

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



**Regular Session, 2004**  
**Constitutional Amendment, 2004**  
**First Extraordinary Session, 2004**  
**Second Extraordinary Session, 2004**

**Volume I**  
**Chapters 1 — 139**

**COMPILED AND PUBLISHED  
UNDER THE DIRECTION  
OF  
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*Clerk of the House*

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## FOREWORD

These volumes contain the Acts of the Second Regular Session and the First and Second Extraordinary Sessions of the 76th Legislature, 2004.

### **Second Regular Session, 2004**

The Second Regular Session of the 76th Legislature convened on January 14, 2004. The Constitutional sixty-day limit on the duration of the session was midnight, March 13, 2004. The Governor issued a Proclamation on March 10, extending the session for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned *sine die* on March 21, 2004.

Bills totaling 2,127 were introduced in the two houses during the session (1,390 House, 623 of which were carryover bills from the 2003 Regular Session, and 737 Senate). The Legislature passed 280 bills, 168 House and 112 Senate.

The Governor vetoed 5 House bills (H. B. 4119, Allowing a phase-in of the transfer of hotel taxing authority when a municipality annexes a hotel to allow the retirement of any debt incurred by the county or to otherwise phase in the transfer of taxing authority to the municipality; H. B. 4308, Providing immunity from civil damages to workers who in good faith provide services or materials, without remuneration, to build or install certain universal accessibility features in accordance with applicable state and federal laws; H. B. 4354, Authorizing county commissions to adopt ordinances to reduce false alarms; H. B. 4377, Assessing a penalty on those physicians who fail to pay the special assessment; and H. B. 4623, Repealing the section of the code relating to expenditure of excess in collections upon approval of governor) and 7 Senate bills (S. B. 160, Extending time to appropriate money from public employees insurance agency reserve fund to bureau of medical services; S. B. 197, Relating generally to distribution of net terminal income of racetrack video

lottery terminals; S. B. 563, Relating to public employees retirement act; S. B. 566, Establishing Unborn Victims of Violence Act; S. B. 616, Relating to environmental protection advisory council; S. B. 636, Relating to employment of members of teachers defined benefit retirement system; and S. B. 694, Establishing Fairness in Competitive Bidding Act). The Legislature amended and again passed H. B. 4308, H. B. 4377 and S. B. 197, leaving a net total of 271 bills, 165 House and 106 Senate, which became law.

There were 200 Concurrent Resolutions introduced during the session, 98 House and 102 Senate, of which 39 House and 23 Senate were adopted. Twenty-six House Joint Resolutions (12 of which were carryover House Joint Resolutions) and 11 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 1 House Joint Resolution (H. J. R. 114, Veterans Bonus Amendment of 2004) was adopted. The House introduced 21 House Resolutions, and the Senate introduced 45 Senate Resolutions, of which 11 House and 45 Senate were adopted.

The Senate failed to pass 82 House bills passed by the House, and 61 Senate bills failed passage by the House. Six House bills and 7 Senate bills were pending conference. The Senate failed to introduce 3 House bills passed by the House and 3 Senate bills, passed by the Senate, failed to be introduced in the House.

\* \* \* \* \*

### **First Extraordinary Session, 2004**

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment *sine die* of the Regular Session, March 21, 2004, contained supplemental appropriation bills for consideration.

The Legislature passed 14 bills, of which 1 was a House bill and 13 were Senate bills.

The Governor vetoed 1 Senate bill (S. B. 1013, Expiring funds to unappropriated balance in general revenue fund to department of military affairs and public safety, division of corrections), leaving a net total of 13 bills, 1 House and 12 Senate, which became law.

Two Concurrent Resolutions were adopted, 1 House and 1 Senate. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* 8:40 P.M. the same day.

\* \* \* \* \*

### **Second Extraordinary Session, 2004**

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., June 15, 2004, contained 29 items for consideration.

The Legislature passed 13 bills, of which 7 were House bills and 6 were Senate bills.

One House Concurrent Resolution was adopted and the Senate adopted 5 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* 7:48 P.M. the same day.

\* \* \* \* \*

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

These Acts may be purchased from the Office of the Clerk of the House, 212 Main Unit, State Capitol, Charleston, West Virginia, 25305.

GREGORY M. GRAY

*Clerk of the House and  
Keeper of the Rolls.*



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## REGULAR SESSION, 2004

### OFFICERS

*Speaker* — Robert S. Kiss, Beckley

*Clerk* — Gregory M. Gray, Charleston

*Sergeant at Arms* — Oce Smith, Fairmont

*Doorkeeper* — John A. Roberts, Hedgesville

District	Name	Address	Legislative Service
First	Joe DeLong (D)	Weirton	75th-76th
	Randy Swartzmiller (D)	New Cumberland	75th-76th
Second	Timothy R. Ennis (D)	Wellsburg	72nd-76th
	Jack Yost (D)	Wellsburg	76th
Third	Christopher Wakim (R)	Wheeling	76th
	L. Gil White (R)	Wheeling	70th-71st; 73rd-76th
Fourth	Kenneth D. Tucker (D)	Moundsville	73rd-76th
	Scott G. Varner (D)	Moundsville	71st-76th
Fifth	Dave Pethel (D)	Hundred	69th-71st; 74th-76th
Sixth	William Roger Romine (R)	West Union	75th-76th
Seventh	Otis A. Leggett (R)	St. Marys	68th-76th
Eighth	Everette W. Anderson, Jr. (R)	Williamstown	71st-76th
Ninth	Larry W. Border (R)	Davisville	70th-76th
Tenth	Tom Azinger (R)	Vienna	72nd-76th
	J. D. Beane (D)	Parkersburg	70th-76th
	John Ellem (R)	Parkersburg	75th-76th
Eleventh	Bob Ashley (R)	Spencer	67th-72nd; 75th-76th
Twelfth	Mitch Carmichael (R)	Ripley	75th-76th
Thirteenth	Dale Martin (D)	Poca	75th-76th
	Brady Paxton (D)	Liberty	71st; Appt. 4/22/99, 74th-76th
Fourteenth	Mike Hall (R)	Hurricane	72nd-76th
	Patti Eagloski Schoen (R)	Scott Depot	76th
Fifteenth	Kevin J. Craig (D)	Huntington	75th-76th
	Margarette R. Leach (D)	Huntington	71st-76th
	Jim Morgan (D)	Huntington	69th; Appt. 2/23/01, 75th-76th
Sixteenth	Greg Howard (R)	Huntington	76th
	Jody G. Smirl (R)	Huntington	58th-61st; 67th; 72nd-76th
	Kelli Sobonya (R)	Ona	76th
Seventeenth	Don C. Perdue (D)	Prichard	74th-76th
	Richard Thompson (D)	Huntington	65th, Resigned 6/81; 75th-76th
Eighteenth	Earnest H. Kuhn (D)	Van	72nd-76th
Nineteenth	Greg Butcher (D)	Chapmanville	73rd-76th
	Joe C. Ferrell (D)	Chapmanville	66th; 68th-70th; 74th-76th
	Lidella Wilson Hrutkay (D)	Logan	75th-76th
	Bill Wright (D)	Sod	76th
Twentieth	K. Steven Kominar (D)	Kermit	72nd-76th
Twenty-first	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st-76th
Twenty-second	Richard Browning (D)	Oceana	69th-72nd; 75th-76th
	Rick Staton (D)	Mullens	69th-76th
Twenty-third	Emily Yeager (D)	Welch	Appt. 3/10/93, 71st; 72nd-76th
Twenty-fourth	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd-76th
Twenty-fifth	Don Caruth (R)	Athens	76th
	Marshall Long (D)	Princeton	Appt. 9/9/02, 75th; 76th
Twenty-sixth	Gerald Crosier (D)	Union	76th
	Robert S. Kiss (D)	Beckley	69th-76th
Twenty-seventh	Virginia Mahan (D)	Green Sulphur Springs	73rd-76th
	Linda Sumner (R)	Beckley	76th
	Sally Matz Susman (D)	Beckley	74th-76th
	Ron Thompson (D)	Beckley	72nd-76th

## MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73rd-76th
	Ray Canterbury (R)	Ronceverte	75th-76th
Twenty-ninth	Tom Louisos (D)	Oak Hill	67th-68th; 70th-76th
	David G. Perry (D)	Oak Hill	75th-76th
	John Pino (D)	Oak Hill	67th-68th; 71st-76th
Thirtieth	Jon Amores (D)	Charleston	72nd-76th
	Bonnie Brown (D)	South Charleston	66th-68th; 70th; 75th-76th
	Ann Calvert (R)	South Charleston	70th-72nd; 74th; 76th
	Dan Foster (D)	South Charleston	76th
	Barbara Burruss Hatfield (D)	South Charleston	68th-70th; 74th-76th
	Corey Palumbo (D)	Charleston	76th
	Sharon Spencer (D)	Charleston	66th; 68th-71st; 73rd-76th
Thirty-first	Carrie Webster (D)	Charleston	75th-76th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73rd; 74th-76th
	Ron Walters (R)	Charleston	71st-72nd; 75th-76th
	Charles Rusty Webb (R)	Cross Lanes	73rd-76th
Thirty-third	William F. Stemple (D)	Arnoldsburg	73rd-76th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd-76th
Thirty-fifth	John W. Shelton (D)	Summersville	73rd-76th
Thirty-sixth	Joe Talbott (D)	Webster Springs	71st-72nd; 76th
Thirty-seventh	William G. Hartman (D)	Elkins	76th
	Bill Proudfoot (D)	Elkins	70th-76th
Thirty-eighth	Doug Stalnaker (D)	Weston	72nd-76th
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76th
Fortieth	Mary M. Poling (D)	Moatsville	75th-76th
Forty-first	Richard J. Iaquina (D)	Clarksburg	76th
	Samuel J. Cann (D)	Clarksburg	72nd-76th
	Ron Fragale (D)	Clarksburg	70th-73rd; 75th-76th
	Barbara A. Warner (D)	Bridgeport	69th-76th
Forty-second	Tom Coleman (D)	Grafton	73rd-76th
Forty-third	Michael Caputo (D)	Fairmont	73rd-76th
	<sup>1</sup> Tim Manchin (D)	Fairmont	Appt. 11/20/03, 76th
	Donna Renner (D)	Fairmont	76th
Forty-fourth	Robert D. Beach (D)	Morgantown	Appt. 5/98 served 7 months, 73rd; 75th-76th
	Barbara Evans Fleischauer (D)	Morgantown	72nd-76th
	Cindy Frich (R)	Morgantown	76th
	Nancy Houston (D)	Morgantown	74th; 76th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93, 71st; 72nd-76th
Forty-sixth	Stanley E. Shaver (D)	Tunnelton	75th-76th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th-76th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-76th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th-71st; 74th-76th
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-76th
Fifty-first	Charles S. Trump, IV (R)	Berkeley Springs	71st-76th
Fifty-second	Craig P. Blair (R)	Martinsburg	76th
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-76th
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76th
Fifty-fifth	John Overington (R)	Martinsburg	67th-76th
Fifty-sixth	Robert C. Tabb (D)	Kearneyville	76th
Fifty-seventh	John Doyle (D)	Shepherdstown	66th; 71st-76th
Fifty-eighth	Dale Manuel (D)	Charles Town	69th-76th

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

TOTAL ..... 100

<sup>1</sup>Appointed Nov. 20, 2003, to fill the vacancy created by the death of A. James Manchin.

# MEMBERS OF THE SENATE

## REGULAR SESSION, 2004

### OFFICERS

*President* — Earl Ray Tomblin, Chapmanville

*Clerk* — Darrell E. Holmes, Charleston

*Sergeant at Arms* — Tony DeRaimo, St. Albans

*Doorkeeper* — Andrew J. Trail, Charleston

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd-76th
	Andy McKenzie (R)	Wheeling	73rd-76th
Second	Larry J. Edgell (D)	New Martinsburg	74th-76th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97,73rd; 74th-76th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-76th
	J. Frank Deem (R)	Vienna	(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th); 72nd-76th
Fourth	Karen L. Facemyer (R)	Ripley	(House 71st-74th); 75th-76th
	Lisa D. Smith (R)	Scott Depot	(House 74th-75th); 76th
Fifth	Robert H. Plymale (D)	Ceredo	71st-76th
	Evan H. Jenkins (D)	Huntington	(House 72nd-74th); 76th
Sixth	H. Truman Chafin (D)	Williamson	66th-76th
	John Pat Fanning (D)	laeger	58th-64th; 67th-68th; 73rd-76th
Seventh	Tracy Dempsey (D)	Harts	(House 70th-75th); 76th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-76th
Eighth	Steve Harrison (R)	Cross Lanes	(House 71st-75th); 76th
	Vic Sprouse (R)	Charleston	(House 72nd); 73rd-76th
Ninth	Billy Wayne Bailey, Jr. (D)	Pineville	Appt. 1/9/91,70th; 71st-76th
	Russ Weeks (R)	Beckley	76th
Tenth	Anita Skeens Caldwell (D)	Princeton	75th-76th
	Jesse O. Guills (R)	Lewisburg	76th
Eleventh	Shirley Love (D)	Oak Hill	72nd-76th
	C. Randy White (D)	Webster Springs	(House 73rd-75th); 76th
Twelfth	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/10/83, 66th; 67th-69th); 70th-71st; 75th-76th
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-76th
Thirteenth	Michael A. Oliverio, II (D)	Westover	(House 71st); 72nd-76th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69th-72nd); 73rd-76th
Fourteenth	Jon Blair Hunter (D)	Clarksburg	73rd-76th
	Sarah M. Minear (R)	Davis	72nd-76th
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr., 69th); Appt. 9/13/89, 69th;70th-76th
	Mike Ross (D)	Coalton	71st-76th
Sixteenth	Herbert S. Snyder (D)	Shenandoah Junction	73rd-76th
	John R. Unger, II (D)	Martinsburg	74th-76th
Seventeenth	Brooks F. McCabe, Jr. (D)	Charleston	74th-76th
	Larry L. Rowe (D)	Malden	(House 73rd-74th); 75th-76th

(D) Democrats	24
(R) Republicans	10
<b>TOTAL</b>	<b>34</b>



## COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 2004

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### STANDING

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#### AGRICULTURE AND NATURAL RESOURCES

Stemple (*Chair of Agriculture*), Boggs (*Vice Chair of Agriculture*), Yeager (*Chair of Natural Resources*), Beach (*Vice Chair of Natural Resources*), Crosier, DeLong, Long, Louisos, Manuel, Paxton, Pethtel, Poling, Shaver, Swartzmiller, Tabb, R. Thompson, Williams, Anderson, Border, Duke, Evans, Leggett, Overington, Romine and Schoen.

#### BANKING AND INSURANCE

R. M. Thompson (*Chair of Banking*), Perry (*Vice Chair of Banking*), H. White (*Chair of Insurance*), Hrutkay (*Vice Chair of Insurance*), Beach, Butcher, Cann, Craig, Foster, Hartman, Hatfield, Iaquina, Morgan, Perdue, Pino, Spencer, Webster, Azinger, Canterbury, Carmichael, Faircloth, Frich, Hamilton, Walters and G. White.

#### CONSTITUTIONAL REVISION

Fleischauer (*Chair*), Webster (*Vice Chair*), Caputo, Crosier, Fragale, Houston, Kominar, Long, Louisos, Manuel, Pino, Renner, Spencer, Staton, Talbott, Varner, H. White, Armstead, Blair, Calvert, Hamilton, Overington, Schoen, Sobonya and Webb.

#### EDUCATION

Mezzatesta (*Chair*), Williams (*Vice Chair*), Beach, Crosier, Fragale, Hartman, Kuhn, Long, Paxton, Perry, Poling, Renner, Shaver, Shelton, Stemple, Swartzmiller, Tabb, Canterbury, Duke, Hamilton, Howard, Romine, Sobonya, Sumner and Wakim.

**FINANCE**

Michael (*Chair*), Doyle (*Vice Chair*), Boggs, Browning, Campbell, Cann, Foster, Frederick, Houston, Leach, Mezzatesta, Proudfoot, Stalnaker, Susman, R. M. Thompson, Varner, Warner, H. White, Anderson, Ashley, Border, Carmichael, Evans, Hall and G. White.

**GOVERNMENT ORGANIZATION**

Beane (*Chair*), Ennis (*Vice Chair*), Butcher, Ferrell, Hatfield, Iaquina, Louisos, Manchin, Manuel, Martin, Perdue, Spencer, Talbott, Tucker, Wright, Yeager, Yost, Azinger, Blair, Caruth, Frich, Leggett, Romine, Schoen and Walters.

**HEALTH AND HUMAN RESOURCES**

Perdue (*Chair*), Hatfield (*Vice Chair*), Brown, DeLong, Fleischauer, Foster, Frederick, Hrutkay, Iaquina, Leach, Mahan, Paxton, Spencer, Susman, Warner, Webster, Yost, Ashley, Carmichael, Hall, Howard, Schadler, Sobonya, Sumner and Wakim.

**INDUSTRY AND LABOR, ECONOMIC  
DEVELOPMENT AND SMALL BUSINESS**

Pethel (*Chair of Industry & Labor*), Tucker (*Vice Chair of Industry & Labor*), Cann (*Chair of Economic Development & Small Business*), Frederick (*Vice Chair of Economic Development & Small Business*), Browning, Caputo, Coleman, Fragale, Hartman, Kuhn, Martin, Palumbo, Perry, Poling, Talbott, Williams, Wright, Canterbury, Caruth, Ellem, Frich, Howard, Sobonya, Walters and G. White.

**JUDICIARY**

Amores (*Chair*), Kominar (*Vice Chair*), Caputo, Craig, Brown, DeLong, Fleischauer, Coleman, Hrutkay, Mahan, Morgan, Palumbo, Pethel, Pino, Stemple, R. Thompson, Webster, Armstead, Calvert, Ellem, Faircloth, Overington, Schadler, Smirl and Webb.

**POLITICAL SUBDIVISIONS**

Proudfoot (*Chair*), Susman (*Vice Chair*), Brown, Caputo, Campbell, Doyle, Ferrell, Houston, Manchin, Martin, Morgan, Palumbo, Perry, Swartzmiller, Tabb, Varner, Yost, Anderson, Armstead, Calvert, Duke, Schadler, Smirl, Stalnaker and Sumner.

**ROADS AND TRANSPORTATION**

Warner (*Chair*), Shelton (*Vice Chair*), Beach, Boggs, Butcher, Coleman, Craig, Ennis, Hartman, Kominar, Manchin, Renner, Susman, R. Thompson, R. M. Thompson, Wright, Yeager, Blair, Border, Caruth, Evans, Leggett, Romine, Schadler and Stalnaker.

**RULES**

Kiss (*Chair*), Amores, Beane, Kominar, Mahan, Mezzatesta, Michael, Pino, Staton, Varner, Warner, Trump, Anderson, Faircloth, Hall and Smirl.

**VETERANS AFFAIRS AND HOMELAND SECURITY**

Kuhn (*Chair of Veterans Affairs*), Shaver (*Vice Chair of Veterans Affairs*), Browning (*Chair of Homeland Security*), Swartzmiller (*Vice Chair of Homeland Security*), Coleman, Butcher, Hrutkay, Iaquinta, Paxton, Poling, Proudfoot, Shelton, Stemple, R. M. Thompson, Tucker, H. White, Yeager, Ashley, Azinger, Ellem, Howard, Schoen, Smirl, Wakim and Webb.

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**JOINT**

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**ENROLLED BILLS**

Spencer (*Chair*), Butcher (*Vice Chair*), Varner and Overington.

**LEGISLATIVE RULE-MAKING REVIEW**

Mahan (*Chair*), R. Thompson (*Vice Chair*), Cann, Kominar, Armstead and Faircloth.

**PENSIONS AND RETIREMENT**

Campbell (*Chair*), Craig (*Vice Chair*), Browning, Frederick, Williams, Duke and Hall.

**RULES**

Kiss (*Chair*), Staton and Trump.

**COMMITTEES OF THE SENATE**  
**Regular Session, 2004**

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**STANDING**

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**AGRICULTURE**

Edgell (*Chair*), Love (*Vice Chair*), Bailey, Dempsey, Hunter, Ross, Unger, Weeks, Facemyer and Guills.

**BANKING AND INSURANCE**

Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Helmick, Kessler, Prezioso, Sharpe, Snyder, Deem, Facemyer, Harrison and Minear.

**CONFIRMATIONS**

Love (*Chair*), Chafin (*Vice Chair*), Bailey, Bowman, Minard, Plymale, Harrison, McKenzie and Smith.

**ECONOMIC DEVELOPMENT**

McCabe (*Chair*), Oliverio (*Vice Chair*), Bowman, Chafin, Fanning, Helmick, Kessler, Minard, Plymale, Prezioso, Unger, Facemyer, Guills, McKenzie and Minear.

**EDUCATION**

Plymale (*Chair*), Edgell (*Vice Chair*), Bailey, Bowman, Caldwell, Dempsey, Hunter, Oliverio, Unger, White, Boley, Guills, Harrison and Sprouse.

**ENERGY, INDUSTRY AND MINING**

Sharpe (*Chair*), Dempsey (*Vice Chair*), Chafin, Fanning, Helmick, Hunter, Jenkins, Kessler, Oliverio, Ross, Deem, Guills, McKenzie and Weeks.

**FINANCE**

Helmick (*Chair*), Sharpe (*Vice Chair*), Bailey, Bowman, Chafin, Dempsey, Edgell, Love, McCabe, Plymale, Prezioso, Unger, Boley, Facemyer, Guills, Minear and Sprouse.

**GOVERNMENT ORGANIZATION**

Bowman (*Chair*), Bailey (*Vice Chair*), Caldwell, Chafin, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley, Minear, Smith and Weeks.

**HEALTH AND HUMAN RESOURCES**

Prezioso (*Chair*), Unger (*Vice Chair*), Edgell, Hunter, Jenkins, McCabe, Ross, Rowe, Sharpe, Snyder, Boley, Guills, Smith and Weeks.

**INTERSTATE COOPERATION**

Caldwell (*Chair*), Dempsey (*Vice Chair*), Minard, Rowe, Unger, Minear and Smith.

**JUDICIARY**

Kessler (*Chair*), Snyder (*Vice Chair*), Caldwell, Fanning, Hunter, Jenkins, Minard, Oliverio, Ross, Rowe, White, Deem, Harrison, McKenzie, Smith and Weeks.

**LABOR**

Snyder (*Chair*), Rowe (*Vice Chair*), Dempsey, Edgell, Hunter, Love, Prezioso, Boley, Deem and Harrison.

**MILITARY**

Hunter (*Chair*), Caldwell (*Vice Chair*), Bailey, Dempsey, Minard, Oliverio, Boley, Deem and Weeks.

**NATURAL RESOURCES**

Fanning (*Chair*), White (*Vice Chair*), Bowman, Helmick, Love, McCabe, Plymale, Prezioso, Ross, Snyder, Deem, Facemyer, Minear and Smith.

**PENSIONS**

Jenkins (*Chair*), Fanning (*Vice Chair*), Edgell, McCabe, Plymale, Boley and Harrison.

**RULES**

Tomblin (*Chair*), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, McKenzie, Minear and Sprouse.

**TRANSPORTATION**

Ross (*Chair*), Caldwell (*Vice Chair*), Love, Oliverio, Rowe, White, Deem, Facemyer and McKenzie.

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**JOINT**

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**ENROLLED BILLS**

Rowe (*Chair*), Bailey, Caldwell, White and Facemyer.

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Ross (*Chair*), Minard (*Vice Chair*), Snyder, Unger, Boley and Minear.

**PENSIONS AND RETIREMENT**

Jenkins (*Chair*), Fanning (*Vice Chair*), Edgell, McCabe, Plymale, Boley and Harrison.

**RULES**

Tomblin (*Chair*), Chafin and Sprouse.





**LEGISLATURE OF WEST VIRGINIA**

**ACTS**

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**FIRST REGULAR SESSION, 2004**

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**CHAPTER 1**

**(Com. Sub. for H. B. 4250 — By Delegates Brown,  
Amores, Palumbo and Mahan)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-21, relating to legal actions against psychologists and psychiatrists appointed by a court to provide expert testimony for child custody evaluations; providing standard for good faith; barring of anonymous administrative complaints; providing method for assigning costs of proceedings; and awarding of attorneys fees.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-21, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.****§55-7-21. Creating presumption of good faith for court-appointed licensed psychologists and psychiatrists conducting a child custody evaluation; method for assigning court and legal fees.**

1 (a) A licensed psychologist or licensed psychiatrist who has  
2 been appointed by a court to conduct a child custody evaluation  
3 in a judicial proceeding shall be presumed to be acting in good  
4 faith if the evaluation has been conducted consistent with  
5 standards established by the American psychological associa-  
6 tion's guidelines for child custody evaluations in divorce  
7 proceedings.

8 (b) No complaint to a licensing or accrediting entity against  
9 a court-appointed licensed psychologist or psychiatrist relating  
10 to a child custody evaluation shall be considered if it is filed  
11 anonymously and does not include the full name, address and  
12 telephone number of the complainant.

13 (c) Any action filed against a licensed psychologist or  
14 licensed psychiatrist alleging tortious conduct related to  
15 evidence provided while acting as a court-appointed expert in  
16 a child custody matter shall contain a recitation of a specific  
17 allegation of breaches of American psychological association's  
18 guidelines for child custody evaluations in divorce proceedings.  
19 Failure to specifically plead such violations shall be cause for  
20 dismissal of the action.

21 (d) Any licensed psychologist or licensed psychiatrist who  
22 is named in a civil action as a defendant because of his or her  
23 performance of a child custody evaluation while acting as a  
24 court-appointed expert and who prevails due to a finding that he  
25 or she acted consistently with the American psychological  
26 association's guidelines shall be entitled to reimbursement of  
27 all reasonable costs and attorneys fees expended.



# CHAPTER 2

**(H. B. 4658 — By Delegates Stemple and Faircloth)**



[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-22, relating to defense of property; providing limited immunity from civil liability; and exceptions.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-22, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-22. Civil immunity to persons resisting criminal activities.**

1       (a) Any person who unlawfully enters upon the property of  
2 another for purposes of engaging in criminal conduct assumes  
3 the risk for any injury caused to him or her by the reasonable  
4 and proportionate acts of the owner or his agent in resisting the  
5 commission of the criminal conduct.

6       (b) The provisions of this section do not apply to the  
7 creation of a hazardous or dangerous condition on the property  
8 designed to prevent criminal conduct or cause injury to a person  
9 engaging in criminal conduct.

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## CHAPTER 3

(Com. Sub. for H. B. 3097 — By Delegates Craig, Leach, Morgan,  
Smirl, Beach and Amores)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2-2a, relating to prescribing proper venue in suits involving West Virginia University or Marshall University.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §14-2-2a, to read as follows:

**ARTICLE 2. CLAIMS AGAINST THE STATE.**

**§14-2-2a. Venue for suits and actions involving West Virginia University and Marshall University.**

1           (a) Notwithstanding the provisions of section two of this  
2 article, any civil action in which the West Virginia University  
3 board of governors, West Virginia University, the West Vir-  
4 ginia University Medical School, or any department or office of  
5 any of those entities, or any officer, employee, agent, intern or  
6 resident of any of those entities, acting within the scope of his  
7 or her employment, is made a party defendant, shall be brought  
8 in the circuit court of any county wherein the cause of action  
9 arose, unless otherwise agreed by the parties.

10           (b) Notwithstanding the provisions of section two of this  
11 article, any civil action in which Marshall University board of

12 governors, Marshall University, the Marshall University School  
13 of Medicine or any department or office of any of those entities,  
14 or any officer, employee, agent, intern or resident of any of  
15 those entities, acting within the scope of his or her employment,  
16 is made a party defendant, shall be brought in the circuit court  
17 of any county wherein the cause of action arose, unless other-  
18 wise agreed by the parties.

19 (c) The exclusive venue provisions of this section are not  
20 applicable to:

21 (1) An action involving an entity or person named in sub-  
22 sections (a) or (b) of this section as garnishee or suggestee; and

23 (2) A proceeding for injunctive or mandamus relief involv-  
24 ing the taking, title, or collection for or prevention of damage  
25 to real property, and where general laws or court rules provide  
26 that proper venue is in the county in which the real property  
27 affected is situate.

28 (d) This section shall apply only to such proceedings as are  
29 not prohibited by the constitutional immunity of the state from  
30 suit under section thirty-five, article VI of the Constitution of  
31 the state.



## CHAPTER 4

**(Com. Sub. for S. B. 209 — By Senators Tomblin, Mr. President, Chafin,  
Sharpe, Minear, Ross, Unger, McCabe, Rowe, Fanning, Facemyer,  
Helmick, White, Plymale, Jenkins, Sprouse and Bowman)**

\_\_\_\_\_  
[Passed February 26, 2004; in effect July 1, 2004. Approved by the Governor.]  
\_\_\_\_\_

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-6-4a, relating to requiring review of certain state leases and purchases of real property by the joint committee on government and finance; requiring the secretary of administration to provide copies of contracts, agreements and reports; and requiring an inventory and master plan for the utilization of office space for state agencies.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-6-4a, to read as follows:

**ARTICLE 6. STATE BUILDINGS.**

**§5-6-4a. Review of real property contracts and agreements; master plan for office space.**

1       (a) The secretary of administration shall provide to the joint  
 2 committee on government and finance a copy of a contract or  
 3 agreement for real property exceeding one million dollars and  
 4 a report setting forth a detailed summary of the terms of the  
 5 contract or agreement, including the name of the owner of the  
 6 property and the agent involved in the sale, at least thirty days  
 7 prior to any sale, exchange, transfer, purchase, lease purchase,  
 8 lease or rental of real property, any refundings of lease pur-  
 9 chases, leases or rental agreements, any construction of new  
 10 buildings and any other acquisition or lease of buildings, office  
 11 space or grounds by any state agency, including the higher edu-  
 12 cation policy commission, but excepting the transactions of the  
 13 division of highways for state road purposes pursuant to article  
 14 two-a, chapter seventeen of this code: *Provided*, That a contract  
 15 or agreement for the lease purchase, lease or rental of real prop-  
 16 erty by any state agency, where the costs of real property acqui-  
 17 sition and improvements are to be financed, in whole or in part,  
 18 with bond proceeds, may contain a preliminary schedule of  
 19 rents and leases for purposes of review by the committee.

20 (b) For renewals of contracts or agreements required to be  
21 reported by the provisions of this section, the secretary of ad-  
22 ministration shall provide a report setting forth a detailed sum-  
23 mary of the terms of the contract or agreement, including the  
24 name of the owner of the property.

25 (c) Within thirty days after receipt of the contract, agree-  
26 ment or report, the committee shall meet and review the con-  
27 tract, agreement or report.

28 (d) On or before the first day of July, two thousand six, the  
29 secretary of administration shall conduct an inventory of avail-  
30 able office space and office space needs and shall develop and  
31 present a master plan for the utilization of office space for state  
32 agencies to the joint committee on government and finance.

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## CHAPTER 5

**(Com. Sub. for H. B. 4266 — By Mr. Speaker, Mr. Kiss, and Delegates  
Walters, Trump, Webb, Beane, Cann and Browning)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-29-1 and §5-29-2, all relating to requiring certain state regulatory agencies to study ways and develop plans to expedite the issuance and renewal of licenses, permits and certificates to business entities in good standing; and requiring reports to the Legislature.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-29-1 and §5-29-2, all to read as follows:

**ARTICLE 29. EXPEDITIOUS ISSUANCE OF LICENSES BY REGULATORY AGENCIES.**

§5-29-1. Purpose of article.

§5-29-2. Regulatory agencies to study expedited permits, licenses and certificates; reports to the Legislature.

**§5-29-1. Purpose of article.**

1           The purpose of this article is to provide for more expedi-  
2           tious and efficient issuance of permits, licenses or certificates  
3           by state regulatory agencies to business entities that are in good  
4           standing in the payment of taxes and other obligations to the  
5           state. For the purposes of this article, a business entity in good  
6           standing is one that:

7           (1) Has conducted commercial activities in this state for at  
8           least two years;

9           (2) Has paid any business tax, workers' compensation or  
10          unemployment compensation premiums due in the preceding  
11          two years; and

12          (3) Has not engaged in activities for which any claim of a  
13          substantial violation of any statute or rule has occurred in the  
14          previous two years.

**§5-29-2. Regulatory agencies to study expedited permits, licenses and certificates; reports to the Legislature.**

1           (a) The following regulatory agencies shall study, review  
2           and develop a plan for expediting the issuance and renewal of  
3           permits, licenses and certificates for business entities in good  
4           standing:



5 (1) Division of labor;

6 (2) The office of miners' health, safety and training; (3) the  
7 division of forestry;

8 (4) The office of health facilities licensure and certification  
9 within the department of health and human resources; and

10 (5) The department of environmental protection excepting  
11 the oil and gas inspectors' examining board.

12 (b) On or before the first day of December, two thousand  
13 four, each agency to which this article applies shall file a report  
14 with the joint standing committee on government organization,  
15 setting forth the findings of its study, its plan to expedite the  
16 issuance and renewal of permits, licenses and certificates to  
17 business entities in good standing, and its recommendations for  
18 any legislation required to meet the purposes of this article.

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## CHAPTER 6

**(H. B. 4134 — By Delegates Pethtel, Varner, Stemple,  
Ennis, Schadler and Beane)**

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §5A-1A-2 of the code of West Virginia, 1931, as amended, relating to deleting reference to the secretary of the department of commerce, labor and environmental services as a member of the employee suggestion award program and replacing the reference with the governor's chief technology officer; and increasing membership in the program by one senator and one delegate.

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

That §5A-1A-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1A. CHIEF TECHNOLOGY OFFICER.**

**§5A-1A-2. Board created; term of members.**

1       There is hereby continued an employee suggestion award  
 2 board which shall be composed of the secretary of administra-  
 3 tion or his or her designee, governor's chief technology officer  
 4 or his or her designee, the president of the Senate or his or her  
 5 designee, the speaker of the House of Delegates or his or her  
 6 designee, two members of the House of Delegates from  
 7 different political parties to be appointed by the speaker of the  
 8 House of Delegates, two members of the Senate from different  
 9 political parties to be appointed by the president of the Senate,  
 10 and the secretary of the department of health and human  
 11 resources or his or her designee. The terms of the members of  
 12 the board shall be consistent with the terms of the offices to  
 13 which they have been elected or appointed.



## CHAPTER 7

**(S. B. 100 — By Senators Rowe, Caldwell, White and Hunter)**



[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact §5A-3-10a of the code of West Virginia, 1931, as amended, relating to prohibiting the state and its political subdivisions from contracting with vendors owing a debt to the state or its political subdivisions.

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

That §5A-3-10a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state or its political subdivisions.**

1 (a) Unless the context clearly requires a different meaning,  
2 for the purposes of this section, the terms:

3 (1) "Debt" means any assessment, premium, penalty, fine,  
4 tax or other amount of money owed to the state or any of its  
5 political subdivisions because of a judgment, fine, permit  
6 violation, license assessment, defaulted workers' compensation  
7 premium, penalty or other assessment presently delinquent or  
8 due and required to be paid to the state or any of its political  
9 subdivisions, including any interest or additional penalties  
10 accrued thereon.

11 (2) "Debtor" means any individual, corporation, partner-  
12 ship, association, limited liability company or any other form  
13 or business association owing a debt to the state or any of its  
14 political subdivisions.

15 (3) "Political subdivision" means any county commission;  
16 municipality; county board of education; any instrumentality  
17 established by a county or municipality; any separate corpora-  
18 tion or instrumentality established by one or more counties or  
19 municipalities, as permitted by law; or any public body charged  
20 by law with the performance of a government function and  
21 whose jurisdiction is coextensive with one or more counties or  
22 municipalities.

23 (4) "Related party" means a party, whether an individual,  
24 corporation, partnership, association, limited liability company  
25 or any other form or business association or other entity  
26 whatsoever, related to any vendor by blood, marriage, owner-  
27 ship or contract through which the party has a relationship of  
28 ownership or other interest with the vendor so that the party  
29 will actually or by effect receive or control a portion of the  
30 benefit, profit or other consideration from performance of a  
31 vendor contract with the party receiving an amount that meets  
32 or exceeds five percent of the total contract amount.

33 (b) No contract or renewal of any contract may be awarded  
34 by the state or any of its political subdivisions to any vendor or  
35 prospective vendor when the vendor or prospective vendor or  
36 a related party to the vendor or prospective vendor is a debtor  
37 and the debt owed is an amount greater than one thousand  
38 dollars in the aggregate.

39 (c) The prohibition of this section does not apply where a  
40 vendor has contested any tax administered pursuant to chapter  
41 eleven of this code, workers' compensation premium, permit  
42 fee or environmental fee or assessment and the matter has not  
43 become final or where the vendor has entered into a payment  
44 plan or agreement and the vendor is not in default of any of the  
45 provisions of such plan or agreement.

46 (d) All bids, contract proposals or contracts with the state  
47 or any of its political subdivisions submitted or approved under  
48 the provisions of this code shall include an affidavit that the  
49 vendor, prospective vendor or a related party to the vendor or  
50 prospective vendor does not owe any debt in an amount in  
51 excess of one thousand dollars or, if a debt is owed, that the  
52 provisions of subsection (c) of this section apply.

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## CHAPTER 8

**(H. B. 4008 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §5-10D-1, §5-10D-2 and §5-10D-3 of the code of West Virginia, 1931, as amended; to amend and reenact §5-16-3 and §5-16-4 of said code; to amend said code by adding thereto a new section, designated §5-16-4b; to amend and reenact §5A-1-2 of said code; to amend said code by adding thereto a new article, designated §5A-10-1, §5A-10-2 and §5A-10-3; and to amend and reenact §29-6-5 and §29-6-6 of said code, all relating to creating a new employee and insurance services division within the department of administration and revising the law governing its component agencies and boards; providing that the division incorporate the consolidated public retirement board, the public employees insurance agency, the board of risk and insurance management, the children's health insurance agency, the education and state employees grievance board and the personnel division; creating the office of commissioner of the division; providing for the powers and duties of the commissioner; authorizing the commissioner to consolidate or reorganize certain internal functions and operations, transfer funds within the agencies and assess agencies with costs; providing that the commissioner chair certain boards and appoint directors of component state agencies within the division; providing for sunset review of division and office of commissioner; establishing employment requirements for director of public employees insurance agency; and adding members to public employees insurance agency finance board.

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

That §5-10D-1, §5-10D-2 and §5-10D-3 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §5-16-3 and §5-16-4 of said code be amended and reenacted; that said code be further amended by adding thereto a new section, designated §5-16-4b; that §5A-1-2 of said code be amended and reenacted; that said code be further amended by adding thereto a new article, designated §5A-10-1, §5A-10-2 and §5A-10-3; and that §29-6-5 and §29-6-6 of said code be amended and reenacted, all to read as follows:

#### **Chapter**

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 5A. Department of Administration.**
- 29. Miscellaneous Boards and Officers.**

### **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

#### **Article**

- 10D. Consolidated Public Retirement Board.**
- 16. West Virginia Public Employees Insurance Act.**

#### **ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.**

- §5-10D-1. Consolidated public retirement board continued; members; vacancies; investment of plan funds.
- §5-10D-2. Chairman and vice chairman; executive director; employees; legal advisor; actuary.
- §5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

#### **§5-10D-1. Consolidated public retirement board continued; members; vacancies; investment of plan funds.**

- 1 (a) The consolidated public retirement board is continued
- 2 to administer all public retirement plans in this state. It shall
- 3 administer the public employees retirement system established
- 4 in article ten of this chapter; the teachers retirement system

5 established in article seven-a, chapter eighteen of this code; the  
6 teachers' defined contribution retirement system created by  
7 article seven-b of said chapter; the West Virginia state police  
8 death, disability and retirement fund created by article two,  
9 chapter fifteen of this code; the West Virginia state police  
10 retirement system created by article two-a of said chapter; the  
11 death, disability and retirement fund for deputy sheriffs created  
12 by article fourteen-d, chapter seven of this code; and the judges'  
13 retirement system created under article nine, chapter fifty-one  
14 of this code.

15 (b) The membership of the consolidated public retirement  
16 board consists of:

17 (1) The governor or his or her designee;

18 (2) The state treasurer or his or her designee;

19 (3) The state auditor or his or her designee;

20 (4) The commissioner of the employee and insurance  
21 services division of the department of administration;

22 (5) Four residents of the state, who are not members,  
23 retirants or beneficiaries of any of the public retirement  
24 systems, to be appointed by the governor, with the advice and  
25 consent of the Senate; and

26 (6) A member, annuitant or retirant of the public employees  
27 retirement system who is or was a state employee; a member,  
28 annuitant or retirant of the public employees retirement system  
29 who is not or was not a state employee; a member, annuitant or  
30 retirant of the teachers retirement system; a member, annuitant  
31 or retirant of the West Virginia state police death, disability and  
32 retirement fund; a member, annuitant or retirant of the deputy  
33 sheriff's death, disability and retirement fund; and a member,  
34 annuitant or retirant of the teachers' defined contribution

35 retirement system, all to be appointed by the governor, with the  
36 advice and consent of the Senate.

37 (c) The appointed members of the board shall serve  
38 five-year terms. A member appointed pursuant to subdivision  
39 (6), subsection (b) of this section ceases to be a member of the  
40 board if he or she ceases to be a member of the represented  
41 system. If a vacancy occurs in the appointed membership, the  
42 governor, within sixty days, shall fill the vacancy by appoint-  
43 ment for the unexpired term. No more than five appointees shall  
44 be of the same political party.

45 (d) The consolidated public retirement board has all the  
46 powers, duties, responsibilities and liabilities of the public  
47 employees retirement system established pursuant to article ten  
48 of this chapter; the teachers retirement system established  
49 pursuant to article seven-a, chapter eighteen of this code; the  
50 teachers' defined contribution system established pursuant to  
51 article seven-b of said chapter; the West Virginia state police  
52 death, disability and retirement fund created pursuant to article  
53 two, chapter fifteen of this code; the death, disability and  
54 retirement fund for deputy sheriffs created pursuant to article  
55 fourteen-d, chapter seven of this code; and the judges' retire-  
56 ment system created pursuant to article nine, chapter fifty-one  
57 of this code and their appropriate governing boards. The  
58 consolidated public retirement board may propose for promul-  
59 gation all rules necessary to effectuate its powers, duties and  
60 responsibilities pursuant to article three, chapter twenty-nine-a  
61 of this code: *Provided*, That the board may adopt any or all of  
62 the rules, previously promulgated, of a retirement system which  
63 it administers.

