state or federal  
104 court. Additionally, the director may call upon the  
105 attorney general for legal assistance and representation as  
106 provided by law.

107 (e) The director shall be appointed by the governor,  
108 by and with the advice and consent of the Senate, and  
109 serves at the will and pleasure of the governor: *Provided,*  
110 That in lieu of appointing a director, the governor may  
111 order the secretary to directly exercise the powers of the  
112 director. The secretary shall designate the order in which  
113 other officials of the division shall act for and perform the  
114 functions of the secretary or the director during the  
115 absence or disability of both the secretary and the director  
116 or in the event of vacancies in both of those offices.

117 (f) At the time of his or her initial appointment, the  
118 director shall be at least thirty years old and shall be  
119 selected with special reference and consideration given to  
120 his or her administrative experience and ability, to his or  
121 her demonstrated interest in the effective and responsible  
122 regulation of the energy industry and the conservation  
123 and wise use of natural resources. The director shall have  
124 at least a bachelor's degree in a related field and shall have  
125 at least three years of experience in a position of  
126 responsible charge in at least one discipline relating to the  
127 duties and responsibilities for which the director will be  
128 responsible upon assumption of the office of director.  
129 The director shall not be a candidate for or hold any other



130 public office, shall not be a member of any political party  
131 committee and shall immediately forfeit and vacate his or  
132 her office as director in the event he or she becomes a  
133 candidate for or accepts appointment to any other public  
134 office or political party committee.

135 (g) The director shall receive an annual salary of  
136 sixty-five thousand dollars and shall be allowed and paid  
137 necessary expenses incident to the performance of his or  
138 her official duties. Prior to the assumption of the duties of  
139 his or her office, the director shall take and subscribe to  
140 the oath required of public officers prescribed by section  
141 five, article IV of the constitution of West Virginia and  
142 shall execute a bond, with surety approved by the  
143 governor, in the penal sum of ten thousand dollars, which  
144 executed oath and bond shall be filed in the office of the  
145 secretary of state. Premiums on the bond shall be paid  
146 from the division funds.

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## CHAPTER 104

(S. B. 313—By Senators Wooton and Love)

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[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections ten and twelve, article sixteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to environmental resources; solid waste landfill closure assistance program; providing when a permittee that is a municipality, county, county solid waste authority or regional solid waste authority is ineligible for closure assistance funds; increasing the limit on the percentage of the closure assistance fund that may be used for administrative purposes from one percent to two percent; providing for closure extension; and providing for reporting requirements.

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

That sections ten and twelve, article sixteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.**

§22-16-10. Limitation on assistance.

§22-16-12. Solid waste facility closure cost assistance fund; closure extension; reporting requirements.

**§22-16-10. Limitation on assistance.**

1       The director may provide closure assistance only to  
2       permittees who meet the following requirements:

3       (1) The permittee of a landfill that does not have a  
4       liner and ceases accepting solid waste on or before the  
5       thirtieth day of November, one thousand nine hundred  
6       ninety-one, except for those landfills allowed to accept  
7       solid waste pursuant to the provisions of section seventeen,  
8       article fifteen of this chapter and ceases accepting solid  
9       waste on or before the extension deadline as determined  
10      by the director; or the permittee of a landfill that has only  
11      a single liner and ceases accepting solid waste on or before  
12      the thirtieth day of September, one thousand nine hundred  
13      ninety-three;

14      (2) The permittee of the landfill must demonstrate to  
15      the satisfaction of the director that it does not have the  
16      financial resources on hand or the ability to generate the  
17      amounts needed to comply, in a timely manner, with the  
18      closure requirements provided in article fifteen of this  
19      chapter and any rules promulgated pursuant thereto:  
20      *Provided*, That any permittee required to close a landfill,  
21      or any portion thereof, due to the lack of an approved  
22      composite liner system, who collects solid waste within this  
23      state which is disposed outside this state, shall not be eligi-  
24      ble for closure assistance: *Provided, however*, That any  
25      permittee which is a Class I municipality shall be eligible  
26      for closure assistance when the permittee elects to and  
27      pays the solid waste assessment fee which would otherwise  
28      be levied and imposed upon the disposal of the solid waste  
29      by subsection (a), section four of this article, if the solid  
30      waste was disposed of within the state; and

31 (3) The permittee must maintain a permit for the land-  
32 fill pursuant to the provisions of section ten, article fifteen  
33 of this chapter and maintain the full amount of the bond  
34 required to be submitted pursuant to section twelve of said  
35 article.

**§22-16-12. Solid waste facility closure cost assistance fund;  
closure extension; reporting requirements.**

1 (a) The "closure cost assistance fund" is continued as a  
2 special revenue account in the state treasury. The fund  
3 shall operate as a special fund whereby all deposits and  
4 payments thereto do not expire to the general revenue  
5 fund, but shall remain in such account and be available for  
6 expenditure in the succeeding fiscal year. Separate  
7 subaccounts may be established within the special account  
8 for the purpose of identification of various revenue re-  
9 sources and payment of specific obligations.

10 (b) Interest earned on any money in the fund shall be  
11 deposited to the credit of the fund.

12 (c) The fund consists of the following:

13 (1) Moneys collected and deposited in the state trea-  
14 sury which are specifically designated by acts of the Leg-  
15 islatre for inclusion in the fund, including moneys col-  
16 lected and deposited into the fund pursuant to section four  
17 of this article;

18 (2) Contributions, grants and gifts from any source,  
19 both public and private, which may be used by the direc-  
20 tor for any project or projects;

21 (3) Amounts repaid by permittees pursuant to section  
22 eighteen, article fifteen of this chapter; and

23 (4) All interest earned on investments made by the  
24 state from moneys deposited in this fund.

25 (d) The solid waste management board, upon written  
26 approval of the director, has the authority to pledge all or  
27 such part of the revenues paid into the closure cost assis-  
28 tance fund as may be needed to meet the requirements of  
29 any revenue bond issue or issues of the solid waste man-  
30 agement board authorized by this article, including the

31 payment of principal of, interest and redemption premi-  
32 um, if any, on such revenue bonds and the establishing  
33 and maintaining of a reserve fund or funds for the pay-  
34 ment of the principal of, interest and redemption premi-  
35 um, if any, on such revenue bond issue or issues when  
36 other moneys pledged may be insufficient therefor. Any  
37 pledge of moneys in the closure cost assistance fund for  
38 revenue bonds shall be a prior and superior charge on  
39 such fund over the use of any of the moneys in such fund  
40 to pay for the cost of any project on a cash basis. Expen-  
41 ditures from the fund, other than for the retirement of  
42 revenue bonds, may only be made in accordance with the  
43 provisions of this article.

44 (e) The amounts deposited in the fund may be ex-  
45 pended only on the cost of projects as provided for in  
46 sections three and fifteen of this article, as provided in  
47 subsection (f) of this section and for payment of bonds  
48 and notes issued pursuant to section five of this article:  
49 *Provided*, That no more than two percent of the annual  
50 deposits to such fund may be used for administrative pur-  
51 poses.

52 (f) Notwithstanding any provision of this article, upon  
53 request of the solid waste management board, and with the  
54 approval of the projects by the director of the division of  
55 environmental protection, the director may pledge and  
56 place into escrow accounts up to an aggregate of two mil-  
57 lion dollars of the fund to satisfy two years debt service  
58 requirement that permittees of publicly-owned landfills  
59 and transfer stations are required to meet in order to ob-  
60 tain loans. Pledges shall be made on a project-by-project  
61 basis, may not exceed five hundred thousand dollars for a  
62 project and shall be made available after loan commit-  
63 ments are received. The director may pledge funds for a  
64 loan only when the following conditions are met:

65 (1) The proceeds of the loan are used only to perform  
66 construction of a transfer station or a composite liner  
67 system that is required to meet the provisions of title  
68 forty-seven, series thirty-eight, solid waste management  
69 rules;

70 (2) The permittee dedicates all yearly debt service  
71 revenue, as determined by the public service commission,  
72 to meet the repayment schedule of the loan, before it uses  
73 available revenue for any other purpose; and

74 (3) That any funds pledged may only be paid to the  
75 lender if the permittee is in default on the loan.

76 (g) Any landfills which were ordered to close by the  
77 thirty-first day of December, one thousand nine hundred  
78 ninety-four, and which have been granted a certificate of  
79 need pursuant to the provisions of subsection (b), section  
80 one-c, article two, chapter twenty-four of this code or  
81 section one-i of said article are hereby granted a closure  
82 extension until the first day of January, one thousand nine  
83 hundred ninety-six: *Provided*, That no landfill which  
84 closed on or before the thirtieth day of September, one  
85 thousand nine hundred ninety-four, shall be eligible for  
86 such an extension.

87 (h) The department of environmental protection is  
88 required to file, by the first day of January of each  
89 ensuing year, an annual report with the joint committee on  
90 government and finance providing details on the manner  
91 in which the landfill closure assistance funds were  
92 expended for the prior fiscal year.

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## CHAPTER 105

(Com. Sub. for S. B. 287—By Senators Wooton and Love)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article three, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to environmental quality board rule-making authority; authorizing the promulgation of procedural rules granting site specific variances for water quality standards for coal remining operations; providing minimum requirements for procedures for granting variances; granting variance without requirement of

best available technology and best professional judgment prohibited; granting variance without demonstration of potential for improvement prohibited; and granting variance if degradation will result prohibited.

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

That section four, article three, chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.**

**§22B-3-4. Environmental quality board rule-making authority.**

1           (a) In order to carry out the purposes of this chapter  
2 and chapter twenty-two of this code, the board shall pro-  
3 mulgate legislative rules setting standards of water quality  
4 applicable to both the surface waters and groundwaters of  
5 this state. Standards of quality with respect to surface wa-  
6 ters shall be such as to protect the public health and wel-  
7 fare, wildlife, fish and aquatic life, and the present and  
8 prospective future uses of such water for domestic, agri-  
9 cultural, industrial, recreational, scenic and other legitimate  
10 beneficial uses thereof.

11           (b) Except for the alternate procedures provided for in  
12 subsection (c) of this section, the board shall promulgate  
13 legislative rules setting water quality standards in accor-  
14 dance with the provisions of article three, chapter  
15 twenty-nine-a of this code and the declaration of policy  
16 set forth in section two, article eleven, chapter twenty-two  
17 of this code.

18           (c) The board may grant site specific variance only for  
19 remined areas of coal remining operation from the stan-  
20 dards of water quality set forth in legislative rule  
21 46-CSR-1, et seq., setting standards for iron manganese  
22 and pH prior to the issuance of a national pollutant dis-  
23 charge elimination system (NPDES) permit by the division  
24 of environmental protection in accordance with 33 USC  
25 Section 1311(p) of the federal Water Pollution Control  
26 Act. The standards established in the variance will exist  
27 for the term of the NPDES permit. The board will pro-

28 mulgate procedural rules on granting site specific coal  
29 remining variances in accordance with the provisions of  
30 article three, chapter twenty-nine-a of this code on or  
31 before the first day of July, one thousand nine hundred  
32 ninety-five. At a minimum, the procedures for granting  
33 or denying a remining variance will include the following:  
34 A description of the data and information to be submitted  
35 to the board by the applicant for such variance; the criteria  
36 to be employed by the board in its decision; and provi-  
37 sions for a public comment period and public hearing  
38 prior to the board's decision. The board may not grant a  
39 variance without requiring the applicant to improve the  
40 instream water quality as much as is reasonably possible  
41 by applying best available technology economically  
42 achievable using best professional judgment which re-  
43 quirement will be included as a permit condition. The  
44 board may not grant a variance without a demonstration  
45 by the applicant that the coal remining operation will  
46 result in the potential for improved instream water quality  
47 as a result of the remining operation. The board may not  
48 grant a variance where the board determines that degrada-  
49 tion of the instream water quality will result from the  
50 remining operation.

51 (d) No rule of the board may specify the design of  
52 equipment, type of construction or particular method  
53 which a person shall use to reduce the discharge of a pol-  
54 lutant.

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## CHAPTER 106

(Com. Sub. for S. B. 419—By Senators Oliverio and Kimble)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, four and six, article three of said chapter, all relating to the laws of descent and distribution; defining

terms for purposes of descent provisions; redefining the term "beneficiary"; right to elective share of surviving spouse; revising valuations of elective share; providing for the augmented estate; excluding certain powers of appointment, property or property rights, proceeds of insurance, pension, profit sharing, retirement and other benefit plans and other transfers made by a decedent within two years preceding his or her death from augmented estate; payor or third party reliance on governing instrument; payment of funds or transfer or deposit of property to court; filing fee discretionary; discharge of payor or third party; liability of payor or third party upon receipt of written notice of petition for elective share; where notice to be mailed or served; rights of bona fide purchaser of property from recipient of assets; proceedings for elective share; service of petition; written notice of time and place for hearing; exclusions of portions of decedent's estate for purposes of satisfying certain elective share amounts; and clarifying liability of others for elective share entitlement.

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

That section one, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, two, four and six, article three of said chapter be amended and reenacted, all to read as follows:

**Article**

1. **Descent.**
3. **Provisions Relating to Husband or Wife of Decedent.**

**ARTICLE 1. DESCENT.**

**§42-1-1. General definitions.**

1 Subject to additional definitions contained in the sub-  
2 sequent articles that are applicable to specific articles, parts  
3 or sections, and unless the context otherwise requires in  
4 this code:

5 (1) "Agent" includes an attorney-in-fact under a dura-  
6 ble or nondurable power of attorney, an individual autho-  
7 rized to make decisions concerning another's health care  
8 and an individual authorized to make decisions for another



9 er under a natural death act.

10 (2) "Beneficiary" as it relates to a trust beneficiary,  
11 includes a person who has any present or future interest,  
12 vested or contingent, and also includes the owner of an  
13 interest by assignment or other transfer; as it relates to a  
14 charitable trust, includes any person entitled to enforce the  
15 trust; as it relates to a "beneficiary of a beneficiary desig-  
16 nation", refers to a beneficiary of an account with POD  
17 designation, of a security registered in beneficiary form  
18 (TOD) or other nonprobate transfer at death; and, as it  
19 relates to a "beneficiary designated in a governing instru-  
20 ment", includes a grantee of a deed, a devisee, a trust bene-  
21 ficiary, a beneficiary of a beneficiary designation or a  
22 person in whose favor a power of attorney or a power held  
23 in any individual, fiduciary or representative capacity is  
24 exercised.

25 (3) "Court" means the county commission or branch  
26 in this state having jurisdiction in matters relating to the  
27 affairs of decedents.

28 (4) "Conservator" means a person who is appointed by  
29 a court to manage the estate of a protected person.

30 (5) "Descendant" of an individual means all of his or  
31 her descendants of all generations, with the relationship of  
32 parent and child at each generation being determined by  
33 the definition of child and parent contained in this code.

34 (6) "Devise" when used as a noun, means a testamenta-  
35 ry disposition of real or personal property and, when used  
36 as a verb, means to dispose of real or personal property by  
37 will.

38 (7) "Devisee" means a person designated in a will to  
39 receive a devise. In the case of a devise to an existing trust  
40 or trustee, or to a trustee on trust described by will, the  
41 trust or trustee is the devisee and the beneficiaries are not  
42 devisees.

43 (8) "Distributee" means any person who has received  
44 property of a decedent from his or her personal represen-  
45 tative other than as a creditor or purchaser. A testamenta-  
46 ry trustee is a distributee only to the extent of distributed

47 assets or increment thereto remaining in his or her hands.  
48 A beneficiary of a testamentary trust to whom the trustee  
49 has distributed property received from a personal repre-  
50 sentative is a distributee of the personal representative.  
51 For the purposes of this provision, "testamentary trustee"  
52 includes a trustee to whom assets are transferred by will, to  
53 the extent of the devised assets.

54 (9) "Estate" includes the property of the decedent, trust  
55 or other person whose affairs are subject to this code as  
56 originally constituted and as it exists from time to time  
57 during administration.

58 (10) "Exempt property" means that property of a  
59 decedent's estate which is provided for in section  
60 forty-eight, article VI of the constitution.

61 (11) "Fiduciary" includes a personal representative,  
62 guardian, conservator and trustee.

63 (12) "Foreign personal representative" means a per-  
64 sonal representative appointed by another jurisdiction.

65 (13) "Formal proceedings" means proceedings con-  
66 ducted before a judge with notice to interested persons.

67 (14) "Governing instrument" means a deed, will, trust,  
68 insurance or annuity policy, account with POD designa-  
69 tion, security registered in beneficiary form (TOD), pen-  
70 sion, profit sharing, retirement or similar benefit plan,  
71 instrument creating or exercising a power of appointment  
72 or a power of attorney or a donative, appointive or nomi-  
73 native instrument of any other type.

74 (15) "Guardian" means a person who has qualified as a  
75 guardian of a minor or incapacitated person pursuant to  
76 testamentary or court appointment, but excludes one who  
77 is merely a guardian ad litem.

78 (16) "Heirs" means persons, including the surviving  
79 spouse and the state, who are entitled under the statutes of  
80 intestate succession to the property of a decedent.

81 (17) "Informal proceedings" mean those conducted  
82 without notice to interested persons by an officer of the  
83 court acting as a registrar for probate of a will or appoint-

84 ment of a personal representative.

85 (18) "Interested person" includes heirs, devisees, chil-  
86 dren, spouses, creditors, beneficiaries and any others hav-  
87 ing a property right in or claim against a trust estate or the  
88 estate of a decedent, ward or protected person. It also  
89 includes persons having priority for appointment as per-  
90 sonal representative and other fiduciaries representing  
91 interested persons. The meaning as it relates to particular  
92 persons may vary from time to time and must be deter-  
93 mined according to the particular purposes of, and matter  
94 involved in, any proceeding.

95 (19) "Issue" of a person means descendant as defined  
96 in subdivision (5) of this section.

97 (20) "Joint tenants with the right of survivorship" and  
98 "community property with the right of survivorship" in-  
99 cludes coowners of property held under circumstances  
100 that entitle one or more to the whole of the property on  
101 the death of the other or others, but excludes forms of  
102 coownership registration in which the underlying owner-  
103 ship of each party is in proportion to that party's contribu-  
104 tion.

105 (21) "Lease" includes an oil, gas or other mineral  
106 lease.

107 (22) "Letters" includes letters testamentary, letters of  
108 guardianship, letters of administration and letters of con-  
109 servatorship.

110 (23) "Minor" means a person who is under eighteen  
111 years of age.

112 (24) "Mortgage" means any deed of trust, conveyance,  
113 agreement or arrangement in which property is encum-  
114 bered or used as security.

115 (25) "Nonresident decedent" means a decedent who  
116 was domiciled in another jurisdiction at the time of his or  
117 her death.

118 (26) "Parent" includes any person entitled to take, or  
119 who would be entitled to take if the child died without a  
120 will, as a parent under this code by intestate succession

121 from the child whose relationship is in question and ex-  
122 cludes any person who is only a stepparent, foster parent  
123 or grandparent.

124 (27) "Payor" means a trustee, insurer, business entity,  
125 employer, government, governmental agency or subdivi-  
126 sion or any other person authorized or obligated by law or  
127 a governing instrument to make payments.

128 (28) "Person" means an individual or an organization.

129 (29) "Personal representative" includes executor, ad-  
130 ministrator, successor personal representative, special ad-  
131 ministrator and persons who perform substantially the  
132 same function under the law governing their status. "Gen-  
133 eral personal representative" excludes special administra-  
134 tor.

135 (30) "Petition" means a written request to the court for  
136 an order after notice.

137 (31) "Proceeding" includes action at law and suit in  
138 equity.

139 (32) "Property" includes both real and personal prop-  
140 erty or any interest therein and means anything that may  
141 be the subject of ownership.

142 (33) "Security" includes any note, stock, treasury  
143 stock, bond, debenture, evidence of indebtedness, certifi-  
144 cate of interest or participation in an oil, gas or mining  
145 title or lease or in payments out of production under such  
146 a title or lease, collateral trust certificate, transferable share,  
147 voting trust certificate or, in general, any interest or instru-  
148 ment commonly known as a security or any certificate of  
149 interest or participation, any temporary or interim certifi-  
150 cate, receipt or certificate of deposit for, or any warrant or  
151 right to subscribe to or purchase, any of the foregoing.

152 (34) "Settlement" in reference to a decedent's estate,  
153 includes the full process of administration, distribution  
154 and closing.

155 (35) "State" means a state of the United States, the  
156 District of Columbia, the Commonwealth of Puerto Rico  
157 or any territory or insular possession subject to the juris-

158 diction of the United States.

159 (36) "Successor personal representative" means a per-  
160 sonal representative, other than a special administrator,  
161 who is appointed to succeed a previously appointed per-  
162 sonal representative.

163 (37) "Successors" means persons, other than creditors,  
164 who are entitled to property of a decedent under his or her  
165 will or this code.

166 (38) "Survive" means that an individual has neither  
167 predeceased an event, including the death of another indi-  
168 vidual, nor is deemed to have predeceased an event. The  
169 term includes its derivatives, such as "survives", "survived",  
170 "survivor" and "surviving".

171 (39) "Surviving spouse" means the person to whom the  
172 decedent was married at the time of the decedent's death.

173 (40) "Testacy proceeding" means a proceeding to  
174 establish a will or determine intestacy.

175 (41) "Testator" includes an individual of either sex.

176 (42) "Trust" includes an express trust, private or chari-  
177 table, with additions thereto, wherever and however creat-  
178 ed. The term also includes a trust created or determined  
179 by judgment or decree under which the trust is to be ad-  
180 ministered in the manner of an express trust. The term  
181 excludes other constructive trusts and excludes resulting  
182 trusts, conservatorships, personal representatives and custo-  
183 dial arrangements, including that relating to gifts or trans-  
184 fers to minors, dealing with special custodial situations,  
185 business trusts providing for certificates to be issued to  
186 beneficiaries.

187 (43) "Trustee" includes an original, additional or suc-  
188 cessor trustee, whether or not appointed or confirmed by  
189 court.

190 (44) "Will" includes codicil and any testamentary in-  
191 strument that merely appoints an executor, revokes or  
192 revises another will, nominates a guardian or expressly  
193 excludes or limits the right of an individual or class to  
194 succeed to property of the decedent passing by intestate



23 13 years but less than 14 years . . . 42% of the augmented estate.

24 14 years but less than 15 years . . . 46% of the augmented estate.

25 15 years or more . . . . . 50% of the augmented estate.

26 (b) If the sum of the amounts described in subdivi-  
27 sions (3) and (4), subsection (b), section two of this article,  
28 and subdivisions (1) and (3), subsection (a), section six of  
29 this article, and that part of the elective-share amount pay-  
30 able from the decedent's probate and reclaimable estates  
31 under subsections (b) and (c), section six of this article, is  
32 less than twenty-five thousand dollars, the surviving spouse  
33 is entitled to a supplemental elective-share amount equal  
34 to twenty-five thousand dollars, minus the sum of the  
35 amounts described in said sections. The supplemental  
36 elective-share amount is payable from the decedent's pro-  
37 bate estate and from recipients of the decedent's reclaim-  
38 able estate in the order of priority set forth in subsections  
39 (b) and (c), section six of this article.

40 (c) The right, if any, of the surviving spouse of a dece-  
41 dent who dies domiciled outside this state to take an elec-  
42 tive share in property in this state is governed by the law  
43 of the decedent's domicile at death.

#### §42-3-2. Augmented estate.

1 (a) Definitions.

2 (1) In this section:

3 (i) "Bona fide purchaser" means a purchaser for value  
4 in good faith and without notice of an adverse claim. The  
5 notation of a state documentary fee on a recorded instru-  
6 ment is prima facie evidence that the transfer described  
7 therein was made to a bona fide purchaser.

8 (ii) "Nonadverse party" means a person who does not  
9 have a substantial beneficial interest in the trust or other  
10 property arrangement that would be adversely affected by  
11 the exercise or nonexercise of the power that he or she  
12 possesses respecting the trust or other property arrange-  
13 ment. A person having a general power of appointment  
14 over property is deemed to have a beneficial interest in the  
15 property.

16 (iii) "Presently exercisable general power of appoint-  
17 ment" means a power of appointment under which, at the  
18 time in question, the decedent by an exercise of the power  
19 could have created an interest, present or future, in himself  
20 or herself or his or her creditors.

21 (iv) "Probate estate" means property, whether real or  
22 personal, movable or immovable, wherever situated, that  
23 would pass by intestate succession if the decedent died  
24 without a valid will.

25 (v) "Right to income" includes a right to payments  
26 under an annuity or similar contractual arrangement.

27 (vi) "Value of property owned by the surviving spouse  
28 at the decedent's death" and "value of property to which  
29 the surviving spouse succeeds by reason of the decedent's  
30 death" include the commuted value of any present or  
31 future interest then held by the surviving spouse and the  
32 commuted value of amounts payable to the surviving  
33 spouse after the decedent's death under any trust, life in-  
34 surance settlement option, annuity contract, public or  
35 private pension, disability compensation, death benefit or  
36 retirement plan, or any similar arrangement, exclusive of  
37 the federal social security system.

38 (b) The augmented estate consists of the sum of:

39 (1) The value of the decedent's probate estate, reduced  
40 by funeral and administration expenses, homestead ex-  
41emption, property exemption and enforceable claims;

42 (2) The value of the decedent's reclaimable estate.  
43 The decedent's reclaimable estate is composed of all prop-  
44erty, whether real or personal, movable or immovable,  
45 wherever situated, not included in the decedent's probate  
46 estate, of any of the following types:

47 (i) Property to the extent the passing of the principal  
48 thereof to or for the benefit of any person, other than the  
49 decedent's surviving spouse, was subject to a presently  
50 exercisable general power of appointment created by the  
51 decedent during the marriage and held by the decedent  
52 alone if the decedent held that power immediately before  
53 his or her death;



54 (ii) Property, to the extent of the decedent's contribu-  
55 tion to it during the marriage, as a percentage of the  
56 whole, by which the property is held by the decedent and  
57 any other person, except the decedent's surviving spouse,  
58 with right of survivorship, acquired during the marriage of  
59 the decedent and the surviving spouse, if the decedent held  
60 that interest immediately before his or her death;

61 (iii) Property transferred by the decedent to any per-  
62 son other than a bona fide purchaser at any time during  
63 the decedent's marriage to the surviving spouse, to or for  
64 the benefit of any person, other than the decedent's surviv-  
65 ing spouse, if the transfer is of any of the following types:

66 (A) Any transfer to the extent that the decedent re-  
67 tained at the time of his or her death the possession or  
68 enjoyment of, or right to income from the property;

69 (B) Any transfer to the extent that, at the time of the  
70 decedent's death, the income or principal was subject to a  
71 power, exercisable by the decedent alone or in conjunc-  
72 tion with any other person or exercisable by a nonadverse  
73 party, for the benefit of the decedent or the decedent's  
74 estate; or

75 (C) Any transfer made to a donee within two years  
76 before the decedent's death to the extent that the aggregate  
77 transfers to any one donee in either of the years exceed  
78 ten thousand dollars;

79 (3) The value of property to which the surviving  
80 spouse succeeds by reason of the decedent's death, other  
81 than by homestead exemption, exempt property, testate  
82 succession or intestate succession, including the proceeds  
83 of insurance, including accidental death benefits, on the  
84 life of the decedent and benefits payable under a retire-  
85 ment plan in which the decedent was a participant, exclu-  
86 sive of the federal social security system; and

87 (4) The value of property owned by the surviving  
88 spouse at the decedent's death, reduced by enforceable  
89 claims against that property or that spouse, plus the value  
90 of amounts that would have been includible in the surviv-  
91 ing spouse's reclaimable estate had the spouse predeceased  
92 the decedent.

93 (c) Any transfer is excluded from the decedent's re-  
94 claimable estate: (i) To the extent the decedent received  
95 adequate and full consideration in money or money's  
96 worth for the transfer, exercise or release; or (ii) if irrevocably  
97 made with the written consent or joinder of the sur-  
98 viving spouse. Life insurance, accident insurance, pension,  
99 profit sharing, retirement and other benefit plans payable  
100 to persons other than the decedent's surviving spouse or  
101 the decedent's estate is also excluded.

102 (d) Property is valued as of the decedent's death, but  
103 property irrevocably transferred during the two-year peri-  
104 od next preceding the decedent's death which is included  
105 in the decedent's reclaimable estate under paragraph (iii),  
106 subdivision (2), subsection (b) of this section is valued as  
107 of the time of the transfer. If the terms of more than one  
108 of the paragraphs or subparagraphs of subdivision (2),  
109 subsection (b) of this section apply, the property is includ-  
110 ed in the augmented estate under the paragraph or sub-  
111 paragraph that yields the highest value.

112 (e) (1) Although under this section a payment, item of  
113 property or other benefit is included in the decedent's  
114 reclaimable estate, a payor or other third party is not liable  
115 for having made a payment or transferred an item of  
116 property or other benefit to a beneficiary designated in a  
117 governing instrument, or for having taken any other ac-  
118 tion in reliance on the validity of a governing instrument,  
119 upon request and satisfactory proof of the decedent's  
120 death, before the payor or other third party received writ-  
121 ten notice from the surviving spouse or spouse's represen-  
122 tative of an intention to file a petition for the elective share  
123 or that a petition for the elective share has been filed. A  
124 payor or other third party is only liable for actions taken  
125 two or more business days after the payor or other third  
126 party has actual receipt of such written notice of an inten-  
127 tion to file a petition for the elective share or that a peti-  
128 tion for the elective share has been filed.

129 Any form of service of notice other than that de-  
130 scribed in subdivision (2) of this subsection shall not be  
131 sufficient to impose liability on a payor or other third  
132 party for actions taken pursuant to the governing instru-  
133 ment.

133           (2) The written notice shall indicate the name of the  
134 decedent, the date of the decedent's death, the name of the  
135 person asserting an interest, the nature of the payment or  
136 item of property or other benefit and a statement that the  
137 spouse intends to file a petition for the elective share or  
138 that a petition for the elective share has been filed.

139           (3) The written notice must be mailed to the payor's or  
140 other third party's main office or home by registered or  
141 certified mail, return receipt requested, or served upon the  
142 payor or other third party in the same manner as a sum-  
143 mons in a civil action. Notice to a sales representative of  
144 the payor or other third party shall not constitute notice to  
145 the payor or other third party. Upon receipt of written  
146 notice of intention to file a petition for the elective share  
147 or that a petition for the elective share has been filed, a  
148 payor or other third party may pay any amount owed or  
149 transfer or deposit any item of property held by it to or  
150 with the court having jurisdiction of the probate proceed-  
151 ings relating to the decedent's estate, or if no proceedings  
152 have been commenced, to or with the court having juris-  
153 diction of probate proceedings relating to decedents' es-  
154 tates located in the county of the decedent's residence. The  
155 availability of such actions under this section shall not  
156 prevent the payor or other third party from taking any  
157 other action authorized by law or the governing instru-  
158 ment. If no probate proceedings have been commenced,  
159 the payor or other third party shall file with the court a  
160 copy of the written notice received by the payor or other  
161 third party, with the payment of funds or transfer or de-  
162 posit of property. The court shall not charge a filing fee  
163 to the payor or other third party for any such payment,  
164 transfer or deposit with the court, even if no probate pro-  
165 ceedings have been commenced before such payment,  
166 transfer or deposit. The court shall hold the funds or item  
167 of property and, upon its determination under subsection  
168 (d), section four of this article, shall order disbursement in  
169 accordance with the determination. If no petition is filed  
170 in the court within the specified time under subsection (a)  
171 of said section or, if filed, the demand for an elective share  
172 is withdrawn under subsection (c) of said section, the court  
173 shall order disbursement to the designated beneficiary. A

174 filing fee, if any, may be charged upon disbursement  
175 either to the recipient or against the funds or property on  
176 deposit with the court, in the discretion of the court. Pay-  
177 ments, transfers or deposits made to or with the court dis-  
178 charge the payor or other third party from all claims un-  
179 der the governing instrument or applicable law for the  
180 value of amounts paid to or items of property transferred  
181 to or deposited with the court.

182 (4) Upon petition to the probate court by the benefi-  
183 ciary designated in a governing instrument, the court may  
184 order that all or part of the property be paid to the benefi-  
185 ciary in an amount and subject to conditions consistent  
186 with this section.

187 (f) (1) A bona fide purchaser who purchases property  
188 from a recipient, or who receives a payment or other item  
189 of property in partial or full satisfaction of a legally en-  
190 forceable obligation, is neither obligated under this part to  
191 return the payment, item or property or benefit nor is  
192 liable under this part for the amount of the payment or the  
193 value of the item of property or benefit. But a person  
194 who, not for value, receives a payment, item of property or  
195 any other benefit included in the decedent's reclaimable  
196 estate is obligated to return the payment, item of property  
197 or benefit, or is personally liable for the amount of the  
198 payment or the value of the item of property or benefit, as  
199 provided in section six of this article.

200 (2) If any section or part of any section of this part is  
201 preempted by federal law with respect to a payment, an  
202 item of property or any other benefit included in the de-  
203 cedent's reclaimable estate, a person who, not for value,  
204 receives the payment, item of property, or any other bene-  
205 fit is obligated to return that payment, item of property, or  
206 benefit, or is personally liable for the amount of that pay-  
207 ment or the value of that item of property or benefit, as  
208 provided in section six of this article to the person who  
209 would have been entitled to it were that section or part of  
210 that section not preempted.

#### **§42-3-4. Proceeding for elective share; time limit.**

1 (a) Except as provided in subsection (b) of this sec-  
2 tion, the election must be made by filing in the court and

3 mailing or delivering to the personal representative, if any,  
4 a petition for the elective share within nine months after  
5 the date of the decedent's death, or within six months after  
6 the probate of the decedent's will, whichever limitation  
7 later expires. The surviving spouse must serve a copy of  
8 the petition for the elective share on, and must give written  
9 notice of the time and place set for hearing to persons  
10 interested in the estate and to the distributees and recipi-  
11 ents of portions of the augmented estate whose interests  
12 may be adversely affected by the taking of the elective  
13 share. The decedent's reclaimable estate, described in sub-  
14 division (2), subsection (b), section two of this article, is  
15 not included within the augmented estate for the purpose  
16 of computing the elective share, if the petition is filed  
17 more than nine months after the decedent's death.

18 (b) Within nine months after the decedent's death, the  
19 surviving spouse may petition the court for an extension  
20 of time for making an election. If, within nine months  
21 after the decedent's death, the spouse gives notice of the  
22 petition to all persons interested in the decedent's reclaim-  
23 able estate, against whom the spouse chooses to proceed  
24 under subsection (d) of this section, the court for cause  
25 shown by the surviving spouse may extend the time for  
26 election. If the court grants the spouse's petition for an  
27 extension, the decedent's reclaimable estate, described in  
28 subdivision (2), subsection (b), section two of this article,  
29 in the hands of those persons against whom the spouse  
30 chooses to proceed under subsection (d) of this section, is  
31 not excluded from the augmented estate for the purpose  
32 of computing the elective-share and supplemental  
33 elective-share amounts, but is excluded for the purpose of  
34 satisfying the elective share amount and the supplemental  
35 elective share amount under subsections (b) and (c), sec-  
36 tion six of this article, if the spouse makes an election by  
37 filing in the court and mailing or delivering to the person-  
38 al representative, if any, a petition for the elective share  
39 within the time allowed by the extension.

40 (c) The surviving spouse may withdraw his or her  
41 demand for an elective share at any time before entry of a  
42 final determination by the court.

43 (d) After notice and hearing, the court shall determine  
44 the elective share and supplemental elective-share amounts  
45 and shall order its payment from the assets of the aug-  
46 mented estate or by contribution as appears appropriate  
47 under section six of this article. If it appears that a fund  
48 or property included in the augmented estate has not  
49 come into the possession of the personal representative, or  
50 has been distributed by the personal representative, the  
51 court nevertheless shall fix the liability of any person who  
52 has any interest in the fund or property or who has posses-  
53 sion thereof, whether as trustee or otherwise. The pro-  
54 ceeding may be maintained against fewer than all persons  
55 against whom relief could be sought, but no person is  
56 subject to contribution in any greater amount than he or  
57 she would have been under section two of this article had  
58 relief been secured against all persons subject to contribu-  
59 tion.

60 (e) An order or judgment of the court may be en-  
61 forced as necessary in suit for contribution or payment in  
62 other courts of this state or other jurisdictions.

**§42-3-6. Charging spouse with owned assets and gifts re-  
ceived; liability of others for balance of elective  
share.**

1 (a) In a proceeding for an elective share, the following  
2 are applied first to satisfy the elective-share amount and to  
3 reduce or eliminate any contributions due from the dece-  
4 dent's probate estate and recipients of the decedent's re-  
5 claimable estate:

6 (1) Amounts included in the augmented estate which  
7 pass or have passed to the surviving spouse by testate or  
8 intestate succession;

9 (2) Amounts included in the augmented estate under  
10 subdivision (3), subsection (b), section two of this article;

11 (3) Amounts included in the augmented estate which  
12 would have passed to the spouse but were disclaimed; and

13 (4) Amounts included in the augmented estate under  
14 subdivision (4), subsection (b), section two of this article  
15 up to the applicable percentage thereof. For the purposes  
16 of this subsection, the "applicable percentage" is twice the

17 elective-share percentage set forth in the schedule in sec-  
18 tion one of this article appropriate to the length of time  
19 the spouse and the decedent were married to each other.

20 (b) If, after the application of subsection (a), the  
21 elective-share amount is not fully satisfied or the surviving  
22 spouse is entitled to a supplemental elective-share amount,  
23 amounts included in the decedent's probate estate and that  
24 portion of the decedent's reclaimable estate other than  
25 amounts irrevocably transferred within two years before  
26 the decedent's death are applied first to satisfy the unsatis-  
27 fied balance of the elective-share amount or the supple-  
28 mental elective-share amount. The decedent's probate  
29 estate and that portion of the decedent's reclaimable estate  
30 are so applied that liability for the unsatisfied balance of  
31 the elective-share amount or for the supplemental  
32 elective-share amount is equitably apportioned among the  
33 recipients of the decedent's probate estate and that portion  
34 of the decedent's reclaimable estate in proportion to the  
35 value of their interests therein.

36 (c) If, after the application of subsections (a) and (b)  
37 of this section, the elective share or supplemental  
38 elective-share amount is not fully satisfied, the remaining  
39 portion of the decedent's reclaimable estate is so applied  
40 that liability for the unsatisfied balance of the elective  
41 share or supplemental elective-share amount is equitably  
42 apportioned among the recipients of that portion of the  
43 decedent's reclaimable estate in proportion to the value of  
44 their interests therein.

45 (d) Only original recipients of the reclaimable estate  
46 described in subdivision (2), subsection (b), section two of  
47 this article, and the donees of the recipients of the reclaim-  
48 able estate to the extent the original recipients or their  
49 donees have the property or its proceeds, are liable to  
50 make a proportional contribution toward satisfaction of  
51 the surviving spouse's elective share or supplemental  
52 elective-share amount. A person liable to make contribu-  
53 tion may choose to give up the proportional part of the  
54 reclaimable estate or to pay the value of the amount for  
55 which he or she is liable.

# CHAPTER 107

(Com. Sub. for S. B. 458—By Senator Jackson)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one and twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to proceedings of decedents' estates; references thereon; service and publication of notice of time for receiving claims; proceedings relating thereto; claims against decedents' estates; and providing that final settlement of certain decedents' estates may be waived in specified circumstances.

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

That sections one and twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

## ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§442-1. Reference of decedents' estates; proceedings thereon.

§44-2-29. Waiver of final settlement.

### §44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisal by the  
2 personal representative to the county clerk, the estate of  
3 his or her decedent shall, by order of the county  
4 commission to be then made, be referred to a fiduciary  
5 commissioner for proof and determination of debts and  
6 claims, establishment of their priority, determination of the  
7 amount of the respective shares of the legatees and  
8 distributees, and any other matter necessary and proper  
9 for the settlement of the estate: *Provided*, That in counties  
10 where there are two or more such commissioners, the  
11 estates of decedents shall be referred to such



12 commissioners in rotation, in order that, so far as possible,  
13 there may be an equal division of the work: *Provided,*  
14 *however,* That a fiduciary commissioner may not charge  
15 to the estate a fee greater than two hundred dollars for the  
16 settlement of an estate, except upon approval of the  
17 county commission because of complicating issues or  
18 problems attendant to such settlement and amount of time  
19 involved in and about its resolution.

20 (b) If the personal representative shall deliver to the  
21 clerk an appraisalment of the assets of the estate showing  
22 their value to be fifty thousand dollars or less, exclusive of  
23 nonprobate assets, the clerk shall record said appraisalment  
24 and publish a notice once a week for two successive weeks  
25 in a newspaper of general circulation within the county of  
26 administration of the estate, substantially as follows:

27 NOTICE OF PENDING ESTATE

28 "Notice is hereby given that settlement of the estate of  
29 the following named decedents will proceed without  
30 reference to a fiduciary commissioner unless within ninety  
31 days from the first publication of this notice such  
32 reference is requested by a party in interest or an unpaid  
33 creditor and good cause is shown to support such  
34 reference.

35 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

36 \_\_\_\_\_

37 Clerk of the County Commission

38 of \_\_\_\_\_ County, West Virginia."

39 The clerk shall charge to the personal representative,  
40 and receive, the reasonable cost of publication of the  
41 notice.

42 The personal representative shall, within a reasonable  
43 time after the date of recordation of the appraisalment in  
44 such case, make a report to the clerk of his receipts,  
45 disbursements and distribution, and shall make affidavit  
46 that all claims against the estate, for expenses of  
47 administration, taxes and debts of the decedent, have been

48 paid in full. The clerk shall collect a fee of ten dollars for  
 49 recording such report and affidavit, and for publication of  
 50 the notice hereafter provided, the fee to be in lieu of any  
 51 other fee provided by law for recording a report of  
 52 settlement of the accounts of a decedent's personal  
 53 representative. At least once a month the clerk shall cause  
 54 to be published once a week for two successive weeks in a  
 55 newspaper of general circulation within the county of the  
 56 administration of the estate, with regard to reports received  
 57 in the prior month, a notice substantially as follows:

58           NOTICE OF FILING OF ESTATE ACCOUNTS

59           "I have before me the account of the executor(s) or  
 60 administrator(s) of the estates of the following deceased  
 61 persons:

62 \_\_\_\_\_  
 63 \_\_\_\_\_  
 64 \_\_\_\_\_

65           Any person having a claim against the estate of any  
 66 such deceased person, or who has any beneficial interest  
 67 therein, may appear before me or the county commission  
 68 at any time within thirty days after first publication of this  
 69 notice, and request reference of said estate to a  
 70 commissioner or object to confirmation of the accounting.  
 71 In the absence of such request or objection, the  
 72 accounting may be approved by the county commission.

73 \_\_\_\_\_  
 74                                   Clerk of the County Commission  
 75                                   of \_\_\_\_\_ County, W. Va."

76           If no such request or objection is made to the clerk or  
 77 to the county commission, the county commission may  
 78 confirm the report of the personal representative, and  
 79 thereupon the personal representative and his surety shall  
 80 be discharged; but if such objection or request is made,  
 81 the county commission may confirm the accounting and  
 82 record the same, or may refer the estate to one of its

83 fiduciary commissioners: *Provided*, That the personal  
84 representative has twenty days after the date of the filing  
85 of a claim or claims against the estate of the decedent to  
86 approve or reject the claim before the estate is referred to  
87 a fiduciary commissioner and if all claims are approved as  
88 filed, then no reference may be made.

89 (c) If upon the return and recordation of the  
90 appraisal, it appears to the clerk that there is only one  
91 beneficiary of the estate and that the beneficiary is  
92 competent at law, there shall be no further administration  
93 upon the estate, and no reference to a fiduciary  
94 commissioner, unless, for due cause, the county  
95 commission orders further administration and a reference  
96 to a fiduciary commissioner: *Provided*, That the personal  
97 representative has twenty days after the date of the filing  
98 of a claim or claims against the estate of the decedent to  
99 approve or reject one claim before the estate is referred to  
100 a fiduciary commissioner and if all claims are approved as  
101 filed, then no reference may be made. The bond of the  
102 personal representative and his surety shall be discharged  
103 one year after the date of qualification of the personal  
104 representative if no claim has been filed with the county  
105 clerk and no suit has been instituted against the personal  
106 representative. The clerk shall publish a notice once a  
107 week for two successive weeks in a newspaper of general  
108 circulation within the county of administration of the  
109 estate, substantially as follows:

110 NOTICE OF UNADMINISTERED ESTATE

111 "Notice is hereby given that, there being only one  
112 beneficiary of the deceased, there will be no  
113 administration of the estate unless within ninety days  
114 demand for administration be made by a party in interest  
115 or an unpaid creditor.

116 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

117

118 \_\_\_\_\_  
Clerk of the County Commission

119 of \_\_\_\_\_ County, W. Va."

120       The clerk shall charge to the personal representative,  
121 and receive, the reasonable cost of publication of the  
122 notice.

123       If no person demands administration and no creditor  
124 appears in response to the notice hereinabove provided,  
125 the clerk shall enter an order declaring the estate closed,  
126 without final settlement or waiver thereof and alienation of  
127 the decedent's real estate more than six months after the  
128 date of the notice to a bona fide purchaser for value shall  
129 be free of any lien for taxes or debts of the decedent,  
130 notwithstanding the provisions of section five, article eight  
131 of this chapter.

**§44-2-29. Waiver of final settlement.**

1       In all estates of decedents subject to administration  
2 under this article where a release of lien required by the  
3 provisions of article eleven, chapter eleven of this code has  
4 been filed with the clerk and more than ninety days have  
5 elapsed since the filing of any notice required by the  
6 provisions of this article, even though such estate may  
7 have been referred to a fiduciary commissioner, a final  
8 settlement may be waived by a waiver containing an  
9 affidavit made by the personal representative, that the time  
10 for filing of claims has expired, that no known and unpaid  
11 claims exist against the estate, and that all beneficiaries  
12 have each been advised of the share or shares to which  
13 each is entitled from the estate and signed by every  
14 beneficiary.

15       In the case of a beneficiary under a disability, the duly  
16 qualified personal representative of such beneficiary may  
17 sign in lieu of such beneficiary. A personal representative  
18 signing such waiver shall be responsible to his or her  
19 cestui que trust for any loss resulting from such waiver.

20       The waiver shall be recorded as in the case of and in  
21 lieu of a settlement.

## CHAPTER 108

(S. B. 24—By Senators Wooton, Anderson, Bowman, Buckalew, Deem,  
Dittmar, Grubb, Miller, Oliverio, Ross, Schoonover,  
Scott, White and Yoder)

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[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article five-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the termination of trusts in certain circumstances.

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

That article five-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four, to read as follows:

### ARTICLE 5A. POWERS OF FIDUCIARIES.

#### **§44-5A-4. Termination of trusts valued at less than fifty thousand dollars; spendthrift and other protective trusts for incompetents and children.**

1           (a) Upon application of a trustee of a trust with assets  
2 valued at less than fifty thousand dollars, the principal of  
3 which is not distributable until some future time, a circuit  
4 court having in rem jurisdiction over the corpus of the  
5 trust may order that the trust be terminated upon a finding  
6 that the continued existence of the trust is no longer  
7 economically beneficial or practical because, relative to  
8 the costs of administering the trust or because of an  
9 existing economic circumstance that directly threatens the  
10 solvency, financial integrity or monetary value of such  
11 trust, continuance of the trust pursuant to its existing terms  
12 will defeat or substantially impair the accomplishment of  
13 its purposes.

14           (b) Notwithstanding the provisions of subsection (a) of  
15 this section to the contrary, the court may not, pursuant to

16 said subsection, order the termination of a spendthrift or  
17 other protective trust which exists for the benefit of one or  
18 more incompetents or minors in the absence of the court's  
19 further finding that there exists or will exist upon the  
20 termination of such trust an adequate alternative protective  
21 device or provision for the management of the trust assets  
22 and protection of the primary beneficiary or beneficiaries  
23 for whom the trust was created.

24 (c) Upon the entry of an order that the trust be  
25 terminated pursuant to the provisions of this section, the  
26 trustee shall, at least fourteen days prior to the date upon  
27 which the trustee proposes to terminate the trust, file with  
28 the court such accounting of the activities and assets of the  
29 trust as may be directed by the court and serve a copy  
30 thereof upon the parties to the action and such other  
31 persons that may be affected by the termination of the  
32 trust. Upon the court's review of the accounting, the court  
33 may enter an order approving the accounting and the  
34 terms of the termination of the trust proposed by the  
35 trustee or may enter such other order as the court may  
36 deem appropriate in the action.

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## CHAPTER 109

(Com. Sub. for H. B. 2429—By Mr. Speaker, Mr. Chambers, and Delegates Kiss,  
Farris, Seacrist, Amores and Hunt)

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[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article six-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the administration of estates and trusts; uniform management of institutional funds act; revising the definitions of "institution," "institutional fund" and "gift instrument"; and adding a definition of "community foundation" or "community trust."

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

That section two, article six-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 6A. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT.**

**§44-6A-2. Definitions.**

1       The following words or phrases as used in this article  
2 shall have the meanings ascribed to them in this section,  
3 unless the context of this article clearly indicates other-  
4 wise:

5       (a) "Endowment fund" means an institutional fund, or  
6 any part thereof, not wholly expendable by the institution  
7 on a current basis under the terms of the applicable gift  
8 instrument;

9       (b) "Gift instrument" means a will, deed, trust agree-  
10 ment, grant, conveyance, agreement, memorandum, writ-  
11 ing or other governing document (including the terms of  
12 any institutional solicitations from which an institutional  
13 fund resulted) that was executed or in effect before or  
14 after the effective date of this article under which property  
15 is transferred to, or held by or on behalf of, an institution  
16 as an institutional fund;

17       (c) "Governing board" means the body responsible for  
18 the management of an institution or of an institutional  
19 fund;

20       (d) "Historic dollar value" means the aggregate fair  
21 value in dollars of: (i) An endowment fund at the time it  
22 became an endowment fund; (ii) each subsequent dona-  
23 tion to the fund at the time it is made; and (iii) each accu-  
24 mulation made pursuant to a direction in the applicable  
25 gift instrument at the time the accumulation is added to  
26 the fund. The determination of historic dollar value made  
27 in good faith by the institution is conclusive;

28       (e) "Institution" means an incorporated or unincorpo-  
29 rated organization organized and operated exclusively for  
30 educational, religious, charitable or other eleemosynary  
31 purpose, a governmental organization to the extent that it  
32 holds funds exclusively for any of these purposes, or a  
33 community foundation or community trust;

34 (f) "Institutional fund" means a fund held by an  
35 institution for its exclusive use, benefit or purposes, but  
36 does not include: (i) A fund held for an institution by a  
37 trustee that is not an institution, unless the fund is held  
38 exclusively for the benefit of either a community  
39 foundation or community trust by a bank, a trust  
40 company or another fiduciary that is a trustee of the  
41 community foundation or community trust; or (ii) a fund  
42 in which a beneficiary that is not an institution has an  
43 interest, other than possible rights that could arise upon  
44 violation or failure of the purposes of the fund;

45 (g) "Community foundation" or "community trust"  
46 means an institution that has been established to attract  
47 contributions of a capital or endowment nature for the  
48 benefit of a particular community or area whose  
49 contributions are often received and maintained in the  
50 form of separate trusts or funds which are subject to  
51 varying degrees of control by the governing body of the  
52 community foundation or community trust and which the  
53 governing body in good faith believes meets the  
54 requirements of the regulations issued by the internal  
55 revenue service, United States department of treasury,  
56 presently codified as 26 CFR 1.170A-9(e)(10) and (11),  
57 to qualify as a "publicly supported" organization and to be  
58 treated as a "single entity" rather than as an aggregation of  
59 separate funds.

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## CHAPTER 110

(H. B. 2328—By Mr. Speaker, Mr. Chambers, and  
Delegates Rowe and Staton)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact sections five, six and ten, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and



reenact sections one, two and four, article three of said chapter, all relating to the ethical standards for elected and appointed officials and public employees; acceptance of honorarium; seeking employment by public officials or employees, solicitation of private business by public employees or officials; financial disclosure statements, filing requirements; definitions; penalties; registration of lobbyists; and reporting by lobbyists.

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

That sections five, six and ten, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, two and four, article three of said chapter be amended and reenacted, all to read as follows:

**Article.**

2. **West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies.**
3. **Lobbyists.**

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.**

- §6B-2-5. Ethical standards for elected and appointed officials and public employees.
- §6B-2-6. Financial disclosure statement; filing requirements.
- §6B-2-10. Violations and penalties.

**§6B-2-5. Ethical standards for elected and appointed officials and public employees.**

- 1 (a) *Persons subject to section.* — The provisions of
- 2 this section apply to all elected and appointed public offi-
- 3 cials and public employees, whether full or part time, in
- 4 state, county, municipal governments and their respective
- 5 boards, agencies, departments and commissions and in any

6 other regional or local governmental agency, including  
7 county school boards.

8       (b) *Use of public office for private gain.* — (1) A  
9 public official or public employee may not knowingly  
10 and intentionally use his or her office or the prestige of  
11 his or her office for his or her own private gain or that of  
12 another person. The performance of usual and customary  
13 duties associated with the office or position or the ad-  
14 vancement of public policy goals or constituent services,  
15 without compensation, does not constitute the use of pres-  
16 tige of office for private gain.

17       (2) The Legislature, in enacting this subsection (b),  
18 relating to the use of public office or public employment  
19 for private gain, recognizes that there may be certain pub-  
20 lic officials or public employees who bring to their respec-  
21 tive offices or employment their own unique personal  
22 prestige which is based upon their intelligence, education,  
23 experience, skills and abilities, or other personal gifts or  
24 traits. In many cases, these persons bring a personal pres-  
25 tige to their office or employment which inures to the  
26 benefit of the state and its citizens. Such persons may, in  
27 fact, be sought by the state to serve in their office or em-  
28 ployment because, through their unusual gifts or traits,  
29 they bring stature and recognition to their office or em-  
30 ployment and to the state itself. While the office or em-  
31 ployment held or to be held by such persons may have its  
32 own inherent prestige, it would be unfair to such individu-  
33 als and against the best interests of the citizens of this state  
34 to deny such persons the right to hold public office or be  
35 publicly employed on the grounds that they would, in  
36 addition to the emoluments of their office or employment,  
37 be in a position to benefit financially from the personal  
38 prestige which otherwise inheres to them. Accordingly,  
39 the commission is directed, by legislative rule, to establish  
40 categories of such public officials and public employees,  
41 identifying them generally by the office or employment  
42 held, and offering persons who fit within such categories

43 the opportunity to apply for an exemption from the appli-  
44 cation of the provisions of this subsection. Such exemp-  
45 tions may be granted by the commission, on a case-  
46 by-case basis, when it is shown that: (A) The public office  
47 held or the public employment engaged in is not such that  
48 it would ordinarily be available or offered to a substantial  
49 number of the citizens of this state; (B) the office held or  
50 the employment engaged in is such that it normally or  
51 specifically requires a person who possesses personal pres-  
52 tige; and (C) the person's employment contract or letter of  
53 appointment provides or anticipates that the person will  
54 gain financially from activities which are not a part of his  
55 or her office or employment.