64 (e) The consolidated public retirement board shall continue  
65 to transfer all funds received for the benefit of the retirement  
66 systems within the consolidated pension plan as defined in  
67 section three-c, article six-b, chapter forty-four of this code,



68 including, but not limited to, all employer and employee  
69 contributions, to the West Virginia investment management  
70 board: *Provided*, That the employer and employee contributions  
71 of the teachers' defined contribution system, established in  
72 section three, article seven-b, chapter eighteen of this code, and  
73 voluntary deferred compensation funds invested by the West  
74 Virginia consolidated public retirement board pursuant to  
75 section five, article ten-b of this chapter may not be transferred  
76 to the West Virginia investment management board.

77 (f) Notwithstanding any provision of this code or any  
78 legislative rule to the contrary, all assets of the public retire-  
79 ment plans set forth in subsection (a) of this section shall be  
80 held in trust. The consolidated public retirement board shall be  
81 a trustee for all public retirement plans, except with regard to  
82 the investment of funds: *Provided*, That the consolidated public  
83 retirement board shall be a trustee with regard to the invest-  
84 ments of the teachers' defined contribution system, the volun-  
85 tary deferred compensation funds invested pursuant to section  
86 five, article ten-b of this chapter and any other assets of the  
87 public retirement plans administered by the consolidated public  
88 retirement board as set forth in subsection (a) of this section for  
89 which no trustee has been expressly designated in this code.

90 (g) The board may employ the West Virginia investment  
91 management board to provide investment management consult-  
92 ing services for the investment of funds in the teachers' defined  
93 contribution system.

**§5-10D-2. Chairman and vice chairman; executive director;  
employees; legal advisor; actuary.**

1 (a) The board shall elect from its own number a chairman  
2 and vice chairman.

3 (b) The board shall appoint an executive director of the  
4 retirement systems. The executive director shall be the chief

5 administrative officer of all the systems and he or she shall not  
6 be a member of the board. He or she shall perform such duties  
7 as are required of him or her in this article and as the board  
8 from time to time delegates to him or her. The compensation of  
9 the executive director shall be fixed by the board subject to the  
10 approval of the governor. The executive director shall, with the  
11 approval of the board of trustees, employ any administrative,  
12 technical and clerical employees required in the proper opera-  
13 tion of the systems.

14 (c) Notwithstanding the provisions of section two, article  
15 three of this chapter, the board shall employ and be represented  
16 by an attorney licensed to practice law in the state of West  
17 Virginia who is not an active member of any of the retirement  
18 systems administered by the board.

19 (d) An actuary, employed by the state or the board pursuant  
20 to section four of this article, shall be the actuarial consultant to  
21 the board.

**§5-10D-3. Board meetings; quorum; vote; proceedings; compen-  
sation.**

1 (a) The board shall hold a meeting at least once each three  
2 months, and shall designate the time and place of the meeting.  
3 Seven voting trustees constitute a quorum at any meeting of the  
4 board. Each member is entitled to one vote on each question  
5 before the board. The board shall adopt its own rules of  
6 procedure and shall keep a record of its proceedings. All  
7 meetings of the board shall be public.

8 (b) The members shall serve as members without compen-  
9 sation for their services as such: *Provided*, That each member  
10 shall be reimbursed, upon approval of the board, for any  
11 necessary expenses actually incurred by him or her in carrying  
12 out his or her duties. No public employee member may suffer

13 any loss of salary or wages on account of his or her service as  
14 trustee.

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

§5-16-3. Composition of public employees insurance agency; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board.

§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

§5-16-4b. Continuation of the public employees insurance agency finance board.

**§5-16-3. Composition of public employees insurance agency; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board.**

1 (a) The public employees insurance agency consists of the  
2 director, the finance board, the advisory board and any employ-  
3 ees who may be authorized by law. The director shall be  
4 appointed by the commissioner of the employee and insurance  
5 services division of the department of administration. The  
6 director shall have at least three years' experience in health or  
7 governmental health benefit administration as his or her  
8 primary employment duty prior to appointment as director. The  
9 director shall be employed pursuant to an employment contract  
10 which may have a multi-year term, not to exceed five years per  
11 contract. Notwithstanding any other provision of this code to  
12 the contrary, the director's salary shall be set by the commis-  
13 sioner of the employee and insurance services division, with the  
14 approval of the secretary of the department of administration.  
15 The current director shall continue to be eligible to serve as  
16 director through the thirtieth day of June, two thousand four.  
17 The director shall receive actual expenses incurred in the  
18 performance of official business. The director shall employ any

19 administrative, technical and clerical employees required for  
20 the proper administration of the insurance programs provided  
21 for in this article. The director shall perform the duties that are  
22 required of him or her under the provisions of this article and is  
23 the chief administrative officer of the public employees  
24 insurance agency. The director may employ a deputy director.

25 (b) All positions in the agency, except for the director, his  
26 or her personal secretary, the deputy director and the chief  
27 financial officer shall be included in the classified service of the  
28 civil service system pursuant to article six, chapter twenty-nine  
29 of this code. Any person required to be included in the classi-  
30 fied service by the provisions of this subsection who was  
31 employed in any of the positions included in this subsection on  
32 or after the effective date of this article shall not be required to  
33 take and pass qualifying or competitive examinations upon or  
34 as a condition to being added to the classified service: *Pro-*  
35 *vided,* That no person required to be included in the classified  
36 service by the provisions of this subsection who was employed  
37 in any of the positions included in this subsection as of the  
38 effective date of this section shall be thereafter severed,  
39 removed or terminated in his or her employment prior to his or  
40 her entry into the classified service except for cause as if the  
41 person had been in the classified service when severed,  
42 removed or terminated.

43 (c) The director is responsible for the administration and  
44 management of the public employees insurance agency as  
45 provided for in this article and in connection with his or her  
46 responsibility may make all rules necessary to effectuate the  
47 provisions of this article. Nothing in section four or five of this  
48 article limits the director's ability to manage on a day-to-day  
49 basis the group insurance plans required or authorized by this  
50 article, including, but not limited to, administrative contracting,  
51 studies, analyses and audits, eligibility determinations, utiliza-  
52 tion management provisions and incentives, provider negotia-

53 tions, provider contracting and payment, designation of covered  
54 and noncovered services, offering of additional coverage  
55 options or cost containment incentives, pursuit of coordination  
56 of benefits and subrogation, or any other actions which would  
57 serve to implement the plan or plans designed by the finance  
58 board. The director is to function as a benefits management  
59 professional and should avoid political involvement in manag-  
60 ing the affairs of the public employees insurance agency.

**\*§5-16-4. Public employees insurance agency finance board  
continued; qualifications, terms and removal of  
members; quorum; compensation and expenses;  
termination date.**

1 (a) The public employees insurance agency finance board,  
2 is continued and consists of the commissioner of the employee  
3 and insurance services division of the department of administra-  
4 tion and eight members appointed by the governor with the  
5 advice and consent of the Senate for terms of four years and  
6 until the appointment of their successors. Members may be  
7 reappointed for successive terms. No more than five members  
8 (including the commissioner) may be of the same political  
9 party.

10 (b) Of the eight members appointed by the governor, one  
11 member shall represent the interests of education employees,  
12 one shall represent the interests of public employees, one shall  
13 represent the interests of retired employees, one shall represent  
14 the interests of organized labor and four shall be selected from  
15 the public at large. The governor shall appoint the member  
16 representing the interests of education employees from a list of  
17 three names submitted by the largest organization of education  
18 employees in this state. The governor shall appoint the member  
19 representing the interests of organized labor from a list of three

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4531 (Chapter 213),  
which passed prior to this act.

20 names submitted by the state's largest organization representing  
21 labor affiliates. The four members appointed from the public  
22 shall each have experience in the financing, development or  
23 management of employee benefit programs. All appointments  
24 shall be selected to represent the different geographical areas  
25 within the state and all members shall be residents of West  
26 Virginia. No member may be removed from office by the  
27 governor except for official misconduct, incompetence, neglect  
28 of duty, neglect of fiduciary duty or other specific responsibility  
29 imposed by this article, or gross immorality.

30 (c) The commissioner of the employee and insurance  
31 services division shall serve as chair of the finance board,  
32 which shall meet at times and places specified by the call of the  
33 chair or upon the written request to the chair of at least two  
34 members. The director of the public employees insurance  
35 agency shall serve as staff to the board. Notice of each meeting  
36 shall be given in writing to each member by the director at least  
37 three days in advance of the meeting. Five members constitute  
38 a quorum. The board shall pay each member the same compen-  
39 sation and expense reimbursement that is paid to members of  
40 the Legislature for their interim duties, as recommended by the  
41 citizens legislative compensation commission and authorized  
42 by law for each day or portion of a day engaged in the discharge  
43 of official duties.

44 (d) Upon termination of the board and notwithstanding any  
45 provisions in this article to the contrary, the director is autho-  
46 rized to assess monthly employee premium contributions and  
47 to change the types and levels of costs to employees only in  
48 accordance with this subsection. Any assessments or changes  
49 in costs imposed pursuant to this subsection shall be imple-  
50 mented by legislative rule proposed by the director for promul-  
51 gation pursuant to the provisions of article three, chapter  
52 twenty-nine-a of this code; any employee assessments or costs  
53 previously authorized by the finance board shall then remain in

54 effect until amended by rule of the director promulgated  
55 pursuant to this subsection.

**§5-16-4b. Continuation of the public employees insurance agency  
finance board.**

1 The public employees insurance agency finance board shall  
2 continue to exist, pursuant to the provisions of article ten,  
3 chapter four of this code, until the first day of July, two  
4 thousand five, unless sooner terminated, continued or reestab-  
5 lished pursuant to the provisions of that article.

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

**Article**

1. **Department of Administration.**
10. **Employee and Insurance Services Division.**

**ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

**\*§5A-1-2. Department of administration and office of secretary;  
secretary; divisions; directors.**

1 (a) The department of administration and the office of  
2 secretary of administration are continued in the executive  
3 branch of state government. The secretary shall be the chief  
4 executive officer of the department and shall be appointed by  
5 the governor, by and with the advice and consent of the Senate,  
6 for a term not exceeding the term of the governor.

7 (b) The department of administration may receive federal  
8 funds.

9 (c) The secretary shall serve at the will and pleasure of the  
10 governor. The annual compensation of the secretary shall be as

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\* **CLERK'S NOTE:** This section was also amended by S. B. 149 (Chapter 239),  
which passed prior to this act.

11 specified in section two-a, article seven, chapter six of this  
12 code.

13 (d) There shall be in the department of administration a  
14 finance division, a general services division, an information  
15 services and communications division, an employee and  
16 insurance services division and a purchasing division. Each  
17 division shall be headed by a director who may also head any  
18 and all sections within that division and who shall be appointed  
19 by the secretary, except that the commissioner of the employee  
20 and insurance services division shall be appointed by the  
21 governor with the advice and consent of the Senate as provided  
22 in article ten of this chapter. In addition to the divisions  
23 enumerated in this subsection, there shall also be in the  
24 department of administration those agencies, boards, commis-  
25 sions and councils specified in section one, article two, chapter  
26 five-f of this code.

#### **ARTICLE 10. EMPLOYEE AND INSURANCE SERVICES DIVISION.**

§5A-10-1. Division created; purpose and functions; cooperation.

§5A-10-2. Creation of office of commissioner of the employee and insurance  
services division; qualifications; powers and duties.

§5A-10-3. Continuation of division.

#### **§5A-10-1. Division created; purpose and functions; cooperation.**

1 (a) There is created within the department of administra-  
2 tion, an employee and insurance services division. The follow-  
3 ing agencies of the department of administration are incorpo-  
4 rated within the employee and insurance services division:

5 (1) The consolidated public retirement board provided for  
6 in article ten-d, chapter five of this code and the retirement  
7 programs administered by the board;

8 (2) The public employees insurance agency and associated  
9 boards provided for in article sixteen, chapter five of this code;



10 (3) The division of personnel provided for in article six,  
11 chapter twenty-nine of this code;

12 (4) The board of risk and insurance management provided  
13 for in article twelve, chapter twenty-nine of this code;

14 (5) The childrens health insurance agency and associated  
15 boards provided for in article sixteen-b, chapter five of this  
16 code; and

17 (6) The education and state employees grievance board  
18 provided for in article six-a, chapter twenty-nine of this code.

19 (b) The purpose and function of the division of employee  
20 and insurance services is to preserve the integrity of a system of  
21 personnel administration for state agencies based on merit  
22 principles; to provide to the state employees who are stake-  
23 holders, fairness, confidence and security in the administration  
24 of state insurance and retirement benefit plans; to provide for  
25 long-term fiscal security and enhance the state's ability to  
26 assure its fiscal obligations under its insurance, risk and benefit  
27 plans; to promote loss control in state programs and agencies;  
28 and to coordinate and consolidate technical functions of the  
29 component agencies while preserving inviolate their separate  
30 trust responsibilities.

31 (c) The director of the purchasing division and the chief  
32 technology officer within the office of the governor shall  
33 cooperate and provide assistance in the consolidation, reorgani-  
34 zation and integration of functions of the division and its  
35 component agencies and programs, and shall expedite all  
36 reasonable requests in order to assure efficient and adequate  
37 systems support.

38 (d) Any agency or board incorporated into the division  
39 pursuant to subsection (a) of this section which disagrees with

40 an action of the commissioner may refer the disagreement to  
41 the secretary for review.

**§5A-10-2. Creation of office of commissioner of the employee and insurance services division; qualifications; powers and duties.**

1 (a) The office of commissioner of the employee and  
2 insurance services division is created. On the effective date of  
3 this section, the director of the former insurance and retirement  
4 division shall serve as acting commissioner of the employee  
5 and insurance services division and shall immediately assume  
6 the duties of the office. Not later than the thirtieth day of  
7 January, two thousand five, the governor shall appoint the  
8 commissioner with the advice and consent of the Senate, to  
9 serve at the will and pleasure of the governor, at a salary to be  
10 established by the governor. The commissioner shall have  
11 knowledge in the areas of self-insured risk pools and employee  
12 benefit program administration, knowledge of the special trust  
13 requirements of benefit programs with respect to stakeholders,  
14 and an understanding of the special demands upon government  
15 with respect to budgetary constraints, the protection of public  
16 funds, and federal and state standards of accountability.

17 (b) The commissioner may:

18 (1) Coordinate overall policy within the division;

19 (2) Propose comprehensive budgets for consideration by the  
20 secretary of the department of administration and the governor;

21 (3) Develop and provide to the governor, the speaker of the  
22 House of Delegates and the president of the Senate, on an  
23 annual basis, long-range financial forecasts for the insurance  
24 and benefit programs administered by the division, which shall  
25 include cash-flow projections for future budget years, based on  
26 known facts and reasonable, clearly stated actuarial assump-  
27 tions;

28       (4) Interact with stakeholders, staff of the component  
29 agencies and outside agencies to develop long-term strategies  
30 for delivering quality services, reducing unfunded liabilities,  
31 and assuring the fiscal viability of programs;

32       (5) Propose and provide to the governor, the speaker of the  
33 House of Delegates and the president of the Senate, on an  
34 annual basis, long-term strategic plans to provide for the fiscal  
35 security of the programs administered by the agencies within  
36 the division and minimize the fiscal burden upon limited state  
37 resources;

38       (6) Employ and discharge, with the approval of the  
39 secretary of the department of administration, employees within  
40 the office of the commissioner, to serve at the will and pleasure  
41 of the commissioner;

42       (7) Eliminate or consolidate positions, with the approval of  
43 the secretary of the department of administration, other than  
44 positions of administrators or positions of board members, and  
45 name a person to fill more than one position;

46       (8) Delegate, assign, transfer or combine responsibilities or  
47 duties to or among employees, other than administrators or  
48 board members;

49       (9) Reorganize internal functions or operations;

50       (10) Transfer within the division, with the approval of the  
51 secretary of the department of administration, funds appropri-  
52 ated to the various agencies of the division: *Provided*, That no  
53 funds may be transferred from a claims payment account,  
54 retiree benefit account, trust account or any other account or  
55 funds specifically exempted by the Legislature from transfer:  
56 *Provided, however*, That authority to transfer funds pursuant to  
57 this section expires on the thirtieth day of June, two thousand  
58 five;

- 59       (11) Enter into contracts or agreements requiring the  
60 expenditure of public funds, and authorize the expenditure or  
61 obligating of public funds as authorized by law;
- 62       (12) Acquire by lease or purchase property of whatever  
63 kind or character, and convey or dispose of any property of  
64 whatever kind or character as authorized by law;
- 65       (13) Conduct internal audits;
- 66       (14) Supervise internal management;
- 67       (15) Recommend to the secretary the promulgation of rules  
68 to implement and make effective the powers, authority and  
69 duties granted and imposed by the provisions of this article. The  
70 rules, unless specifically exempted in accordance with the  
71 provisions of this code, shall be proposed in accordance with  
72 the provisions of chapter twenty-nine-a of this code;
- 73       (16) Delegate duties to administrators in order to facilitate  
74 execution of the powers, authority and duties of the commis-  
75 sioner;
- 76       (17) Consolidate data, accounting and claims administration  
77 systems and propose to the secretary of the department of  
78 administration the termination or renegotiation of contracts;
- 79       (18) Take any other action involving or relating to internal  
80 management not otherwise prohibited by law;
- 81       (19) With approval of the secretary of the department of  
82 administration, assess all agencies within the employee and  
83 insurance services division a reasonable amount to cover the  
84 costs of the division; and
- 85       (20) Promote combined purchasing of components within  
86 the division.

87 (c) The commissioner shall work cooperatively with the  
88 consolidated public retirement board and the public employees  
89 insurance agency to acquire and implement combined data  
90 systems for the retirement and health plans administered by the  
91 consolidated public retirement board and the public employees  
92 insurance agency. Beginning on the first day of January, two  
93 thousand five, and continuing until the combined data system  
94 is fully implemented, the commissioner shall provide to the  
95 joint committee on government and finance, or any other  
96 committee as the Legislature directs, monthly updates on the  
97 development and implementation of the system.

98 (d) Nothing contained in this section may be construed to  
99 limit the powers of the secretary of the department of adminis-  
100 tration pursuant to chapter five-f of this code, or to enlarge the  
101 power and authority granted to any agency or administrator  
102 within the division. Nothing contained in this section may be  
103 construed to limit the rights of any beneficiary of a retirement  
104 or benefit program arising by operation of law or any trust  
105 instrument. No power granted to the commissioner may be  
106 exercised if to do so would violate or be inconsistent with the  
107 separate fiduciary responsibilities with respect to the respective  
108 funds under the commissioners' authority, or with the provi-  
109 sions of any federal law or regulation, any federal-state program  
110 or federally delegated program, or jeopardize the approval,  
111 existence or funding of any program. The powers granted to the  
112 commissioner to enter into contracts or agreements and to make  
113 expenditures or obligations of public funds under this provision  
114 may not exceed or be interpreted as authority to exceed the  
115 powers previously granted by the Legislature to the various  
116 administrators or board members of the various agencies or  
117 boards that comprise and are incorporated into the division.  
118 Nothing contained in this section may be construed to limit the  
119 rights of employees within the classified service of the state as  
120 provided in subsection (d), section two, article two, chapter  
121 five-f of this code.

**§5A-10-3. Continuation of division.**

1       The division of employee and insurance services and the  
2 office of commissioner of the division of employee and  
3 insurance services shall continue to exist, pursuant to the  
4 provisions of article ten, chapter four of this code, until the first  
5 day of July, two thousand five, unless sooner terminated,  
6 continued or reestablished pursuant to the provisions of that  
7 article.

**CHAPTER 29. MISCELLANEOUS BOARDS  
AND OFFICERS.****ARTICLE 6. CIVIL SERVICE SYSTEM.**

§29-6-5. Division of personnel continued; sections.

§29-6-6. State personnel board continued; members; term; quorum; vacancies;  
powers and duties.

**§29-6-5. Division of personnel continued; sections.**

1       (a) The division of personnel is continued within the  
2 employee and insurance services division of the department of  
3 administration.

4       (b) The division of personnel shall perform the following  
5 functions:

6       (1) Applicant services;

7       (2) Classification and compensation;

8       (3) Management development and training;

9       (4) Program evaluation and payroll;

10      (5) Employee services;

11      (6) Employee relations; and

12 (7) Administrative and staff services.

13 (c) The commissioner of the employee and insurance  
14 services division shall establish any sections of the division that  
15 are necessary to carry out the functions of the division and the  
16 purposes of this article. Each section shall be under the control  
17 of a section chief to be appointed by the director who shall be  
18 qualified by reason of exceptional training and experience in  
19 the field of activities of the respective section.

**§29-6-6. State personnel board continued; members; term;  
quorum; vacancies; powers and duties.**

1 (a) There is continued within the division a state personnel  
2 board which consists of the commissioner of the employee and  
3 insurance services division or his or her designee, who shall  
4 serve as an ex officio member and five members appointed by  
5 the governor with the advice and consent of the Senate for  
6 terms of four years and until the appointment of their succes-  
7 sors. No more than four members may be of the same political  
8 party. Four members of the board constitute a quorum.

9 (b) A member of the board may not be removed from office  
10 except for official misconduct, incompetence, neglect of duty,  
11 gross immorality or malfeasance, and then only in the manner  
12 prescribed in article six, chapter six of this code for the removal  
13 by the governor of state elected officers.

14 (c) Citizen members of the board shall each be paid one  
15 hundred dollars for each day devoted to the work of the board.  
16 Each member shall be reimbursed for all reasonable and  
17 necessary expenses actually incurred in the performance of his  
18 or her duties, except that in the event the expenses are paid, or  
19 are to be paid, by a third party, the members shall not be  
20 reimbursed by the state.

21 (d) The commissioner of the employee and insurance  
22 services division of the department of administration or his or

23 her designee shall serve as chair of the board. The board shall  
24 meet at the time and place specified by the call of the chair. At  
25 least one meeting shall be held in each month. All meetings  
26 shall be open to the public. Notice of each meeting shall be  
27 given in writing to each member by the director at least three  
28 days in advance of the meeting period.

29 (e) In addition to other powers and duties invested in it by  
30 this article or by any other law, the board shall:

31 (1) Propose rules for promulgation in accordance with  
32 chapter twenty-nine-a of this code to implement the provisions  
33 of this article;

34 (2) Interpret the application of this article to any public  
35 body or entity; and

36 (3) Authorize and conduct any studies, inquiries, investiga-  
37 tions or hearings in the operation of this article it considers  
38 necessary.

39 (f) The director or the board may subpoena and require the  
40 attendance of witnesses in the production of evidence or  
41 documents relevant to any proceeding under this article.



## CHAPTER 9

**(S. B. 631 — By Senator Snyder)**



[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact §19-15-1 of the code of West  
Virginia, 1931, as amended; and to amend said code by adding



thereto a new section, designated §19-15-16a, all relating to the West Virginia fertilizer law; definitions; and political subdivisions not to regulate packaging, labeling, sale, storage, distribution, use or application of fertilizers.

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

That §19-15-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §19-15-16a, all to read as follows:

**ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.**

§19-15-1. Definitions of words and terms.

§19-15-16a. Local legislation prohibited.

**§19-15-1. Definitions of words and terms.**

1 (a) "Brand" means a term, design or trademark used in  
2 connection with one or several grades of regulated product.

3 (b) "Bulk fertilizer" means fertilizer delivered to the  
4 purchaser either in solid or liquid state in a nonpackage form to  
5 which a label cannot be attached.

6 (c) "Commissioner" means the commissioner of agriculture  
7 of the state of West Virginia or his or her duly authorized agent.

8 (d) "Compost" means a biologically stable material derived  
9 from the composting process.

10 (e) "Custom media" means a horticultural growing medium  
11 prepared to exact specifications of the person who will be  
12 planting in the medium.

13 (f) "Department" means the department of agriculture of  
14 the state of West Virginia.

15 (g) “Distribute” means to import, consign, to offer for sale,  
16 sell, barter, warehouse or otherwise supply a regulated product  
17 in this state.

18 (h) “Distributor” means any person who distributes a  
19 regulated product in this state.

20 (i) “Embargo” means a written stop sale order issued by the  
21 commissioner of agriculture prohibiting the sale, use of or  
22 transportation of any regulated product in any manner until the  
23 embargo is released by the commissioner.

24 (j) “Fertilizer” means any substance containing one or more  
25 recognized plant nutrients, including natural organic fertilizer,  
26 which is designed for use or claimed to have value in promoting  
27 plant growth, except unmanipulated animal and vegetable  
28 manures, marl, lime, limestone, wood ashes and gypsum and  
29 other products exempted by rule of the commissioner.

30 (k) “Fertilizer material” means a fertilizer which either:

31 (1) Contains important quantities of no more than one of  
32 the primary plant nutrients: (nitrogen (N), available phosphate  
33 (P205) and soluble potash (K20); or

34 (2) Has eighty-five percent or more of its plant nutrient  
35 content present in the form of a single chemical compound; or

36 (3) Is derived from a plant or animal residue or by-product  
37 or a natural material deposit which has been processed in such  
38 a way that its content of primary plant nutrients has not been  
39 materially changed except by purification and concentration.

40 (l) “Grade” means the percentage of total nitrogen, avail-  
41 able phosphate and soluble potash stated in whole numbers in  
42 the same terms, order and percentages as in the guaranteed  
43 analysis: *Provided*, That specialty fertilizers may be guaranteed

44 in fractional units of less than one percent of total nitrogen,  
45 available phosphate and soluble potash: *Provided, however,*  
46 That fertilizer materials, bone meal, manures and similar raw  
47 materials may be guaranteed in fractional units.

48 (m) "Guaranteed analysis" means the minimum percentage  
49 of plant nutrients claimed in the following order and form:

- 50 (1) Total nitrogen (N) . . . . . percent
- 51 Available phosphate (P205) . . . . . percent
- 52 Soluble potash (K201) . . . . . percent

53 (2) For unacidulated mineral phosphatic materials and basic  
54 slag, bone, tankage and other organic phosphatic materials, the  
55 total available phosphate or degree of fineness may also be  
56 guaranteed.

57 (3) Guarantees for other plant nutrients may be permitted  
58 or required by rule of the commissioner and shall be expressed  
59 in the form of the element. The sources of such other nutrients  
60 (oxides, salt, chelates, etc.) may be required to be stated on the  
61 application for registration and may be included as a parentheti-  
62 cal statement on the label. Other beneficial substances or  
63 compounds, determinable by laboratory methods, also may be  
64 guaranteed by permission of the commissioner. When any plant  
65 nutrients or other substances or compounds are guaranteed, they  
66 shall be subject to inspection and analysis in accord with the  
67 methods and rules prescribed by the commissioner.

68 (n) "Horticultural growing medium" means any substance  
69 or mixture of substances promoted as or intended to function as  
70 a commercial or consumer growing medium for the managed  
71 growth of horticultural crops in containers.

72 (o) "Investigational allowance" means an allowance for  
73 variations inherent in the collection, preparation and analysis of  
74 an official sample of regulated product.

75 (p) "Label" means the display of all written, printed or  
76 graphic matter upon the immediate container or statement  
77 accompanying a regulated product.

78 (q) "Labeling" means all written, printed or graphic matter,  
79 upon or accompanying any regulated product, or advertise-  
80 ments, brochures, posters or electronic announcements used in  
81 promoting the sale of regulated products.

82 (r) "Local legislation" means, but not limited to, any  
83 ordinance, motion, resolution, amendment, regulation or rule  
84 adopted by a political subdivision.

85 (s) "Manufacture" means to produce, compound, mix, blend  
86 or in any way alter the chemical or physical characteristics of  
87 a regulated product.

88 (t) "Manufacturer" means any person who manufactures a  
89 regulated product.

90 (u) "Mixed fertilizer" means a fertilizer containing any  
91 combination or mixture of fertilizer materials.

92 (v) "Natural organic fertilizer" means materials derived  
93 from either plant or animal products containing one or more  
94 elements other than carbon, hydrogen and oxygen which are  
95 essential for plant growth. These materials may be subjected to  
96 biological degradation processes under normal conditions of  
97 aging, rainfall, sun-curing, air drying, composting, rotting,  
98 enzymatic or anaerobic/aerobic bacterial action or any combi-  
99 nation of these. These materials may not be mixed with  
100 synthetic materials or changed in any physical or chemical  
101 manner from their initial state except by manipulations such as  
102 drying, cooking, chopping, grinding, shredding, hydrolysis or  
103 pelleting.

104 (w) "Official sample" means any sample of regulated  
105 product collected by the commissioner or his or her agent and  
106 designated as "official" by the commissioner.

107 (x) "Percent" or "percentage" means the percentage by  
108 weight.

109 (y) "Person" means an individual, partnership, association,  
110 firm or corporation.

111 (z) "Political subdivision" means any local government  
112 entity which includes, but is not limited to, any city, county or  
113 municipal corporation and any other body corporate and politic  
114 that is responsible for government activities in a geographical  
115 area smaller than that of the state.

116 (aa) "Primary nutrients" means nitrogen (N), available  
117 phosphate (P205) and soluble potash (K20).

118 (bb) "Registrant" means the person who registers regulated  
119 products under the provisions of this article.

120 (cc) "Regulated product" means any product governed by  
121 this article, including any fertilizer, specialty fertilizer, soil  
122 amendment and horticultural growing medium.

123 (dd) "Soil amendment" means any substance or mixture of  
124 substances, imported, manufactured, prepared or sold for  
125 manurial, soil enriching or soil corrective purposes, or intended  
126 to be used for promoting or stimulating the growth of plants,  
127 increasing the productivity of plants, improving the quality of  
128 crops or producing any chemical or physical change in the soil.  
129 The following are exempt from the definition of "soil amend-  
130 ment": Fertilizer, unmanipulated animal manures, horticultural  
131 growing medium, agricultural liming materials, unmixed mulch  
132 and unmixed peat.

133 (ee) “Specialty fertilizer” means a fertilizer distributed  
134 primarily for nonfarm use, such as home gardens, lawns,  
135 shrubbery, flowers, house plants, golf courses, municipal parks,  
136 cemeteries, greenhouses and nurseries.

137 (ff) “Synthetic” means any substance generated from  
138 another material or materials by means of a chemical reaction.

139 (gg) “Ton” means a net weight of two thousand pounds  
140 avoirdupois.

141 (hh) “Unmanipulated manure” means substances composed  
142 of the excreta of domestic animals, or domestic fowls, which  
143 has not been processed or conditioned in any manner, including,  
144 but not limited to, processing or conditioning by drying,  
145 grinding, pelleting, shredding, addition of plant food, mixing  
146 artificially with any material or materials, other than those  
147 which have been used for bedding, sanitary or feeding purposes  
148 for animals or fowls or by any other means.

**§19-15-16a. Local legislation prohibited.**

1 No political subdivision may regulate the registration,  
2 packaging, labeling, sale, storage, distribution, use and applica-  
3 tion of fertilizers; and, in addition, no political subdivision may  
4 adopt or continue in effect local legislation relating to the  
5 registration, packaging, labeling, sale, storage, distribution, use  
6 or application of fertilizers.

7 Local legislation in violation of this section is void and  
8 unenforceable.

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## CHAPTER 10

(Com. Sub. for H. B. 4516 — By Delegates Boggs,  
Michael, Kominar and Evans)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §19-21A-4 and §19-21A-7 of the code of West Virginia, 1931, as amended, all relating to the state conservation committee and conservation districts; adding a member to the state conservation committee; designating the administrative officer and the support staff as the West Virginia conservation agency; and increasing the per diem rate for conservation supervisors.

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

That §19-21A-4 and §19-21A-7 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 21A. CONSERVATION DISTRICTS.**

§19-21A-4. State conservation committee; continuation.

§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.

#### **§19-21A-4. State conservation committee; continuation.**

1 (a) The state conservation committee is continued. It serves  
2 as an agency of the state and is to perform the functions  
3 conferred upon it in this article. The committee consists of the  
4 following ten members:

5 (1) Four citizen members;

6 (2) The following ex officio members:

7 (A) The director of the state cooperative extension service;

8 (B) The director of the state agricultural and forestry  
9 experiment station;

10 (C) The secretary of the department of environmental  
11 protection;

12 (D) The state commissioner of agriculture, who is the  
13 chairperson of the committee;

14 (E) The director of the division of forestry; and

15 (F) The president of the West Virginia association of  
16 conservation districts.

17 (b) The governor shall appoint, by and with the consent of  
18 the Senate, the four citizens members. Members shall be  
19 appointed for four-year terms, which are staggered in accor-  
20 dance with the initial appointments under prior enactment of  
21 this section. In the event of a vacancy, the appointment is for  
22 the unexpired term.

23 (c) The committee may invite the secretary of agriculture  
24 of the United States of America to appoint one person to serve  
25 with the committee as an advisory member.

26 (d) The committee shall keep a record of its official actions,  
27 shall adopt a seal, which shall be judicially noticed, and may  
28 perform those acts, hold public hearings and adopt or propose  
29 for legislative approval rules necessary for the execution of its  
30 functions under this article.

31 (e) The state conservation committee may employ an  
32 administrative officer, technical experts and other agents and  
33 employees, permanent and temporary, as it requires. The



34 administrative officer and support staff shall be known as the  
35 West Virginia conservation agency. The committee shall  
36 determine their qualifications, duties and compensation. The  
37 committee may call upon the attorney general of the state for  
38 legal services it requires. It may delegate to its chairperson, to  
39 one or more of its members, or to one or more agents or  
40 employees, powers and duties it considers proper. The commit-  
41 tee may secure necessary and suitable office accommodations  
42 and the necessary supplies and equipment. Upon request of the  
43 committee, for the purpose of carrying out any of its functions,  
44 the supervising officer of any state agency or of any state  
45 institution of learning shall, insofar as may be possible, under  
46 available appropriations and having due regard to the needs of  
47 the agency to which the request is directed, assign or detail to  
48 the committee, members of the staff or personnel of the agency  
49 or institution of learning and make special reports, surveys or  
50 studies required by the committee.

51 (f) A member of the committee holds office so long as he  
52 or she retains the office by virtue of which he or she is serving  
53 on the committee. A majority of the committee is a quorum and  
54 the concurrence of a majority in any matter within their duties  
55 is required for its determination. The chairperson and members  
56 of the committee may receive no compensation for their  
57 services on the committee, but are entitled to reimbursement of  
58 expenses, including traveling expenses necessarily incurred in  
59 the discharge of their duties on the committee. The committee  
60 shall:

61 (1) Require the execution of surety bonds for all employees  
62 and officers who are entrusted with funds or property;

63 (2) Provide for the keeping of a full and accurate public  
64 record of all proceedings and of all resolutions, rules and orders  
65 issued or adopted; and

66       (3) Provide for an annual audit of the accounts of receipts  
67 and disbursements.

68       (g) In addition to other duties and powers conferred upon  
69 the state conservation committee, it may:

70       (1) Offer appropriate assistance to the supervisors of  
71 conservation districts, organized as provided in this article, in  
72 the carrying out of any of their powers and programs;

73       (2) Keep the supervisors of each of the several districts,  
74 organized under the provisions of this article, informed of the  
75 activities and experience of all other districts organized under  
76 this article and facilitate an interchange of advice and experi-  
77 ence between the districts and cooperation between them;

78       (3) Coordinate the programs of the several conservation  
79 districts so far as this may be done by advice and consultation;

80       (4) Secure the cooperation and assistance of the United  
81 States and any of its agencies and of agencies of this state in the  
82 work of the districts;

83       (5) Disseminate information throughout the state concern-  
84 ing the activities and programs of the conservation districts and  
85 encourage the formation of the districts in areas where their  
86 organization is desirable;

87       (6) Accept and receive donations, gifts, contributions,  
88 grants and appropriations in money, services, materials or  
89 otherwise from the United States or any of its agencies, from  
90 the state of West Virginia or from other sources and use or  
91 expend the money, services, materials or other contributions in  
92 carrying out the policy and provisions of this article, including  
93 the right to allocate the money, services or materials in part to  
94 the various conservation districts created by this article in order  
95 to assist them in carrying on their operations; and

96 (7) Obtain options upon and acquire by purchase, exchange,  
97 lease, gift, grant, bequest, devise or otherwise any property, real  
98 or personal, or rights or interests in the property; maintain,  
99 administer, operate and improve any properties acquired;  
100 receive and retain income from the property and to expend the  
101 income as required for operation, maintenance, administration  
102 or improvement of the properties or in otherwise carrying out  
103 the purposes and provisions of this article; and sell, lease or  
104 otherwise dispose of any of its property or interests in the  
105 property in furtherance of the purposes and the provisions of  
106 this article. Money received from the sale of land acquired in  
107 the small watershed program shall be deposited in the special  
108 account of the state conservation committee and expended as  
109 provided in this article.

**§19-21A-7. Supervisors to constitute governing body of district;  
qualifications and terms of supervisors; powers  
and duties.**

1 (a) The governing body of the district consists of the  
2 supervisors, appointed or elected, as provided in this article.  
3 The two supervisors appointed by the committee shall be  
4 persons who are by training and experience qualified to perform  
5 the specialized skilled services which are required of them in  
6 the performance of their duties under this section and shall be  
7 legal residents and landowners in the district.

8 (b) The supervisors shall designate a chairperson and may,  
9 from time to time, change the designation. The term of office of  
10 each supervisor is three years. A supervisor holds office until  
11 his or her successor has been elected or appointed. In case a  
12 new county or portion of a county is added to a district, the  
13 committee may appoint a supervisor to represent it until the  
14 next regular election of supervisors for the district takes place.  
15 If a vacancy occurs among the elected supervisors of a district,  
16 the committee shall appoint a successor from the same county

17 to fill the unexpired term. The appointment shall be made from  
18 a name or list of names submitted by local farm organizations  
19 and agencies.

20 (c) When any county or portion of a county lying within the  
21 boundaries of a district has in effect eight hundred or more  
22 signed agreements of cooperation with occupiers of land  
23 located within the county, then at the next regular election of  
24 supervisors the land occupiers within the county or portion of  
25 the county are entitled to elect two supervisors to represent the  
26 county instead of one for the term and in the manner prescribed  
27 in this section. A majority of the supervisors constitutes a  
28 quorum and the concurrence of a majority in any matter within  
29 their duties is required for its determination.

30 (d) A supervisor is entitled to expenses and a per diem not  
31 to exceed thirty dollars when engaged in the performance of his  
32 or her duties.

33 (e) The supervisors may, with the approval of the state  
34 committee, employ a secretary, technical experts and any other  
35 officers, agents and employees, permanent and temporary, as  
36 they may require and shall determine their qualifications, duties  
37 and compensation. The supervisors may delegate to their  
38 chairperson, to one or more supervisors or to one or more  
39 agents, or employees, those administrative powers and duties  
40 they consider proper. The supervisors shall furnish to the state  
41 conservation committee, upon request, copies of the ordinances,  
42 rules, orders, contracts, forms and other documents they adopt  
43 or employ and any other information concerning their activities  
44 required in the performance of state conservation committee's  
45 duties under this article.

46 (f) The supervisors shall:

47 (1) Require the execution of surety bonds for all employees  
48 and officers who are entrusted with funds or property;

49 (2) Provide for the keeping of a full and accurate record of  
50 all proceedings and of all resolutions, rules and orders issued or  
51 adopted; and

52 (3) Provide for an annual audit of the accounts of receipts  
53 and disbursements.

54 (g) Any supervisor may be removed by the state conserva-  
55 tion committee upon notice and hearing for neglect of duty or  
56 malfeasance in office, but for no other reason.

57 (h) The supervisors may invite the legislative body of any  
58 municipality or county located near the territory comprised  
59 within the district to designate a representative to advise and  
60 consult with the supervisors of a district on all questions of  
61 program and policy which may affect the property, water  
62 supply or other interests of the municipality or county.

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## CHAPTER 11

**(S. B. 574 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler,  
Minard, Rowe, Snyder, White, Boley, Minear and Weeks)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §60-2-11 of the code of West Virginia, 1931, as amended, relating generally to powers and duties of the alcohol beverage control commissioner; allowing commissioner to sell liquor warehouse, upon approval of governor and board of public works, when sale is in best interest of state; and making technical corrections.

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

That §60-2-11 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.**

**§60-2-11. Powers and duties.**

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

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

7       (2) Sign and execute in the name of the commissioner any  
8 contract or agreement authorized by this chapter;

9       (3) Supervise the fiscal affairs and responsibilities of the  
10 agency;

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

19       (5) With the approval of the governor and the board of  
20 public works, sell, in part or in whole, the real estate containing  
21 12.168 acres and a warehouse situate on River Road in the Hub  
22 Industrial Park, Nitro, Putnam County, for a sale price of at  
23 least the appraised fair market value and upon terms the  
24 commissioner determines to be in the best interest of the state  
25 of West Virginia;

26       (6) With the approval of the governor and the board of  
27 public works, and upon the sale of real estate containing 12.168  
28 acres and a warehouse situate on River Road in the Hub

29 Industrial Park, Nitro, Putnam County, acquire title to and  
30 purchase, upon terms the commissioner determines to be in the  
31 best interest of the state of West Virginia, real estate containing  
32 a replacement warehouse of a size and in a location that the  
33 commissioner determines meets the storage needs of the  
34 agency;

35 (7) Keep a complete and accurate record of all proceedings,  
36 record and file all bonds and contracts taken or entered into and  
37 assume responsibility for the custody and preservation of all  
38 papers and documents pertaining to the commissioner;

39 (8) Purchase or lease as provided by law all equipment  
40 necessary for the conduct of the agency;

41 (9) Report to the governor each year all information relative  
42 to the operation and functions of the agency. The commissioner  
43 shall make such other reports and recommendations as may be  
44 required by the governor;

45 (10) Exercise any other power that may be necessary or  
46 proper for the orderly conduct of the business and the effective  
47 discharge of the duties of the commissioner; and

48 (11) Invoke any legal or equitable remedies for the enforce-  
49 ment of the orders of the commissioner or the provisions of this  
50 chapter.

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## CHAPTER 12

**(Com. Sub. for H. B. 4022 — By Mr. Speaker,  
Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed February 26, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §17F-1-1, §17F-1-2, §17F-1-3, §17F-1-4, §17F-1-5, §17F-1-6, §17F-1-7, §17F-1-8 and §17F-1-9, all relating to the regulation of all-terrain vehicles generally; prohibiting operation on interstate highways and on center-lined roads or roads with more than two lanes; exceptions to prohibition; prohibiting operation with more than one passenger unless allowed under manufacturers' specifications; prohibiting child passengers unless operator is an adult or has a level two intermediate driver's license; requiring certain equipment; prohibiting riders under the age of eighteen without a helmet; providing for criminal penalties for violations; requiring safety awareness courses; creating exceptions; providing for regulation by local government authority; requiring rental dealers to provide safety equipment; providing certain exemptions for use on private property; providing exemption for farm and commercial use; and clarifying application of rules of operation.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §17F-1-1, §17F-1-2, §17F-1-3, §17F-1-4, §17F-1-5, §17F-1-6, §17F-1-7, §17F-1-8 and §17F-1-9, all to read as follows:

## **CHAPTER 17F. ALL-TERRAIN VEHICLES.**

### **ARTICLE 1. REGULATION OF ALL-TERRAIN VEHICLES.**

- §17F-1-1. Acts prohibited by operator; penalties for violations.
- §17F-1-2. Safety awareness courses.
- §17F-1-3. Local government authority to regulate.
- §17F-1-4. All-terrain vehicle rental dealers required to provide safety equipment.
- §17F-1-5. Private property exemption.
- §17F-1-6. Exemption for farm, commercial use; current regulations.
- §17F-1-7. Applicability of rules of operation.
- §17F-1-8. Criminal penalties.
- §17F-1-9. Definition of all-terrain vehicle.

**§17F-1-1. Acts prohibited by operator; penalties for violations.**



1 (a) No all-terrain vehicle may be operated in this state:

2 (1) On any interstate highway except by public safety  
3 personnel responding to emergencies;

4 (2) On any road or highway with a center line or more than  
5 two lanes except for the purpose of crossing the road, street or  
6 highway, if:

7 (A) The crossing is made at an angle of approximately  
8 ninety degrees to the direction of the highway and at a place  
9 where no obstruction prevents a quick and safe crossing;

10 (B) The vehicle is brought to a complete stop before  
11 crossing the shoulder or main traveled way of the highway;

12 (C) The operator yields his or her right-of-way to all  
13 oncoming traffic that constitutes an immediate potential hazard;  
14 and

15 (D) Both the headlight and taillight are illuminated when  
16 the crossing is made if the vehicle is so equipped;

17 (3) With more than one passenger unless more passengers  
18 are allowed under manufacturers' recommendations;

19 (4) With a passenger under the age of eighteen, unless the  
20 operator has at a minimum a level two intermediate driver's  
21 license or its equivalent or is eighteen years of age or older;

22 (5) Unless riders under the age of eighteen are wearing size  
23 appropriate protective helmets that meet the current perfor-  
24 mance specifications established by the American national  
25 standards institute standard, z 90.1, the United States depart-  
26 ment of transportation federal motor vehicle safety standard no.  
27 218 or Snell safety standards for protective headgear for vehicle  
28 users;

29 (6) Anytime from sunset to sunrise without an illuminated  
30 headlight or lights and taillights;

31 (7) Without a manufacturer-installed or equivalent spark  
32 arrester and a manufacturer-installed or equivalent muffler in  
33 proper working order and properly connected to the vehicle's  
34 exhaust system; or

35 (8) Unless operating in compliance with the provisions of  
36 section two of this article.

37 (b) An all-terrain vehicle may, for the sole purpose of  
38 getting from one trail, field or area of operation to another, be  
39 operated upon the shoulder of any road, street or highway  
40 referred to in subdivision (2), subsection (a) of this section,  
41 other than an interstate highway, for a distance not to exceed  
42 ten miles, if:

43 (1) The vehicle is operated at speeds of twenty-five miles  
44 per hour or less; and

45 (2) The vehicle is operated at any time from sunset to  
46 sunrise, the all-terrain vehicle must be equipped with headlights  
47 and taillights which must be illuminated.

48 (c) Operation of an all-terrain vehicle in accordance with  
49 subsection (b) shall not constitute operation of a motor vehicle  
50 on a road or highway of this state as contemplated by the  
51 provisions of section seven of this article.

52 (d) Notwithstanding any provision of this chapter to the  
53 contrary, a municipality, county or other political subdivision  
54 of the state may authorize the operation of all-terrain vehicles  
55 on certain specified roads, streets or highways which are  
56 marked with centerline pavement markings, other than inter-  
57 state highways, to allow participation in parades, exhibitions  
58 and other special events, in emergencies or for specified  
59 purposes.

#### §17F-1-2. Safety awareness courses.

1 (a) On and after the first day of September, two thousand  
2 four, the commissioner of motor vehicles shall offer a free all-

3 terrain vehicle rider safety awareness course, and may approve  
4 other all-terrain vehicle rider safety awareness courses, to meet  
5 the reasonably anticipated needs of the public. The commis-  
6 sioner shall offer free safety awareness course materials to  
7 authorized dealers of all-terrain vehicles for use by purchasers  
8 and potential purchasers free of charge.

9 (b) The commissioner shall issue certificates of completion  
10 to persons who satisfactorily complete the requirements of an  
11 approved course. The commissioner may authorize a dealer of  
12 all-terrain vehicles and other approved providers to issue the  
13 certificates of completion.

14 (c) On and after the first day of January, two thousand five,  
15 no person under the age of eighteen may operate an all-terrain  
16 vehicle without a certificate of completion of a vehicle rider  
17 awareness course as offered or approved by the commissioner.

18 (d) The provisions of subsection (c) of this section do not  
19 apply to the operation of an all-terrain vehicle on any private or  
20 public recreational trail or area or affiliated trail or area  
21 operated by a person or entity which has in place a safety  
22 program.

### **§17F-1-3. Local government authority to regulate.**

1 Notwithstanding any provision of this article to the  
2 contrary:

3 (1) The governing body of a municipality may regulate in  
4 any manner or prohibit, by lawfully enacted ordinance, the  
5 operation of all-terrain vehicles upon any street, road or avenue  
6 within the municipal corporate limits.

7 (2) Homeowner associations may petition the county  
8 commission of the county in which the area regulated by the  
9 homeowner association is located for an ordinance to regulate  
10 or prohibit the operation of all-terrain vehicles upon any street,  
11 road or avenue within the area regulated by the homeowner  
12 association. County commissions are hereby authorized, upon

13 receipt of a petition authorized by the provisions of this section,  
14 to enact an ordinance regulating or prohibiting the operation of  
15 all-terrain vehicles.

16 (3) The county commission of any county which has in  
17 effect and is operating under a countywide comprehensive plan  
18 may by lawfully enacted ordinance regulate or prohibit the  
19 operation of all-terrain vehicles on any road in the county,  
20 except interstate highways: *Provided*, That any county which  
21 enacts any such ordinance shall notify the West Virginia state  
22 police and all law-enforcement agencies in the county of its  
23 action in writing, together with a copy of the ordinance.

**§17F-1-4. All-terrain vehicle rental dealers required to provide safety equipment.**

1 Any person or entity renting or leasing all-terrain vehicles  
2 for recreational purposes must provide protective helmets as  
3 defined by the provisions of subdivision (5), subsection (a),  
4 section one of this article, to all persons using such vehicles  
5 who are under the age of eighteen and offer protective helmets  
6 to all persons eighteen and older using the rented or leased  
7 vehicles: *Provided*, That for the provisions of this section to be  
8 applicable, the age and identity of the users of the all-terrain  
9 vehicle must be disclosed to the person or entity providing the  
10 rented or leased vehicle.

**§17F-1-5. Private property exemption.**

1 Except as provided by the provisions of subdivisions (3),  
2 (4) and (5), subsection (a), section one of this article, and except  
3 as provided by the provisions of section two of this article, the  
4 provisions of this article do not apply if the all-terrain vehicle  
5 is operated exclusively on lands owned or leased by the vehicle  
6 owner or on private lands of others with the owner's permis-  
7 sion.

**§17F-1-6. Exemption for farm, commercial use; current regulations.**

1 (a) Except as provided by the provisions of subdivisions (4)  
2 and (5), subsection (a), section one, nothing in this article may  
3 be construed to preclude or limit the use or operation of all-  
4 terrain vehicles for lawful nonrecreational commercial pur-  
5 poses, including, but not limited to, farm use, oil and gas  
6 operations, timbering, surveying and public utilities access.

7 (b) Nothing in this chapter may be construed to supersede  
8 or contravene the provisions of any agreement between the state  
9 of West Virginia and any private or governmental entity entered  
10 into prior to the effective date of this chapter, or any lawfully  
11 promulgated legislative rule, including any emergency legisla-  
12 tive rule, regulating the operation of all-terrain vehicles.

#### **§17F-1-7. Applicability of rules of operation.**

1 (a) Every person operating an all-terrain vehicle upon a  
2 public road or highway of this state shall be subject to all of the  
3 duties applicable to the driver of a vehicle by the provisions of  
4 chapter seventeen-c of this code except where inconsistent with  
5 the provisions of this article and except as to those provisions  
6 of chapter seventeen-c of this code which by their nature can  
7 have no application.

8 (b) Notwithstanding the provisions of subsection (a) of this  
9 section, a motor vehicle operator's license is not required of an  
10 operator of an all-terrain vehicle when he or she is operating  
11 said vehicle in conformity with the provisions of subdivision  
12 (2), subsection (a) or subsection (b), section one of this chapter  
13 except when the operator is under the age of eighteen and is  
14 transporting a passenger under the age of eighteen.

#### **§17F-1-8. Criminal penalties.**

1 (a) Except as provided in the provisions of subsection (b)  
2 of this section and in addition to any other legal remedy for  
3 violation of civil or criminal provisions of this code, any person  
4 who violates the provisions of this article or municipal or  
5 county ordinance enacted pursuant to the provisions of section

6 three of this article or who owns or has control over an all-  
7 terrain vehicle and knowingly permits it to be used in violation  
8 of the provisions of this article is guilty of a misdemeanor and,  
9 upon conviction thereof, shall be fined not more than one  
10 hundred dollars.

11 (b) Any parent, legal guardian or person who has actual  
12 responsibility for a child under eighteen years of age who  
13 knows or should have known the child is operating or is a  
14 passenger on an all-terrain vehicle without a helmet as required  
15 by the provisions of section one of this article is guilty of a  
16 misdemeanor and shall, upon conviction, be subject to the  
17 following penalties:

18 (1) For a first offense, a fine of not less than fifty dollars  
19 nor more than one hundred dollars or not more than ten hours  
20 of community service, or both;

21 (2) For a second offense, a fine of not less than one hundred  
22 dollars nor more than two hundred dollars or not more than  
23 twenty hours of community service, or both;

24 (3) For a third or subsequent offense, a fine of not less than  
25 two hundred dollars nor more than five hundred dollars or not  
26 more than one hundred hours of community service, or both.

**§17F-1-9. Definition of all-terrain vehicle.**

1 As used in this chapter, “all-terrain vehicle” or “ATV”  
2 shall mean any motor vehicle, fifty-two inches or less in width,  
3 having an unladen weight of eight hundred pounds or less,  
4 traveling on three or more low pressure tires with a seat  
5 designed to be straddled by the rider, designed for or capable of  
6 travel over unimproved terrain.

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## CHAPTER 13

(Com. Sub. for S. B. 133 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]

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[Passed March 21, 2004; 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 VI of the constitution.

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

**Title**

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

### TITLE I—GENERAL PROVISIONS.

#### TITLE I — GENERAL PROVISIONS.

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

1     **Section 1. General policy.**—The purpose of this bill is to  
2 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 two thousand  
5 five.

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

2     “Governor” shall mean the governor of the state of West  
3 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, bureau,  
7 division, office, board, commission, agency or institution  
8 to which an appropriation is made.

9 The “fiscal year two thousand five” shall mean the  
10 period from the first day of July, two thousand four,  
11 through the thirtieth day of June, two thousand five.

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

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

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

1 **Sec. 3. Classification of appropriations.**—An appropria-  
2 tion 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 or  
6 contractual payments paid to consultants or to inde-  
7 pendent contractors engaged by the spending unit.



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

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

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

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

32 “BRIM Premiums” shall mean the amount charged as  
33 consideration for insurance protection and includes the  
34 present value of projected losses and administrative  
35 expenses. Premiums are assessed for coverages, as defined  
36 in the applicable policies, for claims arising from, inter  
37 alia, general liability, wrongful acts, property, professional  
38 liability and automobile exposures.

39 Should the appropriation for “BRIM Premiums” be  
40 insufficient to cover such cost, the remainder of such costs  
41 shall be transferred by each spending unit from its  
42 “personal services” line item, its “employee benefit” line  
43 item, its “unclassified” line item or any other appropriate  
44 line item to “BRIM Premiums” for payment to the Board

45 of Risk and Insurance Management. Each spending unit is  
46 hereby authorized and required to make such payments.

47 Each spending unit shall be responsible for all contribu-  
48 tions, payments or other costs related to coverage and  
49 claims of its employees for unemployment compensation.  
50 Such expenditures shall be considered an employee  
51 benefit.

52 “Current expenses” shall mean operating costs other  
53 than personal services and shall not include equipment,  
54 repairs and alterations, buildings or lands.

55 Each spending unit shall be responsible for and charged  
56 monthly for all postage meter service and shall reimburse  
57 the appropriate revolving fund monthly for all such  
58 amounts. Such expenditures shall be considered a current  
59 expense.

60 “Equipment” shall mean equipment items which have an  
61 appreciable and calculable period of usefulness in excess  
62 of one year.

63 “Repairs and alterations” shall mean routine mainte-  
64 nance and repairs to structures and minor improvements  
65 to property which do not increase the capital assets.

66 “Buildings” shall include new construction and major  
67 alteration of existing structures and the improvement of  
68 lands and shall include shelter, support, storage, protec-  
69 tion or the improvement of a natural condition.

70 “Lands” shall mean the purchase of real property or  
71 interest in real property.

72 “Capital outlay” shall mean and include buildings, lands  
73 or buildings and lands, with such category or item of  
74 appropriation to remain in effect as provided by section  
75 twelve, article three, chapter twelve of the code.

76 From appropriations made to the spending units of state  
77 government, upon approval of the governor there may be  
78 transferred to a special account an amount sufficient to  
79 match federal funds under any federal act.

80 Appropriations classified in any of the above categories  
81 shall be expended only for the purposes as defined above  
82 and only for the spending units herein designated: *Pro-*  
83 *vided*, That the secretary of each department and the  
84 commissioner of the bureau of commerce shall have the  
85 authority to transfer within the department or bureau  
86 those general revenue funds appropriated to the various  
87 agencies of the department or bureau: *Provided, however,*  
88 That no more than five percent of the general revenue  
89 funds appropriated to any one agency or board may be  
90 transferred to other agencies or boards within the depart-  
91 ment or bureau: *Provided further*, That the secretary of  
92 each department and the director, commissioner, executive  
93 secretary, superintendent, chairman or any other agency  
94 head not governed by a departmental secretary as estab-  
95 lished by chapter five-f of the code shall have the author-  
96 ity to transfer funds appropriated to “personal services”  
97 and “employee benefits” to other lines within the same  
98 account and no funds from other lines shall be transferred  
99 to the “personal services” line: *And provided further*, That  
100 the secretary of each department and the director, commis-  
101 sioner, executive secretary, superintendent, chairman or  
102 any other agency head not governed by a departmental  
103 secretary as established by chapter five-f of the code shall  
104 have the authority to transfer general revenue funds  
105 appropriated to “annual increment” to other general  
106 revenue accounts within the same department, bureau or  
107 commission for the purpose of providing an annual incre-  
108 ment in accordance with article five, chapter five of the  
109 code: *And provided further*, That if the Legislature by  
110 subsequent enactment consolidates agencies, boards or  
111 functions, the secretary may transfer the funds formerly  
112 appropriated to such agency, board or function in order to  
113 implement such consolidation. No funds may be trans-  
114 ferred from a special revenue account, dedicated account,  
115 capital expenditure account or any other account or fund  
116 specifically exempted by the Legislature from transfer,  
117 except that the use of the appropriations from the state  
118 road fund for the office of the secretary of the department  
119 of transportation is not a use other than the purpose for  
120 which such funds were dedicated and is permitted.

121 Appropriations otherwise classified shall be expended  
 122 only where the distribution of expenditures for different  
 123 purposes cannot well be determined in advance or it is  
 124 necessary or desirable to permit the spending unit the  
 125 freedom to spend an appropriation for more than one of  
 126 the above classifications.

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

1 **Sec. 5. Maximum expenditures.**—No authority or re-  
 2 quirement 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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§17. General school fund.	

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

**LEGISLATIVE***1—Senate*Fund 0165 FY 2005 Org 2100

	<b>Activity</b>	<b>General Revenue Fund</b>
1 Compensation of Members (R) . . .	003	\$ 1,010,000
2 Compensation and Per Diem		
3 of Officers and Employees (R) . .	005	3,003,210
4 Employee Benefits (R) . . . . .	010	597,712
5 Current Expenses and		
6 Contingent Fund (R) . . . . .	021	700,000
7 Repairs and Alterations (R) . . . . .	064	450,000
8 Computer Supplies (R) . . . . .	101	40,000
9 Computer Systems (R) . . . . .	102	250,000
10 Printing Blue Book (R) . . . . .	103	150,000
11 Expenses of Members (R) . . . . .	399	700,000
12 BRIM Premium (R) . . . . .	913	<u>18,877</u>
13 Total . . . . .		\$ 6,919,799

14 The appropriations for the senate for the fiscal year 2004  
 15 are to remain in full force and effect and are hereby  
 16 reappropriated to June 30, 2005. Any balances so  
 17 reappropriated may be transferred and credited to the  
 18 fiscal year 2005 accounts.

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

23 The clerk of the senate, with the approval of the presi-  
 24 dent, is authorized to draw his or her requisitions upon the  
 25 auditor, payable out of the Current Expenses and Continen-  
 26 tent Fund of the senate, for any bills for supplies and  
 27 services that may have been incurred by the senate and not  
 28 included in the appropriation bill, for supplies and ser-  
 29 vices incurred in preparation for the opening, the conduct  
 30 of the business and after adjournment of any regular or

31 extraordinary session, and for the necessary operation of  
32 the senate offices, the requisitions for which are to be  
33 accompanied by bills to be filed with the auditor.

34 The clerk of the senate, with the written approval of the  
35 president, or the president of the senate shall have author-  
36 ity to employ such staff personnel during any session of  
37 the Legislature as shall be needed in addition to staff  
38 personnel authorized by the senate resolution adopted  
39 during any such session. The clerk of the senate, with the  
40 written approval of the president, or the president of the  
41 senate shall have authority to employ such staff personnel  
42 between sessions of the Legislature as shall be needed, the  
43 compensation of all staff personnel during and between  
44 sessions of the Legislature, notwithstanding any such  
45 senate resolution, to be fixed by the president of the  
46 senate. The clerk is hereby authorized to draw his or her  
47 requisitions upon the auditor for the payment of all such  
48 staff personnel for such services, payable out of the  
49 appropriation for Compensation and Per Diem of Officers  
50 and Employees or Current Expenses and Contingent Fund  
51 of the senate.

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

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

*2—House of Delegates*

Fund 0170 FY 2005 Org 2200

1 Compensation of Members (R) . . . 003 \$ 2,270,000

2	Compensation and Per Diem		
3	of Officers and Employees (R) . . . 005		600,000
4	Current Expenses and		
5	Contingent Fund (R) . . . . . 021		4,221,162
6	Expenses of Members (R) . . . . . 399		1,190,000
7	BRIM Premium (R) . . . . . 913		<u>20,515</u>
8	Total . . . . .		\$8,301,677

9     The appropriations for the house of delegates for the  
10 fiscal year 2004 are to remain in full force and effect and  
11 are hereby reappropriated to June 30, 2005. Any balances  
12 so reappropriated may be transferred and credited to the  
13 fiscal year 2005 accounts.

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

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

29     The speaker of the house of delegates, upon approval of  
30 the house committee on rules, shall have authority to  
31 employ such staff personnel during and between sessions  
32 of the Legislature as shall be needed, in addition to  
33 personnel designated in the house resolution, and the  
34 compensation of all personnel shall be as fixed in such  
35 house resolution for the session, or fixed by the speaker,  
36 with the approval of the house committee on rules, during  
37 and between sessions of the Legislature, notwithstanding  
38 such house resolution. The clerk of the house is hereby  
39 authorized to draw requisitions upon the auditor for such

40 services, payable out of the appropriation for the Compen-  
 41 sation and Per Diem of Officers and Employees or Current  
 42 Expenses and Contingent Fund of the house of delegates.

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

*3—Joint Expenses*

(WV Code Chapter 4)

Fund 0175 FY 2005 Org 2300

1	Joint Committee on		
2	Government and Finance (R) . . . . .	104	\$ 6,317,298
3	Legislative Printing (R) . . . . .	105	940,000
4	Legislative Rule-Making		
5	Review Committee (R) . . . . .	106	226,050
6	Legislative Computer System (R) . . . . .	107	1,138,121
7	Joint Standing Committee		
8	on Education (R) . . . . .	108	74,500
9	Tax Reduction and Federal Funding		
10	Increased Compliance		
11	(TRAFFIC)(R) . . . . .	642	9,400,000
12	BRIM Premium (R) . . . . .	913	<u>14,220</u>
13	Total . . . . .		\$18,110,189

14 The appropriations for the joint expenses for the fiscal  
 15 year 2004 are to remain in full force and effect and are  
 16 hereby reappropriated to June 30, 2005. Any balances so  
 17 reappropriated may be transferred and credited to the  
 18 fiscal year 2005 accounts.

19 Upon the written request of the clerk of the senate, with  
 20 the approval of the president of the senate, and the clerk  
 21 of the house of delegates, with the approval of the speaker

22 of the house of delegates, and a copy to the legislative  
 23 auditor, the auditor shall transfer amounts between items  
 24 of the total appropriation in order to protect or increase  
 25 the efficiency of the service.

26 The appropriation for the Tax Reduction and Federal  
 27 Funding Increased Compliance (TRAFFIC) (fund 0175,  
 28 activity 642) is intended for possible general state tax  
 29 reductions or the offsetting of any reductions in federal  
 30 funding for state programs.

### JUDICIAL

#### 4—*Supreme Court— General Judicial*

#### Fund 0180 FY 2005 Org 2400

1	Personal Services (R) . . . . .	001	\$	46,784,820
2	Annual Increment (R) . . . . .	004		475,000
3	Employee Benefits (R) . . . . .	010		15,712,329
4	Unclassified (R) . . . . .	099		6,377,846
5	Judges' Retirement System (R) . . .	110		6,758,174
6	BRIM Premium (R) . . . . .	913		<u>294,341</u>
7	Total . . . . .		\$	76,402,510

8 The appropriations to the supreme court of appeals for  
 9 the fiscal years 2002, 2003 and 2004 are to remain in full  
 10 force and effect and are hereby reappropriated to June 30,  
 11 2005. Any balances so reappropriated may be transferred  
 12 and credited to the fiscal year 2005 accounts.

13 This appropriation shall be administered by the admin-  
 14 istrative director of the supreme court of appeals, who  
 15 shall draw requisitions for warrants in payment in the  
 16 form of payrolls, making deductions therefrom as required  
 17 by law for taxes and other items.

18 The appropriation for the Judges' Retirement System is  
 19 to be transferred to the consolidated public retirement  
 20 board, in accordance with the law relating thereto, upon  
 21 requisition of the administrative director of the supreme  
 22 court of appeals.

**EXECUTIVE**

*5 – Governor’s Office*

(WV Code Chapter 5)

Fund 0101 FY 2005 Org 0100

1	Personal Services . . . . .	001	\$	2,245,000
2	Salary of Governor . . . . .	002		95,000
3	Annual Increment . . . . .	004		17,745
4	Employee Benefits . . . . .	010		699,040
5	Unclassified (R) . . . . .	099		830,386
6	Jobs for American Graduates . . . .	089		-0-
7	National Governors’ Association .	123		77,500
8	Southern States Energy Board . . .	124		5,740
9	Publication of Papers and			
10	Transition Expenses (R) . . . . .	465		-0-
11	BRIM Premium . . . . .	913		<u>267,409</u>
12	Total . . . . .		\$	4,237,820

13 Any unexpended balances remaining in the appropria-  
 14 tions for Unclassified (fund 0101, activity 099), Publica-  
 15 tion of Papers and Transition Expenses (fund 0101,  
 16 activity 465), Publication of Papers and Transition  
 17 Expenses—Surplus (fund 0101, activity 359) and Southern  
 18 Governors’ Association-Surplus (fund 0101, activity 962)  
 19 at the close of the fiscal year 2004 are hereby  
 20 reappropriated for expenditure during the fiscal year 2005.

*6 – Governor’s Office –  
 Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2005 Org 0100

1	Unclassified—Total . . . . .	096	\$	424,974
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2 To be used for current general expenses, including  
 3 compensation of employees, household maintenance, cost  
 4 of official functions and additional household expenses  
 5 occasioned by such official functions.

*7—Governor's Office—  
Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 0104 FY 2005 Org 0100

1	Personal Services .....	010	\$	178,288
2	Annual Increment .....	004		2,050
3	Employee Benefits .....	010		45,065
4	Unclassified .....	099		55,757
5	Family Resource Networks (R) ...	274		1,205,935
6	Early Parenting Education .....	559		285,000
7	Starting Points Centers and			
8	Parent Education Services (R) ..	316		<u>-0-</u>
9	Total .....			\$ 1,772,095

10 Any unexpended balances remaining in the appropria-  
 11 tions for Family Resource Networks (fund 0104, activity  
 12 274), Starting Points Centers and Parent Education  
 13 Services (fund 0104, activity 316) and Educare (fund 0104,  
 14 activity 895) at the close of the fiscal year 2004 are hereby  
 15 reappropriated for expenditure during the fiscal year 2005,  
 16 with the exception of fund 0104, fiscal year 2004, activity  
 17 274 (\$38,899); and fund 0104, fiscal year 2004, activity 316  
 18 (\$38,899) which shall expire on June 30, 2004.

*8—Governor's Office—  
Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2005 Org 0100

1	Business & Economic Development			
2	Stimulus (R) .....	586	\$	-0-
3	Civil Contingent Fund - Total (R)	114		<u>9,100,000</u>
4	Total .....		\$	-0-

5 Any unexpended balances remaining in the appropria-  
 6 tions for Civil Contingent Fund—Total (fund 0105, activity  
 7 114), Civil Contingent Fund—Total—Surplus (fund 0105,  
 8 activity 238), Civil Contingent Fund (fund 0105, activity  
 9 614) and Business and Economic Development Stimulus



10 (fund 0105, activity 586) at the close of the fiscal year 2004  
 11 are hereby reappropriated for expenditure during the  
 12 fiscal year 2005.

13 From this appropriation there may be expended, at the  
 14 discretion of the governor, an amount not to exceed one  
 15 thousand dollars as West Virginia's contribution to the  
 16 interstate oil compact commission.

17 The above appropriation is intended to provide contin-  
 18 gency funding for accidental, unanticipated, emergency or  
 19 unplanned events which may occur during the fiscal year  
 20 and is not to be expended for the normal day-to-day  
 21 operations of the governor's office.

*9—Auditor's Office—  
 General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2005 Org 1200

1	Personal Services .....	001	\$ 2,087,640
2	Salary of Auditor .....	002	75,000
3	Annual Increment .....	004	37,265
4	Employee Benefits .....	010	662,576
5	Unclassified .....	099	703,936
6	BRIM Premium .....	913	<u>13,374</u>
7	Total .....		\$ 3,579,791

*10—Treasurer's Office*

(WV Code Chapter 12)

Fund 0126 FY 2005 Org 1300

1	Personal Services .....	001	\$ 1,667,893
2	Salary of Treasurer .....	002	75,000
3	Annual Increment .....	004	20,563
4	Employee Benefits .....	010	534,401
5	Unclassified (R) .....	099	942,889
6	Abandoned Property Program ...	118	283,029
7	Tuition Trust Fund (R) .....	692	148,549

8	BRIM Premium . . . . .	913	<u>32,909</u>
9	Total . . . . .		\$ 3,705,233

10 Any unexpended balances remaining in the appropri-  
 11 ations for Unclassified (fund 0126, activity 099) and Tuition  
 12 Trust Fund (fund 0126, activity 692) at the close of the  
 13 fiscal year 2004 are hereby reappropriated for expenditure  
 14 during the fiscal year 2005, with the exception of fund  
 15 0126, fiscal year 2004, activity 009 (\$42,549) which shall  
 16 expire on June 30, 2004.

*11—Department of Agriculture*

(WV Code Chapter 19)

Fund 0131 FY 2005 Org 1400

1	Personal Services . . . . .	001	\$ 3,596,423
2	Salary of Commissioner . . . . .	002	75,000
3	Annual Increment . . . . .	004	77,138
4	Employee Benefits . . . . .	010	1,307,831
5	State Farm Museum . . . . .	055	110,000
6	General John McCausland		
7	Memorial Farm . . . . .	095	-0-
8	Unclassified (R) . . . . .	099	788,483
9	Gypsy Moth Program (R). . . . .	119	945,905
10	Huntington Farmers Market . . . . .	128	50,000
11	Black Fly Control (R) . . . . .	137	428,606
12	Donated Foods Program . . . . .	363	50,000
13	Predator Control . . . . .	470	140,000
14	Bee Research . . . . .	691	32,421
15	Microbiology Program (R) . . . . .	785	152,905
16	Moorefield Agriculture Center (R)	786	995,883
17	BRIM Premium . . . . .	913	114,505
18	WV Food Banks . . . . .	969	100,000
19	Animal Identification Program . .	039	200,000
20	Seniors' Farmers' Market Nutrition		
21	Coupon Program . . . . .	970	<u>60,000</u>
22	Total . . . . .		\$ 9,225,100

23 Any unexpended balances remaining in the appropri-  
 24 ations for Unclassified (fund 0131, activity 099), Gypsy

25 Moth Program (fund 0131, activity 119), Black Fly Control  
 26 (fund 0131, activity 137), Charleston Farmers Market  
 27 (fund 0131, activity 476), Capital Improvements—Total  
 28 —Surplus (fund 0131, activity 672), Microbiology Program  
 29 (fund 0131, activity 785) and Moorefield Agriculture  
 30 Center (fund 0131, activity 786) at the close of the fiscal  
 31 year 2004 are hereby reappropriated for expenditure  
 32 during the fiscal year 2005, with the exception of fund  
 33 0131, fiscal year 2004, activity 119 (\$63,473); fund 0131,  
 34 fiscal year, 2004, activity 137 (\$55,000); and fund 0131,  
 35 fiscal year 2004, activity 786 (\$49,706) which shall expire  
 36 on the June 30, 2004.

37 A portion of the Unclassified appropriation may be  
 38 transferred to a special revenue fund for the purpose of  
 39 matching federal funds for marketing and development  
 40 activities.

*12—West Virginia Conservation Agency*

(WV Code Chapter 19)

Fund 0132 FY 2005 Org 1400

1	Personal Services .....	001	\$	464,113
2	Annual Increment .....	004		8,150
3	Employee Benefits .....	010		175,037
4	Unclassified (R) .....	099		331,252
5	Soil Conservation Projects (R) ...	120		2,688,089
6	Maintenance of Flood			
7	Control Projects (R) .....	522		2,170,438
8	BRIM Premium .....	913		<u>5,090</u>
9	Total .....		\$	5,842,169

10 Any unexpended balances remaining in the appropria-  
 11 tions for Soil Conservation Projects (fund 0132, activity  
 12 120), Soil Conservation Projects—Surplus (fund 0132,  
 13 activity 269) and Maintenance of Flood Control Projects  
 14 (fund 0132, activity 522), and Unclassified (fund 0132,  
 15 activity 099) at the close of the fiscal year 2004 are hereby  
 16 reappropriated for expenditure during the fiscal year 2005,

- 17 with the exception of fund 0132, fiscal year 2004, activity  
 18 120 (\$157,964) which shall expire on June 30, 2004.

*13—Department of Agriculture—  
Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2005 Org 1400

- |   |  |     |            |
|---|--|-----|------------|
| 1 | Unclassified - Total . . . . .                           | 096 | \$ 617,112 |
| 2 | Any part or all of this appropriation may be transferred |     |            |
| 3 | to a special revenue fund for the purpose of matching    |     |            |
| 4 | federal funds for the above-named program.               |     |            |

*14—Department of Agriculture—  
Agricultural Awards*

(WV Code Chapter 19)

Fund 0136 FY 2005 Org 1400

- |   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 1 | Commissioner's Awards       |     |               |
| 2 | and Programs . . . . .      | 737 | \$ 43,650     |
| 3 | Programs & Awards for 4-H   |     |               |
| 4 | Clubs and FFA/FHA . . . . . | 577 |               |
| 5 |                             |     | <u>15,000</u> |
| 6 | Total . . . . .             |     | \$ 58,650     |

*15—Attorney General*

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

Fund 0150 FY 2005 Org 1500

- |   |                                      |     |                |
|---|--------------------------------------|-----|----------------|
| 1 | Personal Services (R) . . . . .      | 001 | \$ 1,907,267   |
| 2 | Salary of Attorney General . . . . . | 002 | 80,000         |
| 3 | Annual Increment . . . . .           | 004 | 46,284         |
| 4 | Employee Benefits (R) . . . . .      | 010 | 738,947        |
| 5 | Unclassified (R) . . . . .           | 099 | 316,716        |
| 6 | Better Government Bureau . . . . .   | 740 | 295,054        |
| 7 | BRIM Premium . . . . .               | 913 | <u>131,565</u> |
| 8 | Total . . . . .                      |     | \$ 3,515,833   |

9 Any unexpended balances remaining in the above  
 10 appropriations for Personal Services (fund 0150, activity  
 11 001), Employee Benefits (fund 0150, activity 010) and  
 12 Unclassified (fund 0150, activity 099) at the close of the  
 13 fiscal year 2004 are hereby reappropriated for expenditure  
 14 during the fiscal year 2005 with the exception of fund  
 15 0150, fiscal year 2004, activity 001 (\$107,746) which shall  
 16 expire on June 30, 2004.

17 When legal counsel or secretarial help is appointed by  
 18 the attorney general for any state spending unit, this  
 19 account shall be reimbursed from such spending units  
 20 specifically appropriated account or from accounts  
 21 appropriated by general language contained within this  
 22 bill: *Provided*, That the spending unit shall reimburse at  
 23 a rate and upon terms agreed to by the state spending unit  
 24 and the attorney general: *Provided, however*, That if the  
 25 spending unit and the attorney general are unable to agree  
 26 on the amount and terms of the reimbursement, the  
 27 spending unit and the attorney general shall submit their  
 28 proposed reimbursement rates and terms to the joint  
 29 committee on government and finance for final determina-  
 30 tion.

16—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2005 Org 1600

1	Personal Services . . . . .	001	\$ 607,425
2	Salary of Secretary of State . . . . .	002	70,000
3	Annual Increment . . . . .	004	10,900
4	Employee Benefits . . . . .	010	226,267
5	Unclassified (R) . . . . .	099	124,858
6	BRIM Premium . . . . .	913	<u>43,724</u>
7	Total . . . . .		\$ 1,083,174

8 Any unexpended balances remaining in the appropria-  
 9 tions for Unclassified (fund 0155, activity 099) and Admin-  
 10 istrative Law Division Improvements (fund 0155, activity

11 880) at the close of the fiscal year 2004 are hereby  
 12 reappropriated for expenditure during the fiscal year 2005,  
 13 with the exception of fund 0155, fiscal year 2004, activity  
 14 099 (\$31,927) which shall expire on June 30, 2004.

*17—State Election Commission*

(WV Code Chapter 3)

Fund 0160 FY 2005 Org 1601

1	Unclassified—Total . . . . .	096	\$	10,275
---	------------------------------	-----	----	--------

**DEPARTMENT OF ADMINISTRATION**

*18—Department of Administration—  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2005 Org 0201

1	Unclassified . . . . .	099	\$	271,097
2	Lease Rental Payments . . . . .	516		11,463,103
3	Pay Equity Reserve . . . . .	364		250,000
4	BRIM Premium . . . . .	913		<u>14,073</u>
5	Total . . . . .			\$11,998,273

6 The appropriation for Lease Rental Payments shall be  
 7 disbursed as provided by chapter thirty-one, article  
 8 fifteen, section six-b of the code.

*19—Consolidated Public Retirement Board*

(WV Code Chapter 5)

Fund 0195 FY 2005 Org 0205

1 The division of highways, division of motor vehicles,  
 2 bureau of employment programs, public service commis-  
 3 sion and other departments, bureaus, divisions, or commis-  
 4 sions operating from special revenue funds and/or federal  
 5 funds shall pay their proportionate share of the retirement

6 costs for their respective divisions. When specific appro-  
 7 priations are not made, such payments may be made from  
 8 the balances in the various special revenue funds in excess  
 9 of specific appropriations.

*20—Division of Finance*

(WV Code Chapter 5A)

Fund 0203 FY 2005 Org 0209

1	Personal Services .....	001	\$	102,940
2	Annual Increment .....	004		713
3	Employee Benefits .....	010		27,936
4	Unclassified .....	099		140,823
5	GAAP Project (R) .....	125		995,934
6	BRIM Premium .....	913		<u>70,609</u>
7	Total .....		\$	1,338,955

8 Any unexpended balance remaining in the appropriation  
 9 for GAAP Project (fund 0203, activity 125) at the close of  
 10 the fiscal year 2004 is hereby reappropriated for expendi-  
 11 ture during the fiscal year 2005.

*21—Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 2005 Org 0211

1	Personal Services .....	001	\$	582,902
2	Annual Increment .....	004		14,000
3	Employee Benefits .....	010		237,351
4	Unclassified .....	099		527,649
5	Fire Service Fee .....	126		14,000
6	Capitol Complex - Capital Outlay	417		-0-
7	BRIM Premium .....	913		<u>98,759</u>
8	Total .....		\$	1,474,661

*22-Division of Purchasing*

(WV Code Chapter 5A)

Fund 0210 FY 2005 Org 0213

APPROPRIATIONS

1	Personal Services .....	001	\$	620,344
2	Annual Increment .....	004		10,928
3	Employee Benefits .....	010		196,554
4	Unclassified .....	099		8,247
5	BRIM Premium .....	913		<u>3,594</u>
6	Total .....		\$	839,667

7 The division of highways shall reimburse the Unclassi-  
 8 fied appropriation (fund 2031, activity 099) within the  
 9 division of purchasing for all actual expenses incurred  
 10 pursuant to the provisions of section thirteen, article  
 11 two-a, chapter seventeen of the code.

*23-Commission on Uniform State Laws*

(WV Code Chapter 29)

Fund 0214 FY 2005 Org 0217

1	Unclassified-Total .....	096	\$	31,000
2	To pay expenses for members of the commission on			
3	uniform state laws.			

*24-Board of Risk and Insurance Management*

(WV Code Chapter 29)

Fund 0217 FY 2005 Org 0218

1	Retro Payments-Total .....	652	\$	2,000,000
2	These funds may be transferred to a special account for			
3	the payment of premiums, self-insurance losses, loss			
4	adjustment expenses and loss prevention engineering fees			
5	and may be transferred to a special account for disburse-			
6	ment for payment of premiums and insurance losses.			

*25-Education and State Employees' Grievance Board*

(WV Code Chapter 18)

Fund 0220 FY 2005 Org 0219

1	Personal Services .....	001	\$	624,084
2	Annual Increment .....	004		8,775



3	Employee Benefits .....	010	166,359
4	Unclassified .....	099	137,334
5	BRIM Premium .....	913	<u>2,116</u>
6	Total .....		\$ 938,668

*26-Ethics Commission*

(WV Code Chapter 6B)

Fund 0223 FY 2005 Org 0220

1	Personal Services .....	001	\$ 219,694
2	Annual Increment .....	004	1,900
3	Employee Benefits .....	010	64,402
4	Unclassified .....	099	1,968
5	BRIM Premium .....	913	<u>3,735</u>
6	Total .....		\$ 291,699

*27-Public Defender Services*

(WV Code Chapter 29)

Fund 0226 FY 2005 Org 0221

1	Personal Services .....	001	\$ 548,011
2	Annual Increment .....	004	5,275
3	Employee Benefits .....	010	192,885
4	Unclassified .....	099	315,074
5	Appointed Counsel Fees and		
6	Public Defender Corporations ..	127	-0-
7	Appointed Counsel Fees .....	788	9,795,756
8	Public Defender Corporations ...	352	12,773,436
9	Appointed Counsel-Public		
10	Defender Conflicts .....	568	3,265,252
11	BRIM Premium .....	913	<u>47,190</u>
12	Total .....		\$26,942,879

13 Any unexpended balances remaining in the above  
 14 appropriations for Public Defender Corporations (fund  
 15 0226, activity 352), and Appointed Counsel Fees (fund  
 16 0226, activity 788) at the close of the fiscal year 2004 are  
 17 hereby reappropriated for expenditure during the fiscal  
 18 year 2005.

*28-Committee for the Purchase of  
Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2005 Org 0224

1 Unclassified-Total . . . . . 096 \$ 5,046

*29-Public Employees Insurance Agency*

(WV Code Chapter 5)

Fund 0200 FY 2005 Org 0225

1 The division of highways, division of motor vehicles,  
2 bureau of employment programs, public service commis-  
3 sion and other departments, bureaus, divisions, or commis-  
4 sions operating from special revenue funds and/or federal  
5 funds shall pay their proportionate share of the public  
6 employees health insurance cost for their respective  
7 divisions.

*30-West Virginia Prosecuting Attorneys' Institute*

Fund 0557 FY 2005 Org 0228

1	Forensic Medical			
2	Examinations (R) . . . . .	683	\$	100,000
3	Federal Funds/Grant Match (R) . .	749		<u>88,000</u>
4	Total . . . . .		\$	188,000

5 Any unexpended balances remaining in the appropria-  
6 tions for Forensic Medical Examinations (fund 0557,  
7 activity 683) and Federal Funds/Grant Match (fund 0557,  
8 activity 749) at the close of the fiscal year 2004 are hereby  
9 reappropriated for expenditure during the fiscal year 2005,  
10 with the exception of fund 0557, fiscal year 2004, activity  
11 683 (\$8,204) which shall expire on June 30, 2004.

*31-Children's Health Insurance Agency*

(WV Code Chapter 5)

Fund 0588 FY 2005 Org 0230

- 1 Unclassified-Total (R) . . . . . 096 \$ 7,122,654
- 2 Any unexpended balance remaining in the appropriation
- 3 for Unclassified-Total (fund 0588, activity 096) at the close
- 4 of the fiscal year 2004 is hereby reappropriated for
- 5 expenditure during the fiscal year 2005.