56 (c) *Gifts.* — (1) A public official or public employee  
57 may not solicit any gift unless the solicitation is for a char-  
58 itable purpose with no resulting direct pecuniary benefit  
59 conferred upon the official or employee or his or her  
60 immediate family: *Provided*, That no public official or  
61 public employee may solicit for a charitable purpose any  
62 gift from any person who is also an official or employee  
63 of the state and whose position as such is subordinate to  
64 the soliciting official or employee: *Provided, however*,  
65 That nothing herein shall prohibit a candidate for public  
66 office from soliciting a lawful political contribution. No  
67 official or employee may knowingly accept any gift, di-  
68 rectly or indirectly, from a lobbyist or from any person  
69 whom the official or employee knows or has reason to  
70 know:

71 (A) Is doing or seeking to do business of any kind  
72 with his or her agency;

73 (B) Is engaged in activities which are regulated or  
74 controlled by his or her agency; or

75 (C) Has financial interests which may be substantially  
76 and materially affected, in a manner distinguishable from  
77 the public generally, by the performance or nonperfor-  
78 mance of his official duties.

79           (2) Notwithstanding the provisions of subdivision (1)  
80 of this subsection, a person who is a public official or  
81 public employee may accept a gift described in this subdi-  
82 vision, and there shall be a presumption that the receipt of  
83 such gift does not impair the impartiality and independent  
84 judgment of the person. This presumption may be rebut-  
85 ted only by direct objective evidence that the gift did im-  
86 pair the impartiality and independent judgment of the  
87 person or that the person knew or had reason to know that  
88 the gift was offered with the intent to impair his or her  
89 impartiality and independent judgment. The provisions of  
90 subdivision (1) of this subsection do not apply to:

91           (A) Meals and beverages;

92           (B) Ceremonial gifts or awards which have insignifi-  
93 cant monetary value;

94           (C) Unsolicited gifts of nominal value or trivial items  
95 of informational value;

96           (D) Reasonable expenses for food, travel and lodging  
97 of the official or employee for a meeting at which the  
98 official or employee participates in a panel or speaking  
99 engagement at the meeting;

100           (E) Gifts of tickets or free admission extended to a  
101 public official or public employee to attend charitable,  
102 cultural or political events, if the purpose of such gift or  
103 admission is a courtesy or ceremony customarily extended  
104 to the office;

105           (F) Gifts that are purely private and personal in nature;  
106 or

107           (G) Gifts from relatives by blood or marriage, or a  
108 member of the same household.

109           (3) The commission shall, through legislative rule  
110 promulgated pursuant to chapter twenty-nine-a of this  
111 code, establish guidelines for the acceptance of a reason-  
112 able honorarium by public officials and elected officials.

113 The rule promulgated shall be consistent with this section.  
114 Any elected public official may accept an honorarium  
115 only when: (1) That official is a part-time elected public  
116 official; (2) the fee is not related to the official's public  
117 position or duties; (3) the fee is for services provided by  
118 the public official that are related to the public official's  
119 regular, nonpublic trade, profession, occupation, hobby or  
120 avocation; and (4) the honorarium is not provided in  
121 exchange for any promise or action on the part of the  
122 public official.

123 (4) Nothing in this section shall be construed so as to  
124 prohibit the giving of a lawful political contribution as  
125 defined by law.

126 (5) The governor or his designee may, in the name of  
127 the state of West Virginia, accept and receive gifts from  
128 any public or private source. Any such gift so obtained  
129 shall become the property of the state and shall, within  
130 thirty days of the receipt thereof, be registered with the  
131 commission and the division of culture and history.

132 (d) *Interests in public contracts.* — (1) In addition to  
133 the provisions of section fifteen, article ten, chapter  
134 sixty-one of this code, no elected or appointed public  
135 official or public employee or member of his or her im-  
136 mediate family or business with which he or she is associ-  
137 ated may be a party to or have an interest in the profits or  
138 benefits of a contract which such official or employee  
139 may have direct authority to enter into, or over which he  
140 or she may have control: *Provided*, That nothing herein  
141 shall be construed to prevent or make unlawful the em-  
142 ployment of any person with any governmental body:  
143 *Provided, however*, That nothing herein shall be construed  
144 to prohibit a member of the Legislature from entering into  
145 a contract with any governmental body, or prohibit a  
146 part-time appointed public official from entering into a  
147 contract which such part-time appointed public official  
148 may have direct authority to enter into or over which he or  
149 she may have control when such official has been recused

150 from deciding or evaluating and excused from voting on  
151 such contract and has fully disclosed the extent of such  
152 interest in the contract.

153 (2) In the absence of bribery or a purpose to defraud,  
154 an elected or appointed public official or public employee  
155 or a member of his or her immediate family or a business  
156 with which he or she is associated shall not be considered  
157 as having an interest in a public contract when such a  
158 person has a limited interest as an owner, shareholder or  
159 creditor of the business which is the contractor on the  
160 public contract involved. A limited interest for the pur-  
161 poses of this subsection is:

162 (A) An interest:

163 (i) Not exceeding ten percent of the partnership or the  
164 outstanding shares of a corporation; or

165 (ii) Not exceeding thirty thousand dollars interest in  
166 the profits or benefits of the contract; or

167 (B) An interest as a creditor:

168 (i) Not exceeding ten percent of the total indebtedness  
169 of a business; or

170 (ii) Not exceeding thirty thousand dollars interest in  
171 the profits or benefits of the contract.

172 (3) Where the provisions of subdivisions (1) and (2) of  
173 this subsection would result in the loss of a quorum in a  
174 public body or agency, in excessive cost, undue hardship,  
175 or other substantial interference with the operation of a  
176 state, county, municipality, county school board or other  
177 governmental agency, the affected governmental body or  
178 agency may make written application to the ethics com-  
179 mission for an exemption from subdivisions (1) and (2) of  
180 this subsection.

181 (e) *Confidential information.* — No present or former  
182 public official or employee may knowingly and improp-

183 erly disclose any confidential information acquired by  
184 him or her in the course of his or her official duties nor  
185 use such information to further his or her personal inter-  
186 ests or the interests of another person.

187 (f) *Prohibited representation.* — No present or former  
188 elected or appointed public official or public employee  
189 shall, during or after his or her public employment or  
190 service, represent a client or act in a representative capacity  
191 with or without compensation on behalf of any person in a  
192 contested case, rate-making proceeding, license or permit  
193 application, regulation filing or other particular matter  
194 involving a specific party or parties which arose during his  
195 or her period of public service or employment and in  
196 which he or she personally and substantially participated  
197 in a decision-making, advisory or staff support capacity,  
198 unless the appropriate government agency, after consulta-  
199 tion, consents to such representation. A staff attorney,  
200 accountant or other professional employee who has repre-  
201 sented a government agency in a particular matter shall  
202 not thereafter represent another client in the same or sub-  
203 stantially related matter in which that client's interests are  
204 materially adverse to the interests of the government agen-  
205 cy, without the consent of the government agency: *Provid-*  
206 *ed,* That this prohibition on representation shall not apply  
207 when the client was not directly involved in the particular  
208 matter in which such professional employee represented  
209 the government agency, but was involved only as a mem-  
210 ber of a class. The provisions of this subsection shall not  
211 apply to legislators who were in office and legislative staff  
212 who were employed at the time it originally became effec-  
213 tive on the first day of July, one thousand nine hundred  
214 eighty-nine, and those who have since become legislators  
215 or legislative staff and those who shall serve hereafter as  
216 legislators or legislative staff.

217 (g) *Limitation on practice before a board, agency,*  
218 *commission or department.* — (1) No elected or appointed  
219 public official and no full-time staff attorney or accoun-

220 tant shall, during his or her public service or public em-  
221 ployment or for a period of six months after the termina-  
222 tion of his or her public service or public employment  
223 with a governmental entity authorized to hear contested  
224 cases or promulgate regulations, appear in a representative  
225 capacity before the governmental entity in which he or she  
226 serves or served or is or was employed in the following  
227 matters:

228 (A) A contested case involving an administrative sanc-  
229 tion, action or refusal to act;

230 (B) To support or oppose a proposed regulation;

231 (C) To support or contest the issuance or denial of a  
232 license or permit;

233 (D) A rate-making proceeding; and

234 (E) To influence the expenditure of public funds.

235 (2) As used in this subsection, "represent" includes any  
236 formal or informal appearance before, or any written or  
237 oral communication with, any public agency on behalf of  
238 any person: *Provided*, That nothing contained in this  
239 subsection shall prohibit, during any period, a former  
240 public official or employee from being retained by or  
241 employed to represent, assist, or act in a representative  
242 capacity on behalf of the public agency by which he or  
243 she was employed or in which he or she served. Nothing  
244 in this subsection shall be construed to prevent a former  
245 public official or employee from representing another  
246 state, county, municipal or other governmental entity be-  
247 fore the governmental entity in which he or she served or  
248 was employed within six months after the termination of  
249 his or her employment or service in the entity.

250 (3) A present or former public official or employee  
251 may appear at any time in a representative capacity before  
252 the Legislature, a county commission, city or town council  
253 or county school board in relation to the consideration of



254 a statute, budget, ordinance, rule, resolution or enactment.

255 (4) Members and former members of the Legislature  
256 and professional employees and former professional em-  
257 ployees of the Legislature shall be permitted to appear in a  
258 representative capacity on behalf of clients before any  
259 governmental agency of the state, or of county or municipi-  
260 pal governments including county school boards.

261 (5) An elected or appointed public official, full-time  
262 staff attorney or accountant who would be adversely af-  
263 fected by the provisions of this subsection may apply to  
264 the ethics commission for an exemption from the six  
265 months prohibition against appearing in a representative  
266 capacity, when the person's education and experience is  
267 such that the prohibition would, for all practical purposes,  
268 deprive the person of the ability to earn a livelihood in this  
269 state outside of the governmental agency. The ethics  
270 commission shall by legislative rule establish general  
271 guidelines or standards for granting an exemption or  
272 reducing the time period, but shall decide each application  
273 on a case-by-case basis.

274 (h) *Employment by regulated persons.* — (1) No  
275 full-time official or full-time public employee may seek  
276 employment with, be employed by, or seek to sell or lease  
277 real or personal property to any person who:

278 (A) Had a matter on which he or she took, or a subor-  
279 dinate is known to have taken, regulatory action within the  
280 preceding twelve months; or

281 (B) Has a matter before the agency to which he or she  
282 is working or a subordinate is known by him or her to be  
283 working.

284 (2) Within the meaning of this section, the term "em-  
285 ployment" includes professional services and other servic-  
286 es rendered by the public official or public employee,  
287 whether rendered as employee or as an independent con-  
288 tractor; "seek employment" includes responding to unso-

289 licted offers of employment as well as any direct or indi-  
290 rect contact with a potential employer relating to the avail-  
291 ability or conditions of employment in furtherance of  
292 obtaining employment; and "subordinate" includes only  
293 those agency personnel over whom the public servant has  
294 supervisory responsibility.

295 (3) A full-time public official or full-time public em-  
296 ployee who would be adversely affected by the provisions  
297 of this subsection may apply to the ethics commission for  
298 an exemption from the prohibition contained in subsec-  
299 tion (1). The ethics commission shall by legislative rule  
300 establish general guidelines or standards for granting an  
301 exemption, but shall decide each application on a case-  
302 by-case basis.

303 (4) A full-time public official or full-time public em-  
304 ployee may not take personal regulatory action on a mat-  
305 ter affecting a person by whom he or she is employed or  
306 with whom he or she is seeking employment or has an  
307 agreement concerning future employment.

308 (5) A full-time public official or full-time public em-  
309 ployee may not receive private compensation for provid-  
310 ing information or services that he or she is required to  
311 provide in carrying out his or her public job responsibili-  
312 ties.

313 (i) *Members of the Legislature required to vote.* —  
314 Members of the Legislature who have asked to be excused  
315 from voting or who have made inquiry as to whether they  
316 should be excused from voting on a particular matter and  
317 who are required by the presiding officer of the House of  
318 Delegates or Senate of West Virginia to vote under the  
319 rules of the particular house shall not be guilty of any  
320 violation of ethics under the provisions of this section for  
321 a vote so cast.

322 (j) *Limitations on participation in licensing and*  
323 *rate-making proceedings.* — No public official or em-  
324 ployee may participate within the scope of his or her du-

325 ties as a public official or employee, except through min-  
326 isterial functions as defined in section three, article one of  
327 this chapter, in any license or rate-making proceeding that  
328 directly affects the license or rates of any person, partner-  
329 ship, trust, business trust, corporation or association in  
330 which the public official or employee or his or her imme-  
331 diate family owns or controls more than ten percent. No  
332 public official or public employee may participate within  
333 the scope of his or her duties as a public official or public  
334 employee, except through ministerial functions as defined  
335 in section three, article one of this chapter, in any license  
336 or rate-making proceeding that directly affects the license  
337 or rates of any person to whom the public official or pub-  
338 lic employee or his or her immediate family, or a partner-  
339 ship, trust, business trust, corporation or association of  
340 which the public official or employee, or his or her imme-  
341 diate family, owns or controls more than ten percent, has  
342 sold goods or services totaling more than one thousand  
343 dollars during the preceding year, unless the public offi-  
344 cial or public employee has filed a written statement ac-  
345 knowledging such sale with the public agency and the  
346 statement is entered in any public record of the agency's  
347 proceedings. This subsection shall not be construed to  
348 require the disclosure of clients of attorneys or of patients  
349 or clients of persons licensed pursuant to articles three,  
350 eight, fourteen, fourteen-a, fifteen, sixteen, twenty,  
351 twenty-one or thirty-one, chapter thirty of this code.

352 (k) *Certain expenses prohibited.* — No public official  
353 or public employee shall knowingly request or accept  
354 from any governmental entity compensation or reim-  
355 bursement for any expenses actually paid by a lobbyist  
356 and required by the provisions of this chapter to be re-  
357 ported, or actually paid by any other person.

358 (l) Any person who is employed as a member of the  
359 faculty or staff of a public institution of higher education  
360 and who is engaged in teaching, research, consulting or  
361 publication activities in his or her field of expertise with

362 public or private entities and thereby derives private bene-  
363 fits from such activities shall be exempt from the prohibi-  
364 tions contained in subsections (b), (c) and (d) of this sec-  
365 tion when the activity is approved as a part of an employ-  
366 ment contract with the governing board of such institution  
367 or has been approved by the employees' department su-  
368 pervisor or the president of the institution by which the  
369 faculty or staff member is employed.

370 (m) Except as provided in this section, a person who  
371 is a public official or public employee may not solicit  
372 private business from a subordinate public official or  
373 public employee whom he or she has the authority to  
374 direct, supervise or control. A person who is a public  
375 official or public employee may solicit private business  
376 from a subordinate public official or public employee  
377 whom he or she has the authority to direct, supervise or  
378 control when:

379 (A) The solicitation is a general solicitation directed to  
380 the public at large through the mailing or other means of  
381 distribution of a letter, pamphlet, handbill, circular or  
382 other written or printed media; or

383 (B) The solicitation is limited to the posting of a notice  
384 in a communal work area; or

385 (C) The solicitation is for the sale of property of a  
386 kind that the person is not regularly engaged in selling; or

387 (D) The solicitation is made at the location of a private  
388 business owned or operated by the person to which the  
389 subordinate public official or public employee has come  
390 on his or her own initiative.

391 (n) The commission by legislative rule promulgated  
392 in accordance with chapter twenty-nine-a of this code may  
393 define further exemptions from this section as necessary  
394 or appropriate.

**§6B-2-6. Financial disclosure statement; filing requirements.**

1 (a) The requirements for filing a financial disclosure  
2 statement shall become initially effective on the first day  
3 of February, one thousand nine hundred ninety, for all  
4 persons holding public office or employment on that date  
5 and who are otherwise required to file such statement  
6 under the provisions of this section. The initial financial  
7 disclosure statement shall cover the period from the first  
8 day of July, one thousand nine hundred eighty-nine, for  
9 the period ending the thirty-first day of January, one  
10 thousand nine hundred ninety. Thereafter, the financial  
11 disclosure statement shall be filed on the first day of Feb-  
12 ruary of each calendar year to cover the period of the  
13 preceding calendar year, except insofar as may be other-  
14 wise provided herein. The following persons must file the  
15 financial disclosure statement required by this section with  
16 the ethics commission:

17 (1) All elected officials in this state, including, but not  
18 limited to, all persons elected statewide, all county elected  
19 officials, municipal elected officials in municipalities  
20 which have, by ordinance, opted to be covered by the  
21 disclosure provisions of this section, all members of the  
22 several county or district boards of education and all  
23 county or district school board superintendents;

24 (2) All members of state boards, commissions and  
25 agencies appointed by the governor; and

26 (3) Secretaries of departments, commissioners, deputy  
27 commissioners, assistant commissioners, directors, deputy  
28 directors, assistant directors, department heads, deputy  
29 department heads and assistant department heads.

30 A person who is required to file a financial disclosure  
31 statement under this section by virtue of becoming an  
32 elected or appointed public official whose office is de-  
33 scribed in subdivision (1), (2) or (3) of this subsection,  
34 and who assumes the office less than ten days before a  
35 filing date established herein or who assumes the office  
36 after the filing date, shall file a financial disclosure state-

37 ment for the previous twelve months no later than thirty  
38 days after the date on which the person assumes the duties  
39 of the office, unless the person has filed a financial disclo-  
40 sure statement with the commission during the  
41 twelve-month period before he or she assumed office.

42 (b) A candidate for public office shall file a financial  
43 disclosure statement for the previous calendar year with  
44 the state ethics commission no later than ten days after he  
45 or she files a certificate of candidacy, but in all circum-  
46 stances, not later than ten days prior to the election, unless  
47 he or she has filed a financial disclosure statement with the  
48 state ethics commission during the previous calendar  
49 year.

50 The ethics commission shall file a duplicate copy of  
51 the financial disclosure statement required in this section  
52 in the following offices within ten days of the receipt of  
53 the candidate's statement of disclosure:

54 (1) Municipal candidates in municipalities which have  
55 opted, by ordinance, to be covered by the disclosure pro-  
56 visions of this section, in the office of the clerk of the  
57 municipality in which the candidate is seeking office;

58 (2) Legislative candidates in single county districts and  
59 candidates for a county office or county school board in  
60 the office of the clerk of the county commission of the  
61 county in which the candidate is seeking office;

62 (3) Legislative candidates from multicounty districts  
63 and congressional candidates in the office of the clerk of  
64 the county commission of the county of the candidate's  
65 residence.

66 After a ninety-day period following any election, the  
67 clerks who receive the financial disclosure statements of  
68 candidates may destroy or dispose of those statements  
69 filed by candidates who were unsuccessful in the election.

70 (c) No candidate for public office may maintain his or

71 her place on a ballot and no public official may take the  
72 oath of office or enter or continue upon his or her duties  
73 or receive compensation from public funds unless he or  
74 she has filed a financial disclosure statement with the state  
75 ethics commission as required by the provisions of this  
76 section.

77 (d) The state ethics commission may, upon request of  
78 any person required to file a financial disclosure state-  
79 ment, and for good cause shown, extend the deadline for  
80 filing such statement for a reasonable period of time:  
81 *Provided*, That no extension of time shall be granted to a  
82 candidate who has not filed a financial disclosure state-  
83 ment for the preceding filing period.

84 (e) No person shall fail to file a statement required by  
85 this section.

86 (f) No person shall knowingly file a materially false  
87 statement that is required to be filed under this section.

#### §6B-2-10. Violations and penalties.

1 (a) If any person violates the provisions of subsection  
2 (e), (f) or (g), section five of this article, or violates the  
3 provisions of subdivision (1), subsection (e), section four  
4 of this article, such person, upon conviction thereof, shall  
5 be guilty of a misdemeanor, and shall be punished by  
6 confinement in the county jail for a period not to exceed  
7 six months or shall be fined not more than one thousand  
8 dollars, or both such confinement and fine. If any person  
9 violating the provisions of subdivision (1), subsection (e),  
10 section four of this article shall be a member of the com-  
11 mission or an employee thereof, he or she shall, upon  
12 conviction, be subject to immediate removal or discharge.

13 (b) If any person violates the provisions of subsection  
14 (f), section six of this article by willfully and knowingly  
15 filing a false financial statement, such person shall, upon  
16 conviction thereof, be deemed guilty of false swearing and  
17 shall be punished as provided in section three, article five,

18 chapter sixty-one of this code.

19 (c) If any person knowingly fails or refuses to file a  
20 financial statement required by section six of this article,  
21 such person, upon conviction thereof, shall be guilty of a  
22 misdemeanor, and shall be fined not less than one hun-  
23 dred dollars nor more than one thousand dollars.

24 (d) If any complainant violates the provisions of sub-  
25 division (2), subsection (f), section four, article two of this  
26 chapter by knowingly and willfully disclosing any infor-  
27 mation made confidential by an order of the commission,  
28 he or she shall be subject to administrative sanction by the  
29 commission as provided for in subsection (r), section four  
30 of this article.

### ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

§6B-3-2. Registration of lobbyists.

§6B-3-4. Reporting by lobbyists.

#### §6B-3-1. Definitions.

1 As used in this article, unless the context in which used  
2 clearly indicates otherwise:

3 (1) "Compensation" means money or any other thing  
4 of value received or to be received by a lobbyist from an  
5 employer for services rendered.

6 (2) "Employer" or "lobbyist's employer" means any  
7 person who employs or retains a lobbyist.

8 (3) "Expenditure" means payment, distribution, loan,  
9 advance deposit, reimbursement, or gift of money, real or  
10 personal property or any other thing of value; or a con-  
11 tract, promise or agreement, whether or not legally en-  
12 forceable.

13 (4) "Government officer or employee" means a mem-  
14 ber of the Legislature, a legislative employee, the governor  
15 and other members of the board of public works, heads of



16 executive departments, and any other public officer or  
17 public employee under the legislative or executive branch  
18 of state government who is empowered or authorized to  
19 make policy and perform nonministerial functions. In the  
20 case of elected offices included herein, the term "govern-  
21 ment officer or employee" shall include candidates who  
22 have been elected but who have not yet assumed office.

23 (5) "Legislation" means bills, resolutions, motions,  
24 amendments, nominations, and other matters pending or  
25 proposed in either house of the Legislature, and includes  
26 any other matters that may be the subject of action by  
27 either house or any committee of the Legislature and all  
28 bills or resolutions that, having passed both houses, are  
29 pending approval or veto by the governor.

30 (6) "Lobbying" or "lobbying activity" means the act of  
31 communicating with a government officer or employee to  
32 promote, advocate or oppose or otherwise attempt to influ-  
33 ence:

34 (i) The passage or defeat or the executive approval or  
35 veto of any legislation which may be considered by the  
36 Legislature of this state; or

37 (ii) The adoption or rejection of any rule, regulation,  
38 legislative rule, standard, rate, fee or other delegated legis-  
39 lative or quasi-legislative action to be taken or withheld by  
40 any executive department.

41 (7) (A) "Lobbyist" means a person who, through com-  
42 munication with a government officer or employee, pro-  
43 motes, advocates or opposes or otherwise attempts to influ-  
44 ence:

45 (i) The passage or defeat or the executive approval or  
46 veto of any legislation which may be considered by the  
47 Legislature of this state; or

48 (ii) The adoption or rejection of any rule, regulation,  
49 legislative rule, standard, rate, fee or other delegated legis-

50 lative or quasi-legislative action to be taken or withheld by  
51 any executive department.

52 (B) The term "lobbyist" shall not include the following  
53 persons, who shall be exempt from the registration and  
54 reporting requirements set forth in this article, unless such  
55 persons engage in activities which would otherwise subject  
56 them to the registration and reporting requirements:

57 (i) Persons who limit their lobbying activities to ap-  
58 pearing before public sessions of committees of the Legis-  
59 lature, or public hearings of state agencies, are exempt.

60 (ii) Persons who limit their lobbying activities to at-  
61 tending receptions, dinners, parties or other group func-  
62 tions and make no expenditure in connection with such  
63 lobbying are exempt.

64 (iii) Persons who engage in news or feature reporting  
65 activities and editorial comment as working members of  
66 the press, radio, or television and persons who publish or  
67 disseminate such news, features or editorial comment  
68 through a newspaper, book, regularly published periodi-  
69 cal, radio station or television station, are exempt.

70 (iv) Persons who lobby without compensation or  
71 other consideration for acting as lobbyists, and whose  
72 total expenditures in connection with such lobbying do  
73 not exceed twenty-five dollars during any calendar year,  
74 are exempt. The exemption contained in this subpara-  
75 graph (iv) and subparagraph (ii) are intended to permit  
76 and encourage citizens of this state to exercise their consti-  
77 tutional rights to assemble in a peaceable manner, consult  
78 for the common good, instruct their representatives, and  
79 apply for a redress of grievances. Accordingly, such per-  
80 sons may lobby without incurring any registration or  
81 reporting obligation under this article. Any person ex-  
82 empt under this subparagraph (iv) or subparagraph (ii)  
83 may at his or her option register and report under this  
84 article.

85 (v) Persons who lobby on behalf of a nonprofit orga-  
86 nization with regard to legislation, without compensation,  
87 and who restrict their lobbying activities to no more than  
88 twenty days or parts thereof during any regular session of  
89 the Legislature, are exempt. The commission may pro-  
90 mulgate a legislative rule to require registration and re-  
91 porting by persons who would otherwise be exempt under  
92 this subparagraph, if it determines that such rule is neces-  
93 sary to prevent frustration of the purposes of this article.  
94 Any person exempt under this subparagraph may at his or  
95 her option register and report under this article.

96 (vi) The governor, members of the governor's staff,  
97 members of the board of public works, officers and em-  
98 ployees of the executive branch who communicate with a  
99 member of the Legislature on the request of that member,  
100 or who communicate with the Legislature, through the  
101 proper official channels, requests for legislative action or  
102 appropriations which are deemed necessary for the effi-  
103 cient conduct of the public business or which are made in  
104 the proper performance of their official duties, are ex-  
105 empt.

106 (vii) Members of the Legislature are exempt.

107 (viii) Persons employed by the Legislature for the  
108 purpose of aiding in the preparation or enactment of leg-  
109 islation or the performance of legislative duties are ex-  
110 empt.

111 (ix) Persons rendering professional services in draft-  
112 ing proposed legislation or in advising or rendering opin-  
113 ions to clients as to the construction and effect of pro-  
114 posed or pending legislation are exempt.

115 (8) "Person" means any individual, partnership, trust,  
116 estate, business trust, association, or corporation; any de-  
117 partment, commission, board, publicly supported college  
118 or university, division, institution, bureau, or any other  
119 instrumentality of the state; or any county, municipal  
120 corporation, school district or any other political subdivi-

121 sion of the state.

**§6B-3-2. Registration of lobbyists.**

1 (a) Before engaging in any lobbying activity, or within  
2 thirty days after being employed as a lobbyist, whichever  
3 occurs first, a lobbyist shall register with the ethics com-  
4 mission by filing a lobbyist registration statement, signed  
5 under oath or affirmation. The registration statement shall  
6 contain such information and be in such form as the ethics  
7 commission may prescribe by legislative rule, including,  
8 but not limited to, the following information:

9 (1) The registrant's name, business address, telephone  
10 numbers and any temporary residential and business ad-  
11 dresses and telephone numbers used or to be used by the  
12 registrant while lobbying during a legislative session;

13 (2) The name, address and occupation or business of  
14 the registrant's employer;

15 (3) A statement as to whether the registrant is em-  
16 ployed or retained by his or her employer solely as a  
17 lobbyist or is a regular employee performing services for  
18 the employer which include, but are not limited to, lobby-  
19 ing;

20 (4) A statement as to whether the registrant is em-  
21 ployed or retained by his or her employer under any  
22 agreement, arrangement or understanding according to  
23 which the registrant's compensation, or any portion there-  
24 of, is or will be contingent upon the success of his or her  
25 lobbying activity;

26 (5) The general subject or subjects, if known, on which  
27 the registrant will lobby or employ some other person to  
28 lobby in a manner which requires registration under this  
29 article;

30 (6) An appended written authorization from each of  
31 the lobbyist's employers confirming the lobbyist's em-  
32 ployment and the subjects on which the employer is to be

33 represented.

34 (b) A registrant who lobbies with regard to matters  
35 before the Legislature must file duplicate copies of the  
36 lobbyist's registration statement required by subsection (a)  
37 or (d) of this section with the clerk of the Senate and the  
38 clerk of the House of Delegates contemporaneously with  
39 the filing with the ethics commission before engaging in  
40 any lobbying activity.

41 (c) Any lobbyist who receives or is to receive compen-  
42 sation from more than one person for services as a lobby-  
43 ist shall file a separate notice of representation with respect  
44 to each person compensating him or her for services per-  
45 formed as a lobbyist. When a lobbyist whose fee for lob-  
46 bying with respect to the same subject is to be paid or  
47 contributed by more than one person, then such lobbyist  
48 may file a single statement, in which he shall detail the  
49 name, business address and occupation of each person so  
50 paying or contributing.

51 (d) Whenever a change, modification or termination of  
52 the lobbyist's employment occurs, the lobbyist shall, within  
53 one week of such change, modification or termination,  
54 furnish full information regarding the same by filing with  
55 the commission an amended registration statement.

56 (e) Each lobbyist who has registered shall file a new  
57 registration statement, revised as appropriate, on the Mon-  
58 day preceding the second Wednesday in January of each  
59 odd-numbered year, and failure to do so shall terminate  
60 his registration. Until such registration is renewed, the  
61 person may not engage in lobbying activities unless he or  
62 she is otherwise exempt under paragraph (B), subdivision  
63 (7), section one of this article.

#### **§6B-3-4. Reporting by lobbyists.**

1 (a) A lobbyist shall file with the commission reports of  
2 his lobbying activities, signed under oath or affirmation  
3 by the lobbyist. Lobbyists who are required under this

4 article to file copies of their registration statements with  
5 the clerks of the respective houses of the Legislature shall  
6 also contemporaneously file copies of all reports required  
7 under this section with the clerks. Such reports shall be  
8 filed as follows:

9 (1) On or before the Monday preceding the second  
10 Wednesday in January of each year, a lobbyist shall file an  
11 annual report of all lobbying activities which he or she  
12 engaged in during the preceding calendar year; and

13 (2) If a lobbyist engages in lobbying with respect to  
14 legislation, then:

15 (A) Between the fortieth and forty-fifth days of any  
16 regular session of the Legislature in which any such lob-  
17 bying occurred, the lobbyist shall file a report describing  
18 all of his or her lobbying activities which occurred since  
19 the beginning of the calendar year; and

20 (B) Within twenty-one days after the adjournment *sine*  
21 *die* of any regular or extraordinary session of the Legisla-  
22 ture in which any such lobbying occurred, the lobbyist  
23 shall file a report describing all of his or her lobbying  
24 activities which occurred since the beginning of the calen-  
25 dar year or since the filing of the last report required by  
26 this section, whichever is later.

27 (b) (1) Except as otherwise provided in this section,  
28 each report filed by a lobbyist shall show the total amount  
29 of all expenditures for lobbying made or incurred by such  
30 lobbyist, or on behalf of such lobbyist by the lobbyist's  
31 employer, during the period covered by the report. The  
32 report shall also show subtotals segregated according to  
33 financial category, including meals and beverages; living  
34 accommodations; advertising; travel; contributions; gifts to  
35 public officials or employees or to members of the imme-  
36 diate family of such persons; and other expenses or servic-  
37 es.

38 (2) Lobbyists are not required to report the following:

39 (A) Unreimbursed personal living and travel expenses  
40 not incurred directly for lobbying;

41 (B) Any expenses incurred for his or her own living  
42 accommodations;

43 (C) Any expenses incurred for his or her own travel to  
44 and from public meetings or hearings of the legislative  
45 and executive branches;

46 (D) Any expenses incurred for telephone, and any  
47 office expenses, including rent and salaries and wages paid  
48 for staff and secretarial assistance; and

49 (E) Separate expenditures to or on behalf of a public  
50 official or employee in an amount of less than five dollars.

51 (c) If a lobbyist is employed by more than one em-  
52 ployer, the report shall show the proportionate amount of  
53 such expenditures in each category incurred on behalf of  
54 each of his employers.

55 (d) The report shall describe the subject matter of the  
56 lobbying activities in which the lobbyist has been engaged  
57 during the reporting period.

58 (e) If, during the period covered by the report, the  
59 lobbyist made expenditures in the reporting categories of  
60 meals and beverages, living accommodations, travel, gifts  
61 or other expenditures, other than for those expenditures  
62 governed by subsection (f) of this section, which expendi-  
63 tures in any such reporting category total more than  
64 twenty-five dollars to or on behalf of any particular public  
65 official or employee, the lobbyist shall report the name of  
66 the public official or employee to whom or on whose  
67 behalf the expenditures were made, the total amount of the  
68 expenditures, and the subject matter of the lobbying activ-  
69 ity, if any. Under this subsection (e), no portion of the  
70 amount of an expenditure for a dinner, party or other  
71 function sponsored by a lobbyist or a lobbyist's employer  
72 need be attributed to or counted toward the reporting

73 amount of twenty-five dollars for a particular public offi-  
74 cial or employee who attends such function if the sponsor  
75 has invited to the function all the members of: (1) The  
76 Legislature; (2) either house of the Legislature; (3) a  
77 standing or select committee of either house; or (4) a joint  
78 committee of the two houses of the Legislature. However,  
79 the amount spent for such function shall be added to other  
80 expenditures for the purpose of determining the total  
81 amount of expenditures reported under subsection (b) of  
82 this section.

83 (f) If, during the period covered by the report, the  
84 lobbyist made expenditures in the reporting categories of  
85 meals and beverages, lodging, travel, gifts and scheduled  
86 entertainment, which reporting expenditures in any such  
87 reporting category total more than twenty-five dollars for  
88 or on behalf of a particular public official or public em-  
89 ployee in return for the participation of the public official  
90 or employee in a panel or speaking engagement at the  
91 meeting, the lobbyist shall report the name of the public  
92 official or employee to whom or on whose behalf the  
93 expenditures were made and the total amount of the ex-  
94 penditures.

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## CHAPTER 111

(Com. Sub. for S. B. 145—By Senators Wagner, Miller and Yoder)

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[Passed February 20, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections four and five, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to excepting certain board members of local development authorities from being in violation of the state ethics law solely by serving on an authority board.

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



That sections four and five, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.**

§7-12-4. Qualifications of members.

§7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved.

**§7-12-4. Qualifications of members.**

1 (a) In addition to the appointing agencies as provided  
2 for in section three of this article, such other persons,  
3 firms, unincorporated associations and corporations, which  
4 reside or maintain offices in the county of the develop-  
5 ment authority, are eligible to participate in and request  
6 the governing body to appoint members to the develop-  
7 ment authority as the said authority by its bylaws provides.  
8 Members can also be drawn from citizens of a county  
9 contiguous to the county in which the county develop-  
10 ment authority is located regardless of their state of resi-  
11 dence.

12 (b) Any person employed by, owning an interest in, or  
13 otherwise associated with a public utility company as de-  
14 fined in section two, article one, chapter twenty-four of  
15 this code or bank as defined in section two, article one,  
16 chapter thirty-one-a of this code may serve as a board  
17 member and shall not be disqualified from serving as a  
18 board member because of conflict of interest as defined in  
19 section fifteen, article ten, chapter sixty-one of this code  
20 and shall not be subject to prosecution under the provi-  
21 sions of said section when the violation is created solely as  
22 a result of his or her relationship with the bank or public  
23 utility. This member must recuse himself or herself from  
24 board participation regarding the conflicting issue as pro-  
25 vided for in section five of this article.

**§7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved.**

1 (a) No member of the authority shall receive any com-

2   pensation, whether in formal salary, per diem allowance or  
3   otherwise, in connection with his or her services as such  
4   member. Each member shall, however, be entitled to re-  
5   imbursement by the authority for any necessary expendi-  
6   tures in connection with the performance of his or her  
7   general duties as such member.

8       (b) Whenever a person associated with a public utility  
9   or bank as set out in section four of this article has a con-  
10   flict of interest between the board and that public utility or  
11   bank, then he or she must recuse himself or herself from  
12   any vote, discussion or other activity associated with the  
13   board or its members that creates the conflict of interest.

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## CHAPTER 112

(H. B. 2130—By Delegates Border, Kiss, Anderson, Manuel and Love)

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[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eight-b, article fifteen, chapter eight and section three, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to firefighters; providing for payment of the cost of providing immunizations against hepatitis-b and other blood borne pathogens to firefighters; requiring volunteer and part volunteer fire departments to obtain no cost or lowest cost vaccinations from local boards of health or from a licensed health care provider; requiring local health departments to maintain records of immunizations; and approval of general plan of operation of local boards of health by the commissioner of public health.

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

That section eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article two-a, chapter sixteen of said code be amended and reenacted, all to read as follows:

## Chapter

8. Municipal Corporations.

16. Public Health.

### CHAPTER 8. MUNICIPAL CORPORATIONS.

#### ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

##### §8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

1 Revenues allocated to volunteer and part volunteer  
2 fire companies and departments may be expended only  
3 for the items listed in subdivisions (a) through (h) of this  
4 section. Such expenditures may be made for the fol-  
5 lowing:

6 (a) Personal protective equipment, including pro-  
7 tective head gear, bunker coats, pants, boots, combination  
8 of bunker pants and boots, coats and gloves;

9 (b) Equipment for compliance with the national fire  
10 protection standard or automotive fire apparatus,  
11 NFPA-1901;

12 (c) Compliance with insurance service office  
13 recommendations relating to fire departments;

14 (d) Rescue equipment, communications equipment  
15 and ambulance equipment: *Provided*, That no moneys  
16 received from the municipal pensions and protection fund  
17 or the fire protection fund may be used for equipment for  
18 personal vehicles owned or operated by volunteer fire  
19 company or department members;

20 (e) Capital improvements reasonably required for  
21 effective and efficient fire protection service and  
22 maintenance thereof;

23 (f) Retirement of debts;

24 (g) Payment of utility bills; and

25 (h) Payment of the cost of immunizations, including  
26 any laboratory work incident thereto, for firefighters  
27 against hepatitis-b and other blood borne pathogens:  
28 *Provided*, That the vaccine shall be purchased through the  
29 state immunization program or from the lowest cost  
30 vendor available: *Provided, however*, That volunteer and  
31 part volunteer fire companies and departments shall seek  
32 to obtain no cost administration of the vaccinations  
33 through local boards of health: *Provided further*, That in  
34 the event any volunteer or part volunteer fire company or  
35 department is unable to obtain no cost administration of  
36 the vaccinations through a local board of health, the  
37 company or department shall seek to obtain the lowest  
38 cost available for the administration of the vaccinations  
39 from a licensed health care provider.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL HEALTH AGENCIES.

#### §16-2A-3. Powers and duties of county and municipal boards of health; filing of rules.

1 County or municipal boards of health created and  
2 established pursuant to the provisions of this article shall  
3 direct, supervise and control all matters relating to the  
4 general health and sanitation of their respective counties  
5 or municipalities. The local boards of health also have the  
6 power and authority to adopt and promulgate and from  
7 time to time amend rules, consistent with the public health  
8 laws of this state and the rules of the West Virginia state  
9 department of health and human resources, as may be  
10 necessary and proper for the protection of the general

11 health of the county or municipality and the prevention of  
12 the introduction, propagation and spread of disease. All  
13 rules shall be filed, in the case of a county board, with the  
14 clerk of the county commission, and in the case of a  
15 municipal board, with the clerk, recorder or similar officer  
16 of the municipality. The rules shall be kept by the clerk or  
17 recording officer in a separate book and shall be public  
18 records.

19         It is the duty of local boards of health to protect the  
20 general health and supervise and control the sanitation of  
21 their respective counties and municipalities; to enforce the  
22 laws of this state pertaining to public health, and the rules  
23 of the department of health and human resources, insofar  
24 as they are applicable to counties or municipalities, and to  
25 perform duties in relation to public health as may be  
26 prescribed by order of the county commission or by  
27 ordinance of the municipality consistent with the public  
28 health laws of this state and the regulations duly adopted  
29 by the department of health and human resources. All  
30 local boards of health receiving state or federal funds for  
31 health purposes shall submit a general plan of operation  
32 for health purposes to the commissioner of the bureau of  
33 public health for approval. The commissioner may act  
34 through any county or municipal board of health created,  
35 established and operated pursuant to the provisions of this  
36 article.

37         Local departments of health created and established  
38 pursuant to the provisions of either this article or article  
39 two of this chapter shall be notified of each immunization  
40 for hepatitis-b and other blood borne pathogens received  
41 by firefighters within the service area of the local  
42 department of health. Local departments of health shall  
43 maintain, for a period of not less than thirty years, a  
44 record of the date of the immunization and the name of  
45 each firefighter within the service area of the local health  
46 department immunized against hepatitis-b and other blood  
47 borne pathogens.

## CHAPTER 113

(Com. Sub. for S. B. 281—By Senators Manchin, Sharpe, Dugan, Oliverio,  
Wiedebusch, Helmick, Ross, Buckalew, Anderson and Schoonover)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fourteen, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to audits of volunteer fire departments receiving state funds or grants in the amount of fifteen thousand dollars or more; providing that the volunteer fire department may satisfy the audit requirement by submitting a sworn statement of expenditures which is made under oath and acknowledged before a notary public; filing fees; making it a felony to file such a sworn statement of expenditures which is fraudulent; and prescribing criminal penalties.

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

That section fourteen, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.**

**§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.**

1 Any corporation, association or other organization in  
2 West Virginia, whether nonprofit or for profit, which  
3 receives state funds or grants in the amount of fifteen  
4 thousand dollars or more shall file an audit of the  
5 disbursement of funds with the legislative auditor's office.  
6 The audit shall be filed within two years of the  
7 disbursement of funds or grants by the grantee and shall  
8 be made by an independent certified public accountant at  
9 the cost of the corporation, association or other  
10 organization and must show that the funds or grants were  
11 spent for the purposes intended when the grant was made.

12 State funds or audits of state funds or grants under fifteen  
13 thousand dollars may be authorized by the joint  
14 committee on government and finance to be conducted by  
15 the legislative auditor's office at no cost to the grantee:  
16 *Provided*, That volunteer fire departments will satisfy the  
17 audit requirements of this section by submitting a sworn  
18 statement of annual expenditures to the legislative  
19 auditor's office, along with a filing fee of seventy-five  
20 dollars, on or before the fourteenth day of February of  
21 each year, if such volunteer fire department elects not to  
22 be audited. The sworn statement of expenditures must be  
23 signed by the chief or director of the volunteer fire  
24 department, and shall be made under oath and  
25 acknowledged before a notary public. The office of the  
26 legislative auditor may assign an employee or employees  
27 to perform random audits of the disbursement of funds or  
28 grants to volunteer fire departments. Any person who  
29 files a fraudulent sworn statement of expenditures under  
30 this section is guilty of a felony, and, upon conviction  
31 thereof, shall be fined not less than one thousand dollars  
32 nor more than five thousand dollars, or imprisoned in the  
33 state penitentiary for a period of time not less than one  
34 year nor more than five years, or both fined and  
35 imprisoned.

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## CHAPTER 114

(H. B. 2519—By Delegates Seacrist and Hunt)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nine, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the state fire marshal to accept gifts and donations, and setting forth the uses of such gifts and donations.

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

That section nine, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

**§29-3-9. Powers, duties and authority of state fire commission and state fire marshal.**

1           (a) The state fire commission may employ personnel,  
2 fix their compensation and, within funds available to do  
3 so, incur expenses as necessary in the performance of the  
4 duties of its office.

5           (b) The state fire commission is responsible for fire  
6 programs within this state, including the state fire marshal's  
7 office, training, uniform standards and certification, fi-  
8 nance and planning and fire prevention.

9           (c) All state and area training and education in fire  
10 service shall be coordinated by the state fire commission.  
11 The state fire marshal shall ensure that these programs are  
12 operated throughout the state at a level consistent with  
13 needs identified by the commissioner.

14           (d) The state fire commission shall develop minimum  
15 training levels for firefighters, minimum levels of equip-  
16 ment needed to protect life and property within fire ser-  
17 vice areas, minimum performance standards the depart-  
18 ments must meet in response times, communications, mini-  
19 mum levels of water flow and pressure and other perfor-  
20 mance measures as considered necessary to meet the over-  
21 all goals of improved fire prevention and control. The  
22 state fire commission may make recommendations to the  
23 state insurance commissioner regarding town classifica-  
24 tions for fire insurance rates.

25           (e) The formation of any new fire department, includ-  
26 ing volunteer fire departments, requires the concurrence  
27 of the state fire commission. The state fire commission  
28 shall develop a method of certification which can be ap-  
29 plied to all fire departments and volunteer fire depart-  
30 ments.

31           (f) The state fire commission shall develop a plan for  
32 fire prevention and control which shall include, but not be  
33 limited to, the following areas: Manpower needs; location  
34 of training centers; location of fire prevention and control



35 units; communications; fire-fighting facilities; water sourc-  
36 es; vehicular needs; public education and information;  
37 public participation; standardization in record keeping;  
38 evaluation of personnel; reporting of fire hazards; pro-  
39 grams on mutual aid; location of public safety agencies;  
40 outline of fire prevention programs; and accessibility of  
41 fire prevention information.

42 (g) The state fire commission shall establish fire pro-  
43 tection areas and at such times as funds are available shall  
44 establish field offices for inspection, planning and certifi-  
45 cation.

46 (h) The state fire marshal may accept, on behalf of  
47 the state fire commission, gifts, grants, court ordered civil  
48 forfeiture proceedings and bequests of funds or property  
49 from individuals, foundations, corporations, the federal  
50 government, governmental agencies and other organiza-  
51 tions or institutions. The state fire marshal, acting on  
52 behalf of the state fire commission, may enter into, sign  
53 and execute any agreements and do and perform any acts  
54 that may be necessary, useful, desirable or convenient to  
55 effectuate the purposes of this article. Moneys from gifts,  
56 grants, civil forfeiture proceedings and bequests received  
57 by the state fire marshal shall be deposited into the special  
58 account set forth in subsection (c), section twelve-b of this  
59 article, and the state fire marshal, with the approval of the  
60 state fire commission, has the authority to make expendi-  
61 tures of, or use of any tangible property, in order to effec-  
62 tuate the purposes of this article.

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## CHAPTER 115

(Com. Sub. for S. B. 482—By Senators Love, Wiedebusch, Bowman,  
Schoonover, Buckalew and Blatnik)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article twelve, chapter eleven of the code of  
West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section eighty-six; and to amend and reenact section twenty-three, article three, chapter twenty-nine of said code, all relating to authorizing sparklers and novelties sales; requiring registration of businesses which sell sparklers and novelties; and preventing sparklers and sparkler devices from being sold to persons under sixteen years of age.

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

That article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eighty-six; and that section twenty-three, article three, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

## **Chapter**

### **11. Taxation.**

### **29. Miscellaneous Boards and Officers.**

## **CHAPTER 11. TAXATION.**

### **ARTICLE 12. BUSINESS REGISTRATION TAX.**

#### **§11-12-86. Sparkler and novelty registration fee.**

1       The tax commissioner shall establish an annual "Sparkler and Novelty Registration Fee" which shall be charged  
2 kler and Novelty Registration Fee" which shall be charged  
3 all businesses licensed to do business in the state of West  
4 Virginia desiring to sell sparklers and novelties authorized  
5 for sale in section twenty-three, article three, chapter  
6 twenty-nine of this code. This fee shall run concurrent  
7 with the business registration certificate set forth in section  
8 five of this article. This fee shall not be prorated. Each  
9 business shall pay fifteen dollars for each registration and  
10 shall be issued a sticker or card by the tax commissioner  
11 to be posted in a conspicuous position at the location of  
12 the business which has paid the registration fee. This fee  
13 shall be collected for each separate location where sparklers and novelties are sold. The tax commissioner may,  
14 klers and novelties are sold. The tax commissioner may,  
15 in his discretion, require a separate certificate which shall  
16 be posted as set forth herein, or provide that the evidence  
17 of compliance with this section may be by a stamp or  
18 language added to the business registration certificate or

19 by embossing or writing imprinted on the business regis-  
20 tration certificate.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

#### §29-3-23. "Fireworks" defined; labels required.

1 The term "fireworks" means and includes any com-  
2 bustible or explosive composition, or any substance or  
3 combination of substances, or article prepared for the  
4 purpose of producing a visible or an audible effect by  
5 combustion, explosion, deflagration or detonation and  
6 shall include blank cartridges, toy pistols, toy cannons, toy  
7 canes or toy guns in which explosives are used, the type of  
8 unmanned balloons which require fire underneath to pro-  
9 pel the same, firecrackers, torpedoes, skyrockets, roman  
10 candles, daygo bombs or other fireworks of like construc-  
11 tion and any fireworks containing any explosive or flam-  
12 mable compound or any tablets or other device containing  
13 any explosive substance, except that the term "fireworks"  
14 shall not include:

15 Model rockets and model rocket engines, designed,  
16 sold and used for the purpose of propelling recoverable  
17 acro models and shall not include toy pistols, toy canes,  
18 toy guns or other devices in which paper or plastic caps  
19 manufactured in accordance with the United States depart-  
20 ment of transportation regulations for packing and ship-  
21 ping of toy paper or plastic caps are used and toy paper or  
22 plastic caps manufactured as provided therein, the sale and  
23 use of which shall be permitted at all times. Each package  
24 containing toy paper or plastic caps offered for retail sale  
25 shall be labeled to indicate the maximum explosive con-  
26 tent per cap.

27 The following sparklers and novelties shall not be  
28 considered fireworks and require a business registration  
29 fee be paid to be authorized to sell, as provided for in  
30 section eighty-six, article twelve, chapter eleven of this  
31 code:

32 (1) Explosive caps designed to be fired in toy pistols,

33 provided that the explosive mixture of the caps shall not  
34 exceed twenty-five hundredths of a grain for each cap.

35 (2) Snake and glow worms composed of pressed pel-  
36 lets of a pyrotechnic mixture that produce a large  
37 snake-like ash when burning.

38 (3) Smoke devices consisting of a tube or sphere con-  
39 taining a pyrotechnic mixture that produces white or col-  
40 ored smoke.

41 (4) Trick noisemakers which produce a small report  
42 designed to surprise the user and which include:

43 (a) A party popper, which is a small plastic or paper  
44 item containing not in excess of twenty-five hundredths of  
45 a grain of explosive mixture. A string protruding from  
46 the device is pulled to activate the device, expelling paper  
47 streamers and producing a small report.

48 (b) A string popper which is a small tube containing  
49 not in excess of twenty-five hundredths of a grain of ex-  
50 plosive mixture with string protruding from both ends.  
51 The strings are pulled to activate the friction-sensitive  
52 mixture, producing a small report.

53 (c) A snapper or drop pop, which is a small paper  
54 wrapped item containing no more than twenty-five hun-  
55 dredths of a grain of explosive mixture coated on small  
56 bits of sand. When dropped, the device produces a small  
57 report.

58 (5) Wire sparklers consisting of wire or stick coated  
59 with nonexplosive pyrotechnic mixture that produces a  
60 shower of sparks upon ignition. These items must not  
61 exceed one hundred grams of mixture per item.

62 (6) Other sparkling devices which emit showers of  
63 sparks and sometimes a whistling or crackling effect when  
64 burning, do not detonate or explode, are hand-held or  
65 ground-based, cannot propel themselves through the air  
66 and contain not more than seventy-five grams of chemical  
67 compound per tube or not more than a total of two hun-  
68 dred grams if multiple tubes are used: *Provided*, That  
69 sparklers and sparkler devices as provided for herein shall  
70 not be sold to anyone below the age of sixteen years old.

## CHAPTER 116

(H. B. 2071—By Delegates J. Martin, Mezzatesta, Michael and Willison)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section three, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing by two the number of members on the West Virginia forest management review commission.

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

That section three, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 24. WEST VIRGINIA FOREST MANAGEMENT REVIEW COMMISSION.**

**§5-24-3. Commission continued; composition; appointment of members.**

1       The West Virginia forest management review commis-  
2       sion heretofore created is hereby continued for the pur-  
3       poses set forth in this article. This commission shall be  
4       comprised of five members from the West Virginia Senate,  
5       a co-chairman and four members to be appointed by the  
6       Senate president, and five members of the House of Dele-  
7       gates, a co-chairman and four members to be appointed  
8       by the speaker; four members to be representatives from  
9       the commercial forest industry in the state, and three  
10      members of the public-at-large. The seven nonlegislative  
11      members shall be appointed by the governor, with the  
12      advice and consent of the Senate. Two members shall be  
13      appointed to serve a term of two years; three members  
14      shall be appointed to serve a term of four years; and two

15 members shall be appointed to serve a term of six years.  
16 The successor of each such appointed member shall be  
17 appointed for an overlapping term of six years, except that  
18 any person appointed to fill a vacancy occurring prior to  
19 the expiration of the term for which the predecessor was  
20 appointed shall be appointed only to the remainder of  
21 such term. Each board member shall serve until the  
22 appointment of his or her successor.

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## CHAPTER 117

(Com. Sub. for H. B. 2242—By Delegates J. Martin, Michael,  
Love, Border, Evans, Kominar and Cann)

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[Passed February 16, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section forty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting the division of natural resources, the division of forestry and the department of agriculture from travel rules in the purchasing division.

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

That section forty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 3. PURCHASING DIVISION.

#### \*§5A-3-48. Travel rules; exceptions.

1 The secretary of administration shall promulgate rules  
2 relating to the ownership, purchase, use, storage, main-  
3 tenance and repair of all motor vehicles and aircraft  
4 owned by the state of West Virginia and in the possession

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**Clerk's Note:** This section was also amended by S. B. 547 (Chapter 99), which passed subsequent to this act.

5 of any department, institution or agency thereof: *Provid-*  
6 *ed*, That the provisions of sections forty-eight through  
7 fifty-three of this article shall not apply to the division of  
8 highways of the department of transportation, the division  
9 of public safety of the department of military affairs and  
10 public safety, the division of natural resources, the divi-  
11 sion of forestry and the department of agriculture. If, in  
12 the judgment of the secretary, economy or convenience  
13 indicate the expediency thereof, the secretary may require  
14 all vehicles and the aircraft subject to regulation by this  
15 article, or such of them as he or she may designate, to be  
16 kept in such garages, and other places of storage, and to  
17 be made available in such manner and under such terms  
18 for the official use of such departments, institutions, agen-  
19 cies, officers, agents and employees of the state as the  
20 secretary may designate by any such rule as he or she may  
21 from time to time promulgate. The secretary also has the  
22 authority to administer the travel regulations promulgated  
23 by the governor in accordance with section eleven, article  
24 three, chapter twelve of this code, unless otherwise deter-  
25 mined by the governor.

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## CHAPTER 118

(Com. Sub. for S. B. 148—By Senators Ross, Love, Miller, Plymale and Sharpe)

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[Passed March 7, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact article fourteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulation of persons who offer, sell or negotiate for the sale of preneed funeral contracts; setting forth legislative policy and intent; definitions; excluding premiums and annuities paid to insurance companies from the definition of "funds";

excluding life insurance companies from the definition of "trustee"; requirement of certificate of authority from the consumer protection division of the office of the attorney general for persons controlling funds paid pursuant to a preneed funeral contract and for persons who offer preneed funeral contract; exceptions; application for certificate; biennial reporting period; renewal of certificate of authority; providing for a temporary certificate and establishing a fee therefor; issuance of certificate; records of certificate holder; license for agents and employees of preneed funeral contract sellers; fee and requirements for license; limiting authorized deduction of overhead costs from contract proceeds; deposit of contract proceeds or insurance premiums; restrictions on management of proceeds; review of accounts by division of banking; promulgation of legislative rules by the consumer protection division of the office of the attorney general; disbursement of proceeds; authority to provide services or goods after the death of a contract beneficiary; refund of proceeds; cancellation of contract; immunity from civil liability; interest on proceeds; unenforceable contracts and recovery of proceeds; trustees and fidelity bond for trust funds; investment standards; irrevocable contracts; contract recording requirements and fee; allocation of recording fee to preneed burial contract regulation fund and preneed guarantee fund and subjecting said funds to legislative appropriation; payment of lost benefits from preneed guarantee fund on pro rata basis; performance and fulfillment of contract; transfer and assignment of contract; credit life insurance; sale of business; forms; limitations on solicitation of contracts; prohibited acts; proceedings, actions and remedies upon occurrence of prohibited acts; statutory lien for claim against contract provider; liability of certificate holder for acts and omissions of employees and agents; specific civil actions against contract providers; award of punitive damages and attorney fees and deposit thereof into preneed burial contract regulation fund; severability; and criminal penalties.

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



That article fourteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 14. PRENEED FUNERAL CONTRACTS.**

- §47-14-1. Declaration of policy; legislative intent.
- §47-14-2. Definitions.
- §47-14-3. Certificate of authority required; fees to go to division; special account established; duties of certificate holder.
- §47-14-4. Agents and employees; licenses required; fee to go to division.
- §47-14-5. Disposition of proceeds; trusts; procedure for administration; division to promulgate rules.
- §47-14-6. Withdrawal of funds.
- §47-14-7. Income on trust accounts.
- §47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trust; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.
- §47-14-9. Forms and Rules.
- §47-14-10. Solicitation.
- §47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.
- §47-14-12. Civil action; attorney's fees.
- §47-14-13. Penalty.
- §47-14-14. Severability.

**§47-14-1. Declaration of policy; legislative intent.**

1 It is contrary to public policy for any person to re-  
2 ceive, hold, control or manage funds or proceeds received  
3 from the sale of, or from a contract to sell, funeral services,  
4 funeral goods, burial goods or any one or combination of  
5 them, where payments for the same are made either out-  
6 right or on an installment basis, prior to the death of the  
7 person or persons so purchasing them, or for whom they  
8 are purchased, unless that person holds, controls or man-  
9 ages those funds subject pursuant to the limitations pre-  
10 scribed by this article and the legislative rules promulgated  
11 pursuant thereto.

12 It is the legislative intent that the provisions of this  
13 article shall be construed as a limitation upon the manner

14 in which a person is permitted to accept funds in prepay-  
15 ment of funeral services to be performed in the future, or  
16 funeral or burial goods to be used in connection with the  
17 funeral or final disposition of human remains, so that at all  
18 times members of the public may have an opportunity to  
19 arrange and pay for funerals for themselves and their  
20 families in advance of need while at the same time provid-  
21 ing all possible safeguards whereunder such prepaid funds  
22 cannot be dissipated, whether intentionally or not, in order  
23 that such funds are available for the payment of funeral  
24 services so arranged. Further, it is the legislative intent that  
25 no person may offer, sell or negotiate for the sale of a  
26 preneed funeral contract through anyone who is not li-  
27 censed pursuant to the provisions of this article.

**§47-14-2. Definitions.**

1 As used in this article, unless the context otherwise  
2 requires:

3 (1) "Burial goods" means all merchandise supplied in  
4 regard to burial, or entombment in a mausoleum or  
5 inurnment in a columbarium, but does not include those  
6 services actually performed by a cemetery acting only as  
7 such, or the sale by any person of cemetery lots, land or  
8 interests therein, services incidental thereto, or the sale by  
9 any person of markers, memorials, monuments, equip-  
10 ment, crypts, urns, burial vaults or vaults constructed or to  
11 be constructed in a mausoleum or columbarium.

12 (2) "Contract beneficiary" means any person specified  
13 or implied in a preneed funeral contract, upon whose  
14 death funeral services, funeral goods or burial goods are  
15 to be performed, provided or delivered.

16 (3) "Contract buyer" means any person, whether or not  
17 a contract beneficiary, who purchases goods or services  
18 pursuant to a preneed funeral contract but does not in-  
19 clude any person other than a natural person.

20 (4) "Contract seller" or "seller" means a person, his  
21 agent or his employee who sells, makes available or pro-

22 vides preneed funeral contracts.

23 (5) "Division" means the consumer protection division  
24 of the office of the attorney general.

25 (6) "Funds" means moneys or other consideration,  
26 other than premiums for insurance policies or annuities  
27 paid to a life insurance company, received pursuant to the  
28 sale of a preneed funeral contract, including interest ac-  
29 crued or earned thereon.

30 (7) "Funeral goods" means those items of merchandise  
31 sold or offered for sale directly to the public by any per-  
32 son which will be used in connection with a funeral or  
33 alternative for final disposition of human remains, but  
34 does not include those services actually performed by a  
35 cemetery acting only as such, or the sale by the cemetery  
36 of cemetery lots, land or interest therein, services inciden-  
37 tal thereto, or the sale by any person of markers, memori-  
38 als, monuments, equipment, crypts, urns, burial vaults or  
39 vaults constructed or to be constructed in a mausoleum or  
40 columbarium.

41 (8) "Funeral services" means those services usually  
42 performed by a licensed funeral establishment or director  
43 including, but not limited to, care and preparation of hu-  
44 man remains and coordinating rites and ceremonies in  
45 connection with the disposition of human remains carried  
46 out at the request of any individual responsible for funeral  
47 and disposition arrangements.

48 (9) "Person" means a natural person, partnership, firm,  
49 association or corporation, including any agent or em-  
50 ployee thereof residing in or doing business in this state  
51 who is engaged in the selling of, making available of or  
52 providing of preneed funeral contracts, as defined herein,  
53 or who is the recipient of funds paid for such purpose.

54 (10) "Person who makes a preneed funeral contract  
55 available" means a person who, while not directly selling  
56 the contents of a preneed funeral contract to the public  
57 through his efforts, makes such contracts available to the

58 public, but does not include manufacturers of funeral  
59 goods or burial goods.

60 (11) "Personal residence" means any residential build-  
61 ing in which one temporarily or permanently maintains  
62 his abode including, but not limited to, hotels, motels,  
63 apartments, nursing homes, convalescent homes, homes  
64 for the aged and public and private institutions.

65 (12) "Preneed funeral contract" means any contract,  
66 agreement, mutual understanding, series or combination  
67 of contracts, agreements and mutual understandings, in-  
68 cluding a contract that is financed by the purchase of an  
69 insurance policy or annuity, under which, for a specified  
70 consideration paid in advance of death in a lump sum or  
71 by installments, a person promises to furnish or make  
72 available or provide funeral services, funeral goods or  
73 burial goods for use at a time determinable by the death  
74 of the contract beneficiary who is either named or implied  
75 therein.

76 (13) "Provider" means a person who, though not nec-  
77 essarily a party to a preneed funeral contract, makes the  
78 services or goods referred to in such a contract available to  
79 the public pursuant to such a contract.

80 (14) "Trustee" means any natural person, partnership  
81 or corporation, including any bank, trust company, sav-  
82 ings and loan association or credit union, which receives  
83 money pursuant to any agreement or contract made pur-  
84 suant to the provisions of this article. The term "trustee"  
85 does not include an insurance company licensed pursuant  
86 to chapter thirty-three of this code.

**§47-14-3. Certificate of authority required; fees to go to divi-  
sion; special account established; duties of certifi-  
cate holder.**

1 (a) No person may receive, hold, control or manage  
2 any funds or other thing of value tendered as payment on  
3 any preneed funeral contract unless such person has ob-  
4 tained a certificate of authority or renewal thereof from

5 the division: *Provided*, That no bank, trust company,  
6 savings and loan association or other financial institution  
7 regulated by this state or insured by an agency of the  
8 United States federal government or life insurance compa-  
9 nies licensed pursuant to the provisions of chapter  
10 thirty-three of this code is required to obtain a certificate  
11 of authority.

12 (b) No person may sell, make available or be a provid-  
13 er of a preneed funeral contract unless such person has  
14 obtained a certificate of authority or renewal thereof from  
15 the division.

16 (c) Any person desiring to obtain a certificate of au-  
17 thority shall file with the division, upon forms provided by  
18 the division, a completed application, together with a two  
19 hundred dollar application fee for the original certificate  
20 of authority. The fee shall be payable to a special revenue  
21 account to be known as the "Preneed Burial Contract Reg-  
22 ulation Fund" to be used for the purpose of administering  
23 the provisions of this article. The original application or a  
24 renewal application shall contain at least the following  
25 information:

26 (1) The name and address of each person owning ten  
27 percent or more interest in the applicant;

28 (2) The experience of the applicant;

29 (3) Such other information as the division may require  
30 to determine to its satisfaction that the applicant possesses  
31 the ability, experience, financial stability and integrity to  
32 negotiate preneed funeral contracts and, in the case of a  
33 funeral service provider, to provide the funeral services,  
34 funeral goods or burial goods as specified therein; and

35 (4) The types of preneed funeral contracts proposed  
36 to be written or otherwise used and copies of any writings  
37 used pursuant thereto; and if a person is a party to or  
38 bound by any such contract, an itemization of all out-  
39 standing preneed funeral contracts, the dates upon which  
40 such contracts were entered into, the names of all parties

41 involved in such contracts or having any right thereunder,  
42 the amount paid toward each contract and, if payments are  
43 not completed, the amounts owing on each contract and  
44 the present depository or holder of all such funds.

45 (d) Each certificate of authority holder shall renew its  
46 certificate of authority according to the schedule estab-  
47 lished by this article. The fee for renewal shall be two  
48 hundred dollars per each entity, payable to the "Preneed  
49 Burial Contract Regulation Fund" established by this sec-  
50 tion.

51 (e) Each certificate of authority holder shall file with  
52 the division a biennial report which shall contain the fol-  
53 lowing:

54 (1) An identification of all outstanding preneed funer-  
55 al contracts, the dates upon which the contracts were en-  
56 tered into by the parties, the names of all parties involved  
57 in such contracts or having any right thereunder, includ-  
58 ing, but not limited to, the contract beneficiary, the  
59 amount paid and interest earned on each contract and, if  
60 payments are not completed, the amounts owing and the  
61 present balance of funds applicable to each such contract.

62 (2) The date on which any insurance policy or annuity  
63 was purchased to fund a preneed funeral contract, the  
64 amount paid for each such insurance policy or annuity  
65 and the present value of each such insurance policy or  
66 annuity.

67 (3) The name of the contract seller and the name of  
68 the provider of the services and goods and a statement that  
69 the provider has sufficient funds available to perform all  
70 of its obligations under its contracts.

71 (4) A statement that the contract seller and the person  
72 receiving funds paid thereunder have complied with the  
73 trust requirements of this article, and the name and address  
74 of the present depository or holder of such funds and a  
75 statement of all the amounts thereof itemized as to each  
76 such contract.

77 (5) Any changes or amendments in any contracts or  
78 obligations of the seller and provider which have occurred  
79 since the date of the last report.

80 (6) Such other information as may be considered  
81 necessary by the division in order to meet its responsibili-  
82 ties under this article.

83 Any person who sells, provides or makes preneed  
84 funeral contracts available or receives moneys or other  
85 consideration therefor from the public or who otherwise  
86 holds or performs such contracts with or without a certifi-  
87 cate of authority is required to file a biennial report with  
88 the division as prescribed in this subsection. Beginning  
89 with the year one thousand nine hundred ninety-five, the  
90 reporting period for which a biennial report is to be made  
91 pursuant to this section shall be a calendar year ending on  
92 the thirty-first day of December every other year. All  
93 such reports shall be filed with the division no later than  
94 the thirty-first day of March of the year following the  
95 reporting period.

96 (f) Beginning with the calendar year one thousand  
97 nine hundred ninety-five, the certificate of authority shall  
98 expire on the thirtieth day of June following its issuance:  
99 *Provided*, That a temporary certificate of authority may  
100 be issued by the division for a period not to exceed six  
101 months for purposes of implementing the change in the  
102 certificate of authority reporting period for the year one  
103 thousand nine hundred ninety-five. The fee for such  
104 temporary certificate shall be one hundred dollars.

105 (g) Every application, request for renewal and state-  
106 ment filed with the division shall be sworn to by the appli-  
107 cant or certificate holder. If the certificate holder is a  
108 partnership, it shall be sworn to by each member thereof.  
109 If the certificate holder is a corporation, it shall be sworn  
110 to by the president and secretary thereof.

111 (h) Upon the satisfaction of the division, based upon  
112 the application statements and any other information that  
113 the applicant meets the requirements of this article and of

114 the rules promulgated by the division and, if upon investi-  
115 gation by the division of the principals, including direc-  
116 tors, officers, stockholders, employees and agents of such  
117 person, nothing is found to warrant denial of the certifi-  
118 cate, the division shall issue the certificate of authority or  
119 renewal thereof.

120 (i) (1) The certificate holder shall keep accurate ac-  
121 counts, books and records in this state of all transactions,  
122 copies of all contracts, dates and amounts of payments  
123 made and accepted thereon, the name and address of each  
124 contract buyer, the name of the contract beneficiary of  
125 each contract, the name of the trustee holding trust funds  
126 received under each contract and such other records as the  
127 division may require to determine whether such certificate  
128 holder is complying with the provisions of this article.  
129 Such records must be kept for twelve months after the date  
130 of termination of the applicable preneed contract.

131 (2) The certificate holder shall make all books and  
132 records pertaining to preneed funeral contracts available  
133 to the division for examination. The division may not  
134 more frequently than once in any calendar year, unless  
135 pursuant to an order of court for good cause shown, dur-  
136 ing ordinary business hours, cause to be examined the  
137 books, records and accounts of the certificate holder with  
138 respect to funds received by said certificate holder and for  
139 that purpose may require the attendance of and examine,  
140 under oath, all persons whose testimony the division may  
141 require.

142 (3) The certificate holder shall pay for the cost of any  
143 examination which is not the first one in that calendar  
144 year, including the salary and traveling expenses paid to  
145 the person making the examination during the time spent  
146 in making the examination and in traveling to and return-  
147 ing from the point where the records are kept and all other  
148 expenses necessarily incurred in the examination. The  
149 division shall assess and collect a fee for each such exami-  
150 nation, based on the certificate holder's total outstanding  
151 preneed funeral service contracts and the cost of such



152 examination, but the cost to the person being audited shall  
153 not be more than a total cost of five hundred dollars for  
154 each such examination. This fee shall be payable to the  
155 "Preneed Burial Contract Regulation Fund" established in  
156 this section.

**§47-14-4. Agents and employees; licenses required; fee to go to division.**

1 No agent or employee of a contract seller may sell  
2 preneed funeral contracts in this state without having first  
3 obtained a license from the division. The fee for such  
4 license and the annual renewal thereof is twenty-five dol-  
5 lars. These fees shall be payable to the "Preneed Burial  
6 Contract Regulation Fund" established by section three of  
7 this article. The division shall not issue such license with-  
8 out requiring an applicant for the license, or if the appli-  
9 cant is a corporation, its individual agents, to provide  
10 proof to warrant its issuance by presenting with the appli-  
11 cation affidavits from his employer stating that, to the  
12 employer's best information, knowledge and belief, the  
13 applicant merits a license. The acts of the agent shall be  
14 considered acts of the employer. The division may re-  
15 quire the applicant to pass a written examination to ascer-  
16 tain if the applicant has sufficient knowledge of the indus-  
17 try and the provisions of this article to properly engage in  
18 the business governed by the provisions of this article.

**§47-14-5. Disposition of proceeds; trusts; procedure for administration; division to promulgate rules.**

1 (a) All sums paid or collected on such preneed funeral  
2 contracts entered into after the seventh day of June, one  
3 thousand nine hundred eighty-three, shall be handled in  
4 the following manner:

5 (1) The contract seller or other person collecting the  
6 funds may retain for his own use and benefit and for the  
7 purpose of covering selling expenses, servicing costs and  
8 general overhead, an amount not to exceed ten percent of  
9 the total original amount agreed to be paid by the contract  
10 buyer as reflected in the original preneed funeral contract.

11 Upon retaining such amount, no further deduction from  
12 any sums collected pursuant to the contract for such pur-  
13 poses shall be made by any such seller or person or their  
14 assignees or transferees. Such ten percent or other  
15 amount is exempt from the trust and refunding provisions  
16 of this article;

17 (2) All of the funds collected under the contract, less  
18 the amount authorized to be deducted under subdivision  
19 (1) of this subsection, shall be deposited under the provi-  
20 sions of subdivision (3) of this subsection;

21 (3) Unless otherwise specifically exempt under this  
22 article, all funds paid to or collected by any person as the  
23 result of a preneed funeral contract shall, within thirty  
24 days after receipt thereof by such a person, be deposited  
25 in this state: (i) In the name of a trustee who is a contract  
26 seller, provider or person making the preneed funeral  
27 contract available, in a state or federally chartered and  
28 insured bank, savings institution, building and loan institu-  
29 tion located in this state or in a state or federally chartered  
30 credit union located in this state; or (ii) under the terms of  
31 a trust instrument entered into with a national or state bank  
32 having trust powers or a trust company located in this  
33 state. In the event a preneed funeral contract is funded by  
34 the purchase of an insurance policy or an annuity, the  
35 premiums paid on such insurance policy or annuity shall  
36 be deposited with an insurer licensed pursuant to the pro-  
37 visions of chapter thirty-three of this code.

38 (b) The funds to be deposited from more than one  
39 preneed funeral contract may at the option of the recipient  
40 thereof or the certificate of authority holder be placed in a  
41 common or commingled trust fund in this state under a  
42 single trust instrument.

43 (c) All deposits, other than for insurance policies or  
44 annuities, shall be placed in an account with a trustee in  
45 the name of the contract seller, provider or person making  
46 the contract available, as set forth in the contract, to whom  
47 the contract buyer makes payment. Each trustee shall

48 maintain records showing the trust's investment and, as to  
49 each contract showing the amount paid, the amount of  
50 interest earned and the current balance with respect to any  
51 particular buyer's contract.

52 (d) All funds required to be deposited and covered by  
53 this article shall remain in this state.

54 (e) All accounts of money deposited in any bank,  
55 savings institution, building and loan association or credit  
56 union in accordance with the provisions of this article are  
57 subject to periodic examination by the division of banking  
58 of this state.

59 (f) The division shall promulgate legislative rules in  
60 accordance with the provisions of chapter twenty-nine-a of  
61 this code for the purpose of administering the provisions  
62 of this article.

**§47-14-6. Withdrawal of funds.**

1 (a) Disbursements of funds discharging any preneed  
2 funeral contract shall be made by the trustee to the person  
3 named in the contract upon receipt of a certified photo-  
4 static copy of the death certificate of the contract benefi-  
5 ciary and evidence satisfactory to the trustee that the  
6 preneed funeral contract has been fully performed. In the  
7 event that, after the death of the contract beneficiary, the  
8 contract services or goods are not desired by the heirs or  
9 by the personal representative of the contract beneficiary,  
10 the party obligated to provide the funeral services, funeral  
11 goods or burial goods under the contract shall have au-  
12 thority to provide such services or goods despite the de-  
13 sires to the contrary expressed by such heirs or personal  
14 representative. If the service and goods are not provided  
15 upon the death of the contract beneficiary because of  
16 actions of the seller, provider or person making the  
17 preneed funeral contract available, then all of the funds  
18 held on deposit shall in ten days be refunded to the con-  
19 tract buyer or his legal representative who also has avail-  
20 able any other remedy set forth in this article.

21 (b) Any contract buyer or legally authorized person  
22 acting in his behalf may cancel a preneed funeral contract  
23 prior to the death of the contract beneficiary by notifying  
24 in writing the contract seller or present obligor of the  
25 provisions thereof, if a different person, of such desire to  
26 cancel. The seller or obligor shall, in ten days after receipt  
27 of such notice, notify the trustee of such cancellation and  
28 the trustee shall within thirty days after receipt of written  
29 notification pay to the contract buyer or his legal repre-  
30 sentative all funds placed in the trust account and paid on  
31 the contract.

32 (c) If the contract buyer is more than one hundred  
33 eighty days in default with respect to any payment or  
34 installment due on or pursuant to the preneed funeral  
35 contract, the contract seller or provider may, on ten days'  
36 prior written notice, cancel the contract. All funds in the  
37 trust account shall be refunded to the contract purchaser  
38 or to the estate of the contract beneficiary.

39 (d) The seller of a preneed funeral contract may not  
40 cancel the contract unless the contract is in default as to  
41 the buyer's obligations.

42 (e) Payment by any depository or any trustee made in  
43 good faith pursuant to the terms of this section shall forev-  
44 er relieve such depository or trustee, as such, for any fur-  
45 ther liability for such funds under the contract and in law.

#### **§47-14-7. Income on trust accounts.**

1 (a) Whether the payments on a preneed funeral con-  
2 tract are placed in a bank, savings institution, building and  
3 loan association, credit union or in a common trust fund  
4 as permitted in this article, or are part of a commingled  
5 common trust fund as permitted in this article, the income  
6 from a contract deposit, except as otherwise provided  
7 herein, shall accrue to the credit of the individual account  
8 of such contract until such time as the burial goods, fune-  
9 ral goods and funeral services for the contract beneficiary  
10 are required to be delivered and returned by reason of  
11 such beneficiary's death.

12 (b) Upon the death of such contract beneficiary, the  
13 total amount in the trust account attributable to the con-  
14 tract beneficiary shall be disbursed as follows:

15 (1) If the cost of the goods and services contracted for  
16 at the time of such beneficiary's death exceeds the amount  
17 paid under the contract, then the provider may have and  
18 use the principal and so much of the interest as may be  
19 necessary to defray such additional cost over and above  
20 the contract cost: *Provided*, That to the extent that the  
21 cost of goods and services provided exceeds the principal  
22 and interest thereon, the provider shall provide and make  
23 available the goods and services contracted for at no addi-  
24 tional cost to the contract purchaser or to the heirs or  
25 personal representative of the contract beneficiary;

26 (2) To the extent the principal and interest thereon  
27 exceed the cost of the goods and services contracted for,  
28 then the provider may retain only so much of the princi-  
29 pal and interest necessary to defray the total of such cost  
30 and the balance shall be returned to the estate of the con-  
31 tract beneficiary or to the contract buyer as may be proper  
32 under the provisions of this article or the legislative rules  
33 promulgated by the division.

34 (c) The trustee for the trust shall make annual valua-  
35 tions of assets held in trust. No person may withdraw  
36 income from the trust, except for the purpose of executing  
37 the terms of the contract, disbursing the trust proceeds as  
38 provided in this article and paying costs incidental to the  
39 trust, including, but not limited to, reasonable trust fees  
40 and tax assessments.

**§47-14-8. Limitations on enforcement of contract; appoint-  
ment and removal of trustees; standards for  
administration of trusts; contracts may be irre-  
vocable; "Preneed Guarantee Fund" estab-  
lished; assignment of contract allowed; credit life  
insurance allowed; successor in interest defined.**

1 (a) A contract seller, provider or person making the

2 preneed funeral contract available may not enforce a  
3 preneed funeral contract made in violation of this article,  
4 but a contract buyer or his heirs or legal representative  
5 may recover all amounts paid under his contract and all  
6 accrued income on such amount where the contract seller,  
7 provider or person making the preneed funeral contract  
8 available has violated the provisions of this article as to  
9 such contract. The right of such recovery is in addition to  
10 the remedy provided for in section twelve of this article.

11 (b) A contract seller, provider or person making the  
12 preneed funeral contract available may appoint a board of  
13 at least three individual trustees under a trust instrument, if  
14 the trustee is other than a chartered state or national bank  
15 or trust company under the supervision of the division of  
16 banking of this state, to serve as trustees of its trust funds.  
17 Each individual trustee shall be a resident of this state and  
18 shall hold office subject to the direction of the seller. Not  
19 more than one member of the board of trustees of a trust  
20 fund may have a proprietary interest in the seller appoint-  
21 ing trustees or in any certificate of authority holder who is  
22 placing funds in such trust.

23 Individual trustees of a trust fund established under  
24 the provisions of this article shall file a fidelity bond with a  
25 corporate surety thereon which is licensed to do business  
26 in this state with the division in an amount equal to the  
27 funds in trust, guaranteeing payment of damages occa-  
28 sioned by breach of the trustees' fiduciary duties. The  
29 trustees of one or more trust funds need file only one such  
30 bond. The aggregate liability of the surety shall in no  
31 case exceed the face amount of the bond. The division or  
32 any aggrieved person claiming against any bond required  
33 by this section may maintain an action against the trustee  
34 and the surety. Individual trustees shall take no action  
35 respecting trust funds unless there is on file with the divi-  
36 sion a bond as required by this section. If the trustees are  
37 individuals, the division may suspend the certificate of  
38 authority of any contract seller, provider or person mak-  
39 ing the preneed funeral contract available having trust

40 funds with respect to which there is no bond on file with  
41 the division as required by this section.

42 (c) All trustees subject to the provisions of this article  
43 shall comply with the following investment standards: In  
44 acquiring, investing, reinvesting, exchanging, retaining,  
45 selling and managing property for the benefit of others,  
46 trustees have the responsibilities which customarily attach  
47 to such offices and to the type of estates entrusted to their  
48 care and shall exercise the judgment and care under the  
49 circumstances then prevailing which men of prudence,  
50 discretion and intelligence exercise in the management of  
51 their own affairs, not in regard to speculation but in regard  
52 to the permanent disposition of their funds, considering  
53 the probable income as well as the probable safety of their  
54 capital.

55 (d) No preneed funeral contract may restrict any con-  
56 tract buyer who may make his or her contract irrevocable  
57 in accordance with the laws and regulations of this state.  
58 Irrevocable preneed contracts may be transferred pursuant  
59 to the provisions of this section.

60 (e) All preneed funeral contracts must be in writing  
61 and no contract form may be used without prior approval  
62 of the division.

63 (f) Each contract buyer shall pay a contract recording  
64 fee of five dollars to the contract seller. Beginning on the  
65 first day of July, one thousand nine hundred ninety-five,  
66 the contract buyer shall pay a fee of ten dollars to the  
67 contract seller. Beginning on the first day of January, one  
68 thousand nine hundred ninety-six, the contract buyer shall  
69 pay a fee of fifteen dollars to the contract seller. Begin-  
70 ning on the first day of January, one thousand nine hun-  
71 dred ninety-seven, the contract buyer shall pay a fee of  
72 twenty dollars to the contract seller. The contract seller is  
73 to forward such sum and a copy of the contract to the  
74 division within ten days after its execution. The division  
75 shall record the contract. Within ten days after receiving  
76 the fee, the division will notify the contract buyer, by mail,

77 of the recording. Forty percent of the contract recording  
78 fees shall be placed by the division in an account un-  
79 der the division's control entitled "Preneed Guarantee  
80 Fund", and the income thereon shall accrue to the fund.  
81 The division may use such income, if necessary in its dis-  
82 cretion, to enforce this article. For fiscal years beginning  
83 after the thirtieth day of June, one thousand nine hundred  
84 ninety-six, no expenditures or disbursements may be  
85 made from the "Preneed Burial Contract Regulation Fund"  
86 and the "Preneed Guarantee Fund" created in this article  
87 except by appropriation by the Legislature. The remain-  
88 ing sixty percent of the contract recording fee shall be  
89 placed by the division in the "Preneed Burial Contract  
90 Regulation Fund" as provided in section three of this arti-  
91 cle.

92 In the event any contract buyer of any preneed funer-  
93 al contract is unable to receive the benefits of the contract,  
94 or to receive the funds due by reason of his cancellation  
95 thereof, such buyer may apply therefor to the division on  
96 a form supplied by the division. Upon the finding of the  
97 division that said benefits or return of payment is not  
98 available to the buyer, the division will cause to be paid to  
99 the said buyer from the "Preneed Guarantee Fund" the  
100 amount actually paid by the buyer under the contract to  
101 the extent funds are available in the "Preneed Guarantee  
102 Fund". In the event multiple claims are made and there  
103 are insufficient funds in the "Preneed Guarantee Fund" to  
104 satisfy all claims in full, payments from the "Preneed  
105 Guarantee Fund" shall be made on a pro rata basis. If the  
106 seller's liability for default is subsequently proven, any  
107 judgment resulting therefrom shall, to the extent that it is  
108 for amounts paid from the "Preneed Guarantee Fund", be  
109 ordered payable to the "Preneed Guarantee Fund".

110 (g) Notwithstanding any other provision of this article  
111 to the contrary, delivery of funeral or burial goods prior  
112 to the death of the person for whose benefit they are pur-  
113 chased does not constitute performance or fulfillment,  
114 either wholly or in part, of any preneed contract or series



115 of contracts.

116 (h) The contract buyer may, on acceptance in writing  
117 by a transferee, transfer the obligations of the seller, pro-  
118 vider or person making the preneed funeral contract avail-  
119 able to other persons within or without this state. The  
120 funds on deposit for the contract and any future pay-  
121 ments, if any, by the contract buyer shall then be trans-  
122 ferred and deposited under applicable state law, if any, in  
123 the state wherein the contract buyer resides or to a state  
124 where the obligations of the provider of the funeral service  
125 and goods will be fulfilled.

126 Upon such transfer, the contract buyer and transferee  
127 shall, in writing, release the contract seller, provider or  
128 person making the preneed funeral contract available and  
129 the trusts, as applicable, from further liability under such  
130 contract.

131 Nothing in this article or in any preneed funeral con-  
132 tract may limit the right of a contract buyer to assign such  
133 a contract to any person whomsoever except as specifical-  
134 ly provided herein and except that if the assignee is a  
135 resident of this state or the contract is to be fulfilled by the  
136 assignee in this state, the assignee must hold a certificate of  
137 authority under this article. If the contract is to be ful-  
138 filled in another state, the assignee must in all respects be  
139 in compliance with the preneed funeral law of that state, if  
140 any.

141 (i) Notwithstanding any other law of this state, a con-  
142 tract seller, provider or person making the preneed funeral  
143 contract available may, if requested by the contract buyer  
144 where the contract is to be paid in installments, provide for  
145 the sale of credit life insurance on the life of the contract  
146 beneficiary in order to have the funds necessary to make  
147 payment in full under the contract if the beneficiary  
148 should die prior to completing all the payments due. The  
149 seller shall disclose all costs of such insurance in clear  
150 language and shall inquire of the buyer whether he under-  
151 stands the terms of the insurance contract and is aware of

152 the total cost of the insurance.

153 (j) In the event any certificate of authority holder or  
154 anyone in violation of this article who has outstanding  
155 preneed funeral contracts and is not the current holder of  
156 a certificate of authority sells its business, through the sale  
157 of assets or stock, which is involved in the fulfillment of  
158 obligations under preneed funeral contracts, the buyer of  
159 such business is a "successor in interest" and is covered not  
160 only by this article but shall assume the obligations of  
161 seller under seller's outstanding preneed funeral contracts  
162 regardless of whether seller made known to buyer the  
163 existence of such contract or contracts.

#### **§47-14-9. Forms and rules.**

1 The administration and enforcement of the provisions  
2 of this article are vested in the division. The division shall  
3 prepare and furnish all forms necessary under this article,  
4 including forms for applications for certificates of author-  
5 ity, for renewals thereof, for annual statements, for other  
6 required reports and for preneed funeral contracts. The  
7 division shall promulgate, in accordance with the provi-  
8 sions of chapter twenty-nine-a of this code, legislative  
9 rules as may be necessary to effectuate the purpose of this  
10 article.

#### **§47-14-10. Solicitation.**

1 (a) Any contract seller or agent or employee or person  
2 acting in behalf of any such person may not:

3 (1) Directly or indirectly call upon individuals or  
4 persons in hospitals, rest homes, nursing homes or similar  
5 institutions for the purpose of soliciting preneed funeral  
6 contracts or making funeral or final disposition arrange-  
7 ments without first having been specifically requested by  
8 such person to do so;

9 (2) Directly or indirectly employ any agent, assistant,  
10 employee, independent contracting person or any other  
11 person to call upon individuals or persons in hospitals, rest

12 homes, nursing homes or similar institutions for the pur-  
13 pose of soliciting preneed funeral contracts or making  
14 funeral or final disposition arrangements without first  
15 having been specifically requested by such person to do  
16 so;

17 (3) Solicit relatives of persons whose death is appar-  
18 ently pending or whose death has recently occurred for  
19 the purpose of providing funeral services, final disposition,  
20 burial or funeral goods for such person;

21 (4) Solicit or accept or pay any consideration for  
22 recommending or causing a dead human body to be pro-  
23 vided funeral services and funeral and burial goods by  
24 specific persons or the services of a specific crematory,  
25 mausoleum or cemetery except where such arrangement is  
26 the subject of a preneed funeral contract;

27 (5) Solicit by telephone call or by visit to a personal  
28 residence, unless such solicitation has been previously  
29 requested by the person solicited or by a family member  
30 residing at such residence.

31 (b) Notwithstanding any other provision of law to the  
32 contrary, nothing in this article shall be construed to re-  
33 strict the right of a person to lawfully advertise, to use  
34 direct mail or otherwise communicate in a manner not  
35 within the above prohibition of solicitation or to solicit the  
36 business of anyone responding to such communication or  
37 otherwise initiating discussion of the goods or services  
38 being offered.

39 (c) Nothing herein shall be construed to prohibit gen-  
40 eral advertising.

41 (d) Anyone making a personal or written solicitation  
42 for a preneed funeral contract shall, at the very first in-  
43 stance, divulge the real reason for the contract or solici-  
44 tation.

45 (e) The division may promulgate legislative rules reg-  
46 ulating the solicitation of preneed contracts by certificate

47 holders or registrants to protect the public from sollicita-  
48 tion practices which utilize undue influence or which take  
49 undue advantage of a person's ignorance or emotional  
50 vulnerability.

**§47-14-11. Disciplinary proceedings; revocation of license or  
certificate; liquidation upon violation.**

1 (a) No person shall:

2 (1) Violate any provisions of this article;

3 (2) Attempt to procure or procure a certificate of  
4 authority or license under this article by bribery or fraud-  
5 ulent misrepresentation;

6 (3) Have had any certificate of authority or license to  
7 sell preneed funeral contracts revoked, suspended or oth-  
8 erwise acted against, including denial of licensure, by a  
9 licensing authority of another jurisdiction;

10 (4) Have been convicted or found guilty of a crime in  
11 any jurisdiction which directly relates to the sale of  
12 preneed funeral contracts;

13 (5) Make or file a report required by this article which  
14 the certificate holder knows to be false or knowingly fail  
15 to make or file a report required by this article;

16 (6) Advertise goods or services in a manner which is  
17 fraudulent, false, deceptive or misleading in form or con-  
18 tent;

19 (7) Engage in fraud, deceit or misrepresentation in the  
20 conduct of business governed by the provisions of this  
21 article;

22 (8) Fail to comply with a lawful order of the division;

23 (9) Knowingly make any false or misleading state-  
24 ment, oral or written, directly or indirectly, regarding the  
25 sale of services or merchandise in connection with the  
26 conduct of the certificate holder's business;

27 (10) Fail to maintain the funds received under the  
28 contracts as required by this article;

29 (11) Fail to cancel a preneed funeral contract upon  
30 proper request and refund that portion of the amount paid  
31 on such a contract as required by this article;

32 (12) Fail to renew or qualify for renewal of its certifi-  
33 cate of authority or license;

34 (13) Fail to produce records in connection with the  
35 certificate holder's business or otherwise fail to comply  
36 with the provisions of this article or any rule promulgated  
37 by the division pursuant to this article; or

38 (14) Solicit by the certificate holder, its agents, em-  
39 ployees or representatives through the use of fraud, undue  
40 influence, misrepresentation or overreaching or other  
41 forms of vexatious conduct as defined by law, this article  
42 or the legislative rules promulgated by the division.

43 (b) Upon the violation of any of the provisions of this  
44 article, determined in an administrative hearing after no-  
45 tice and an opportunity to be heard, the division may  
46 institute revocation proceedings regarding a license to  
47 operate a funeral establishment or a certificate of authority  
48 or license to sell preneed funeral contracts, or both the  
49 license and the certificate of authority or license, or file a  
50 complaint in a court of competent jurisdiction setting  
51 forth the relevant facts and praying for the issuance of an  
52 order to show cause why the license to operate a funeral  
53 home or the certificate of authority or license to sell  
54 preneed funeral contracts, or both the license and the  
55 certificate should not be revoked or the person should not  
56 be enjoined from engaging in business governed by the  
57 provisions of this article.

58 (1) Upon application for such rule to show cause, the  
59 court may, in its discretion, issue an injunction restraining  
60 the defendant from transacting further business until fur-  
61 ther order of the court.

62       (2) Upon return of such order to show cause, the court  
63 shall hear and try the issue forthwith. If the court deter-  
64 mines that the person so charged as defendant in such  
65 proceeding has not been guilty of the omission, failure or  
66 violation alleged in the complaint by the division, the  
67 court shall dismiss such complaint. If the court finds that  
68 the charges of the division are supported by the evidence,  
69 it may enter an order directing the revocation of a license  
70 to operate a funeral home or of a certificate of authority  
71 or license to sell preneed funeral contracts, or the revoca-  
72 tion of both the license and the certificate of authority or  
73 license, or permanently enjoining the person from engag-  
74 ing in business governed by the provisions of this article  
75 until its requirements are met. The court shall have the  
76 authority to order the liquidation of the business upon a  
77 finding that the person engaged therein is in violation of  
78 any provision of this article.

79       (3) In any such order of liquidation or in any order or  
80 orders thereafter entered, the court shall provide a notice  
81 to creditors for the filing of claims and otherwise direct all  
82 other matters necessary and essential to govern an estate in  
83 receivership.

84       (c) When the division finds that any person has violat-  
85 ed the provisions of subsection (a) of this section after an  
86 administrative hearing or finds that any funeral services or  
87 funeral or burial goods are offered for sale when the offer  
88 is not a bona fide offer to sell such services or goods, it  
89 may enter an order imposing one or more of the follow-  
90 ing penalties:

91       (1) Denial of an application for a certificate of author-  
92 ity or license, including a renewal;

93       (2) Revocation or suspension of a certificate of au-  
94 thority or license;

95       (3) Imposition of an administrative fine not to exceed  
96 one thousand dollars for each county where there are  
97 separate violations;

98 (4) Issuance of a reprimand; or

99 (5) Placement of the licensee or certificate holder on  
100 probation for a period of time and subject to such condi-  
101 tions as the division may specify.

102 (d) All preneed funeral contract buyers have a priority  
103 in claims against the provider, to the extent that their inter-  
104 est is set forth in this article. Such priority constitutes a  
105 statutory lien at the time the contract was executed to the  
106 extent payments on the contract were made and interest  
107 has accrued.

108 (e) For purposes of this section, the acts or omissions  
109 of any person employed by or under contract to or on  
110 behalf of the certificate holder shall be treated as acts or  
111 omissions of the certificate holder.

112 (f) Subject to the provisions of subsection (b), section  
113 seven of this article, all prices or quotations of prices con-  
114 tained in any preneed funeral contract shall be fully and  
115 clearly stated.

**§47-14-12. Civil action; attorney's fees.**

1 (a) The failure of a certificate holder, a licensee or of  
2 any other person engaged in the sale of preneed funeral  
3 contracts without a certificate of authority or license re-  
4 quired pursuant to the provisions of this article to comply  
5 with the provisions of this article gives rise to a civil cause  
6 of action in favor of the division, any aggrieved consumer,  
7 contract guarantor or contract purchaser. Upon entry of a  
8 judgment for damages in favor of the plaintiff, the trial  
9 court shall award punitive damages in the amount of three  
10 times the actual damages awarded in the judgment.

11 (b) The prevailing party, after judgment in trial court  
12 and exhaustion of all appeals, if any, shall receive reason-  
13 able attorney's fees and costs from the nonprevailing par-  
14 ty.

15 (c) The attorney for the prevailing party shall submit a

16 sworn affidavit of his time spent on the case and his costs  
17 incurred for all the motions, hearings and appeals to the  
18 trial judge who presided over the civil case.

19 (d) The trial judge shall award the prevailing party the  
20 sum of reasonable costs incurred in the action, plus a rea-  
21 sonable legal fee for the hours actually spent on the case  
22 as sworn to in an affidavit.

23 (e) Any award of attorney's fees or costs shall become  
24 part of the judgment and subject to execution as the law  
25 allows.

26 (f) The division shall deposit any penalties or attor-  
27 ney's fees recovered by the division in the "Preneed Burial  
28 Contract Regulation Fund" for the purpose of administer-  
29 ing and enforcing the provisions of this article.

#### **§47-14-13. Penalty.**

1 (a) Any person who willfully and knowingly conceals  
2 or embezzles any funds paid as the result of a preneed  
3 funeral contract is guilty of a felony, and, upon conviction  
4 thereof, shall be imprisoned in the penitentiary for a defi-  
5 nite term of not less than three years and fined not more  
6 than ten thousand dollars.

7 (b) Except as provided by subsection (a) of this sec-  
8 tion, any person who violates any provision of this article  
9 or the legislative rules promulgated hereunder is guilty of  
10 a misdemeanor, and, upon conviction thereof, shall be  
11 punished by a fine of not less than five hundred nor more  
12 than five thousand dollars for each occurrence, or con-  
13 fined in jail for a term not to exceed one year, or both  
14 fined and confined.

#### **§47-14-14. Severability.**

1 If any section, subsection, subdivision, subparagraph,  
2 sentence or clause of this article is adjudged to be uncon-  
3 stitutional or otherwise invalid, such invalidation shall not  
4 affect the validity of the remaining portions of this article  
5 and, to this end, the provisions of this article are hereby  
6 declared to be severable.



# CHAPTER 119

(H. B. 2732—By Delegate Ashley)

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[Passed March 10, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section eight, article two, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three of said chapter by adding thereto a new section, designated section fourteen-a, all relating to the nomination or appointment of guardians or conservators of protected persons; providing for the nomination of guardians or conservators; authorizing the nomination of successor guardians or conservators; and limiting the liability of guardians or conservators and of guardians or committees appointed under prior law.

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

That section eight, article two, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article three of said chapter be amended by adding thereto a new section, designated section fourteen-a, all to read as follows:

**Article**

2. Procedure for Appointment.
3. Guardianship and Conservatorship Administration.

**ARTICLE 2. PROCEDURE FOR APPOINTMENT.**

**§44A-2-8. Nomination of guardian or conservator of alleged or adjudicated protected person; preferences.**

- 1 (a) Any person who has sufficient capacity to form a
- 2 preference may at any time nominate any individual or
- 3 entity to serve as his or her guardian or conservator. The
- 4 nomination may be made in writing, by an oral request to

5 the court, or may be proved by any other competent  
6 evidence. The designation of a representative under a valid  
7 medical power of attorney, a living will or of a surrogate  
8 decision-maker shall constitute competent evidence of the  
9 nomination of a guardian, and the designation of an  
10 attorney under a valid durable power of attorney shall  
11 constitute competent evidence of the nomination of a  
12 conservator.

13 (b) A guardian or conservator whose appointment has  
14 not been terminated or who has not been otherwise  
15 removed pursuant to the provisions of section four or  
16 section five of this article may nominate a successor  
17 guardian or conservator for consideration by the court.  
18 The nomination may appear in a will or other writing and  
19 shall contain a brief statement of the reason or reasons for  
20 the nomination.

21 (c) The court shall appoint the one so nominated if the  
22 nominee is otherwise eligible to act and would serve in the  
23 best interests of the alleged or adjudicated protected  
24 person.

### ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

#### §44A-3-14a. No liability of present conservator or guardian for prior acts or failure to act of preceding conservators, guardians or committees.

1 No liability may accrue to any present conservator or  
2 guardian appointed pursuant to the provisions of this  
3 chapter solely for the prior acts or failure to act of any  
4 committee or guardian appointed under prior law, as  
5 defined in subsection (f), section two, article one of this  
6 chapter, or solely for the prior acts or failure to act of any  
7 preceding conservator or guardian, as defined in section  
8 four, article one of this chapter. No liability may accrue to  
9 any guardian or committee appointed under prior law, as  
10 defined in subsection (f), section two, article one of this  
11 chapter, solely for the acts or failure to act of any  
12 preceding guardian and committee.

## CHAPTER 120

(Com. Sub. for H. B. 2560—By Delegates Prezioso and Mezzatesta)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fines for violations of parking and other privileges reserved to handicapped and physically disabled persons; and providing for signs.

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

That section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 13. STOPPING, STANDING AND PARKING.

#### §17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

1 (a) Any owner of a Class A motor vehicle subject to  
2 registration under the provisions of article three, chapter  
3 seventeen-a of this code, who is:

4 (1) A physically handicapped person with limited  
5 mobility;

6 (2) A relative of a person who is a physically handi-  
7 capped person with limited mobility;

8 (3) A person who regularly resides with a person who  
9 is a physically handicapped person with limited mobility;  
10 or

11 (4) A person who regularly transports a person who is  
12 a physically handicapped person with limited mobility,  
13 may apply for a special registration plate or a mobile

14 windshield placard by submitting to the commissioner:

15 (A) An application therefor on a form prescribed and  
16 furnished by the commissioner, specifying whether the  
17 applicant desires a special registration plate or a mobile  
18 windshield placard; and

19 (B) A certificate issued by a person licensed to prac-  
20 tice medicine stating that the applicant or the applicant's  
21 spouse or a member of the applicant's immediate family  
22 residing with him is a physically handicapped person with  
23 limited mobility as defined in this section.

24 Upon receipt of the application, the physician's certifi-  
25 cate and the registration fee, if he finds that the applicant  
26 qualifies for the special registration plate or mobile wind-  
27 shield placard provided for in this subsection, the com-  
28 missioner shall issue to such applicant an appropriately  
29 designed and appropriately designated special registration  
30 plate or mobile windshield placard. The special plate  
31 shall be used in place of a regular license plate.

32 As used in this section, a physically handicapped  
33 person with limited mobility is any person who suffers  
34 from a permanent physical condition making it unduly  
35 difficult and burdensome for such person to walk.

36 Any person who falsely or fraudulently obtains or  
37 seeks to obtain the special plate or the mobile windshield  
38 placard provided for in this subsection (a), and any person  
39 who falsely certifies that a person is physically handi-  
40 capped with limited mobility in order that an applicant  
41 may be issued the special plate, is guilty of a misdemea-  
42 nor, and, upon conviction thereof, in addition to any other  
43 penalty he may otherwise incur, shall be fined one hun-  
44 dred dollars.

45 (b) Any physically disabled person, any person who  
46 is a relative of a physically disabled person, any person  
47 who regularly resides with a physically disabled person, or  
48 any person who regularly transports a physically disabled  
49 person, may apply for a vehicle decal for a Class A vehicle

50 by submitting to the commissioner:

51 (1) An application therefor on a form prescribed and  
52 furnished by the commissioner;

53 (2) A certificate issued by a person licensed to prac-  
54 tice medicine stating that the applicant or the applicant's  
55 relative is a physically disabled person, or that the person  
56 regularly residing with the applicant or regularly trans-  
57 ported by the applicant is a physically disabled person, as  
58 defined in this section, and stating the expected duration  
59 of the disability; and

60 (3) A fee of one dollar.

61 Upon receipt of the application, the physician's certifi-  
62 cate and the registration fee, if he finds that the applicant  
63 qualifies for the vehicle decal provided for in this subsec-  
64 tion, the commissioner shall issue to such applicant an  
65 appropriately designed decal. The decal shall be dis-  
66 played on the motor vehicle in the manner prescribed by  
67 the commissioner and shall be valid for such period of  
68 time as the certifying physician has determined that the  
69 disability will continue, which period of time, reflecting  
70 the date of expiration, shall be conspicuously shown on  
71 the face of the decal.

72 As used in this section "physically disabled person"  
73 means any person who has sustained a temporary disabili-  
74 ty rendering it unduly difficult and burdensome for him  
75 to walk.

76 Any person who falsely or fraudulently obtains or  
77 seeks to obtain the vehicle decal provided for in this sub-  
78 section, and any person who falsely certifies that a person  
79 is physically disabled in order that an applicant may be  
80 issued the vehicle decal, is guilty of a misdemeanor, and,  
81 upon conviction thereof, in addition to any other penalty  
82 he may otherwise incur, shall be fined one hundred dol-  
83 lars.

84 (c) Free stopping, standing or parking places shall be  
85 designated in close proximity to all state, county and mu-

86 nicipal buildings and other public facilities, and shall be  
87 marked with the words "reserved for disabled persons", or  
88 with words of like import. Such places shall be reserved  
89 solely for physically disabled and handicapped persons  
90 during the hours that such buildings are open for busi-  
91 ness.

92 Any person whose vehicle properly displays a valid  
93 special registration plate, mobile windshield placard or  
94 decal may park the vehicle for unlimited periods of time  
95 in parking zones unrestricted as to length of parking time  
96 permitted: *Provided*, That this privilege does not mean  
97 that the vehicle may park in any zone where stopping,  
98 standing or parking is prohibited or which creates parking  
99 zones for special types of vehicles or which prohibits  
100 parking during heavy traffic periods during specified rush  
101 hours or where parking would clearly present a traffic  
102 hazard. To the extent any provision of any ordinance of  
103 any political subdivision of this state is contrary to the  
104 provisions of this section, the provisions of this section  
105 shall take precedence and shall apply.

106 The privileges provided for in this subsection shall  
107 apply only during those times when the vehicle is being  
108 used for the transportation of a physically handicapped  
109 or disabled person. Any person who knowingly exercises,  
110 or attempts to exercise, such privileges at a time when the  
111 vehicle is not being used for the transportation of a physi-  
112 cally handicapped or disabled person is guilty of a misde-  
113 meanor, and, upon conviction thereof, in addition to any  
114 other penalty he may otherwise incur, shall be fined one  
115 hundred dollars.

116 (d) No person may stop, stand or park a motor vehi-  
117 cle in an area designated, zoned or marked for the handi-  
118 capped or physically disabled, and no person may stop,  
119 stand or park any motor vehicle at special, clearly marked,  
120 parking locations provided for the handicapped or physi-  
121 cally disabled in or on privately owned parking lots, park-  
122 ing garages, or other parking areas, when such person is  
123 not physically disabled or handicapped and does not have

124 displayed upon his vehicle a distinguishing insignia for  
125 the handicapped issued by the commissioner: *Provided*,  
126 That any person in the act of transporting a handicapped  
127 or physically disabled person, as defined by this article,  
128 may stop, stand or park a motor vehicle not displaying a  
129 distinguishing insignia for the handicapped in an area  
130 designated, zoned or marked for the handicapped or  
131 physically disabled for the limited purposes of loading or  
132 unloading his handicapped or physically disabled  
133 passenger: *Provided, however*, That such vehicle shall be  
134 promptly moved after the completion of such limited  
135 purposes.

136 Any person who violates the provisions of this  
137 subsection is guilty of a misdemeanor, and, upon  
138 conviction thereof, shall be fined one hundred dollars.

139 (e) The erection of future signs marking areas  
140 designated for the handicapped or physically disabled  
141 shall include the words "\$100 fine". .

142 (f) The commissioner shall adopt and promulgate  
143 rules and regulations in accordance with the provisions of  
144 chapter twenty-nine-a of this code to effectuate the  
145 provisions of this section.

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## CHAPTER 121

(Com. Sub. for H. B. 2476—By Delegates Kliss and Petersen)

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[Passed March 10, 1995; in effect from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact sections two, three, five and six,  
article two-d, chapter sixteen of the code of West Virginia,  
one thousand nine hundred thirty-one, as amended, relating

generally to certificate of need procedures; providing the definition of terms; requiring certificate of need for new providers of personal care services; setting forth minimum review criteria for certificate of need; authorizing the health care cost review authority to amend or modify certificate of need standards; setting forth the requirements for amending the standards; and authorizing the health care cost review authority to declare a limited moratorium for purposes of amending obsolete or nonexistent standards.

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

That sections two, three, five and six, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2D. CERTIFICATE OF NEED.**

§16-2D-2. Definitions.

§16-2D-3. Certificate of need.

§16-2D-5. Powers and duties of state agency.

§16-2D-6. Minimum criteria for certificate of need reviews.

**§16-2D-2. Definitions.**

1 As used in this article, unless otherwise indicated by  
2 the context:

3 (a) "Affected person" means:

4 (1) The applicant;

5 (2) An agency or organization representing consum-  
6 ers;

7 (3) Any individual residing within the geographic area  
8 served or to be served by the applicant;

9 (4) Any individual who regularly uses the health care  
10 facilities within that geographic area;

11 (5) The health care facilities which provide services  
12 similar to the services of the facility under review and



13 which will be significantly affected by the proposed pro-  
14 ject;

15 (6) The health care facilities which, prior to receipt by  
16 the state agency of the proposal being reviewed, have  
17 formally indicated an intention to provide similar services  
18 in the future;

19 (7) Third-party payors who reimburse health care  
20 facilities similar to those proposed for services;

21 (8) Any agency which establishes rates for health care  
22 facilities similar to those proposed; or

23 (9) Organizations representing health care providers.