**DEPARTMENT OF EDUCATION**

*32-State Department of Education-  
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2005 Org 0402

1	Personal Services . . . . .	001	\$ 214,437
2	Annual Increment . . . . .	004	3,594
3	Employee Benefits . . . . .	010	77,799
4	Unclassified . . . . .	099	<u>1,660,000</u>
5	Total . . . . .		\$ 1,955,830

*33-State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2005 Org 0402

1	Personal Services . . . . .	001	\$ 557,252
2	Annual Increment . . . . .	004	12,350
3	Employee Benefits . . . . .	010	226,888
4	Unclassified . . . . .	099	141,864
5	BRIM Premium . . . . .	913	<u>41,436</u>
6	Total . . . . .		\$ 979,790

*34-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2005 Org 0402

1	Personal Services . . . . .	001	\$ 2,805,924
2	Annual Increment . . . . .	004	37,695
3	Employee Benefits . . . . .	010	892,172
4	Unclassified (R) . . . . .	099	3,800,000

5	WV Education Information		
6	System (WVEIS) . . . . .	138	-0-
7	34/1000 Waiver . . . . .	139	400,000
8	Traditional Student Increased		
9	Enrollmt 5yr-12th grade . . . . .	997	2,600,000
10	Collaborative Resource Allocation	041	3,631,694
11	Safe Schools . . . . .	143	2,000,000
12	Educational Achievement		
13	Incentive . . . . .	042	5,208,396
14	Teacher Mentor (R) . . . . .	158	400,000
15	National Teacher Certification (R)	161	50,000
16	HVAC Technicians . . . . .	355	315,493
17	Early Retirement		
18	Notification Incentive . . . . .	366	150,000
19	FBI Checks . . . . .	372	97,985
20	Foreign Student Education (R) . . .	636	80,113
21	Bridges Program . . . . .	394	150,000
22	State Teacher of the Year . . . . .	640	38,499
23	Principals Mentorship . . . . .	649	50,000
24	Allowance for Work Based		
25	Learning . . . . .	744	120,000
26	Marshall University Graduate College		
27	Writing Project . . . . .	807	25,000
28	Regional Education		
29	Service Agencies . . . . .	972	4,400,000
30	Sparse Population Allocation . . . .	973	625,000
31	BRIM Premium . . . . .	913	<u>328,295</u>
32	Total . . . . .		\$28,206,266

33 The above appropriation includes the state board of  
34 education and their executive office.

35 Any unexpended balances remaining in the appropria-  
36 tions for Unclassified (fund 0313, activity 099),  
37 S.U.C.C.E.S.S.—Surplus (fund 0313, activity 964), Com-  
38 puter Basic Skills—Surplus (fund 0313, activity 965),  
39 Teacher Mentor (fund 0313, activity 158), National  
40 Teacher Certification (fund 0313, activity 161) and Foreign  
41 Student Education (fund 0313, activity 636) at the close of

42 the fiscal year 2004 are hereby reappropriated for expen-  
 43 diture during the fiscal year 2005.

*35-State Department of Education-  
 Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2005 Org 0402

1	Special Education-Counties . . . . .	159	\$ 7,271,757
2	Special Education-Institutions . . . . .	160	3,217,483
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers . . . . .	302	581,478
6	Education of Institutionalized		
7	Juveniles and Adults . . . . .	472	11,503,434
8	Potomac Center . . . . .	810	-0-
9	Educational Programs at Beckley		
10	and Burlington Centers . . . . .	975	<u>-0-</u>
11	Total . . . . .		\$22,574,152

12 Any unexpended balance remaining in the appropriation  
 13 for Unclassified-Surplus (fund 0314, activity 097) at the  
 14 close of the fiscal year 2004 is hereby reappropriated for  
 15 expenditure during the fiscal year 2005.

16 From the above appropriations, the superintendent shall  
 17 have authority to expend funds for the costs of special  
 18 education for those children residing in out-of-state  
 19 placements.

*36-State Department of Education-  
 State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2005 Org 0402

1	Other Current Expenses . . . . .	022	\$125,826,312
2	Professional Educators . . . . .	151	731,600,242
3	Service Personnel . . . . .	152	243,025,520
4	Fixed Charges . . . . .	153	88,788,405

APPROPRIATIONS

5	Transportation .....	154	25,787,620
6	Administration .....	155	3,023,492
7	Improve Instructional Programs ..	156	<u>33,000,000</u>
8	Basic Foundation Allowances ....		1,251,051,591
9	Less Local Share .....		<u>(305,560,152)</u>
10	Total Basic State Aid .....		945,491,439
11	Early Childhood Collaborative ...	018	34,760,421
12	Public Employees'		
13	Insurance Matching .....	012	177,271,016
14	Teachers' Retirement System ....	019	345,376,678
15	School Building Authority .....	453	<u>21,561,365</u>
16	Total .....		\$ 1,524,460,919

*37-State Board of Education-  
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2005 Org 0402

1	Personal Services .....	001	\$ 902,344
2	Annual Increment .....	004	16,099
3	Employee Benefits .....	010	307,091
4	Unclassified .....	099	1,110,000
5	Wood Products-Forestry		
6	Vocational Program .....	146	56,220
7	Albert Yanni Vocational		
8	Program .....	147	124,263
9	Vocational Aid .....	148	14,404,493
10	Adult Basic Education .....	149	3,113,039
11	Partnership Development/Staff ..	171	-0-
12	Program Modernization .....	305	725,000
13	Technical and Secondary Program		
14	Improvement Staff .....	330	260,871
15	GED Testing .....	339	291,160
16	Aquaculture Support .....	769	<u>80,000</u>
17	Total .....		\$ 21,390,580

*38-State Board of Education-  
Division of Educational Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2005 Org 0402

1	Personal Services .....	001	\$	414,244
2	Annual Increment .....	004		3,000
3	Employee Benefits .....	010		120,899
4	Unclassified .....	099		<u>162,384</u>
5	Total .....		\$	700,527

*39-West Virginia Schools for the Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2005 Org 0403

1	Personal Services .....	001	\$	6,857,223
2	Annual Increment .....	004		5,550
3	Employee Benefits .....	010		2,507,476
4	Unclassified .....	099		1,613,470
5	BRIM Premium .....	913		<u>68,938</u>
6	Total .....		\$	11,052,657

**DEPARTMENT OF EDUCATION AND THE ARTS**

*40-Department of Education and the Arts-  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2005 Org 0431

1	Governor's Honor Academy and			
2	School for the Arts (R) .....	030	\$	-0-
3	Governor's Honor Academy .....	478		390,150
4	Unclassified (R) .....	099		777,735
5	Center for Professional			
6	Development (R) .....	115		1,200,000
7	Center for Professional Development-			
8	Principals' Academy (R) .....	415		398,970
9	Teacher Education			
10	Partnerships (R) .....	576		500,000
11	Energy Express .....	861		450,000
12	BRIM Premium .....	913		<u>3,821</u>
13	Total .....		\$	3,720,676

14 Any unexpended balances remaining in the appropria-  
 15 tions for Governor’s Honors Academy and School for the  
 16 Arts (fund 0294, activity 030), Unclassified (fund 0294,  
 17 activity 099), Center for Professional Development (fund  
 18 0294, activity 115), Center for Professional Development-  
 19 Principals’ Academy (fund 0294, activity 415) and Teacher  
 20 Education Partnerships (fund 0294, activity 576) at the  
 21 close of the fiscal year 2004 are hereby reappropriated for  
 22 expenditure during the fiscal year 2005, with the exception  
 23 of fund 0294, fiscal year 2004, activity 415 (\$35,000); fund  
 24 0294, fiscal year 2004, activity 115 (\$24,322); fund 0294,  
 25 fiscal year 2004, activity 576 (\$65,000); and fund 0294,  
 26 fiscal year 2004, activity 099(\$11,391) which shall expire  
 27 on June 30, 2004.

*41-Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 2005 Org 0432

1	Personal Services .....	001	\$	2,144,527
2	Annual Increment .....	004		40,162
3	Employee Benefits .....	010		893,273
4	Unclassified .....	099		470,000
5	Culture and History			
6	Programming .....	732		300,000
7	BRIM Premium .....	913		<u>61,293</u>
8	Total .....		\$	3,909,255

9 The Unclassified appropriation includes funding for the  
 10 arts funds, department programming funds, grants, fairs  
 11 and festivals and Camp Washington Carver and shall be  
 12 expended only upon authorization of the division of  
 13 culture and history and in accordance with the provisions  
 14 of chapter five-a, article three, and chapter twelve of the  
 15 code.

16 All federal moneys received as reimbursement to the  
 17 division of culture and history for moneys expended from  
 18 the general revenue fund for the arts fund and historical  
 19 preservation are hereby reappropriated for the purposes as



20 originally made, including personal services, current  
 21 expenses and equipment.

*42-Library Commission*

(WV Code Chapter 10)

Fund 0296 FY 2005 Org 0433

1	Personal Services .....	001	\$	866,543
2	Annual Increment .....	004		28,100
3	Employee Benefits .....	010		349,668
4	Unclassified .....	099		229,809
5	Services to Blind			
6	and Handicapped .....	181		38,456
7	EBA Contractual Services .....	044		50,000
8	BRIM Premium .....	913		<u>31,822</u>
9	Total .....		\$	1,594,398

*43-Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2005 Org 0439

1	Personal Services .....	001	\$	3,030,517
2	Annual Increment .....	004		61,492
3	Employee Benefits .....	010		1,039,610
4	Unclassified .....	099		492,586
5	BRIM Premium .....	913		<u>69,225</u>
6	Total .....		\$	4,693,430

7 These funds may be transferred to special revenue  
 8 accounts for matching college, university, city, county,  
 9 federal and/or other generated revenues.

*44-State Board of Rehabilitation-  
 Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2005 Org 0932

1	Personal Services .....	001	\$	6,439,706
2	Annual Increment .....	004		134,049

APPROPRIATIONS

3	Employee Benefits . . . . .	010	2,648,899
4	Unclassified . . . . .	099	-0-
5	Employment Attendant		
6	Care Program . . . . .	598	179,000
7	Workshop Development . . . . .	163	1,816,149
8	Supported Employment		
9	Extended Services . . . . .	206	119,032
10	Ron Yost Personal		
11	Assistance Fund (R) . . . . .	407	340,000
12	Independent Living Services . . . .	009	24,000
13	BRIM Premium . . . . .	913	<u>68,263</u>
14	Total . . . . .		\$ 11,769,098

15 Any unexpended balances remaining in the appropria-  
 16 tions for Technology-Related Assistance Revolving Loan  
 17 Fund for Individuals with Disabilities (fund 0310, activity  
 18 766) is hereby reappropriated for expenditure during the  
 19 fiscal year 2005 and may be transferred to a special  
 20 account for the purpose of disbursement or loan. Any  
 21 unexpended balances remaining in the appropriations for  
 22 Capital Improvements -Surplus (fund 0310, activity 661),  
 23 Unclassified - Surplus (fund 0310, activity 097) and Ron  
 24 Yost Personal Assistant Fund (fund 0310, activity 406) at  
 25 the close of the fiscal year 2004 is hereby reappropriated  
 26 for expenditure during the fiscal year 2005.

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*45-Department of Health and Human Resources-  
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2005 Org 0501

1	Unclassified-Total . . . . .	096	\$ 137,929
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*46-Division of Health-  
 Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2005 Org 0506

1	Personal Services .....	001	\$	7,262,502
2	Annual Increment .....	004		164,981
3	Employee Benefits .....	010		3,132,691
4	Level 1, 2 and 3 Trauma Centers .	013		675,594
5	Unclassified .....	099		2,677,222
6	Safe Drinking Water Program ...	187		506,098
7	Pet Scan Support .....	209		100,000
8	Women, Infants and Children ....	210		45,000
9	Basic Public Health			
10	Services Support .....	212		4,324,216
11	Early Intervention .....	223		3,307,043
12	Cancer Registry .....	225		272,671
13	State EMS Technical Assistance .	379		1,404,020
14	EMS Program for Children .....	381		49,864
15	Statewide EMS Program Support	383		554,181
16	Primary Care Centers -			
17	Mortgage Finance .....	413		621,718
18	Black Lung Clinics .....	467		198,646
19	Women's Right to Know .....	546		200,000
20	Pediatric Dental Services .....	550		150,000
21	Vaccine for Children .....	551		432,457
22	Adult Influenza Vaccine .....	552		65,000
23	Tuberculosis Control .....	553		254,042
24	Maternal and Child Health Clinics,			
25	Clinicians and Medical Contracts			
26	and Fees (R) .....	575		4,614,362
27	Epidemiology Support .....	626		379,593
28	Primary Care Support .....	628		7,254,178
29	State Aid to Local			
30	Health Departments .....	702		9,257,684
31	Health Right Free Clinics .....	727		2,747,836
32	Osteoporosis Prevention Fund ...	729		156,696
33	Center for End of Life .....	545		195,000
34	Tobacco Education Program .....	906		-0-
35	CARDIAC Project .....	375		250,000
36	Emergency Response Entities-			
37	Special Projects .....	822		400,000
38	Chief Medical Examiner .....	045		3,384,423
39	BRIM Premium .....	913		<u>224,757</u>
40	Total .....		\$	55,262,475

41 Any unexpended balances remaining in the appropri-  
42 ations for Unclassified (fund 0407, fiscal year 1997, activity  
43 099) and Maternal and Child Health Clinics, Clinicians  
44 and Medical Contracts and Fees (fund 0407, activity 575)  
45 at the close of the fiscal year 2004 are hereby reap-  
46 propriated for expenditure during the fiscal year 2005,  
47 with the exception of fund 0407, fiscal year 2004, activity  
48 575 (\$69,213) which shall expire on June 30, 2004.

49 From the Maternal and Child Health Clinics, Clinicians,  
50 and Medical Contracts and Fees line item, \$400,000 shall  
51 be transferred to the Breast and Cervical Cancer Diagnos-  
52 tic Treatment Fund.

53 Included in the above appropriation for Primary Care  
54 Centers-Mortgage Finance is \$50,000 for the mortgage  
55 payment for the Lincoln Primary Care Center, Inc.;  
56 \$53,140 for the mortgage payment for the Monroe Health  
57 Center; \$42,564 for the mortgage payment for Roane  
58 County Family Health Care, Inc.; \$25,000 for the mortgage  
59 payment for the Tug River Health Association, Inc.;  
60 \$48,000 for the mortgage payment for the Primary Care  
61 Systems (Clay); \$10,800 for the mortgage for the Belington  
62 Clinic; \$30,000 for the mortgage payment for the Tri-  
63 County Health Clinic; \$15,000 for the mortgage payments  
64 for Valley Health Care (Randolph); \$58,560 for the mort-  
65 gage payment for Valley Health Systems, Inc. (Woman's  
66 Place and Harts Health Clinic); \$46,958 for the mortgage  
67 payment for Ritchie County Primary Care Association,  
68 Inc.; \$24,000 for the mortgage payment for Camden-on-  
69 Gauley Primary Care Center; \$8,000 for the mortgage  
70 payment for Northern Greenbrier Health Clinic; \$12,696  
71 for the mortgage payment for the Women's Care, Inc.  
72 (Putnam); \$25,000 for the mortgage payment for the  
73 Preston-Taylor Community Health Centers, Inc.; \$20,000  
74 for the mortgage payments for the North Fork Clinic  
75 (Pendleton); \$40,000 for the mortgage payments for the  
76 Pendleton Community Care; \$27,000 for the mortgage for  
77 South Branch Health Facility (Upper Tract); \$38,400 for  
78 the mortgage payment for Clay-Battelle Community

79 Health Center; \$33,600 for the mortgage payment for  
 80 Mountaineer Health Clinic in Paw Paw and \$13,000 be  
 81 expended for the mortgage payment for the St. George  
 82 Medical Clinic.

*47-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 0525 FY 2005 Org 0506

1	Personal Services .....	001	\$	616,833
2	Annual Increment .....	004		11,991
3	Employee Benefits .....	010		252,697
4	Special Olympics .....	208		26,074
5	Behavioral Health Program-			
6	Unclassified (R) .....	219		41,179,562
7	Family Support Act .....	221		1,092,753
8	Institutional Facilities			
9	Operations .....	335		46,712,385
10	Colin Anderson Community			
11	Placement (R) .....	803		3,264,325
12	Renaissance Program .....	804		194,000
13	BRIM Premium .....	913		<u>1,152,725</u>
14	Total .....		\$	94,503,345

15 Any unexpended balances remaining in the appropria-  
 16 tions for Behavioral Health Program-Unclassified (fund  
 17 0525, activity 219) and Colin Anderson Community  
 18 Placement (fund 0525, activity 803) at the close of the  
 19 fiscal year 2004 are hereby reappropriated for expenditure  
 20 during the fiscal year 2005, with the exception of fund  
 21 0525, fiscal year 2004, activity 219 (\$2,064,354); and fund  
 22 0525, fiscal year 2004, activity 803 (\$2,100,325) which  
 23 shall expire on June 30, 2004.

24 The secretary of the department of health and human  
 25 resources, prior to the beginning of the fiscal year, shall  
 26 file with the legislative auditor and the department of  
 27 revenue an expenditure schedule for each formerly sepa-  
 28 rate spending unit which has been consolidated into the  
 29 above account and which receives a portion of the above

30 appropriation for Institutional Facilities Operations. The  
31 secretary shall also, within fifteen days after the close of  
32 the six-month period of said fiscal year, file with the  
33 legislative auditor and the department of revenue an  
34 itemized report of expenditures made during the preceding  
35 six-month period.

36 From the Colin Anderson Community Placement (fund  
37 0525, activity 803) funds may be both expended for the  
38 community placement costs of the Colin Anderson clients  
39 and transferred to the Medical Services Program Fund to  
40 pay the Medicaid state share of the Medicaid cost of Colin  
41 Anderson clients in the community.

42 From the above appropriation to Institutional Facilities  
43 Operations, together with available funds from the  
44 division of health-hospital services revenue account (fund  
45 5156, activity 335) and tobacco settlement expenditure  
46 fund (fund 5124, activity 335), on July 1, 2004, the sum of  
47 one hundred sixty thousand dollars shall be transferred to  
48 the department of agriculture-land division as advance  
49 payment for the purchase of food products; actual pay-  
50 ments for such purchases shall not be required until such  
51 credits have been completely expended.

52 Additional funds have been appropriated in fund 5124,  
53 fiscal year 2005, organization 0506 and fund 5156, fiscal  
54 year 2005, organization 0506, for the operation of the  
55 institutional facilities. The secretary of the department of  
56 health and human resources is authorized to utilize up to  
57 ten percent of the funds from the Institutional Facilities  
58 Operations line item to facilitate cost effective and cost  
59 saving services at the community level.

*48-Division of Health-  
West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 2005 Org 0506

1 West Virginia Drinking Water Treatment

2 Revolving Fund-Transfer . . . . . 689 \$ 700,000

3 The above appropriation for Drinking Water Treatment  
4 Revolving Fund-Transfer shall be transferred to the West  
5 Virginia Drinking Water Treatment Revolving Fund or  
6 appropriate bank depository and the Drinking Water  
7 Treatment Revolving-Administrative Expense Fund as  
8 provided by chapter sixteen of the code.

*49-Human Rights Commission*

(WV Code Chapter 5)

Fund 0416 FY 2005 Org 0510

1	Personal Services . . . . .	001	\$	667,467
2	Annual Increment . . . . .	004		16,000
3	Employee Benefits . . . . .	010		222,794
4	Unclassified . . . . .	099		254,684
5	BRIM Premium . . . . .	913		<u>20,668</u>
6	Total . . . . .		\$	1,181,613

*50-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2005 Org 0511

1	Personal Services . . . . .	001	\$	21,465,192
2	Annual Increment . . . . .	004		648,734
3	Employee Benefits . . . . .	010		8,449,645
4	Unclassified . . . . .	099		16,731,576
5	Child Care Development . . . . .	144		1,447,463
6	Medical Services Contracts			
7	and Office of Managed Care . . .	183		2,329,730
8	Medical Services . . . . .	189		239,070,628
9	Women's Commission . . . . .	191		133,381
10	Social Services . . . . .	195		60,105,425
11	Family Preservation Program . . .	196		1,565,000
12	Domestic Violence Legal			
13	Services Fund . . . . .	384		150,000
14	James "Tiger" Morton Catastrophic			
15	Illness Fund . . . . .	455		940,000

16	Child Protective Services		
17	Case Workers . . . . .	468	11,917,452
18	Medical Services Trust		
19	Fund Transfer . . . . .	512	5,000,000
20	OSCAR and RAPIDS . . . . .	515	3,471,648
21	WV Teaching Hospitals		
22	Tertiary/Safety Net . . . . .	547	1,750,000
23	Child Welfare System . . . . .	603	2,581,948
24	Commission for the Deaf and		
25	Hard of Hearing . . . . .	704	263,473
26	Child Support Enforcement . . . . .	705	2,758,468
27	Medicaid Auditing . . . . .	706	590,841
28	Temporary Assistance for Needy		
29	Families/Maintenance of Effort	707	22,969,096
30	Child Care-Maintenance of		
31	Effort and Match . . . . .	708	4,409,643
32	Grants for Licensed Domestic		
33	Violence Programs and Statewide		
34	Prevention . . . . .	750	1,000,000
35	Indigent Burials (R) . . . . .	851	1,200,000
36	<del>*Sole Community/Medicare Dependent</del>		
37	<del>Hospitals under 100 beds . . . . .</del>	<del>046</del>	<del>750,000</del>
38	BRIM Premium . . . . .	913	<u>882,229</u>
39	**Total . . . . .		<u>412,581,572</u>
			\$ 411,831,572

40 Any unexpended balances remaining in the appropri-  
 41 ations for Indigent Burials (fund 0403, activity 851) and  
 42 Medical Services (fund 0403, activity 189) at the close of  
 43 the fiscal year 2004 are hereby reappropriated for expen-  
 44 diture during the fiscal year 2005, with the exception of  
 45 fund 0403, fiscal year 2004, activity 189 (\$122,818); and  
 46 fund 0403, fiscal year 2004, activity 851 (\$325,000) which  
 47 shall expire on June 30, 2004.

\* CLERK'S NOTE: The Governor struck language on lines 36 and 37.

\*\* CLERK'S NOTE: The Governor also reduced the total on line 39 from "\$412,581,572" to "411,831,572" to reflect the deletion.



48 The above appropriation for James "Tiger" Morton  
 49 Catastrophic Illness Fund (activity 455) shall be trans-  
 50 ferred to the James "Tiger" Morton Catastrophic Illness  
 51 Fund (fund 5454) as provided by chapter sixteen, article  
 52 five-q, of the code.

53 The above appropriation for Domestic Violence Legal  
 54 Services Fund (activity 384) shall be transferred to the  
 55 Domestic Violence Legal Services Fund (fund 5455).

56 Notwithstanding the provisions of Title I, section three  
 57 of this bill, the secretary of the department of health and  
 58 human resources shall have the authority to transfer funds  
 59 within the above account: *Provided*, That no more than  
 60 five percent of the funds appropriated to one line item may  
 61 be transferred to other line items: *Provided, however*, That  
 62 no funds from other line items shall be transferred to the  
 63 personal services line item.

64 The secretary shall have authority to expend funds for  
 65 the educational costs of those children residing in out-of-  
 66 state placements, excluding the costs of special education  
 67 programs.

68 ~~\*The above appropriation for Sole Community/Medicare~~  
 69 ~~Dependent Hospitals under 100 beds shall be used as~~  
 70 ~~additional state match for cost based reimbursement.~~

**DEPARTMENT OF MILITARY AFFAIRS  
 AND PUBLIC SAFETY**

*51-Department of Military Affairs and Public Safety-  
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2005 Org 0601

1 Unclassified (R) ..... 099 \$ 529,199

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\* **CLERK'S NOTE:** The Governor struck language on lines 68, 69 and 70.

2	BRIM Premium .....	913	<u>11,194</u>
3	Total .....	\$	540,393

4 Any unexpended balance remaining in the appropriation  
 5 for Unclassified (fund 0430, activity 099) at the close of the  
 6 fiscal year 2004 is hereby reappropriated for expenditure  
 7 during the fiscal year 2005.

*52-Adjutant General-*

*State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2005 Org 0603

1	Personal Services .....	001	\$	387,196
2	Annual Increment .....	004		9,900
3	Employee Benefits .....	010		127,063
4	Unclassified (R) .....	099		13,186,283
5	Mountaineer ChalleNGe Academy	709		1,200,000
6	BRIM Premium .....	913	<u>45,086</u>	
7	Total .....	\$	14,955,528	

8 Any unexpended balance remaining in the appropriation  
 9 for Unclassified (fund 0433, activity 099) at the close of the  
 10 fiscal year 2004 is hereby reappropriated for expenditure  
 11 during the fiscal year 2005.

12 From the above appropriation an amount approved by  
 13 the adjutant general and the secretary of military affairs  
 14 and public safety may be transferred to the State Armory  
 15 Board for operation and maintenance of National Guard  
 16 Armories.

*53-West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 2005 Org 0605

1	Personal Services .....	001	\$	122,751
2	Annual Increment .....	004		1,744

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3	Employee Benefits . . . . .	010      127,119
4	Unclassified . . . . .	099      119,325
5	Salaries of Members of West	
6	Virginia Parole Board . . . . .	227      225,000
7	BRIM Premium . . . . .	913 <u>17,511</u>
8	Total . . . . .	\$      613,450

*54-Office of Emergency Services*

(WV Code Chapter 15)

Fund 0443 FY 2005 Org 0606

1	Personal Services . . . . .	001	\$      222,636
2	Annual Increment . . . . .	004	5,500
3	Employee Benefits . . . . .	010	84,834
4	Unclassified . . . . .	099	106,841
5	Federal Emergency Management		
6	Agency Match (R) . . . . .	188	210,937
7	Radiological Emergency		
8	Preparedness . . . . .	554	25,600
9	Early Warning Flood System . . . . .	877	324,264
10	BRIM Premium . . . . .	913	<u>12,598</u>
11	Total . . . . .		\$      993,210

12 Any unexpended balances remaining in the appropria-  
13 tions for Federal Emergency Management Agency  
14 Match—Surplus (fund 0443, activity 121), Federal Emer-  
15 gency Management Agency Match (fund 0443, activity  
16 188), Flood Reparations (fund 0443, activity 400) and  
17 Homeland Security Grant Match—Surplus (fund 0443,  
18 activity 957) at the close of the fiscal year 2004 are hereby  
19 reappropriated for expenditure during the fiscal year 2005.

*55-Division of Corrections-  
Central Office*

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

Fund 0446 FY 2005 Org 0608

1	Personal Services . . . . .	001	\$      357,881
2	Annual Increment . . . . .	004	5,775

3	Employee Benefits .....	010	117,832
4	Unclassified .....	099	<u>97,594</u>
5	Total .....		\$ 579,082

6 Any unexpended balance remaining in the appropriation  
 7 for Management Information System (fund 0446, activity  
 8 398) at the close of the fiscal year 2004 is hereby  
 9 reappropriated for expenditure during the fiscal year 2005.

*56-Division of Corrections-  
 Correctional Units*

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

Fund 0450 FY 2005 Org 0608

1	Unclassified .....	099	\$ 896,204
2	Employee Benefits .....	010	324,385
3	Charleston Work Release .....	456	834,089
4	Beckley Correctional Center .....	490	919,012
5	Huntington Work Release .....	495	712,740
6	Anthony Center .....	504	4,219,340
7	Huttonsville Correctional Center .	514	13,730,212
8	Northern Correctional Facility ...	534	5,968,468
9	Inmate Medical Expenses .....	535	12,371,767
10	Pruntytown Correctional Center .	543	5,657,088
11	Payments to Federal, County and/or		
12	Regional Jails .....	555	8,303,000
13	Corrections Academy .....	569	995,100
14	Martinsburg Correctional Center .	663	3,060,000
15	Parole Services .....	686	1,982,452
16	Special Services .....	687	2,091,002
17	St. Mary's Correctional Facility ..	881	10,720,652
18	Denmar Correctional Facility ....	882	3,584,430
19	Ohio County		
20	Correctional Facility .....	883	1,179,235
21	Mt. Olive Correctional Facility ...	888	16,673,064
22	Lakin Correctional Facility .....	896	7,245,722
23	BRIM Premium .....	913	<u>853,296</u>
24	Total .....		\$ 102,321,258

25 The commissioner of corrections shall within fifteen  
 26 days after the close of each six-month period of said fiscal  
 27 year, file with the legislative auditor and the department  
 28 of revenue an itemized report of expenditures made during  
 29 the preceding six-month period. Such report shall include  
 30 the total of expenditures made for personal services,  
 31 annual increment, current expenses (inmate medical  
 32 expenses and other), repairs and alterations and equip-  
 33 ment. The commissioner of corrections shall also have the  
 34 authority to transfer between line items appropriated to  
 35 the individual correctional units above and may transfer  
 36 funds from the individuals units to Payments to Federal,  
 37 County and/or Regional Jails (fund 0450, activity 555) or  
 38 the Inmate Medical Expenses (fund 0450, activity 535).

39 From the above appropriation to Unclassified, on July 1,  
 40 2004, the sum of three hundred thousand dollars shall be  
 41 transferred to the department of agriculture-land division  
 42 as advance payment for the purchase of food products;  
 43 actual payments for such purchases shall not be required  
 44 until such credits have been completely expended.

*57-West Virginia State Police*

(WV Code Chapter 15)

Fund 0453 FY 2005 Org 0612

1	Personal Services .....	001	\$ 27,590,156
2	Annual Increment .....	004	198,050
3	Employee Benefits .....	010	6,727,064
4	Unclassified .....	099	6,091,191
5	Handgun Replacement .....	289	-0-
6	Vehicle Purchase .....	451	1,000,000
7	Barracks Maintenance		
8	and Construction (R) .....	494	98,068
9	Trooper Class (R) .....	521	3,670,885
10	Barracks Lease Payments .....	556	440,088
11	Communications and		
12	Other Equipment (R) .....	558	613,285
13	Trooper Retirement Fund .....	605	27,780,136

14	Handgun Administration		
15	Expense . . . . .	747	70,544
16	Automated Fingerprint		
17	Identification System . . . . .	898	496,122
18	BRIM Premium . . . . .	913	<u>6,731,157</u>
19	Total . . . . .		\$ 81,506,746

20 Any unexpended balances remaining in the appropriati-  
 21 ons for Barracks Maintenance and Construction (fund  
 22 0453, activity 494), Trooper Class (fund 0453, activity 521)  
 23 and Communications and Other Equipment (fund 0453,  
 24 activity 558) at the close of the fiscal year 2004 are hereby  
 25 reappropriated for expenditure during the fiscal year 2005.

26 From the reappropriated balance of the Barracks  
 27 Maintenance and Construction line item above, at least  
 28 \$500,000 shall be utilized to repair and renovate the  
 29 Martinsburg Barracks.

*58-Division of Veterans' Affairs*

(WV Code Chapter 9A)

Fund 0456 FY 2005 Org 0613

1	Personal Services . . . . .	001	\$	872,723
2	Annual Increment . . . . .	004		27,330
3	Employee Benefits . . . . .	010		387,973
4	Unclassified . . . . .	099		50,000
5	Veterans' Field Offices . . . . .	228		180,000
6	Veterans' Nursing Home . . . . .	286		750,000
7	Veterans' Toll Free			
8	Assistance Line . . . . .	328		5,000
9	Veterans' Reeducation			
10	Assistance (R) . . . . .	329		211,604
11	Veterans' Grant Program (R) . . . .	342		150,000
12	Memorial Day Patriotic Exercise .	697		20,000
13	BRIM Premium . . . . .	913		<u>27,978</u>
14	Total . . . . .		\$	2,682,608

15 Any unexpended balances remaining in the appropriati-  
 16 ons for Veterans' Reeducation Assistance (fund 0456,

17 activity 329), Veterans' Grant Program (fund 0456, activity  
 18 342), Women's Veterans' Monument (fund 0456, activity  
 19 385) and Veterans' Monuments (fund 0456, activity 817) at  
 20 the close of the fiscal year 2004 are hereby reappropriated  
 21 for expenditure during the fiscal year 2005.

22 The above appropriation for Veterans' Nursing Home  
 23 (fund 0456, activity 286) may be transferred to the Veter-  
 24 ans' Nursing Home Support Fund (fund 6703, org 0613) at  
 25 the discretion of the director of the Division of Veterans'  
 26 Affairs.

*59-Division of Veterans' Affairs-  
 Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 2005 Org 0618

1	Personal Services .....	001	\$	668,646
2	Annual Increment .....	004		15,100
3	Employee Benefits .....	010		312,663
4	Unclassified .....	099		<u>37,316</u>
5	Total .....		\$	1,033,725

*60-Fire Commission*

(WV Code Chapter 29)

Fund 0436 FY 2005 Org 0619

1	Safe Schools Hotline - Total .....	093	\$	200,000
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*61-Division of Criminal Justice Services*

(WV Code Chapter 15)

Fund 0546 FY 2005 Org 0620

1	Personal Services .....	001	\$	236,236
2	Annual Increment .....	004		3,645
3	Employee Benefits .....	010		78,755
4	Unclassified .....	099		129,583
5	Statistical Analysis Program .....	597		48,265
6	Sentencing Commission .....	976		-0-

7	BRIM Premium .....	913	<u>1,462</u>
8	Total .....		\$ 497,946

*62-Division of Juvenile Services*

(WV Code Chapter 49)

Fund 0570 FY 2005 Org 0621

1	Robert L. Shell Juvenile Center ..	267	\$ 1,573,072
2	Donald R. Kuhn		
3	Diagnostic Center .....	283	2,078,265
4	Central Office .....	701	1,825,015
5	BRIM Premium .....	913	31,436
6	WV Industrial Home for Youth ...	979	10,689,850
7	Davis Center .....	980	2,117,417
8	Eastern Regional Juvenile Center	981	1,257,152
9	Northern Regional		
10	Juvenile Center .....	982	912,807
11	North Central Regional		
12	Juvenile Center .....	983	1,602,290
13	Southern Regional		
14	Juvenile Center .....	984	1,704,494
15	Tiger Morton Center .....	985	1,814,195
16	Donald R. Kuhn Juvenile Center .	986	1,458,122
17	J.M. "Chick" Buckbee		
18	Juvenile Center .....	987	1,834,552
19	Salem Canine .....	988	87,651
20	Davis Canine .....	989	83,611
21	The Academy .....	990	128,857
22	Mt. Hope Juvenile Center .....	991	<u>1,742,028</u>
23	Total .....		\$ 30,940,814

24 Any unexpended balance remaining in the appropriation  
 25 for Unclassified (fund 0570, activity 099) at the close of the  
 26 fiscal year 2004 is hereby reappropriated for expenditure  
 27 during the fiscal year 2005.

28 From the above appropriation to Unclassified, on July 1,  
 29 2004, the sum of fifty thousand dollars shall be transferred  
 30 to the department of agriculture-land division as advance  
 31 payment for the purchase of food products; actual pay-



32 ments for such purchases shall not be required until such  
33 credits have been completely expended.

34 The director of juvenile services shall also have the  
35 authority to transfer between line items appropriated to  
36 the individual juvenile centers above.

*63-Division of Protective Services*

(WV Code Chapter 15)

Fund 0585 FY 2005 Org 0622

1	Personal Services .....	001	\$	864,051
2	Annual Increment .....	004		9,350
3	Employee Benefits .....	010		343,713
4	Unclassified (R) .....	099		514,518
5	BRIM Premium .....	913		<u>6,816</u>
6	Total .....		\$	1,738,448

7 Any unexpended balances remaining in the appropria-  
8 tions for Equipment (fund 0585, activity 070) and Unclas-  
9 sified (fund 0585, activity 099) at the close of the fiscal  
10 year 2004 are hereby reappropriated for expenditure  
11 during the fiscal year 2005.

**DEPARTMENT OF REVENUE**

*64-Office of the Secretary*

(WV Code Chapter 11)

Fund 0465 FY 2005 Org 0701

1	Unclassified - Total .....	096	\$	622,000
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*65-Tax Division*

(WV Code Chapter 11)

Fund 0470 FY 2005 Org 0702

1	Personal Services (R) .....	001	\$	11,002,709
2	Annual Increment .....	004		259,060
3	Employee Benefits (R) .....	010		4,194,362

114	APPROPRIATIONS	[Ch. 13
4	Tax Technology Upgrade . . . . .	094      1,815,000
5	Unclassified (R) . . . . .	099      6,417,510
6	GIS Development Project . . . . .	562      150,000
7	Remittance Processor . . . . .	570      381,015
8	Multi State Tax Commission . . . . .	653      77,958
9	BRIM Premium . . . . .	913 <u>11,711</u>
10	Total . . . . .	\$ 24,309,325

11 Any unexpended balances remaining in the appropria-  
12 tions for Personal Services (fund 0470, activity 001),  
13 Employee Benefits (fund 0470, activity 010), Unclassified-  
14 Surplus (fund 0470, activity 097), Unclassified (fund 0470,  
15 activity 099), and Tax Technology Upgrade-Surplus (fund  
16 0470, activity 450) at the close of the fiscal year 2004 are  
17 hereby reappropriated for expenditure during the fiscal  
18 year 2005.

*66-State Budget Office*

(WV Code Chapter 11B)

Fund 0595 FY 2005 Org 0703

1	Unclassified - Total . . . . .	096      \$      1,050,000
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*67-West Virginia Office of Tax Appeals*

(WV Code Chapter 11)

Fund 0593 FY 2005 Org 0709

1	Unclassified-Total (R) . . . . .	096      \$      644,413
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2 Any unexpended balance remaining in the appropriation  
3 for Unclassified—Total (fund 0593, activity 096) at the  
4 close of the fiscal year 2004 is hereby reappropriated for  
5 expenditure during the fiscal year 2005, with the exception  
6 of fund 0593, fiscal year 2004, activity 096 (\$18,636) which  
7 shall expire on June 30, 2004.

*68-Division of Professional and Occupational Licenses-  
State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2005 Org 0933

1	Unclassified-Total .....	096	\$	10,000
2	Unclassified .....	099		-0-
3	BRIM Premium .....	913		-0-
4	Total .....		\$	-0-

**DEPARTMENT OF TRANSPORTATION**

*69-State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2005 Org 0804

1	Unclassified .....	099	\$	3,096,347
2	BRIM Premium .....	913		270,874
3	Total .....		\$	3,367,221

*70-Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 2005 Org 0805

1	Unclassified (R) .....	099	\$	1,258,342
2	Grant Match (R) .....	388		1,000,000
3	Total .....		\$	2,258,342

4 Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), Grant Match (fund 0510, activity 388) and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2004 are hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0510, fiscal year 2004, activity 099 (\$37,531); and fund 0510, fiscal year 2004, activity 749 (\$29,000) which shall expire on June 30, 2004.

*71-Public Port Authority*

(WV Code Chapter 17)

Fund 0581 FY 2005 Org 0806

1	Unclassified .....	099	\$	460,537
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2	BRIM Premium .....	913	<u>649</u>
3	Total .....	\$	461,186

4 Any unexpended balance remaining in the appropriation  
 5 for Unclassified-Total (fund 0581, activity 096) at the close  
 6 of the fiscal year 2004 is hereby reappropriated for  
 7 expenditure during the fiscal year 2005, with the exception  
 8 of fund 0581, fiscal year 2004, activity 096 (\$21,040) which  
 9 shall expire on June 30, 2004.

*72-Aeronautics Commission*

(WV Code Chapter 29)

Fund 0582 FY 2005 Org 0807

1	Unclassified (R) .....	099	\$ 1,169,436
2	Civil Air Patrol .....	234	<u>151,384</u>
3	Total .....	\$	1,320,820

4 Any unexpended balance remaining in the appropriation  
 5 for Unclassified (fund 0582, activity 099) at the close of the  
 6 fiscal year 2004 is hereby reappropriated for expenditure  
 7 during the fiscal year 2005, with the exception of fund  
 8 0582, fiscal year 2004, activity 099 (\$35,606) which shall  
 9 expire on June 30, 2004.

**BUREAU OF COMMERCE**

*73-Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2005 Org 0305

1	Personal Services .....	001	\$ 1,631,940
2	Annual Increment .....	004	43,000
3	Employee Benefits .....	010	736,845
4	Aerial Tanker .....	047	200,000
5	BRIM Premium .....	913	<u>208,855</u>
6	Total .....	\$	2,820,640

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

74-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2005 Org 0306

1	Personal Services . . . . .	001	\$	1,243,962
2	Annual Increment . . . . .	004		35,564
3	Employee Benefits . . . . .	010		415,126
4	Unclassified . . . . .	099		201,317
5	Mineral Mapping System (R) . . . .	207		1,556,636
6	BRIM Premium . . . . .	913		<u>34,291</u>
7	Total . . . . .		\$	3,486,896

8 Any unexpended balances remaining in the appropria-  
9 tions for Mineral Mapping System (fund 0253, activity  
10 207) and Geographic Information System (fund 0253,  
11 activity 214) at the close of the fiscal year 2004 are hereby  
12 reappropriated for expenditure during the fiscal year 2005,  
13 with the exception of fund 0253, fiscal year 2004, activity  
14 214 (\$8,527); and fund 0253, fiscal year 2004, activity 207  
15 (\$65,450) which shall expire on June 30, 2004.

16 The above Unclassified appropriation includes funding  
17 to secure federal and other contracts and may be trans-  
18 ferred to a special revolving fund (fund 3105, activity 099)  
19 for the purpose of providing advance funding for such  
20 contracts.