24 (b) "Ambulatory health care facility" means a facility  
25 which is free-standing and not physically attached to a  
26 health care facility and which provides health care to  
27 noninstitutionalized and nonhomebound persons on an  
28 outpatient basis. This definition does not include the  
29 private office practice of any one or more health profes-  
30 sionals licensed to practice in this state pursuant to the  
31 provisions of chapter thirty of this code: *Provided*, That  
32 such exemption from review of private office practice  
33 shall not be construed to include such practices where  
34 major medical equipment otherwise subject to review un-  
35 der the provisions of this article is acquired, offered or  
36 developed: *Provided, however*, That such exemption  
37 from review of private office practice shall not be con-  
38 strued to include certain health services otherwise subject  
39 to review under the provisions of subdivision (1), subsec-  
40 tion (a), section four of this article.

41 (c) "Ambulatory surgical facility" means a facility  
42 which is free-standing and not physically attached to a  
43 health care facility and which provides surgical treatment  
44 to patients not requiring hospitalization. This definition  
45 does not include the private office practice of any one or  
46 more health professionals licensed to practice surgery in  
47 this state pursuant to the provisions of chapter thirty of

48 this code: *Provided*, That such exemption from review of  
49 private office practice shall not be construed to include  
50 such practices where major medical equipment otherwise  
51 subject to review under the provisions of this article is  
52 acquired, offered or developed: *Provided, however*, That  
53 such exemption from review of private office practice  
54 shall not be construed to include certain health services  
55 otherwise subject to review under the provisions of subdi-  
56 vision (1), subsection (a), section four of this article.

57 (d) "Applicant" means: (1) The governing body or  
58 the person proposing a new institutional health service  
59 who is, or will be, the health care facility licensee wherein  
60 the new institutional health service is proposed to be locat-  
61 ed, and (2) in the case of a proposed new institutional  
62 health service not to be located in a licensed health care  
63 facility, the governing body or the person proposing to  
64 provide such new institutional health service. Incorpora-  
65 tors or promoters who will not constitute the governing  
66 body or persons responsible for the new institutional  
67 health service may not be an applicant.

68 (e) "Bed capacity" means the number of beds for  
69 which a license is issued to a health care facility, or, if a  
70 facility is unlicensed, the number of adult and pediatric  
71 beds permanently staffed and maintained for immediate  
72 use by inpatients in patient rooms or wards.

73 (f) "Capital expenditure" means an expenditure:

74 (1) Made by or on behalf of a health care facility; and

75 (2) (A) Which (i) under generally accepted accounting  
76 principles is not properly chargeable as an expense of  
77 operation and maintenance, or (ii) is made to obtain either  
78 by lease or comparable arrangement any facility or part  
79 thereof or any equipment for a facility or part; and (B)  
80 which (i) exceeds the expenditure minimum, or (ii) is a  
81 substantial change to the bed capacity of the facility with  
82 respect to which the expenditure is made, or (iii) is a sub-  
83 stantial change to the services of such facility. For pur-

84 poses of subparagraph (i), paragraph (B), subdivision (2)  
85 of this definition, the cost of any studies, surveys, designs,  
86 plans, working drawings, specifications, and other activi-  
87 ties, including staff effort and consulting and other servic-  
88 es, essential to the acquisition, improvement, expansion, or  
89 replacement of any plant or equipment with respect to  
90 which an expenditure described in paragraph (B), subdivi-  
91 sion (2) of this definition is made shall be included in  
92 determining if such expenditure exceeds the expenditure  
93 minimum. Donations of equipment or facilities to a  
94 health care facility which if acquired directly by such  
95 facility would be subject to review shall be considered  
96 capital expenditures, and a transfer of equipment or facili-  
97 ties for less than fair market value shall be considered a  
98 capital expenditure for purposes of such subdivisions if a  
99 transfer of the equipment or facilities at fair market value  
100 would be subject to review. A series of expenditures, each  
101 less than the expenditure minimum, which when taken  
102 together are in excess of the expenditure minimum, may  
103 be determined by the state agency to be a single capital  
104 expenditure subject to review. In making its determina-  
105 tion, the state agency shall consider: Whether the expendi-  
106 tures are for components of a system which is required to  
107 accomplish a single purpose; whether the expenditures are  
108 to be made over a two-year period and are directed to-  
109 wards the accomplishment of a single goal within the  
110 health care facility's long-range plan; or whether the ex-  
111 penditures are to be made within a two-year period within  
112 a single department such that they will constitute a signifi-  
113 cant modernization of the department.

114 (g) "Expenditure minimum" means seven hundred  
115 fifty thousand dollars per fiscal year.

116 (h) "Health," used as a term, includes physical and  
117 mental health.

118 (i) "Health care facility" is defined as including hospi-  
119 tals, skilled nursing facilities, kidney disease treatment  
120 centers, including free-standing hemodialysis units, inter-

121 mediate care facilities, ambulatory health care facilities,  
122 ambulatory surgical facilities, home health agencies, reha-  
123 bilitation facilities and health maintenance organizations;  
124 community mental health and mental retardation facilities,  
125 whether under public or private ownership, or as a profit  
126 or nonprofit organization and whether or not licensed or  
127 required to be licensed in whole or in part by the state.  
128 For purposes of this definition, "community mental health  
129 and mental retardation facility" means a private facility  
130 which provides such comprehensive services and continu-  
131 ity of care as emergency, outpatient, partial hospitalization,  
132 inpatient and consultation and education for individuals  
133 with mental illness, mental retardation or drug or alcohol  
134 addiction.

135 (j) "Health care provider" means a person, partnership,  
136 corporation, facility or institution licensed or certified or  
137 authorized by law to provide professional health care  
138 service in this state to an individual during that individual's  
139 medical care, treatment or confinement.

140 (k) "Health maintenance organization" means a public  
141 or private organization, organized under the laws of this  
142 state, which:

143 (1) Is a qualified health maintenance organization  
144 under Section 1310(d) of the Public Health Service Act, as  
145 amended, Title 42 United States Code Section 300e-9(d);  
146 or

147 (2) (A) Provides or otherwise makes available to en-  
148 rolled participants health care services, including substan-  
149 tially the following basic health care services: Usual phy-  
150 sician services, hospitalization, laboratory, X ray, emergen-  
151 cy and preventive services and out-of-area coverage; and

152 (B) Is compensated except for copayments for the  
153 provision of the basic health care services listed in para-  
154 graph (A), subdivision (2), subsection (k) of this definition  
155 to enrolled participants on a predetermined periodic rate  
156 basis without regard to the date the health care services are

157 provided and which is fixed without regard to the frequen-  
158 cy, extent or kind of health service actually provided; and

159 (C) Provides physicians' services primarily (i) directly  
160 through physicians who are either employees or partners  
161 of such organization, or (ii) through arrangements with  
162 individual physicians or one or more groups of physicians  
163 organized on a group practice or individual practice basis.

164 (l) "Health services" means clinically related preven-  
165 tive, diagnostic, treatment or rehabilitative services, includ-  
166 ing alcohol, drug abuse and mental health services.

167 (m) "Home health agency" is an organization primari-  
168 ly engaged in providing directly or through contract ar-  
169 rangements, professional nursing services, home health  
170 aide services, and other therapeutic and related services,  
171 including, but not limited to, physical, speech and occupa-  
172 tional therapy and nutritional and medical social services  
173 to persons in their place of residence on a part-time or  
174 intermittent basis.

175 (n) "Hospital" means an institution which is primarily  
176 engaged in providing to inpatients, by or under the super-  
177 vision of physicians, diagnostic and therapeutic services  
178 for medical diagnosis, treatment, and care of injured, dis-  
179 abled or sick persons, or rehabilitation services for the  
180 rehabilitation of injured, disabled or sick persons. This  
181 term also includes psychiatric and tuberculosis hospitals.

182 (o) "Intermediate care facility" means an institution  
183 which provides, on a regular basis, health-related care and  
184 services to individuals who do not require the degree of  
185 care and treatment which a hospital or skilled nursing  
186 facility is designed to provide, but who, because of their  
187 mental or physical condition, require health-related care  
188 and services above the level of room and board.

189 (p) "Long-range plan" means a document formally  
190 adopted by the legally constituted governing body of an  
191 existing health care facility or by a person proposing a

192 new institutional health service. Each long-range plan  
193 shall consist of the information required by the state agen-  
194 cy in regulations adopted pursuant to section eight of this  
195 article.

196 (q) "Major medical equipment" means a single unit of  
197 medical equipment or a single system of components with  
198 related functions which is used for the provision of medi-  
199 cal and other health services and which costs in excess of  
200 three hundred thousand dollars, except that such term  
201 does not include medical equipment acquired by or on  
202 behalf of a clinical laboratory to provide clinical laborato-  
203 ry services if the clinical laboratory is independent of a  
204 physician's office and a hospital and it has been deter-  
205 mined under Title XVIII of the Social Security Act to  
206 meet the requirements of paragraphs ten and eleven of  
207 Section 1861(s) of such act, Title 42 United States Code  
208 Sections 1395x (10) and (11). In determining whether  
209 medical equipment costs more than three hundred thou-  
210 sand dollars, the cost of studies, surveys, designs, plans,  
211 working drawings, specifications, and other activities es-  
212 sential to the acquisition of such equipment shall be in-  
213 cluded. If the equipment is acquired for less than fair  
214 market value, the term "cost" includes the fair market val-  
215 ue.

216 (r) "Medically underserved population" means the  
217 population of an urban or rural area designated by the  
218 state agency as an area with a shortage of personal health  
219 services or a population having a shortage of such services,  
220 after taking into account unusual local conditions which  
221 are a barrier to accessibility or availability of such services.  
222 Such designation shall be in regulations adopted by the  
223 state agency pursuant to section eight of this article, and  
224 the population so designated may include the state's medi-  
225 cally underserved population designated by the Federal  
226 Secretary of Health and Human Services under Section  
227 330(b)(3) of the Public Health Service Act, as amended,  
228 Title 42 United States Code Section 254(b)(3).

229 (s) "New institutional health service" means such ser-  
230 vice as described in section three of this article.

231 (t) "Offer", when used in connection with health servic-  
232 es, means that the health care facility or health mainte-  
233 nance organization holds itself out as capable of provid-  
234 ing, or as having the means for the provision of, specified  
235 health services.

236 (u) "Person" means an individual, trust, estate, partner-  
237 ship, committee, corporation, association and other organi-  
238 zations such as joint-stock companies and insurance com-  
239 panies, a state or a political subdivision or instrumentality  
240 thereof or any legal entity recognized by the state.

241 (v) "Personal care services" means medically oriented  
242 activities or tasks ordered by a physician and which is  
243 implemented according to a nursing plan of care which  
244 has been completed by, and which is supervised by, a  
245 registered nurse and billed to the state. These services  
246 include those activities which are intended to enable per-  
247 sons to meet their physical needs and to be treated by a  
248 physician in their place of residence. The term shall in-  
249 clude, but not be limited to, services related to personal  
250 hygiene, dressing, feeding, nutrition, environmental sup-  
251 port functions and health related tasks.

252 (w) "Physician" means a doctor of medicine or osteop-  
253 athy legally authorized to practice by the state.

254 (x) "Proposed new institutional health service" means  
255 such service as described in section three of this article.

256 (y) "Psychiatric hospital" means an institution which  
257 primarily provides to inpatients, by or under the supervi-  
258 sion of a physician, specialized services for the diagnosis,  
259 treatment and rehabilitation of mentally ill and emotional-  
260 ly disturbed persons.

261 (z) "Rehabilitation facility" means an inpatient facility  
262 which is operated for the primary purpose of assisting in  
263 the rehabilitation of disabled persons through an integrat-

264 ed program of medical and other services which are pro-  
265 vided under competent professional supervision.

266 (aa) "Review agency" means an agency of the state,  
267 designated by the governor as the agency for the review of  
268 state agency decisions.

269 (bb) "Skilled nursing facility" means an institution or a  
270 distinct part of an institution which is primarily engaged in  
271 providing to inpatients skilled nursing care and related  
272 services for patients who require medical or nursing care,  
273 or rehabilitation services for the rehabilitation of injured,  
274 disabled or sick persons.

275 (cc) "State agency" means the health care cost review  
276 authority created, established, and continued pursuant to  
277 article twenty-nine-b of this chapter.

278 (dd) "State health plan" means the document approved  
279 by the governor after preparation by the former health  
280 care planning commission, or that document as approved  
281 by the governor after amendment by the health care plan-  
282 ning council or its successor agency.

283 (ee) "Substantial change to the bed capacity" of a  
284 health care facility means any change, with which a capital  
285 expenditure is associated, that increases or decreases the  
286 bed capacity, or relocates beds from one physical facility  
287 or site to another, but does not include a change by which  
288 a health care facility reassigns existing beds as swing beds  
289 between acute care and long-term care categories: *Provid-*  
290 *ed*, That a decrease in bed capacity in response to federal  
291 rural health initiatives shall be excluded from this defini-  
292 tion.

293 (ff) "Substantial change to the health services" of a  
294 health care facility means the addition of a health service  
295 which is offered by or on behalf of the health care facility  
296 and which was not offered by or on behalf of the facility  
297 within the twelve-month period before the month in which  
298 the service is first offered, or the termination of a health



299 service which was offered by or on behalf of the facility,  
300 but does not include the providing of hospice care, ambu-  
301 lance service, wellness centers or programs, adult day care,  
302 or respite care by acute care facilities.

303 (gg) "To develop", when used in connection with  
304 health services, means to undertake those activities which  
305 upon their completion will result in the offer of a new  
306 institutional health service or the incurring of a financial  
307 obligation, in relation to the offering of such a service.

### §16-2D-3. Certificate of need.

1 Except as provided in section four of this article, any  
2 new institutional health service may not be acquired, of-  
3 fered or developed within this state except upon applica-  
4 tion for and receipt of a certificate of need as provided by  
5 this article. Any new provider of personal care service  
6 offered by any person, facility, corporation or entity, other  
7 than an agency of the state, may not be offered or devel-  
8 oped in this state, if the service is to be funded in whole, or  
9 in part, by state or federal medicaid funds, except upon  
10 application for and receipt of a certificate of need as pro-  
11 vided in section six of this article: *Provided*, That a certif-  
12 icate of need shall not be required for a person providing  
13 specialized foster care personal care services to one indi-  
14 vidual and those services are delivered in the provider's  
15 home. Whenever a new institutional health service for  
16 which a certificate of need is required by this article is  
17 proposed for a health care facility for which, pursuant to  
18 section four of this article, no certificate of need is or was  
19 required, a certificate of need shall be issued before the  
20 new institutional health service is offered or developed.  
21 No person may knowingly charge or bill for any health  
22 services associated with any new institutional health service  
23 that is knowingly acquired, offered or developed in viola-  
24 tion of this article, and any bill made in violation of this  
25 section is legally unenforceable. For purposes of this  
26 article, a proposed "new institutional health service" in-  
27 cludes:

28 (a) The construction, development, acquisition or  
29 other establishment of a new health care facility or health  
30 maintenance organization;

31 (b) The partial or total closure of a health care facility  
32 or health maintenance organization with which a capital  
33 expenditure is associated;

34 (c) Any obligation for a capital expenditure incurred  
35 by or on behalf of a health care facility, except as exempt-  
36 ed in section four of this article, or health maintenance  
37 organization in excess of the expenditure minimum or  
38 any obligation for a capital expenditure incurred by any  
39 person to acquire a health care facility. An obligation for  
40 a capital expenditure is considered to be incurred by or on  
41 behalf of a health care facility:

42 (1) When a contract, enforceable under state law, is  
43 entered into by or on behalf of the health care facility for  
44 the construction, acquisition, lease or financing of a capital  
45 asset;

46 (2) When the governing board of the health care facil-  
47 ity takes formal action to commit its own funds for a con-  
48 struction project undertaken by the health care facility as  
49 its own contractor; or

50 (3) In the case of donated property, on the date on  
51 which the gift is completed under state law;

52 (d) A substantial change to the bed capacity of a  
53 health care facility with which a capital expenditure is  
54 associated;

55 (e) (1) The addition of health services which are of-  
56 fered by or on behalf of a health care facility or health  
57 maintenance organization and which were not offered on  
58 a regular basis by or on behalf of the health care facility  
59 or health maintenance organization within the  
60 twelve-month period prior to the time the services would  
61 be offered; and

62 (2) The addition of ventilator services for any nursing  
63 facility bed by any health care facility or health mainte-  
64 nance organization;

65 (f) The deletion of one or more health services, previ-  
66 ously offered on a regular basis by or on behalf of a  
67 health care facility or health maintenance organization  
68 which is associated with a capital expenditure;

69 (g) A substantial change to the bed capacity or health  
70 services offered by or on behalf of a health care facility,  
71 whether or not the change is associated with a proposed  
72 capital expenditure, if the change is associated with a pre-  
73 vious capital expenditure for which a certificate of need  
74 was issued and if the change will occur within two years  
75 after the date the activity which was associated with the  
76 previously approved capital expenditure was undertaken;

77 (h) The acquisition of major medical equipment;

78 (i) A substantial change in an approved new institu-  
79 tional health service for which a certificate of need is in  
80 effect. For purposes of this subsection, "substantial  
81 change" shall be defined by the state agency in regulations  
82 adopted pursuant to section eight of this article.

#### **§16-2D-5. Powers and duties of state agency.**

1 (a) The state agency is hereby empowered to adminis-  
2 ter the certificate of need program as provided by this  
3 article.

4 (b) The state agency shall be responsible for coordi-  
5 nating and developing the health planning research efforts  
6 of the state and for amending and modifying the state  
7 health plan which includes the certificate of need stan-  
8 dards.

9 (c) The state agency may seek advice and assistance of  
10 other persons, organizations and other state agencies in the  
11 performance of the state agency's responsibilities under  
12 this article.

13       (d) For health services for which competition appro-  
14       priately allocates supply consistent with the state health  
15       plan, the state agency shall, in the performance of its func-  
16       tions under this article, give priority, where appropriate to  
17       advance the purposes of quality assurance, cost effective-  
18       ness and access, to actions which would strengthen the  
19       effect of competition on the supply of such services.

20       (e) For health services for which competition does not  
21       or will not appropriately allocate supply consistent with  
22       the state health plan, the state agency shall, in the exercise  
23       of its functions under this article, take actions, where ap-  
24       propriate to advance the purposes of quality assurance,  
25       cost effectiveness and access and the other purposes of this  
26       article, to allocate the supply of such services.

27       (f) Notwithstanding the provisions of section seven of  
28       this article, the state agency may charge a fee for the filing  
29       of any application, the filing of any notice in lieu of an  
30       application, the filing of any exemption determination  
31       request or the filing of any request for a declaratory rul-  
32       ing. The fees charged may vary according to the type of  
33       matter involved, the type of health service or facility in-  
34       volved or the amount of capital expenditure involved.  
35       The state agency shall implement this subsection by filing  
36       procedural rules pursuant to chapter twenty-nine-a of this  
37       code. The fees charged shall be deposited into a special  
38       fund known as the certificate of need program fund to be  
39       expended for the purposes of this article.

40       (g) No hospital, nursing home or other health care  
41       facility shall add any intermediate care or skilled nursing  
42       beds to its current licensed bed complement. This prohi-  
43       bition also applies to the conversion of acute care or other  
44       types of beds to intermediate care or skilled nursing beds:  
45       *Provided,* That hospitals eligible under the provisions of  
46       section four-a and subsection (i), section five of this article  
47       may convert acute care beds to skilled nursing beds in  
48       accordance with the provisions of these sections, upon  
49       approval by the state agency. Furthermore, no certificate

50 of need shall be granted for the construction or addition  
51 of any intermediate care or skilled nursing beds except in  
52 the case of facilities designed to replace existing beds in  
53 unsafe existing facilities. A health care facility in receipt  
54 of a certificate of need for the construction or addition of  
55 intermediate care or skilled nursing beds which was ap-  
56 proved prior to the effective date of this section must incur  
57 an obligation for a capital expenditure within twelve  
58 months of the date of issuance of the certificate of need.  
59 No extensions shall be granted beyond the twelve-month  
60 period: *Provided, however,* That a maximum of sixty  
61 beds may be approved, as a demonstration project, by the  
62 state agency for a unit to provide nursing services to pa-  
63 tients with alzheimer's disease if: (1) The unit is located in  
64 an existing facility which was formerly owned and operat-  
65 ed by the state of West Virginia and is presently owned by  
66 a county of the state of West Virginia; (2) the facility has  
67 provided health care services, including personal care  
68 services, within one year prior to the effective date of this  
69 section; (3) the facility demonstrates that awarding the  
70 certificate of need and operating the facility will be cost  
71 effective for the state; and (4) that any applicable lease,  
72 lease-purchase or contract for operating the facility was  
73 awarded through a process of competitive bidding consis-  
74 tent with state purchasing practices and procedures: *Pro-*  
75 *vided further,* That an application for said demonstration  
76 project shall be filed with the state agency on or before the  
77 twenty-first day of October, one thousand nine hundred  
78 ninety-three.

79 (h) No additional intermediate care facility for the  
80 mentally retarded (ICF/MR) beds shall be granted a certifi-  
81 cate of need, except that prohibition does not apply to  
82 ICF/MR beds approved under the Kanawha County circuit  
83 court order of the third day of August, one thousand nine  
84 hundred eighty-nine, civil action number MISC-81-585  
85 issued in the case of *E. H. v. Matin*, 168 W.V. 248, 284  
86 S.E.2d 232 (1981).

87 (i) Notwithstanding the provisions of subsection (g),  
88 section five of this article and, further notwithstanding the  
89 provisions of subsection (d), section three of this article, an  
90 existing acute care hospital may apply to the health care  
91 cost review authority for a certificate of need to convert  
92 acute care beds to skilled nursing beds: *Provided*, That  
93 the proposed skilled nursing beds are medicare certified  
94 only: *Provided, however*, That any hospital which con-  
95 verts acute care beds to medicare certified only skilled  
96 nursing beds is prohibited from billing for any medicaid  
97 reimbursement for any beds so converted. In converting  
98 beds, the hospital must convert a minimum of one acute  
99 care bed into one medicare certified only skilled nursing  
100 bed. The health care cost review authority may require a  
101 hospital to convert up to and including three acute care  
102 beds for each medicare certified only skilled nursing bed.  
103 The health care cost review authority shall adopt rules to  
104 implement this subsection which require that:

105 (1) All acute care beds converted shall be permanently  
106 deleted from the hospital's acute care bed complement and  
107 the hospital may not thereafter add, by conversion or  
108 otherwise, acute care beds to its bed complement without  
109 satisfying the requirements of subsection (d), section three  
110 of this article for which purposes such an addition, wheth-  
111 er by conversion or otherwise, shall be considered a sub-  
112 stantial change to the bed capacity of the hospital notwith-  
113 standing the definition of that term found in subsection  
114 (ee), section two of this article.

115 (2) The hospital shall meet all federal and state licens-  
116 ing certification and operational requirements applicable  
117 to nursing homes including a requirement that all skilled  
118 care beds created under this subsection shall be located in  
119 distinct-part, long-term care units.

120 (3) The hospital must demonstrate a need for the pro-  
121 ject.

122 (4) The hospital must use existing space for the medi-

123 care certified only skilled nursing beds. Under no cir-  
124 cumstances shall the hospital construct, lease or acquire  
125 additional space for purposes of this section.

126 (5) The hospital must notify the acute care patient,  
127 prior to discharge, of facilities with skilled nursing beds  
128 which are located in or near the patient's county of resi-  
129 dence.

130 Nothing in this subsection shall negatively affect the  
131 rights of inspection and certification which are otherwise  
132 required by federal law or regulations or by this code of  
133 duly adopted regulations of an authorized state entity.

134 (j) Notwithstanding the provisions of subsection (g) of  
135 this section, a retirement life care center with no skilled  
136 nursing beds may apply to the health care cost review  
137 authority for a certificate of need for up to sixty skilled  
138 nursing beds provided the proposed skilled beds are medi-  
139 care certified only. On a statewide basis, a maximum of  
140 one hundred eighty skilled beds which are medicare certi-  
141 fied only may be developed pursuant to this subsection.  
142 The state health plan shall not be applicable to projects  
143 submitted under this subsection. The health care cost  
144 review authority shall adopt rules to implement this sub-  
145 section which shall include:

146 (1) A requirement that the one hundred eighty beds  
147 are to be distributed on a statewide basis;

148 (2) There shall be a minimum of twenty beds and a  
149 maximum of sixty beds in each approved unit;

150 (3) The unit developed by the retirement life care  
151 center shall meet all federal and state licensing certifica-  
152 tion and operational requirements applicable to nursing  
153 homes;

154 (4) The retirement center must demonstrate a need for  
155 the project;

156 (5) The retirement center must offer personal care,

157 home health services and other lower levels of care to its  
158 residents; and

159 (6) The retirement center must demonstrate both short  
160 and long-term financial feasibility.

161 Nothing in this subsection shall negatively affect the  
162 rights of inspection and certification which are otherwise  
163 required by federal law or regulations or by this code of  
164 duly adopted regulations of an authorized state entity.

165 (k) The provisions of this article are severable and if  
166 any provision, section or part thereby shall be held invalid,  
167 unconstitutional or inapplicable to any person or circum-  
168 stance, such invalidity, unconstitutionality or inapplicabili-  
169 ty shall not affect or impair any other remaining provi-  
170 sions contained herein.

171 (l) The state agency is hereby empowered to order a  
172 moratorium upon the processing of an application or  
173 applications for the development of a new institutional  
174 health service filed pursuant to section three of this article,  
175 when criteria and guidelines for evaluating the need for  
176 such new institutional health service have not yet been  
177 adopted or are obsolete. Such moratorium shall be de-  
178 clared by a written order which shall detail the circum-  
179 stances requiring the moratorium. Upon the adoption of  
180 criteria for evaluating the need for the new institutional  
181 health service affected by the moratorium, or one hundred  
182 eighty days from the declaration of a moratorium, which-  
183 ever is less, the moratorium shall be declared to be over  
184 and affected applications shall be processed pursuant to  
185 section six of this article.

186 (m) The state agency shall coordinate the collection of  
187 information needed to allow the state agency to develop  
188 recommended modifications to certificate of need stan-  
189 dards as required in this article. When the state agency  
190 proposes amendments or modifications to the certificate  
191 of need standards, they shall file with the secretary of state,  
192 for publication in the state register, a notice of proposed



193 action, including the text of all proposed amendments and  
194 modifications, and a date, time and place for receipt of  
195 general public comment. To comply with the public com-  
196 ment requirement of this section, the state agency may  
197 hold a public hearing or schedule a public comment peri-  
198 od for the receipt of written statements or documents.

199 All proposed amendments and modifications to the  
200 certificate of need standards, with a record of the public  
201 hearing or written statements and documents received  
202 pursuant to a public comment period, shall be presented to  
203 the governor. Within thirty days of receiving said pro-  
204 posed amendments or modifications, the governor shall  
205 either approve or disapprove all or part of said amend-  
206 ments and modifications, and, for any portion of amend-  
207 ments or modifications not approved, shall specify the  
208 reason or reasons for nonapproval. Any portions of the  
209 amendments or modifications not approved by the gover-  
210 nor may be revised and resubmitted.

**§16-2D-6. Minimum criteria for certificate of need reviews.**

1 (a) Except as provided in subsections (f) and (g), sec-  
2 tion nine of this article, in making its determination as to  
3 whether a certificate of need shall be issued, the state agen-  
4 cy shall, at a minimum, consider all of the following crite-  
5 ria that are applicable: *Provided*, That in the case of a  
6 health maintenance organization or an ambulatory care  
7 facility or health care facility controlled, directly or indi-  
8 rectly, by a health maintenance organization or combina-  
9 tion of health maintenance organizations, the criteria con-  
10 sidered shall be only those set forth in subdivision (12) of  
11 this subsection: *Provided, however*, That the criteria set  
12 forth in subsection (f) of this section applies to all hospi-  
13 tals, nursing homes and health care facilities when ventila-  
14 tor services are to be provided for any nursing facility  
15 bed:

16 (1) The recommendation of the designated health  
17 systems agency for the health service area in which the

18 proposed new institutional health service is to be located;

19 (2) The relationship of the health services being re-  
20 viewed to the state health plan and to the applicable health  
21 systems plan and annual implementation plan adopted by  
22 the designated health systems agency for the health service  
23 area in which the proposed new institutional health service  
24 is to be located;

25 (3) The relationship of services reviewed to the  
26 long-range development plan of the person providing or  
27 proposing the services;

28 (4) The need that the population served or to be  
29 served by the services has for the services proposed to be  
30 offered or expanded, and the extent to which all residents  
31 of the area, and in particular low income persons, racial  
32 and ethnic minorities, women, handicapped persons, other  
33 medically underserved population, and the elderly, are  
34 likely to have access to those services;

35 (5) The availability of less costly or more effective  
36 alternative methods of providing the services to be offered,  
37 expanded, reduced, relocated or eliminated;

38 (6) The immediate and long-term financial feasibility  
39 of the proposal as well as the probable impact of the pro-  
40 posal on the costs of and charges for providing health  
41 services by the person proposing the new institutional  
42 health service;

43 (7) The relationship of the services proposed to the  
44 existing health care system of the area in which the servic-  
45 es are proposed to be provided;

46 (8) In the case of health services proposed to be pro-  
47 vided, the availability of resources, including health care  
48 providers, management personnel, and funds for capital  
49 and operating needs, for the provision of the services pro-  
50 posed to be provided and the need for alternative uses of  
51 these resources as identified by the state health plan, appli-  
52 cable health systems plan and annual implementation

53 plan;

54 (9) The appropriate and nondiscriminatory utilization  
55 of existing and available health care providers;

56 (10) The relationship, including the organizational  
57 relationship, of the health services proposed to be provid-  
58 ed to ancillary or support services;

59 (11) Special needs and circumstances of those entities  
60 which provide a substantial portion of their services or  
61 resources, or both, to individuals not residing in the health  
62 service areas in which the entities are located or in adjacent  
63 health service areas. The entities may include medical and  
64 other health professional schools, multidisciplinary clinics  
65 and specialty centers;

66 (12) To the extent not precluded by subdivision (1),  
67 subsection (f), section nine of this article, the special needs  
68 and circumstances of health maintenance organizations.  
69 These needs and circumstances are limited to:

70 (A) The needs of enrolled members and reasonably  
71 anticipated new members of the health maintenance orga-  
72 nization for the health services proposed to be provided  
73 by the organization; and

74 (B) The availability of the new health services from  
75 nonhealth maintenance organization providers or other  
76 health maintenance organizations in a reasonable and  
77 cost-effective manner which is consistent with the basic  
78 method of operation of the health maintenance organiza-  
79 tion. In assessing the availability of these health services  
80 from these providers, the agency shall consider only  
81 whether the services from these providers:

82 (i) Would be available under a contract of at least five  
83 years' duration;

84 (ii) Would be available and conveniently accessible  
85 through physicians and other health professionals associ-  
86 ated with the health maintenance organization;

87 (iii) Would cost no more than if the services were pro-  
88 vided by the health maintenance organization; and

89 (iv) Would be available in a manner which is adminis-  
90 tratively feasible to the health maintenance organization;

91 (13) The special needs and circumstances of biomed-  
92 ical and behavioral research projects which are designed to  
93 meet a national need and for which local conditions offer  
94 special advantages;

95 (14) In the case of a reduction or elimination of a  
96 service, including the relocation of a facility or a service,  
97 the need that the population presently served has for the  
98 service, the extent to which that need will be met adequate-  
99 ly by the proposed relocation or by alternative arrange-  
100 ments, and the effect of the reduction, elimination or relo-  
101 cation of the service on the ability of low income persons,  
102 racial and ethnic minorities, women, handicapped persons,  
103 other medically underserved population, and the elderly,  
104 to obtain needed health care;

105 (15) In the case of a construction project: (A) The  
106 cost and methods of the proposed construction, including  
107 the costs and methods of energy provision and (B) the  
108 probable impact of the construction project reviewed on  
109 the costs of providing health services by the person pro-  
110 posing the construction project and on the costs and  
111 charges to the public of providing health services by other  
112 persons;

113 (16) In the case of health services proposed to be  
114 provided, the effect of the means proposed for the deliv-  
115 ery of proposed health services on the clinical needs of  
116 health professional training programs in the area in which  
117 the services are to be provided;

118 (17) In the case of health services proposed to be  
119 provided, if the services are to be available in a limited  
120 number of facilities, the extent to which the schools in the  
121 area for health professions will have access to the services

122 for training purposes;

123 (18) In the case of health services proposed to be  
124 provided, the extent to which the proposed services will be  
125 accessible to all the residents of the area to be served by  
126 the services;

127 (19) In accordance with section five of this article, the  
128 factors influencing the effect of competition on the supply  
129 of the health services being reviewed;

130 (20) Improvements or innovations in the financing  
131 and delivery of health services which foster competition, in  
132 accordance with section five of this article, and serve to  
133 promote quality assurance and cost effectiveness;

134 (21) In the case of health services or facilities pro-  
135 posed to be provided, the efficiency and appropriateness  
136 of the use of existing services and facilities similar to those  
137 proposed;

138 (22) In the case of existing services or facilities, the  
139 quality of care provided by the services or facilities in the  
140 past;

141 (23) In the case where an application is made by an  
142 osteopathic or allopathic facility for a certificate of need  
143 to construct, expand, or modernize a health care facility,  
144 acquire major medical equipment, or add services, the  
145 need for that construction, expansion, modernization,  
146 acquisition of equipment, or addition of services shall be  
147 considered on the basis of the need for and the availability  
148 in the community of services and facilities for osteopathic  
149 and allopathic physicians and their patients. The state  
150 agency shall consider the application in terms of its impact  
151 on existing and proposed institutional training programs  
152 for doctors of osteopathy and medicine at the student,  
153 internship, and residency training levels;

154 (24) The special circumstances of health care facilities  
155 with respect to the need for conserving energy;

156       (25) The contribution of the proposed service in meet-  
157 ing the health related needs of members of medically  
158 underserved populations which have traditionally experi-  
159 enced difficulties in obtaining equal access to health ser-  
160 vices, particularly those needs identified in the state health  
161 plan, applicable health systems plan and annual imple-  
162 mentation plan, as deserving of priority. For the purpose  
163 of determining the extent to which the proposed service  
164 will be accessible, the state agency shall consider:

165       (A) The extent to which medically underserved popu-  
166 lations currently use the applicant's services in comparison  
167 to the percentage of the population in the applicant's ser-  
168 vice area which is medically underserved, and the extent to  
169 which medically underserved populations are expected to  
170 use the proposed services if approved;

171       (B) The performance of the applicant in meeting its  
172 obligation, if any, under any applicable federal regulations  
173 requiring provision of uncompensated care, community  
174 service, or access by minorities and handicapped persons  
175 to programs receiving federal financial assistance, includ-  
176 ing the existence of any civil rights access complaints  
177 against the applicant;

178       (C) The extent to which medicare, medicaid and medi-  
179 cally indigent patients are served by the applicant; and

180       (D) The extent to which the applicant offers a range of  
181 means by which a person will have access to its services,  
182 including, but not limited to, outpatient services, admission  
183 by a house staff and admission by personal physician;

184       (26) The existence of a mechanism for soliciting con-  
185 sumer input into the health care facility's decision making  
186 process.

187       (b) The state agency may include additional criteria  
188 which it prescribes by regulations adopted pursuant to  
189 section eight of this article.

190       (c) Criteria for reviews may vary according to the

191 purpose for which a particular review is being conducted  
192 or the types of health services being reviewed.

193 (d) An application for a certificate of need may not be  
194 made subject to any criterion not contained in this article  
195 or not contained in regulations adopted pursuant to sec-  
196 tion eight of this article.

197 (e) In the case of any proposed new institutional  
198 health service, the state agency may not grant a certificate  
199 of need under its certificate of need program unless, after  
200 consideration of the appropriateness of the use of existing  
201 facilities providing services similar to those being pro-  
202 posed, the state agency makes, in addition to findings  
203 required in section nine of this article, each of the follow-  
204 ing findings in writing: (1) That superior alternatives to  
205 the services in terms of cost, efficiency and appropriate-  
206 ness do not exist and the development of alternatives is not  
207 practicable; (2) that existing facilities providing services  
208 similar to those proposed are being used in an appropriate  
209 and efficient manner; (3) that in the case of new construc-  
210 tion, alternatives to new construction, such as moderniza-  
211 tion or sharing arrangements, have been considered and  
212 have been implemented to the maximum extent practica-  
213 ble; (4) that patients will experience serious problems in  
214 obtaining care of the type proposed in the absence of the  
215 proposed new service; and (5) that in the case of a propos-  
216 al for the addition of beds for the provision of skilled  
217 nursing or intermediate care services, the addition will be  
218 consistent with the plans of other agencies of the state  
219 responsible for the provision and financing of long-term  
220 care facilities or services including home health services.

221 (f) In the case where an application is made by a hos-  
222 pital, nursing home or other health care facility to provide  
223 ventilator services which have not previously been provid-  
224 ed for a nursing facility bed, the state agency shall consid-  
225 er the application in terms of the need for the service and  
226 whether the cost exceeds the level of current medicaid  
227 services. No facility may, by providing ventilator services,

228 provide a higher level of service for a nursing facility bed  
229 without demonstrating that the change in level of service  
230 by provision of the additional ventilator services will result  
231 in no additional fiscal burden to the state.

232 (g) In the case where application is made by any  
233 person or entity to provide personal care services which  
234 are to be billed for medicaid reimbursement, the state  
235 agency shall consider the application in terms of the need  
236 for the service and whether the cost exceeds the level of  
237 the cost of current medicaid services. No person or entity  
238 may provide personal care services to be billed for medic-  
239 aid reimbursement without demonstrating that the provi-  
240 sion of the personal care service will result in no additional  
241 fiscal burden to the state: *Provided*, That a certificate of  
242 need shall not be required for a person providing special-  
243 ized foster care personal care services to one individual  
244 and those services are delivered in the provider's home.  
245 The state agency will also consider the total fiscal liability  
246 to the state for all applications which have been submitted.

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## CHAPTER 122

(H. B. 2722—By Delegate Gallagher)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section five-a, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to periodic license inspections of hospitals; exemptions; annual self-evaluations; and confidentiality of accreditation reports.

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

That section five-a, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as



amended, be amended and reenacted to read as follows:

**ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

**§16-5B-5a. Accreditation reports accepted for periodic license inspections.**

1       Notwithstanding any other provision of this article, a  
2 periodic license inspection shall not be conducted by the  
3 state department of health and human resources for a  
4 hospital if the hospital has applied for and received an  
5 exemption from that requirement: *Provided*, That no  
6 exemption granted diminishes the right of the state depart-  
7 ment of health and human resources to conduct complaint  
8 inspections: *Provided, however*, That no exemption grant-  
9 ed relieves a hospital from compliance with section six-a  
10 of this article.

11       The state department of health and human resources  
12 shall grant an exemption from a periodic license inspec-  
13 tion during the year following accreditation if a hospital  
14 applies by submitting evidence of its accreditation by the  
15 joint commission on accreditation of health care organiza-  
16 tions or the American osteopathic association and submits  
17 a complete copy of the commission's accreditation report.

18       If the accreditation of a hospital is for a period longer  
19 than one year, the state department of health and human  
20 resources may conduct at least one license inspection of  
21 the hospital after the first year of accreditation and before  
22 the accreditation has expired and may conduct additional  
23 license inspections if needed. Hospitals receiving a three-  
24 year accreditation shall conduct annual self-evaluations  
25 using the current year accreditation manual for hospitals  
26 (AMH) unless the state department of health and human  
27 resources informs the hospital that the hospital will be  
28 inspected by the state department of health and human  
29 resources. Hospitals are not required to conduct self-eval-  
30 uations for any calendar year during which they are in-  
31 spected by the state department of health and human re-  
32 sources. These self-evaluations shall be completed and  
33 placed on file in the hospital by the thirty-first day of

34 March of each year. Hospitals shall make the results of  
35 the self-evaluation available to the state department of  
36 health and human resources if requested.

37 Accreditation reports filed with the state department  
38 of health and human resources shall be treated as  
39 confidential in accordance with section ten of this article.



## CHAPTER 123

(H. B. 2026—By Delegates Douglas, Gallagher, Beane,  
Amores, Staton and Manuel)



[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]



AN ACT to repeal section eight-a, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to substituted consent for health care services in extended care facilities operated in connection with hospitals.

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

### **ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

#### **§1. Repeal of section relating to substituted consent for health care services in extended care facilities operated in connection with hospitals.**

1 Section eight-a, article five-b, chapter sixteen of the  
2 code of West Virginia, one thousand nine hundred  
3 thirty-one, as amended, is hereby repealed.

## CHAPTER 124

(S. B. 430—By Senators Helmick, Wiedebusch, Ross, Whitlow, Scott, Manchin, Tomblin, Mr. President, Sharpe, Dittmar, Walker, Buckalew, Kimble, Love, Wagner, Bailey, Anderson, Wooton, Craigo, Chafin, White, Schoonover, Bowman, Deem, Plymale and Jackson)

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[Passed March 6, 1995; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nursing, personal and residential care homes; and exempting fraternal homes from the licensing requirements.

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

That section two, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

### ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.

#### §16-5C-2. Definitions.

1 As used in this article, unless a different meaning  
2 appears from the context:

3 (a) The term "director" means the secretary of the  
4 department of health and human resources or his or her  
5 designee;

6 (b) The term "facility" means any nursing home, per-  
7 sonal care home or residential board and care home as  
8 defined in subdivisions (d), (e) and (f) of this section:  
9 *Provided*, That the care or treatment in a household,  
10 whether for compensation or not, of any person related by

11 blood or marriage, within the degree of consanguinity of  
12 second cousin to the head of the household, or his or her  
13 spouse, may not be deemed to constitute a nursing home,  
14 personal care home or residential board and care home  
15 within the meaning of this article. Nothing contained in  
16 this article applies to hospitals, as defined under section  
17 one, article five-b of this chapter; or state institutions, as  
18 defined under section three, article one, chapter  
19 twenty-five of this code or section six, article one, chapter  
20 twenty-seven of this code; or nursing homes operated by  
21 the federal government or the state government; or institu-  
22 tions operated for the treatment and care of alcoholic  
23 patients; or offices of physicians; or hotels, boarding  
24 homes or other similar places that furnish to their guests  
25 only room and board; or extended care facilities operated  
26 in conjunction with a hospital; or to homes or asylums  
27 operated by fraternal orders pursuant to article three,  
28 chapter thirty-five of this code;

29 (c) The term "limited and intermittent nursing care"  
30 means care which may only be provided when the need  
31 for such care meets these factors: (1) The resident re-  
32 quests to remain in the facility; (2) the resident is advised  
33 of the availability of other specialized health care facilities  
34 to treat his or her condition; and (3) the need for such  
35 care is the result of a medical pathology or a result of the  
36 normal aging process. Limited and intermittent nursing  
37 care shall only be provided by or under the direct supervi-  
38 sion of a registered professional nurse and in accordance  
39 with rules promulgated by the board of health;

40 (d) The term "nursing home" means any institution,  
41 residence or place, or any part or unit thereof, however  
42 named, in this state which is advertised, offered, main-  
43 tained or operated by the ownership or management,  
44 whether for a consideration or not, for the express or im-  
45 plied purpose of providing accommodations and care, for  
46 a period of more than twenty-four hours, for four or more

47 persons who are ill or otherwise incapacitated and in need  
48 of extensive, on-going nursing care due to physical or  
49 mental impairment or which provides services for the  
50 rehabilitation of persons who are convalescing from illness  
51 or incapacitation;

52 (e) The term "personal care home" means any institu-  
53 tion, residence or place, or any part or unit thereof, howev-  
54 er named, in this state which is advertised, offered, main-  
55 tained or operated by the ownership or management,  
56 whether for a consideration or not, for the express or im-  
57 plied purpose of providing accommodations and personal  
58 assistance and supervision, for a period of more than  
59 twenty-four hours, to four or more persons who are de-  
60 pendent upon the services of others by reason of physical  
61 or mental impairment who may require limited and inter-  
62 mittent nursing care, including those individuals who qual-  
63 ify for and are receiving services coordinated by a li-  
64 censed hospice: *Provided*, That services utilizing equip-  
65 ment which requires auxiliary electrical power in the event  
66 of a power failure may not be used unless the personal  
67 care home has a backup power generator;

68 (f) The term "residential board and care home" means  
69 any residence or place, or any part or unit thereof, howev-  
70 er named, in this state which is advertised, offered, main-  
71 tained or operated by the ownership or management,  
72 whether for consideration or not, for the express or im-  
73 plied purpose of providing accommodations and personal  
74 assistance and supervision, for a period of more than  
75 twenty-four hours, to four to ten persons who are not  
76 related to the owner or manager by blood or marriage  
77 within the degree of consanguinity of second cousin and  
78 are dependent upon the services of others by reason of  
79 physical or mental impairment or who may require limited  
80 and intermittent nursing care but are capable of  
81 self-preservation and are not bedfast, including those indi-  
82 viduals who qualify for and are receiving services coordi-

83 nated by a licensed hospice: *Provided*, That services uti-  
84 lizing equipment which requires auxiliary electrical power  
85 in the event of a power failure may not be used unless the  
86 residential board and care home has a backup power gen-  
87 erator;

88 (g) The term "nursing care" means those procedures  
89 commonly employed in providing for the physical, emo-  
90 tional and rehabilitational needs of the ill or otherwise  
91 incapacitated which require technical skills and knowledge  
92 beyond that which the untrained person possesses, includ-  
93 ing, but not limited to, such procedures as: Irrigations,  
94 catheterizations, special procedure contributing to rehabil-  
95 itation and administration of medication by any method  
96 which involves a level of complexity and skill in adminis-  
97 tration not possessed by the untrained person;

98 (h) The term "personal assistance" means personal  
99 services, including, but not limited to, the following: Help  
100 in walking, bathing, dressing, feeding or getting in or out  
101 of bed, or supervision required because of the age or men-  
102 tal impairment of the resident;

103 (i) The term "patient" means an individual under care  
104 in a nursing home;

105 (j) The term "resident" means an individual living in a  
106 personal care home or a residential board and care home;

107 (k) The term "sponsor" means the person or agency  
108 legally responsible for the welfare and support of a patient  
109 or resident;

110 (l) The term "person" means an individual and every  
111 form of organization, whether incorporated or unincorpo-  
112 rated, including any partnership, corporation, trust, associ-  
113 ation or political subdivision of the state.

114 The director may define in regulations any term used  
115 herein which is not expressly defined.

## CHAPTER 125

(Com. Sub. for H. B. 2322—By Delegates Seacrist, Hunt and Amores)

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[Passed March 11, 1995; in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section two, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of county commissions to create, enlarge, reduce, merge, dissolve or consolidate public service districts subject to the approval of the public service commission.

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

That section two, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER,  
SEWERAGE AND GAS SERVICES.**

**§16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.**

1 (a) The county commission of any county may  
2 propose the creation, enlargement, reduction, merger,  
3 dissolution, or consolidation of a public service district by  
4 any of the following methods: (1) On its own motion by  
5 order duly adopted, (2) upon the recommendation of the  
6 public service commission, or (3) by petition of twenty-  
7 five percent of the registered voters who reside within the  
8 limits of the proposed public service district within one or  
9 more counties. The petition shall contain a description,  
10 including metes and bounds, sufficient to identify the  
11 territory to be embraced therein and the name of such  
12 proposed district: *Provided*, That after the effective date of

13 this section, no new public service district shall be created,  
14 enlarged, reduced, merged, dissolved or consolidated  
15 under this section without the written consent and approval  
16 of the public service commission, which approval and  
17 consent shall be in accordance with rules promulgated by  
18 the public service commission and may only be requested  
19 after consent is given by the appropriate county  
20 commission or commissions pursuant to this section. Any  
21 territory may be included regardless of whether or not the  
22 territory includes one or more cities, incorporated towns  
23 or other municipal corporations which own and operate  
24 any public service properties and regardless of whether or  
25 not it includes one or more cities, incorporated towns or  
26 other municipal corporations being served by privately  
27 owned public service properties: *Provided, however,* That  
28 the same territory shall not be included within the  
29 boundaries of more than one public service district except  
30 where the territory or part thereof is included within the  
31 boundaries of a separate public service district organized  
32 to supply water, sewerage services or gas facilities not  
33 being furnished within such territory or part thereof:  
34 *Provided further,* That no city, incorporated town or other  
35 municipal corporation shall be included within the  
36 boundaries of the proposed district except upon the  
37 adoption of a resolution of the governing body of the city,  
38 incorporated town or other municipal corporation  
39 consenting.

40 (b) The petition shall be filed in the office of the  
41 clerk of the county commission of the county in which the  
42 territory to constitute the proposed district is situated, and  
43 if the territory is situated in more than one county, then  
44 the petition shall be filed in the office of the clerk of the  
45 county commission of the county in which the major  
46 portion of the territory extends, and a copy thereof  
47 (omitting signatures) shall be filed with each of the clerks  
48 of the county commission of the other county or counties  
49 into which the territory extends. The clerk of the county  
50 commission receiving such petition shall present it to the  
51 county commission of the county at the first regular  
52 meeting after the filing or at a special meeting called for  
53 the consideration thereof.



54 (c) When the county commission of any county  
55 enters an order on its own motion proposing the creation,  
56 enlargement, reduction, merger, dissolution or consoli-  
57 dation of a public service district, as aforesaid, or when a  
58 petition for the creation is presented, as aforesaid, the  
59 county commission shall at the same session fix a date of  
60 hearing in the county on the creation, enlargement,  
61 reduction, merger, dissolution or consolidation of the  
62 proposed public service district, which date so fixed shall  
63 be not more than forty days nor less than twenty days  
64 from the date of the action. If the territory proposed to be  
65 included is situated in more than one county, the county  
66 commission, when fixing a date of hearing, shall provide  
67 for notifying the county commission and clerk thereof of  
68 each of the other counties into which the territory extends  
69 of the date so fixed. The clerk of the county commission  
70 of each county in which any territory in the proposed  
71 public service district is located shall cause notice of the  
72 hearing and the time and place thereof, and setting forth a  
73 description of all of the territory proposed to be included  
74 therein to be given by publication as a Class I legal  
75 advertisement in compliance with the provisions of article  
76 three, chapter fifty-nine of this code, and the publication  
77 area for the publication shall be by publication in each  
78 city, incorporated town or municipal corporation if  
79 available in each county in which any territory in the  
80 proposed public service district is located. The publication  
81 shall be at least ten days prior to the hearing.

82 (d) In all cases where proceedings for the creation,  
83 enlargement, reduction, merger, dissolution or consoli-  
84 dation of the public service districts are initiated by  
85 petition as aforesaid, the person filing the petition shall  
86 advance or satisfactorily indemnify the payment of the  
87 cost and expenses of publishing the hearing notice, and  
88 otherwise the costs and expenses of the notice shall be  
89 paid in the first instance by the county commission out of  
90 contingent funds or any other funds available or made  
91 available for that purpose. In addition to the notice  
92 required herein to be published, there shall also be posted  
93 in at least five conspicuous places in the proposed public  
94 service district, a notice containing the same information

95 as is contained in the published notice. The posted notices  
96 shall be posted not less than ten days before the hearing.

97 (e) All persons residing in or owning or having any  
98 interest in property in the proposed public service district  
99 shall have an opportunity to be heard for and against its  
100 creation, enlargement, reduction, merger, dissolution or  
101 consolidation. At the hearing the county commission  
102 before which the hearing is conducted shall consider and  
103 determine the feasibility of the creation, enlargement,  
104 reduction, merger, dissolution or consolidation of the  
105 proposed district. If the county commission determines  
106 that the construction or acquisition by purchase or  
107 otherwise and maintenance, operation, improvement and  
108 extension of public service properties by the public service  
109 district will be conducive to the preservation of public  
110 health, comfort and convenience of such area, the county  
111 commission shall by order create, enlarge, reduce, merge,  
112 dissolve or consolidate such public service district. If the  
113 county commission, after due consideration, determines  
114 that the proposed district will not be conducive to the  
115 preservation of public health, comfort or convenience of  
116 the area or that the creation, enlargement, reduction,  
117 merger, dissolution or consolidation of the proposed  
118 district as set forth and described in the petition or order is  
119 not feasible, it may refuse to enter an order creating the  
120 district or it may enter an order amending the description  
121 of the proposed district and create, enlarge, reduce, merge,  
122 dissolve or consolidate the district as amended.

123 (f) If the county commission determines that any  
124 other public service district or districts can adequately  
125 serve the area of the proposed public service district,  
126 whether by enlargement, reduction, merger, dissolution or  
127 consolidation, it shall refuse to enter the order, but shall  
128 enter an order creating, enlarging, reducing, merging,  
129 dissolving or consolidating the area with an existing public  
130 service district, in accordance with rules adopted by the  
131 public service commission for such purpose: *Provided,*  
132 That no enlargement of a public service district may occur  
133 if the present or proposed physical facilities of the public  
134 service district are determined by the appropriate county  
135 commission or the public service commission to be

136 inadequate to provide such enlarged service. The clerk of  
137 the county commission of each county into which any  
138 part of such district extends shall retain in his office an  
139 authentic copy of the order creating, enlarging, reducing,  
140 merging, dissolving or consolidating the district: *Provided,*  
141 *however,* That within ten days after the entry of an order  
142 creating, enlarging, reducing, merging, dissolving or con-  
143 solidating a district, such order must be filed for review  
144 and approval by the public service commission. The  
145 public service commission shall provide a hearing in the  
146 affected county on the matter and may approve, reject or  
147 modify the order of the county commission if it finds it is  
148 in the best interests of the public to do so. The public  
149 service commission shall adopt rules relating to such  
150 filings and the approval, disapproval or modification of  
151 county commission orders for creating, enlarging,  
152 merging, dissolving or consolidating districts. The  
153 provisions of this section shall not apply to the  
154 implementation by a county commission of an order  
155 issued by the public service commission pursuant to this  
156 section and section one-b of this article.