75-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2005 Org 0307

1	Personal Services . . . . .	001	\$	2,354,456
2	Annual Increment . . . . .	004		34,180
3	Employee Benefits . . . . .	010		730,222
4	Energy Village . . . . .	090		-0-
5	Unclassified . . . . .	099		2,493,845
6	Partnership Grants (R) . . . . .	131		2,640,244
7	National Youth Science Camp . . .	132		149,039

8	Local Economic Development		
9	Partnerships (R) . . . . .	133	1,650,000
10	ARC Assessment . . . . .	136	167,308
11	Institute for Software Research . .	217	76,213
12	West Virginia Steel Advisory . . . .	230	-0-
13	Mid-Atlantic Aerospace		
14	Complex (R) . . . . .	231	176,783
15	Guaranteed Work		
16	Force Grant (R) . . . . .	242	2,378,267
17	Mingo County Surface		
18	Mine Project . . . . .	296	125,000
19	Small Business Financial		
20	Assistance (R) . . . . .	360	356,695
21	Robert C. Byrd Institute for Advanced/ 22 Flexible Manufacturing-Technology 23 Outreach and Programs for 24 Environmental and		
25	Advanced Technologies . . . . .	367	549,990
26	Advantage Valley . . . . .	389	78,570
27	Chemical Alliance Zone . . . . .	390	40,500
28	WV High Tech Consortium . . . . .	391	159,570
29	Charleston Farmers Market (R) . .	476	90,000
30	Industrial Park Assistance (R) . . .	480	445,000
31	Leverage Technology and Small 32 Business Development		
33	Program (R) . . . . .	525	639,614
34	International Offices (R) . . . . .	593	690,644
35	WV Manufacturing		
36	Extension Partnership . . . . .	731	152,426
37	Small Business Work Force (R) . .	735	417,341
38	Polymer Alliance . . . . .	754	76,213
39	National Institute		
40	of Chemical Studies . . . . .	805	74,519
41	Local Economic		
42	Development Assistance (R) . . .	819	4,778,516
43	Community College		
44	Workforce Development (R) . . .	878	642,943
45	BRIM Premium . . . . .	913	24,130
46	Hardwood Alliance Zone . . . . .	992	45,000

47	ARC-WV Home of Your		
48	Own Alliance . . . . .	048	<u>40,000</u>
49	Total . . . . .		\$ 22,277,228

50 Any unexpended balances remaining in the appropria-  
 51 tions for Partnership Grants (fund 0256, activity 131),  
 52 Local Economic Development Partnerships (fund 0256,  
 53 activity 133), Mid-Atlantic Aerospace Complex (fund 0256,  
 54 activity 231), Guaranteed Work Force Grant (fund 0256,  
 55 activity 242), Local Economic Development Assis-  
 56 tance—Surplus (fund 0256, activity 266), Small Business  
 57 Financial Assistance (fund 0256, activity 360), Charleston  
 58 Farmers Market (fund 0256, activity 476), Industrial Park  
 59 Assistance (fund 0256, activity 480), Leverage Technology  
 60 and Small Business Development Program (fund 0256,  
 61 activity 525), International Offices (fund 0256, activity  
 62 593), Small Business Work Force (fund 0256, activity 735),  
 63 Local Economic Development Assistance (fund 0256,  
 64 activity 819), Community College Workforce Development  
 65 (fund 0256, activity 878), Economic Development Assis-  
 66 tance (fund 0256, activity 900) and Technology Initiatives  
 67 (fund 0256, activity 901) at the close of the fiscal year 2004  
 68 are hereby reappropriated for expenditure during the  
 69 fiscal year 2005, with the exception of fund 0256, fiscal  
 70 year 2004, activity 131 (\$152,922); fund 0256, fiscal year  
 71 2004, activity 133 (\$109,132); fund 0256, fiscal year 2004,  
 72 activity 231 (\$5,696); fund 0256, fiscal year 2004, activity  
 73 242 (\$78,375); fund 0256, fiscal year 2004, activity 476  
 74 (\$2,610); fund 0256, fiscal year 2004, activity 480 (\$64,134);  
 75 fund 0256, fiscal year 2004, activity 525 (\$20,835); fund  
 76 0256, fiscal year 2004, activity 593 (\$22,504); fund 0256,  
 77 fiscal year 2004, activity 735 (\$15,344); fund 0256, fiscal  
 78 year 2004, activity 819 (\$171,208); and fund 0256, fiscal  
 79 year 2004, activity 878 (\$20,950) which shall expire on June  
 80 30, 2004.

81 The above appropriation to Local Economic Develop-  
 82 ment Partnerships shall be used by the West Virginia  
 83 development office for the award of funding assistance to  
 84 county and regional economic development corporations or

85 authorities participating in the certified development  
 86 community program developed under the provisions of  
 87 section three, article two, chapter five-b of the code. The  
 88 West Virginia development office shall award the funding  
 89 assistance through a matching grant program, based upon  
 90 a formula whereby funding assistance may not exceed  
 91 thirty thousand dollars per county served by an economic  
 92 development corporation or authority.

*76-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 0260 FY 2005 Org 0308

1	Personal Services .....	001	\$	1,605,054
2	Annual Increment .....	004		25,072
3	Employee Benefits .....	010		666,904
4	Unclassified .....	099		565,789
5	BRIM Premium .....	913		<u>49,987</u>
6	Total .....		\$	2,912,806

*77-Division of Natural Resources*

(WV Code Chapter 20)

Fund 0265 FY 2005 Org 0310

1	Personal Services .....	001	\$	6,741,356
2	Annual Increment .....	004		220,037
3	Employee Benefits .....	010		3,280,120
4	Gypsy Moth Suppression Program –			
5	Wildlife Management Areas ...	014		45,500
6	Unclassified .....	099		19,089
7	Litter Control Conservation			
8	Officers .....	564		150,000
9	Upper Mud River Flood Control ..	654		150,000
10	Law Enforcement .....	806		759,589
11	BRIM Premium .....	913		<u>326,638</u>
12	Total .....		\$	11,692,329

13 Any revenue derived from mineral extraction at any  
 14 state park shall be deposited in a special revenue account



15 of the division of natural resources, first for bond debt  
16 payment purposes and with any remainder to be for park  
17 operation and improvement purposes.

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

(WV Code Chapter 22)

Fund 0277 FY 2005 Org 0314

1	Personal Services .....	001	\$	3,648,406
2	Annual Increment .....	004		70,750
3	Employee Benefits .....	010		1,391,000
4	Unclassified .....	099		676,068
5	WV Diesel Equipment			
6	Commission .....	712		38,034
7	BRIM Premium .....	913		<u>61,503</u>
8	Total .....		\$	5,885,761

*79-Board of Coal Mine Health and Safety*

(WV Code Chapter 22)

Fund 0280 FY 2005 Org 0319

1	Personal Services .....	001	\$	110,950
2	Annual Increment .....	004		600
3	Employee Benefits .....	010		28,736
4	Unclassified .....	099		<u>29,115</u>
5	Total .....		\$	169,401

*80-Coal Mine Safety and Technical Review Committee*

(WV Code Chapter 22)

Fund 0285 FY 2005 Org 0320

1	Unclassified-Total .....	096	\$	63,352
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**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*81-Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2005 Org 0311

## APPROPRIATIONS

[Ch. 13]

1	Personal Services .....	001	\$	82,085
2	Annual Increment .....	004		965
3	Employee Benefits .....	010		17,445
4	Unclassified .....	099		4,873
5	BRIM Premium .....	913		<u>-0-</u>
6	Total .....		\$	105,368

*82-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 0273 FY 2005 Org 0313

1	Personal Services .....	001	\$	3,716,672
2	Annual Increment .....	004		64,009
3	Employee Benefits .....	010		1,253,967
4	West Virginia's Contribution to the			
5	Interstate Commission on			
6	Potomac River Basin .....	091		38,493
7	West Virginia's Contribution to the			
8	Ohio River Valley Water			
9	Sanitation Commission .....	092		109,992
10	Unclassified .....	099		971,225
11	Dam Safety .....	607		213,997
12	Office of Water Resources			
13	Non-Enforcement Activity ....	855		1,155,645
14	BRIM Premium .....	913		31,620
15	Welch DEP Office			
16	Continuing Operation .....	993		<u>83,720</u>
17	Total .....		\$	7,639,340

*83-Air Quality Board*

(WV Code Chapter 16)

Fund 0550 FY 2005 Org 0325

1	Unclassified .....	099	\$	79,390
2	BRIM Premium .....	913		<u>3,124</u>
3	Total .....		\$	82,514

**BUREAU OF SENIOR SERVICES***84-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2005 Org 0508

1	Personal Services .....	001	\$	125,099
2	Annual Increment .....	004		2,350
3	Employee Benefits .....	010		61,168
4	Unclassified .....	099		344,277
5	Silver Haired Legislature .....	202		15,000
6	Area Agencies Administration ...	203		78,685
7	Alzheimers Respite Care .....	565		250,000
8	BRIM Premium .....	913		<u>6,389</u>
9	Total .....		\$	882,968

**HIGHER EDUCATION POLICY COMMISSION**

*85-Higher Education Policy Commission-  
Administration-  
Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2005 Org 0441

1	Unclassified .....	099	\$	2,000,000
2	WVNET .....	169		1,952,662
3	West Virginia Council for Community			
4	and Technical Education (R) ...	392		-0-
5	Vice Chancellor for Health Sciences			
6	-Rural Health Initiative Program			
7	and Site Support (R) .....	595		-0-
8	BRIM Premium .....	913		<u>66,509</u>
9	Total .....		\$	4,019,171

10 Any unexpended balances remaining in the appropri-  
 11 ations for Vice Chancellor for Health Sciences-Rural Health  
 12 Initiative Program and Site Support (fund 0589, activity  
 13 595), Vice Chancellor for Health Sciences-Rural Health  
 14 Residency Program (fund 0589, activity 601), West  
 15 Virginia Council for Community and Technical Education  
 16 (fund 0589, activity 392) and HEAPS Grant Program (fund  
 17 0589, activity 867) at the close of the fiscal year 2004 are  
 18 hereby reappropriated for expenditure during the fiscal

19 year 2005, with the exception of fund 0589, fiscal year  
 20 2004, activity 595, organization 0441 (\$27,976); fund 0343,  
 21 fiscal year 2004, activity 595, organization 0463 (\$21,906);  
 22 fund 0347, fiscal year 2004, activity 595, organization 0471  
 23 (\$75,000); fund 0589, fiscal year 2004, activity 601, organi-  
 24 zation 0441 (\$1,400); fund 0347, fiscal year 2004, activity  
 25 601, organization 0471 (\$86,122); and fund 0589, fiscal  
 26 year 2004, activity 392, organization 0441 (\$8,808) which  
 27 shall expire on June 30, 2004.

*86-Higher Education Policy Commission-  
 System-  
 Control Account*

(WV Code Chapter 18B)

Fund 0586 FY 2005 Org 0442

1	Marshall Medical School . . . . .	173	\$	12,841,156
2	WVU - School of Health Sciences	174		41,670,694
3	WVU School of Health Sciences -			
4	Charleston Division . . . . .	175		3,732,313
5	WVU School of Health Sciences			
6	Eastern Division . . . . .	056		1,600,000
7	Primary Health Education Medical			
8	School Program Support (R) . . .	177		2,165,141
9	New River Community and			
10	Technical College			
11	of Bluefield State College . . . . .	358		-0-
12	Bluefield State College . . . . .	408		3,205,566
13	Concord College . . . . .	410		8,294,215
14	Eastern West Virginia Community			
15	and Technical College . . . . .	412		-0-
16	Fairmont State College . . . . .	414		11,214,165
17	Fairmont State Community and			
18	Technical College . . . . .	421		-0-
19	Glenville State College . . . . .	428		5,493,196
20	Shepherd College . . . . .	432		8,522,724
21	West Liberty State College . . . . .	439		8,570,738
22	Shepherd Community and			
23	Technical College . . . . .	434		-0-

24	West Virginia State College . . . . .	441	9,513,158
25	West Virginia State Community and		
26	Technical College . . . . .	445	-0-
27	Southern West Virginia Community and		
28	Technical College . . . . .	446	-0-
29	West Virginia Northern Community and		
30	Technical College . . . . .	447	-0-
31	Marshall University . . . . .	448	39,426,465
32	Marshall University Medical School		
33	BRIM Subsidy . . . . .	449	728,167
34	West Virginia University . . . . .	459	83,734,963
35	West Virginia University School of		
36	Medicine BRIM Subsidy . . . . .	460	1,438,380
37	West Virginia University -		
38	Parkersburg . . . . .	471	-0-
39	West Virginia University Institute		
40	for Technology . . . . .	479	6,145,888
41	West Virginia University Institute		
42	for Technology Community and		
43	Technical College . . . . .	486	-0-
44	Marshall University Community and		
45	Technical College . . . . .	487	-0-
46	Blanchette Rockefeller		
47	Neurological Institute . . . . .	635	-0-
48	West Virginia University -		
49	Potomac State . . . . .	994	<u>4,018,430</u>
50	Total . . . . .		\$ 252,315,359

51 Any unexpended balances remaining in the appropri-  
52 ations for Primary Health Education Medical School  
53 Program Support (fund 0586, activity 177), Jackson's Mill  
54 (fund 0586, activity 461), Marshall University Forensic  
55 Lab (fund 0586, activity 572), Jackson's Mill-Surplus (fund  
56 0586, activity 842) and WVU College of Engineering and  
57 Mineral Resources-Diesel Training—Transfer (fund 0586,  
58 activity 852) at the close of fiscal year 2004 are hereby  
59 reappropriated for expenditure during the fiscal year 2005,  
60 with the exception of fund 0586, fiscal year 2004, activity  
61 177, organization 0442 (\$392); fund 0347, fiscal year 2004,  
62 activity 177, organization 0471 (\$50,000); and fund 0343,

63 fiscal year 2004, activity 177, organization 0463 (\$23,759)  
64 which shall expire on June 30, 2004.

65 Included in the appropriation for WVU—School of  
66 Health Sciences and Marshall Medical School are \$943,080  
67 and \$295,477, respectively, for Graduate Medical Educa-  
68 tion which may be transferred to the Department of  
69 Health and Human Resources' Medical Service Fund (fund  
70 5084) for the purpose of matching federal or other funds to  
71 be used in support of graduate medical education, subject  
72 to the Vice-Chancellor for Health Sciences and the Secre-  
73 tary of the Department of Health and Human Resources.  
74 If approval is denied, the funds may be utilized by the  
75 respective institutions for expenditure on graduate medical  
76 education.

77 Included in the above appropriation for WVU - School of  
78 Health Sciences is \$511,105 for the WVU Charleston  
79 Division Poison Control Hotline. This amount shall be  
80 enhanced by an allocation for the director's salary as well  
81 as in-kind assistance. These amounts shall be allocated  
82 equally among the four quarters of the fiscal year for  
83 disbursement to the WVU-Charleston Division Poison  
84 Control Hotline. Also included is an additional \$800,000  
85 for the Blanchette Rockefeller Project.

86 Included in the above appropriation for West Virginia  
87 University is \$34,500 for the Marshall and WVU Faculty  
88 and Course Development International Study Project,  
89 \$246,429 for the WVU Law School - Skills Program,  
90 \$147,857 for the WVU Coal and Energy Research Bureau,  
91 \$19,714 for the WVU College of Engineering and Mineral  
92 Resources - Diesel Training - Transfer, \$153,000 for the  
93 WVU-Sheep Study, \$80,000 for a veterinarian, and  
94 \$100,000 for the rifle team.

95 Included in the above appropriation for Marshall  
96 Medical School is \$417,351 for the Marshall University  
97 Forensic Lab and \$175,061 for the Marshall University  
98 Center for Rural Health.

99 Included in the above appropriation for Marshall  
100 University is \$181,280 for the Marshall University-South-  
101 ern WV CTC 2+2 Program and \$795,597 for the Marshall  
102 University Autism Training Center.

103 Included in the above appropriation for Concord College  
104 is \$100,000 for the Geographic Alliance.

105 Included in the above appropriation for Shepherd  
106 College is \$100,000 for the Gateway Program.

107 The institutions operating from special revenue funds  
108 and/or federal funds shall pay their proportionate share of  
109 the Board of Risk and Insurance Management total  
110 insurance premium cost for their respective institutions.

*87-West Virginia Council for  
Community and Technical College Council-  
Control Account*

(WV Code Chapter 18B)

Fund FY 2005 Org 0442

1	WV Council for CTC Education * <del>(R)</del>	392	\$	650,000
2	New River Community and Technical			
3	College of Bluefield State College	358		5,315,219
4	Eastern West Virginia Community			
5	and Technical College . . . . .	412		1,967,728
6	Fairmont State Community and			
7	Technical College . . . . .	421		7,394,285
8	Shepherd Community and			
9	Technical College . . . . .	434		2,307,838
10	West Virginia State Community and			
11	Technical College . . . . .	445		2,734,186
12	Southern West Virginia Community			
13	and Technical College . . . . .	446		7,658,467
14	West Virginia Northern Community			
15	and Technical College . . . . .	447		5,729,485

\* CLERK'S NOTE: The Governor struck the designation "(R)" in Item No. 87, line 1.

16	West Virginia University -		
17	Parkersburg . . . . .	471	8,035,367
18	West Virginia University Institute		
19	for Technology Community and		
20	Technical College . . . . .	486	3,200,538
21	Marshall University Community and		
22	Technical College . . . . .	487	<u>5,220,038</u>
23	Total . . . . .		\$ 50,213,151

24 ~~\*Any unexpended balances remaining in the appropria-~~  
 25 ~~tion for the West Virginia Council for Community and~~  
 26 ~~Technical Education (fund 0589, activity 392) at the close~~  
 27 ~~of the fiscal year 2004 are hereby reappropriated for~~  
 28 ~~expenditure during the fiscal year 2005, with the exception~~  
 29 ~~of fund 0355, fiscal year 2004, activity 488 (\$1,050) which~~  
 30 ~~shall expire June 30, 2004.~~

31 Included in the above appropriation for Southern West  
 32 Virginia Community and Technical College is \$373,774 for  
 33 the Marshall University—Southern WV Community and  
 34 Technical College 2+2 Program, \$98,912 for delivery of the  
 35 associate degree nursing program to Eastern WV Commu-  
 36 nity and Technical College, and \$25,000 for the Appleread  
 37 Program.

38 The institutions operating with special revenue funds  
 39 and/or federal funds shall pay their proportionate share of  
 40 the Board of Risk and Insurance Management total  
 41 insurance premium cost for their respective institutions.

*88-Higher Education Policy Commission-  
 Health Sciences-  
 Control Account*

(WV Code Chapter 18B)

Fund 0590 FY 2005 Org 0477

1 Any unexpended balances remaining in the appropria-  
 2 tions for Primary Health Education Medical School

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\* **CLERK'S NOTE:** The Governor struck language on line 24 through line 30.



3 Program Support (fund 0590, activity 177), Correctional  
 4 Telemedicine Project (fund 0590, activity 406), WVU  
 5 Charleston Division-Poison Control Hot Line (fund 0590,  
 6 activity 510), Capital Outlay and Equipment (fund 0590,  
 7 activity 542) and Rural Health Initiative Site Support  
 8 Program (fund 0590, activity 853) at the close of the fiscal  
 9 year 2004 are hereby reappropriated for expenditure  
 10 during the fiscal year 2005.

*89-Higher Education Policy Commission—  
 Legislative-  
 Funding Priorities  
 Control Account*

(WV Code Chapter 18B)

Fund 0591 FY 2005 Org 0441

1 Any unexpended balances remaining in the appropria-  
 2 tions for Higher Education—Special Projects (fund 0591,  
 3 activity 488), Independently Accredited Community and  
 4 Technical College Development (fund 0591, activity 491)  
 5 and Research Challenge (fund 0591, activity 502) at the  
 6 close of the fiscal year 2004 are hereby reappropriated for  
 7 expenditure during the fiscal year 2005, with the exception  
 8 of fund 0355, fiscal year 2004, activity 488, organization  
 9 0482 (\$1,050) which shall expire on June 30, 2004.

10 The above appropriation shall be allocated only to the  
 11 State's post-secondary institutions with compacts ap-  
 12 proved by the Higher Education Policy Commission, as  
 13 stated in §18B-1A-5.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*90-Workers' Compensation Commission*

(WV Code Chapter 23)

Fund 0594 FY 2005 Org 0322

1 Unclassified - Total - Transfer . . . 402 \$ 5,000,000

2 Total TITLE II, Section 1-  
 3 General Revenue ..... \$ 3,053,286,599

1 **Sec. 2. Appropriations from state road fund.**-From the  
 2 state road fund 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 two thousand five.

**DEPARTMENT OF TRANSPORTATION**

*91-Division of Motor Vehicles*

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

Fund 9007 FY 2005 Org 0802

	<b>Activity</b>	<b>State Road Fund</b>
1	Personal Services ..... 001	\$ 13,022,017
2	Annual Increment ..... 004	206,350
3	Employee Benefits ..... 010	5,567,059
4	Unclassified ..... 099	19,648,868
5	Jefferson County Regional Office . 613	<u>550,000</u>
6	Total .....	\$ 38,994,294

*92-Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2005 Org 0803

1	Debt Service ..... 040	\$ 50,000,000
2	Maintenance ..... 237	249,700,000
3	Maintenance, Contract Paving and	
4	Secondary Road Maintenance .. 272	50,000,000
5	Bridge Repair and Replacement .. 273	30,000,000
6	Inventory Revolving ..... 275	2,000,000
7	Equipment Revolving ..... 276	15,000,000
8	General Operations ..... 277	46,500,000

9	Interstate Construction . . . . .	278	70,000,000
10	Other Federal Aid Programs . . . . .	279	300,700,000
11	Appalachian Programs . . . . .	280	200,000,000
12	Nonfederal Aid Construction . . . . .	281	25,000,000
13	Highway Litter Control . . . . .	282	1,775,000
14	PSC Weight Enforcement . . . . .	345	<u>4,566,000</u>
15	Total . . . . .		\$1,045,241,000

16 The above appropriation for PSC Weight Enforcement  
 17 (activity 345) shall be transferred to the Public Service  
 18 Commission Fund (fund 8623).

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

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

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

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

44 Total TITLE II, Section 2-

45 State Road Fund . . . . . \$ 1,084,235,294

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 two thousand five.

**LEGISLATIVE**

*93-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2005 Org 2300

	<b>Activity</b>		<b>Other Funds</b>
1	Personal Services . . . . .	001	\$ 214,000
2	Annual Increment . . . . .	004	5,000
3	Employee Benefits . . . . .	010	73,500
4	Unclassified . . . . .	099	51,000
5	Economic Loss Claim		
6	Payment Fund (R) . . . . .	334	<u>2,921,500</u>
7	Total . . . . .		\$ 3,265,000

8 Any unexpended balance remaining in the appropriation  
 9 for Economic Loss Claim Payment Fund (fund 1731,  
 10 activity 334) at the close of the fiscal year 2004 is hereby  
 11 reappropriated for expenditure during the fiscal year 2005.

*94-Tax Reduction and Federal Funding  
 Increased Compliance*

(WV Code Chapter 4)

Fund 1732 FY 2005 Org 2300

1	Unclassified—Total—		
2	Transfer . . . . .	402	\$ -0-

3    ~~\*From the above appropriation for Unclassi-~~  
 4    ~~fied—Total—Transfer a total of \$6,624,593.38 shall be~~  
 5    ~~transferred to the general revenue fund.~~

**EXECUTIVE**

*95-Chief Technology Officer Administration Fund*

(WV Code Chapter 5)

Fund 1028 FY 2005 Org 0100

1	Unclassified .....	099	\$	1,872,961
2	EPSCoR Undergraduate Scientific			
3	Instrumentation Program .....	829		<u>150,000</u>
4	Total .....		\$	2,022,961

*96-Auditor's Office-  
Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2005 Org 1200

1	Personal Services .....	001	\$	209,629
2	Annual Increment .....	004		7,500
3	Employee Benefits .....	010		67,081
4	Unclassified .....	099		<u>395,416</u>
5	Total .....		\$	679,626

6    There is hereby appropriated from this fund, in addition  
 7    to the above appropriation, the necessary amount for the  
 8    expenditure of funds other than personal services or  
 9    employee benefits to enable the division to pay the direct  
 10   expenses relating to land sales as provided in Chapter  
 11   eleven-a of the West Virginia Code.

12   The total amount of this appropriation shall be paid  
 13   from the special revenue fund out of fees and collections as  
 14   provided by law.

*97-Auditor's Office-  
Securities Regulation Fund*

\* CLERK'S NOTE: The Governor struck language in Item No. 94, lines 3, 4 and 5.

## (WV Code Chapter 32)

Fund 1225 FY 2005 Org 1200

1	Personal Services .....	001	\$	1,011,298
2	Annual Increment .....	004		8,700
3	Employee Benefits .....	010		332,940
4	Unclassified .....	099		<u>1,168,017</u>
5	Total .....		\$	2,520,955

*98-Auditor's Office-  
Technology Support and Acquisition*

## (WV Code Chapter 12)

Fund 1233 FY 2005 Org 1200

1	Unclassified-Total .....	096	\$	747,368
2	Fifty percent of the deposits made into this fund shall be			
3	transferred to the Treasurer's Office-Technology Support			
4	and Acquisition(fund 1329, org 1300) for expenditure for			
5	the purposes described in West Virginia Code §12-3-10c.			

*99-Auditor's Office-  
Purchasing Card Administration Fund*

## (WV Code Chapter 12)

Fund 1234 FY 2005 Org 1200

1	Unclassified-Total .....	096	\$	600,000
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*100-Auditor's Office-  
Office of the Chief Inspector*

## (WV Code Chapter 6)

Fund 1235 FY 2005 Org 1200

1	Personal Services .....	001	\$	1,769,646
2	Annual Increment .....	004		30,000
3	Employee Benefits .....	010		568,489
4	Unclassified .....	099		<u>431,865</u>
5	Total .....		\$	2,800,000

*101-Treasurer's Office-  
Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1329 FY 2005 Org 1300

1	Unclassified-Total .....	096	\$	475,000
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*102-Department of Agriculture-  
Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2005 Org 1400

1	Personal Services .....	001	\$	936,844
2	Annual Increment .....	004		10,550
3	Employee Benefits .....	010		317,340
4	Unclassified .....	099		<u>1,313,366</u>
5	Total .....		\$	2,578,100

*103-Department of Agriculture-  
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2005 Org 1400

1	Personal Services .....	001	\$	50,304
2	Annual Increment .....	004		800
3	Employee Benefits .....	010		14,128
4	Unclassified .....	099		<u>476,306</u>
5	Total .....		\$	541,538

*104-Department of Agriculture-  
General John McCausland Memorial Farm*

(WV Code Chapter 19)

Fund 1409 FY 2005 Org 1400

1	Unclassified-Total .....	096	\$	80,133
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2 The above appropriation shall be expended in accor-  
 3 dance with article twenty-six, chapter nineteen of the  
 4 code.

*105-Department of Agriculture-  
 Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2005 Org 1400

1 Unclassified-Total ..... 096 \$ 1,028,903

*106-Department of Agriculture-  
 Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2005 Org 1400

1 Unclassified-Total ..... 096 \$ 3,040,000

*107-Attorney General-  
 Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2005 Org 1500

1	Personal Services .....	001	\$	216,640
2	Annual Increment .....	004		1,650
3	Employee Benefits .....	010		70,081
4	Unclassified .....	099		<u>178,285</u>
5	Total .....		\$	466,656

*108-Attorney General-  
 Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2005 Org 1500

1 Unclassified-Total ..... 096 \$ 227,284

*109-Attorney General-  
 Preneed Funeral Guarantee Fund*



(WV Code Chapter 47)

Fund 1514 FY 2005 Org 1500

1 Unclassified-Total ..... 096 \$ 775,000

*110-Secretary of State-  
Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2005 Org 1600

1	Personal Services .....	001	\$	968,032
2	Annual Increment .....	004		9,950
3	Employee Benefits .....	010		237,600
4	Unclassified .....	099		<u>1,138,431</u>
5	Total .....		\$	2,354,013

*111-Secretary of State-  
State Election Fund*

(WV Code Chapter 3)

Fund 1614 FY 2005 Org 1600

1 Any unexpended balance remaining in the appropriation  
2 for Unclassified - Total (fund 1614, activity 096) at the  
3 close of the fiscal year 2004 is hereby reappropriated for  
4 expenditure during the fiscal year 2005.

**DEPARTMENT OF ADMINISTRATION**

*112-Office of the Secretary-  
Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2005 Org 0201

1 Tobacco Settlement Fund-  
2 Transfer ..... 902 \$ 25,400,000

3 The above appropriation for Tobacco Settlement Fund-  
4 Transfer shall be transferred to the Division of Health  
5 (fund 5124, org 0506) for expenditure.

*113-Division of Information Services and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 2005 Org 0210

1	Personal Services .....	001	\$	10,327,242
2	Annual Increment .....	004		132,300
3	Employee Benefits .....	010		3,334,251
4	Unclassified .....	099		<u>6,571,771</u>
5	Total .....		\$	20,365,564

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

10 There is hereby appropriated from this fund, in addition  
 11 to the above appropriation, the necessary amount for the  
 12 expenditure of funds other than personal services or  
 13 employee benefits to enable the division to provide  
 14 information processing services to user agencies. These  
 15 services include, but are not limited to, data processing  
 16 equipment, 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.

*114-Division of Personnel*

(WV Code Chapter 29)

Fund 2440 FY 2005 Org 0222

1	Personal Services .....	001	\$	2,586,137
2	Annual Increment .....	004		54,850
3	Employee Benefits .....	010		851,083
4	Unclassified .....	099		<u>872,975</u>
5	Total .....		\$	4,365,045

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.

*115-WV Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 2521 FY 2005 Org 0228

1 Unclassified-Total (R) . . . . . 096 \$ 574,113

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified-Total (fund 2521, activity 096) at the close  
4 of the fiscal year 2004 is hereby reappropriated for  
5 expenditure during the fiscal year 2005, except for fund  
6 2521, activity 096 (fiscal years 2002 and 2003) which shall  
7 expire on June 30, 2004.

**DEPARTMENT OF EDUCATION**

*116-State Board of Education-  
Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2005 Org 0402

1 Unclassified-Total (R) . . . . . 096 \$ 505,000

2 Any unexpended balance remaining in the appropriation  
3 for Unclassified-Total (fund 3937, activity 096) at the close  
4 of the fiscal year 2004 is hereby reappropriated for expen-  
5 diture during the fiscal year 2005.

*117-State Department of Education-  
School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 2005 Org 0402

1 Personal Services . . . . . 001 \$ 661,719  
2 Annual Increment . . . . . 004 7,350  
3 Employee Benefits . . . . . 010 230,170

4	Unclassified .....	099	<u>264,099</u>
5	Total .....		\$ 1,163,338

6 The above appropriation for the administrative expenses  
7 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.

*118-State Department of Education-  
FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Fund 3960 FY 2005 Org 0402

1	Personal Services .....	001	\$ 800,000
2	Annual Increment .....	004	12,800
3	Employee Benefits .....	010	280,693
4	Unclassified .....	099	<u>906,507</u>
5	Total .....		\$ 2,000,000

**DEPARTMENT OF EDUCATION AND THE ARTS**

*119-Office of the Secretary-  
Lottery Education Fund Interest Earnings-  
Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2005 Org 0431

1	EPSCoR - Total .....	651	\$ 300,000
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2 Any unexpended balances remaining in the appropria-  
3 tions for Unclassified-Total (fund 3508, activity 096),  
4 Research Challenge (fund 3508, activity 502) and EPSCoR  
5 (fund 3508, activity 571) at the close of the fiscal year 2004  
6 are hereby reappropriated for expenditure during the  
7 fiscal year 2005.

*120-Division of Culture and History-  
Public Records and Preservation Revenue Fund*

(WV Code Chapter 5A)

Fund 3542 FY 2005 Org 0432

1 Unclassified–Total ..... 096 \$ 500,000

*121-State Board of Rehabilitation-  
Division of Rehabilitation Services-  
West Virginia Rehabilitation Center-  
Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2005 Org 0932

1	Unclassified .....	099	\$	2,802,182
2	Workshop Development .....	163		450,000
3	Workshop-Supported			
4	Employment .....	484		<u>50,000</u>
5	Total .....		\$	3,302,182

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*122-Board of Barbers and Cosmetologists*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2005 Org 0505

1	Personal Services .....	001	\$	235,246
2	Annual Increment .....	004		4,861
3	Employee Benefits .....	010		96,500
4	Unclassified .....	099		<u>107,591</u>
5	Total .....		\$	444,198

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

*123-WV Board of Medicine*

(WV Code Chapter 30)

Fund 5106 FY 2005 Org 0506

1 Unclassified–Total ..... 096 \$ 1,170,080

124-Division of Health-  
Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2005 Org 0506

1	ABCA Tobacco Retailer Education			
2	Program-Transfer .....	239	\$	200,000
3	Institutional Facilities			
4	Operations (R) .....	335		19,549,408
5	Tobacco Education Program (R) ..	906		<u>5,650,592</u>
6	Total .....		\$	25,400,000

7 Any unexpended balances remaining in the above  
8 appropriations for Institutional Facilities Operations (fund  
9 5124, activity 335) and Tobacco Education Program (fund  
10 5124, activity 906) at the close of the fiscal year 2004 are  
11 hereby reappropriated for expenditure during the fiscal  
12 year 2005.

13 From the above appropriation for ABCA Tobacco  
14 Retailer Education Program-Transfer, \$200,000 shall be  
15 transferred to the Alcohol Beverage Control Administra-  
16 tion (fund 7352, org 0708) for expenditure.

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  
20 revenue an expenditure schedule for each formerly sepa-  
21 rate spending unit which has been consolidated into the  
22 above account and which receives a portion of the above  
23 appropriation for Institutional Facilities Operations. The  
24 secretary shall also, within fifteen days after the close of  
25 the six-month period of said fiscal year, file with the  
26 legislative auditor and the department of revenue an  
27 itemized report of expenditures made during the preceding  
28 six-month period.

29 Additional funds have been appropriated in fund 0525,  
30 fiscal year 2005, organization 0506, and fund 5156, fiscal  
31 year 2005, organization 0506, for the operation of the

32 institutional facilities. The secretary of the department of  
 33 health and human resources is authorized to utilize up to  
 34 ten percent of the funds from the Institutional Facilities  
 35 Operations line item to facilitate cost effective and cost  
 36 saving services at the community level.

37 From the above appropriation to Institutional Facilities  
 38 Operations, together with available funds from the  
 39 division of health-hospital services revenue account (fund  
 40 5156, activity 335) and consolidated medical services fund  
 41 (fund 0525, activity 335), on July 1, 2004, the sum of one  
 42 hundred sixty thousand dollars shall be transferred to the  
 43 department of agriculture-land division as advance  
 44 payment for the purchase of food products; actual pay-  
 45 ments for such purchases shall not be required until such  
 46 credits have been completely expended.

*125-Division of Health-  
 Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 2005 Org 0506

1	Personal Services .....	001	\$	263,211
2	Annual Increment .....	004		8,553
3	Employee Benefits .....	010		113,319
4	Unclassified. ....	099		<u>100,354</u>
5	Total .....		\$	485,437

*126-Division of Health-  
 Hospital Services Revenue Account  
 (Special Fund)*

*(Capital Improvement, Renovation and Operations)*

(WV Code Chapter 16)

Fund 5156 FY 2005 Org 0506

1	Debt Service (R) .....	040	\$	2,420,000
2	Institutional Facilities			
3	Operations (R) .....	335		38,671,470
4	Medical Services Trust Fund-			

5	Transfer (R) . . . . .	512	<u>23,300,000</u>
6	Total . . . . .		\$ 64,391,470

7 Any unexpended balance remaining in the appropriation  
 8 for hospital services revenue account at the close of the  
 9 fiscal year 2004 is hereby reappropriated for expenditure  
 10 during the fiscal year 2005, except for fund 5156, activity  
 11 040 (fiscal year 2003) which shall expire on June 30, 2004.

12 The total amount of this appropriation shall be paid  
 13 from the hospital services revenue account special fund  
 14 created by section fifteen-a, article one, chapter sixteen of  
 15 the code, and shall be used for operating expenses and for  
 16 improvements in connection with existing facilities and  
 17 bond payments.

18 The secretary of the department of health and human  
 19 resources is authorized to utilize up to ten percent of the  
 20 funds from the appropriation for Institutional Facilities  
 21 Operations line to facilitate cost effective and cost saving  
 22 services at the community level.

23 Necessary funds from the above appropriation may be  
 24 used for medical facilities operations, either in connection  
 25 with this account or in connection with the line item  
 26 designated Institutional Facilities Operations in the  
 27 consolidated medical service fund (fund 0525, fiscal year  
 28 2005, organization 0506) and the tobacco settlement  
 29 expenditure fund (fund 5124, fiscal year 2005, organiza-  
 30 tion 0506).

31 From the above appropriation to Institutional Facilities  
 32 Operations, together with available funds from the  
 33 consolidated medical services fund (fund 0525, activity  
 34 335) and the tobacco settlement expenditure fund (fund  
 35 5124, activity 335), on July 1, 2004, the sum of one hun-  
 36 dred sixty thousand dollars shall be transferred to the  
 37 department of agriculture-land division as advance  
 38 payment for the purchase of food products; actual pay-  
 39 ments for such purchases shall not be required until such  
 40 credits have been completely expended.



*127-Division of Health-  
Laboratory Services*

(WV Code Chapter 16)

Fund 5163 FY 2005 Org 0506

1	Personal Services .....	001	\$	502,830
2	Annual Increment .....	004		10,310
3	Employee Benefits .....	010		198,208
4	Unclassified .....	099		<u>125,448</u>
5	Total .....		\$	836,796

*128-Division of Health-  
Health Facility Licensing*

(WV Code Chapter 16)

Fund 5172 FY 2005 Org 0506

1	Personal Services .....	001	\$	201,430
2	Annual Increment .....	004		3,000
3	Employee Benefits .....	010		72,220
4	Unclassified .....	099		<u>96,362</u>
5	Total .....		\$	373,012

*129-Division of Health-  
Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2005 Org 0506

1	Personal Services .....	001	\$	56,071
2	Annual Increment .....	004		1,380
3	Employee Benefits .....	010		20,574
4	Unclassified. ....	099		<u>2,996,821</u>
5	Total .....		\$	3,074,846

*130-Division of Health-  
Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2005 Org 0506

1 Unclassified-Total ..... 096 \$ 20,000

*131-Division of Health-  
West Virginia Birth to Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2005 Org 0506

1	Personal Services .....	001	\$	500,000
2	Annual Increment .....	004		4,000
3	Employee Benefits .....	010		192,276
4	Unclassified .....	099		<u>20,303,724</u>
5	Total .....		\$	21,000,000

*132-West Virginia Health Care Authority*

(WV Code Chapter 16)

Fund 5375 FY 2005 Org 0507

1	Personal Services .....	001	\$	2,010,764
2	Annual Increment .....	004		22,500
3	Employee Benefits .....	010		601,545
4	Hospital Assistance .....	025		600,000
5	Unclassified .....	099		<u>3,346,482</u>
6	Total .....		\$	6,581,291

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

*133-Division of Human Services-  
Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 2005 Org 0511

1 Unclassified-Total ..... 096 \$ 144,535,538

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.

*134-Division of Human Services-  
 Child Support Enforcement*

(WV Code Chapter 48A)

Fund 5094 FY 2005 Org 0511

1 Unclassified-Total (R) . . . . . 096 \$ 30,781,971

2 Any unexpended balance remaining in the appropriation  
 3 for Unclassified-Total (fund 5094, activity 096) at the close  
 4 of the fiscal year 2004 is hereby reappropriated for  
 5 expenditure during the fiscal year 2005.

*135-Division of Human Services-  
 Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2005 Org 0511

1	Unclassified . . . . .	099	\$ 27,877,927
2	Eligibility Expansion . . . . .	582	1,958,066
3	Public Employees Insurance		
4	Reserve Fund-Transfer . . . . .	903	<u>7,000,000</u>
5	Total . . . . .		\$ 36,835,993

6 The above appropriation to Unclassified shall be used to  
 7 provide state match of Medicaid expenditures as defined  
 8 and authorized in subsection (c) of Chapter 9-4A-2a.  
 9 Expenditures from the fund are limited to the following:  
 10 payment of backlogged billings, funding for services to  
 11 future federally mandated population groups and payment  
 12 of the required state match for medicaid disproportionate  
 13 share payments. The remainder of all moneys deposited in

14 the fund shall be transferred to the division of human  
15 services accounts.

16 ~~\*From the above appropriation, Public Employees~~  
17 ~~Insurance Reserve Fund-Transfer, \$1,000,000 shall be~~  
18 ~~expended for the Sole Community Hospitals and Medicare~~  
19 ~~Dependent Hospitals who have under 100 beds. These~~  
20 ~~funds shall be used as additional state match to establish~~  
21 ~~cost based reimbursement.~~

*136-Division of Human Services-  
James "Tiger" Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2005 Org 0511

1 Unclassified-Total . . . . . 096 \$ 1,700,000

*137-Family Protection Services Board-  
Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2005 Org 0511

1 Unclassified-Total . . . . . 096 \$ 622,245

**DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY**

*138-Department of Military Affairs and Public Safety-  
Office of the Secretary-  
Law-Enforcement, Safety and  
Emergency Worker Funeral  
Expense Payment Fund*

(WV Code Chapter 15)

Fund 6003 FY 2005 Org 0601

1 Unclassified-Total . . . . . 096 \$ 20,000

**\* CLERK'S NOTE:** The Governor struck language in Item No. 135, line 16 through line 21.

*139-State Armory Board-  
General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2005 Org 0603

1 Unclassified-Total ..... 096 \$ 480,000

*140-West Virginia Division of Corrections-  
Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2005 Org 0608

1	Personal Services .....	001	\$	116,774
2	Annual Increment .....	004		1,651
3	Employee Benefits .....	010		52,130
4	Unclassified .....	099		<u>234,989</u>
5	Total .....		\$	405,544

*141-West Virginia State Police-  
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2005 Org 0612

1	Personal Services .....	001	\$	1,112,117
2	Annual Increment .....	004		12,650
3	Employee Benefits .....	010		380,623
4	Unclassified .....	099		491,797
5	BRIM Premium .....	913		<u>247,888</u>
6	Total .....		\$	2,245,075

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.

*142-West Virginia State Police-  
Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2005 Org 0612

1	Unclassified .....	099	\$	1,156,317
2	BRIM Premium .....	913		<u>126,595</u>
3	Total .....		\$	1,282,912

4 The total amount of this appropriation shall be paid  
 5 from the special revenue fund out of receipts collected  
 6 pursuant to sections nine-a and sixteen, article fifteen,  
 7 chapter eleven of the code and paid into a revolving fund  
 8 account in the state treasury.

*143-West Virginia State Police-  
 Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2005 Org 0612

1	Unclassified .....	099	\$	454,475
2	BRIM Premium .....	913		<u>63,294</u>
3	Total .....		\$	517,769

4 Contingent upon the purchase of property vacated by  
 5 Shawnee Hills, Inc. and the reimbursement of funding  
 6 from the Regional Jail and Correctional Facility Authority  
 7 for the cost and acquisition of the same property, from the  
 8 cash balance available, the amount of \$1,200,000 may be  
 9 transferred to Fund 6519, fiscal year 2005, organization  
 10 0612, as reimbursement for funds transferred by the  
 11 legislative action during fiscal year 2003.

*144-West Virginia State Police-  
 Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2005 Org 0612

1	Unclassified (R) .....	099	\$	339,774
2	BRIM Premium .....	913		<u>44,312</u>
3	Total .....		\$	384,086

4 Any unexpended balance remaining in the appropriation  
 5 for Unclassified (fund 6519, activity 099) at the close of the

6 fiscal year 2004 is hereby reappropriated for expenditure  
 7 during the fiscal year 2005.

*145-West Virginia State Police-  
 Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2005 Org 0612

1	Unclassified .....	099	\$	204,989
2	BRIM Premium .....	913		<u>15,182</u>
3	Total .....		\$	220,171

*146-West Virginia State Police-  
 Bail Bond Enforcer Fund*

(WV Code Chapter 15)

Fund 6532 FY 2005 Org 0612

1	Unclassified-Total .....	096	\$	3,500
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*147-Division of Veterans' Affairs-  
 Veterans' Facilities Support Fund*

(WV Code Chapter 19A)

Fund 6703 FY 2005 Org 0613

1	Unclassified-Total .....	096	\$	3,100,000
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*148-Regional Jail and Correctional Facility Authority*

(WV Code Chapter 31)

Fund 6675 FY 2005 Org 0615

1	Personal Services .....	001	\$	1,213,846
2	Annual Increment .....	004		16,550
3	Employee Benefits .....	010		406,374
4	Debt Service .....	040		9,000,000
5	Unclassified .....	099		<u>672,230</u>
6	Total .....		\$	11,309,000

7 The Legislature reasonably expects the West Virginia  
8 Regional Jail and Correctional Facility Authority to  
9 reimburse the West Virginia State Police for the cost of the  
10 acquisition of the approximate 32 acres and three build-  
11 ings situated along Academy Drive, Institute, West  
12 Virginia, and abutting the West Virginia State Police  
13 Academy from proceeds of bonds issued by the West  
14 Virginia Economic Development Authority on behalf of  
15 the West Virginia Regional Jail and Correctional Facility  
16 Authority, anticipated to be issued during fiscal year 2005.  
17 The source of original payment for the land acquisition  
18 was fund 6516, organization 0612 and upon issuance of the  
19 bonds, proceeds thereof not to exceed the amount of such  
20 capital expenditures will be applied to reimbursement of  
21 fund 6516, organization 0612 from the appropriate  
22 account(s) or fund(s) from the West Virginia Regional Jail  
23 and Correctional Facility Authority or its trustee. The  
24 maximum amount of such reimbursement is \$1,500,000  
25 and the maximum principal amount of bonds to be issued  
26 for design, acquisition, construction, and equipping of the  
27 Regional Jail and Economic Development Authority  
28 Projects is \$50,000,000.

*149-Division of Veterans' Affairs-  
Veterans' Home*

(WV Code Chapter 19A)

Fund 6754 FY 2005 Org 0618

1 Unclassified-Total ..... 096 \$ 466,000

*150-Fire Commission-  
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2005 Org 0619

1 Personal Services ..... 001 \$ 1,900,000  
2 Annual Increment ..... 004 18,000  
3 Employee Benefits ..... 010 672,000  
4 Unclassified ..... 099 644,722



5	BRIM Premium .....	913		<u>50,000</u>
6	Total .....		\$	3,284,722

7 Any unexpended cash balance remaining in fund 6152 at  
 8 the close of the fiscal year 2004 is hereby available for  
 9 expenditure as part of the fiscal year 2005 appropriation.

*151-Division of Criminal Justice Services-  
 WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2005 Org 0620

1	Unclassified-Total .....	096	\$	2,000,000
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*152-Criminal Justice Services-  
 Court Security Fund*

(Executive Order)

Fund 6804 FY 2005 Org 0620

1	Unclassified-Total .....	096	\$	1,050,000
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**DEPARTMENT OF REVENUE**

*153-Division of Banking*

(WV Code Chapter 31A)

Fund 3041 FY 2005 Org 0303

1	Personal Services .....	001	\$	1,537,881
2	Annual Increment .....	004		14,000
3	Employee Benefits .....	010		430,695
4	Unclassified .....	099		<u>680,988</u>
5	Total .....		\$	2,663,564

*154-Tax Division-  
 Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2005 Org 0702

1	Personal Services .....	001	\$	17,274
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154	APPROPRIATIONS		[Ch. 13
2	Annual Increment .....	004	150
3	Employee Benefits .....	010	5,870
4	Unclassified .....	099	<u>9,633</u>
5	Total .....		\$ 32,927

*155-Tax Division-  
Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2005 Org 0702

1	Personal Services .....	001	\$	830,304
2	Annual Increment .....	004		17,500
3	Employee Benefits .....	010		308,900
4	Unclassified .....	099		<u>322,186</u>
5	Total .....		\$	1,478,890

*156-State Budget Office-  
Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2005 Org 0703

1	Public Employees Insurance Reserve			
2	Fund - Transfer .....	903	\$	7,000,000
3	The above appropriation for Public Employees Insurance			
4	Reserve Fund - Transfer shall be transferred to the Medical			
5	Services Trust Fund (fund 5185, org 0511) for expenditure.			

*157-Insurance Commissioner-  
Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2005 Org 0704

1	Personal Services .....	001	\$	556,330
2	Annual Increment .....	004		3,000
3	Employee Benefits .....	010		152,738
4	Unclassified .....	099		<u>487,742</u>
5	Total .....		\$	1,199,810

*158-Insurance Commissioner-  
Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2005 Org 0704

1	Personal Services . . . . .	001	\$	331,028
2	Annual Increment . . . . .	004		4,050
3	Employee Benefits . . . . .	010		92,344
4	Unclassified . . . . .	099		<u>103,149</u>
5	Total . . . . .		\$	530,571

*159-Insurance Commissioner*

(WV Code Chapter 33)

Fund 7152 FY 2005 Org 0704

1	Personal Services . . . . .	001	\$	2,996,953
2	Annual Increment . . . . .	004		42,000
3	Employee Benefits . . . . .	010		977,860
4	Unclassified . . . . .	099		<u>1,338,194</u>
5	Total . . . . .		\$	5,355,007

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.

*160-Racing Commission-  
Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2005 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 except  
6 for hospitalization, medical care and/or funeral expenses  
7 for persons contributing to this fund.

*161-Racing Commission-  
Administration and Promotion*

(WV Code Chapter 19)

Fund 7304 FY 2005 Org 0707

1	Personal Services .....	001	\$	66,444
2	Annual Increment .....	004		1,000
3	Employee Benefits .....	010		24,152
4	Unclassified .....	099		47,358
5	Total .....		\$	138,954

*162-Racing Commission-  
General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2005 Org 0707

1	Personal Services .....	001	\$	1,770,000
2	Annual Increment .....	004		20,250
3	Employee Benefits .....	010		459,000
4	Unclassified .....	099		533,796
5	Total .....		\$	2,783,046

*163-Racing Commission-  
Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Fund 7307 FY 2005 Org 0707

1	Unclassified-Total .....	096	\$	65,000
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*164-Alcohol Beverage Control Administration-  
Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2005 Org 0708

1	Personal Services .....	001	\$	224,718
2	Annual Increment .....	004		4,000
3	Employee Benefits .....	010		88,780

4	Unclassified .....	099	<u>145,292</u>
5	Total .....		\$ 462,790

6 To the extent permitted by law, four classified exempt  
7 positions shall be provided from Personal Services line  
8 item for field auditors.

*165-Alcohol Beverage Control Administration*

(WV Code Chapter 60)

Fund 7352 FY 2005 Org 0708

1	Personal Services .....	001	\$ 3,585,014
2	Annual Increment .....	004	79,000
3	Employee Benefits .....	010	1,341,893
4	Unclassified (R) .....	099	<u>1,855,070</u>
5	Total .....		\$ 6,860,977

6 Any unexpended balance remaining in Unclassified  
7 (fund 7352, activity 099) at the close of the fiscal year 2004  
8 is hereby reappropriated for expenditure during the fiscal  
9 year 2005.

10 From the above appropriation an amount of \$500,000  
11 shall be used for the Tobacco/Alcohol Education Program.

12 The total amount of this appropriation shall be paid  
13 from a special revenue fund out of liquor revenues.

14 The above appropriation includes the salary of the  
15 commissioner and the salaries, expenses and equipment of  
16 administrative offices, warehouses and inspectors.

17 There is hereby appropriated from liquor revenues, in  
18 addition to the above appropriation, the necessary amount  
19 for the purchase of liquor as provided by law.

**DEPARTMENT OF TRANSPORTATION**

*166-Division of Motor Vehicles-  
Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Fund 8213 FY 2005 Org 0802

1	Personal Services .....	001	\$	439,810
2	Annual Increment .....	004		6,500
3	Employee Benefits .....	010		202,704
4	Unclassified .....	099		<u>276,708</u>
5	Total .....		\$	925,722

*167-Division of Motor Vehicles-  
Driver Rehabilitation*

(WV Code Chapter 17C)

Fund 8214 FY 2005 Org 0802

1	Unclassified-Total .....	096	\$	182,194
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*168-Division of Motor Vehicles-  
Insurance Certificate Fees*

(WV Code Chapter 20)

Fund 8215 FY 2005 Org 0802

1	Personal Services .....	001	\$	621,000
2	Annual Increment .....	004		15,850
3	Employee Benefits .....	010		275,533
4	Unclassified .....	099		<u>31,078</u>
5	Total .....		\$	943,461

*169-Division of Motor Vehicles-  
Motorboat Licenses*

(WV Code Chapter 20)

Fund 8216 FY 2005 Org 0802

1	Unclassified-Total .....	096	\$	397,704
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*170-Division of Motor Vehicles-  
Returned Check Fees*

(WV Code Chapter 17)

Fund 8217 FY 2005 Org 0802

1	Unclassified-Total .....	096	\$	16,000
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*171-Division of Motor Vehicles-  
Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2005 Org 0802

1	Unclassified-Total .....	096	\$	200,000
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*172-Division of Highways-  
A. James Manchin Fund*

(WV Code Chapter 17)

Fund 8319 FY 2005 Org 0803

1	Unclassified-Total .....	096	\$	3,625,000
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**BUREAU OF COMMERCE**

*173-Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2005 Org 0305

1	Personal Services .....	001	\$	343,845
2	Annual Increment .....	004		7,250
3	Employee Benefits .....	010		146,854
4	Unclassified .....	099		452,519
5	Total .....		\$	950,468

*174-Division of Forestry-  
Timberland Enforcement Operations*

(WV Code Chapter 19)

Fund 3082 FY 2005 Org 0305

1	Unclassified-Total .....	096	\$	150,000
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*175-Division of Forestry-  
Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2005 Org 0305

1 Unclassified-Total . . . . . 096 \$ 2,953,665

*176-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 3100 FY 2005 Org 0306

1	Personal Services . . . . .	001	\$	42,818
2	Annual Increment . . . . .	004		406
3	Employee Benefits . . . . .	010		7,683
4	Unclassified . . . . .	099		<u>177,249</u>
5	Total . . . . .		\$	228,156

6 The above appropriation shall be used in accordance  
7 with section four, article two, chapter twenty-nine of the  
8 code.

*177-West Virginia Development Office-  
Energy Assistance*

(WV Code Chapter 5B)

Fund 3144 FY 2005 Org 0307

1 Any unexpended balance remaining in the appropriation  
2 for Energy Assistance-Total (fund 3144, activity 647) at the  
3 close of the fiscal year 2004 is hereby reappropriated for  
4 expenditure during the fiscal year 2005.

*178-West Virginia Development Office-  
Office of Coal Field Community Development*

(WV Code Chapter 5B)

Fund 3162 FY 2005 Org 0307

1 Unclassified-Total (R) . . . . . 096 \$ 730,000

2 Any unexpended balance remaining in the above appro-  
3 priation for Unclassified-Total (fund 3162, activity 096) at  
4 the close of the fiscal year 2004 is hereby reappropriated  
5 for expenditure during the fiscal year 2005.



*179-Division of Labor-  
Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2005 Org 0308

1	Personal Services .....	001	\$	940,540
2	Annual Increment .....	004		13,090
3	Employee Benefits .....	010		395,070
4	Unclassified .....	099		<u>542,986</u>
5	Total .....		\$	1,891,686

*180-Division of Labor-  
Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2005 Org 0308

1	Personal Services .....	001	\$	162,700
2	Annual Increment .....	004		1,723
3	Employee Benefits .....	010		68,067
4	Unclassified .....	099		<u>83,571</u>
5	Total .....		\$	316,061

*181-Division of Labor-  
Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2005 Org 0308

1	Unclassified-Total .....	096	\$	115,031
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*182-Division of Labor-  
Amusement Rides/Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2005 Org 0308

1	Unclassified-Total .....	096	\$	101,135
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*183-Division of Natural Resources*

(WV Code Chapter 20)

Fund 3200 FY 2005 Org 0310

1	Wildlife Resources . . . . .	023	\$	6,074,534
2	Administration . . . . .	155		1,656,690
3	Capital Improvements and			
4	Land Purchase (R) . . . . .	248		1,260,000
5	Radio System-Law Enforcement . . . . .	058		265,000
6	Law Enforcement . . . . .	806		<u>6,074,534</u>
7	Total . . . . .		\$	15,330,758

8     The total amount of this appropriation shall be paid from  
 9     a special revenue fund out of fees collected by the division  
 10    of natural resources.

11    Any unexpended balances remaining in the appropria-  
 12    tions for Point of Sale Licensing System (fund 3200,  
 13    activity 043) and Capital Improvements and Land Pur-  
 14    chase (fund 3200, activity 248) at the close of the fiscal  
 15    year 2004 are hereby reappropriated for expenditure  
 16    during the fiscal year 2005.

*184-Division of Natural Resources-  
Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Fund 3202 FY 2005 Org 0310

1	Unclassified-Total . . . . .	096	\$	20,000
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*185-Division of Natural Resources-  
Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2005 Org 0310

1	Personal Services . . . . .	001	\$	237,855
2	Annual Increment . . . . .	004		1,700
3	Employee Benefits . . . . .	010		83,470

4	Unclassified .....	099	<u>293,727</u>
5	Total .....		\$ 616,752

*186-Division of Natural Resources-  
Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2005 Org 0310

1	Personal Services .....	001	\$ 234,568
2	Annual Increment .....	004	6,400
3	Employee Benefits .....	010	89,039
4	Unclassified .....	099	<u>162,031</u>
5	Total .....		\$ 492,038

*187-Division of Natural Resources-  
Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2005 Org 0310

1	Unclassified-Total .....	096	\$ 185,000
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*188-Division of Natural Resources-  
Recycling Assistance Fund*

(WV Code Chapter 20)

Fund 3254 FY 2005 Org 0310

1	Personal Services .....	001	\$ 233,206
2	Annual Increment .....	004	3,255
3	Employee Benefits .....	010	107,520
4	Unclassified (R) .....	099	<u>2,300,019</u>
5	Total .....		\$ 2,644,000

6 Any unexpended balance remaining in the appropriation  
7 for Unclassified (fund 3254, activity 099) at the close of the  
8 fiscal year 2004 is hereby reappropriated for expenditure  
9 during the fiscal year 2005.

*189-Division of Natural Resources-  
Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2005 Org 0310

1 Unclassified-Total . . . . . 096 \$ 20,000

*190-Miners' Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2005 Org 0314

1	Personal Services . . . . .	001	\$	400,300
2	Employee Benefits . . . . .	010		138,000
3	Unclassified . . . . .	099		851,700
4	WV Mining Extension Service . . .	026		<u>150,000</u>
5	Total . . . . .		\$	1,540,000

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*191-Solid Waste Management Board*

(WV Code Chapter 20)

Fund 3288 FY 2005 Org 0312

1	Personal Services . . . . .	001	\$	631,515
2	Annual Increment . . . . .	004		3,250
3	Employee Benefits . . . . .	010		191,400
4	Unclassified . . . . .	099		<u>1,893,883</u>
5	Total . . . . .		\$	2,720,048

*192-Division of Environmental Protection-  
Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2005 Org 0313

1 Unclassified - Total . . . . . 096 \$ 100,000

*193-Division of Environmental Protection-  
Special Reclamation Trust Fund*

(WV Code Chapter 22A)

Fund 3321 FY 2005 Org 0313

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1	Personal Services . . . . .	001	\$	1,190,610
2	Annual Increment . . . . .	004		9,650
3	Employee Benefits . . . . .	010		409,417
4	Unclassified . . . . .	099		<u>17,215,791</u>
5	Total . . . . .		\$	18,825,468

*194-Division of Environmental Protection-  
Oil and Gas Reclamation Trust*

(WV Code Chapter 22B)

Fund 3322 FY 2005 Org 0313

1	Unclassified-Total . . . . .	096	\$	200,000
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*195-Division of Environmental Protection-  
Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Fund 3323 FY 2005 Org 0313

1	Personal Services . . . . .	001	\$	326,253
2	Annual Increment . . . . .	004		2,350
3	Employee Benefits . . . . .	010		111,114
4	Unclassified . . . . .	099		<u>521,185</u>
5	Total . . . . .		\$	960,902

*196-Division of Environmental Protection-  
Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2005 Org 0313

1	Personal Services . . . . .	001	\$	4,882,259
2	Annual Increment . . . . .	004		57,153
3	Employee Benefits . . . . .	010		1,580,684
4	Unclassified . . . . .	099		<u>1,936,218</u>
5	Total . . . . .		\$	8,456,314

*197-Division of Environmental Protection-  
Underground Storage Tanks-  
Administrative Fund*

## (WV Code Chapter 20)

Fund 3325 FY 2005 Org 0313

1	Personal Services .....	001	\$	326,988
2	Annual Increment .....	004		3,575
3	Employee Benefits .....	010		127,429
4	Unclassified .....	099		<u>73,415</u>
5	Total .....		\$	531,407

*198-Division of Environmental Protection-  
Hazardous Waste Emergency and Response Fund*

## (WV Code Chapter 20)

Fund 3331 FY 2005 Org 0313

1	Personal Services .....	001	\$	498,485
2	Annual Increment .....	004		7,775
3	Employee Benefits .....	010		177,428
4	Unclassified .....	099		<u>940,408</u>
5	Total .....		\$	1,624,096

*199-Division of Environmental Protection-  
Solid Waste Reclamation and  
Environmental Response Fund*

## (WV Code Chapter 20)

Fund 3332 FY 2005 Org 0313

1	Personal Services .....	001	\$	238,196
2	Annual Increment .....	004		1,900
3	Employee Benefits .....	010		73,084
4	Unclassified .....	099		<u>1,008,156</u>
5	Total .....		\$	1,321,336

*200-Division of Environmental Protection-  
Solid Waste Enforcement Fund*

## (WV Code Chapter 20)

Fund 3333 FY 2005 Org 0313

1	Personal Services .....	001	\$	1,596,773
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2	Annual Increment . . . . .	004 23,700
3	Employee Benefits . . . . .	010 552,718
4	Unclassified . . . . .	099 <u>1,237,849</u>
5	Total . . . . .	\$ 3,411,040

*201-Division of Environmental Protection-  
Fees and Operating Expenses*

(WV Code Chapter 16)

Fund 3336 FY 2005 Org 0313

1	Personal Services . . . . .	001 \$ 3,780,910
2	Annual Increment . . . . .	004 32,875
3	Employee Benefits . . . . .	010 1,129,486
4	Unclassified . . . . .	099 <u>2,040,172</u>
5	Total . . . . .	\$ 6,983,443

*202-Division of Environmental Protection-  
Environmental Laboratory  
Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2005 Org 0313

1	Personal Services . . . . .	001 \$ 128,772
2	Annual Increment . . . . .	004 2,150
3	Employee Benefits . . . . .	010 48,532
4	Unclassified . . . . .	099 <u>192,388</u>
5	Total . . . . .	\$ 371,842

*203-Division of Environmental Protection-  
Stream Restoration Fund*

Fund 3349 FY 2005 Org 0313

1	Unclassified-Total . . . . .	096 \$ 1,000,000
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*204-Division of Environmental Protection-  
Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2005 Org 0313

1 Unclassified-Total . . . . . 096 \$ 1,415,856

*205-Oil and Gas Conservation Commission*

(WV Code Chapter 22)

Fund 3371 FY 2005 Org 0315

1	Personal Services . . . . .	001	\$	154,869
2	Annual Increment . . . . .	004		2,000
3	Employee Benefits . . . . .	010		32,226
4	Unclassified . . . . .	099		<u>45,862</u>
5	Total . . . . .		\$	234,957

**HIGHER EDUCATION POLICY COMMISSION**

*206-Higher Education Policy Commission-  
System-*

*Registration Fee Capital Improvement Fund  
(Capital Improvement and Bond Retirement Fund)  
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2005 Org 0442

1	Debt Service (R) . . . . .	040	\$	4,822,241
2	General Capital Expenditures (R)	306		<u>500,000</u>
3	Total . . . . .		\$	5,322,241

4 Any unexpended balances remaining in the appropria-  
 5 tions at the close of fiscal year 2004 are hereby  
 6 reappropriated for expenditure during the fiscal year 2005  
 7 with the exception of fund 4902, fiscal year 1987, activity  
 8 338 which shall expire on June 30, 2004.

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



14 The above appropriations, except for debt service, may  
15 be transferred to special revenue funds for capital im-  
16 provement projects at the institutions.

*207-Higher Education Policy Commission-  
System-  
Tuition Fee Capital Improvement Fund  
(Capital Improvement and Bond Retirement Fund)  
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2005 Org 0442

1	Debt Service (R) . . . . .	040	\$	13,774,581
2	General Capital Expenditures (R)	306		500,000
3	Facilities Planning			
4	and Administration (R) . . . . .	386		<u>387,975</u>
5	Total . . . . .		\$	14,662,556

6 Any unexpended balances remaining in the appropria-  
7 tions at the close of fiscal year 2004 are hereby  
8 reappropriated for expenditure during the fiscal year 2005  
9 with the exception of fund 4903, fiscal year 2002, activity  
10 040, fund 4903, fiscal year 1991, activity 259, fund 4903,  
11 fiscal year 2000, activity 259, fund 4903, fiscal year 1985,  
12 activity 353, and fund 4903, fiscal year 1993, activity 457  
13 which shall expire on June 30, 2004.

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

19 The above appropriations, except for debt service, may  
20 be transferred to special revenue funds for capital im-  
21 provement projects at the institutions.

*208-Higher Education Policy Commission-  
1977 State System Registration Fee Refund Revenue  
Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2005 Org 0442

1 Capital Outlay - Total . . . . . 321 \$ 10,000

2 Any unexpended balance remaining in the appropriation  
3 at the close of the fiscal year 2004 is hereby reappropriated  
4 for expenditure during the fiscal year 2005.

5 The appropriation shall be paid from available unex-  
6 pended cash balances and interest earnings accruing to the  
7 fund. The appropriation shall be expended at the discre-  
8 tion of the Higher Education Policy Commission and the  
9 funds may be allocated to any institution within the  
10 system.

11 The total amount of this appropriation shall be paid from  
12 the unexpended proceeds of revenue bonds previously  
13 issued pursuant to section eight, article ten, chapter  
14 eighteen-b of the code, which have since been refunded.

*209-Higher Education Policy Commission-  
Tuition Fee Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2005 Org 0442

1 Any unexpended balance remaining in the appropriation  
2 at the close of the fiscal year 2004 is hereby reappropriated  
3 for expenditure during the fiscal year 2005, with the  
4 exception of fund 4906, fiscal year 2000, activity 511 which  
5 shall expire on June 30, 2004.

6 The appropriation shall be paid from available unex-  
7 pended cash balances and interest earnings accruing to the  
8 fund. The appropriation shall be expended at the discre-  
9 tion of the Higher Education Policy Commission and the  
10 funds may be allocated to any institution within the  
11 system.

12 The total amount of this appropriation shall be paid from  
13 the unexpended proceeds of revenue bonds previously

- 14 issued pursuant to section eight, article twelve-b, chapter
- 15 eighteen of the code, which have since been refunded.

*210-Health Sciences-  
West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2005 Org 0463

- 1 Unclassified-Total (R) . . . . . 096 \$ 15,359,466
- 2 Any unexpended balance remaining in the appropriation
- 3 for the West Virginia University Health Sciences Center at
- 4 the close of fiscal year 2004 is hereby reappropriated for
- 5 expenditure during the fiscal year 2005.

*211-Higher Education Policy Commission-  
Fairmont State College*

(WV Code Chapters 18 and 18B)

Fund 4457 FY 2005 Org 0484

- 1 Any unexpended balance remaining in the appropriation
- 2 at the close of the fiscal year 2004 is hereby reappropriated
- 3 for expenditure during the fiscal year 2005.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*212-Workers' Compensation Fund*

(WV Code Chapter 23)

Fund 3440 FY 2005 Org 0322

1	Personal Services . . . . .	001	\$	31,400,673
2	Annual Increment . . . . .	004		501,653
3	Employee Benefits . . . . .	010		11,825,710
4	Unclassified (R) . . . . .	099		22,531,695
5	Employer Excess Liability Fund. .	226		<u>117,197</u>
6	Total . . . . .		\$	66,376,928

- 7 Any unexpended balances remaining in the appropri-
- 8 ations for Unclassified (fund 3440, activity 099) and Tech-

9 nology Improvements (fund 3440, activity 599) at the close  
 10 of the fiscal year 2004 are hereby reappropriated for  
 11 expenditure during the fiscal year 2005.

*213-Hospital Finance Authority*

(WV Code Chapter 16)

Fund 5475 FY 2005 Org 0509

1	Personal Services .....	001	\$	46,024
2	Annual Increment .....	004		700
3	Employee Benefits .....	010		16,663
4	Unclassified. ....	099		<u>36,613</u>
5	Total .....		\$	100,000

6 The total amount of this appropriation shall be paid from  
 7 the special revenue fund out of fees and collections as  
 8 provided by article twenty-nine-a, chapter sixteen of the  
 9 code.

*214-Municipal Bond Commission*

(WV Code Chapter 13)

Fund 7253 FY 2005 Org 0706

1	Personal Services .....	001	\$	161,262
2	Annual Increment .....	004		4,300
3	Employee Benefits .....	010		58,713
4	Unclassified .....	099		<u>81,890</u>
5	Total .....		\$	306,165

*215-WV State Board of Examiners for  
 Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2005 Org 0906

1	Unclassified-Total .....	096	\$	363,090
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*216-WV Board of Examiners for  
 Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2005 Org 0907

1 Unclassified-Total . . . . . 096 \$ 882,136

*217-Public Service Commission*

(WV Code Chapter 24)

Fund 8623 FY 2005 Org 0926

1	Personal Services . . . . .	001	\$	7,916,582
2	Annual Increment . . . . .	004		130,000
3	Employee Benefits . . . . .	010		2,671,106
4	Unclassified . . . . .	099		2,313,705
5	Weight Enforcement Program . . .	345		4,566,000
6	Debt Payment/Capital Outlay . . .	520		350,000
7	BRIM Premium . . . . .	913		<u>139,752</u>
8	Total . . . . .		\$	18,087,145

9 The total amount of this appropriation except for the  
10 PSC Weight Enforcement appropriation (activity 345) shall  
11 be paid from a special revenue fund out of collection for  
12 special license fees from public service corporations as  
13 provided by law. The amount appropriated to the PSC  
14 Weight Enforcement (activity 345) shall be paid from the  
15 state road fund as provided by law.

16 The Public Service Commission is authorized to spend up  
17 to \$500,000, from surplus funds in this account, to meet the  
18 expected deficiencies in the Motor Carrier Division  
19 account due to passage of enrolled house bill no. 2715,  
20 regular session, 1998.

*218-Public Service Commission-  
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8624 FY 2005 Org 0926

1	Personal Services . . . . .	001	\$	152,476
2	Annual Increment . . . . .	004		5,556

3	Employee Benefits .....	010		53,791
4	Unclassified .....	099		<u>84,849</u>
5	Total .....		\$	296,672

6 The total amount of this appropriation shall be paid from  
 7 a special revenue fund out of receipts collected for or by  
 8 the public service commission pursuant to and in the  
 9 exercise of regulatory authority over pipeline companies as  
 10 provided by law.

*219-Public Service Commission-  
 Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2005 Org 0926

1	Personal Services .....	001	\$	1,582,433
2	Annual Increment .....	004		40,000
3	Employee Benefits .....	010		577,313
4	Unclassified .....	099		<u>545,361</u>
5	Total .....		\$	2,745,107

6 The total amount of this appropriation shall be paid from  
 7 a special revenue fund out of receipts collected for or by  
 8 the public service commission pursuant to and in the  
 9 exercise of regulatory authority over motor carriers as  
 10 provided by law.

*220-Public Service Commission-  
 Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2005 Org 0926

1	Personal Services .....	001	\$	505,577
2	Annual Increment .....	004		6,650
3	Employee Benefits .....	010		147,177
4	Unclassified .....	099		275,573
5	BRIM Premium .....	913		<u>3,570</u>
6	Total .....		\$	938,547

7 The total amount of this appropriation shall be paid from  
8 a special revenue fund out of collections made by the public  
9 service commission.

*221-Real Estate Commission*

(WV Code Chapter 30)

Fund 8635 FY 2005 Org 0927

1	Personal Services .....	001	\$	360,695
2	Annual Increment .....	004		6,200
3	Employee Benefits .....	010		115,700
4	Unclassified .....	099		<u>236,826</u>
5	Total .....		\$	719,421

6 The total amount of this appropriation shall be paid out  
7 of collections of license fees as provided by law.

*222-WV Board of Examiners for Speech-  
Language Pathology and Audiology*

(WV Code Chapter 30)

Fund 8646 FY 2005 Org 0930

1	Unclassified-Total .....	096	\$	60,000
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*223-WV Board of Respiratory Care*

(WV Code Chapter 30)

Fund 8676 FY 2005 Org 0935

1	Unclassified-Total .....	096	\$	104,650
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*224-WV Board of Licensed Dietitians*

Fund 8680 FY 2005 Org 0936

1	Unclassified-Total .....	096	\$	20,000
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*225-Massage Therapy Licensure Board*

(WV Code Chapter 30)

Fund 8671 FY 2005 Org 0938

1	Unclassified-Total . . . . .	096	\$	<u>80,000</u>
2	Total TITLE II, Section 3-Other Funds		\$	<u>679,853,194</u>

1     **Sec. 4. Appropriations from lottery net profits.**-Net  
2 profits of the lottery are to be deposited by the director of  
3 the lottery to the following accounts in the amounts  
4 indicated. The director of the lottery shall prorate each  
5 deposit of net profits in the proportion the appropriation  
6 for each account bears to the total of the appropriations  
7 for all accounts.

8     After first satisfying the requirements for Fund 2252 and  
9 Fund 3963 pursuant to section eighteen, article twenty-  
10 two, chapter twenty-nine of the code, the director of the  
11 lottery shall make available from the remaining net profits  
12 of the lottery any amounts needed to pay debt service for  
13 which the appropriation is made for Fund 3167, and is  
14 authorized to transfer any such amounts to Fund 3167 for  
15 that purpose. Upon receipt of reimbursement of amounts  
16 so transferred, the director of the lottery shall deposit the  
17 reimbursement amounts to the following accounts as  
18 required by this section.

*226-Education, Arts, Sciences and Tourism-  
Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2005 Org 0211

				<b>Lottery Funds</b>
	<b>Activity</b>		\$	
1	Debt Service-Total . . . . .	310	\$	10,000,000

*227-West Virginia Development Office-  
Division of Tourism*

(WV Code Chapter 5B)



Fund 3067 FY 2005 Org 0304

1	Unclassified - Total . . . . .	096	\$	-0-
2	Tourism-Telemarketing Center . .	463		90,000
3	Tourism-Advertising . . . . .	618		3,597,930
4	WV Film Office . . . . .	498		102,139
5	Motor Sports Council . . . . .	513		90,000
6	Tourism-Unclassified . . . . .	662		<u>4,185,765</u>
7	Total . . . . .		\$	8,065,834

8 Any unexpended balances remaining in the appropria-  
9 tions for Tourism-Advertising (fund 3067, activity 618),  
10 State Parks and Recreation Advertising (fund 3067,  
11 activity 619), Capitol Complex-Capital Outlay (fund 3067,  
12 activity 417), Tourism-Special Projects (fund 3067, activity  
13 859), Tourism-Unclassified (fund 3067, activity 662),  
14 Tourism-Unclassified-Lottery Surplus (fund 3067, activity  
15 773), Stonewall Jackson State Park (fund 3067, activity  
16 959) and Hatfield—McCoy Recreational Trail (fund 3067,  
17 activity 960) at the close of the fiscal year 2004 are hereby  
18 reappropriated for expenditure during the fiscal year 2005.

*228-Division of Natural Resources*

(WV Code Chapter 20)

Fund 3267 FY 2005 Org 0310

1	Gypsy Moth Suppression			
2	Program for State Parks . . . . .	017	\$	45,500
3	Unclassified (R) . . . . .	099		2,228,603
4	Pricketts Fort State Park . . . . .	324		98,280
5	Non-Game Wildlife . . . . .	527		445,470
6	State Parks and			
7	Recreation Advertising . . . . .	619		622,440
8	West Virginia Stream			
9	Partners Program . . . . .	637		<u>81,900</u>
10	Total . . . . .		\$	3,522,193

11 Any unexpended balances remaining in the appropria-  
12 tions for Unclassified (fund 3267, activity 099), State  
13 Recreation Area Improvements (fund 3267, activity 307),

14 Capital Outlay-Parks (fund 3267, activity 288), Flood  
 15 Reparations (fund 3267, activity 400), Parks Operations-  
 16 Unclassified (fund 3267, activity 645), State Parks-Special  
 17 Projects (fund 3267, activity 860), Computerized Lodging  
 18 Reservation System (fund 3267, activity 910) and State  
 19 Parks Repairs, Renovations, Maintenance and Life Safety  
 20 Repairs (fund 3267, activity 911) at the close of the fiscal  
 21 year 2004 are hereby reappropriated for expenditure  
 22 during the fiscal year 2005.

*229-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2005 Org 0402

1	Safe Schools .....	143	\$	-0-
2	Unclassified .....	099		3,407,000
3	Technology Infrastructure			
4	Network .....	351		20,500,000
5	READS Program .....	365		-0-
6	MATH Program .....	368		300,000
7	Vocational Education			
8	Equipment Replacement .....	393		-0-
9	Assessment Program .....	396		6,430,943
10	Employment Programs Rate Relief	401		878,189
11	Teacher Reimbursement .....	573		150,000
12	Teacher Relocation .....	574		10,000
13	Technology Repair and			
14	Modernization .....	298		1,000,000
15	National Science Foundation			
16	Match/WV Science .....	578		300,000
17	Three Tier Funding .....	411		1,000,000
18	Educational Program Allowance .	996		<u>250,000</u>
19	Total .....		\$	34,226,132

20 Any unexpended balances remaining in the appropria-  
 21 tions for Computer Basic Skills (fund 3951, activity 145),  
 22 S.U.C.C.E.S.S. (fund 3951, activity 255), Technology  
 23 Repair and Modernization (fund 3951, activity 298),  
 24 Technology and Telecommunications Initiative (fund 3951,

25 activity 596), Technology Demonstration Project (fund  
 26 3951, activity 639) and Educational Development (fund  
 27 3951, activity 823) at the close of the fiscal year 2004 are  
 28 hereby reappropriated for expenditure during the fiscal  
 29 year 2005.

30 The above appropriation for Technology Infrastructure  
 31 Network shall be expended on the following programs and  
 32 technology; Computer Basic Skills, S.U.C.C.E.S.S., WVEIS,  
 33 Technology Repair and Modernization, Technology and  
 34 Telecommunications Initiative and other programs in the  
 35 field that will benefit the Counties. No more then 40% of  
 36 the total appropriation shall be allotted to Computer Basic  
 37 Skills and S.U.C.C.E.S.S. Prior to the completion and  
 38 presentation of the Technology Study to the Joint LOCEA  
 39 Committee, no more than 50% of the total appropriation  
 40 shall be spent. The study is to be completed by January 15,  
 41 2005.

*230-State Department of Education-  
 School Building Authority-  
 Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2005 Org 0402

1 Debt Service-Total . . . . . 310 \$ 18,000,000

*231-Department of Education and the Arts-  
 Office of the Secretary-  
 Control Account-  
 Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2005 Org 0431

1 WV Humanities Council . . . . . 168 \$ 350,000  
 2 Commission for National  
 3 Community Service . . . . . 193 160,050  
 4 Technical Preparation Program .. 440 450,000  
 5 Arts Programs (R) . . . . . 500 40,000

180	APPROPRIATIONS		[Ch. 13
	6 College Readiness (R) . . . . .	579	200,000
	7 LATA Access (R) . . . . .	580	360,000
	8 Hospitality Training . . . . .	600	480,000
	9 Challenger Learning Center . . . . .	862	55,000
	10 Special Olympic Games . . . . .	966	25,000
	11 Center for Excellence in		
	12 Disabilities . . . . .	967	<u>100,000</u>
	13 Total . . . . .		\$ 2,220,050

14 Any unexpended balances remaining in the appropria-  
15 tions for Unclassified (fund 3508, activity 099), Arts  
16 Programs (fund 3508, activity 500), College Readiness  
17 (fund 3508, activity 579), LATA Access (fund 3508, activity  
18 580) and WV2001 Project (fund 3508, activity 836) at the  
19 close of fiscal year 2004 are hereby reappropriated for  
20 expenditure during the fiscal year 2005.

*232-Division of Culture and History-  
Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2005 Org 0432

1	Huntington Symphony . . . . .	027	\$ 75,000
2	Martin Luther King, Jr.		
3	Holiday Celebration . . . . .	031	10,800
4	Fairs and Festivals . . . . .	122	2,000,000
5	Archeological Curation/Capital		
6	Improvements (R) . . . . .	246	50,337
7	Historic Preservation		
8	Grants (R) . . . . .	311	450,000
9	West Virginia Public Theater . . . . .	312	250,000
10	Tri-County Fair Association . . . . .	343	125,000
11	George Tyler Moore Center for the		
12	Study of the Civil War . . . . .	397	70,000
13	Theater Arts of West Virginia . . . . .	464	420,000
14	Grants for Competitive		
15	Arts Program (R) . . . . .	624	810,000
16	Contemporary American		
17	Theater Festival . . . . .	811	120,000

18	Independence Hall (R) . . . . .	812	50,000
19	Mountain State Forest Festival . .	864	<u>75,000</u>
20	Total . . . . .	\$	4,506,137

21 Any unexpended balances remaining in the appropria-  
 22 tions for Archeological Curation/Capital Improvements  
 23 (fund 3534, activity 246), Historic Preservation Grants  
 24 (fund 3534, activity 311), Capital Outlay, Repairs and  
 25 Equipment (fund 3534, activity 589), Grants for Competi-  
 26 tive Arts Program (fund 3534, activity 624), Independence  
 27 Hall (fund 3534, activity 812) and Project ACCESS (fund  
 28 3534, activity 865) at the close of the fiscal year 2004 are  
 29 hereby reappropriated for expenditure during the fiscal  
 30 year 2005.

*233-Library Commission-  
 Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2005 Org 0433

1	Books and Films . . . . .	179	\$	500,000
2	Services to Libraries . . . . .	057		500,000
3	Grants to Public Libraries . . . . .	182		7,348,884
4	Services to State Institutions . . . .	180		-0-
5	Digital Resources . . . . .	309		219,992
6	Libraries-Special Projects . . . . .	625		500,000
7	Infomine Network . . . . .	884		<u>1,126,769</u>
8	Total . . . . .		\$	10,195,645

*234-Educational Broadcasting Authority-  
 Lottery Education Fund*

(WV Code Chapter 10)

Fund 3587 FY 2005 Org 0439

1	Mountain Stage . . . . .	249	\$	163,800
2	Star Schools . . . . .	509		<u>220,675</u>
3	Total . . . . .		\$	384,475

4 Any unexpended balance remaining in the above appro-  
 5 priation for Digital Conversion (fund 3587, activity 247) at

6 the close of the fiscal year 2004 is hereby reappropriated  
7 for expenditure during the fiscal year 2005.

*235-Bureau of Senior Services-  
Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2005 Org 0508

1	Local Programs Service		
2	Delivery Costs . . . . .	200	\$ 2,475,250
3	In-Home Services for		
4	Senior Citizens . . . . .	224	1,000,000
5	Nutrition Services for the Elderly	337	1,000,000
6	Senior Citizen Centers and		
7	Programs (R) . . . . .	462	2,900,000
8	Direct Services . . . . .	481	2,800,000
9	Transfer to Division of Human Services		
10	for Health Care and Title XIX Waiver		
11	for Senior Citizens . . . . .	539	13,000,000
12	Senior Services Medicaid		
13	Transfer . . . . .	871	10,300,000
14	Legislative Initiatives		
15	for the Elderly . . . . .	904	4,700,000
16	Long Term Care Ombudsman . . . .	905	<u>321,325</u>
17	Total . . . . .		\$ 38,469,575

18 Any unexpended balances remaining in the appropria-  
19 tion for Senior Citizen Centers and Programs (fund 5405,  
20 activity 462) at the close of the fiscal year 2004 is hereby  
21 reappropriated for expenditure during the fiscal year 2005.

22 The above appropriation for Transfer to Division of  
23 Human Services for Health Care and Title XIX Waiver for  
24 Senior Citizens along with the federal moneys generated  
25 thereby shall be used for reimbursement for services  
26 provided under the program. Further, the program shall  
27 be preserved within the aggregate of these funds.

*236-Higher Education Policy Commission-  
Lottery Education-*

*Higher Education Policy Commission-  
Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2005 Org 0441

1	Unclassified (R) . . . . .	099	\$	2,786,738
2	Higher Education Grant			
3	Program (R) . . . . .	164		18,000,000
4	Tuition Contract Program (R) . . . .	165		749,576
5	Minority Doctoral Fellowship (R)	166		150,000
6	Underwood - Smith Scholarship			
7	Program-Student Awards (R) . .	167		150,000
8	School of Osteopathic			
9	Medicine (R) . . . . .	172		6,330,742
10	Health Sciences Scholarship (R) . .	176		148,575
11	School of Osteopathic Medicine BRIM			
12	Subsidy (R) . . . . .	403		116,369
13	West Liberty State College . . . . .	439		-0-
14	Higher Education-Special			
15	Projects (R) . . . . .	488		1,051,808
16	Rural Health Initiative - Medical			
17	Schools Support (R) . . . . .	581		486,056
18	Vice Chancellor for Health Sciences -			
19	Rural Health Initiative Program and			
20	Site Support (R) . . . . .	595		-0-
21	Vice Chancellor for Health Sciences -			
22	Rural Health Residency			
23	Program (R) . . . . .	601		278,408
24	MA Public Health Program and			
25	Health Science Technology (R) .	623		60,781
26	Central Office . . . . .	701		-0-
27	HEAPS Grant Program (R) . . . . .	867		4,000,000
28	WV Engineering, Science, and			
29	Technology Scholarship			
30	Program (R) . . . . .	868		500,000
31	Health Sciences Career			
32	Opportunities Program (R) . . . . .	869		61,296
33	HSTA Program (R) . . . . .	870		1,017,341

34	Marshall Medical School-		
35	RHI Program and Site Support . . .	033	467,995
36	WVU Health Sciences		
37	RHI Program and Site Support . . .	035	1,263,890
38	RHI Program and Site Support -		
39	District Consortia . . . . .	036	2,561,437
40	RHI Program and Site Support -		
41	RHEP Program Administration .	037	193,484
42	RHI Program and Site Support -Grad		
43	Med Ed and Fiscal Oversight . . . .	038	<u>105,090</u>
44	Total . . . . .		\$40,479,586

45 Any unexpended balances remaining in the appropria-  
 46 tions at the close of fiscal year 2004 are hereby  
 47 reappropriated for expenditure during the fiscal year 2005.