157 (g) The county commission may, if in its discretion it  
158 deems it necessary, feasible and proper, enlarge the district  
159 to include additional areas, reduce the area of the district,  
160 where facilities, equipment, service or materials have not  
161 been extended, or dissolve the district if inactive or create  
162 or consolidate two or more such districts. If consolidation  
163 of districts is not feasible, the county commission may  
164 consolidate and centralize management and administration  
165 of districts within its county or multicounty area to achieve  
166 efficiency of operations: *Provided,* That where the county  
167 commission determines on its own motion by order  
168 entered of record, or there is a petition to enlarge the  
169 district, merge and consolidate districts, or the  
170 management and administration thereof, reduce the area  
171 of the district or dissolve the district if inactive, all of the  
172 applicable provisions of this article providing for hearing,  
173 notice of hearing and approval by the public service  
174 commission shall apply. The commission shall at all times  
175 attempt to bring about the enlargement or merger of  
176 existing public service districts in order to provide

177 increased services and to eliminate the need for creation of  
178 new public service districts in those areas which are not  
179 currently serviced by a public service district: *Provided,*  
180 *however,* That where two or more public service districts  
181 are consolidated pursuant to this section, any rate differen-  
182 tials may continue for the period of bonded indebtedness  
183 incurred prior to consolidation. The districts may not  
184 enter into any agreement, contract or covenant that in-  
185 fringes upon, impairs, abridges or usurps the duties, rights  
186 or powers of the county commission, as set forth in this  
187 article, or conflicts with any provision of this article.

188 (h) A list of all districts and their current board mem-  
189 bers shall be filed by the county commission with the  
190 secretary of state and the public service commission by the  
191 first day of July of each year.

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## CHAPTER 126

(S. B. 563—By Senator Walker)

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[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections four and five, article twenty-nine-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-nine-e, all relating to the state health care and human services programs generally, including, but not limited to, terminating the uncompensated health care and medicaid expenditures task force and transferring their duties to the legislative oversight commission on health and human resources accountability; creating a legislative oversight commission on health and human resources accountability; appointments; compensation and expenses; powers and duties; studies; and annual reports to the Legislature.

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

That sections four and five, article twenty-nine-c, chapter

sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article twenty-nine-e, all to read as follows:

Article

**29C. Indigent Care.**

**29E. Legislative Oversight Commission on Health and Human Resources Accountability.**

**ARTICLE 29C. INDIGENT CARE.**

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

§16-29C-5. Effective date and termination date.

**§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.**

1 (a) Not later than the first day of June, one thousand  
2 nine hundred eighty-five, the president of the Senate and  
3 speaker of the House of Delegates of the West Virginia  
4 Legislature shall appoint a legislative task force on un-  
5 compensated health care and medicaid expenditures which  
6 shall meet, study and make recommendations as herein  
7 provided.

8 (b) The task force shall be composed of three mem-  
9 bers of the Senate appointed by the president from the  
10 membership of the Senate standing committee on health  
11 and human resources, three members of the House of  
12 Delegates appointed by the speaker from the membership  
13 of the House of Delegates standing committee on health  
14 and human resources and a number of citizens appointed  
15 jointly by the president and speaker which, in their discre-  
16 tion, adequately provides for the appropriate representa-  
17 tion of the interests of the providers of health care services,  
18 the providers of health care insurance, state departments  
19 involved in the administration of health care and health  
20 care related programs and the citizens of this state. Of the  
21 members of the Senate appointed by the president, not  
22 more than two shall be from the same political party. Of  
23 the members of the House of Delegates appointed by the  
24 speaker, not more than two shall be from the same politi-  
25 cal party.

26 (c) Members originally appointed to the task force  
27 shall serve for terms beginning on the date of appointment  
28 and ending on the thirtieth day of June, one thousand nine  
29 hundred ninety-five, unless sooner replaced by the presi-  
30 dent or the speaker as applicable, or, in the discretion of  
31 the president and the speaker, unless the work of the task  
32 force is completed or the need for the task force no longer  
33 exists prior to that date. The task force shall cease to exist  
34 on the thirtieth day of June, one thousand nine hundred  
35 ninety-five. The duties of the task force, as defined in this  
36 section, shall be assumed by the legislative oversight com-  
37 mission on health and human resources accountability  
38 created pursuant to the provisions of article twenty-nine-e  
39 of this chapter.

40 (d) The task force shall meet on such dates as may be  
41 approved by the joint committee on government and fi-  
42 nance for the regular meetings of its subcommittees unless  
43 approval is first obtained from the joint committee on  
44 government and finance for additional meetings. The task  
45 force shall conduct studies on the amount of funds ex-  
46 pended by hospitals and other health care providers of this  
47 state for services to persons who are unable to pay for  
48 those services and for which they receive no other form of  
49 reimbursement, the extent to which persons in this state  
50 forego needed medical services because of insufficient  
51 income and assets to pay for those services, the extent to  
52 which the state is maximizing available federal programs  
53 and moneys in providing health care services to the citi-  
54 zens of this state, the operation of the programs and funds  
55 created by this article and the roles of the public, private  
56 and private nonprofit sectors in providing health care  
57 services to the citizens of this state. The task force shall  
58 also study the state medicaid program in order to deter-  
59 mine if the state medicaid agency, as the payor of last  
60 resort, is expending maximum effort to identify alternate  
61 private insurance resources for medicaid beneficiaries and  
62 shall study the feasibility and financial impact upon the  
63 state of assuring increased access to medicaid beneficiaries  
64 to primary health care in the nonhospital setting by re-  
65 quiring enrollment in a primary care clinic program, if  
66 available, and of the establishment of different and lesser

67 schedules of payment for primary health services deliv-  
68 ered by a hospital emergency room as compared to the  
69 schedule of payments for emergency room services of a  
70 true medical emergency nature.

71 (e) The task force shall file an interim report with the  
72 joint committee on government and finance and the Leg-  
73 islature on the date of the last meeting of the joint com-  
74 mittee on government and finance prior to commence-  
75 ment of the regular session of the Legislature in each year  
76 before the final report of the task force is filed with the  
77 joint committee on government and finance and the Leg-  
78 islature on or before the thirtieth day of June, one thou-  
79 sand nine hundred ninety-five.

80 (f) The members of the task force shall be entitled to  
81 compensation at the rate authorized for members of the  
82 Legislature participating in legislative interim meetings  
83 and to reimbursement for reasonable and necessary ex-  
84 penses actually incurred in attending meetings of the task  
85 force, except that any employee of the state appointed to  
86 the task force is not entitled to such compensation. Funds  
87 necessary for the work of the task force shall be paid from  
88 joint appropriations to the Senate and House of Delegates  
89 but no such funds shall be spent or obligations incurred in  
90 the conduct of such work without prior approval of the  
91 joint committee on government and finance.

**§16-29C-5. Effective date and termination date.**

1 This article shall be effective from passage and, not-  
2 withstanding the provisions of section four of this article,  
3 shall terminate on the thirtieth day of June, one thousand  
4 nine hundred ninety-five.

**ARTICLE 29E. LEGISLATIVE OVERSIGHT COMMISSION ON  
HEALTH AND HUMAN RESOURCES AC-  
COUNTABILITY.**

§16-29E-1. Findings and purpose.

§16-29E-2. Legislative intent.

§16-29E-3. Definitions.

§16-29E-4. Creation of a legislative oversight commission on health and  
human resources accountability.

§16-29E-5. Powers and duties of commission.

§16-29E-6. Examination and subpoena powers; contempt proceedings.

§16-29E-7. Legislative reports.

**§16-29E-1. Findings and purpose.**

1 The Legislature hereby finds and declares that:

2 (1) A crisis exists in the funding of health and social  
3 programs of this state;

4 (2) These programs exist to provide federal and state  
5 supported services to citizens in need;

6 (3) The health and well-being of these citizens is jeop-  
7 arded when uncontrolled growth in various programs  
8 uses a disproportionate share of the available funding;

9 (4) State programs are often developed and imple-  
10 mented with limited private or federal grant moneys,  
11 which require future funding from the limited state re-  
12 sources; and

13 (5) The problem is exacerbated when various state  
14 agencies make competing or conflicting policy decisions.

**§16-29E-2. Legislative intent.**

1 It is the intent of the Legislature that all actions taken  
2 pursuant to the provisions of this article by the Legislature  
3 and the various agencies within the department of health  
4 and human resources serve the following core set of prin-  
5 ciples:

6 (1) That all health and social programs offered under  
7 state authority be coordinated to maximize efficiencies  
8 and minimize competition within the various agencies  
9 thereby addressing the needs of the citizens more effec-  
10 tively;

11 (2) That communication be facilitated among the  
12 various agencies within the department of health and hu-  
13 man resources and between the department and the Legis-  
14 lature;

15 (3) That policy changes, not made by legislative rule,  
16 be discussed with the commission for purposes of coordi-  
17 nating those policies with existing programs and stated



18 goals;

19 (4) That programs or policies implemented in accor-  
20 dance with federal mandates be communicated to the  
21 commission;

22 (5) That in developing and implementing programs  
23 with private or federal grant moneys, the various agencies  
24 communicate their efforts to the commission to ensure  
25 and facilitate future state funding; and

26 (6) That agencies previously exempted from  
27 rule-making review by federal or state statutes advise the  
28 commission of program changes which may affect the  
29 health and well-being of the citizens of West Virginia.

#### **§16-29E-3. Definitions.**

1 As used in this article:

2 (a) "Agency" means those various agencies, authorities,  
3 boards, committees, commissions or departments of the  
4 department of health and human resources with authority  
5 to promulgate legislative rules pursuant to this chapter that  
6 regulate health care providers, practitioners or consumers;  
7 or those offering social services programs;

8 (b) "Commission" means the legislative oversight com-  
9 mission on health and human resources accountability;  
10 and

11 (c) "Department" means the department of health and  
12 human resources.

#### **§16-29E-4. Creation of a legislative oversight commission on health and human resources accountability.**

1 (a) There is hereby created a joint commission of the  
2 Legislature known as the legislative oversight commission  
3 on health and human resources accountability. The com-  
4 mission shall be composed of six members of the Senate  
5 appointed by the president of the Senate and six members  
6 of the House of Delegates appointed by the speaker of the  
7 House of Delegates. No more than five of the six mem-  
8 bers appointed by the president of the Senate and the  
9 speaker of the House of Delegates, respectively, may be

10 members of the same political party. In addition, the  
11 president of the Senate and speaker of the House of Dele-  
12 gates shall be ex officio nonvoting members of the com-  
13 mission and shall designate the cochairpersons. At least  
14 one of the Senate appointees and one of the House of  
15 Delegates appointees shall be the chairperson of the com-  
16 mittee on health and human resources of the Senate and  
17 House of Delegates, respectively, and at least one of the  
18 Senate appointees and at least one of the House of Dele-  
19 gates appointees shall be a member of the committee on  
20 finance of the Senate and House of Delegates, respective-  
21 ly. The members shall serve until their successors shall  
22 have been appointed as heretofore provided.

23 (b) Members of the commission shall receive such  
24 compensation and expenses as provided in article two-a,  
25 chapter four of this code. Such expenses and all other  
26 expenses including those incurred in the employment of  
27 legal, technical, investigative, clerical, stenographic, adviso-  
28 ry and other personnel shall be paid from an appropria-  
29 tion to be made expressly for the legislative oversight  
30 commission on health and human resources accountabili-  
31 ty: *Provided*, That if no such appropriation be made, such  
32 expenses shall be paid from the appropriation under  
33 "Fund No. 0175 for Joint Expenses" created pursuant to  
34 the provisions of said chapter: *Provided, however*, That no  
35 expense of any kind payable under the account for joint  
36 expenses shall be incurred unless first approved by the  
37 joint committee on government and finance.

38 (c) The commission shall meet at any time both dur-  
39 ing sessions of the Legislature and in the interim or as  
40 often as may be necessary.

#### **§16-29E-5. Powers and duties of commission.**

1 (a) The powers, duties and responsibilities of the com-  
2 mission shall include the following:

3 (1) Make a continuing investigation, study and review  
4 of the practices, policies and procedures of the health care  
5 and social services agencies in this state;

6 (2) Make a continuing investigation, study and review

7 of all matters related to health and social policy in the  
8 state;

9 (3) Review program development by the various agen-  
10 cies of the department of health and human resources if  
11 those programs impact the physical, emotional or social  
12 well-being of the citizens of West Virginia;

13 (4) Conduct studies on:

14 (A) The amount of funds expended by hospitals and  
15 other health care providers of this state for services to  
16 persons who are unable to pay for those services and for  
17 which they receive no other form of reimbursement;

18 (B) The extent to which persons in this state forego  
19 needed medical services because of insufficient income  
20 and assets to pay for those services;

21 (C) The extent to which the state is maximizing avail-  
22 able federal programs and moneys in providing health  
23 care services to the citizens of this state;

24 (D) The operation of the programs and funds created  
25 by article twenty-nine-c of this chapter; and

26 (E) The roles of the public, private and private non-  
27 profit sectors in providing health care services to the citi-  
28 zens of this state;

29 (5) Review and study the state medicaid program in  
30 order to determine if the state medicaid agency, as the  
31 payor of last resort, is expending maximum effort to iden-  
32 tify alternate private insurance resources for medicaid  
33 beneficiaries;

34 (6) Review and study the feasibility and financial im-  
35 pact upon the state of assuring increased access to medic-  
36 aid beneficiaries to primary health care in the nonhospital  
37 setting by requiring enrollment in a primary care clinic  
38 program, if available;

39 (7) Review and study the feasibility and financial im-  
40 pact upon the state of the establishment of different and  
41 lesser schedules of payment for primary health services  
42 delivered by a hospital emergency room as compared to  
43 the schedule of payments for emergency room services of

44 a true medical emergency nature;

45 (8) Conduct a study on the effects of rural health  
46 networks, including effects on the quality, cost and avail-  
47 ability of care; and

48 (9) Meet jointly with the advisory committee created  
49 in article thirty-five of this chapter to determine methods  
50 for coordinating the collection and analysis of health care  
51 information within the state, including the development of  
52 health information systems that will allow for the electron-  
53 ic transmittal of data and access by the various agencies of  
54 government.

55 (b) The commission shall make annual reports to the  
56 Legislature regarding the results of all investigations, stud-  
57 ies and reviews pursuant to the provisions of section seven  
58 of this article.

**§16-29E-6. Examination and subpoena powers; contempt proceedings.**

1 (a) For purposes of carrying out its duties, the com-  
2 mission is hereby empowered and authorized to examine  
3 witnesses and to subpoena such persons and books, re-  
4 cords, documents, papers or any other tangible things as it  
5 believes should be examined to make a complete investi-  
6 gation.

7 (b) All witnesses appearing before the commission  
8 under subpoena shall testify under oath or affirmation.  
9 Any member of the commission may administer oaths or  
10 affirmations to such witnesses.

11 (c) To compel the attendance of witnesses at such  
12 hearings or the production of any books, records, docu-  
13 ments, papers or any other tangible thing, the commission  
14 is hereby empowered and authorized to issue subpoenas,  
15 signed by one of the cochairpersons, in accordance with  
16 section five, article one, chapter four of this code. Such  
17 subpoenas shall be served by any person authorized by  
18 law to serve and execute legal process and service shall be  
19 made without charge. Witnesses subpoenaed to attend  
20 hearings shall be allowed the same mileage and per diem  
21 as is allowed witnesses before any petit jury in this state.

22 (d) If any person subpoenaed to appear at any hearing  
23 shall refuse to appear or to answer inquiries there pro-  
24 pounded, or shall fail or refuse to produce books, records,  
25 documents, papers or any other tangible thing within his  
26 control when the same are demanded, the commission  
27 shall report the facts to the circuit court of Kanawha  
28 County or any other court of competent jurisdiction and  
29 such court may compel obedience to the subpoena as  
30 though such subpoena had been issued by such court in  
31 the first instance.

**§16-29E-7. Legislative reports.**

1 (a) The commission shall submit annual reports to the  
2 Legislature, as required by the provisions of section five of  
3 this article, which such reports shall describe and evaluate  
4 in a concise manner:

5 (1) The major activities of the several health and hu-  
6 man resources agencies for the fiscal year immediately  
7 past, including important policy decisions reached on  
8 initiatives undertaken during that year, especially as such  
9 activities, decisions and initiatives relate to:

10 (A) The implementation of health care or social ser-  
11 vices programs;

12 (B) Improving the accessibility of appropriate health  
13 care in all areas of this state;

14 (C) Improving the health status of the citizens of this  
15 state; and

16 (D) Coordinating social services programs to reflect a  
17 cohesive delivery of transitional services.

18 (2) Other information considered by the commission  
19 to be important, including recommendations for statutory,  
20 fiscal or policy reforms and reasons for such recommen-  
21 dations.

22 (b) The reports may specify in what manner any prac-  
23 tice, policy or procedure may or should be modified to  
24 satisfy the goal of efficient and effective delivery of health  
25 and social services programs and to improve the quality of  
26 health and social services available in this state.

## CHAPTER 127

(Com. Sub. for S. B. 161—By Senators Tomblin, Mr. President, and Boley)  
[By Request of the Executive]

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, six and nine, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating the West Virginia rural health advisory panel; legislative findings; definitions; continuing the rural health initiative; reports and audit required; and termination date.

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

That sections two, three, four, six and nine, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-2. Legislative findings and declarations.

§18B-16-3. Definitions.

§18B-16-4. Establishment of rural health initiative; goals of rural health initiative.

§18B-16-6. Creation of the West Virginia rural health advisory panel.

§18B-16-9. Accountability; reports and audit required.

#### §18B-16-2. Legislative findings and declarations.

- 1 (a) The Legislature hereby finds and declares that the
- 2 health of the citizens of West Virginia is of paramount
- 3 importance; that the education of health care professionals
- 4 must be reshaped; that the delivery of health care services
- 5 must be improved; that refocusing health sciences educa-
- 6 tion will aid in the recruitment of health care professionals
- 7 and their retention in the state; that the educational process
- 8 should incorporate clinical experience in rural areas and

9 provide improved availability of health care services  
10 throughout the state, especially in rural areas; and that the  
11 state investment in such education and services must be  
12 contained within reasonable limits.

13 (b) The Legislature further hereby finds and declares  
14 that the vice chancellor for health sciences shall provide an  
15 integral link among the advisory panel created in section  
16 six of this article, the health sciences programs at the state  
17 institutions of higher education, the governing boards of  
18 the state's institutions of higher education and the joint  
19 commission for vocational-technical-occupational educa-  
20 tion to assure cooperation and the coordination of efforts  
21 to effectuate the goals set forth in section four of this  
22 article.

23 (c) It is the further finding of the Legislature that the  
24 appropriations pursuant to section eight of this article are  
25 made with the understanding that the educational and  
26 clinical programs existing at the schools of medicine on  
27 the effective date of this section, as well as the goals of this  
28 article, will be met without requests for increases in the  
29 annual appropriations through the fiscal year beginning  
30 on the first day of July, one thousand nine hundred  
31 ninety-five, with the exception of requested increases in  
32 appropriations for the purpose of meeting any increases in  
33 the salaries of personnel as may be given to other employ-  
34 ees at state institutions of higher education under the  
35 board of trustees.

36 (d) The Legislature further finds that there is a serious  
37 need throughout the state for a greater number of primary  
38 care physicians and allied health care professionals and a  
39 serious need for improved accessibility to adequate health  
40 care throughout the state, especially in rural areas; that the  
41 state's medical schools are finding it difficult to satisfy the  
42 ever increasing demand for qualified persons to deliver  
43 these health care services; and that the state's institutions of  
44 higher education and rural health care facilities existing  
45 throughout the state are a major educational resource for  
46 training students in these health care services, as well as a

47 major resource for providing health care to underserved  
48 citizens of this state.

49 (e) The Legislature further finds that in order to pro-  
50 vide adequate health care in rural communities there must  
51 be a cooperative initiative among educators, physicians,  
52 mid-level providers, allied health care providers and the  
53 rural communities.

54 (f) The Legislature further finds that the rural health  
55 initiative and the Kellogg program have together imple-  
56 mented a nationally acclaimed, highly successful effort to  
57 enable the health professions schools to serve the rural and  
58 primary care health needs of the state and should be con-  
59 tinued as a single program within the office of the vice  
60 chancellor for health sciences.

#### §18B-16-3. Definitions.

1 For purposes of this article, and in addition to the  
2 definitions set forth in section two, article one of this chap-  
3 ter, the terms used in this article have the following defini-  
4 tions ascribed to them:

5 (a) "Advisory panel" or "panel" means the West Vir-  
6 ginia rural health advisory panel created under section six  
7 of this article.

8 (b) "Allied health care" means health care other than  
9 that provided by physicians, nurses, dentists and mid-level  
10 providers and includes, but is not limited to, care provided  
11 by clinical laboratory personnel, physical therapists, occu-  
12 pational therapists, respiratory therapists, medical records  
13 personnel, dietetic personnel, radiologic personnel,  
14 speech-language-hearing personnel and dental hygienists.

15 (c) "Mid-level provider" includes, but is not limited to,  
16 advanced nurse practitioners, nurse-midwives and physi-  
17 cian assistants.

18 (d) "Office of community and rural health services"  
19 means that agency, staff or office within the department of  
20 health and human resources which has as its primary focus



21 the delivery of rural health care.

22 (e) "Primary care" means basic or general health care  
23 which emphasizes the point when the patient first seeks  
24 assistance from the medical care system and the care of  
25 the simpler and more common illnesses. This type of care  
26 is generally rendered by family practice physicians, gener-  
27 al practice physicians, general internists, obstetricians,  
28 pediatricians, psychiatrists and mid-level providers.

29 (f) "Primary health care education sites" or "sites",  
30 whether the term is used in the plural or singular, means  
31 those rural health care facilities established for the provi-  
32 sion of educational and clinical experiences pursuant to  
33 section seven of this article.

34 (g) "Rural health care facilities" or "facilities", whether  
35 the term is used in the plural or singular, means nonprofit,  
36 free-standing primary care clinics in medically  
37 underserved or health professional shortage areas and  
38 nonprofit rural hospitals with one hundred or less licensed  
39 acute care beds located in a nonstandard metropolitan  
40 statistical area.

41 (h) "Schools of medicine" means the West Virginia  
42 university school of medicine, which is the school of  
43 health sciences; the Marshall school of medicine, which is  
44 the Marshall medical school; and the West Virginia school  
45 of osteopathic medicine.

46 (i) "Vice chancellor" means the vice chancellor for  
47 health sciences provided for under section six, article two  
48 of this chapter.

**§18B-16-4. Establishment of rural health initiative; goals of  
rural health initiative.**

1 There is hereby established a rural health initiative  
2 under the auspices of the board of trustees and under the  
3 direction and administration of the vice chancellor. This  
4 initiative shall combine the efforts of the rural health ini-  
5 tiative as created by this article in the year one thousand  
6 nine hundred ninety-one, and the Kellogg program as

7 administered by the vice chancellor before the effective  
8 date of this section. The goals of the rural health initiative  
9 include, but are not limited to:

10 (a) The development of at least six primary health care  
11 education sites;

12 (b) The establishment of satellite programs from the  
13 primary health care education sites to provide additional  
14 opportunities for students and medical residents to serve  
15 under role models in rural areas;

16 (c) The provision of training to all medical students  
17 under the direction of primary care physicians practicing  
18 in rural areas;

19 (d) The provision of admission preferences for quali-  
20 fied students entering primary care in needed specialties in  
21 underserved areas;

22 (e) The creation of medical residency rotations in  
23 hospitals and clinics in rural areas and the provision of  
24 incentives to medical residents to accept the residencies at  
25 these hospitals and clinics;

26 (f) The placement of mid-level providers in rural com-  
27 munities and the provision of support to the mid-level  
28 providers;

29 (g) The extension of rural hospital physician respite  
30 loan programs to rural primary health care clinics;

31 (h) The development of innovative programs which  
32 enhance student interest in rural health care opportunities;

33 (i) The increased placement of primary care physi-  
34 cians in underserved areas;

35 (j) The increased retention of obstetrical providers and  
36 the availability of prenatal care;

37 (k) The increased use of underserved areas of the state  
38 in the educational process;

39 (l) An increase in the number of support services pro-

40 vided to rural practitioners;

41 (m) An increase in the retention rate of graduates  
42 from West Virginia medical schools, nursing schools and  
43 allied health care education programs;

44 (n) The development of effective health promotion  
45 and disease prevention programs to enhance wellness; and

46 (o) The establishment of primary health care educa-  
47 tion sites which complement existing community health  
48 care resources and which do not relocate the fundamental  
49 responsibility for health care from the community to the  
50 board of trustees.

**§18B-16-6. Creation of the West Virginia rural health advisory panel.**

1 (a) The West Virginia rural health advisory panel is  
2 hereby created and the rural health initiative advisory  
3 panel is hereby terminated as of the first day of July, one  
4 thousand nine hundred ninety-five. The advisory panel,  
5 which shall be appointed by the governor after consulting  
6 with the vice chancellor, shall consist of one community  
7 representative from each of the consortia of primary  
8 health care education sites; five members shall be rural  
9 health care providers, two of whom shall be representatives  
10 of rural health care facilities selected from such lists as  
11 may be submitted by associations interested or involved in  
12 the provision of rural health care, two of whom shall be  
13 physicians engaged in the private practice of rural medi-  
14 cine, and one of whom shall be an advanced nurse practi-  
15 tioner or a nurse midwife with experience in rural health  
16 care delivery; the dean or designee from each of the par-  
17 ticipating health sciences schools, ex officio; one represen-  
18 tative from private colleges; one representative from the  
19 state college system; one site coordinator; the commission-  
20 er of public health, ex officio; and the director of the  
21 office of community and rural health services, ex officio.  
22 Except for the ex officio members, members of the panel  
23 shall serve for staggered three-year terms: *Provided*, That  
24 one third of the initial appointments shall be designated

25 by the governor for one-year terms and one third of the  
26 initial appointments shall be designated by the governor  
27 for two-year terms.

28 Members of the advisory panel shall be reimbursed  
29 for the cost of reasonable and necessary expenses actually  
30 incurred in the performance of their duties: *Provided,*  
31 That members of the panel who are employed by the state  
32 of West Virginia shall not be reimbursed for their expens-  
33 es under the provisions of this section.

34 (b) The functions and duties of the panel are to rec-  
35 ommend policies and procedures to the vice chancellor  
36 related to the rural health initiative and to oversee and  
37 coordinate implementation of those policies and proce-  
38 dures.

39 (c) Pursuant to the provisions of article ten, chapter  
40 four of this code, the West Virginia rural health advisory  
41 panel shall continue to exist until the first day of July, two  
42 thousand one, to allow for the completion of a preliminary  
43 performance review by the joint committee on govern-  
44 ment operations.

45 (d) The advisory panel has the power and the duty to  
46 recommend rural health care facilities to be established as  
47 primary health care education sites. Such recommenda-  
48 tion shall be made to the vice chancellor in accordance  
49 with the criteria set forth in section seven of this article.  
50 After review of the proposals submitted to the vice chan-  
51 cellor by the schools of medicine pursuant to section eight  
52 of this article, the panel's recommendation shall include an  
53 estimation of the costs to be allocated per site from avail-  
54 able funds in the university of West Virginia health scienc-  
55 es account in the line item designated for rural health  
56 initiative site support.

57 (e) The advisory panel shall adopt guidelines regard-  
58 ing the application by rural health care facilities for selec-  
59 tion as primary health care education sites and shall ap-  
60 prove an application form which provides the panel with  
61 sufficient information to consider the criteria set forth in

62 section eight of this article. The guidelines and applica-  
63 tion shall be sent by registered mail to each rural health  
64 care facility in the state as soon as practicable after the  
65 effective date of this section.

66 (f) The advisory panel shall provide an ongoing evalu-  
67 ation of the rural health initiative and shall make the re-  
68 ports required under this article.

**§18B-16-9. Accountability; reports and audit required.**

1 (a) The vice chancellor, with the assistance of the advi-  
2 sory panel, shall report in detail to the board of trustees on  
3 the expenditure and planned expenditure of public funds  
4 to the schools of medicine under section eight of this  
5 article. The board of trustees shall report to the governor,  
6 the president of the Senate and the speaker of the House  
7 of Delegates annually prior to the first day of December  
8 as a part of the higher education report cards required by  
9 section eight-a, article one of this chapter.

10 (b) The vice chancellor, with the guidance and recom-  
11 mendations of the advisory panel, shall develop additional  
12 performance indicators, including, but not limited to: (1)  
13 An analysis of the health care needs of the targeted areas;  
14 (2) the number of persons served and the nature of the  
15 services provided; (3) the number of full-time and  
16 part-time faculty, students, interns and residents, by disci-  
17 pline, participating in the health science and allied health  
18 care education programs; (4) the number of health pro-  
19 viders in each community served by primary health care  
20 education sites; (5) the financial, social and health status  
21 changes in each community served by primary health care  
22 education sites; and (6) the extent to which the plans and  
23 policies of the office of rural health and the health care  
24 planning commission are being effectuated. The vice  
25 chancellor shall provide information on the performance  
26 indicators to the board of trustees for inclusion in the  
27 higher education accountability report card for health  
28 sciences provided for in section eight-a, article one of this  
29 chapter.

30 (c) The advisory panel shall report at least annually to  
31 the joint legislative oversight commission on education  
32 accountability created under section eleven, article three-a,  
33 chapter twenty-nine-a of this code and to the area health  
34 education centers subcommittee of the joint committee on  
35 government and finance regarding the status of the rural  
36 health care initiative, paying particular attention to the role  
37 of the communities.

38 (d) The vice chancellor shall report at least annually to  
39 the joint legislative oversight commission on education  
40 accountability created under section eleven, article three-a,  
41 chapter twenty-nine-a of this code and to the area health  
42 education centers subcommittee of the joint committee on  
43 government and finance regarding the status of the rural  
44 health care initiative, paying particular attention to the role  
45 of the schools of medicine.

46 (e) The board of trustees shall facilitate a meeting at  
47 least quarterly for the chief administrators of each primary  
48 health care education site established pursuant to this arti-  
49 cle and each chief administrator at other rural health care  
50 facilities providing educational and clinical experiences to  
51 students, interns and residents at the state's schools of med-  
52 icine. The meetings shall commence no later than the first  
53 day of July, one thousand nine hundred ninety-two, and  
54 shall be for the purpose of discussing the status, efficiency  
55 and effectiveness of the various programs and their opera-  
56 tion and recommending any changes to the board of trust-  
57 ees, which may include statutory recommendations to be  
58 made to the Legislature.

59 In addition to the reports otherwise required and com-  
60 mencing with a report for the fiscal year beginning on the  
61 first day of July, one thousand nine hundred ninety-one,  
62 the chief administrators shall submit to the board of trust-  
63 ees an annual evaluation of the extent to which the goals  
64 set forth in section four of this article and other goals  
65 relating to collaborative efforts between the schools of  
66 medicine and rural health care facilities are being attained.  
67 Such report shall be forwarded annually in its entirety to

68 the governor, the president of the Senate and the speaker  
 69 of the House of Delegates no later than the fifteenth day  
 70 of January.

71 (f) The legislative auditor, at the direction of the joint  
 72 committee on government and finance, shall perform on  
 73 an ongoing basis a fiscal audit of the medical education  
 74 components within the university of West Virginia system,  
 75 the state college system and the rural health initiative for  
 76 periodic review by the Legislature.

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## CHAPTER 128

(Com. Sub. for H. B. 2557—By Delegates Prezioso, Ball, Beach, Heck,  
 Kallai, Henderson and Anderson)

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[Passed March 10, 1995; in effect ninety days from passage.  
 Became law without Governor's signature.]

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AN ACT to amend article three, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three, relating to the creation of the health sciences scholarship program.

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

That article three, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three, to read as follows:

**ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.**

**§18C-3-3. Health sciences scholarship program; establishment; administration; eligibility.**

1 (a) *Legislative findings*—The Legislature finds that  
 2 there is a critical need for additional practicing health care  
 3 professionals in West Virginia. Therefore, there is hereby  
 4 created a health sciences scholarship program to be  
 5 administered by the vice chancellor of health sciences.

6 The purpose of this program is to provide an incentive for  
7 health professional students to complete their training and  
8 provide primary care in underserved areas of West  
9 Virginia.

10 (b) *Establishment of special account*—There is  
11 hereby established a special revolving fund account under  
12 the board of trustees in the state treasury to be known as  
13 the "Health Sciences Scholarship Fund" that shall be used  
14 to carry out the purposes of this section. The fund shall  
15 consist of one or more of the following: (1) All  
16 unexpended health sciences scholarship funds on deposit  
17 in the state treasury on the effective date of this section;  
18 (2) appropriations as may be provided by the Legislature;  
19 (3) repayments, including interest as set by the vice  
20 chancellor of health sciences, collected from scholarship  
21 recipients who fail to practice in West Virginia under the  
22 terms of the scholarship agreement as set forth under this  
23 section; or (4) amounts that may become available from  
24 other sources. Balances remaining in the fund at the end  
25 of the fiscal year shall not expire or revert to the general  
26 revenue. All costs associated with the administration of  
27 this section shall be paid from the health sciences  
28 scholarship fund under the direction of the vice chancellor  
29 of health sciences.

30 (c) *Eligibility requirements*—An individual is eligible  
31 for consideration for a health sciences scholarship; if the  
32 individual (1) either (A) a fourth-year medical student at  
33 the Marshall university school of medicine, West Virginia  
34 school of osteopathic medicine or West Virginia university  
35 school of medicine who has been accepted in a primary  
36 care internship/residency program in West Virginia, or (B)  
37 is enrolled or accepted for enrollment in an approved  
38 education program at a West Virginia institution leading to  
39 a degree or certification in the field of nurse practitioner,  
40 nurse midwife, physician assistant, or other disciplines  
41 identified as shortage fields by the vice chancellor of  
42 health sciences; and (2) signs an agreement to practice for  
43 at least two years in an underserved area of West Virginia  
44 as determined by the bureau of public health. Awarding  
45 preference will be given to West Virginia residents.

46 (d) *Scholarship awards*—Scholarships shall be in the  
47 amount of ten thousand dollars and may be awarded by  
48 the vice chancellor of health sciences, with the advice of an



49 advisory panel, from the pool of all applicants with a  
50 commitment to practice in an underserved area of West  
51 Virginia as determined by the bureau of public health.  
52 Nothing herein shall be construed as granting or  
53 guaranteeing any applicant any right to such a  
54 scholarship.

55 (e) *Repayment provisions*—A scholarship recipient  
56 who fails to practice in an underserved area of West  
57 Virginia within six months of the completion of his or her  
58 training, or who fails to complete his or her training, is in  
59 breach of contract and is liable for repayment of the total  
60 scholarship amount received plus interest. The granting or  
61 renewal of a license to practice in West Virginia or to  
62 reciprocal licensure in another state based upon licensure  
63 in West Virginia shall be contingent upon beginning  
64 payment and continuing payment until complete  
65 repayment of the total scholarship amount if the recipient  
66 fails to practice in an underserved area. No license,  
67 renewal or reciprocity shall be granted to persons whose  
68 repayments are in arrears. The appropriate regulatory  
69 board shall inform all other states where a recipient has  
70 reciprocated based upon West Virginia licensure of any  
71 refusal to renew licensure in West Virginia as a result of  
72 failure to repay the scholarship amount. This provision  
73 shall be explained in bold type in the scholarship contract.  
74 Repayment terms, not inconsistent with this section, shall  
75 be established by the vice chancellor of health sciences  
76 pursuant to rules as required under subsection (f) of this  
77 section.

78 (f) *Promulgation of rules*—The board of trustees shall  
79 promulgate rules pursuant to article three-a, chapter  
80 twenty-nine-a of this code necessary for the implemen-  
81 tation and administration of this section.

82 (g) *Definitions*—For purposes of the repayment  
83 provisions of this section, the term "training" means the  
84 entire degree program or certification program for nurse  
85 midwives, nurse practitioners, physician assistants and  
86 other disciplines identified as shortage field by the vice  
87 chancellor. The term also means the completion of a  
88 degree program and includes completion of an approved  
89 residency/internship program for students pursuing a  
90 degree in medicine or a degree in osteopathy.

## CHAPTER 129

(Com. Sub. for H. B. 2632—By Delegate Mezzatesta)

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[Passed March 10, 1995; in effect from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact sections ten and twelve-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-c, all relating to pari-mutuel taxation; providing for an alternative method to calculate taxes; setting forth specific time periods during which such alternative method will be in effect; providing for eligibility to receive awards or purses through the greyhound breeding development fund; providing for payment of certain percentage of net simulcast income into thoroughbred development fund; exception; defining net simulcast income; repealing the requirement that the handle from televised simulcast racing be included in the calculation of average daily handle; permitting interstate simulcasting by licensed racetracks; and providing relief from the two hundred twenty day racing schedule for cause.

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

That sections ten and twelve-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-three, all to read as follows:

PART VII. TAXATION OF HORSE AND

DOG RACING AND PARI-MUTUEL

WAGERING; DISPOSITION OF REVENUES.

**ARTICLE 23. HORSE AND DOG RACING.**

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

§19-23-12c. Interstate simulcasts by licensed racetracks.

**§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.**

1       (a) Any racing association conducting thoroughbred  
2 racing at any horse racetrack in this state shall pay each  
3 day upon which horse races are run a daily license tax of  
4 two hundred fifty dollars. Any racing association conduct-  
5 ing harness racing at any horse racetrack in this state shall  
6 pay each day upon which horse races are run a daily li-  
7 cense tax of one hundred fifty dollars. Any racing associ-  
8 ation conducting dog races shall pay each day upon which  
9 dog races are run a daily license tax of one hundred fifty  
10 dollars. In the event thoroughbred racing, harness racing,  
11 dog racing, or any combination of the foregoing are con-  
12 ducted on the same day at the same racetrack by the same  
13 racing association, only one daily license tax in the  
14 amount of two hundred fifty dollars shall be paid for that  
15 day. Any daily license tax shall not apply to any local,  
16 county or state fair, horse show or agricultural or livestock  
17 exposition at which horse racing is conducted for not  
18 more than six days.

19       (b) Any racing association licensed by the racing  
20 commission to conduct thoroughbred racing and permit-  
21 ting and conducting pari-mutuel wagering under the pro-  
22 visions of this article shall, in addition to the daily license  
23 tax set forth in subsection (a) of this section, pay to the  
24 racing commission, from the commission deducted each  
25 day by the licensee from the pari-mutuel pools on thor-  
26 oughbred racing a tax calculated on the total daily contri-  
27 bution of all pari-mutuel pools conducted or made at any  
28 and every thoroughbred race meeting of the licensee li-  
29 censed under the provisions of this article. The tax, on the  
30 pari-mutuel pools conducted or made each day during the  
31 months of January, February, March, October, November  
32 and December, shall from the effective date of this section  
33 and for fiscal year one thousand nine hundred eighty-five  
34 be calculated at two and six-tenths percent; for fiscal year  
35 one thousand nine hundred eighty-six, be calculated at  
36 two and three-tenths percent; for fiscal year one thousand

37 nine hundred eighty-seven, be calculated at two percent of  
38 the pool; for fiscal year one thousand nine hundred  
39 eighty-eight, be calculated at one and one-half percent;  
40 for fiscal year one thousand nine hundred eighty-nine, be  
41 calculated at one percent of the pool; for fiscal year one  
42 thousand nine hundred ninety, seven tenths of one per-  
43 cent, and for fiscal year one thousand nine hundred  
44 ninety-one and each fiscal year thereafter be calculated at  
45 four tenths of one percent of the pool; and, on the  
46 pari-mutuel pools conducted or made each day during all  
47 other months, shall from the effective date of this section  
48 and for fiscal year one thousand nine hundred eighty-five,  
49 be calculated at three and six-tenths percent; for fiscal  
50 year one thousand nine hundred eighty-six, be calculated  
51 at three and three-tenths percent; for fiscal year one thou-  
52 sand nine hundred eighty-seven, be calculated at three  
53 percent of the pool; for fiscal year one thousand nine  
54 hundred eighty-eight, be calculated at two and one-half  
55 percent; for fiscal year one thousand nine hundred  
56 eighty-nine, be calculated at two percent of the pool; for  
57 fiscal year one thousand nine hundred ninety, be calculat-  
58 ed at one and seven-tenths percent of the pool; and for  
59 fiscal year one thousand nine hundred ninety-one and  
60 each fiscal year thereafter, be calculated at one and  
61 four-tenths percent of the pool: *Provided*, That out of the  
62 amount realized from the three tenths of one percent de-  
63 crease in the tax effective for fiscal year one thousand  
64 nine hundred ninety-one and thereafter, which decrease  
65 correspondingly increases the amount of commission  
66 retained by the licensee, the licensee shall annually expend  
67 or dedicate (i) one half of the realized amount for capital  
68 improvements in its barn area at the track, subject to the  
69 racing commission's prior approval of the plans for the  
70 improvements, and (ii) the remaining one half of the real-  
71 ized amount for capital improvements as the licensee may  
72 determine appropriate at the track. The term "capital  
73 improvement" shall be as defined by the Internal Revenue  
74 Code: *Provided, however*, That any racing association  
75 operating a horse racetrack in this state having an average  
76 daily pari-mutuel pool on horse racing of two hundred  
77 eighty thousand dollars or less per day for the race meet-  
78 ings of the preceding calendar year shall, in lieu of pay-

79 ment of the pari-mutuel pool tax, calculated as in this  
80 subsection, be permitted to conduct pari-mutuel wagering  
81 at the horse racetrack on the basis of a daily pari-mutuel  
82 pool tax fixed as follows: On the daily pari-mutuel pool  
83 not exceeding three hundred thousand dollars the daily  
84 pari-mutuel pool tax shall be one thousand dollars plus  
85 the otherwise applicable percentage rate imposed by this  
86 subsection of the daily pari-mutuel pool, if any, in excess  
87 of three hundred thousand dollars: *Provided further*, That  
88 upon the effective date of the reduction of the daily  
89 pari-mutuel pool tax to one thousand dollars from the  
90 former two thousand dollars, the association or licensee  
91 shall daily deposit five hundred dollars into the special  
92 fund for regular purses established by subdivision (1),  
93 subsection (b), section nine of this article: *And provided*  
94 *further*, That if an association or licensee qualifying for  
95 the foregoing alternate tax conducts more than one racing  
96 performance, each consisting of up to ten races in a calen-  
97 dar day, the association or licensee shall pay both the daily  
98 license tax imposed in subsection (a) of this section and  
99 the alternate tax in this subsection for each performance:  
100 *And provided further*, That a licensee qualifying for the  
101 foregoing alternate tax is excluded from participation in  
102 the fund established by section thirteen-b of this article:  
103 *And provided further*, That this exclusion shall not apply  
104 to any thoroughbred racetrack at which the licensee has  
105 participated in the West Virginia thoroughbred develop-  
106 ment fund for more than four consecutive years prior to  
107 the thirty-first day of December, one thousand nine hun-  
108 dred ninety-two.

109 (c) Any racing association licensed by the racing com-  
110 mission to conduct harness racing and permitting and  
111 conducting pari-mutuel wagering under the provisions of  
112 this article shall, in addition to the daily license tax re-  
113 quired under subsection (a) of this section, pay to the  
114 racing commission, from the commission deducted each  
115 day by the licensee from the pari-mutuel pools on harness  
116 racing, as a tax, three percent of the first one hundred  
117 thousand dollars wagered, or any part thereof; four per-  
118 cent of the next one hundred fifty thousand dollars; and  
119 five and three-fourths percent of all over that amount

120 wagered each day in all pari-mutuel pools conducted or  
121 made at any and every harness race meeting of the licens-  
122 ee licensed under the provisions of this article.

123 (d) Any racing association licensed by the racing  
124 commission to conduct dog racing and permitting and  
125 conducting pari-mutuel wagering under the provisions of  
126 this article shall, in addition to the daily license tax re-  
127 quired under subsection (a) of this section, pay to the  
128 racing commission, from the commission deducted each  
129 day by the licensee from the pari-mutuel pools on dog  
130 racing, as a tax, four percent of the first fifty thousand  
131 dollars or any part thereof of the pari-mutuel pools, five  
132 percent of the next fifty thousand dollars of the  
133 pari-mutuel pools, six percent of the next one hundred  
134 thousand dollars of the pari-mutuel pools, seven percent  
135 of the next one hundred fifty thousand dollars of the  
136 pari-mutuel pools, and eight percent of all over three hun-  
137 dred fifty thousand dollars wagered each day: *Provided,*  
138 That the licensee shall deduct daily from the pari-mutuel  
139 tax an amount equal to one tenth of one percent of the  
140 daily pari-mutuel pools in dog racing in fiscal year one  
141 thousand nine hundred ninety; fifteen hundredths of one  
142 percent in fiscal year one thousand nine hundred  
143 ninety-one; two tenths of one percent in fiscal year one  
144 thousand nine hundred ninety-two; one quarter of one  
145 percent in fiscal year one thousand nine hundred  
146 ninety-three; and three tenths of one percent in fiscal year  
147 one thousand nine hundred ninety-four and every fiscal  
148 year thereafter. The amounts deducted shall be paid to  
149 the racing commission to be deposited by the racing com-  
150 mission in a banking institution of its choice in a special  
151 account to be known as "West Virginia Racing  
152 Commission-Special Account-West Virginia Greyhound  
153 Breeding Development Fund". The purpose of the fund is  
154 to promote better breeding and racing of greyhounds in  
155 the state through awards and purses to resident owners of  
156 accredited West Virginia whelped greyhounds. In order to  
157 be eligible to receive an award or purse through the fund,  
158 the owner of the accredited West Virginia whelped grey-  
159 hound must be a resident of this state. The moneys shall  
160 be expended by the racing commission for purses for

161 stake races, supplemental purse awards, administration,  
162 promotion and educational programs involving West Vir-  
163 ginia whelped dogs, owned by residents of this state under  
164 rules and regulations promulgated by the racing commis-  
165 sion. The racing commission shall pay out of the grey-  
166 hound breeding development fund to each of the licensed  
167 dog racing tracks the sum of seventy-five thousand dollars  
168 for the fiscal year ending the thirtieth day of June, one  
169 thousand nine hundred ninety-four. The licensee shall  
170 deposit the sum into the special fund for regular purses  
171 established under the provisions of section nine of this  
172 article. The funds shall be expended solely for the pur-  
173 pose of supplementing regular purses under rules and  
174 regulations promulgated by the racing commission.

175 Supplemental purse awards will be distributed as fol-  
176 lows: Supplemental purses shall be paid directly to the  
177 owner of an accredited greyhound or, if the greyhound is  
178 leased, the owner may choose to designate a percentage of  
179 the purse earned directly to the lessor as agreed to via a  
180 written purse distribution form on file with the racing  
181 commission.

182 The owner of accredited West Virginia whelped grey-  
183 hounds that earn a purse at any West Virginia meet will  
184 receive a bonus award calculated at the end of each month  
185 as a percentage of the fund dedicated to the owners as  
186 purse supplements, which shall be a minimum of fifty  
187 percent of the total moneys deposited into the West Vir-  
188 ginia greyhound breeding development fund monthly.

189 The total amount of the fund available for the owners'  
190 awards shall be distributed according to the ratio of purses  
191 earned by an accredited greyhound to the total amount  
192 earned in races by all accredited West Virginia whelped  
193 greyhounds for that month as a percentage of the funds  
194 dedicated to the owners' purse supplements.

195 The owner of an accredited West Virginia whelped  
196 greyhound shall file a purse distribution form with the  
197 racing commission for a percentage of his or her dog's  
198 earnings to be paid directly to the lessor of the grey-  
199 hound. Distribution shall be made on the fifteenth day of  
200 each month for the preceding month's achievements.

201 In no event shall purses earned at a meet held at a  
202 track which did not make contributions to the West Vir-  
203 ginia greyhound breeder's development fund out of the  
204 daily pool on the day the meet was held qualify or count  
205 toward eligibility for supplemental purse awards.

206 Any balance in the purse supplement funds after all  
207 distributions have been made for the year revert to the  
208 general account of the fund for distribution in the follow-  
209 ing year.

210 In an effort to further promote the breeding of quality  
211 West Virginia whelped greyhounds, a bonus purse supple-  
212 ment shall be established in the amount of fifty thousand  
213 dollars per annum, to be paid in equal quarterly install-  
214 ments of twelve thousand five hundred dollars per quarter  
215 using the same method to calculate and distribute these  
216 funds as the regular supplemental purse awards. This  
217 bonus purse supplement is for three years only, commenc-  
218 ing on the first day of July, one thousand nine hundred  
219 ninety-three, and ending the thirtieth day of June, one  
220 thousand nine hundred ninety-six. This money would  
221 come from the current existing balance in the greyhound  
222 development fund.

223 Each pari-mutuel greyhound track shall provide stakes  
224 races for accredited West Virginia whelped greyhounds:  
225 *Provided*, That each pari-mutuel track shall have one  
226 juvenile and one open stake race annually. The racing  
227 commission shall oversee and approve racing schedules  
228 and purse amounts.

229 Ten percent of the deposits into the greyhound breed-  
230 ing development fund beginning the first day of July, one  
231 thousand nine hundred ninety-three and continuing each  
232 year thereafter, shall be withheld by the racing commis-  
233 sion and placed in a special revenue account hereby creat-  
234 ed in the state treasury called the "administration, promo-  
235 tion and educational account". The racing commission is  
236 authorized to expend the moneys deposited in the admin-  
237 istration, promotion and educational account at such times  
238 and in such amounts as the commission determines to be  
239 necessary for purposes of administering and promoting  
240 the greyhound development program: *Provided*, That



241 beginning with fiscal year one thousand nine hundred  
242 ninety-five and in each fiscal year thereafter in which the  
243 commission anticipates spending any money from the  
244 account, the commission shall submit to the executive  
245 department during the budget preparation period prior to  
246 the Legislature convening before that fiscal year for inclu-  
247 sion in the executive budget document and budget bill, the  
248 recommended expenditures, as well as requests of appro-  
249 priations for the purpose of administration, promotion and  
250 education. The commission shall make an annual report  
251 to the Legislature on the status of the administration, pro-  
252 motion and education account, including the previous  
253 year's expenditures and projected expenditures for the  
254 next year.

255 The racing commission, for the fiscal year one thou-  
256 sand nine hundred ninety-four only, may expend up to  
257 thirty-five thousand dollars from the West Virginia grey-  
258 hound breeding development fund to accomplish the  
259 purposes of this section without strictly following the re-  
260 quirements in the previous paragraph.

261 (e) All daily license and pari-mutuel pools tax pay-  
262 ments required under the provisions of this section shall  
263 be made to the racing commission or its agent after the  
264 last race of each day of each horse or dog race meeting,  
265 and the pari-mutuel pools tax payments shall be made  
266 from all contributions to all pari-mutuel pools to each and  
267 every race of the day.

268 (f) Every association or licensee subject to the provi-  
269 sions of this article, including the changed provisions of  
270 sections nine and ten of this article, shall annually submit  
271 to the racing commission and the Legislature financial  
272 statements, including a balance sheet, income statement,  
273 statement of change in financial position and an audit of  
274 any electronic data system used for pari-mutuel tickets  
275 and betting, prepared in accordance with generally accept-  
276 ed auditing standards, as certified by an experienced pub-  
277 lic accountant or a certified public accountant.

**§19-23-12b. Televised racing days; merging of pari-mutuel  
wagering pools.**

1 (a) For the purposes of this section:

2 (1) "Televised racing day" means a calendar day, as  
3 signed by the commission, at a licensed racetrack on  
4 which pari-mutuel betting is conducted on horse or dog  
5 races run at racetracks outside of the state which are  
6 broadcast by television at a licensed racetrack and which  
7 day or days have had the prior written approval of the  
8 representative of the majority of the owners and trainers  
9 who hold permits required by section two of this article;  
10 and

11 (2) "Host racing association" means any person who,  
12 pursuant to a license or other permission granted by the  
13 host state, conducts the horse or dog race subject to the  
14 interstate wager.

15 (b) A licensee conducting not less than two hundred  
16 twenty live racing dates for each horse or dog race meet-  
17 ing may, with the prior approval of the state racing com-  
18 mission, contract with any legal wagering entity in any  
19 other state to receive telecasts and accept wagers on races  
20 conducted by the legal wagering entity: *Provided*, That at  
21 those thoroughbred racetracks, the licensee, in applying  
22 for racing dates, shall apply for not less than two hundred  
23 twenty live racing dates for each horse race meeting. If,  
24 thereafter, for reasons beyond the licensee's control, relat-  
25 ed to adverse weather conditions or unforeseen casualty  
26 occurrences the licensee concludes that this number of  
27 racing days cannot be attained, the licensee may file a  
28 request with the racing commission to reduce the autho-  
29 rized live racing days. Upon receipt of the request the  
30 racing commission shall within seventy-two hours of the  
31 receipt of the request notify the licensee and the represen-  
32 tative of a majority of the owners and trainers at the re-  
33 questing track that such request has been received and that  
34 if no objection to the request is received within ten days of  
35 the notification the request will be approved: *Provided*,  
36 That the commission shall give consideration to whether  
37 there existed available unscheduled potential live racing  
38 dates following the adverse weather or casualty and prior  
39 to the end of the race meeting which could be used as new  
40 live racing dates in order to maintain a full two hundred

41 twenty day live racing schedule. If an objection is received  
42 by the commission within the time limits, the commission  
43 shall establish a binding arbitration board. The board  
44 shall consist of one member appointed by the licensee,  
45 one member appointed by the representative of a majority  
46 of the owners and trainers at the racetrack and a third  
47 member to be selected by the two appointed members. In  
48 the event the two members cannot agree on the third  
49 member, each member shall submit two names to the rac-  
50 ing commission and from those names the racing commis-  
51 sion shall appoint the third member of the board. The  
52 board shall hear from all parties concerned and thereupon  
53 shall make recommendations to the racing commission on  
54 the required number of live racing days. The recommen-  
55 dations of the board are final. The telecasts may be re-  
56 ceived and wagers accepted at any location authorized by  
57 the provisions of section twelve-a of this article. The con-  
58 tract must receive the approval of the representative of the  
59 majority of the owners and trainers who hold permits  
60 required by section two of this article at the receiving  
61 racetrack.

62 (c) The commission may allow the licensee to com-  
63 mingle its wagering pools with the wagering pools of the  
64 host racing association. If the pools are commingled, the  
65 wagering at the licensee's racetrack must be on tabulating  
66 equipment capable of issuing pari-mutuel tickets and be  
67 electronically linked with the equipment at the sending  
68 racetrack. Subject to the approval of the commission, the  
69 types of betting, licensee commissions and distribution of  
70 winnings on pari-mutuel pools of the sending licensee  
71 racetrack are those in effect at the licensee racetrack.  
72 Breakage for pari-mutuel pools on a televised racing day  
73 must be calculated in accordance with the law or rules  
74 governing the sending racetrack and must be distributed  
75 in a manner agreed to between the licensee and the send-  
76 ing racetrack.