1	Total TITLE II, Section 4-		
2	Lottery Revenue . . . . .		\$ <u>170,096,627</u>

1 **Sec. 5. Appropriations from state excess lottery revenue**  
 2 **fund.-** In accordance with section eighteen-a, article  
 3 twenty-two, chapter twenty nine of the code, the following  
 4 appropriations shall be deposited and disbursed by the  
 5 director of the lottery to the following accounts in this  
 6 section in the amounts indicated.

*237-Lottery Commission-  
 General Purpose Account*

Fund 7206 FY 2005 Org 0705

	Activity	Funds
1	Unclassified-Total-Transfer . . . . .	402 \$ 65,000,000

2 The above appropriation for Unclassified-Total-Trans-  
 3 fer(activity 402) shall be transferred to the General  
 4 Revenue Fund as determined by the director of the lottery.

*238-Economic Development Authority-  
 Economic Development Project Fund*



Fund 3167 FY 2005 Org 0307

1 Debt Service-Total . . . . . 310 \$ 19,000,000

2 Pursuant to subsection (f), section eighteen-a, article  
3 twenty-two, chapter twenty-nine of the code, excess  
4 lottery revenues are authorized to be transferred to the  
5 lottery fund as reimbursement of amounts transferred to  
6 the economic development project fund pursuant to section  
7 four of this title and subsection (f), section eighteen, article  
8 twenty-two, chapter twenty-nine of the code.

*239-Education Improvement Fund*

Fund 4295 FY 2005 Org 0441

1 Unclassified-Total-Transfer (R) . . 402 \$ 27,000,000

2 Any unexpended balance remaining in the appropriation  
3 at the close of fiscal year 2004 is hereby reappropriated for  
4 expenditure during the fiscal year 2005.

5 The above appropriation for Unclassified-Total-Transfer  
6 (activity 402) shall be transferred to the PROMISE Schol-  
7 arship Fund (fund 4296, org 0441) established by chapter  
8 eighteen-c, article seven, section seven.

*240-School Building Authority*

Fund 3514 FY 2005 Org 0402

1 Unclassified-Total-  
2 Transfer (R) . . . . . 402 \$ 19,000,000

3 Any unexpended balance remaining in the appropriation  
4 at the close of fiscal year 2004 is hereby reappropriated for  
5 expenditure during the fiscal year 2005.

6 The above appropriation for Unclassified-Total-Trans-  
7 fer (activity 402) shall be transferred to the General  
8 Revenue Fund for appropriation under West Virginia Code  
9 §18-9D-6.

*241-West Virginia Infrastructure Council*

Fund 3390 FY 2005 Org 0316

- 1 Unclassified-Total-
- 2    Transfer (R) . . . . . 402    \$ 40,000,000
- 3    Any unexpended balance remaining in the appropriation
- 4    at the close of the fiscal year 2004 is hereby reappropriated
- 5    for expenditure during the fiscal year 2005.
- 6    The above appropriation for Unclassified-Total-Trans-
- 7    fer(activity 402) shall be transferred to the West Virginia
- 8    Infrastructure Fund (fund 3384, org 0316) created by
- 9    chapter thirty-one, article fifteen-a, section nine of the
- 10   code.

*242-Higher Education Improvement Fund*

Fund 4297 FY 2005 Org 0441

- 1 Unclassified-Total (R) . . . . . 096    \$ 10,000,000
- 2    Any unexpended balance remaining in the appropriation
- 3    at the close of the fiscal year 2004 is hereby reappropriated
- 4    for expenditure during the fiscal year 2005.

*243-State Park Improvement Fund*

Fund 3277 FY 2005 Org 0310

- 1 Unclassified-Total (R) . . . . . 096    \$ 5,000,000
- 2    Any unexpended balance remaining in the appropriation
- 3    at the close of the fiscal year 2004 is hereby reappropriated
- 4    for expenditure during the fiscal year 2005.

*244-Lottery Commission-  
Refundable Credit*

Fund 7207 FY 2005 Org 0705

- 1 Unclassified-Total-Transfer . . . . . 402    \$ 10,000,000

2 The above appropriation for Unclassified-Total-Transfer  
 3 (activity 402) shall be transferred to the General Revenue  
 4 Fund to provide reimbursement for the refundable credit  
 5 allowable under chapter eleven, article twenty-one, section  
 6 twenty-one of the code. The amount of the required  
 7 transfer shall be determined solely by the state tax com-  
 8 missioner and shall be completed by the director of the  
 9 lottery upon the commissioners request.

*245-Lottery Commission-  
 Excess Lottery Revenue Fund Surplus*

Fund 7208 FY 2005 Org 0705

1 Unclassified-Total-Transfer . . . . . 402 \$ 22,800,000

2 The above appropriation for Unclassified-Total-Transfer  
 3 (activity 402) shall be transferred to the General Revenue  
 4 Fund only after all funding required by chapter twenty-  
 5 nine, article twenty-two, section eighteen-a of the code has  
 6 been satisfied as determined by the director of the lottery.

*246-Joint Expenses*

(WV Code Chapter 4)

Fund 1735 FY 2005 Org 2300

1 Any unexpended balance remaining in the appropriation  
 2 at the close of fiscal year 2004 is hereby reappropriated for  
 3 expenditure during the fiscal year 2005.

4 The above appropriation for Tax Reduction and Federal  
 5 Funding Increased Compliance (TRAFFIC)-Total (fund  
 6 1735, activity 620) is intended for possible general state tax  
 7 reductions or the offsetting of any reductions in federal  
 8 funding for state programs. It is not intended as a general  
 9 appropriation for expenditure by the Legislature.

10 Total TITLE II, Section 5-Excess  
 11 Lottery Funds . . . . . \$ 217,800,000

1     **Sec. 6. Appropriations of federal funds.**-In accordance  
 2 with article eleven, chapter four of the code, from federal  
 3 funds there are hereby appropriated conditionally upon the  
 4 fulfillment of the provisions set forth in article two,  
 5 chapter five-a of the code the following amounts, as  
 6 itemized, for expenditure during the fiscal year two  
 7 thousand five.

### LEGISLATIVE

#### *247-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 2005 Org 2300

	<b>Activity</b>		<b>Federal Funds</b>
1	Unclassified-Total . . . . .	096	\$ 1,263,500

### JUDICIAL

#### *248-Supreme Court— Consolidated Federal Funds*

Fund 8867 FY 2005 Org 2400

1	Unclassified-Total . . . . .	096	\$ 150,000
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### EXECUTIVE

#### *249-Governor's Office- Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 8792 FY 2005 Org 0100

1	Unclassified-Total . . . . .	096	\$ 450,000
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#### *250-Governor's Office- Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2005 Org 0100

1 Unclassified-Total ..... 096 \$ 7,811,976

*251-Governor's Office-  
Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2005 Org 0100

1 Unclassified-Total ..... 096 \$ 5,431,509

*252-Auditor's Office-  
National White Collar Crime Center*

(WV Code Chapter 12)

Fund 8807 FY 2005 Org 1200

1 Unclassified-Total ..... 096 \$ 14,000,942

*253-Department of Agriculture*

(WV Code Chapter 19)

Fund 8736 FY 2005 Org 1400

1 Unclassified-Total ..... 096 \$ 4,246,459

*254-Department of Agriculture-  
Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 2005 Org 1400

1 Unclassified-Total ..... 096 \$ 818,829

*255-Department of Agriculture-  
State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2005 Org 1400

1 Unclassified-Total ..... 096 \$ 341,174

*256-Secretary of State-*

(WV Code Chapter 3)

Fund 8854 FY 2005 Org 1600

1 Unclassified-Total \*~~(R)~~ ..... 096 \$ 14,500,000

**DEPARTMENT OF ADMINISTRATION**

*257-West Virginia Prosecuting Attorney's Institute*

(WV Code Chapter 7)

Fund 8834 FY 2005 Org 0228

1 Unclassified-Total ..... 096 \$ 199,468

*258-Children's Health Insurance Agency*

(WV Code Chapter 5)

Fund 8838 FY 2005 Org 0230

1 Unclassified-Total ..... 096 \$ 33,817,646

**DEPARTMENT OF EDUCATION**

*259-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2005 Org 0402

1 Unclassified-Total ..... 096 \$160,000,000

*260-State Department of Education-  
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2005 Org 0402

1 Unclassified-Total ..... 096 \$ 85,000,000

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\* **CLERK'S NOTE:** The Governor struck the designation "(R)" in Item No. 256, line 1.

*261-State Board of Education-  
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2005 Org 0402

1 Unclassified-Total ..... 096 \$ 21,000,000

*262-State Department of Education-  
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2005 Org 0402

1 Unclassified-Total ..... 096 \$ 77,000,000

*263-State Department of Education-  
Education Grant*

Fund 8748 FY 2005 Org 0402

1 Unclassified-Total ..... 096 \$ 50,000,000

**DEPARTMENT OF EDUCATION AND THE ARTS**

*264-Department of Education and the Arts-  
Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2005 Org 0431

1 Unclassified-Total ..... 096 \$ 1,051,571

*265-Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2005 Org 0432

1 Unclassified-Total ..... 096 \$ 2,500,000

*266-Library Commission*

(WV Code Chapter 10)

Fund 8720 FY 2005 Org 0433

1	Unclassified-Total .....	096	\$	1,932,637
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*267-Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 8721 FY 2005 Org 0439

1	Unclassified-Total .....	096	\$	1,800,000
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*268-State Board of Rehabilitation-  
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2005 Org 0932

1	Unclassified-Total .....	096	\$	46,323,075
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**DEPARTMENT OF HEALTH AND HUMAN RESOURCES***269-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2005 Org 0506

1	Unclassified-Total .....	096	\$	7,308,797
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*270-Division of Health-  
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2005 Org 0506

1	Unclassified-Total .....	096	\$	73,734,131
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*271-Division of Health-  
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2005 Org 0506

1	Unclassified-Total .....	096	\$	16,000,000
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*272-West Virginia Health Care Authority*

(WV Code Chapter 16)

Fund 8851 FY 2005 Org 0507

1 Unclassified-Total ..... 096 \$ 40,000

*273-Human Rights Commission*

(WV Code Chapter 5)

Fund 8725 FY 2005 Org 0510

1 Unclassified-Total ..... 096 \$ 510,467

*274-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2005 Org 0511

1 Unclassified-Total ..... 096 \$ 1,905,460,500

**DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY***275-Adjutant General-State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2005 Org 0603

1 Unclassified-Total ..... 096 \$ 85,274,083

*276-Office of Emergency Services*

(WV Code Chapter 15)

Fund 8727 FY 2005 Org 0606

1 Unclassified-Total ..... 096 \$ 8,693,164

*277-Division of Corrections*

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

Fund 8836 FY 2005 Org 0608

1 Unclassified-Total ..... 096 \$ 650,000

*278-West Virginia State Police*

(WV Code Chapter 15)

Fund 8741 FY 2005 Org 0612

1 Unclassified-Total ..... 096 \$ 1,208,527

*279-Division of Veterans' Affairs*

(WV Code Chapter 9A)

Fund 8858 FY 2005 Org 0613

1 Unclassified-Total ..... 096 \$ 10,000,000

*280-Division of Veterans' Affairs-  
Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2005 Org 0618

1 Unclassified-Total ..... 096 \$ 1,203,780

*281-Division of Criminal Justice Services*

(WV Code Chapter 15)

Fund 8803 FY 2005 Org 0620

1 Unclassified-Total ..... 096 \$ 14,915,835

*282-Division of Juvenile Services*

(WV Code Chapter 49)

Fund 8855 FY 2005 Org 0621

1 Unclassified-Total ..... 096 \$ 331,000

**DEPARTMENT OF REVENUE***283-Tax Division*

(WV Code Chapter 11)

Fund 7069 FY 2005 Org 0702

1 Unclassified-Total ..... 096 \$ 25,000

**DEPARTMENT OF TRANSPORTATION**

*284-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2005 Org 0802

1 Unclassified-Total ..... 096 \$ 9,819,900

*285-Division of Public Transit*

(WV Code Chapter 17)

Fund 8745 FY 2005 Org 0805

1 Unclassified-Total ..... 096 \$ 11,602,638

*286-Public Port Authority*

(WV Code Chapter 17)

Fund 8830 FY 2005 Org 0806

1 Unclassified-Total ..... 096 \$ 2,660,000

**BUREAU OF COMMERCE**

*287-Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2005 Org 0305

1 Unclassified-Total ..... 096 \$ 2,249,448

*288-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 8704 FY 2005 Org 0306

1 Unclassified-Total ..... 096 \$ 550,000

*289-West Virginia Development Office*

(WV Code Chapter 5B)

Fund 8705 FY 2005 Org 0307

1 Unclassified-Total . . . . . 096 \$ 9,595,134

*290-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 8706 FY 2005 Org 0308

1 Unclassified-Total . . . . . 096 \$ 540,822

*291-Division of Natural Resources*

(WV Code Chapter 20)

Fund 8707 FY 2005 Org 0310

1 Unclassified-Total . . . . . 096 \$ 8,534,200

*292-Division of Miners' Health,  
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2005 Org 0314

1 Unclassified-Total . . . . . 096 \$ 590,765

**BUREAU OF EMPLOYMENT PROGRAMS**

*293-Bureau of Employment Programs*

(WV Code Chapter 21A)

Fund 8835 FY 2005 Org 0323

1	Unclassified . . . . .	099	\$ 512,657
2	Reed Act 2002 -		
3	Unemployment Compensation	622	2,374,000
4	Reed Act 2002 -		
5	Employment Services . . . . .	630	<u>1,371,000</u>
6	Total . . . . .		\$ 4,257,657

7 Pursuant to the requirements of 42 U.S.C. 1103, Section  
 8 903 of the Social Security Act, as amended, and the  
 9 provisions of section nine, article nine, chapter twenty-  
 10 one-a of the code of West Virginia, one thousand nine  
 11 hundred thirty-one, as amended, the above appropriation  
 12 to Unclassified shall be used by the bureau of employment  
 13 programs for the specific purpose of administration of the  
 14 state's unemployment insurance program or job service  
 15 activities, subject to each and every restriction, limitation  
 16 or obligation imposed on the use of the funds by those  
 17 federal and state statutes.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*294-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2005 Org 0313

1	Unclassified-Total .....	096	\$ 98,015,470
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**BUREAU OF SENIOR SERVICES**

*295-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2005 Org 0508

1	Unclassified-Total .....	096	\$ 14,550,000
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**MISCELLANEOUS BOARDS AND COMMISSIONS**

*296-Board of Pharmacy*

(WV Code Chapter 30)

Fund 8857 FY 2005 Org 0913

1	Unclassified-Total .....	096	\$ 87,500
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*297-Public Service Commission-  
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2005 Org 0926

1 Unclassified-Total ..... 096 \$ 1,514,718

*298-Public Service Commission-  
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2005 Org 0926

1 Unclassified-Total ..... 096 \$ 270,918

*299-Coal Heritage Highway Authority*

(WV Code Chapter 29)

Fund 8861 FY 2005 Org 0942

1 Unclassified-Total ..... 096 \$ 27,000

*299-WV State Mapping and Addressing Board*

(WV Code Chapter)

Fund 8868 FY 2005 Org 0940

1 Unclassified ..... 099 \$375,000

2 Total TITLE II, Section 6-

3 Federal Funds ..... \$2,820,253,240

1 **Sec. 7. Appropriations from federal block grants.**-The  
2 following items are hereby appropriated from federal block  
3 grants to be available for expenditure during the fiscal year  
4 2005.

*300-Governor's Office-  
Office of Economic Opportunity  
Community Services*

Fund 8799 FY 2005 Org 0100

1 Unclassified-Total ..... 096 \$ 8,000,000

*301-West Virginia Development Office-  
Community Development*

Fund 8746 FY 2005 Org 0307

1 Unclassified-Total ..... 096 \$ 28,330,852

*302-West Virginia Development Office-  
Workforce Investment Act*

Fund 8848 FY 2005 Org 0307

1 Unclassified-Total ..... 096 \$ 49,832,357

*303-Division of Health-  
Maternal and Child Health*

Fund 8750 FY 2005 Org 0506

1 Unclassified-Total ..... 096 \$ 10,878,891

*304-Division of Health-  
Preventive Health*

Fund 8753 FY 2005 Org 0506

1 Unclassified-Total ..... 096 \$ 2,237,034

*305-Division of Health-  
Substance Abuse Prevention and Treatment*

Fund 8793 FY 2005 Org 0506

1 Unclassified-Total ..... 096 \$ 11,557,304

*306-Division of Health-  
Community Mental Health Services*

Fund 8794 FY 2005 Org 0506

1 Unclassified-Total ..... 096 \$ 3,314,733

*307-Division of Health-  
Abstinence Education Program*

Fund 8825 FY 2005 Org 0506

1 Unclassified-Total ..... 096 \$ 976,837

*308-Division of Human Services-  
Energy Assistance*

Fund 8755 FY 2005 Org 0511

1 Unclassified-Total ..... 096 \$ 21,100,942

*309-Division of Human Services-  
Social Services*

Fund 8757 FY 2005 Org 0511

1 Unclassified-Total ..... 096 \$ 15,000,000

*310-Division of Human Services-  
Temporary Assistance Needy Families*

Fund 8816 FY 2005 Org 0511

1 Unclassified-Total ..... 096 \$175,000,000

*311-Division of Human Services-  
Child Care and Development*

Fund 8817 FY 2005 Org 0511

1 Unclassified-Total ..... 096 \$ 38,080,000

*312-Division of Criminal Justice Services-  
Juvenile Accountability Incentive*

Fund 8829 FY 2005 Org 0620

1 Unclassified-Total ..... 096 \$ 2,400,000

*313-Division of Criminal Justice Services-  
Local Law Enforcement*

Fund 8833 FY 2005 Org 0620

1 Unclassified-Total ..... 096 \$ 607,494

2 Total TITLE II, Section 7-

3 Federal Block Grants \$ 367,316,444



1       **Sec. 8. Awards for claims against the state.**—There are  
2 hereby appropriated for fiscal year 2005, from the fund as  
3 designated, in the amounts as specified, general revenue  
4 funds in the amount of \$3,621,385, special revenue fund in  
5 the amount of \$162,427, state road funds in the amount of  
6 \$433,954, and non-general revenue fund in the amount of  
7 \$326,944 for payment of claims against the state.

1       **Sec. 9. Appropriations from surplus accrued.**— The  
2 following items are hereby appropriated from the state  
3 excess lottery revenue fund, and are to be available for  
4 expenditure during the fiscal year 2005 out of surplus  
5 funds only, as determined by the director of the lottery,  
6 accrued from the fiscal year ending the thirtieth day of  
7 June, 2004, subject to the terms and conditions set forth in  
8 this section.

9       It is the intent and mandate of the Legislature that the  
10 following appropriations be payable only from surplus  
11 accrued from the fiscal year ending the thirtieth day of  
12 June two thousand four.

13       In the event that surplus revenues available from the  
14 fiscal year ending the thirtieth day of June, two thousand  
15 four, are not sufficient to meet all the appropriations made  
16 pursuant to this section, then the appropriations shall be  
17 made to the extent that surplus funds are available and  
18 shall be allocated first to provide the necessary funds to  
19 meet the first appropriation of this section; next, to  
20 provide the funds necessary for the second appropriation  
21 of this section and subsequently to provide the funds  
22 necessary for each appropriation in succession before any  
23 funds are provided for the next subsequent appropriation.

~~\*314—Joint Expenses~~

~~(WV Code Chapter 4)~~

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\* **CLERK'S NOTE:** The Governor struck all of Item Nos. 314, 315 and 317.

~~Fund FY 2005 Org 2300~~

- 1 ~~Tax Reduction and Federal~~
- 2 ~~Funding Increased~~
- 3 ~~Compliance(TRAFFIC) . . . . . 642 — \$ 5,000,000~~

*~~315-Workers' Compensation Commission~~*

~~(WV Code Chapter 23)~~

~~Fund FY 2005 Org 0322~~

- 1 ~~Self-Insured Security Pool . . . . . 033 — \$ 5,000,000~~

*~~316—Governor's Office~~*

~~(WV Code Chapter 5)~~

Fund FY 2005 Org 0100

- 1 Publication of Papers and
- 2 Transition Expenses . . . . . 465 \$ 325,000

*~~317-Adjutant General-  
State Militia~~*

~~(WV Code Chapter 15)~~

~~Fund FY 2005 Org 0603~~

- 1 ~~Armory Capital Improvements . . 325 — \$ 2,000,000~~

*~~318-Division of Corrections-  
Correctional Units~~*

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

Fund FY 2005 Org 0608

- 1 Payments to Federal, County and/or
- 2 Regional Jails . . . . . 555 \$ 3,887,620

*319-Tax Division*

(WV Code Chapter 11)

Fund FY 2005 Org 0702

1 Remittance Processor . . . . . 570 \$ 200,000

*320-West Virginia State Police*

(WV Code Chapter 15)

Fund FY 2005 Org 0612

1 Handgun Replacement . . . . . 289 \$ 400,000

*321-Division of Health-  
Central Office*

(WV Code Chapter 16)

Fund FY 2005 Org 0506

1 Chief Medical Examiner -  
2 Capital Improvements . . . . . 035 \$ 1,050,000

~~\*322-Division of Culture and History~~

~~(WV Code Chapter 29)~~

~~Fund FY 2005 Org 0432~~

~~1 State Museum . . . . . 036 \$ 1,000,000~~

~~*323-Governor's Office-  
Civil Contingent Fund*~~

~~(WV Code Chapter 5)~~

~~1 Flood Reparations . . . . . 400 \$ 400,000~~

~~2 From the above appropriation, \$300,000 shall be  
3 allocated to Wyoming County and \$100,000 shall be  
4 allocated to Greenbrier County.~~

~~*324-West Virginia Development Office*~~

~~(WV Code Chapter 5B)~~

\* CLERK'S NOTE: The Governor struck all of the Item Nos. 322, 323, 324, 325 and 326.

~~Fund FY 2005 Org 0307~~

- 1 Local Economic
- 2 ~~Development Assistance . . . . . 819 \$ 3,244,651~~

~~325-Board of Risk and Insurance Management~~

~~(WV Code Chapter 29)~~

~~Fund FY 2005 Org 0218~~

- 1 ~~Unfunded Liability Payment . . . . . 037 \$ 7,000,000~~

~~326-Division of Finance~~

~~(WV Code Chapter 5A)~~

~~Fund FY 2005 Org 0209~~

- 1 FIMS Upgrade to Open
- 2 Platform . . . . . ~~038 \$ 10,000,000~~
- 3 \*Total TITLE II, Section 9-
- 4 Surplus Accrued . . . . . 39,507,271
- \$ 5,862,620

1     **Sec. 10. Special revenue appropriations.**-There are  
 2 hereby appropriated for expenditure during the fiscal year  
 3 two thousand five appropriations made by general law  
 4 from special revenue which are not paid into the state fund  
 5 as general revenue under the provisions of section two,  
 6 article two, chapter twelve of the code: *Provided*, That  
 7 none of the money so appropriated by this section shall be  
 8 available for expenditure except in compliance with and in  
 9 conformity to the provisions of articles two and three,  
 10 chapter twelve and article two, chapter five-a of the code,  
 11 with due consideration to the digest of the budget bill  
 12 prepared pursuant to article one, chapter four, unless the  
 13 spending unit has filed with the director of the budget and  
 14 the legislative auditor prior to the beginning of each fiscal  
 15 year:

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\* **CLERK'S NOTE:** The Governor also reduced the total appearing in TITLE II, Section 9, Surplus Accrued, from "\$39,507,271" to "\$5,862,620".

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 two  
4 thousand five, for the purpose of making studies and  
5 recommendations relative to improvements of the adminis-  
6 tration and management of spending units in the executive  
7 branch of state government, shall be deposited in the state  
8 treasury in a separate account therein designated state  
9 improvement fund.

10 There are hereby appropriated all moneys so deposited  
11 during the fiscal year two thousand five to be expended as  
12 authorized by the governor, for such studies and recom-  
13 mendations which may encompass any problems of  
14 organization, procedures, systems, functions, powers or  
15 duties of a state spending unit in the executive branch, or  
16 the betterment of the economic, social, educational, health  
17 and general welfare of the state or its citizens.

1 **Sec. 12. Specific funds and collection accounts.-**A fund  
2 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  
5 account 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 state  
3 treasury is hereby appropriated out of the fund into which  
4 it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for  
6 the state finds that a sum has been erroneously paid, he or  
7 she shall issue his or her requisition upon the auditor for  
8 the refunding of the proper amount. The auditor shall  
9 issue his or her warrant to the treasurer and the treasurer

10 shall pay the warrant out of the fund into which the  
11 amount was originally 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 develop-  
5 ment fund which is under the supervision and control of  
6 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 because  
9 of the failure of any state agency for either general obliga-  
10 tion or revenue bonds or any local taxing district for  
11 general obligation bonds to remit funds necessary for the  
12 payment of interest and sinking fund requirements. The  
13 governor is authorized to transfer from time to time such  
14 amounts to the municipal bond commission as may be  
15 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  
19 development fund or from any state agency or local taxing  
20 district for which the governor advanced funds, with  
21 interest at the rate carried by the bonds for security or  
22 payment of which the advance was made.

1     **Sec. 15. Appropriations for local governments.**-There  
2 are hereby appropriated for payment to counties, districts  
3 and municipal corporations such amounts as will be  
4 necessary to pay taxes due counties, districts and municipi-  
5 pal 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 sum  
2 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 I-  
7 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.

#### TITLE III--ADMINISTRATION.

§1. Appropriations conditional.

§2. Legislative intent.

§3. Constitutionality.

1     **Section 1. Appropriations conditional.**-The expenditure  
2 of the appropriations made by this act, except those  
3 appropriations made to the legislative and judicial  
4 branches of the state government, are conditioned upon the  
5 compliance 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 appropriations and  
10 reappropriations shall be to the succeeding or later spend-  
11 ing unit created, unless otherwise indicated.

1     **Sec. 2. Legislative intent.**-It is the intent of the Legisla-  
2 ture that the duly appointed members of the conference  
3 committee on this bill may formulate and set forth in a  
4 budget digest recommendations for the expenditure of  
5 money appropriated by this bill after its enactment. It is  
6 the further intent of the Legislature that the recommenda-  
7 tions set forth in the budget digest are an expression of  
8 legislative intent, do not have the force and effect of law,  
9 and may not be construed to alter the lawful enactment of  
10 this bill.

1       **Sec. 3. Constitutionality.**-If any part of this act is  
2 declared unconstitutional by a court of competent jurisdiction,  
3 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 14

(H. B. 4348 — By Delegates Michael, Boggs, Warner,  
Border, R. M. Thompson, H. White and Proudfoot)

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[Passed February 23, 2004; in effect from passage. Approved by the Governor.]

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AN ACT expiring funds to the treasurer's office - banking services fund 1322, fiscal year 2004, organization 1300, for the fiscal year ending June 30, 2004, in the amount of \$4,400,000 from the treasurer's office - unclaimed property trust fund, fund 1342, fiscal year 2004, organization 1300.

WHEREAS, The Legislature finds that the account balance in the treasurer's office - unclaimed property trust fund, fund 1342, fiscal year 2004, organization 1300, exceeds that which is necessary for the purposes for which the account was established; therefore

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

1       That the balance of the funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, two thousand  
3 four, to the treasurer's office - unclaimed property trust fund,  
4 fund 1342, fiscal year 2004, organization 1300, be decreased by  
5 expiring the amount of \$4,400,000 to the balance of the state  
6 treasurer - banking services fund, fund 1322, fiscal year 2004,  
7 organization 1300, during the fiscal year two thousand four.



8       The purpose of this bill is to expire the sum of \$4,400,000  
9 from the state treasurer - unclaimed property trust fund, fund  
10 1342, fiscal year 2004, organization 1300, to the balance of the  
11 state treasurer - banking services fund, fund 1322, fiscal year  
12 2004, organization 1300, for the fiscal year ending the thirtieth  
13 day of June, two thousand four, to be available for expenditure  
14 during the fiscal year two thousand four.

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## CHAPTER 15

**(H. B. 4546 — By Delegates Michael, Doyle, Leach,  
Campbell, Susman, Stalnaker and Proudfoot)**

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[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of health and human resources - family protection services board - domestic violence legal services fund, fund 5455, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - family protection services board - domestic violence legal services fund, fund 5455, fiscal year 2004, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 5455, fiscal year 2004, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF HEALTH AND**  
4 **HUMAN RESOURCES**

5 *135—Family Protection Services Board—*

6 *Domestic Violence Legal Services Fund*

7 (WV Code Chapter 48)

8 Fund 5455 FY 2004 Org 0511

9	<b>Act-</b>	<b>Other</b>
10	<b>ivity</b>	<b>Funds</b>
11	1 Unclassified - Total . . . . .	096 \$ 250,000

12 The purpose of this supplementary appropriation bill is to  
13 supplement and increase items of appropriations in the afore-  
14 said account for the designated spending unit for expenditure  
15 during the fiscal year two thousand four.

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**CHAPTER 16**

**(H. B. 4547 — By Delegates Michael, Browning, Proudfoot,  
Houston, Carmichael, Susman and Frederick)**

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[Passed March 11, 2004; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the bureau of commerce - division of miners' health, safety and training, fund 8709, fiscal year 2004, organization 0314, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8709, fiscal year 2004, organization 0314, be supplemented and amended by increasing the total appropriation as follows:

1                    TITLE II — APPROPRIATIONS.

2                    **Sec. 6. Appropriations of federal funds.**

3                    **BUREAU OF COMMERCE**

4                    *286—Division of Miners' Health,*

5                    *Safety and Training*

6                    (WV Code Chapter 22)

7                    Fund 8709 FY 2004 Org 0314

8		<b>Act-</b>	<b>Federal</b>
9		<b>ivity</b>	<b>Funds</b>

10	1	Unclassified - Total . . . . .	096	\$ 400,000
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11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriation in the aforesaid  
13 account for the designated spending unit for expenditure during  
14 the fiscal year two thousand four.

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## CHAPTER 17

**(H. B. 4548 — By Delegates Michael, Warner, Ashley,  
Browning, Carmichael, Cann and Proudfoot)**

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[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of transportation - division of motor vehicles - driver's license reinstatement fund, fund 8213, fiscal year 2004, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of transportation - division of motor vehicles - driver's license reinstatement fund, fund 8213, fiscal year 2004, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8213, fiscal year 2004, organization 0802, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF TRANSPORTATION

4 162—*Division of Motor Vehicles*—

5 *Driver’s License Reinstatement Fund*

6 (WV Code Chapter 17B)

7 Fund 8213 FY 2004 Org 0802

8		Act-	Other
9		ivity	Funds
10	4 Unclassified .....	099	\$ 300,000

11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriations in the afore-  
13 said account for the designated spending unit for expenditure  
14 during the fiscal year two thousand four.

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## CHAPTER 18

(H. B. 4549 — By Delegates Michael, Leach, Campbell,  
Foster, Susman, Anderson and Hall)

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[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the bureau of com-

merce - division of labor - elevator safety act, fund 3188, fiscal year 2004, organization 0308, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce - division of labor - elevator safety act, fund 3188, fiscal year 2004, organization 0308, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 3188, fiscal year 2004, organization 0308, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **BUREAU OF COMMERCE**

4 *176—Division of Labor—*

5 *Elevator Safety Act*

6 (WV Code Chapter 21)

7 Fund 3188 FY 2004 Org 0308

8		<b>Act-</b>	<b>Other</b>
9		<b>ivity</b>	<b>Funds</b>

10	4	Unclassified . . . . .	099	\$ 25,000
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11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriations in the afore-

- 13 said account for the designated spending unit for expenditure  
14 during the fiscal year two thousand four.

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## CHAPTER 19

**(H. B. 4550 — By Delegates Michael, Leach, Campbell,  
Hall, Proudfoot, Stalnaker and Evans)**

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[Passed March 11, 2004; 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, two thousand four, to the department of health and human resources - division of health - central office, fund 8802, fiscal year 2004, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8802, fiscal year 2004, organization 0506, be supplemented and amended by increasing the total appropriation as follows:

2

**Sec. 6. Appropriations of federal funds.**

3

**DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES**

4

5

*264—Division of Health—*

6

*Central Office*

7

(WV Code Chapter 16)

8

Fund 8802 FY 2004 Org 0506

9

**Act-**

**Federal**

10

**ivity**

**Funds**

11

1

Unclassified - Total . . . . .

096

\$ 8,118,314

12

The purpose of this supplementary appropriation bill is to  
13 supplement and increase items of appropriations in the afore-  
14 said account for the designated spending unit for expenditure  
15 during fiscal year two thousand four.



**CHAPTER 20**

**(H. B. 4551 — By Delegates Michael, Doyle, Leach,  
Stalnaker, Campbell, Ashley and Cann)**



[Passed March 11, 2004; 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,  
two thousand four, to the department of health and human



resources - division of human services, fund 8722, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8722, fiscal year 2004, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF HEALTH AND**  
4 **HUMAN RESOURCES**

5 268—*Division of Human Services*

6 (WV Code Chapters 9, 48 and 49)

7 Fund 8722 FY 2004 Org 0511

8		<b>Act-</b>	<b>Federal</b>
9		<b>ivity</b>	<b>Funds</b>

10	1	Unclassified - Total .....	096	\$ 95,397,425
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11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriations in the afore-

- 13 said account for the designated spending unit for expenditure  
 14 during fiscal year two thousand four.

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## CHAPTER 21

**(H. B. 4748 — By Delegates Michael, Doyle, Leach,  
 Campbell, Stalnaker, Warner and Proudfoot)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation in the state excess lottery revenue fund, to the lottery commission - refundable credit, fund 7207, fiscal year 2004, organization 0705, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 7207, fiscal year 2004, organization 0705, be supplemented and amended to read as follows:

1                                    TITLE II — APPROPRIATIONS.

2                                    **Sec. 5. Appropriations from state excess**  
 3                                    **lottery revenue fund.**

4                                    *240—Lottery Commission—*

5                                    *Refundable Credit*

6                                    Fund 7207 FY 2004 Org 0705

7 1    Unclassified - Total - Transfer . . .    402    \$ 10,000,000

8       The above appropriation for Unclassified - Total - Transfer  
9 (activity 402) shall be transferred to the General Revenue Fund  
10 to provide reimbursement for the refundable credit provided by  
11 §11-21-21 and §29-22-18a of the code. The amount of the  
12 required transfer shall be determined solely by the state tax  
13 commissioner and shall be completed by the director of the  
14 lottery upon the commissioner's request.

15       The purpose of this bill is to supplement this account in the  
16 budget act for the fiscal year ending the thirtieth day of June,  
17 two thousand four, by amending language with no additional  
18 funds being appropriated.

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## CHAPTER 22

**(H. B. 4749 — By Delegates Michael, Anderson,  
Boggs, Cann, Frederick, Ashley and Warner)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT supplementing, amending and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2004, organization 0803, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand four.

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

That the items of the total appropriation from the state road fund, fund 9017, fiscal year 2004, organization 0803, be amended and increased in the existing line items as follows:

2           **Sec. 2. Appropriations from state road fund.**

3           **DEPARTMENT OF TRANSPORTATION**

4                       *90—Division of Highways*

5                       (WV Code Chapters 17 and 17C)

6                       Fund 9017 FY 2004 Org 0803

			<b>Act-</b>		<b>State</b>
			<b>ivity</b>		<b>Road</b>
					<b>Fund</b>
10	2	Maintenance .....	237	\$	6,000,000
11	3	Maintenance, Contract Paving and			
12	4	Secondary Road Maintenance ..	272		6,000,000
13	5	Bridge Repair and Replacement ...	273		5,000,000
14	7	Equipment Revolving .....	276		2,000,000
15	8	General Operations .....	277		1,250,000
16	11	Appalachian Programs .....	280		15,000,000

17           The purpose of this supplementary appropriation bill is to  
 18 supplement, amend, and increase existing items in the aforesaid  
 19 account for the designated spending unit, for expenditure during  
 20 the fiscal year ending the thirtieth day of June, two thousand  
 21 four.



**CHAPTER 23**

**(H. B. 4750 — By Delegates Anderson, Ashley, Border,  
Carmichael, Evans, Hall and G. White)**

[Passed March 13, 2004; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of education - state department of education, fund 8712, fiscal year 2004, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8712, fiscal year 2004, organization 0402, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF EDUCATION**

4 *254—State Department of Education*

5 (WV Code Chapters 18 and 18A)

6 Fund 8712 FY 2004 Org 0402

7		<b>Act-</b>	<b>Federal</b>
8		<b>ivity</b>	<b>Funds</b>

9	1	Unclassified- Total .....	096	\$ 30,000,000
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10       The purpose of this supplementary appropriation bill is to  
11 supplement and increase items of appropriation in the aforesaid  
12 account for the designated spending unit for expenditure during  
13 fiscal year two thousand four.

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## CHAPTER 24

**(H. B. 4751 — By Delegates Michael, Doyle, Leach,  
Boggs, Browning, Cann and Houston)**

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[Passed March 13, 2004; 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, two thousand four, to the department of military affairs and public safety - adjutant general - state militia, fund 8726, fiscal year 2004, organization 0603, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8726, fiscal year 2004, organization 0603, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF MILITARY**  
4 **AFFAIRS AND PUBLIC SAFETY**

5 *269—Adjutant General — State Militia*

6 (WV Code Chapter 15)

7 Fund 8726 FY 2004 Org 0603

8		<b>Act-</b>	<b>Federal</b>
9		<b>ivity</b>	<b>Funds</b>

10	1	Unclassified - Total . . . . .	096	\$ 30,000,000
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11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriations in the afore-  
13 said account for the designated spending unit for expenditure  
14 during fiscal year two thousand four.



# CHAPTER 25

**(H. B. 4752 — By Delegates Michael, Doyle, H. White,  
Stalnaker, Boggs, Carmichael and Cann)**

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of tax and revenue - division of banking, fund 3041, fiscal year 2004,

organization 0303, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue - division of banking, fund 3041, fiscal year 2004, organization 0303, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 3041, fiscal year 2004, organization 0303, be supplemented and amended by increasing the total appropriation as follows:

1	TITLE II — APPROPRIATIONS.		
2	<b>Sec. 3. Appropriations from other funds.</b>		
3	<b>DEPARTMENT OF TAX AND REVENUE</b>		
4	<i>150—Division of Banking</i>		
5	(WV Code Chapter 31A)		
6	Fund <u>3041</u> FY <u>2004</u> Org <u>0303</u>		
7		<b>Act-</b>	<b>Other</b>
8		<b>ivity</b>	<b>Funds</b>
9	4	Unclassified . . . . . 099	\$ 25,000

10 The purpose of this supplementary appropriation bill is to  
11 supplement and increase items of appropriations in the afore-  
12 said account for the designated spending unit for expenditure  
13 during the fiscal year two thousand four.



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## CHAPTER 26

**(H. B. 4754 — By Delegates Michael, Warner, Campbell,  
Ashley, Frederick, R. M. Thompson and H. White)**

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[Passed March 13, 2004; 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of transportation - division of motor vehicles, fund 8787, fiscal year 2004, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing and new programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8787, fiscal year 2004, organization 0802, be supplemented and amended by increasing the total appropriation as follows:

- 1                    TITLE II—APPROPRIATIONS.
- 2                    **Sec. 6. Appropriations of federal funds.**
- 3                    **DEPARTMENT OF TRANSPORTATION**

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4

277—*Division of Motor Vehicles*

5

(WV Code Chapter 17B)

6

Fund 8787 FY 2004 Org 0802

7

**Act-**

**Federal**

8

**ivity**

**Funds**

9

1 Unclassified - Total . . . . . 096 \$ 2,102,680

10 The purpose of this supplementary appropriation bill is to  
11 supplement and increase items of appropriation in the aforesaid  
12 account for the designated spending unit for expenditure during  
13 fiscal year two thousand four.



## CHAPTER 27

(H. B. 4755 — By Delegates Michael, Leach,  
Browning, R. M. Thompson, H. White and Cann)



[Passed March 13, 2004; 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, two thousand four, to a new item of appropriation designated to the coal heritage highway authority, fund 8861, fiscal year 2004, organization 0942, supplementing and amending chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That chapter twenty, acts of the Legislature, regular session, two thousand three, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **MISCELLANEOUS BOARDS AND COMMISSIONS**

4 *291a—Coal Heritage Highway Authority*

5 (WV Code Chapter 29)

6 Fund 8861 FY 2004 Org 0942

7		<b>Act-</b>	<b>Federal</b>
8		<b>ivity</b>	<b>Funds</b>
9	1 Unclassified - Total . . . . .	096	\$ 27,000

10 The purpose of this supplementary appropriation bill is to  
11 supplement this account in the budget act for fiscal year ending  
12 the thirtieth day of June, two thousand four, by providing for a  
13 new item of appropriation to be established therein to appropri-  
14 ate federal funds for the designated spending unit for expendi-  
15 ture during the fiscal year two thousand four.

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## CHAPTER 28

**(H. B. 4756 — By Delegates Michael, Leach, Boggs and Campbell)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2004, organization 0906, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2004, organization 0906, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8517, fiscal year 2004, organization 0906, be supplemented and amended by increasing the total appropriation as follows:

- 1                    TITLE II — APPROPRIATIONS.
- 2                    **Sec. 3. Appropriations from other funds.**
- 3                    **MISCELLANEOUS BOARDS AND COMMISSIONS**

4 211—*WV State Board of Examiners for*  
5 *Licensed Practical Nurses*

6 (WV Code Chapter 30)

7 Fund 8517 FY 2004 Org 0906

8		<b>Act-</b>	<b>Other</b>
9		<b>ivity</b>	<b>Funds</b>

10	1	Unclassified - Total .....	096	\$	15,000
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11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriation in the aforesaid  
13 account for the designated spending unit for expenditure during  
14 fiscal year two thousand four.



# CHAPTER 29

**(H. B. 4757— By Delegates Michael, Doyle, Warner,  
Houston, Anderson, R. M. Thompson and Cann)**

[Passed March 13, 2004; 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, two thousand four, to the department of military affairs and public safety - division of criminal justice services, fund 8803, fiscal year 2004, organization 0620, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing and new programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8803, fiscal year 2004, organization 0620, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF MILITARY**  
4 **AFFAIRS AND PUBLIC SAFETY**

5 *274—Division of Criminal Justice Services*

6 (WV Code Chapter 15)

7 Fund 8803 FY 2004 Org 0620

8		<b>Act-</b>	<b>Federal</b>
9		<b>ivity</b>	<b>Funds</b>

10	1	Unclassified - Total . . . . .	096	\$ 2,703,001
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11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriations in the afore-  
13 said account for the designated spending unit for expenditure  
14 during fiscal year two thousand four.