77 (d) The commission may assign televised racing days  
78 at any time. When a televised racing day is assigned, the  
79 commission shall assign either a steward or an auditor to  
80 preside over the televised races at the licensee racetrack.

81 (e) (1) From the licensee commissions authorized by  
82 subsection (c) of this section, the licensee shall pay one  
83 tenth of one percent of each commission into the general  
84 fund of the county, in which the racetrack is located and at  
85 which the wagering occurred and there is imposed and the  
86 licensee shall pay, for each televised racing day on which  
87 the total pari-mutuel pool exceeds one hundred thousand  
88 dollars, the greater of either: (i) The total of the daily  
89 license tax and the pari-mutuel pools tax required by  
90 section ten of this article; or (ii) a daily license tax of one  
91 thousand two hundred fifty dollars. For each televised  
92 racing day on which the total pari-mutuel pool is one  
93 hundred thousand dollars or less, the licensee shall pay a  
94 daily license tax of five hundred dollars plus an additional  
95 license tax of one hundred dollars for each ten thousand  
96 dollars, or part thereof, that the pari-mutuel pool exceeds  
97 fifty thousand dollars, but does not exceed one hundred  
98 thousand dollars. Payments of the tax imposed by this  
99 section are subject to the requirements of subsection (e),  
100 section ten of this article.

101 (2) From the licensee commissions authorized by  
102 subsection (c) of this section, after payments are made in  
103 accordance with the provisions of subdivision (1) of this  
104 subsection, the licensee shall pay, for each televised racing  
105 day, one fourth of one percent of the total pari-mutuel  
106 pools for and on behalf of all employees of the licensed  
107 racing association by making a deposit into a special fund  
108 to be established by the racing commission and to be used  
109 for payments into the pension plan for all employees of  
110 the licensed racing association.

111 (3) From the licensee commissions authorized by  
112 subsection (c) of this section, after payments are made in  
113 accordance with the provisions of subdivisions (1) and (2)  
114 of this subsection, the licensee shall pay, for each televised  
115 racing day on or after the first day of July, one thousand  
116 nine hundred ninety-six, one-half percent of net simulcast  
117 income and for each televised racing day on or after the  
118 first day of July, one thousand nine hundred ninety-seven,  
119 an additional one-half percent of net simulcast income  
120 into the West Virginia thoroughbred development fund  
121 established by the racing commission according to section

122 thirteen-b of this article: *Provided*, That the payments shall  
123 be reduced by an amount equal to one-third of direct  
124 simulcast expenses which shall include, but not be limited  
125 to, the cost of simulcast signals and decoder costs: *Provid-*  
126 *ed, however*, That no licensee qualifying for the alternate  
127 tax provisions of subsection (b), section ten of this article  
128 shall be required to make the payments unless the licensee  
129 has participated in the West Virginia thoroughbred devel-  
130 opment fund for a period of more than four consecutive  
131 calendar years prior to the thirty-first day of December,  
132 one thousand nine hundred ninety-two. The term "net  
133 simulcast income" means the total simulcast handle less  
134 direct simulcast expenses, including, but not limited to, the  
135 cost of simulcast signals and decoder costs.

136 (f) After deducting the tax required by subsection (e)  
137 of this section, the amount required to be paid under the  
138 terms of the contract with the legal wagering entity of  
139 another state and the cost of transmission, the horse racing  
140 association shall make a deposit equal to fifty percent of  
141 the remainder into the purse fund established under the  
142 provisions of subdivision (1), subsection (b), section nine  
143 of this article.

144 (g) The provisions of the "Federal Interstate  
145 Horseracing Act of 1978", also known as Public Law  
146 95-515, Section 3001-3007 of Title 15, U.S. Code, as  
147 amended, controls in determining the intent of this sec-  
148 tion.

**§19-23-12c. Interstate simulcasts by licensed racetracks.**

1 Any racing association which is licensed under this  
2 article to hold live races may be authorized by the com-  
3 mission to transmit broadcasts of races conducted at its  
4 racetrack to legal wagering entities located outside this  
5 state: *Provided*, That all broadcasts of horse races shall be  
6 in accordance with all of the provisions of the "Federal  
7 Interstate Horseracing Act of 1978", also known as Public  
8 Law 95-515, section 3007 of Title 15 of the United States  
9 Code.

## CHAPTER 130

**(Com. Sub. for H. B. 2037—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)  
[By Request of the Executive]**

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[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

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**AN ACT to amend and reenact sections three, nine, ten and sixteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article fifteen-b, all relating to authorizing the sale of bonds for water, sewer and infrastructure purposes; increasing the number of public members of council; specifying qualifications for public members; authorizing expenses for public members of council; exempting economic development authority and civil contingent fund from council review; providing for the deposit of proceeds in the infrastructure fund derived from the sale of bonds; providing that the fund may be operated as a trust account in a local bank; establishing minimum rates for loans; providing for engineering assistance program; limiting types of engineering information required; providing requirements for disbursement of funds by loan or grant; setting minimum end user utility rates; providing for disbursements to pay debt service on infrastructure general obligation bonds; empowering the governor to issue infrastructure general obligation bonds; creating the infrastructure obligation debt service fund; funding the infrastructure general obligation debt service funds; providing terms for general obligation bonds; setting forth a cap on the interest rate of bonds; directing the use of funds deposited in infrastructure general obligation debt service fund; setting forth the covenants of the state; providing for the sale of general obligation bonds and their minimum price; prohibiting funds inuring to the benefit of or being distributable to directors or officers; providing that**

infrastructure general obligation bonds are lawful investments; authorizing the water development authority to issue refunding bonds; providing for the termination or dissolution of the water development authority; allowing the governor to select legal advisors; setting forth duties of bond counsel; authorizing the treasurer to select financial advisor; allowing the payment of expenses from debt service fund.

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

That sections three, nine, ten and sixteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article fifteen-b, all to read as follows:

**Article**

**15A. West Virginia Infrastructure and Jobs Development Council.**

**15B. Infrastructure Bonds.**

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.**

§31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

§31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

§31-15A-16. Dedication of severance tax proceeds.

**§31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.**

1 (a) The West Virginia infrastructure and jobs develop-  
2 ment council is hereby continued. The council is a gov-  
3 ernmental instrumentality of the state. The exercise by the  
4 council of the powers conferred by this article and the  
5 carrying out of its purpose and duties shall be considered

6 and held to be, and are hereby determined to be, essential  
7 governmental functions and for a public purpose.

8 (b) The council shall consist of eleven members, in-  
9 cluding the executive director of the housing development  
10 fund or his or her designee, the director of the division of  
11 environmental protection or his or her designee, the direc-  
12 tor of the economic development authority or his or her  
13 designee, the director of the water development authority  
14 or his or her designee, the executive director of the state  
15 development office or his or her designee, the director of  
16 the division of health or his or her designee, the chairman  
17 of the public service commission or his or her designee,  
18 and four members representing the general public: *Pro-*  
19 *vided*, That there shall be at least one member represent-  
20 ing the general public from each congressional district:  
21 *Provided, however*, That after the expiration of the term  
22 of office of the members first appointed as representatives  
23 of the general public, no more than one member repre-  
24 senting the general public may be a resident of the same  
25 county. The governor shall appoint the public members  
26 of the council who shall serve three-year staggered terms.  
27 The commissioner of the division of highways, the execu-  
28 tive director of the state rail authority, two members of the  
29 West Virginia Senate, two members of the West Virginia  
30 House of Delegates, one representative of the board of  
31 directors of the state college system and one representative  
32 of the board of trustees of the university of West Virginia  
33 shall serve as advisory members of the council. The gov-  
34 ernor shall appoint the legislative members of the council:  
35 *Provided further*, That no more than three of the legisla-  
36 tive members may be of the same political party. The  
37 governor shall appoint the representatives of the govern-  
38 ing boards from a list of three names submitted by each  
39 governing board. The advisory members shall be *ex offi-*  
40 *cio*, nonvoting members of the council.

41 (c) The council shall annually elect one of its mem-  
42 bers as chairman, and shall appoint a secretary, who need



43 not be a member of the council and who shall keep re-  
44 cords of its proceedings. Six members of the council shall  
45 constitute a quorum and the affirmative vote of at least the  
46 majority of those members present shall be necessary for  
47 any action taken by vote of the council. No vacancy in  
48 the membership of the council impairs the rights of a  
49 quorum by such vote to exercise all the rights and per-  
50 form all the duties of the council.

51 (d) No member of the council who serves by virtue of  
52 his or her office shall receive any compensation or reim-  
53 bursement of expenses for serving as a member. The  
54 members of the council who represent the general public  
55 shall receive reimbursement for actual expenses incurred  
56 in the service of the council.

57 (e) The council shall meet at least monthly to review  
58 projects and infrastructure projects requesting funding  
59 assistance and otherwise to conduct its business, and shall  
60 meet more frequently if necessary. Notwithstanding any  
61 other provision of this article to the contrary, the econom-  
62 ic development authority shall not be subject to council  
63 review with regard to any action taken pursuant to the  
64 authority established in article fifteen, chapter thirty-one  
65 of this code nor shall the governor's civil contingent fund  
66 be subject to council review with regard to projects or  
67 infrastructure projects funded through the governor's civil  
68 contingent fund.

69 (f) The water development authority shall provide  
70 office space for the council, and each governmental agen-  
71 cy represented on the council shall provide staff support  
72 for the council in the manner determined by the council  
73 from time to time.

74 (g) The council shall invite to all its meetings one or  
75 more representatives of the United States department of  
76 agriculture, rural economic community development, the  
77 United States economic development agency and the Unit-  
78 ed States army corps of engineers or any successors there-

79 to. The council shall also invite such other appropriate  
80 parties as may be necessary to effectuate the purposes of  
81 this article.

**§31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.**

1 (a) The water development authority shall create and  
2 establish a special revolving fund of moneys made avail-  
3 able by appropriation, grant, contribution or loan to be  
4 known as the "West Virginia Infrastructure Fund". This  
5 fund shall be governed, administered and accounted for  
6 by the directors, officers and managerial staff of the water  
7 development authority as a special purpose account sepa-  
8 rate and distinct from any other moneys, funds or funds  
9 owned and managed by the water development authority.  
10 The infrastructure fund shall consist of sub-accounts, as  
11 deemed necessary by the council or the water develop-  
12 ment authority, for the deposit of: (1) Infrastructure reve-  
13 nues; (2) any appropriations, grants, gifts, contributions,  
14 loan proceeds or other revenues received by the infra-  
15 structure fund from any source, public or private; (3)  
16 amounts received as payments on any loans made by the  
17 water development authority to pay for the cost of a pro-  
18 ject or infrastructure project; (4) insurance proceeds pay-  
19 able to the water development authority or the infrastruc-  
20 ture fund in connection with any infrastructure project or  
21 project; (5) all income earned on moneys held in the in-  
22 frastructure fund; (6) all funds deposited in accordance  
23 with section four of article fifteen-b; and (7) all proceeds  
24 derived from the sale of bonds issued pursuant to article  
25 fifteen-b of this chapter.

26 Any money collected pursuant to this section shall be  
27 paid into the West Virginia infrastructure fund by the state  
28 agent or entity charged with the collection of the same,

29 credited to the infrastructure fund, and used only for pur-  
30 poses set forth in this article or article fifteen-b.

31 Amounts in the infrastructure fund shall be segregated  
32 and administered by the water development authority  
33 separate and apart from its other assets and programs.  
34 Amounts in the infrastructure fund may not be transferred  
35 to any other fund or account or used, other than indirect-  
36 ly, for the purposes of any other program of the water  
37 development authority, except that the water development  
38 authority may use funds in the infrastructure fund to re-  
39 imburse itself for any administrative costs incurred by it  
40 and approved by the council in connection with any loan,  
41 loan guarantee, grant or other funding assistance made by  
42 the water development authority pursuant to this article.

43 (b) Notwithstanding any provision of this code to the  
44 contrary, amounts in the infrastructure fund shall be de-  
45 posited by the water development authority in one or  
46 more banking institutions: *Provided*, That any moneys so  
47 deposited shall be deposited in a banking institution locat-  
48 ed in this state. The banking institution shall be selected  
49 by the water development authority by competitive bid.  
50 Pending the disbursement of any money from the infra-  
51 structure fund as authorized under this section, the water  
52 development authority shall invest and reinvest the mon-  
53 eys subject to the limitations set forth in article eighteen,  
54 chapter thirty-one of this code.

55 (c) To further accomplish the purposes and intent of  
56 this article and article fifteen-b of this chapter, the water  
57 development authority may pledge infrastructure revenues  
58 and from time to time establish one or more restricted  
59 accounts within the infrastructure fund for the purpose of  
60 providing funds to guarantee loans for infrastructure pro-  
61 jects or projects: *Provided*, That for any fiscal year the  
62 water development authority may not deposit into the  
63 restricted accounts more than twenty percent of the aggre-  
64 gate amount of infrastructure revenues deposited into the  
65 infrastructure fund during the fiscal year. No loan guar-

66 antee shall be made pursuant to this article unless recourse  
67 under the loan guarantee is limited solely to amounts in  
68 the restricted account or accounts. No person shall have  
69 any recourse to any restricted accounts established pursu-  
70 ant to this subsection other than those persons to whom  
71 the loan guarantee or guarantees have been made.

72 (d) Each loan, loan guarantee, grant or other assistance  
73 made or provided by the water development authority  
74 shall be evidenced by a loan, loan guarantee, grant or  
75 assistance agreement between the water development au-  
76 thority and the project sponsor to which the loan, loan  
77 guarantee, grant or assistance shall be made or provided,  
78 which agreement shall include, without limitation and to  
79 the extent applicable, the following provisions:

80 (1) The estimated cost of the infrastructure project or  
81 project, the amount of the loan, loan guarantee or grant or  
82 the nature of the assistance, and in the case of a loan or  
83 loan guarantee, the terms of repayment and the security  
84 therefor, if any;

85 (2) The specific purposes for which the loan or grant  
86 proceeds shall be expended or the benefits to accrue from  
87 the loan guarantee or other assistance, and the conditions  
88 and procedure for disbursing loan or grant proceeds;

89 (3) The duties and obligations imposed regarding the  
90 acquisition, construction, improvement or operation of the  
91 project or infrastructure project; and

92 (4) The agreement of the governmental agency to  
93 comply with all applicable federal and state laws, and all  
94 rules and regulations issued or imposed by the water de-  
95 velopment authority or other state, federal or local bodies  
96 regarding the acquisition, construction, improvement or  
97 operation of the infrastructure project or project and  
98 granting the water development authority the right to  
99 appoint a receiver for the project or infrastructure if the  
100 project sponsor should default on any terms of the agree-  
101 ment.

102 (e) Any resolution of the water development authority  
103 approving loan, loan guarantee, grant or other assistance  
104 shall include a finding and determination that the require-  
105 ments of this section have been met.

106 (f) The interest rate on any loan to governmental,  
107 quasi-governmental, or not for profit project sponsors for  
108 projects made pursuant to this article shall not exceed  
109 three percent per annum. Due to the limited availability  
110 of funds available for loans for projects, it is the public  
111 policy of this state to prioritize funding needs to first meet  
112 the needs of governmental, quasi-governmental and not  
113 for profit project sponsors and to require that loans made  
114 to for-profit entities shall bear interest at the current mar-  
115 ket rates. Therefore, no loan may be made by the council  
116 to a for-profit entity at an interest rate which is less than  
117 the current market rate at the time of the loan agreement.

118 (g) The water development authority shall cause an  
119 annual audit to be made by an independent certified pub-  
120 lic accountant of its books, accounts and records, with  
121 respect to the receipts, disbursements, contracts, leases,  
122 assignments, loans, grants and all other matters relating to  
123 the financial operation of the infrastructure fund, includ-  
124 ing the operating of any sub-account within the infrastruc-  
125 ture fund. The person performing such audit shall furnish  
126 copies of the audit report to the commissioner of finance  
127 and administration, where they shall be placed on file and  
128 made available for inspection by the general public. The  
129 person performing such audit shall also furnish copies of  
130 the audit report to the Legislature's joint committee on  
131 government and finance.

**§31-15A-10. Recommendations by council for expenditures of  
funds by loan, grant or for engineering assis-  
tance.**

1 (a) To further accomplish the purpose and intent of  
2 this article, the water development authority shall use the  
3 moneys in the infrastructure fund created pursuant to

4 section nine of this article, upon receipt of one or more  
5 recommendations from the council pursuant to section  
6 five of this article, to make loans, with or without interest,  
7 loan guarantees or grants and to provide other assistance,  
8 financial, technical or otherwise, to finance all or part of  
9 the costs of infrastructure projects or projects to be under-  
10 taken by a project sponsor: *Provided*, That any moneys  
11 disbursed from the infrastructure fund in the form of  
12 grants shall not exceed twenty percent of the total funds  
13 available for the funding of projects. No loan, loan guar-  
14 antee, grant or other assistance shall be made or provided  
15 except upon a determination by the council that the loan,  
16 loan guarantee, grant or other assistance and the manner  
17 in which it will be provided are necessary or appropriate to  
18 accomplish the purposes and intent of this article, based  
19 upon an application submitted to the council: *Provided*,  
20 *however*, That no grant shall be made to a project sponsor  
21 that is not a governmental agency or a not for profit cor-  
22 poration under the provisions of section 501(c) of the  
23 Internal Revenue Code of 1986, as amended. Applica-  
24 tions for loans, loan guarantees, grants or other assistance  
25 may be submitted by a project sponsor for one or more  
26 infrastructure projects on preliminary application forms  
27 prepared by the council pursuant to section four of this  
28 article. Any recommendation of the council approving a  
29 loan, loan guarantee, grant or other assistance shall include  
30 a finding and determination by the council that the re-  
31 quirements of this section have been met. The council  
32 shall base any decisions to loan money for projects to  
33 project sponsors pursuant to this article solely on the need  
34 of the project sponsors.

35 (b) The council has the authority in its sole discretion  
36 to make grants to project sponsors if it finds that: (1) The  
37 level of rates for the users would otherwise be an unrea-  
38 sonable burden given the users' likely ability to pay; or (2)  
39 the absence of a sufficient number of users prevents fund-  
40 ing of the project except through grants: *Provided*, That  
41 no project sponsor shall receive infrastructure grant mon-

42 ey in an amount in excess of fifty percent of the total cost  
43 of the project. Therefore, the council may consider the  
44 economic or financial conditions of the area to be served.  
45 As a condition for receipt of a grant under this subsection,  
46 the council may require, in addition to any other condi-  
47 tions, that the applicant pursue other state or federal grant  
48 or loan programs. Upon a recommendation by the coun-  
49 cil, the water development authority shall provide the grant  
50 in accordance with the recommendation. The council  
51 shall develop criteria to be considered in making grants to  
52 project sponsors which shall require consideration of the  
53 economic or financial conditions of the area to be served  
54 and the availability of other funding sources. The council  
55 shall adopt procedural rules regarding the manner in  
56 which grants will be awarded in conformity with this sec-  
57 tion. The procedural rules shall be adopted pursuant to  
58 article three, chapter twenty-nine-a of this code.

59 (c) The council shall affix a mandatory minimum end  
60 user utility rate that must be met by the project sponsor  
61 before grant assistance may be awarded. The mandatory  
62 minimum utility rate shall be established by legislative rule  
63 promulgated in accordance with article three, chapter  
64 twenty-nine-a of this code. The rule shall provide that the  
65 mandatory minimum utility rate be based upon a uniform  
66 statewide percentage of the median household income in a  
67 particular geographic area which is rationally related to  
68 the geographic area of the project to be served.

69 (d) No loan or grant funds may be made available for  
70 a project if the project to be funded will provide subsi-  
71 dized services to certain users in the service area of the  
72 project.

73 (e) Notwithstanding any other provision of this article  
74 to the contrary, engineering studies and requirements  
75 imposed by the council for preliminary applications shall  
76 not exceed those engineering studies and requirements  
77 which are necessary for the council to determine the eco-  
78 nomic feasibility of the project. If the council determines

79 that the engineering studies and requirements for the  
80 pre-application would impose an undue hardship on any  
81 project sponsor, the council may provide funding assis-  
82 tance to project sponsors to defray the expenses of the  
83 pre-application process from moneys available in the  
84 infrastructure fund for making loans: *Provided*, That the  
85 council may only provide funding assistance in an amount  
86 equal to five thousand dollars or fifty percent of the total  
87 pre-application cost of the project, whichever amount is  
88 greater. If the project is ultimately approved for a loan by  
89 the council, the amount of funding assistance provided to  
90 the project sponsor for the pre-application process shall be  
91 included in the total amount of the loan to be repaid by  
92 the project sponsor. If the project is not ultimately ap-  
93 proved by the council, then the amount of funding assis-  
94 tance provided to the project sponsor will be considered a  
95 grant by the council and the total amount of the assistance  
96 shall be forgiven. In no event may the amount of funding  
97 assistance provided to all project sponsors exceed, in the  
98 aggregate, one hundred thousand dollars annually.

**§31-15A-16. Dedication of severance tax proceeds.**

1 (a) There shall be dedicated an annual amount from  
2 the collections of the tax collected pursuant to article  
3 thirteen-a, chapter eleven of this code for the construction,  
4 extension, expansion, rehabilitation, repair and improve-  
5 ment of water supply and sewage treatment systems and  
6 for the acquisition, preparation, construction and improve-  
7 ment of sites for economic development in this state as  
8 provided in this article.

9 (b) Notwithstanding any other provision of this code  
10 to the contrary, beginning on the first day of July, one  
11 thousand nine hundred ninety-five, the first sixteen mil-  
12 lion dollars of the tax collected pursuant to article  
13 thirteen-a, chapter eleven of this code shall be deposited to  
14 the credit of the West Virginia infrastructure general obli-  
15 gation debt service fund created pursuant to section three,  
16 article fifteen-b of this chapter: *Provided*, That none of



17 the collections from the tax imposed pursuant to section  
18 six, article thirteen-a, chapter eleven of this code shall be  
19 so dedicated or deposited: *Provided, however,* That the  
20 portion of the tax imposed by article thirteen-a, chapter  
21 eleven and dedicated for purposes of medicaid and the  
22 division of forestry pursuant to section twenty-a of said  
23 article thirteen-a shall remain dedicated for the purposes  
24 set forth in said section twenty-a.

25 (c) On or before the first day of May of each year,  
26 commencing the first day of May, one thousand nine  
27 hundred ninety-five, the council, by resolution, shall certi-  
28 fy to the treasurer and the water development authority the  
29 principal and interest coverage ratio and amount for the  
30 following fiscal year on any infrastructure general obliga-  
31 tion bonds issued pursuant to the provisions of article  
32 fifteen-b of this chapter.

#### **ARTICLE 15B. INFRASTRUCTURE BONDS.**

- §31-15B-1. Definitions.
- §31-15B-2. Infrastructure general obligation bonds; amount; when may issue.
- §31-15B-3. Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds.
- §31-15B-4. Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder.
- §31-15B-5. Covenants of state.
- §31-15B-6. Sale by governor; minimum price.
- §31-15B-7. Prohibition on funds inuring to the benefit of or being distributable to directors or officers; transactions between the council and West Virginia water development authority and directors or officers having certain interests in such transactions.
- §31-15B-8. Infrastructure bonds lawful investments.
- §31-15B-9. Refunding bonds.
- §31-15B-10. Termination or dissolution.
- §31-15B-11. Treasurer to determine financial advisor.
- §31-15B-12. Governor to determine bond counsel.
- §31-15B-13. Approval and payment of all necessary expenses.

#### **§31-15B-1. Definitions.**

1 For purposes of this article and article fifteen-a of this  
2 chapter:

3 (a) "Council" means the West Virginia infrastructure  
4 and jobs development council created in section three,  
5 article fifteen-a of this chapter;

6 (b) "Infrastructure amendment" means the amend-  
7 ment to the constitution of this state entitled "infrastructure  
8 amendment" as approved by referendum in the month of  
9 November, one thousand nine hundred ninety-four;

10 (c) "Infrastructure general obligation bond" means  
11 any bond or bonds issued by the state pursuant to section  
12 two of this article;

13 (d) "Water development authority" means the West  
14 Virginia water development authority established under  
15 article one, chapter twenty-two-c of this code, or any suc-  
16 cessor to all or any substantial part of its powers and du-  
17 ties.

**§31-15B-2. Infrastructure general obligation bonds; amount;  
when may issue.**

1 Bonds of the state of West Virginia, under authority of  
2 the infrastructure improvement amendment of 1994, of  
3 the par value not to exceed in the aggregate three hundred  
4 million dollars, are hereby authorized to be issued and  
5 sold solely for the construction, extension, expansion,  
6 rehabilitation, repair and improvement of water supply  
7 and sewage treatment systems and for the acquisition,  
8 preparation, construction and improvement of sites for  
9 economic development as provided for by the constitution  
10 and the provisions of this article.

11 These bonds may be issued by the governor upon  
12 resolution by the infrastructure council and certification to  
13 the governor. The bonds shall bear such date and mature  
14 at such time, bear interest at such rate not to exceed eight  
15 percent per annum, be in such amounts, be in such de-

16 nominations, be in such registered form, carry such regis-  
17 tration privileges, be due and payable at such time and  
18 place and in such amounts, and subject to such terms of  
19 redemption as such resolution may provide: *Provided,*  
20 That in no event may the amount of bonds outstanding  
21 exceed an amount for which sixteen million dollars would  
22 not be sufficient to provide annual service on the total  
23 amount of debt outstanding.

24 Both the principal and interest of the bonds shall be  
25 payable in the lawful money of the United States of Amer-  
26 ica and the bonds and the interest thereon shall be exempt  
27 from taxation by the state of West Virginia, or by any  
28 county, district or municipality thereof, which fact shall  
29 appear on the face of the bonds as part of the contract  
30 with the holder of the bond.

31 The bonds shall be executed on behalf of the state of  
32 West Virginia, by the manual or facsimile signature of the  
33 treasurer thereof, under the great seal of the state or a  
34 facsimile thereof, and countersigned by the manual or  
35 facsimile signature of the auditor of the state.

**§31-15B-3. Creation of debt service fund; disbursements to  
pay debt service on infrastructure general  
obligation bonds.**

1 There is hereby created a special account in the state  
2 treasury, which shall be designated and known as the "West  
3 Virginia Infrastructure General Obligation Debt Service  
4 Fund", into which shall be deposited amounts pursuant to  
5 the provisions of section sixteen, article fifteen-a of this  
6 chapter, as well as any amounts appropriated by the Legis-  
7 lature.

**§31-15B-4. Infrastructure general obligation debt service  
fund; sources used to pay bonds and interest;  
investment of remainder.**

1 All money from any and all appropriations made by  
2 the state, all moneys transferred pursuant to the provisions

3 of section sixteen, article fifteen-a of this chapter and all  
4 moneys from any other source whatsoever which is made  
5 liable by law for the payment of the principal of such  
6 bonds or the interest thereon shall be deposited into the  
7 infrastructure general obligation debt service fund. Mon-  
8 eys shall be kept by the treasurer in a separate account,  
9 under the designation aforesaid, and all moneys belonging  
10 to the infrastructure general obligation debt service fund  
11 shall be deposited in the state treasury to the credit there-  
12 of.

13 This fund shall be applied by the treasurer to the pay-  
14 ment of the principal and interest on such bonds as shall  
15 become due as herein provided. Any funds remaining  
16 after certification of the amount necessary for the pay-  
17 ment of principal and interest as provided by section six-  
18 teen, article fifteen-a and expenses authorized pursuant to  
19 section thirteen of this article shall be deposited to the  
20 credit of the infrastructure fund.

#### **§31-15B-5. Covenants of state.**

1 The state of West Virginia covenants and agrees with  
2 the holders of the bonds issued pursuant hereto as follows:  
3 (1) That such bonds shall constitute a direct and general  
4 obligation of the state of West Virginia; (2) that the full  
5 faith and credit of the state is hereby pledged to secure the  
6 payment of the principal and interest of such bonds; (3)  
7 that an annual state tax shall be collected in an amount  
8 sufficient to pay as it may accrue the interest on such  
9 bonds and the principal thereof; and (4) that such tax shall  
10 be levied in any year only to the extent that the moneys  
11 transferred to the infrastructure general obligation debt  
12 service fund as provided in section sixteen, article fifteen-a  
13 of this chapter which are irrevocably set aside and appro-  
14 priated for and applied to the payment of the interest on  
15 and principal of any bond becoming due and payable in  
16 such year are insufficient therefor.

#### **§31-15B-6. Sale by governor; minimum price.**

1       The governor shall sell the bonds herein authorized at  
2 such time or times as the council, by resolution, may de-  
3 termine necessary to provide funds for purposes set forth  
4 in this article and article fifteen-a of this chapter. Sales  
5 shall be at not less than par and accrued interest.

6       The bonds must be offered for competitive bids from  
7 recognized financial investment institutions before the  
8 bonds may be sold: *Provided*, That the bid process is not  
9 subject to the provisions of article three-a, chapter five-a  
10 of this code. Any and all of the bids may be rejected. If  
11 the bonds are not sold pursuant to the competitive bid  
12 process, the bonds may, within sixty days after the date the  
13 bids are received, be sold at private sale: *Provided*,  
14 *however*, That no private sale shall be made at a price less  
15 than the highest bid received.

**§31-15B-7. Prohibition on funds inuring to the benefit of or  
being distributable to directors or officers;  
transactions between the council and West  
Virginia water development authority and di-  
rectors or officers having certain interests in  
such transactions.**

1       No part of the infrastructure fund shall inure to the  
2 benefit of or be distributable to the commissioners of the  
3 public service commission, the council, or the West Virgin-  
4 ia water development authority's directors or officers. The  
5 council may approve and the water development authority  
6 make loans and exercise other powers as previously speci-  
7 fied in furtherance of their corporate purpose: *Provided*,  
8 That no loans shall be made, nor shall any property be  
9 purchased or leased from, or sold, leased or otherwise  
10 disposed of, to any commissioner, director or officer of  
11 the council, the public service commission or the West  
12 Virginia water development authority.

**§31-15B-8. Infrastructure bonds lawful investments.**

1       All infrastructure bonds issued pursuant to this article  
2 shall be lawful investments for banking institutions, societ-

3 ies for savings, building and loan associations, savings and  
4 loan associations, deposit guarantee associations, trust  
5 companies, insurance companies, including domestic for  
6 life and domestic not for life insurance companies.

**§31-15B-9. Refunding bonds.**

1 Any infrastructure general obligation bonds which are  
2 outstanding may at any time be refunded by the issuance  
3 of refunding bonds in an amount deemed necessary to  
4 refund the principal of the bonds to be refunded, together  
5 with any unpaid interest thereon; to accomplish the pur-  
6 pose of this article and article fifteen-a of this chapter; and  
7 to pay any premiums and commissions necessary to be  
8 paid in connection therewith. Any refunding may be  
9 effected whether the infrastructure general obligation  
10 bonds to be refunded shall have then matured or shall  
11 thereafter mature. Any refunding bonds issued pursuant  
12 to this article shall be payable from the infrastructure  
13 general obligation bond debt service fund, and shall be  
14 subject to the provisions contained in section eleven, arti-  
15 cle fifteen-a of this chapter and shall be secured in accor-  
16 dance with the provisions of this article.

**§31-15B-10. Termination or dissolution.**

1 Upon the termination or dissolution of the West Vir-  
2 ginia water development authority, all rights and proper-  
3 ties of the West Virginia water development authority with  
4 respect to the infrastructure fund shall pass to and be vest-  
5 ed in the state, subject to the rights of bondholders,  
6 lienholders and other creditors.

**§31-15B-11. Treasurer to determine financial advisor.**

1 The treasurer shall select a competent person or firm  
2 to serve as financial advisor for the issuance and sale of  
3 general obligation bonds issued pursuant to this article.

**§31-15B-12. Governor to determine bond counsel.**

1       The governor shall select a competent person or firm  
2 to serve as bond counsel who shall be responsible for the  
3 issuance of a final approving opinion regarding the legali-  
4 ty of the sale of general obligation bonds issued pursuant  
5 to this article. Notwithstanding the provisions of article  
6 three, chapter five of this code, bond counsel may repre-  
7 sent the council in court, render advice to the council and  
8 provide other legal services as may be requested by the  
9 council regarding any bond issuance pursuant to this  
10 article and all other matter relating to the bond issue.

**§31-15B-13. Approval and payment of all necessary expenses.**

1       All necessary expenses, including legal expenses, in-  
2 curred in the issuance of any general obligation bonds  
3 pursuant to this article shall be paid out of the infrastruc-  
4 ture general obligation debt service fund. The amount of  
5 any expenses incurred shall be certified to the water devel-  
6 opment authority.

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## CHAPTER 131

(Com. Sub. for H. B. 2491—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)  
[By Request of the Executive]

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[Passed March 11, 1995, in effect ninety days from passage.  
Became law without Governor's signature.]

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AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article twenty-four of said chapter; to amend and reenact sections one-a, two, four and five, article fifteen, chapter thirty-three of said code; to further amend said article by adding thereto two new sections, designated sections one-b and twenty; and to amend article sixteen of said chapter by adding thereto a new section, designated section fifteen, all relating to accident and sickness insurance, excluding individual, employee and employer deposits, to medical

savings accounts from adjusted gross income for purposes of personal income tax and from taxable income for purposes of corporation net income tax, requiring the guaranty of renewability for individual accident and sickness policies, establishing rate criteria for individual major medical policies, deleting an optional relation of earnings to insurance proviso, permitting establishment of individual medical savings accounts to serve as self-insurance for the payment of medical expenses, authorizing combined plans to defray medical expenses included within deductible provisions of an individual or group insurance plan and therefore not payable under that plan, definitions, ownership of accounts, contributions, trustees, restricting withdrawals from medical savings accounts for purposes other than payment of medical expenses, requiring insurance commissioner to issue regulations for plan standards, and authorizing tax commissioner to provide penalties for early withdrawal by legislative rule.

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

That section fifteen, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six, article twenty-four of said chapter be amended and reenacted; that sections one-a, two, four and five, article fifteen, chapter thirty-three of said code be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections one-b and twenty; and that article sixteen of said chapter be amended by adding thereto a new section, designated section fifteen, all to read as follows:

#### **Chapter**

- 11. Taxation.**
- 13. Insurance.**

### **CHAPTER 11. TAXATION.**

#### **Article**

- 21. Personal Income Tax.**
- 24. Corporation Net Income Tax.**

#### **ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-12. West Virginia adjusted gross income of resident individual.**



1           (a) *General.* — The West Virginia adjusted gross in-  
2 come of a resident individual means his federal adjusted  
3 gross income as defined in the laws of the United States  
4 for the taxable year with the modifications specified in this  
5 section.

6           (b) *Modifications increasing federal adjusted gross*  
7 *income.* — There shall be added to federal adjusted gross  
8 income unless already included therein the following  
9 items:

10           (1) Interest income on obligations of any state other  
11 than this state or of a political subdivision of any other  
12 state unless created by compact or agreement to which this  
13 state is a party;

14           (2) Interest or dividend income on obligations or  
15 securities of any authority, commission or instrumentality  
16 of the United States, which the laws of the United States  
17 exempt from federal income tax but not from state in-  
18 come taxes;

19           (3) Income taxes imposed by this state or any other  
20 taxing jurisdiction, to the extent deductible in determining  
21 federal adjusted gross income and not credited against  
22 federal income tax: *Provided,* That this modification shall  
23 not be made for taxable years beginning after the  
24 thirty-first day of December, one thousand nine hundred  
25 eighty-six;

26           (4) Interest on indebtedness incurred or continued to  
27 purchase or carry obligations or securities the income  
28 from which is exempt from tax under this article, to the  
29 extent deductible in determining federal adjusted gross  
30 income;

31           (5) Interest on a depository institution tax-exempt  
32 savings certificate which is allowed as an exclusion from  
33 federal gross income under Section 128 of the Internal  
34 Revenue Code, for the federal taxable year;

35           (6) The amount allowed as a deduction from federal  
36 gross income under Section 221 of the Internal Revenue  
37 Code by married couples who file a joint federal return  
38 for the federal taxable year: *Provided,* That this modifica-

39 tion shall not be made for taxable years beginning after  
40 the thirty-first day of December, one thousand nine hun-  
41 dred eighty-six;

42 (7) The deferral value of certain income that is not  
43 recognized for federal tax purposes, which value shall be  
44 an amount equal to a percentage of the amount allowed as  
45 a deduction in determining federal adjusted gross income  
46 pursuant to the accelerated cost recovery system under  
47 Section 168 of the Internal Revenue Code for the federal  
48 taxable year, with the percentage of the federal deduction  
49 to be added as follows with respect to the following recov-  
50 ery property: Three-year property — no modification;  
51 five-year property — ten percent; ten-year property —  
52 fifteen percent; fifteen-year public utility property —  
53 twenty-five percent; and fifteen-year real property —  
54 thirty-five percent: *Provided*, That this modification shall  
55 not apply to any person whose federal deduction is deter-  
56 mined by the use of the straight line method: *Provided*,  
57 *however*, That this modification shall not be made for  
58 taxable years beginning after the thirty-first day of De-  
59 cember, one thousand nine hundred eighty-six; and

60 (8) The amount of a lump sum distribution for which  
61 the taxpayer has elected under Section 402(e) of the Inter-  
62 nal Revenue Code of 1986, as amended, to be separately  
63 taxed for federal income tax purposes.

64 (c) *Modifications reducing federal adjusted gross*  
65 *income.* — There shall be subtracted from federal adjusted  
66 gross income to the extent included therein:

67 (1) Interest income on obligations of the United States  
68 and its possessions to the extent includible in gross income  
69 for federal income tax purposes;

70 (2) Interest or dividend income on obligations or  
71 securities of any authority, commission or instrumentality  
72 of the United States or of the state of West Virginia to the  
73 extent includible in gross income for federal income tax  
74 purposes but exempt from state income taxes under the  
75 laws of the United States or of the state of West Virginia,  
76 including federal interest or dividends paid to sharehold-  
77 ers of a regulated investment company, under Section 852

78 of the Internal Revenue Code for taxable years ending  
79 after the thirtieth day of June, one thousand nine hundred  
80 eighty-seven;

81 (3) Any gain from the sale or other disposition of  
82 property having a higher fair market value on the first day  
83 of January, one thousand nine hundred sixty-one, than the  
84 adjusted basis at said date for federal income tax purposes:  
85 *Provided*, That the amount of this adjustment is limited to  
86 that portion of any gain which does not exceed the differ-  
87 ence between the fair market value and the adjusted basis:  
88 *Provided, however*, That if the gain is considered a  
89 long-term capital gain for federal income tax purposes,  
90 the modification shall be limited to forty percent of the  
91 portion of the gain: *Provided further*, That this modifica-  
92 tion shall not be made for taxable years beginning after  
93 the thirty-first day of December, one thousand nine hun-  
94 dred eighty-six;

95 (4) The amount of any refund or credit for overpay-  
96 ment of income taxes imposed by this state, or any other  
97 taxing jurisdiction, to the extent properly included in  
98 gross income for federal income tax purposes;

99 (5) Annuities, retirement allowances, returns of contri-  
100 butions and any other benefit received under the West  
101 Virginia public employees retirement system, the West  
102 Virginia state teachers retirement system and all forms of  
103 military retirement, including regular armed forces, re-  
104 serves and national guard, including any survivorship  
105 annuities derived therefrom, to the extent includible in  
106 gross income for federal income tax purposes: *Provided*,  
107 That notwithstanding any provisions in this code to the  
108 contrary this modification shall be limited to the first two  
109 thousand dollars of benefits received under the West Vir-  
110 ginia public employees retirement system, the West Vir-  
111 ginia state teachers retirement system and all forms of  
112 military retirement including regular armed forces, re-  
113 serves and national guard, including any survivorship  
114 annuities derived therefrom, to the extent includible in  
115 gross income for federal income tax purposes for taxable  
116 years beginning after the thirty-first day of December, one  
117 thousand nine hundred eighty-six; and the first two thou-

118 sand dollars of benefits received under any federal retire-  
119 ment system to which Title 4 U.S.C. §111 applies: *Provid-*  
120 *ed, however,* That the total modification under this para-  
121 graph shall not exceed two thousand dollars per person  
122 receiving retirement benefits and this limitation shall apply  
123 to all returns or amended returns filed after the last day of  
124 December, one thousand nine hundred eighty-eight;

125 (6) Retirement income received in the form of pen-  
126 sions and annuities after the thirty-first day of December,  
127 one thousand nine hundred seventy-nine, under any West  
128 Virginia police, West Virginia firemen's retirement system  
129 or the West Virginia department of public safety death,  
130 disability and retirement fund, including any survivorship  
131 annuities derived therefrom, to the extent includible in  
132 gross income for federal income tax purposes;

133 (7) Federal adjusted gross income in the amount of  
134 eight thousand dollars received from any source after the  
135 thirty-first day of December, one thousand nine hundred  
136 eighty-six, by any person who has attained the age of  
137 sixty-five on or before the last day of the taxable year, or  
138 by any person certified by proper authority as permanent-  
139 ly and totally disabled, regardless of age, on or before the  
140 last day of the taxable year, to the extent includible in  
141 federal adjusted gross income for federal tax purposes:  
142 *Provided,* That if a person has a medical certification from  
143 a prior year and he is still permanently and totally dis-  
144 abled, a copy of the original certificate is acceptable as  
145 proof of disability. A copy of the form filed for the feder-  
146 al disability income tax exclusion is acceptable: *Provided,*  
147 *however,* That:

148 (i) Where the total modification under subdivisions  
149 (1), (2), (5) and (6) of this subsection is eight thousand  
150 dollars per person or more, no deduction shall be allowed  
151 under this subdivision; and

152 (ii) Where the total modification under subdivisions  
153 (1), (2), (5) and (6) of this subsection is less than eight  
154 thousand dollars per person, the total modification allowed  
155 under this subdivision for all gross income received by  
156 that person shall be limited to the difference between eight  
157 thousand dollars and the sum of modifications under

158 subdivisions;

159 (8) Federal adjusted gross income in the amount of  
160 eight thousand dollars received from any source after the  
161 thirty-first day of December, one thousand nine hundred  
162 eighty-six, by the surviving spouse of any person who had  
163 attained the age of sixty-five or who had been certified as  
164 permanently and totally disabled, to the extent includible  
165 in federal adjusted gross income for federal tax purposes:  
166 *Provided, That:*

167 (i) Where the total modification under subdivisions  
168 (1), (2), (5), (6) and (7) of this subsection is eight thou-  
169 sand dollars or more, no deduction shall be allowed under  
170 this subdivision; and

171 (ii) Where the total modification under subdivisions  
172 (1), (2), (5), (6) and (7) of this subsection is less than eight  
173 thousand dollars per person, the total modification allowed  
174 under this subdivision for all gross income received by  
175 that person shall be limited to the difference between eight  
176 thousand dollars and the sum of the subdivisions;

177 (9) Any pay or allowances received, after the  
178 thirty-first day of December, one thousand nine hundred  
179 seventy-nine, by West Virginia residents who have not  
180 attained the age of sixty-five, as compensation for active  
181 service in the armed forces of the United States: *Provided,*  
182 *That the deduction shall be limited to an amount not to*  
183 *exceed four thousand dollars: Provided, however, That*  
184 *this modification shall not be made for taxable years be-*  
185 *ginning after the thirty-first day of December, one thou-*  
186 *sand nine hundred eighty-six;*

187 (10) Gross income to the extent included in federal  
188 adjusted gross income under Section 86 of the Internal  
189 Revenue Code for federal income tax purposes: *Provided,*  
190 *That this modification shall not be made for taxable years*  
191 *beginning after the thirty-first day of December, one*  
192 *thousand nine hundred eighty-six;*

193 (11) The amount of any lottery prize awarded by the  
194 West Virginia state lottery commission, to the extent prop-  
195 erly included in gross income for federal income tax pur-

196 poses: *Provided*, That for taxable years beginning after  
197 the thirty-first day of December, one thousand nine hun-  
198 dred ninety-two, this modification shall not be made for  
199 lottery prizes awarded by the West Virginia state lottery  
200 commission;

201 (12) Individual, employee and employer contributions  
202 and interest accruing to medical savings accounts offset by  
203 withdrawals for purposes other than payment of medical  
204 expenses or retirement on or after age fifty-five estab-  
205 lished pursuant to section twenty, article fifteen or section  
206 fifteen, article sixteen, chapter thirty-three of this code, to  
207 the extent includible in federal adjusted gross income for  
208 federal tax purposes: *Provided*, That the amount subtract-  
209 ed pursuant to this subsection for any one taxable year  
210 may not exceed two thousand dollars; and

211 (13) Any other income which this state is prohibited  
212 from taxing under the laws of the United States.

213 (d) *Modification for West Virginia fiduciary adjust-*  
214 *ment.* — There shall be added to or subtracted from feder-  
215 al adjusted gross income, as the case may be, the taxpay-  
216 er's share, as beneficiary of an estate or trust, of the West  
217 Virginia fiduciary adjustment determined under section  
218 nineteen of this article.

219 (e) *Partners and S corporation shareholders.* — The  
220 amounts of modifications required to be made under this  
221 section by a partner or an S corporation shareholder,  
222 which relate to items of income, gain, loss or deduction of  
223 a partnership or an S corporation, shall be determined  
224 under section seventeen of this article.

225 (f) *Husband and wife.* — If husband and wife deter-  
226 mine their federal income tax on a joint return but deter-  
227 mine their West Virginia income taxes separately, they  
228 shall determine their West Virginia adjusted gross incomes  
229 separately as if their federal adjusted gross incomes had  
230 been determined separately.

#### ARTICLE 24. CORPORATION NET INCOME TAX.

##### §11-24-6. Adjustments in determining West Virginia taxable income.

1       (a) *General.* — In determining West Virginia taxable  
2 income of a corporation, its taxable income as defined for  
3 federal income tax purposes shall be adjusted and deter-  
4 mined before the apportionment provided by section  
5 seven of this article, by the items specified in this section.

6       (b) *Adjustments increasing federal taxable income.* —  
7 There shall be added to federal taxable income, unless  
8 already included in the computation of federal taxable  
9 income, the following items:

10       (1) Interest or dividends on obligations or securities of  
11 any state or of a political subdivision or authority thereof;

12       (2) Interest or dividends (less related expenses to the  
13 extent not deducted in determining federal taxable in-  
14 come) on obligations or securities of any authority, com-  
15 mission or instrumentality of the United States which the  
16 laws of the United States exempt from federal income tax  
17 but not from state income taxes;

18       (3) Income taxes and other taxes, including franchise  
19 and excise taxes, which are based on, measured by, or  
20 computed with reference to net income, imposed by this  
21 state or any other taxing jurisdiction, to the extent deduct-  
22 ed in determining federal taxable income;

23       (4) The amount of unrelated business taxable income  
24 as defined by Section 512 of the Internal Revenue Code  
25 of 1986, as amended, of a corporation which by reason of  
26 its purposes is generally exempt from federal income  
27 taxes; and

28       (5) The amount of any net operating loss deduction  
29 taken for federal income tax purposes under Section 172  
30 of the Internal Revenue Code of 1986, as amended.

31       (c) *Adjustments decreasing federal taxable income.* —  
32 There shall be subtracted from federal taxable income to  
33 the extent included therein:

34       (1) Any gain from the sale or other disposition of  
35 property having a higher fair market value on the first day  
36 of July, one thousand nine hundred sixty-seven, than the  
37 adjusted basis at said date for federal income tax purposes:

38 *Provided*, That the amount of this adjustment is limited to  
39 that portion of any gain which does not exceed the differ-  
40 ence between the fair market value and the adjusted basis;

41 (2) The amount of any refund or credit for overpay-  
42 ment of income taxes and other taxes, including franchise  
43 and excise taxes, which are based on, measured by, or  
44 computed with reference to net income, imposed by this  
45 state or any other taxing jurisdiction, to the extent proper-  
46 ly included in gross income for federal income tax pur-  
47 poses;

48 (3) The amount added to federal taxable income due  
49 to the elimination of the reserve method for computation  
50 of the bad debt deduction;

51 (4) The full amount of interest expense actually disal-  
52 lowed in determining federal taxable income which was  
53 incurred or continued to purchase or carry obligations or  
54 securities of any state or of any political subdivision there-  
55 of;

56 (5) The amount required to be added to federal tax-  
57 able income as a dividend received from a foreign  
58 (non-United States) corporation under Section 78 of the  
59 Internal Revenue Code of 1986, as amended, by a corpo-  
60 ration electing to take the foreign tax credit for federal  
61 income tax purposes;

62 (6) The amount of salary expenses disallowed as a  
63 deduction for federal income tax purposes due to claim-  
64 ing the federal jobs credit under Section 51 of the Internal  
65 Revenue Code of 1986, as amended;

66 (7) The amount included in federal adjusted gross  
67 income by the operation of Section 951 of the Internal  
68 Revenue Code of 1986, as amended;

69 (8) Employer contributions to medical savings ac-  
70 counts established pursuant to section fifteen, article six-  
71 teen, chapter thirty-three of this code to the extent includ-  
72 ed in federal adjusted gross income for federal income tax  
73 purposes less any portion of employer contributions with-  
74 drawn for purposes other than payment of medical ex-  
75 penses: *Provided*, That the amount subtracted pursuant to



76 this subsection for any one taxable year may not exceed  
77 the maximum amount that would have been deductible  
78 from the corporation's federal adjusted gross income for  
79 federal income tax purposes if the aggregate amount of  
80 the corporation's contributions to individual medical sav-  
81 ings accounts established under section fifteen, article  
82 sixteen, chapter thirty-three of this code had been contrib-  
83 uted to a qualified plan as defined under the Employee  
84 Retirement Income Security Act of 1974, as amended; and

85 (9) Any amount included in federal adjusted gross  
86 income which is foreign source income. Foreign source  
87 income includes:

88 (A) Interest and dividends, other than those derived  
89 from sources within the United States;

90 (B) Rents, royalties, license and technical fees from  
91 property located or services performed without the United  
92 States or from any interest in the property, including rents,  
93 royalties or fees for the use of or the privilege of using  
94 without the United States any patents, copyrights, secret  
95 process and formulas, good will, trademarks, trade brands,  
96 franchises and other like properties; and

97 (C) Gains, profits or other income from the sale of  
98 intangible or real property located without the United  
99 States.

100 In determining the source of "foreign source income",  
101 the provisions of Sections 861, 862 and 863 of the Inter-  
102 nal Revenue Code of 1986, as amended, shall be applied.

103 (d) *Net operating loss deduction.* — Except as other-  
104 wise provided in this subsection, there shall be allowed as a  
105 deduction for the taxable year an amount equal to the  
106 aggregate of: (1) The West Virginia net operating loss  
107 carryovers to that year; plus (2) the net operating loss  
108 carrybacks to that year: *Provided*, That no more than  
109 three hundred thousand dollars of net operating loss from  
110 any taxable year beginning after the thirty-first day of  
111 December, one thousand nine hundred ninety-two, may be  
112 carried back to any previous taxable year. For purposes of  
113 this subsection, the term "West Virginia net operating loss

114 deduction" means the deduction allowed by this subsec-  
115 tion, determined in accordance with Section 172 of the  
116 Internal Revenue Code of 1986, as amended.

117 (1) *Special rules.* —

118 (A) When the corporation further adjusts its adjusted  
119 federal taxable income under section seven of this article,  
120 the West Virginia net operating loss deduction allowed by  
121 this subsection shall be deducted after the section seven  
122 adjustments are made;

123 (B) The tax commissioner shall prescribe the transi-  
124 tion regulations as he deems necessary for fair and equita-  
125 ble administration of this subsection as amended by this  
126 act.

127 (2) *Effective date.* — The provisions of this subsec-  
128 tion, as amended by chapter one hundred nineteen, acts of  
129 the Legislature, one thousand nine hundred eighty-eight,  
130 shall apply to all taxable years ending after the thirtieth  
131 day of June, one thousand nine hundred eighty-eight; and  
132 to all loss carryovers from taxable years ending on or  
133 before said thirtieth day of June.

134 (e) *Special adjustments for expenditures for water and*  
135 *air pollution control facilities.* —

136 (1) If the taxpayer so elects under subdivision (2) of  
137 this subsection, there shall be:

138 (A) Subtracted from federal taxable income the total  
139 of the amounts paid or incurred during the taxable year  
140 for the acquisition, construction or development within  
141 this state of water pollution control facilities or air pollu-  
142 tion control facilities as defined in Section 169 of the  
143 Internal Revenue Code; and

144 (B) Added to federal taxable income the total of the  
145 amounts of any allowances for depreciation and amortiza-  
146 tion of the water pollution control facilities or air pollution  
147 control facilities, as so defined, to the extent deductible in  
148 determining federal taxable income.

149 (2) The election referred to in subdivision (1) of this  
150 subsection shall be made in the return filed within the time

151 prescribed by law (including extensions thereof) for the  
152 taxable year in which the amounts were paid or incurred.  
153 The election shall be made in that manner, and the scope  
154 of application of that election shall be defined, as the tax  
155 commissioner may by regulations prescribe, and shall be  
156 irrevocable when made as to all amounts paid or incurred  
157 for any particular water pollution control facility or air  
158 pollution control facility.

159 (3) Notwithstanding any other provisions of this sub-  
160 section or of section seven to the contrary, if the taxpayer's  
161 federal taxable income is subject to allocation and appor-  
162 tionment under section seven, the adjustments prescribed  
163 in paragraphs (A) and (B), subdivision (1) of this subsec-  
164 tion shall (instead of being made to the taxpayer's federal  
165 taxable income before allocation and apportionment  
166 thereof as provided in section seven) be made to the por-  
167 tion of the taxpayer's net income, computed without re-  
168 gard to the adjustments, allocated and apportioned to this  
169 state in accordance with section seven.

170 (f) *Allowance for certain government obligations and*  
171 *obligations secured by residential property.* — The West  
172 Virginia taxable income of a taxpayer subject to this arti-  
173 cle as adjusted in accordance with subsections (b), (c), (d)  
174 and (e) of this section shall be further adjusted by multi-  
175 plying the taxable income after the adjustment by said  
176 subsections by a fraction equal to one minus a fraction:

177 (1) The numerator of which is the sum of the average  
178 of the monthly beginning and ending account balances  
179 during the taxable year (account balances to be deter-  
180 mined at cost in the same manner that obligations, invest-  
181 ments and loans are reported on Schedule L of the Federal  
182 Form 1120) of the following:

183 (A) Obligations or securities of the United States, or  
184 of any agency, authority, commission or instrumentality  
185 of the United States and any other corporation or entity  
186 created under the authority of the United States Congress  
187 for the purpose of implementing or furthering an objec-  
188 tive of national policy;

189 (B) Obligations or securities of this state and any

190 political subdivision or authority thereof;

191 (C) Investments or loans primarily secured by mort-  
192 gages, or deeds of trust, on residential property located in  
193 this state and occupied by nontransients; and

194 (D) Loans primarily secured by a lien or security  
195 agreement on residential property in the form of a mobile  
196 home, modular home or double-wide, located in this state  
197 and occupied by nontransients.

198 (2) The denominator of which is the average of the  
199 monthly beginning and ending account balances of the  
200 total assets of the taxpayer which are shown on Schedule L  
201 of Federal Form 1120, which are filed by the taxpayer  
202 with the Internal Revenue Service.

### CHAPTER 33. INSURANCE.

#### Article

15. Accident and Sickness Insurance.

16. Group Accident and Sickness Insurance.

#### ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-1a. Premium rate increase requests; loss ratio requirement.

§33-15-1b. Rates, individual major medical policies.

§33-15-2. Scope and format of policy.

§33-15-4. Required policy provisions.

§33-15-5. Optional policy provisions.

§33-15-20. Individual medical savings accounts; definitions; ownership;  
trustees; regulations.

#### §33-15-1a. Premium rate increase requests; loss ratio require- ment.

1 To be eligible to make a premium rate increase re-  
2 quest after the first day of July, one thousand nine hun-  
3 dred ninety-five, any insurer offering or which has in  
4 force accident and sickness insurance policies which are  
5 subject to the provisions of this article shall have a mini-  
6 mum anticipated loss ratio of sixty-five percent as to such  
7 policy form. In calculating its minimum anticipated loss  
8 ratio, an insurer shall include in its actual incurred claims  
9 the amount of premium taxes for the same experience  
10 period which are attributable to the policy forms affected  
11 by this section and which were paid to the state of West

12 Virginia pursuant to the provisions of article three of this  
13 chapter.

**§33-15-1b. Rates, individual major medical policies.**

1 (a) No individual major medical coverage policy may  
2 be approved by the commissioner for use in this state  
3 unless:

4 (1) The premium rates for the policy, after adjustment  
5 for any difference in policy benefits, which include, but  
6 are not limited to, deductibles, copayments and levels of  
7 care management, do not exceed by more than thirty  
8 percent the premium rates charged by the same insurer on  
9 any and all other individual major medical policies for  
10 those individuals with similar characteristics and factors,  
11 which the insurer has had approved by the commissioner  
12 within a five-year period preceding the date of the new  
13 policy filing by the insurer;

14 (2) The insurer files with the commissioner the opin-  
15 ion of a qualified actuary or other person acceptable to  
16 the commissioner which states:

17 (A) That the policy premium rate is in compliance  
18 with subdivision (1) of this subsection; and

19 (B) That the anticipated loss ratio for the combined  
20 experience of the policy taken together with all other  
21 individual major medical coverage policies which the  
22 insurer has had approved by the commissioner within a  
23 five-year period preceding the date of the new policy  
24 filing is equal to or greater than the loss ratio requirements  
25 set forth in section one-a of this article.

26 (3) For a period of three years after the effective date  
27 of this section, an insurer may have one or more policy  
28 forms which exceed the one hundred thirty percent re-  
29 quirement of subdivision (2) of this subsection: *Provided,*  
30 That any rate schedule increase for such policy form shall  
31 not exceed thirty-three and one-third percent of the rate  
32 schedule increase for the lowest rate policy form. During  
33 the final twelve months of this three-year period, an insur-  
34 er may request an extension of time for compliance from  
35 the commissioner based on extenuating circumstances.

36 (b) An initial individual major medical policy form  
37 may be disapproved by the commissioner if the commis-  
38 sioner determines that the rates proposed by the insurer  
39 for the policy form are set at a level substantially less than  
40 rates charged by other insurers for comparable insurance  
41 coverage.

42 (c) Nothing contained in this section may be con-  
43 strued to prevent the use of age, sex, area, industry, occu-  
44 pational, and avocational factors in setting premium rates  
45 or to prevent the use of different rates after approval by  
46 the commissioner for smokers and nonsmokers or for any  
47 other habit or habits of an insured person which have a  
48 statistically proven effect on the health of the person.  
49 Nothing contained in this section shall preclude the estab-  
50 lishment of a substandard classification based upon the  
51 health condition of the insured: *Provided*, That the initial  
52 classification may not be changed adversely to the insured  
53 after the initial issuance of the policy.

54 (d) The commissioner has the right, upon application  
55 by an insurer, and for good cause shown, to grant relief  
56 from any requirement of this section.

**§33-15-2. Scope and format of policy.**

1 No policy of accident and sickness insurance shall be  
2 delivered or issued for delivery to any person in this state  
3 unless:

4 (a) The entire money and other considerations there-  
5 for are expressed therein; and

6 (b) The time at which the insurance takes effect and  
7 terminates is expressed therein; and

8 (c) It purports to insure only one person, except that a  
9 policy may insure, originally or by subsequent amend-  
10 ment upon the application of an adult member of a family  
11 who shall be deemed the policyholder, any two or more  
12 eligible members of that family, including husband, wife,  
13 dependent children or any children under a specified age  
14 which shall not exceed nineteen years and any other per-  
15 son dependent upon the policyholder; and

16 (d) The policy is guaranteed to be renewable by the  
17 insured unless there is fraud, nonpayment of premium, or  
18 material misrepresentation by the insured in the applica-  
19 tion for insurance and the misrepresentation has been  
20 acted upon by the insurer within two years from the date  
21 of the issuance of the policy. Notwithstanding the forego-  
22 ing an insurer may request the commissioner to terminate  
23 coverage. If the commissioner does not approve a request  
24 for termination of coverage, then the insurer may termi-  
25 nate the coverage but shall be prohibited from writing new  
26 business on coverage of the type terminated in this state  
27 for a period of five years from the date of notice to the  
28 commissioner. The insurer shall provide notice to all af-  
29 fected policyholders and the commissioner at least one  
30 hundred twenty days prior to renewal. In the event of  
31 nonrenewal, the commissioner and the insurer shall assist  
32 policyholders regardless of geographic area, in finding  
33 appropriate coverage without imposition of preexisting  
34 coverage or benefit restrictions, if already satisfied, of the  
35 form; and

36 (e) The style, arrangement and over-all appearance of  
37 the policy give no undue prominence to any portion of  
38 the text, and unless every printed portion of the text of the  
39 policy and of any endorsements or attached papers is  
40 plainly printed in light-faced type of a style in general use,  
41 the size of which shall be uniform and not less than  
42 ten-point with a lowercase unspaced alphabet length not  
43 less than one hundred and twenty-point (the "text" shall  
44 include all printed matter except the name and address of  
45 the insurer, name or title of the policy, the brief descrip-  
46 tion, if any, and captions and subcaptions), the policy shall  
47 clearly indicate on the first page the conditions of renew-  
48 ability; and

49 (f) The exceptions and reductions of indemnity are set  
50 forth in the policy and, except those which are set forth in  
51 sections four and five of this article, are printed, at the  
52 insurer's option, either included with the benefit provisions  
53 to which they apply, or under an appropriate caption such  
54 as "Exceptions," or "Exceptions and Reductions": *Provid-*  
55 *ed*, That if an exception or reduction specifically applies  
56 only to a particular benefit of the policy, a statement of

57 such exception or reduction shall be included with the  
58 benefit provision to which it applies; and

59 (g) Each such form, including riders and endorse-  
60 ments, shall be identified by a form number in the lower  
61 left-hand corner of the first part thereof; and

62 (h) It contains no provision purporting to make any  
63 portion of the charter, rules, constitution, or bylaws of the  
64 insurer a part of the policy unless such portion is set forth  
65 in full in the policy, except in the case of the incorpora-  
66 tion of, or reference to, a statement of rates or classifica-  
67 tion of risks, or short-rate table filed with the commission-  
68 er.

#### §33-15-4. Required policy provisions.

1 Except as provided in section six of this article, each  
2 such policy delivered or issued for delivery to any person  
3 in this state shall contain the provisions specified in this  
4 section in the words in which the same appear in this sec-  
5 tion: *Provided*, That the insurer may, at its option, substi-  
6 tute for one or more of such provisions corresponding  
7 provisions of different wording approved by the commis-  
8 sioner which are in each instance not less favorable in any  
9 respect to the insured or the beneficiary. Such provisions  
10 shall be preceded individually by the caption appearing in  
11 this section or, at the option of the insurer, by such appro-  
12 priate individual or group captions or subcaptions as the  
13 commissioner may approve.

14 (a) A provision as follows:

15 "Entire Contract; Changes: This policy, including the  
16 endorsements and the attached papers, if any, constitutes  
17 the entire contract of insurance. No change in this policy  
18 shall be valid until approved by an executive officer of the  
19 insurer and unless such approval be endorsed hereon or  
20 attached hereto. No agent has authority to change this  
21 policy or to waive any of its provisions."

22 (b) A provision as follows:

23 "Time Limit on Certain Defenses: (1) After two years  
24 from the date of issue of this policy no misstatements,



25 except fraudulent misstatements, made by the applicant in  
26 the application for such policy shall be used to void the  
27 policy or to deny a claim for loss incurred or disability (as  
28 defined in the policy) commencing after the expiration of  
29 such two-year period."

30 The foregoing policy provision shall not be so con-  
31 strued as to affect any legal requirement for avoidance of  
32 a policy or denial of a claim during such initial two-year  
33 period, nor to limit the application of subdivisions (a), (b),  
34 (c), (d) and (e) of section five of this article in the event of  
35 misstatement with respect to age or occupation or other  
36 insurance. A policy which the insured has the right to  
37 continue in force subject to its terms by the timely pay-  
38 ment of premium (i) until at least age fifty, or (ii) in the  
39 case of a policy issued after age forty-four, for at least five  
40 years from its date of issue, may contain in lieu of the  
41 foregoing the following provision (from which the clause  
42 in parentheses may be omitted at the insurer's option)  
43 under the caption "Incontestable" :

44 "After this policy has been in force for a period of two  
45 years during the lifetime of the insured (excluding any  
46 period during which the insured is disabled), it shall be-  
47 come incontestable as to the statements contained in the  
48 application.

49 (2) No claim for loss incurred or disability (as defined  
50 in the policy) commencing after two years from the date  
51 of issue of this policy shall be reduced or denied on the  
52 ground that a disease or physical condition not excluded  
53 from coverage by name or specific description effective  
54 on the date of loss had existed prior to the effective date  
55 of coverage of this policy."

56 (c) A provision as follows:

57 "Grace Period: A grace period of \_\_\_\_\_  
58 (insert a number not less than '7' for weekly premium  
59 policies, '10' for monthly premium policies and '31' for all  
60 other policies) days will be granted for the payment of  
61 each premium falling due after the first premium, during  
62 which grace period the policy shall continue in force."

63 (d) A provision as follows:

64 "Reinstatement: If any renewal premium be not paid  
65 within the time granted the insured for payment, as subse-  
66 quent acceptance of premium by the insurer or by any  
67 agent duly authorized by the insurer to accept such premi-  
68 um, without requiring in connection therewith an applica-  
69 tion for reinstatement, shall reinstate the policy: *Provided*,  
70 That if the insurer or such agent requires an application  
71 for reinstatement and issues a conditional receipt for the  
72 premium tendered, the policy will be reinstated upon ap-  
73 proval of such application by the insurer, or lacking such  
74 approval, upon the forty-fifth day following the date of  
75 such conditional receipt unless the insurer has previously  
76 notified the insured in writing of its disapproval of such  
77 application. The reinstated policy shall cover only loss  
78 resulting from such accidental injury as may be sustained  
79 after the date of reinstatement and loss due to such sick-  
80 ness as may begin more than ten days after such date. In  
81 all other respects the insured and insurer shall have the  
82 same rights thereunder as they had under the policy im-  
83 mediately before the due date of the defaulted premium,  
84 subject to any provisions endorsed hereon or attached  
85 hereto in connection with the reinstatement."

86 (e) A provision as follows:

87 "Notice of Claim: Written notice of claim must be  
88 given to the insurer within twenty days after the occur-  
89 rence or commencement of any loss covered by the poli-  
90 cy, or as soon thereafter as is reasonably possible. Notice  
91 given by or on behalf of the insured or the beneficiary to  
92 the insurer at \_\_\_\_\_ (insert the loca-  
93 tion of such office as the insurer may designate for the  
94 purpose), or to any authorized agent of the insurer, with  
95 information sufficient to identify the insured, shall be  
96 deemed notice to the insurer."

97 In a policy providing a loss-of-time benefit which may  
98 be payable for at least two years, an insurer may at its  
99 option insert the following between the first and second  
100 sentences of the above provision:

101 "Subject to the qualifications set forth below, if the

102 insured suffers loss of time on account of disability for  
103 which indemnity may be payable for at least two years, he  
104 shall, at least once in every six months after having given  
105 notice of claim give to the insurer notice of continuance  
106 of said disability, except in the event of legal incapacity.  
107 The period of six months following any filing of proof by  
108 the insured or any payment by the insurer on account of  
109 such claim or any denial of liability, in whole or in part,  
110 by the insurer shall be excluded in applying this provi-  
111 sion. Delay in the giving of such notice shall not impair  
112 the insured's right to any indemnity which would other-  
113 wise have accrued during the period of six months preced-  
114 ing the date on which such notice is actually given."

115 (f) A provision as follows:

116 "Claim Forms: The insurer, upon receipt of a notice of  
117 claim, will furnish to the claimant such forms as are usual-  
118 ly furnished by it for filing proofs of loss. If such forms  
119 are not furnished within fifteen days after the giving of  
120 such notice the claimant shall be deemed to have complied  
121 with the requirements of this policy as to proof of loss  
122 upon submitting, within the time fixed in the policy for  
123 filing proofs of loss, written proof covering the occur-  
124 rence, the character and the extent of the loss for which  
125 claim is made."

126 (g) A provision as follows:

127 "Proof of Loss: Written proof of loss must be fur-  
128 nished to the insurer at its said office in case of claim for  
129 loss for which this policy provides any periodic payment  
130 contingent upon continuing loss within ninety days after  
131 the termination of the period for which the insurer is liable  
132 and in case of claim for any other loss within ninety days  
133 after the date of such loss. Failure to furnish such proof  
134 within the time required shall not invalidate nor reduce  
135 any claim if it was not reasonably possible to give proof  
136 within such time, provided such proof is furnished as soon  
137 as reasonably possible and in no event, except in the ab-  
138 sence of legal capacity, later than one year from the time  
139 proof is otherwise required."

140 (h) A provision as follows:

141 "Time of Payment of Claims: Indemnities payable  
142 under this policy for any loss other than loss for which  
143 this policy provides any periodic payment will be paid  
144 immediately upon receipt of due written proof of such  
145 loss. Subject to due written proof of loss, all accrued in-  
146 demnities for loss for which this policy provides periodic  
147 payment will be paid \_\_\_\_\_ (insert period for  
148 payment which must not be less frequently than monthly)  
149 and any balance remaining unpaid upon the termination  
150 of liability will be paid immediately upon receipt of due  
151 written proof."

152 (i) A provision as follows:

153 "Payment of Claims: Indemnity for loss of life will be  
154 payable in accordance with the beneficiary designation  
155 and the provisions respecting such payment which may be  
156 prescribed herein and effective at the time of payment. If  
157 no such designation or provision is then effective, such  
158 indemnity shall be payable to the estate of the insured.  
159 Any other accrued indemnities unpaid at the insured's  
160 death may, at the option of the insurer, be paid either to  
161 such beneficiary or to such estate. All other indemnities  
162 will be payable to the insured."

163 The following provisions, or either of them, may be  
164 included with the foregoing provisions at the option of the  
165 insurer:

166 "If any indemnity of this policy shall be payable to the  
167 estate of the insured, or to an insured or beneficiary who is  
168 a minor or otherwise not competent to give a valid release,  
169 the insurer may pay such indemnity, up to an amount not  
170 exceeding \$\_\_\_\_\_ (insert an amount which shall not  
171 exceed one thousand dollars), to any relative by blood or  
172 connection by marriage of the insured or beneficiary who  
173 is deemed by the insurer to be equitably entitled thereto.  
174 Any payment made by the insurer in good faith pursuant  
175 to this provision shall fully discharge the insurer to the  
176 extent of such payment."

177 "Subject to any written direction of the insured in the  
178 application or otherwise all or a portion of any indemni-  
179 ties provided by this policy on account of hospital nurs-

180 ing, medical, or surgical services may, at the insurer's op-  
181 tion and unless the insured requests otherwise in writing  
182 not later than the time of filing proofs of such loss, be  
183 paid directly to the hospital or person rendering such  
184 services; but it is not required that the service be rendered  
185 by a particular hospital or person."

186 (j) A provision as follows:

187 "Physical Examinations and Autopsy: The insurer at  
188 its own expense shall have the right and opportunity to  
189 examine the person of the insured when and as often as it  
190 may reasonably require during the pendency of a claim  
191 hereunder and to make an autopsy in case of death where  
192 it is not forbidden by law."

193 (k) A provision as follows:

194 "Legal Actions: No action at law or in equity shall be  
195 brought to recover on this policy prior to the expiration of  
196 sixty days after written proof of loss has been furnished in  
197 accordance with the requirements of this policy. No such  
198 action shall be brought after the expiration of three years  
199 after the time written proof of loss is required to be fur-  
200 nished."

201 (l) A provision as follows:

202 "Change of Beneficiary: Unless the insured makes an  
203 irrevocable designation of beneficiary, the right to change  
204 of beneficiary is reserved to the insured and the consent of  
205 the beneficiary or beneficiaries shall not be requisite to  
206 surrender or assignment of this policy or to any change of  
207 beneficiary or beneficiaries, or to any other changes in  
208 this policy."

209 The first clause of this provision, relating to the irrevo-  
210 cable designation of beneficiary, may be omitted at the  
211 insurer's option.

### §33-15-5. Optional policy provisions.

1 Except as provided in section six of this article, no  
2 such policy delivered or issued for delivery to any person  
3 in this state shall contain provisions respecting the matters  
4 set forth below unless such provisions are in the words in

5 which the same appear in this section: *Provided*, That the  
6 insurer may, at its option, use in lieu of any such provision  
7 a corresponding provision of different wording approved  
8 by the commissioner which is not less favorable in any  
9 respect to the insured or the beneficiary. Any such provi-  
10 sion contained in the policy shall be preceded individually  
11 by the appropriate caption appearing in this section or, at  
12 the option of the insurer, by such appropriate individual  
13 or group captions or subcaptions as the commissioner  
14 may approve.

15 (a) A provision as follows:

16 "Change of Occupation: If the insured be injured or  
17 contract sickness after having changed his occupation to  
18 one classified by the insurer as more hazardous than that  
19 stated in this policy or while doing for compensation any-  
20 thing pertaining to an occupation so classified, the insurer  
21 will pay only such portion of the indemnities provided in  
22 this policy as the premium paid would have purchased at  
23 the rates and within the limits fixed by the insurer for such  
24 more hazardous occupation. If the insured changes his  
25 occupation to one classified by the insurer as less hazard-  
26 ous than that stated in this policy, the insurer, upon receipt  
27 of proof of such change of occupation, will reduce the  
28 premium rate accordingly, and will return the excess pro  
29 rata unearned premium from the date of change of occu-  
30 pation or from the policy anniversary date immediately  
31 preceding receipt of such proof, whichever is the more  
32 recent. In applying this provision, the classification of  
33 occupational risk and the premium rates shall be such as  
34 have been last filed by the insurer prior to the occurrence  
35 of the loss for which the insurer is liable or prior to date of  
36 proof of change in occupation with the state official hav-  
37 ing supervision of insurance in the state where the insured  
38 resided at the time this policy was issued; but if such filing  
39 was not required, then the classification of occupational  
40 risk and the premium rates shall be those last made effec-  
41 tive by the insurer in such state prior to the occurrence of  
42 the loss or prior to the date of proof of change in occupa-  
43 tion."

44 (b) A provision as follows:

45 "Misstatement of Age: If the age of the insured has  
46 been misstated, all amounts payable under this policy shall  
47 be such as the premium paid would have purchased at the  
48 correct age."

49 (c) A provision as follows:

50 "Other Insurance in This Insurer: If an accident or  
51 sickness or accident and sickness policy or policies previ-  
52 ously issued by the insurer to the insured be in force con-  
53 currently herewith, making the aggregate indemnity for  
54 \_\_\_\_\_ (insert type of coverage or coverages) in  
55 excess of \$\_\_\_\_\_ (insert maximum limit of in-  
56 demnity or indemnities) the excess insurance shall be void  
57 and all premiums paid for such excess shall be returned to  
58 the insured or to his estate."

59 Or, in lieu thereof:

60 "Insurance effective at any one time on the insured  
61 under a like policy or policies in this insurer is limited to  
62 the one such policy elected by the insured, his beneficiary  
63 or his estate, as the case may be, and the insurer will return  
64 all premiums paid for all other such policies."

65 Provided that no policy hereafter issued for delivery in  
66 this state which provides, with or without other benefits, for  
67 the payment of benefits or reimbursement for expenses  
68 with respect to hospitalization, nursing care, medical or  
69 surgical examination or treatment, or ambulance transpor-  
70 tation shall contain any provision for a reduction of such  
71 benefits or reimbursement, or any provision for avoidance  
72 of the policy, on account of other insurance of such na-  
73 ture carried by the same insured with the same or another  
74 insurer.

75 (d) A provision as follows:

76 "Insurance with Other Insurers: If there be other valid  
77 coverage, not with this insurer, providing benefits for the  
78 same loss on other than an expense incurred basis and of  
79 which this insurer has not been given written notice prior  
80 to the occurrence or commencement of loss, the only  
81 liability for such benefits under this policy shall be for  
82 such proportion of the indemnities otherwise provided

83 hereunder for such loss as the like indemnities of which  
84 the insurer had notice (including the indemnities under  
85 this policy) bear to the total amount of all like indemnities  
86 for such loss, and for the return of such portion of the  
87 premium paid as shall exceed the pro rata portion for the  
88 indemnities thus determined."

89 The insurer may, at its option, include in this provision  
90 a definition of "other valid coverage," approved as to form  
91 by the commissioner, which definitions shall be limited in  
92 subject matter to coverage provided by organizations  
93 subject to regulations by insurance law or by insurance  
94 authorities of this or any other state of the United States or  
95 any province of Canada, and to any other coverage the  
96 inclusion of which may be approved by the commissioner.  
97 In the absence of such definition such term shall not in-  
98 clude group insurance, or benefits provided by union  
99 welfare plans or by employer or employee benefit organi-  
100 zations. For the purpose of applying the foregoing policy  
101 provisions with respect to any insured any amount of  
102 benefit provided for such insured pursuant to any com-  
103 pulsory benefit statute (including any workers' compensa-  
104 tion or employer's liability statute) whether provided by a  
105 governmental agency or otherwise shall in all cases be  
106 deemed to be "other valid coverage" of which the insurer  
107 has had notice. In applying the foregoing policy provision  
108 no third party liability coverage shall be included as "other  
109 valid coverage."

110 (e) A provision as follows:

111 "Relation of Earnings to Insurance: If the total month-  
112 ly amount of loss of time benefits promised for the same  
113 loss under all valid loss of time coverage upon the insured,  
114 whether payable on a weekly or monthly basis, shall ex-  
115 ceed the monthly earnings of the insured at the time dis-  
116 ability commenced or his average monthly earnings for  
117 the period of two years immediately preceding a disability  
118 for which claim is made, whichever is the greater, the in-  
119 surer will be liable only for such proportionate amount of  
120 such benefits under this policy as the amount of such  
121 monthly earnings or such average monthly earnings of the  
122 insured bears to the total amount of monthly benefits for



123 the same loss under all such coverage upon the insured at  
124 the time such disability commences and for the return of  
125 such part of the premiums paid during such two years as  
126 shall exceed the pro rata amount of the premiums for the  
127 benefits actually paid hereunder; but this shall not operate  
128 to reduce the total monthly amount of benefits payable  
129 under all such coverage upon the insured below the sum  
130 of two hundred dollars or the sum of the monthly benefits  
131 specified in such coverages, whichever is the lesser, nor  
132 shall it operate to reduce benefits other than those payable  
133 for loss of time."

134 The insurer may, at its option, include in this provision  
135 a definition of "valid loss of time coverage," approved as  
136 to form by the commissioner, which definition shall be  
137 limited in subject matter to coverage provided by govern-  
138 mental agencies or by organizations subject to regulation  
139 by insurance law or by insurance authorities of this or any  
140 other state of the United States or any province of Canada,  
141 or to any other coverage the inclusion of which may be  
142 approved by the commissioner or any combination of  
143 such coverages. In the absence of such definition such  
144 term shall not include any coverage provided for such  
145 insured pursuant to any compulsory benefit statute (in-  
146 cluding any workers' compensation or employer's liability  
147 statute), or benefits provided by union welfare plans or by  
148 employer or employee benefit organizations.

149 (f) A provision as follows:

150 "Unpaid Premium: Upon the payment of a claim un-  
151 der this policy, any premiums then due and unpaid or  
152 covered by any note or written order may be deducted  
153 therefrom."

154 (g) A provision as follows:

155 "Return of Premium on Cancellation: If the insured  
156 cancels this policy, the earned premium shall be computed  
157 by the use of the short-rate table last filed with the state  
158 official having supervision of insurance in the state where  
159 the insured resided when the policy was issued. Cancell-  
160 ation shall be without prejudice to any claim originating  
161 prior to the effective date of cancellation."

162 (h) A provision as follows:

163 "Conformity with State Statutes: Any provision of this  
164 policy which, on its effective date, is in conflict with the  
165 statutes of the state in which the insured resides on such  
166 date is hereby amended to conform to the minimum re-  
167 quirements of such statutes."

168 (i) A provision as follows:

169 "Illegal Occupation: The insurer shall not be liable for  
170 any loss to which a contributing cause was the insured's  
171 commission of or attempt to commit a felony or to which  
172 a contributing cause was the insured's being engaged in an  
173 illegal occupation."

174 (j) A provision as follows:

175 "Intoxicants and Narcotics: The insurer shall not be  
176 liable for any loss sustained or contracted in consequence  
177 of the insured's being intoxicated or under the influence  
178 of any narcotic unless administered on the advice of a  
179 physician."

**§33-15-20. Individual medical savings accounts; definitions;  
ownership; trustees; regulations.**

1 (a) Any individual resident of this state may establish a  
2 medical savings account to serve as self-insurance for the  
3 payment of medical expenses. As used in this section  
4 "individual medical savings account" means a trust for the  
5 payment of medical expenses created or organized for the  
6 exclusive benefit of an individual, his or her children and  
7 dependents, and his or her beneficiaries: *Provided*, That  
8 an individual establishing a medical savings account may  
9 designate a percentage of the account that may be with-  
10 drawn by the individual if not needed for medical expens-  
11 es of the individual, his or her children or other depen-  
12 dents and his or her beneficiaries: *Provided, however*,  
13 That any amount remaining in a medical savings account  
14 on the earlier of the date of retirement, at the age of  
15 fifty-nine and one-half years or more, of the individual  
16 who established the account, or the date of death of that  
17 individual, may be withdrawn by the individual or by his  
18 or her personal representative for a purpose other than the

19 payment of medical expenses: *Provided further*, That any  
20 withdrawal for a purpose other than to pay medical ex-  
21 penses as provided in this section shall be added to the  
22 federal adjusted gross income of the payee or distributee  
23 for purposes of calculating West Virginia adjusted gross  
24 income: *And provided further*, That no withdrawal pursu-  
25 ant to this subsection shall be subject to the additional  
26 twenty percent tax as provided in subsection (d) of this  
27 section. "Medical expenses" means amounts paid for ser-  
28 vices for the diagnosis, cure, mitigation, treatment, or pre-  
29 vention of disease, or for the purpose of affecting any  
30 structure or function of the body, which expenses may be  
31 included in calculating the federal deduction for medical  
32 and dental expenses for federal income tax purposes; for  
33 insurance premiums for combined plans issued pursuant  
34 to this section; but excluding expenses for cosmetic sur-  
35 gery as defined in Section 213 of the Internal Revenue  
36 Code of 1986, as amended. Funds in an individual medi-  
37 cal savings account may not be used for payment of medi-  
38 cal expenses which any third-party payor is obligated to  
39 pay, except for expenses of a medicaid-eligible individual  
40 covered under the state's medicaid program. The interest  
41 of an individual in a medical savings account established  
42 for his or her benefit pursuant to this section shall be non-  
43 forfeitable.

44 (b) The trustee for an individual medical savings ac-  
45 count shall be a bank or other entity qualified as a trustee  
46 of individual retirement accounts under Section 408 of the  
47 Internal Revenue Code of 1986, as amended. An insurer  
48 qualified under the Internal Revenue Code of 1986, as  
49 amended, may act as trustee. The assets of the trust shall  
50 not be commingled with other property except in a com-  
51 mon trust fund or common investment fund. A trustee  
52 who is an insurer may hold the assets of individuals in-  
53 sured under individual accident and sickness plans in a  
54 common fund for the account of all individuals who have  
55 an interest in the trust, if there is a separate accounting for  
56 the interest of each individual or member.

57 (c) Any insurer issuing accident and sickness policies  
58 in this state in accordance with the provisions of this article  
59 may offer a benefit plan including deductibles or copay-

60 ments combined with individual self-insurance through  
61 the establishment of individual medical savings accounts.  
62 A benefit plan established pursuant to this subsection shall  
63 provide that medical expenses included within deductible  
64 or copayment provisions of the accident and sickness  
65 policy for the individual or for his or her covered depen-  
66 dents and therefore not payable under that policy be paid  
67 by the trustee, either directly or as reimbursement to an  
68 individual who has previously paid medical expenses,  
69 from the individual medical savings investment account. A  
70 benefit plan may limit payment of medical expenses until  
71 the group plan annual deductible is met from the medical  
72 savings account to expenses which are covered services  
73 under the policy.

74 (d) The insurance commissioner shall promulgate  
75 legislative rules pursuant to article three, chapter twenty-  
76 nine-a of this code to establish specific standards for indi-  
77 vidual medical savings accounts and for plans in which a  
78 policy of insurance is combined with self-insurance under  
79 an individual medical savings account. Such standards  
80 shall be in addition to and in accordance with the applica-  
81 ble laws of this state and may cover, but shall not be limit-  
82 ed to:

83 (1) Definitions of terms;

84 (2) An annual contribution minimum for individual  
85 medical savings accounts;

86 (3) An annual contribution maximum for individual  
87 medical savings accounts;

88 (4) Limitations upon an individual's access to or use of  
89 individual medical savings account funds and circum-  
90 stances under which funds in the account may be dis-  
91 bursed: *Provided*, That if, during any taxable year, the  
92 beneficial owner of an individual medical savings account  
93 borrows any money under or by use of that account, the  
94 account ceases to be an individual medical savings account  
95 as of the first day of that taxable year: *Provided, however*,  
96 That any amount paid or distributed out of a medical  
97 savings account for any purpose other than to defray  
98 medical expenses as provided in this section shall be add-

99 ed to the federal adjusted gross income of the payee or  
100 distributee for purposes of calculating West Virginia ad-  
101 justed gross income: *Provided further*, That the payee's or  
102 distributee's tax under this article for the taxable year in  
103 which the amount is received, except as specifically pro-  
104 vided in subsection (a) of this section or except for a dis-  
105 tribution of account assets pursuant to order of a federal  
106 bankruptcy court, shall be increased by an amount equal  
107 to ten percent of the portion of the payment or distribu-  
108 tion that is includible in the payee's or distributee's federal  
109 adjusted gross income;

110 (5) Circumstances under which a combined benefit  
111 plan offered through an insurer may permit reduced con-  
112 tributions to the individual medical savings account, which  
113 circumstances may include the accruing of a specified  
114 account balance;

115 (6) Provisions relating to reporting payments for the  
116 benefit of an individual from an individual medical sav-  
117 ings account for medical expenses to an insurer offering a  
118 combined benefit plan; and

119 (7) Provisions relating to change or redesignation of a  
120 trustee.

121 (e) The tax commissioner is authorized to establish  
122 penalties for early or unauthorized withdrawals from indi-  
123 vidual medical savings accounts pursuant to rules promul-  
124 gated pursuant to article three, chapter twenty-nine-a of  
125 this code, which penalties may not exceed federal penalties  
126 for early or unauthorized withdrawals from individual  
127 retirement accounts under the Internal Revenue Code of  
128 1986, as amended.

#### **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

##### **§33-16-15. Individual medical savings accounts; definitions; ownership; contributions; trustees; regulations.**

1 (a) Any insurer issuing group accident and sickness  
2 policies in this state, the public employees insurance agen-  
3 cy and any employer offering a health benefit plan pursu-  
4 ant to the Employee Retirement Income Security Act of  
5 1974, as amended, may offer a benefit plan including

6 deductibles or copayments combined with employee  
7 self-insurance through the establishment of individual  
8 medical savings accounts. As used in this section "individ-  
9 ual medical savings account" means a trust for the pay-  
10 ment of medical expenses created or organized for the  
11 exclusive benefit of an individual, his or her dependents  
12 covered under a group accident and sickness policy, and  
13 his or her beneficiaries: *Provided*, That an employee es-  
14 tablishing a medical savings account, or for whom a medi-  
15 cal savings account is established by an employer, may  
16 designate a percentage of the employee's contributions, if  
17 any, to that account that may be withdrawn by the em-  
18 ployee if not needed for medical expenses of the employ-  
19 ee, his or her children or other dependents and his or her  
20 beneficiaries: *Provided, however*, That any amount re-  
21 maining in a medical savings account on the earlier of the  
22 date of retirement, at the age of fifty-nine and one-half  
23 years or more, of the employee or the date of death of the  
24 employee, may be withdrawn by the employee or by his  
25 or her personal representative for a purpose other than the  
26 payment of medical expenses: *Provided further*, That any  
27 withdrawal for a purpose other than to pay medical ex-  
28 penses as provided in this section shall be added to the  
29 federal adjusted gross income of the payee or distributee:  
30 *And provided further*, That no withdrawal pursuant to this  
31 subsection shall be subject to the additional twenty percent  
32 tax as provided in subsection (d) of this section. "Medical  
33 expenses" means amounts paid for services for the diagno-  
34 sis, cure, mitigation, treatment, or prevention of disease, or  
35 for the purpose of affecting any structure or function of  
36 the body, which expenses may be included in calculating  
37 the federal deduction for medical and dental expenses for  
38 federal income tax purposes; for insurance premiums for  
39 combined plans issued pursuant to this section; but ex-  
40 cluding expenses for cosmetic surgery as defined in Sec-  
41 tion 213 of the Internal Revenue Code of 1986, as amend-  
42 ed. Funds in an individual medical savings account may  
43 not be used for payment of medical expenses which any  
44 third-party payor is obligated to pay, except for medical  
45 expenses of a medicaid-eligible individual covered under  
46 the state's medicaid program. A benefit plan established  
47 pursuant to this section shall provide that medical expens-

48 es included within deductible or copayment provisions of  
49 the group accident and sickness policy and therefore not  
50 payable under the group policy for the employee or for  
51 his or her covered dependents be paid by the trustee, ei-  
52 ther directly or as reimbursement to an employee who has  
53 previously paid medical expenses, from the individual  
54 medical savings account. A benefit plan may limit pay-  
55 ment of medical expenses until the group plan annual  
56 deductible is met from the medical savings account to  
57 expenses which are covered services under the group poli-  
58 cy.

59 (b) The interest of an employee in a medical savings  
60 account established for his or her benefit pursuant to this  
61 section shall be nonforfeitable.

62 (c) The trustee for an individual medical savings ac-  
63 count shall be a bank or other entity qualified as a trustee  
64 of individual retirement accounts under Section 408 of the  
65 Internal Revenue Code of 1986, as amended. An insurer  
66 so qualified may act as trustee. The assets of the trust shall  
67 not be commingled with other property except in a com-  
68 mon trust fund or common investment fund. The trustee  
69 may hold the assets of employees insured under a group  
70 accident and sickness plan in a common fund for the  
71 account of all individuals who have an interest in the trust,  
72 if there is a separate accounting for the interest of each  
73 employee or member. Combined plans are subject to the  
74 protections afforded by article twenty-six-a of this chap-  
75 ter.

76 (d) The insurance commissioner shall promulgate  
77 legislative rules pursuant to article three, chapter  
78 twenty-nine-a of this code to establish specific standards  
79 for plans in which a group policy is combined with  
80 self-insurance under an individual medical savings ac-  
81 count. These standards shall be in addition to and in ac-  
82 cordance with the applicable laws of this state and may  
83 cover, but shall not be limited to:

84 (1) Definitions of terms;

85 (2) An annual contribution minimum for individual  
86 medical savings accounts;

87 (3) An annual contribution maximum for individual  
88 medical savings accounts;

89 (4) Limitations which a plan may impose upon an  
90 employee's access to or use of individual medical savings  
91 account funds and circumstances under which funds in the  
92 account may be disbursed: *Provided*, That if, during any  
93 taxable year, the beneficial owner of an individual medical  
94 savings account borrows any money under or by use of  
95 that account, the account ceases to be an individual medi-  
96 cal savings account as of the first day of that taxable year:  
97 *Provided, however*, That any amount paid or distributed  
98 out of a medical savings account for any purpose other  
99 than to defray medical expenses as provided in this section  
100 shall be added to the federal adjusted gross income of the  
101 payee or distributee for purposes of calculating West Vir-  
102 ginia adjusted gross income: *Provided further*, That the  
103 payee's or distributee's tax under this article for the taxable  
104 year in which the amount is received except as specifically  
105 provided in subsection (a) of this section or except for a  
106 distribution of account assets pursuant to order of a feder-  
107 al bankruptcy court, shall be increased by an amount  
108 equal to ten percent of the portion of the payment or  
109 distribution that is includible in the payee's or distributee's  
110 federal adjusted gross income;

111 (5) Circumstances under which a plan may permit  
112 reduced contributions to the individual medical savings  
113 account, which circumstances may include the accruing of  
114 a specified account balance;

115 (6) Provisions relating to reporting payments for the  
116 benefit of an employee from an individual medical sav-  
117 ings account for medical expenses to the group policy  
118 insurer; and

119 (7) Provisions relating to change or redesignation of a  
120 trustee and provisions relating to circumstances requiring  
121 or permitting continuation of coverage by the group plan  
122 or conversion to an individual medical savings account  
123 upon termination of an employee's employment.

124 (e) The tax commissioner is authorized to establish  
125 penalties for early or unauthorized withdrawals from indi-



126 vidual medical savings accounts pursuant to rules  
127 promulgated in accordance with article three, chapter  
128 twenty-nine-a of this code, which penalties may not  
129 exceed federal penalties for early or unauthorized  
130 withdrawals from individual retirement accounts under the  
131 Internal Revenue Code of 1986, as amended.

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## CHAPTER 132

(H. B. 2505—By Delegates Adkins, Gallagher and Nesbitt)

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[Passed March 2, 1995; in effect January 1, 1996. Approved by the Governor.]

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AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen; to amend and reenact section nine, article seven; section two, article twenty-two; and to amend and reenact article forty, all of said chapter, all relating to insurance; insurance commissioner; confidentiality of information; standard valuation for life insurance policies; farmers' mutual fire insurance companies, applicability of other provisions; risk-based capital for insurers; definitions; risk-based capital reports; company action level event; regulatory action level event; authorized control level event; mandatory control level event; hearings; confidentiality, prohibition on announcements; prohibition on ratemaking; supplemental provisions, rules, exemptions; foreign insurers; immunity; severability clause; and effective date.

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

That article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen; that section nine, article seven; section two, article

twenty-two of said chapter be amended and reenacted; and that article forty of said chapter be amended and reenacted, all to read as follows:

**Article**

- 2. **Insurance Commissioner.**
- 7. **Assets and Liabilities.**
- 22. **Farmers' Mutual Fire Insurance Companies.**
- 40. **Risk-based Capital (RBC) for Insurers.**

**ARTICLE 2. INSURANCE COMMISSIONER.**

**§33-2-19. Confidentiality of information.**

1       In order to assist the commissioner in the regulation of  
2 insurers in this state, it is the duty of the commissioner to  
3 maintain, as confidential, any documents or information  
4 received from the national association of insurance  
5 commissioners or insurance departments of other states  
6 which is confidential in such other jurisdictions. It is  
7 within the power of the commissioner to share in-  
8 formation, including otherwise confidential information,  
9 with the national association of insurance commissioners  
10 or insurance departments of other states: *Provided*, That  
11 such other jurisdictions agree to maintain the same level of  
12 confidentiality as is available under this statute.

**ARTICLE 7. ASSETS AND LIABILITIES.**

**§33-7-9. Standard valuation law.**

1       (a) *Title.* — This section shall be known as the  
2 standard valuation law.

3       (b) *Reserve valuation.* — The commissioner shall  
4 annually value, or cause to be valued, the reserve liabilities  
5 (hereinafter called reserves) for all outstanding life  
6 insurance policies and annuity and pure endowment  
7 contracts of every life insurance company doing business  
8 in this state, and may certify the amount of any such  
9 reserves specifying the mortality table or tables, rate or  
10 rates of interest and methods (net level premium method  
11 or other) used in the calculation of such reserves. In  
12 calculating such reserves, he may use group methods and

13 approximate averages for fractions of a year or otherwise.  
14 In lieu of the valuation of the reserves herein required of  
15 any foreign or alien company, he may accept any  
16 valuation made, or caused to be made, by the insurance  
17 supervisory official of any state or other jurisdiction when  
18 such valuation complies with the minimum standard  
19 herein provided and if the official of such state or  
20 jurisdiction accepts as sufficient and for all valid legal  
21 purposes the certificate of valuation of the commissioner  
22 when such certificate states the valuation to have been  
23 made in a specified manner according to which the  
24 aggregate reserves would be at least as large as if they had  
25 been computed in the manner prescribed by the law of  
26 that state or jurisdiction.

27 (c) *Actuarial opinion of reserves.* — This subsection  
28 shall become operative on the first day of January, one  
29 thousand nine hundred ninety-six.

30 (1) *General.* — Every life insurance company doing  
31 business in this state shall annually submit the opinion of a  
32 qualified actuary as to whether the reserves and related  
33 actuarial items held in support of the policies and  
34 contracts specified by the commissioner by regulation are  
35 computed appropriately, are based on assumptions which  
36 satisfy contractual provisions, are consistent with prior  
37 reported amounts and comply with applicable laws of this  
38 state. The commissioner by regulation shall define the  
39 specifics of this opinion and add any other items deemed  
40 to be necessary to its scope.

41 (2) *Actuarial analysis of reserves and assets*  
42 *supporting such reserves.* —

43 (A) Every life insurance company, except as  
44 exempted by or pursuant to regulation, shall also annually  
45 include in the opinion required by subdivision (1) of this  
46 subsection, an opinion of the same qualified actuary as to  
47 whether the reserves and related actuarial items held in  
48 support of the policies and contracts specified by the  
49 commissioner by regulation, when considered in light of  
50 the assets held by the company with respect to the reserves

51 and related actuarial items, including, but not limited to,  
52 the investment earnings on the assets and the  
53 considerations anticipated to be received and retained  
54 under the policies and contracts, make adequate provision  
55 for the company's obligations under the policies and  
56 contracts, including, but not limited to, the benefits under  
57 and expenses associated with the policies and contracts.

58 (B) The commissioner may provide by regulation for  
59 a transition period for establishing any higher reserves  
60 which the qualified actuary may deem necessary in order  
61 to render the opinion required by this subsection.

62 (3) *Requirement for opinion under subdivision (2).* —  
63 Each opinion required by subdivision (2) of this  
64 subsection shall be governed by the following provisions:

65 (A) A memorandum in form and substance acceptable  
66 to the commissioner as specified by regulation shall be  
67 prepared to support each actuarial opinion.

68 (B) If the insurance company fails to provide a  
69 supporting memorandum at the request of the  
70 commissioner within a period specified by regulation or  
71 the commissioner determines that the supporting  
72 memorandum provided by the insurance company fails to  
73 meet the standards prescribed by the regulations or is  
74 otherwise unacceptable to the commissioner, the  
75 commissioner may engage a qualified actuary at the  
76 expense of the company to review the opinion and the  
77 basis for the opinion and prepare such supporting  
78 memorandum as is required by the commissioner.

79 (4) *Requirement for all opinions.* — Every opinion  
80 shall be governed by the following provisions:

81 (A) The opinion shall be submitted with the annual  
82 statement reflecting the valuation of such reserve liabilities  
83 for each year ending on or after the thirty-first day of  
84 December, one thousand nine hundred ninety-five.

85 (B) The opinion shall apply to all business in force,  
86 including individual and group health insurance plans, in

87 form and substance acceptable to the commissioner as  
88 specified by regulation.

89 (C) The opinion shall be based on standards adopted  
90 from time to time by the actuarial standards board and on  
91 such additional standards as the commissioner may by  
92 regulation prescribe.

93 (D) In the case of an opinion required to be submitted  
94 by a foreign or alien company, the commissioner may  
95 accept the opinion filed by that company with the  
96 insurance supervisory official of another state if the  
97 commissioner determines that the opinion reasonably  
98 meets the requirements applicable to a company  
99 domiciled in this state.

100 (E) For the purposes of this section, "qualified  
101 actuary" means a member in good standing of the  
102 American academy of actuaries who meets the  
103 requirements set forth in such regulations.

104 (F) Except in cases of fraud or willful misconduct, the  
105 qualified actuary shall not be liable for damages to any  
106 person (other than the insurance company and the  
107 commissioner) for any act, error, omission, decision or  
108 conduct with respect to the actuary's opinion.

109 (G) Disciplinary action by the commissioner against  
110 the company or the qualified actuary shall be defined in  
111 regulations by the commissioner.

112 (H) Any memorandum in support of the opinion, and  
113 any other material provided by the company to the  
114 commissioner in connection therewith, shall be kept  
115 confidential by the commissioner and shall not be made  
116 public and shall not be subject to subpoena, other than for  
117 the purpose of defending an action seeking damages from  
118 any person by reason of any action required by this  
119 section or by regulations promulgated hereunder:  
120 *Provided*, That the memorandum or other material may  
121 otherwise be released by the commissioner: (i) With the  
122 written consent of the company; or (ii) to the American  
123 academy of actuaries upon request stating that the

124 memorandum or other material is required for the  
125 purpose of professional disciplinary proceedings and  
126 setting forth procedures satisfactory to the commissioner  
127 for preserving the confidentiality of the memorandum or  
128 other material. Once any portion of the confidential  
129 memorandum is cited by the company in its marketing or  
130 is cited before any governmental agency other than a state  
131 insurance department or is released by the company to the  
132 news media, all portions of the confidential memorandum  
133 shall be no longer confidential.

134 (d) *Computation of minimum standards.* — Except as  
135 otherwise provided in subsections (e), (f) and (m) of this  
136 section, the minimum standard for the valuation of all  
137 such policies and contracts issued prior to the effective  
138 date of this section shall be that provided by the laws in  
139 effect immediately prior to such date. Except as otherwise  
140 provided in subsections (e), (f) and (m) of this section, the  
141 minimum standard for the valuation of all such policies  
142 and contracts issued on or after the effective date of this  
143 section shall be the commissioners reserve valuation  
144 methods defined in subsections (g), (h), (k) and (m) of  
145 this section, three and one-half percent interest, or in the  
146 case of life insurance policies and contracts, other than  
147 annuity and pure endowment contracts, issued on or after  
148 the first day of June, one thousand nine hundred  
149 seventy-four, four percent interest for such policies issued  
150 prior to the sixth day of April, one thousand nine hundred  
151 seventy-seven, five and one-half percent interest for single  
152 premium life insurance policies and four and one-half  
153 percent interest for all other such policies issued on and  
154 after the sixth day of April, one thousand nine hundred  
155 seventy-seven, and the following tables:

156 (1) For all ordinary policies of life insurance issued  
157 on the standard basis, excluding any disability and  
158 accidental death benefits in such policies: The commis-  
159 sioners 1941 standard ordinary mortality table for such  
160 policies issued prior to the operative date of subsection  
161 (4a), section thirty, article thirteen of this chapter, the  
162 commissioners 1958 standard ordinary mortality table for

163 such policies issued on or after the operative date of said  
164 subsection, and prior to the operative date of subsection  
165 (4c) of said section: *Provided*, That for any category of  
166 such policies issued on female risks, all modified net  
167 premiums and present values referred to in this section  
168 may be calculated according to an age not more than six  
169 years younger than the actual age of the insured; and for  
170 such policies issued on or after the operative date of  
171 subsection (4c), section thirty, article thirteen of this  
172 chapter: (i) The commissioners 1980 standard ordinary  
173 mortality table; or (ii) at the election of the company for  
174 any one or more specified plans of life insurance, the  
175 commissioners 1980 standard ordinary mortality table  
176 with ten-year select mortality factors; or (iii) any ordinary  
177 mortality table, adopted after the year one thousand nine  
178 hundred eighty by the national association of insurance  
179 commissioners, that is approved by regulation promul-  
180 gated by the commissioner for use in determining the  
181 minimum standard of valuation for such policies.

182 (2) For all industrial life insurance policies issued on  
183 the standard basis, excluding any disability and accidental  
184 death benefits in such policies: The 1941 standard  
185 industrial mortality table for such policies issued prior to  
186 the operative date of subsection (4b), section thirty, article  
187 thirteen of this chapter, and for such policies issued on or  
188 after such operative date, the commissioners 1961  
189 standard industrial mortality table or any industrial  
190 mortality table, adopted after the year one thousand nine  
191 hundred eighty by the national association of insurance  
192 commissioners, that is approved by regulation pro-  
193 mulgated by the commissioner for use in determining the  
194 minimum standard of valuation for such policies.

195 (3) For individual annuity and pure endowment  
196 contracts, excluding any disability and accidental death  
197 benefits in such policies: The 1937 standard annuity  
198 mortality table, or at the option of the company, the  
199 annuity mortality table for 1949, ultimate, or any  
200 modification of either of these tables approved by the  
201 commissioner.

202 (4) For group annuity and pure endowment contracts,  
203 excluding any disability and accidental death benefits in  
204 such policies: The group annuity mortality table for 1951,  
205 any modification of such table approved by the  
206 commissioner, or at the option of the company, any of the  
207 tables or modifications of tables specified for individual  
208 annuity and pure endowment contracts.

209 (5) For total and permanent disability benefits in or  
210 supplementary to ordinary policies or contracts: For  
211 policies or contracts issued on or after the first day of  
212 January, one thousand nine hundred sixty-six, the tables  
213 of period two disablement rates and the 1930 to 1950  
214 termination rates of the 1952 disability study of the  
215 society of actuaries, with due regard to the type of benefit  
216 or any tables of disablement rates and termination rates  
217 adopted after the year one thousand nine hundred eighty  
218 by the national association of insurance commissioners,  
219 that are approved by regulation promulgated by the  
220 commissioner for use in determining the minimum  
221 standard of valuation for such policies; for policies or  
222 contracts issued on or after the first day of January, one  
223 thousand nine hundred sixty-one, and prior to the first  
224 day of January, one thousand nine hundred sixty-six,  
225 either such tables or, at the option of the company, the  
226 Class (3) disability table (1926); and for policies issued  
227 prior to the first day of January, one thousand nine  
228 hundred sixty-one, the Class (3) disability table (1926).  
229 Any such table shall, for active lives, be combined with a  
230 mortality table permitted for calculating the reserves for  
231 life insurance policies.

232 (6) For accidental death benefits in or supplementary  
233 to policies issued on or after the first day of January, one  
234 thousand nine hundred sixty-six, the 1959 accidental  
235 death benefits table or any accidental death benefits table  
236 adopted after the year one thousand nine hundred eighty  
237 by the national association of insurance commissioners,  
238 that is approved by regulation promulgated by the  
239 commissioner for use in determining the minimum  
240 standard of valuation for such policies, for policies issued



241 on or after the first day of January, one thousand nine  
242 hundred sixty-one, and prior to the first day of January,  
243 one thousand nine hundred sixty-six, either such table or,  
244 at the option of the company, the inter-company double  
245 indemnity mortality table; and for policies issued prior to  
246 the first day of January, one thousand nine hundred  
247 sixty-one, the inter-company double indemnity mortality  
248 table. Either table shall be combined with a mortality table  
249 for calculating the reserves for life insurance policies.

250 (7) For group life insurance, life insurance issued on  
251 the substandard basis and other special benefits: Such  
252 tables as may be approved by the commissioner.

253 (e) *Computation of minimum standard for annuities.*  
254 — Except as provided in subsection (f) of this section, the  
255 minimum standard for the valuation of all individual  
256 annuity and pure endowment contracts issued on or after  
257 the operative date of this subsection, as defined herein, and  
258 for all annuities and pure endowments purchased on or  
259 after such operative date under group annuity and pure  
260 endowment contracts, shall be the commissioner's reserve  
261 valuation methods defined in subsections (g) and (h) of  
262 this section and the following tables and interest rates:

263 (1) For individual annuity and pure endowment  
264 contracts issued prior to the sixth day of April, one  
265 thousand nine hundred seventy-seven, excluding any  
266 disability and accidental death benefits in such contracts:  
267 The 1971 individual annuity mortality table, or any  
268 modification of this table approved by the commissioner,  
269 and six percent interest for single premium immediate  
270 annuity contracts and four percent interest for all other  
271 individual annuity and pure endowment contracts;

272 (2) For individual single premium immediate annuity  
273 contracts issued on or after the sixth day of April, one  
274 thousand nine hundred seventy-seven, excluding any  
275 disability and accidental death benefits in such contracts:  
276 The 1971 individual annuity mortality table or any  
277 individual annuity mortality table, adopted after the year  
278 one thousand nine hundred eighty by the national

279 association of insurance commissioners that is approved  
280 by regulation promulgated by the commissioner for use in  
281 determining the minimum standard of valuation for such  
282 contracts, or any modification of these tables approved by  
283 the commissioner, and seven and one-half percent interest;

284 (3) For individual annuity and pure endowment  
285 contracts issued on or after the sixth day of April, one  
286 thousand nine hundred seventy-seven, other than single  
287 premium immediate annuity contracts, excluding any  
288 disability and accidental death benefits in such contracts:  
289 The 1971 individual annuity mortality table or any  
290 individual annuity mortality table adopted after the year  
291 one thousand nine hundred eighty by the national  
292 association of insurance commissioners, that is approved  
293 by regulation promulgated by the commissioner for use in  
294 determining the minimum standard of valuation for such  
295 contracts, or any modification of these tables approved by  
296 the commissioner, and five and one-half percent interest  
297 for single premium deferred annuity and pure endowment  
298 contracts and four and one-half percent interest for all  
299 other such individual annuity and pure endowment  
300 contracts;

301 (4) For all annuities and pure endowments purchased  
302 prior to the sixth day of April, one thousand nine hundred  
303 seventy-seven, under group annuity and pure endowment  
304 contracts, excluding any disability and accidental death  
305 benefits purchased under such contracts: The 1971 group  
306 annuity mortality table, or any modification of this table  
307 approved by the commissioner, and six percent interest;

308 (5) For all annuities and pure endowments purchased  
309 on or after the sixth day of April, one thousand nine  
310 hundred seventy-seven, under group annuity and pure  
311 endowment contracts, excluding any disability and  
312 accidental death benefits purchased under such contracts:  
313 The 1971 group annuity mortality table, or any group  
314 annuity mortality table adopted after the year one  
315 thousand nine hundred eighty by the national association  
316 of insurance commissioners, that is approved by regula-

317 tion promulgated by the commissioner for use in  
318 determining the minimum standard of valuation for such  
319 annuities and pure endowments, or any modification of  
320 these tables approved by the commissioner, and seven and  
321 one-half percent interest.

322 After the third day of June, one thousand nine  
323 hundred seventy-four, any company may file with the  
324 commissioner a written notice of its election to comply  
325 with the provisions of this subsection after a specified date  
326 before the first day of January, one thousand nine  
327 hundred seventy-nine, which shall be the operative date of  
328 this subsection for such company, provided, if a company  
329 makes no such election, the operative date of this section  
330 for such company shall be the first day of January, one  
331 thousand nine hundred seventy-nine.

332 (f) *Computation of minimum standard by calendar*  
333 *year of issue.* —

334 (1) *Applicability of this subsection.* — The interest  
335 rates used in determining the minimum standard for the  
336 valuation of:

337 (A) All life insurance policies issued in a particular  
338 calendar year, on or after the operative date of subsection  
339 (4c), section thirty, article thirteen of this chapter as  
340 amended;

341 (B) All individual annuity and pure endowment  
342 contracts issued in a particular calendar year on or after  
343 the first day of January, one thousand nine hundred  
344 eighty-two;

345 (C) All annuities and pure endowments purchased in a  
346 particular calendar year on or after the first day of  
347 January, one thousand nine hundred eighty-two, under  
348 group annuity and pure endowment contracts; and

349 (D) The net increase, if any, in a particular calendar  
350 year after the first day of January, one thousand nine  
351 hundred eighty-two, in amounts held under guaranteed  
352 interest contracts, shall be the calendar year statutory

353 valuation interest rates as defined in this subsection.

354 (2) *Calendar year statutory valuation interest rates.* —

355 (A) The calendar year statutory valuation interest  
356 rates,  $I$ , shall be determined as follows and the results  
357 rounded to the nearer one-quarter of one percent:

358 (i) For life insurance,

359 
$$I = .03 + W(R_1 - .03) + W/2(R_2 - .09);$$

360 (ii) For single premium immediate annuities and for  
361 annuity benefits involving life contingencies arising from  
362 other annuities with cash settlement options and from  
363 guaranteed interest contracts with cash settlement options,

364 
$$I = .03 + W(R - .03)$$

365 where  $R_1$  is the lesser of  $R$  and  $.09$ ,

366  $R_2$  is the greater of  $R$  and  $.09$ ,

367  $R$  is the reference interest rate defined in this  
368 subsection, and  $W$  is the weighting factor defined in this  
369 section;

370 (iii) For other annuities with cash settlement options  
371 and guaranteed interest contracts with cash settlement  
372 options, valued on an issue year basis, except as stated in  
373 subparagraph (ii) of this paragraph, the formula for life  
374 insurance stated in subparagraph (i) of this paragraph  
375 shall apply to annuities and guaranteed interest contracts  
376 with guarantee durations in excess of ten years and the  
377 formula for single premium immediate annuities stated in  
378 subparagraph (ii) of this paragraph shall apply to  
379 annuities and guaranteed interest contracts with guarantee  
380 duration of ten years or less;

381 (iv) For other annuities with no cash settlement  
382 options and for guaranteed interest contracts with no cash  
383 settlement options, the formula for single premium  
384 immediate annuities stated in subparagraph (ii) of this  
385 paragraph shall apply;

386 (v) For other annuities with cash settlement options  
 387 and guaranteed interest contracts with cash settlement  
 388 options, valued on a change in fund basis, the formula for  
 389 single premium immediate annuities stated in  
 390 subparagraph (ii) of this paragraph shall apply.

391 (B) However, if the calendar year statutory valuation  
 392 interest rate for any life insurance policies issued in any  
 393 calendar year determined without reference to this  
 394 sentence differs from the corresponding actual rate for  
 395 similar policies issued in the immediately preceding  
 396 calendar year by less than one half of one percent the  
 397 calendar year statutory valuation interest rate for such life  
 398 insurance policies shall be equal to the corresponding  
 399 actual rate for the immediately preceding calendar year.  
 400 For purposes of applying the immediately preceding  
 401 sentence, the calendar year statutory valuation interest rate  
 402 for life insurance policies issued in a calendar year shall  
 403 be determined for the year one thousand nine hundred  
 404 eighty (using the reference interest rate defined for the  
 405 year one thousand nine hundred seventy-nine) and shall  
 406 be determined for each subsequent calendar year  
 407 regardless of when subsection (4c), section thirty, article  
 408 thirteen of this chapter, as amended, becomes operative.

409 (3) *Weighting factors.* —

410 (A) The weighting factors referred to in the formulas  
 411 stated above are given in the following tables:

412 (i) Weighting Factors for Life Insurance:

413 Guarantee	
414 Duration	Weighting
415 <u>(Years)</u>	<u>Factors</u>
416 10 or less	.50
417 More than 10, but not more than 20	.45
418 More than 20	.35

419 For life insurance, the guarantee duration is the  
 420 maximum number of years the life insurance can remain  
 421 in force on a basis guaranteed in the policy or under

422 options to convert to plans of life insurance with premium  
 423 rates or nonforfeiture values or both which are guaranteed  
 424 in the original policy;

425 (ii) Weighting factor for single premium immediate  
 426 annuities and for annuity benefits involving life  
 427 contingencies arising from other annuities with cash  
 428 settlement options and guaranteed interest contracts with  
 429 cash settlement options: .80;

430 (iii) Weighting factors for other annuities and for  
 431 guaranteed interest contracts, except as stated in  
 432 subparagraph (ii) of this paragraph, shall be as specified in  
 433 clauses (I), (II) and (III) below, according to the rules and  
 434 definitions in clauses (IV), (V) and (VI) below:

435 (I) For annuities and guaranteed interest contracts  
 436 valued on an issue year basis:

437 Guarantee	Weighting Factor		
438 Duration	for Plan Type		
439 (Years)	<u>A</u>	<u>B</u>	<u>C</u>
440 5 or less:	.80	.60	.50
441 More than 5, but not more than 10:	.75	.60	.50
442 More than 10, but not more than 20:	.65	.50	.45
443 More than 20:	.45	.35	.35

444 (II) For annuities and guaranteed interest contracts  
 445 valued on a change in fund basis, the factors shown in  
 446 subparagraph (i) of this paragraph increased by:

447	Weighting Factor		
448	for Plan Type		
449	<u>A</u>	<u>B</u>	<u>C</u>
450	.15	.25	.05

451 (III) For annuities and guaranteed interest contracts  
 452 valued on an issue year basis (other than those with no  
 453 cash settlement options) which do not guarantee interest  
 454 on considerations received more than one year after issue  
 455 or purchase and for annuities and guaranteed interest

456 contracts valued on a change in fund basis which do not  
 457 guarantee interest rates on considerations received more  
 458 than twelve months beyond the valuation date, the factors  
 459 shown in (I) or derived in (II) increased by:

460	Weighting Factor		
461	for Plan Type		
462	<u>A</u>	<u>B</u>	<u>C</u>
463	.05	.05	.05

464 (IV) For other annuities with cash settlement options  
 465 and guaranteed interest contracts with cash settlement  
 466 options, the guarantee duration is the number of years for  
 467 which the contract guarantees interest rates in excess of the  
 468 calendar year statutory valuation interest rate for life  
 469 insurance policies with guarantee duration in excess of  
 470 twenty years. For other annuities with no cash settlement  
 471 options and for guaranteed interest contracts with no cash  
 472 settlement options, the guaranteed duration is the number  
 473 of years from the date of issue or date of purchase to the  
 474 date annuity benefits are scheduled to commence.

475 (V) Plan type as used in the above tables is defined as  
 476 follows:

477 Plan Type A:

478 At any time policyholder may withdraw funds only:  
 479 (1) With an adjustment to reflect changes in interest rates  
 480 or asset values since receipt of the funds by the insurance  
 481 company; or (2) without such adjustment but in  
 482 installments over five years or more; or (3) as an  
 483 immediate life annuity; or (4) no withdrawal permitted;

484 Plan Type B:

485 Before expiration of the interest rate guarantee,  
 486 policyholder may withdraw funds only: (1) With an  
 487 adjustment to reflect changes in interest rates or asset  
 488 values since receipt of the funds by the insurance  
 489 company; or (2) without such adjustment but in  
 490 installments over five years or more; or (3) no withdrawal

491 permitted. At the end of interest rate guarantee, funds  
492 may be withdrawn without such adjustment in a single sum  
493 or installments over less than five years;

494 Plan Type C:

495 Policyholder may withdraw funds before expiration of  
496 interest rate guarantee in a single sum or installments over  
497 less than five years either: (1) Without adjustment to  
498 reflect changes in interest rates or asset values since receipt  
499 of the funds by the insurance company; or (2) subject  
500 only to a fixed surrender charge stipulated in the contract  
501 as a percentage of the fund.

502 (VI) A company may elect to value guaranteed  
503 interest contracts with cash settlement options and  
504 annuities with cash settlement options on either an issue  
505 year basis or on a change in fund basis. Guaranteed  
506 interest contracts with no cash settlement options and other  
507 annuities with no cash settlement options must be valued  
508 on an issue year basis. As used in this section, an issue  
509 year basis of valuation refers to a valuation basis under  
510 which the interest rate used to determine the minimum  
511 valuation standard for the entire duration of the annuity or  
512 guaranteed interest contract is the calendar year valuation  
513 interest rate for the year of issue or year of purchase of  
514 the annuity or guaranteed interest contract and the change  
515 in fund basis of valuation refers to a valuation basis under  
516 which the interest rate used to determine the minimum  
517 valuation standard applicable to each change in the fund  
518 held under the annuity or guaranteed interest contract is  
519 the calendar year valuation interest rate for the year of the  
520 change in the fund.

521 (4) *Reference interest rate.* —

522 (A) Reference interest rate referred to in subparagraph  
523 (ii), paragraph (A), subdivision (2) of this subsection shall  
524 be defined as follows:

525 (i) For all life insurance, the lesser of the average over  
526 a period of thirty-six months and the average over a  
527 period of twelve months, ending on the thirtieth day of



528 June of the calendar year next preceding the year of issue,  
529 of the monthly average of the composite yield on  
530 seasoned corporate bonds, as published by Moody's  
531 Investors Service, Inc.

532 (ii) For single premium immediate annuities and for  
533 annuity benefits involving life contingencies arising from  
534 other annuities with cash settlement options and  
535 guaranteed interest contracts with cash settlement options,  
536 the average over a period of twelve months, ending on the  
537 thirtieth day of June of the calendar year of issue or year  
538 of purchase, of the monthly average of the composite  
539 yield on seasoned corporate bonds, as published by  
540 Moody's Investors Service, Inc.

541 (iii) For other annuities with cash settlement options  
542 and guaranteed interest contracts with cash settlement  
543 options, valued on a year of issue basis, except as stated in  
544 subparagraph (ii) of this paragraph, with guarantee  
545 duration in excess of ten years, the lesser of the average  
546 over a period of thirty-six months and the average over a  
547 period of twelve months, ending on the thirtieth day of  
548 June of the calendar year of issue or purchase, of the  
549 monthly average of the composite yield on seasoned  
550 corporate bonds, as published by Moody's Investors  
551 Service, Inc.

552 (iv) For other annuities with cash settlement options  
553 and guaranteed interest contracts with cash settlement  
554 options, valued on a year of issue basis, except as stated in  
555 (ii) above, with guarantee duration of ten years or less, the  
556 average over a period of twelve months, ending on the  
557 thirtieth day of June of the calendar year of issue or  
558 purchase, of the monthly average of the composite yield  
559 on seasoned corporate bonds, as published by Moody's  
560 Investors Service, Inc.

561 (v) For other annuities with no cash settlement options  
562 and for guaranteed interest contracts with no cash  
563 settlement options, the average over a period of twelve  
564 months, ending on the thirtieth day of June of the  
565 calendar year of issue or purchase, of the monthly average

566 of the composite yield on seasoned corporate bonds, as  
567 published by Moody's Investors Service, Inc.

568 (vi) For other annuities with cash settlement options  
569 and guaranteed interest contracts with cash settlement  
570 options, valued on a change in fund basis, except as stated  
571 in subparagraph (ii) of this paragraph, the average over a  
572 period of twelve months, ending on the thirtieth day of  
573 June of the calendar year of the change in the fund, of the  
574 monthly average of the composite yield on seasoned  
575 corporate bonds, as published by Moody's Investors  
576 Service, Inc.

577 (5) *Alternative method for determining reference*  
578 *interest rates. —*

579 In the event that the monthly average of the composite  
580 yield on seasoned corporate bonds is no longer published  
581 by Moody's Investors Service, Inc., or in the event that the  
582 national association of insurance commissioners  
583 determines that the monthly average of the composite  
584 yield on seasoned corporate bonds as published by  
585 Moody's Investors Service, Inc., is no longer appropriate  
586 for the determination of the reference interest rate, then an  
587 alternative method for determination of the reference  
588 interest rate, which is adopted by the national association  
589 of insurance commissioners and approved by regulation  
590 promulgated by the commissioner, may be substituted.

591 (g) *Reserve valuation method — life insurance and*  
592 *endowment benefits. —*

593 Except as otherwise provided in subsections (h), (k)  
594 and (m) of this section, reserves according to the  
595 commissioners reserve valuation method, for the life  
596 insurance and endowment benefits of policies providing  
597 for a uniform amount of insurance and requiring the  
598 payment of uniform premiums shall be the excess, if any,  
599 of the present value, at the date of valuation, of such future  
600 guaranteed benefits provided for by such policies, over the  
601 then present value of any future modified net premiums  
602 therefor. The modified net premiums for any such policy

603 shall be such uniform percentage of the respective  
604 contract premiums for such benefits that the present value,  
605 at the date of issue of the policy, of all such modified net  
606 premiums shall be equal to the sum of the then present  
607 value of such benefits provided for by the policy and the  
608 excess of subdivision (1) over subdivision (2), as follows:

609 (1) A net level annual premium equal to the present  
610 value, at the date of issue, of such benefits provided for  
611 after the first policy year, divided by the present value, at  
612 the date of issue, of an annuity of one per annum payable  
613 on the first and each subsequent anniversary of such  
614 policy on which a premium falls due: *Provided*, That  
615 such net level annual premium shall not exceed the net  
616 level annual premium on the nineteen year premium  
617 whole life plan for insurance of the same amount at an age  
618 one year higher than the age at issue of such policy.

619 (2) A net one year term premium for such benefits  
620 provided for in the first policy year: *Provided*, That for  
621 any life insurance policy issued on or after the first day of  
622 January, one thousand nine hundred eighty-five, for which  
623 the contract premium in the first policy year exceeds that  
624 of the second year and for which no comparable  
625 additional benefit is provided in the first year for such  
626 excess and which provides an endowment benefit or a cash  
627 surrender value or a combination thereof in an amount  
628 greater than such excess premium, the reserve according  
629 to the commissioners' reserve valuation method as of any  
630 policy anniversary occurring on or before the assumed  
631 ending date defined herein as the first policy anniversary  
632 on which the sum of any endowment benefit and any cash  
633 surrender value then available is greater than such excess  
634 premium shall, except as otherwise provided in subsection  
635 (k) of this section, be the greater of the reserve as of such  
636 policy anniversary calculated as described in the  
637 preceding paragraph and the reserve as of such policy  
638 anniversary calculated as described in that paragraph, but  
639 with: (i) The value defined in subdivision (1) of that  
640 paragraph being reduced by fifteen percent of the amount  
641 of such excess first year premium; (ii) all present values of

642 benefits and premiums being determined without  
643 reference to premiums or benefits provided for by the  
644 policy after the assumed ending date; (iii) the policy being  
645 assumed to mature on such date as an endowment; and  
646 (iv) the cash surrender value provided on such date being  
647 considered as an endowment benefit. In making the above  
648 comparison the mortality and interest bases stated in  
649 subsections (d) and (f) of this section shall be used.

650 Reserves according to the commissioners' reserve  
651 valuation method for: (i) Life insurance policies providing  
652 for a varying amount of insurance or requiring the  
653 payment of varying premiums; (ii) group annuity and  
654 pure endowment contracts purchased under a retirement  
655 plan or plan of deferred compensation, established or  
656 maintained by an employer (including a partnership or  
657 sole proprietorship) or by an employee organization, or  
658 by both, other than a plan providing individual retirement  
659 accounts or individual retirement annuities under Section  
660 408 of the Internal Revenue Code (26 U.S.C. §408), as  
661 now or hereafter amended; (iii) disability and accidental  
662 death benefits in all policies and contracts; and (iv) all  
663 other benefits, except life insurance and endowment  
664 benefits in life insurance policies and benefits provided by  
665 all other annuity and pure endowment contracts, shall be  
666 calculated by a method consistent with the principles of  
667 the preceding paragraphs of this section.

668 (h) *Reserve valuation method — annuity and pure*  
669 *endowment benefits.* —

670 This subsection shall apply to all annuity and pure  
671 endowment contracts other than group annuity and pure  
672 endowment contracts purchased under a retirement plan  
673 or plan of deferred compensation, established or  
674 maintained by an employer (including a partnership or  
675 sole proprietorship) or by an employee organization, or  
676 by both, other than a plan providing individual retirement  
677 accounts or individual retirement annuities under Section  
678 408 of the Internal Revenue Code (26 U.S.C. §408), as  
679 now or hereafter amended.

680 Reserves according to the commissioners' annuity  
681 reserve method for benefits under annuity or pure  
682 endowment contracts, excluding any disability and  
683 accidental death benefits in such contracts, shall be the  
684 greatest of the respective excesses of the present values, at  
685 the date of valuation, of the future guaranteed benefits,  
686 including guaranteed nonforfeiture benefits, provided for  
687 by such contracts at the end of each respective contract  
688 year, over the present value, at the date of valuation, of any  
689 future valuation considerations derived from future gross  
690 considerations, required by the terms of such contract, that  
691 become payable prior to the end of such respective  
692 contract year. The future guaranteed benefits shall be  
693 determined by using the mortality table, if any, and the  
694 interest rate, or rates, specified in such contracts for  
695 determining guaranteed benefits. The valuation consider-  
696 ations are the portions of the respective gross con-  
697 siderations applied under the terms of such contracts to  
698 determine nonforfeiture values.

699 (i) *Minimum reserves.* —

700 (1) In no event shall a company's aggregate reserves  
701 for all life insurance policies, excluding disability and  
702 accidental death benefits, issued on or after the effective  
703 date of this section, be less than the aggregate reserves  
704 calculated in accordance with the methods set forth in  
705 subsections (g), (h), (k) and (l) of this section and the  
706 mortality table or tables and rate or rates of interest used  
707 in calculating nonforfeiture benefits for such policies.

708 (2) In no event shall the aggregate reserves for all  
709 policies, contracts and benefits be less than the aggregate  
710 reserves determined by the qualified actuary to be  
711 necessary to render the opinion required by subsection (c)  
712 of this section.

713 (j) *Optional reserve calculation.* —

714 Reserves for all policies and contracts issued prior to  
715 the effective date of this section may be calculated, at the  
716 option of the company, according to any standards which

717 produce greater aggregate reserves for all such policies  
718 and contracts than the minimum reserves required by the  
719 laws in effect immediately prior to such date.

720 Reserves for any category of policies, contracts or  
721 benefits as established by the commissioner, issued on or  
722 after the effective date of this section, may be calculated, at  
723 the option of the company, according to any standards  
724 which produce greater aggregate reserves for such  
725 category than those calculated according to the minimum  
726 standard herein provided, but the rate or rates of interest  
727 used for policies and contracts, other than annuity and  
728 pure endowment contracts, shall not be higher than the  
729 corresponding rate or rates of interest used in calculating  
730 any nonforfeiture benefits provided therein.

731 Any such company which at any time shall have  
732 adopted any standard of valuation producing greater  
733 aggregate reserves than those calculated according to the  
734 minimum standard herein provided may, with the approval  
735 of the commissioner, adopt any lower standard of  
736 valuation, but not lower than the minimum herein  
737 provided: *Provided*, That for the purposes of this section,  
738 the holding of additional reserves previously determined  
739 by a qualified actuary to be necessary to render the  
740 opinion required by subsection (c) of this section shall not  
741 be deemed to be the adoption of a higher standard of  
742 valuation.

743 (k) *Reserve calculation — valuation net premium*  
744 *exceeding the gross premium charged. —*

745 If in any contract year the gross premium charged by  
746 any life insurance company on any policy or contract is  
747 less than the valuation net premium for the policy or  
748 contract calculated by the method used in calculating the  
749 reserve thereon but using the minimum valuation  
750 standards of mortality and rate of interest, the minimum  
751 reserve required for such policy or contract shall be the  
752 greater of either the reserve calculated according to the  
753 mortality table, rate of interest, and method actually used  
754 for such policy or contract, or the reserve calculated by

755 the method actually used for such policy or contract but  
756 using the minimum valuation standards of mortality and  
757 rate of interest and replacing the valuation net premium  
758 by the actual gross premium in each contract year for  
759 which the valuation net premium exceeds the actual gross  
760 premium. The minimum valuation standards of mortality  
761 and rate of interest referred to in this section are those  
762 standards stated in subsections (d) and (f) of this section:  
763 *Provided*, That for any life insurance policy issued on or  
764 after the first day of January, one thousand nine hundred  
765 eighty-five, for which the gross premium in the first policy  
766 year exceeds that of the second year and for which no  
767 comparable additional benefit is provided in the first year  
768 for such excess and which provides an endowment benefit  
769 or a cash surrender value or a combination thereof in an  
770 amount greater than such excess premium, the foregoing  
771 provisions of this subsection shall be applied as if the  
772 method actually used in calculating the reserve for such  
773 policy were the method described in subsection (g) of this  
774 section, ignoring the second paragraph of said subsection.  
775 The minimum reserve at each policy anniversary of such a  
776 policy shall be the greater of the minimum reserve  
777 calculated in accordance with said subsection, including  
778 the second paragraph of that section, and the minimum  
779 reserve calculated in accordance with this subsection.

780 (1) *Reserve calculation — indeterminate premium*  
781 *plans.* —

782 In the case of any plan of life insurance which  
783 provides for future premium determination, the amounts  
784 of which are to be determined by the insurance company  
785 based on then estimates of future experience, or in the  
786 case of any plan of life insurance or annuity which is of  
787 such a nature that the minimum reserves cannot be  
788 determined by the methods described in subsections (g),  
789 (h) and (k) of this section, the reserves which are held  
790 under any such plan must:

791 (1) Be appropriate in relation to the benefits and the  
792 pattern of premiums for that plan; and

793 (2) Be computed by a method which is consistent with  
794 the principles of this standard valuation law, as determined  
795 by regulations promulgated by the commissioner.

796 (m) *Minimum standards for health (disability,*  
797 *accident and sickness) plans. —*

798 The commissioner shall promulgate a regulation  
799 containing the minimum standards applicable to the  
800 valuation of health (disability, sickness and accident)  
801 plans.

802 (n) The commissioner shall promulgate a rule on or  
803 before the first day of November, one thousand nine  
804 hundred ninety-five, prescribing the guidelines and  
805 standards for statements of actuarial opinion which are to  
806 be submitted in accordance with subsection (c) of this  
807 section and for memoranda in support thereof; guidelines  
808 and standards for statements of actuarial opinion which  
809 are to be submitted when a company is exempt from  
810 subdivision (2), subsection (c) of the standard valuation  
811 law; and rules applicable to the appointment of an  
812 appointed actuary.

813 (o) *Effective date. —*

814 All acts and parts of acts inconsistent with the  
815 provision of this section are hereby repealed as of the  
816 effective date of this section. This section shall take effect  
817 the first day of January, one thousand nine hundred  
818 ninety-six.

## ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COM- PANIES.

### §33-22-2. Applicability of other provisions.

1 Each company to the same extent such provisions are  
2 applicable to domestic mutual insurers shall be governed  
3 by and be subject to the following articles of this chapter:  
4 Article one (definitions); article two (insurance com-  
5 missioner); article four (general provisions) except that  
6 section sixteen of said article shall not be applicable



7 thereto; article seven (assets and liabilities); article ten  
8 (rehabilitation and liquidation) except that under the  
9 provisions of section thirty-two of said article assessments  
10 shall not be levied against any former member of a  
11 farmers' mutual fire insurance company who is no longer  
12 a member of the company at the time the order to show  
13 cause was issued; article eleven (unfair trade practices);  
14 article twelve (agents, brokers and solicitors) except that  
15 the agent's license fee shall be five dollars; article  
16 twenty-six (West Virginia insurance guaranty association  
17 act); article twenty-seven (insurance holding company  
18 systems); article thirty (mine subsidence insurance) except  
19 that under the provisions of section six of said article, a  
20 farmers' mutual insurance company shall have the option  
21 of offering mine subsidence coverage to all of its  
22 policyholders but shall not be required to do so; article  
23 thirty-three (annual audited financial report); article  
24 thirty-four (administrative supervision); article thirty-  
25 four-a (standards and commissioner's authority for  
26 companies deemed to be in hazardous financial  
27 condition); article thirty-five (criminal sanctions for  
28 failure to report impairment); article thirty-six (business  
29 transacted with producer-controlled property/casualty  
30 insurer); article thirty-seven (managing general agents);  
31 article thirty-nine (disclosure of material transactions); and  
32 article forty (risk-based capital for insurers); but only to  
33 the extent these provisions are not inconsistent with the  
34 provisions of this article.

#### **ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.**

- §33-40-1. Definitions.
- §33-40-2. RBC reports.
- §33-40-3. Company action level event.
- §33-40-4. Regulatory action level event.
- §33-40-5. Authorized control level event.
- §33-40-6. Mandatory control level event.
- §33-40-7. Hearings.
- §33-40-8. Confidentiality; prohibition on announcements, prohibition on use in ratemaking.
- §33-40-9. Supplemental provisions; rules; exemption.
- §33-40-10. Foreign insurers.

- §33-40-11. Immunity.  
§33-40-12. Notices.  
§33-40-13. Effective date.

**§33-40-11. Definitions.**

1 As used in this article, these terms shall have the  
2 following meanings:

3 (a) "Adjusted RBC report" means an RBC report which  
4 has been adjusted by the commissioner in accordance with  
5 subsection (e), section two of this article.

6 (b) "Corrective order" means an order issued by the  
7 commissioner specifying corrective actions which the  
8 commissioner has determined are required.

9 (c) "Commissioner" means the insurance commis-  
10 sioner of the state of West Virginia.

11 (d) "Domestic insurer" means any insurance company  
12 or farmers' mutual fire insurance company domiciled in  
13 this state.

14 (e) "Foreign insurer" means any insurance company  
15 which is licensed to do business in this state under article  
16 three of this chapter but is not domiciled in this state.

17 (f) "NAIC" means the national association of insurance  
18 commissioners.

19 (g) "Life and/or health insurer" means any insurance  
20 company licensed under article three of this chapter or a  
21 licensed property and casualty insurer writing only  
22 accident and health insurance.

23 (h) "Property and casualty insurer" means any  
24 insurance company licensed under article three of this  
25 chapter or any farmers' mutual fire insurance company  
26 licensed under article twenty-two of this chapter, but shall  
27 not include monoline mortgage guaranty insurers,  
28 financial guaranty insurers and title insurers.

29 (i) "Negative trend" means, with respect to a life and/or  
30 health insurer, negative trend over a period of time, as

31 determined in accordance with the trend test calculation  
32 included in the RBC instructions.

33 (j) "RBC instructions" means the RBC report including  
34 risk-based capital instructions adopted by the NAIC, as  
35 such RBC instructions may be amended by the NAIC  
36 from time to time in accordance with the procedures  
37 adopted by the NAIC.

38 (k) "RBC level" means an insurer's company action  
39 level RBC, regulatory action level RBC, authorized control  
40 level RBC, or mandatory control level RBC where:

41 (1) "Company action level RBC" means, with respect to  
42 any insurer, the product of two and its authorized control  
43 level RBC;

44 (2) "Regulatory action level RBC" means the product  
45 of one and one half and its authorized control level RBC;

46 (3) "Authorized control level RBC" means the number  
47 determined under the risk-based capital formula in  
48 accordance with the RBC instructions;

49 (4) "Mandatory control level RBC" means the product  
50 of seven tenths and the authorized control level RBC.

51 (l) "RBC plan" means a comprehensive financial plan  
52 containing the elements specified in subsection (b), section  
53 three of this article. If the commissioner rejects the RBC  
54 plan, and it is revised by the insurer, with or without the  
55 commissioner's recommendation, the plan shall be called  
56 the revised RBC plan.

57 (m) "RBC report" means the report required in section  
58 two of this article.

59 (n) "Total adjusted capital" means the sum of:

60 (1) An insurer's statutory capital and surplus as  
61 determined in accordance with the statutory accounting  
62 applicable to the financial statements required to be filed  
63 under section fourteen, article four of this chapter; and

64 (2) Such other items, if any, as the RBC instructions

65 may provide.

**§33-40-2. RBC reports.**

1 (a) Every domestic insurer shall, on or prior to each  
2 first day of March (the "filing date"), prepare and submit  
3 to the commissioner a report of its RBC levels as of the  
4 end of the calendar year just ended, in a form and  
5 containing such information as is required by the RBC  
6 instructions. In addition, every domestic insurer shall file  
7 its RBC report:

8 (1) With the NAIC in accordance with the RBC  
9 instructions; and

10 (2) With the insurance commissioner in any state in  
11 which the insurer is authorized to do business, if the  
12 insurance commissioner has notified the insurer of its  
13 request in writing, in which case the insurer shall file its  
14 RBC report not later than the later of:

15 (A) Fifteen days from the receipt of notice to file its  
16 RBC report with that state; or

17 (B) The filing date.

18 (b) A life and health insurer's RBC shall be determined  
19 in accordance with the formula set forth in the RBC  
20 instructions. The formula shall take into account (and  
21 may adjust for the covariance between):

22 (1) The risk with respect to the insurer's assets;

23 (2) The risk of adverse insurance experience with  
24 respect to the insurer's liabilities and obligations;

25 (3) The interest rate risk with respect to the insurer's  
26 business; and

27 (4) All other business risks and such other relevant  
28 risks as are set forth in the RBC instructions determined in  
29 each case by applying the factors in the manner set forth  
30 in the RBC instructions.

31 (c) A property and casualty insurer's RBC shall be  
32 determined in accordance with the formula set forth in the

33 RBC instructions. The formula shall take into account  
34 (and may adjust for the covariance between):

35 (1) Asset risk;

36 (2) Credit risk;

37 (3) Underwriting risk; and

38 (4) All other business risks and such other relevant  
39 risks as are set forth in the RBC instructions determined in  
40 each case by applying the factors in the manner set forth  
41 in the RBC instructions.

42 (d) An excess of capital over the amount produced by  
43 the risk-based capital requirements contained in this article  
44 and the formulas, schedules and instructions referenced in  
45 this article is desirable in the business of insurance.  
46 Accordingly, insurers should seek to maintain capital  
47 above the RBC levels required by this article. Additional  
48 capital is used and useful in the insurance business and  
49 helps to secure an insurer against various risks inherent in,  
50 or affecting, the business of insurance and not accounted  
51 for or only partially measured by the risk-based capital  
52 requirements contained in this article.

53 (e) If a domestic insurer files an RBC report which in  
54 the judgment of the commissioner is inaccurate, then the  
55 commissioner shall adjust the RBC report to correct the  
56 inaccuracy and shall notify the insurer of the adjustment.  
57 The notice shall contain a statement of the reason for the  
58 adjustment. An RBC report as so adjusted is referred to as  
59 an "Adjusted RBC Report".

**§33-40-3. Company action level event.**

1 (a) "Company action level event" means any of the  
2 following events:

3 (1) The filing of an RBC report by an insurer which  
4 indicates that:

5 (A) The insurer's total adjusted capital is greater than  
6 or equal to its regulatory action level RBC but less than its  
7 company action level RBC; or

8 (B) If a life and/or health insurer, the insurer has total  
9 adjusted capital which is greater than or equal to its  
10 company action level RBC but less than the product of its  
11 authorized control level RBC and two and one half and  
12 has a negative trend;

13 (2) The notification by the commissioner to the  
14 insurer of an adjusted RBC report that indicates an event  
15 in subdivision (1) of this subsection, provided the insurer  
16 does not challenge the adjusted RBC report under section  
17 seven of this article; or

18 (3) If, pursuant to section seven of this article, an  
19 insurer challenges an adjusted RBC report that indicates  
20 the event in subdivision (1) of this subsection, the  
21 notification by the commissioner to the insurer that the  
22 commissioner has, after a hearing, rejected the insurer's  
23 challenge.

24 (b) In the event of a company action level event, the  
25 insurer shall prepare and submit to the commissioner an  
26 RBC plan which shall:

27 (1) Identify the conditions which contribute to the  
28 company action level event;

29 (2) Contain proposals of corrective actions which the  
30 insurer intends to take and would be expected to result in  
31 the elimination of the company action level event;

32 (3) Provide projections of the insurer's financial results  
33 in the current year and at least the four succeeding years,  
34 both in the absence of proposed corrective actions and  
35 giving effect to the proposed corrective actions, including  
36 projections of statutory operating income, net income,  
37 capital and/or surplus. (The projections for both new and  
38 renewal business may include separate projections for  
39 each major line of business and separately identify each  
40 significant income, expense and benefit component);

41 (4) Identify the key assumptions impacting the  
42 insurer's projections and the sensitivity of the projections  
43 to the assumptions; and

44 (5) Identify the quality of, and problems associated  
45 with, the insurer's business, including, but not limited to, its  
46 assets, anticipated business growth and associated surplus  
47 strain, extraordinary exposure to risk, mix of business and  
48 use of reinsurance, if any, in each case.

49 (c) The RBC plan shall be submitted:

50 (1) Within forty-five days of the company action level  
51 event; or

52 (2) If the insurer challenges an adjusted RBC report  
53 pursuant to section seven of this article, within forty-five  
54 days after notification to the insurer that the commissioner  
55 has, after a hearing, rejected the insurer's challenge.

56 (d) Within sixty days after the submission by an  
57 insurer of an RBC plan to the commissioner, the  
58 commissioner shall notify the insurer whether the RBC  
59 plan shall be implemented or is, in the judgment of the  
60 commissioner, unsatisfactory. If the commissioner  
61 determines the RBC plan is unsatisfactory, the notification  
62 to the insurer shall set forth the reasons for the  
63 determination, and may set forth proposed revisions which  
64 will render the RBC plan satisfactory, in the judgment of  
65 the commissioner. Upon notification from the  
66 commissioner, the insurer shall prepare a revised RBC  
67 plan, which may incorporate by reference any revisions  
68 proposed by the commissioner, and shall submit the  
69 revised RBC plan to the commissioner:

70 (1) Within forty-five days after the notification from  
71 the commissioner; or

72 (2) If the insurer challenges the notification from the  
73 commissioner under section seven of this article, within  
74 forty-five days after a notification to the insurer that the  
75 commissioner has, after a hearing, rejected the insurer's  
76 challenge.

77 (e) In the event of a notification by the commissioner  
78 to an insurer that the insurer's RBC plan or revised RBC  
79 plan is unsatisfactory, the commissioner may at the

80 commissioner's discretion, subject to the insurer's right to a  
81 hearing under section seven of this article, specify in the  
82 notification that the notification constitutes a regulatory  
83 action level event.

84 (f) Every domestic insurer that files an RBC plan or  
85 revised RBC plan with the commissioner shall file a copy  
86 of the RBC plan or revised RBC plan with the insurance  
87 commissioner in any state in which the insurer is  
88 authorized to do business if:

89 (1) Such state has an RBC provision substantially  
90 similar to subsection (a), section eight of this article; and

91 (2) The insurance commissioner of that state has  
92 notified the insurer of its request for the filing in writing,  
93 in which case the insurer shall file a copy of the RBC plan  
94 or revised RBC plan in that state no later than the later of:

95 (i) Fifteen days after the receipt of notice to file a  
96 copy of its RBC plan or revised RBC plan with the state; or

97 (ii) The date on which the RBC plan or revised RBC  
98 plan is filed under subsections (c) and (d) of this section.

#### §33-40-4. Regulatory action level event.

1 (a) "Regulatory action level event" means, with respect  
2 to any insurer, any of the following events:

3 (1) The filing of an RBC report by the insurer which  
4 indicates that the insurer's total adjusted capital is greater  
5 than or equal to its authorized control level RBC but less  
6 than its regulatory action level RBC;

7 (2) The notification by the commissioner to an insurer  
8 of an adjusted RBC report that indicates the event in  
9 subdivision (1) of this subsection, provided the insurer  
10 does not challenge the adjusted RBC report under section  
11 seven of this article;

12 (3) If, pursuant to section seven of this article, the  
13 insurer challenges an adjusted RBC report that indicates  
14 the event in subdivision (1) of this subsection, the



15 notification by the commissioner to the insurer that the  
16 commissioner has, after a hearing, rejected the insurer's  
17 challenge;

18 (4) The failure of the insurer to file an RBC report by  
19 the filing date, unless the insurer has provided an  
20 explanation for such failure which is satisfactory to the  
21 commissioner and has cured the failure within ten days  
22 after the filing date;

23 (5) The failure of the insurer to submit an RBC plan to  
24 the commissioner within the time period set forth in  
25 subsection (c), section three of this article;

26 (6) Notification by the commissioner to the insurer  
27 that:

28 (A) The RBC plan or revised RBC plan submitted by  
29 the insurer is, in the judgment of the commissioner,  
30 unsatisfactory; and

31 (B) Such notification constitutes a regulatory action  
32 level event with respect to the insurer, provided the insurer  
33 has not challenged the determination under section seven  
34 of this article;

35 (7) If, pursuant to section seven of this article, the  
36 insurer challenges a determination by the commissioner  
37 under subdivision (6) of this subsection, the notification  
38 by the commissioner to the insurer that the commissioner  
39 has, after a hearing, rejected such challenge;

40 (8) Notification by the commissioner to the insurer  
41 that the insurer has failed to adhere to its RBC plan or  
42 revised RBC plan, but only if such failure has a substantial  
43 adverse effect on the ability of the insurer to eliminate the  
44 company action level event in accordance with its RBC  
45 plan or revised RBC plan and the commissioner has so  
46 stated in the notification, provided the insurer has not  
47 challenged the determination under section seven of this  
48 article; or

49 (9) If, pursuant to section seven of this article, the

50 insurer challenges a determination by the commissioner  
51 under subdivision (8) of this subsection, the notification  
52 by the commissioner to the insurer that the commissioner  
53 has, after a hearing, rejected the challenge.

54 (b) In the event of a regulatory action level event the  
55 commissioner shall:

56 (1) Require the insurer to prepare and submit an RBC  
57 plan or, if applicable, a revised RBC plan;

58 (2) Perform such examination or analysis as the  
59 commissioner deems necessary of the assets, liabilities and  
60 operations of the insurer including a review of its RBC  
61 plan or revised RBC plan; and

62 (3) Subsequent to the examination or analysis, issue an  
63 order specifying such corrective actions as the  
64 commissioner shall determine are required (a "corrective  
65 order").

66 (c) In determining corrective actions, the commis-  
67 sioner may take into account such factors as are deemed  
68 relevant with respect to the insurer based upon the  
69 commissioner's examination or analysis of the assets,  
70 liabilities and operations of the insurer, including, but not  
71 limited to, the results of any sensitivity tests undertaken  
72 pursuant to the RBC instructions. The RBC plan or revised  
73 RBC plan shall be submitted:

74 (1) Within forty-five days after the occurrence of the  
75 regulatory action level event;

76 (2) If the insurer challenges an adjusted RBC report  
77 pursuant to section seven of this article and the challenge  
78 is not frivolous in the judgment of the commissioner  
79 within forty-five days after the notification to the insurer  
80 that the commissioner has, after a hearing, rejected the  
81 insurer's challenge; or

82 (3) If the insurer challenges a revised RBC plan  
83 pursuant to section seven of this article and the challenge  
84 is not frivolous in the judgment of the commissioner,

85 within forty-five days after the notification to the insurer  
86 that the commissioner has, after a hearing, rejected the  
87 insurer's challenge.

88 (d) The commissioner may retain actuaries and  
89 investment experts and other consultants as may be  
90 necessary in the judgment of the commissioner to review  
91 the insurer's RBC plan or revised RBC plan, examine or  
92 analyze the assets, liabilities and operations of the insurer  
93 and formulate the corrective order with respect to the  
94 insurer. The fees, costs and expenses relating to  
95 consultants shall be borne by the affected insurer or such  
96 other party as directed by the commissioner.

**§33-40-5. Authorized control level event.**

1 (a) "Authorized control level event" means any of the  
2 following events:

3 (1) The filing of an RBC report by the insurer which  
4 indicates that the insurer's total adjusted capital is greater  
5 than or equal to its mandatory control level RBC but less  
6 than its authorized control level RBC;

7 (2) The notification by the commissioner to the  
8 insurer of an adjusted RBC report that indicates the event  
9 in subdivision (1) of this subsection, provided the insurer  
10 does not challenge the adjusted RBC report under section  
11 seven of this article;

12 (3) If, pursuant to section seven of this article, the  
13 insurer challenges an adjusted RBC report that indicates  
14 the event in subdivision (1) of this subsection, notification  
15 by the commissioner to the insurer that the commissioner  
16 has, after a hearing, rejected the insurer's challenge;

17 (4) The failure of the insurer to respond, in a manner  
18 satisfactory to the commissioner, to a corrective order  
19 (provided the insurer has not challenged the corrective  
20 order) under section seven of this article; or

21 (5) If the insurer has challenged a corrective order

22 under section seven of this article and the commissioner  
23 has, after a hearing, rejected the challenge or modified the  
24 corrective order, the failure of the insurer to respond, in a  
25 manner satisfactory to the commissioner, to the corrective  
26 order subsequent to rejection or modification by the  
27 commissioner.

28 (b) In the event of an authorized control level event  
29 with respect to an insurer, the commissioner shall:

30 (1) Take such actions as are required under section  
31 four of this article regarding an insurer with respect to  
32 which a regulatory action level event has occurred; or

33 (2) If the commissioner deems it to be in the best  
34 interests of the policyholders and creditors of the insurer  
35 and of the public, take such actions as are necessary to  
36 cause the insurer to be placed under regulatory control  
37 under article ten of this chapter. In the event the  
38 commissioner takes such actions, the authorized control  
39 level event shall be deemed sufficient grounds for the  
40 commissioner to take action under said article, and the  
41 commissioner shall have the rights, powers and duties with  
42 respect to the insurer as are set forth in said article. In the  
43 event the commissioner takes actions under this  
44 subdivision pursuant to an adjusted RBC report, the  
45 insurer shall be entitled to such protections as are afforded  
46 to insurers under the provisions of article ten of this  
47 chapter pertaining to summary proceedings.

**§33-40-6. Mandatory control level event.**

1 (a) "Mandatory control level event" means any of the  
2 following events:

3 (1) The filing of an RBC report which indicates that  
4 the insurer's total adjusted capital is less than its mandatory  
5 control level RBC;

6 (2) Notification by the commissioner to the insurer of  
7 an adjusted RBC report that indicates the event in  
8 subdivision (1) of this subsection, provided the insurer

9 does not challenge the adjusted RBC report under section  
10 seven of this article; or

11 (3) If, pursuant to section seven of this article, the  
12 insurer challenges an adjusted RBC report that indicates  
13 the event in subdivision (1) of this subsection, notification  
14 by the commissioner to the insurer that the commissioner  
15 has, after a hearing, rejected the insurer's challenge.

16 (b) In the event of a mandatory control level event:

17 (1) With respect to a life insurer, the commissioner  
18 shall take such actions as are necessary to place the insurer  
19 under regulatory control under article ten of this chapter.  
20 In that event, the mandatory control level event shall be  
21 deemed sufficient grounds for the commissioner to take  
22 action under said article, and the commissioner shall have  
23 the rights, powers and duties with respect to the insurer as  
24 are set forth in said article. If the commissioner takes  
25 actions pursuant to an adjusted RBC report, the insurer  
26 shall be entitled to the protections of said article pertaining  
27 to summary proceedings. Notwithstanding any of the  
28 foregoing, the commissioner may forego action for up to  
29 ninety days after the mandatory control level event if the  
30 commissioner finds there is a reasonable expectation that  
31 the mandatory control level event may be eliminated  
32 within the ninety-day period.

33 (2) With respect to a property and casualty insurer, the  
34 commissioner shall take such actions as are necessary to  
35 place the insurer under regulatory control under article  
36 ten of this chapter, or, in the case of an insurer which is  
37 writing no business and which is running-off its existing  
38 business, may allow the insurer to continue its run-off  
39 under the supervision of the commissioner. In either  
40 event, the mandatory control level event shall be deemed  
41 sufficient grounds for the commissioner to take action  
42 under said article and the commissioner shall have the  
43 rights, powers and duties with respect to the insurer as are  
44 set forth in said article. If the commissioner takes actions

45 pursuant to an adjusted RBC report, the insurer shall be  
46 entitled to the protections of said article pertaining to  
47 summary proceedings. Notwithstanding any of the  
48 foregoing, the commissioner may forego action for up to  
49 ninety days after the mandatory control level event if the  
50 commissioner finds there is a reasonable expectation that  
51 the mandatory control level event may be eliminated  
52 within the ninety-day period.

### §33-40-7. Hearings.

1 Insurers shall have the right to a confidential  
2 departmental hearing, on a record, at which the insurer  
3 may challenge any determination or action by the  
4 commissioner made pursuant to the provisions of this  
5 article. The insurer shall notify the commissioner of its  
6 request for a hearing within five days after receiving  
7 notification from the commissioner.

8 (a) Notification to an insurer by the commissioner of  
9 an adjusted RBC report; or

10 (b) Notification to an insurer by the commissioner  
11 that:

12 (1) The insurer's RBC plan or revised RBC plan is  
13 unsatisfactory; and

14 (2) Such notification constitutes a regulatory action  
15 level event with respect to such insurer; or

16 (c) Notification to any insurer by the commissioner  
17 that the insurer has failed to adhere to its RBC plan or  
18 revised RBC plan and that such failure has a substantial  
19 adverse effect on the ability of the insurer to eliminate the  
20 company action level event with respect to the insurer in  
21 accordance with its RBC plan or revised RBC plan; or

22 (d) Notification to an insurer by the commissioner of  
23 a corrective order with respect to the insurer.

24 Upon receipt of the insurer's request for a hearing, the  
25 commissioner shall set a date for the hearing, which date

26 shall be no less than fifteen nor more than forty-five days  
27 after the date of the insurer's request.

**§33-40-8. Confidentiality; prohibition on announcements,  
prohibition on use in ratemaking.**

1 (a) All RBC reports (to the extent the information  
2 therein is not required to be set forth in a publicly  
3 available annual statement schedule) and RBC plans  
4 (including the results or report of any examination or  
5 analysis of an insurer performed pursuant hereto and any  
6 corrective order issued by the commissioner pursuant to  
7 examination or analysis) with respect to any domestic  
8 insurer or foreign insurer which are filed with the  
9 commissioner constitute information that might be  
10 damaging to the insurer if made available to its  
11 competitors and therefore shall be kept confidential by the  
12 commissioner. This information shall not be made public  
13 and/or be subject to subpoena, other than by the  
14 commissioner and then only for the purpose of  
15 enforcement actions taken by the commissioner pursuant  
16 to this article or any other provision of the insurance laws  
17 of this state. The information required by this article is  
18 specifically exempt from the requirements of chapter  
19 twenty-nine-b of this code.

20 (b) It is the judgment of the Legislature that the  
21 comparison of an insurer's total adjusted capital to any of  
22 its RBC levels is a regulatory tool which may indicate the  
23 need for possible corrective action with respect to the  
24 insurer, and is not intended as a means to rank insurers  
25 generally. Therefore, except as otherwise required under  
26 the provisions of this article, the making, publishing,  
27 disseminating, circulating or placing before the public, or  
28 causing, directly or indirectly to be made, published,  
29 disseminated, circulated or placed before the public, in a  
30 newspaper, magazine or other publication, or in the form  
31 of a notice, circular, pamphlet, letter or poster, or over any  
32 radio or television station, or in any other way, an  
33 advertisement, announcement or statement containing an  
34 assertion, representation or statement with regard to the

35 RBC levels of any insurer, or of any component derived in  
36 the calculation, by any insurer, agent, broker or other  
37 person engaged in any manner in the insurance business  
38 would be misleading and is therefore prohibited:  
39 *Provided*, That if any materially false statement with  
40 respect to the comparison regarding an insurer's total  
41 adjusted capital to its RBC levels (or any of them) or an  
42 inappropriate comparison of any other amount to the  
43 insurers RBC levels is published in any written publication  
44 and the insurer is able to demonstrate to the commissioner  
45 with substantial proof the falsity of such statement, or the  
46 inappropriateness, as the case may be, then the insurer  
47 may publish an announcement in a written publication if  
48 the sole purpose of the announcement is to rebut the  
49 materially false statement.

50 (c) It is the further judgment of the Legislature that  
51 the RBC instructions, RBC reports, adjusted RBC reports,  
52 RBC plans and revised RBC plans are intended solely for  
53 use by the commissioner in monitoring the solvency of  
54 insurers and the need for possible corrective action with  
55 respect to insurers and shall not be used by the  
56 commissioner for ratemaking nor considered or  
57 introduced as evidence in any rate proceeding nor used by  
58 the commissioner to calculate or derive any elements of an  
59 appropriate premium level or rate of return for any line of  
60 insurance which an insurer or any affiliate is authorized to  
61 write.

**§33-40-9. Supplemental provisions; rules; exemption.**

1 (a) The provisions of this article are supplemental to  
2 any other provisions of the laws of this state and shall not  
3 preclude or limit any other powers or duties of the  
4 commissioner under such laws, including, but not limited  
5 to, article ten of this chapter.

6 (b) The commissioner may adopt reasonable rules  
7 necessary for the implementation of this article.

8 (c) The commissioner may exempt from the  
9 application of this article any domestic property and



10 casualty insurer which:

11 (1) Writes direct business only in this state;

12 (2) Writes direct annual premiums of two million  
13 dollars or less; and

14 (3) Assumes no reinsurance in excess of five percent  
15 of direct premium written.

16 (d) A domestic farmers' mutual fire insurance  
17 company is exempt from the provisions of this article  
18 when:

19 (1) It writes direct business only in this state;

20 (2) It writes direct annual premiums of two million  
21 dollars or less; and

22 (3) It assumes no reinsurance in excess of five percent  
23 of direct premium written.

**§33-40-10. Foreign insurers.**

1 (a) Any foreign insurer shall, upon the written request  
2 of the commissioner, submit to the commissioner an RBC  
3 report as of the end of the calendar year just ended the  
4 later of:

5 (1) The date an RBC report would be required to be  
6 filed by a domestic insurer under this act; or

7 (2) Fifteen days after the request is received by the  
8 foreign insurer.

9 Any foreign insurer shall, at the written request of the  
10 commissioner, promptly submit to the commissioner a  
11 copy of any RBC plan that is filed with the insurance  
12 commissioner of any other state.

13 (b) In the event of a company action level event,  
14 regulatory action level event or authorized control level  
15 event with respect to any foreign insurer as determined  
16 under the RBC statute applicable in the state of domicile  
17 of the insurer (or, if no RBC statute is in force in that state,  
18 under the provisions of this article), if the insurance

19 commissioner of the state of domicile of the foreign  
20 insurer fails to require the foreign insurer to file an RBC  
21 plan in the manner specified under that state's RBC statute  
22 (or, if no RBC statute is in force in that state, under section  
23 three of this article), the commissioner may require the  
24 foreign insurer to file an RBC plan with the commissioner.  
25 In such event, the failure of the foreign insurer to file an  
26 RBC plan with the commissioner shall be grounds to order  
27 the insurer to cease and desist from writing new insurance  
28 business in this state.

29 (c) In the event of a mandatory control level event  
30 with respect to any foreign insurer, if no domiciliary  
31 receiver has been appointed with respect to the foreign  
32 insurer under the rehabilitation and liquidation statute  
33 applicable in the state of domicile of the foreign insurer,  
34 the commissioner may make application to the circuit  
35 court of Kanawha County permitted under article ten of  
36 this chapter with respect to the liquidation of property of  
37 foreign insurers found in this state and the occurrence of  
38 the mandatory control level event shall be considered  
39 adequate grounds for the application.

#### **§33-40-11. Immunity.**

1 There shall be no liability on the part of, and no cause  
2 of action shall arise against, the commissioner or the  
3 agency of the insurance commission or its employees or  
4 agents for any action taken by them in the performance of  
5 their powers and duties under this article.

#### **§33-40-12. Notices.**

1 All notices by the commissioner to an insurer which  
2 may result in regulatory action hereunder shall be  
3 effective upon dispatch if transmitted by registered or  
4 certified mail, or in the case of any other transmission  
5 shall be effective upon the insurer's receipt of such notice.

#### **§33-40-13. Effective date.**

1 This article shall become effective on the first day of  
2 January, one thousand nine hundred ninety-six.