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## CHAPTER 30

**(H. B. 4758 — By Delegates Michael, Doyle,  
H. White, Campbell, Boggs and Proudfoot)**

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[Passed March 13, 2004; 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, two thousand four, to the department of military affairs and public safety - division of criminal justice services - juvenile accountability incentive, fund 8829, fiscal year 2004, organization 0620, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8829, fiscal year 2004, organization 0620, be supplemented and amended by increasing the total appropriation as follows:

1                   TITLE II — APPROPRIATIONS.

2           **Sec. 7. Appropriations from federal block grants.**

3                   305—*Division of Criminal Justice Services—*

4                               *Juvenile Accountability Incentive*

5                                       Fund 8829 FY 2004 Org 0620

6				<b>Act-</b>	<b>Federal</b>
7				<b>ivity</b>	<b>Funds</b>

8	1	Unclassified - Total . . . . .	096	\$	600,000
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9           The purpose of this supplementary appropriation bill is to  
10 supplement and increase items of appropriations in the afore-  
11 said account for the designated spending unit for expenditure  
12 during fiscal year two thousand four.



# CHAPTER 31

**(H. B. 4760 — By Delegates Michael, Hall, Cann,  
Warner, Leach, Ashley and Proudfoot)**

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[Passed March 13, 2004; 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, two thousand four, to the governor’s office - office of economic opportunity, fund 8797, fiscal year 2004, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for new programs now available for expenditure in the fiscal



year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8797, fiscal year 2004, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 EXECUTIVE

4 245—Governor’s Office—

5 Office of Economic Opportunity

6 (WV Code Chapter 5)

7 Fund 8797 FY 2004 Org 0100

8		<b>Act-</b>	<b>Federal</b>
9		<b>ivity</b>	<b>Funds</b>

10	1	Unclassified - Total .....	096	\$	500,000
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11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriation in the aforesaid  
13 account for the designated spending unit for expenditure during  
14 the fiscal year two thousand four.

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## CHAPTER 32

**(H. B. 4761 — By Delegates Michael, Stalnaker, Boggs,  
Border, R. M. Thompson, Houston and Leach)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of agriculture - donated food fund, fund 1446, fiscal year 2004, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of agriculture - donated food fund, fund 1446, fiscal year 2004, organization 1400, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 1446, fiscal year 2004, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1                                    TITLE II — APPROPRIATIONS.

2                                    **Sec. 3. Appropriations from other funds.**

3                                    EXECUTIVE

4                            103—Department of Agriculture—

5    *Donated Food Fund*

6    (WV Code Chapter 19)

7                            Fund 1446 FY 2004 Org 1400

8			<b>Act-</b>		
9			<b>ivity</b>		<b>Other</b>
					<b>Funds</b>

10	1	Unclassified - Total . . . . .	096	\$	420,000
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11        The purpose of this supplementary appropriation bill is to  
 12        supplement and increase items of appropriations in the afore-  
 13        said account for the designated spending unit for expenditure  
 14        during the fiscal year two thousand four.

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## CHAPTER 33

**(H. B. 4762 — By Delegates Michael, Anderson,  
 Proudfoot, Cann, Browning, Border and Ashley)**

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[Passed March 13, 2004; 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, two thousand four, to the department of military affairs and public safety - office of emergency services, fund 8727, fiscal year 2004, organization 0606, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, 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 for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8727, fiscal year 2004, organization 0606, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **DEPARTMENT OF MILITARY**  
4 **AFFAIRS AND PUBLIC SAFETY**

5 *270—Office of Emergency Services*

6 (WV Code Chapter 15)

7 Fund 8727 FY 2004 Org 0606

8		<b>Act-</b>	<b>Federal</b>
9		<b>ivity</b>	<b>Funds</b>

10	1	Unclassified - Total .....	096	\$	10,000,000
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11 The purpose of this supplementary appropriation bill is to  
12 supplement and increase items of appropriations in the afore-  
13 said account for the designated spending unit for expenditure  
14 during fiscal year two thousand four.

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## CHAPTER 34

**(S. B. 526 — By Senators Helmick, Sharpe, Bailey, Boley, Bowman, Chafin, Dempsey, Edgell, Facemyer, Guills, Love, McCabe, Minear, Plymale, Prezioso, Sprouse and Unger)**

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[Passed March 13, 2004; 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 moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of education and the arts - state board of rehabilitation - division of rehabilitation services, fund 0310, fiscal year 2004, organization 0932, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fourteenth day of January, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand four; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand four; therefore

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0310, fiscal year 2004,

organization 0932, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 44—*State Board of Rehabilitation*—

5 *Division of Rehabilitation Services*

6 (WV Code Chapter 18)

7 Fund 0310 FY 2004 Org 0932

					<b>General</b>
					<b>Revenue</b>
					<b>Funds</b>
			<b>Act-</b>		
			<b>ivity</b>		
11	5	Unclassified - Surplus . . . . .	097	\$	421,000

12 The purpose of this supplemental appropriation bill is to  
13 supplement and increase items of appropriation in the aforesaid  
14 account for the designated spending unit for expenditure during  
15 the fiscal year two thousand four.

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## CHAPTER 35

**(S. B. 713 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of two million five hundred thousand dollars from the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2005, organization 0218.

WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2005, organization 0218, will exceed that which is necessary for the purposes for which the account was established; therefore

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

1       That the balance of the funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, two thousand  
3 five, to the board of risk and insurance management - premium  
4 tax savings fund, fund 2367, fiscal year 2005, organization  
5 0218, be decreased by expiring the amount of two million five  
6 hundred thousand dollars to the unappropriated balance of the  
7 state fund, general revenue, to be available for appropriation  
8 during fiscal year two thousand five.

9       The purpose of this bill is to expire the sum of two million  
10 five hundred thousand dollars from the board of risk and  
11 insurance management - premium tax savings fund, fund  
12 2367, fiscal year 2005, organization 0218, to the unappropri-  
13 ated balance in the state fund, general revenue, for the fiscal  
14 year ending the thirtieth day of June, two thousand five, to be  
15 available for appropriation during fiscal year two thousand  
16 five.

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## CHAPTER 36

**(S. B. 714 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of five hundred thousand dollars from the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2005, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2005, organization 0704, will exceed that which is necessary for the purposes for which the account was established; therefore

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

1       That the balance of the funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, two thousand  
3 five, to the insurance commissioner — insurance commission  
4 fund, fund 7152, fiscal year 2005, organization 0704, be  
5 decreased by expiring the amount of five hundred thousand  
6 dollars to the unappropriated balance of the state fund, general  
7 revenue, to be available for appropriation during fiscal year two  
8 thousand five.

9       The purpose of this bill is to expire the sum of five hundred  
10 thousand dollars from the insurance commissioner — insurance



11 commission fund, fund 7152, fiscal year 2005, organization  
12 0704, to the unappropriated balance in the state fund, general  
13 revenue, for the fiscal year ending the thirtieth day of June, two  
14 thousand five, to be available for appropriation during fiscal  
15 year two thousand five.

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## CHAPTER 37

**(S. B. 715 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso,  
Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley,  
Minear, Facemyer, Guills and Sprouse)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of one million two hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2005, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2005, organization 0926, will exceed that which is necessary for the purposes for which the account was established; therefore

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

1 That the balance of the funds available for expenditure in  
2 the fiscal year ending the thirtieth day of June, two thousand  
3 five, to the public service commission, fund 8623, fiscal year  
4 2005, organization 0926, be decreased by expiring the amount  
5 of one million two hundred fifty thousand dollars to the  
6 unappropriated balance of the state fund, general revenue, to be

7 available for appropriation during the fiscal year two thousand  
8 five.

9 The purpose of this bill is to expire the sum of one million  
10 two hundred fifty thousand dollars from the public service  
11 commission, fund 8623, fiscal year 2005, organization 0926, to  
12 the unappropriated balance in the state fund, general revenue,  
13 for the fiscal year ending the thirtieth day of June, two thousand  
14 five, to be available for appropriation during the fiscal year two  
15 thousand five.

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## CHAPTER 38

**(H. B. 4415 — By Delegates Warner, Beane, Boggs,  
Frederick, Stalnaker, Proudfoot and Foster)**

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[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §6-9-7 of the code of West Virginia, 1931, as amended, relating to giving the state auditor, as the chief inspector, flexibility in determining when to conduct audits on local government offices and when to conduct a review on them.

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

That §6-9-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.**

**§6-9-7. Examinations into affairs of local public offices; penalties.**

1 (a) The chief inspector has the power by himself or herself,  
2 or by any person appointed, designated or approved by the chief

3 inspector to perform the service, to examine into all financial  
4 affairs of every local governmental office or political subdivi-  
5 sion and all boards, commissions, authorities, agencies or other  
6 offices created under authority thereof. An examination shall be  
7 made annually, if required, to comply with the Single Audit Act  
8 and when otherwise required by law or contract. When that act  
9 does not apply, unless otherwise required by law or by contract,  
10 the examination shall be made at least once a year, if practica-  
11 ble. Furthermore, the chief inspector shall furnish annually to  
12 the Legislature a list of each local government office or  
13 political subdivision and all boards, commissions, authorities,  
14 agencies or other offices created under authority thereof and the  
15 year of its most recent completed audit.

16 (b) When required for compliance with regulations for  
17 federal funds received or expended by county boards of  
18 education the chief inspector or his or her designee, including  
19 any certified public accountant approved by the chief inspector  
20 shall conduct and issue an audit report within the time specified  
21 in controlling federal regulations. Examinations of other local  
22 governments shall be conducted and audit or review reports  
23 issued in accordance with uniform procedures of the chief  
24 inspector.

25 (c) A county board of education may elect, by the first day  
26 of May of the fiscal year to be audited, to have its annual  
27 examination performed by a certified public accountant  
28 approved by the chief inspector to perform the examinations.  
29 When this election is made, a copy of the order of the county  
30 board making the election shall be filed with the chief inspector  
31 and the state board of school finance. The county board of  
32 education is allowed to contract with any certified public  
33 accountant on the chief inspector's then current list of approved  
34 certified public accountants, unless the state board of school  
35 finance or the prosecuting attorney of the county in which the  
36 board is located timely submits to the chief inspector a written

37 request for the examination to be performed by the chief  
38 inspector or a person appointed by the chief inspector, or the  
39 chief inspector determines that a special or unusual situation  
40 exists. The county board shall follow the audit bid procurement  
41 procedures established by the chief inspector in obtaining the  
42 audit.

43 (d) The chief inspector shall, at least annually, prepare a list  
44 of certified public accountants approved by the chief inspector  
45 to perform examinations of local governments. Names shall be  
46 added to or deleted from that list in accordance with uniform  
47 procedures of the chief inspector. When each list or updated list  
48 is issued, the chief inspector shall promptly file a copy of the  
49 list in the state register and send a copy to the state board of  
50 education, the state board of school finance and to local  
51 governments who request a copy.

52 (e) A county board of education, when procuring the  
53 services of a certified public accountant on the chief inspector's  
54 list, shall follow the procurement standards prescribed by the  
55 grants management common rule, OMB Circular A-102  
56 "Grants and Cooperative Agreements with State and Local  
57 Governments" in effect for the fiscal year being examined, or  
58 in any replacement circular or regulation of the office of  
59 management and budget and in addition shall follow those  
60 standards as determined by the office of chief inspector.

61 (f) The approved independent certified public accountant  
62 making examinations under this section shall comply with  
63 requirements of this section applicable to examinations per-  
64 formed by the chief inspector, including applicable require-  
65 ments of the federal government and uniform procedures of the  
66 chief inspector applicable to examinations of county boards of  
67 education.

68 (1) Upon completion of the certified public accountant's  
69 examination and audit or review report, the certified public

70 accountant shall promptly send two copies of the certified  
71 report to the county board of education who shall file one copy  
72 with the federal audit clearing house. The certified public  
73 accountant shall send one copy of the certified report to the  
74 state board of school finance, and one copy to the chief inspec-  
75 tor.

76 (2) If any examination discloses misfeasance, malfeasance  
77 or nonfeasance in office on the part of any public officer or  
78 employee, the certified public accountant shall submit his or her  
79 recommendation to the chief inspector regarding the legal  
80 action the approved certified public accountant considers  
81 appropriate, including, but not limited to, whether criminal  
82 prosecution or civil action to effect restitution is appropriate,  
83 and three additional copies of the certified audit report. After  
84 review of the recommendations and the audit report, the chief  
85 inspector shall proceed as provided in subsection (n) of this  
86 section. For purposes of this section and section thirteen, article  
87 nine-b, chapter eighteen of this code, a certified audit report of  
88 an approved certified public accountant shall be treated in the  
89 same manner as a report of the chief inspector.

90 (g) On every examination, inquiry shall be made as to the  
91 financial conditions and resources of the agency having  
92 jurisdiction over the appropriations and levies disbursed by the  
93 office and whether the requirements of the constitution and  
94 statutory laws of the state and the ordinances and orders of the  
95 agency have been properly complied with and also inquire into  
96 the methods and accuracy of the accounts and such other  
97 matters of audit and accounting as the chief inspector may  
98 prescribe.

99 (h) If a local government office is not subject to a single  
100 audit requirement under federal regulations or if it is not  
101 otherwise required by law or contract to undergo an annual  
102 audit and its expenditures from all sources are less than three

103 hundred thousand dollars during the fiscal year the chief  
104 inspector may choose to perform either a review or audit on the  
105 local government office and may in his or her discretion  
106 determine the frequency of such review or audit.

107 (i) The chief inspector or any authorized assistant may issue  
108 subpoenas and compulsory process, direct the service thereof  
109 by any sheriff, compel the attendance of witnesses and the  
110 production of books and papers at any designated time and  
111 place, selected in their respective county, and administer oaths.

112 (j) If any person refuses to appear before the chief inspector  
113 or his or her authorized assistant when required to do so, refuses  
114 to testify on any matter or refuses to produce any books or  
115 papers in his or her possession or under his or her control, he or  
116 she is guilty of a misdemeanor and, upon conviction thereof,  
117 shall be fined not more than one hundred dollars and impris-  
118 oned in the county or regional jail not more than six months.

119 (k) A person convicted of willful false swearing in an  
120 examination is guilty of a misdemeanor and, upon conviction  
121 thereof, shall be fined not more than one hundred dollars and  
122 imprisoned in the county or regional jail not more than six  
123 months.

124 (l) Except as otherwise provided in this section, a copy of  
125 the certified report of each examination shall be filed in the  
126 office of the commissioner, chief inspector with the governing  
127 body of the local government and with other offices as pre-  
128 scribed in uniform procedures of the chief inspector.

129 (m) If any examination discloses misfeasance, malfeasance  
130 or nonfeasance in office on the part of any public officer or  
131 employee, a certified copy of the report shall be filed by the  
132 chief inspector with the proper legal authority of the agency, the  
133 prosecuting attorney of the county wherein the agency is  
134 located and with the attorney general for such legal action as is

135 proper. At the time the certified audit report is filed, the chief  
136 inspector shall notify the proper legal authority of the agency,  
137 the prosecuting attorney and the attorney general in writing of  
138 his or her recommendation as to the legal action that the chief  
139 inspector considers proper, whether criminal prosecution or  
140 civil action to effect restitution, or both.

141 (n) If the proper legal authority or prosecuting attorney,  
142 within nine months of receipt of the certified audit report and  
143 recommendations, refuses, neglects or fails to take efficient  
144 legal action by a civil suit to effect restitution or by prosecuting  
145 criminal proceedings to a final conclusion, in accordance with  
146 the recommendations, the chief inspector may institute the  
147 necessary proceedings or participate therein and prosecute the  
148 proceedings in any court of the state to a final conclusion.

149 (o) A local government that is not a county board of  
150 education may elect, by the first day of May of the fiscal year  
151 to be audited, to have its annual examination performed by a  
152 certified public accountant approved by the chief inspector to  
153 perform the examinations. When this election is made, a copy  
154 of the order of the governing body making the election shall be  
155 filed with the chief inspector. An electing local government is  
156 allowed to contract with any certified public accountant on the  
157 chief inspector's then current list of approved certified public  
158 accountants, unless the prosecuting attorney of the county in  
159 which the local government is located timely submits to the  
160 chief inspector a written request for the examination to be  
161 performed by the chief inspector or a person appointed by the  
162 chief inspector, or the chief inspector determines that a special  
163 or unusual situation exists: *Provided*, That the audit of a local  
164 government may be performed by the chief inspector at his or  
165 her discretion. The local government shall follow the audit bid  
166 procurement procedures established by the chief inspector in  
167 obtaining the audit: *Provided, however*, That the chief inspector  
168 may elect to conduct the audit of a local unit of government

169 with one or more members of his or her audit staff where, in the  
170 opinion of the chief inspector, a special or unusual situation  
171 exists.

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## CHAPTER 39

(Com. Sub. for H. B. 4168 — By Delegates R. M. Thompson,  
Perry, Frich, Iaquina, G. White and Hrutkay)

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[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §31-17-2 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §46A-6K-1, §46A-6K-2, §46A-6K-3, §46A-6K-4 and §46A-6K-5, all relating to mortgage loans; exempting mortgage loan closing costs from consumer sales and service tax levied on brokerage fees, additional charges and finance charges; requiring that funds are available for settlement of a real estate mortgage transaction; defining applicability of the law; providing definition of terms used; establishing duty of lender; maintaining validity of loan documents; and providing a penalty for violations of the article.

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

That §31-17-2 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new article, designated §46A-6K-1, §46A-6K-2, §46A-6K-3, §46A-6K-4 and §46A-6K-5, all to read as follows:

### **Chapter**

#### **31. Corporations.**

#### **46A. West Virginia Consumer Credit and Protection Act.**



**CHAPTER 31. CORPORATIONS.****ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER,  
BROKER AND SERVICER ACT.****§31-17-2. License required for lender, broker or loan originator;  
exemptions.**

1       (a) No person shall engage in this state in the business of  
2 lender, broker or loan originator unless and until he or she shall  
3 first obtain a license to do so from the commissioner, which  
4 license remains unexpired, unsuspended and unrevoked, and no  
5 foreign corporation shall engage in business in this state unless  
6 it is registered with the secretary of state to transact business in  
7 this state.

8       (b) Brokerage fees, additional charges and finance charges  
9 imposed by licensed mortgage brokers, lenders and loan  
10 originators are exempt from the tax imposed by article fifteen,  
11 chapter eleven of this code beginning on the first day of  
12 January, two thousand four.

13       (c) The provisions of this article do not apply to loans made  
14 by the following:

15       (1) Federally insured depository institutions;

16       (2) Regulated consumer lender licensees;

17       (3) Insurance companies;

18       (4) Any other lender licensed by and under the regular  
19 supervision and examination for consumer compliance of any  
20 agency of the federal government;

21       (5) Any agency or instrumentality of this state, federal,  
22 county or municipal government or on behalf of the agency or  
23 instrumentality;

24 (6) By a nonprofit community development organization  
25 making mortgage loans to promote home ownership or im-  
26 provements for the disadvantaged which loans are subject to  
27 federal, state, county or municipal government supervision and  
28 oversight; or

29 (7) Habitat for Humanity International, Inc., and its  
30 affiliates providing low-income housing within this state.

31 Loans made subject to this exemption may be assigned,  
32 transferred, sold or otherwise securitized to any person and  
33 shall remain exempt from the provisions of this article, except  
34 as to reporting requirements in the discretion of the commis-  
35 sioner where the person is a licensee under this article. Nothing  
36 herein shall prohibit a broker licensed under this article from  
37 acting as broker of an exempt loan and receiving compensation  
38 as permitted under the provisions of this article.

39 (d) A person or entity designated in subsection (c) of this  
40 section may take assignments of a primary or subordinate  
41 mortgage loan from a licensed lender and the assignments of  
42 said loans that they themselves could have lawfully made as  
43 exempt from the provisions of this article under this section do  
44 not make that person or entity subject to the licensing, bonding,  
45 reporting or other provisions of this article except as the  
46 defense or claim would be preserved pursuant to section one  
47 hundred two, article two, chapter forty-six-a of this code.

48 (e) The placement or sale for securitization of a primary or  
49 subordinate mortgage loan into a secondary market by a  
50 licensee may not subject the warehouser or final securitization  
51 holder or trustee to the provisions of this article: *Provided*, That  
52 the warehouser, final securitization holder or trustee under an  
53 arrangement is either a licensee, or person or entity entitled to  
54 make exempt loans of that type under this section, or the loan  
55 is held with right of recourse to a licensee.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT  
AND PROTECTION ACT.**

**ARTICLE 6K. GOOD FUNDS SETTLEMENT ACT.**

§46A-6K-1. Applicability.

§46A-6K-2. Definitions.

§46A-6K-3. Duty of lender.

§46A-6K-4. Validity of loan documents.

§46A-6K-5. Penalty.

**§46A-6K-1. Applicability.**

1        This article applies to the settlement of loans secured by  
2 deeds of trust on owner-occupied residential dwellings with  
3 accommodations for not more than four families. This article  
4 does not apply to construction loans or any other loans which,  
5 by agreement of the parties, provide for the disbursement of the  
6 proceeds in stages.

**§46A-6K-2. Definitions.**

1        (a) “Collected funds” or “good funds” means moneys used  
2 to fund the disbursement of settlement proceeds deposited and  
3 irrevocably credited to a settlement agent’s account.

4        (b) “Disbursement of loan funds” means the delivery of the  
5 loan funds by the lender to the settlement agent in the form of:

6        (1) Cash;

7        (2) Wired funds;

8        (3) Certified check;

9        (4) Checks issued by the United States treasury, the state of  
10 West Virginia or an instrumentality of the United States or state  
11 of West Virginia;

12 (5) Cashier's check or teller's check or other similar draft  
13 or obligation of a federally insured bank, savings bank, savings  
14 and loan association or credit union or of any holding company  
15 or wholly owned subsidiary of the foregoing;

16 (6) Checks issued by a licensed lender qualified to do  
17 business in West Virginia which has posted the surety bond  
18 required by subsection (b), section four, article seventeen,  
19 chapter thirty-one of this code;

20 (7) Checks issued by an insurance company licensed and  
21 regulated by the West Virginia insurance commission, which  
22 checks are drawn on a federally insured financial institution;

23 (8) Checks drawn on the escrow account of an attorney  
24 licensed to practice law in West Virginia or on the escrow  
25 account of a real estate broker licensed in West Virginia; or

26 (9) Personal check or checks in an aggregate amount not  
27 exceeding five thousand dollars per loan closing.

28 (c) "Disbursement of settlement proceeds" means the  
29 payment of all proceeds of the transaction by the settlement  
30 agent to the persons entitled thereto.

31 (d) "Lender" means any person regularly engaged in  
32 making loans secured by deeds of trust to secure debt on West  
33 Virginia real estate. A person is considered to be regularly  
34 engaged in making loans if he or she makes more than five such  
35 loans in any one calendar year.

36 (e) "Loan closing" means that time agreed upon by the  
37 borrower, lender, seller, if applicable, and settlement agent  
38 when the execution by the borrower and delivery of the loan  
39 documents to the settlement agent occur.

40 (f) "Loan documents" means the note evidencing the debt  
41 due the lender, the deed of trust, or mortgage securing the debt  
42 due to the lender, and any other documents required by the  
43 lender to be executed by the borrower as a part of the transac-  
44 tion.

45 (g) "Loan funds" means the gross or net proceeds of the  
46 loan to be disbursed by or on behalf of the lender at loan  
47 closing.

48 (h) "Parties", as used in this subsection, means the seller,  
49 purchaser, borrower, lender and the settlement agent, as  
50 applicable.

51 (i) "Settlement" means the time when the settlement agent  
52 has received the duly executed deed, loan funds, loan docu-  
53 ments and other documents and funds required to carry out the  
54 terms of the contract between the parties.

55 (j) "Settlement agent" means the person authorized by law  
56 to be responsible for conducting the settlement and disburse-  
57 ment of the settlement proceeds.

### §46A-6K-3. Duty of lender.

1 The lender shall, at or before loan closing, cause disburse-  
2 ment of loan funds to the settlement agent; however, in the case  
3 of a refinancing, or any other loan where a right of rescission  
4 applies, the lender shall, within one business day after the  
5 expiration of the rescission period required under the federal  
6 Truth-in-Lending Act (15 U. S. C. §1601 et seq.), cause  
7 disbursement of loan funds to the settlement agent, unless the  
8 loan is rescinded by the customer. All funds disbursed by the  
9 lender to the settlement agent must be collected funds. The  
10 lender is not entitled to receive or charge any interest on the  
11 loan until disbursement of loan funds and loan closing has  
12 occurred.

**§46A-6K-4. Validity of loan documents.**

- 1 Failure to comply with the provisions of this article does
- 2 not affect the validity or enforceability of any loan documents
- 3 executed.

**§46A-6K-5. Penalty.**

- 1 Any persons suffering losses due to the failure of the lender
- 2 or the settlement agent to disburse settlement proceeds as
- 3 required by this chapter shall be entitled to recover, in addition
- 4 to other actual damages, double the amount of any interest
- 5 collected in violation of section three of this article plus
- 6 reasonable attorneys' fees incurred in the collection thereof.

**CHAPTER 40****(S. B. 286 — By Senator Minard)**

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact §31A-2-8 of the code of West Virginia, 1931, as amended, relating to the assessment of regulated consumer lenders.

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

That §31A-2-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. DIVISION OF BANKING.**

**§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.**

1       (a) All moneys collected by the commissioner from  
2 financial institutions and bank holding companies for assess-  
3 ments, examination fees, investigation fees or other necessary  
4 expenses incurred by the commissioner in administering such  
5 duties shall be paid to the commissioner and paid by the  
6 commissioner to the treasurer of the state to the credit of a  
7 special revenue account to be known as the "commissioner's  
8 assessment and examination fund" which is hereby established.  
9 The assessments and fees paid into this account shall be  
10 appropriated by law and used to pay the costs and expenses of  
11 the division of banking and all incidental costs and expenses  
12 necessary for its operations. At the end of each fiscal year, if  
13 the fund contains a sum of money in excess of twenty percent  
14 of the appropriated budget of the division of banking, the  
15 amount of the excess shall be transferred to the general revenue  
16 fund of the state. The Legislature may appropriate money to  
17 start the special revenue account.

18       (b) The commissioner of banking shall charge and collect  
19 from each state banking institution or other financial institution  
20 or bank holding company and pay into a special revenue  
21 account in the state treasury for the division of banking assess-  
22 ments as follows:

23       (1) For each state banking institution, a semiannual  
24 assessment payable on the first day of January and the first day  
25 of July, each year, computed upon the total assets of the  
26 banking institution shown on the report of condition of the  
27 banking institution filed as of the preceding thirtieth day of  
28 June and the thirty-first day of December, respectively, as  
29 follows:

30 **Total Assets**

31		<b>But Not</b>			<b>Of Excess</b>
32	<b>Over</b>	<b>Over</b>	<b>This</b>		<b>Over</b>
33	<b>Million</b>	<b>Million</b>	<b>Amount</b>	<b>Plus</b>	<b>Million</b>
34	\$ 0	\$ 2	\$ 0	.001645020	0
35	2	20	3,290	.000205628	2
36	20	100	6,991	.000164502	20
37	100	200	20,151	.000106926	100
38	200	1,000	30,844	.000090476	200
39	1,000	2,000	103,225	.000074026	1,000
40	2,000	6,000	177,251	.000065801	2,000
41	6,000	20,000	440,454	.000055988	6,000
42	20,000	40,000	1,224,292	.000052670	20,000

43 (2) For each regulated consumer lender, an annual assess-  
 44 ment payable on the first day of July, each year, computed upon  
 45 the total outstanding gross loan balances and installment sales  
 46 contract balances net of unearned interest of the regulated  
 47 consumer lender shown on the report of condition of the  
 48 regulated consumer lender as of the preceding thirty-first day of  
 49 December, respectively, as follows:

50 **Total Outstanding Balances**

51		<b>But Not</b>	<b>This</b>		<b>Of Excess</b>
52	<b>Over</b>	<b>Over</b>	<b>Amount</b>	<b>Plus</b>	<b>Over</b>
53	\$ 0	\$ 1,000,000	800	-	-
54	1,000,000	5,000,000	800	.000400	1,000,000
55	5,000,000	10,000,000	2,400	.000200	5,000,000
56	10,000,000	-	4,200	.000100	10,000,000

57 If a regulated consumer lender's records or documents are  
 58 maintained in more than one location in this state, then eight  
 59 hundred dollars may be added to the assessment for each  
 60 additional location.



61 In addition to the assessment provided in this subdivision,  
 62 the commissioner shall charge and collect from each regulated  
 63 consumer lender the actual and necessary costs and expenses  
 64 incurred in connection with any examination of a regulated  
 65 consumer lender.

66 (3) For each credit union, an annual assessment as provided  
 67 for in section eight, article one, chapter thirty-one-c of this code  
 68 as follows:

69 **Total Assets**

70		<b>But Not</b>	<b>This</b>		<b>Of Excess</b>
71	<b>Over</b>	<b>Over</b>	<b>Amount</b>	<b>Plus</b>	<b>Over</b>
72	\$ 0	\$ 100,000	100	-	-
73	100,000	500,000	300	-	-
74	500,000	1,000,000	500	-	-
75	1,000,000	5,000,000	500	.000400	1,000,000
76	5,000,000	10,000,000	2,100	.000200	5,000,000
77	10,000,000	-	3,100	.000100	10,000,000

78 (4) For each bank holding company, an annual assessment  
 79 as provided for in section eight, article eight-a of this chapter.  
 80 The annual assessment may not exceed ten dollars per million  
 81 dollars in deposits rounded off to the nearest million dollars.

82 (c) The commissioner shall each December and each June  
 83 prepare and send to each state banking institution a statement  
 84 of the amount of the assessment due. The commissioner shall  
 85 further, each June, prepare and send to each regulated consumer  
 86 lender and each state credit union a statement of the amount of  
 87 the assessment due. The commissioner shall annually, during  
 88 the month of January, prepare and send to each bank holding  
 89 company a statement of the amount of the assessment due.

90 Assessments may be prescribed every six months, not later  
 91 than the fifteenth day of June and the fifteenth day of Decem-

92 ber, by written order of the commissioner, but shall not exceed  
93 the maximums as set forth in subsection (b) of this section. In  
94 setting the assessments the primary consideration shall be the  
95 amount appropriated by the Legislature for the division of  
96 banking for the corresponding annual period. Reasonable  
97 notice of the assessments shall be made to all interested parties.  
98 All orders of the commissioner for the purpose of setting  
99 assessments are not subject to the provisions of the West  
100 Virginia administrative procedures act under chapter  
101 twenty-nine-a of this code.

102 (d) For making an examination within the state of any other  
103 financial institution for which assessments are not provided by  
104 this code, the commissioner of banking shall charge and collect  
105 from such other financial institution and pay into the special  
106 revenue account for the division of banking the actual and  
107 necessary costs and expenses incurred in connection therewith,  
108 as fixed and determined by the commissioner. Banks that  
109 provide only trust or other nondepository services, nonbanking  
110 subsidiaries of bank holding companies that provide trust  
111 services, nonbanking subsidiaries of banks that provide trust  
112 services and any trust entity that is jointly owned by federally  
113 insured depository institutions may be assessed for necessary  
114 costs and expenses associated with an examination pursuant to  
115 this subsection.

116 (e) If the records of an institution are located outside this  
117 state, the institution at its option shall make them available to  
118 the commissioner at a convenient location within the state or  
119 pay the reasonable and necessary expenses for the commis-  
120 sioner or his or her representatives to examine them at the place  
121 where they are maintained. The commissioner may designate  
122 representatives, including comparable officials of the state in  
123 which the records are located, to inspect them on his or her  
124 behalf.

125 (f) The commissioner of banking may maintain an action  
126 for the recovery of all assessments, costs and expenses in any  
127 court of competent jurisdiction.

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## CHAPTER 41

(S. B. 506 — By Senators Minard and Jenkins)

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[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §31A-4-2 of the code of West Virginia, 1931, as amended, relating to the use of “bank” in its name by a licensed insurance company.

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

That §31A-4-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.**

1 (a) No person doing business in this state, except a banking  
2 institution, a person authorized by the commissioner under the  
3 terms of this section or an insurer licensed pursuant to article  
4 three, chapter thirty-three of this code under a name including  
5 the terms set forth herein as of the thirty-first day of December,  
6 two thousand three, may use or advertise in connection with  
7 such business, or as a designation or title thereof, the term  
8 "bank", "banker", "banking", "banking company", "industrial  
9 bank", "savings bank" or "trust company" and the insurance  
10 commissioner shall notify the commissioner of each insurer so

11 licensed. No person doing business in this state except a  
12 banking institution or a person authorized by the commissioner  
13 under this article may engage in the banking or trust business in  
14 this state. A nonbanking subsidiary of a bank holding company  
15 or a nonbanking subsidiary of a banking institution having a  
16 bank branch or bank main office in this state that provides trust  
17 services pursuant to section fourteen of this article may use the  
18 term "trust company" in its title and advertising. A trust entity  
19 owned jointly by federally insured depository institutions  
20 located within this state and authorized by the commissioner to  
21 operate in this state may use the term "trust company" in its title  
22 and advertising.

23 (b) It is unlawful for any such person other than banking  
24 institutions, as herein excepted, to advertise or hold himself,  
25 itself or themselves, as the case may be, out to the public in any  
26 manner indicating, directly, indirectly or by implication, that  
27 any of them is engaged in the banking or trust business or is  
28 authorized and approved to engage therein in this state. A  
29 nonbanking subsidiary of a bank holding company or  
30 nonbanking subsidiary of a banking institution having a bank  
31 branch or bank main office in this state that provides trust  
32 services pursuant to section fourteen of this article may hold  
33 itself out to the public as engaged in the trust business. A trust  
34 entity owned jointly by federally insured depository institutions  
35 located within this state and authorized by the commissioner to  
36 operate in this state may hold itself out to the public as engaged  
37 in the trust business.

38 (c) The commissioner may authorize a person to utilize the  
39 term "bank" or "banc" in connection with nonprofit organiza-  
40 tions or medical businesses where the term would have a  
41 common meaning separate and apart from a financial institution  
42 and would not result in confusion to the public (e.g., food bank;  
43 medical databank); and in connection with bank holding  
44 companies or their nonbanking affiliates where the term denotes

45 the entities' common affiliation and would not result in confu-  
46 sion to the public.

47 (d) Any violation of the provisions of this section consti-  
48 tutes a misdemeanor offense, punishable as provided in section  
49 fifteen, article eight of this chapter.

50 (e) The commissioner of banking or any one or more  
51 banking institutions, acting individually or jointly, may petition  
52 the circuit court of the county in which any violation of the  
53 provisions of this section occur or are threatened to occur for  
54 injunction or other appropriate judicial remedies for enforce-  
55 ment of the provisions hereof and the prevention of further or  
56 continued violations thereof.

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## CHAPTER 42

(Com. Sub. for H. B. 4294 — By Delegates Cann, Fragale,  
Iaquinta, Stalnaker, Perry and Varner)

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[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §61-3-39h of the code of West Virginia, 1931, as amended, relating to removing the requirement that funds expended from the worthless check fund to pay for additional deputy clerks be proportionate to the time expended on worthless check cases.

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

That §61-3-39h of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.**

1           In any prosecution under sections thirty-nine or thirty-nine-  
2 a of this article the costs as may otherwise be imposed against  
3 the drawer of any check, draft or order shall be imposed on the  
4 person initiating the prosecution if payment of the check, draft  
5 or order is accepted by the payee or holder thereof after the  
6 filing of a complaint for warrant; if the payee or holder had  
7 reason to believe that the check, draft or order would be  
8 dishonored or if the same was postdated; or if the matter is  
9 dismissed for failure to prosecute.

10           Costs collected by magistrate court for issuance of notice  
11 as authorized by section thirty-nine-g of this article may not be  
12 paid into the special county fund created by the provisions of  
13 section four, article three, chapter fifty of this code, but shall be  
14 accounted for separately and retained by the county in a fund  
15 designated the “worthless check fund,” until the sheriff shall  
16 issue warrants in furtherance of the allowable expenses specifi-  
17 cally provided for by this section. Such costs may not be  
18 included in any calculation of the amount of funds to be  
19 retained by the county under the provisions of section four,  
20 article three, chapter fifty of this code.

21           A county may, after agreement with the court administra-  
22 tor’s office of the Supreme Court of Appeals, appropriate and  
23 spend from the worthless check fund herein established such  
24 sums as shall be necessary to pay or defray the expenses of  
25 providing a deputy sheriff to serve warrants for worthless check  
26 offenses and to pay or defray the expenses of providing  
27 additional deputy clerks in the office of the magistrate court  
28 clerk. After payment of these expenses, or after a determination  
29 that these services are not necessary, a county may appropriate  
30 and spend from the fund the sums necessary to defray the  
31 expenses of providing bailiff and service of process services by  
32 the sheriff, to defray the cost of acquiring or renting magistrate

33 court offices and providing utilities and telephones therefor to  
34 defray the cost of complying with section thirty-nine-i herein  
35 and to defray the expenses of such other services which are to  
36 be provided to magistrate courts by the county.

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## CHAPTER 43

(S. B. 199 — By Senators Bowman, Minear,  
Hunter, Sharpe, Caldwell and Rowe)

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[Passed March 5, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §5-14-4 of the code of West Virginia, 1931, as amended, relating to correcting the statutory inconsistency of appointments to the commission for the deaf and hard-of-hearing in relation to the terms and number of appointees.

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

That §5-14-4 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND  
HARD-OF-HEARING.**

**§5-14-4. Terms of office; quorum.**

1 Members of the commission who do not serve ex officio  
2 shall be appointed for the following terms: Three members shall  
3 be appointed for a term of three years; three for a term of two  
4 years; and three for a term of one year. When a vacancy occurs,  
5 an appointment shall be made for the unexpired term. The  
6 members shall annually elect a chairman. A majority of the  
7 members constitutes a quorum for the transaction of business.

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## CHAPTER 44

(Com. Sub. for H. B. 4412 — By Delegates Michael,  
Leach, Doyle, Perdue and Foster)

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[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16B-6c, relating to directing the children's health insurance board to study all available means to develop a plan modification to permit participation by families with income levels between two hundred percent and three hundred percent of the federal poverty level; findings; premium; and report to Legislature.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-6c, to read as follows:

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.**

**§5-16B-6c. Modified benefit plan for children of families of low income between two hundred and three hundred percent of the poverty level.**

1       The Legislature finds:

2       (1) That there exists a number of families of low to moder-  
3       ate income without access to affordable health insurance  
4       coverage, whose children are denied plan participation because  
5       their family income exceeds two hundred percent of the federal  
6       poverty level;



7       (2) That this exclusion imposes a heavy burden on many  
8 families by forcing them to elect whether to spend money on  
9 their children's health care or for their food, clothing and  
10 educational needs;

11       (3) That a plan should be developed and considered  
12 whereby children in families with an income between two  
13 hundred and three hundred percent of the federal poverty level  
14 would contribute approximately twenty to twenty-five percent  
15 of the actual cost of coverage resulting in no additional cost to  
16 state government; and

17       (4) That, while the primary goal of any plan will be the  
18 improvement of health care for these children, a successful plan  
19 for extending this coverage will benefit the state by improving  
20 the economy by allowing parents of these children to spend  
21 more for goods and services and by lowering future medical  
22 expenditures, uncompensated care and the other long-term  
23 adverse economic effects related to having a segment of the  
24 adult population which has been deprived of adequate medical  
25 care during childhood.

26       The board is directed to conduct a study of all available  
27 means to develop a viable, modified plan to enroll the children  
28 of those families having a level of income between two hundred  
29 and three hundred percent of the federal poverty level and to  
30 consider that such a plan should charge an affordable premium  
31 and may be phased in over a two-year period.

32       The board is further directed to study total program costs  
33 related to the implementation of a viable modified plan to  
34 expand coverage with the design requiring no additional state  
35 dollars and to study the long term effect on the state budget.

36       The board is directed to report its findings and recommen-  
37 dations to the Joint Committee on Government and Finance at  
38 its monthly meeting of August, two thousand four.

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## CHAPTER 45

**(S. B. 720 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Facemyer, Guills and Sprouse)**

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §13-2C-21 of the code of West Virginia, 1931, as amended, relating generally to the allocation and carry forward of unused state private activity bond volume cap.

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

That §13-2C-21 of the code of West Virginia, 1931, 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) of  
2 the United States Internal Revenue Code of 1986, other than  
3 those described in Section 146(g) of the Internal Revenue Code)  
4 issued pursuant to this article, including bonds issued by the  
5 West Virginia public energy authority pursuant to subsection  
6 (11), section five, article one, chapter five-d of this code or  
7 under article eighteen, chapter thirty-one of this code, during  
8 any calendar year may not exceed the ceiling established by

9 Section 146(d) of the United States Internal Revenue Code. It  
10 is hereby determined and declared as a matter of legislative  
11 finding: (i) That, in an attempt to promote economic revitaliza-  
12 tion of distressed urban and rural areas, certain special tax  
13 incentives will be provided for empowerment zones and  
14 enterprise communities to be designated from qualifying areas  
15 nominated by state and local governments, all as set forth by  
16 Section 1391, *et seq.*, of the United States Internal Revenue  
17 Code; (ii) that qualified businesses operating in enterprise  
18 communities and empowerment zones will be eligible to  
19 finance property and provide other forms of financial assistance  
20 as provided for in Section 1394 of the United States Internal  
21 Revenue Code; and (iii) that it is in the best interest of this state  
22 and its citizens to facilitate the acquisition, construction and  
23 equipping of projects within designated empowerment zones  
24 and enterprise communities by providing an orderly mechanism  
25 for the commitment of the annual ceiling for private activity  
26 bonds for these projects. It is hereby further determined and  
27 declared as a matter of legislative finding: (i) That the produc-  
28 tion of bituminous coal in this state has resulted in coal waste  
29 which is stored in areas generally referred to as gob piles; (ii)  
30 that gob piles are unsightly and have the potential to pollute the  
31 environment in this state; (iii) that the utilization of the materi-  
32 als in gob piles to produce alternative forms of energy needs to  
33 be encouraged; (iv) that Section 142(a)(6) of the United States  
34 Internal Revenue Code of 1986 permits the financing of solid  
35 waste disposal facilities through the issuance of private activity  
36 bonds; and (v) that it is in the best interest of this state and its  
37 citizens to facilitate the construction of facilities for the  
38 generation of power through the utilization of coal waste by  
39 providing an orderly mechanism for the commitment of the  
40 annual ceiling for private activity bonds for these projects.

41 (b) On or before the first day of each calendar year, the  
42 executive director of the development office shall determine the  
43 state ceiling for the year based on the criteria of the United

44 States Internal Revenue Code. The annual ceiling shall be  
45 allocated among the several issuers of bonds under this article  
46 or under article eighteen, chapter thirty-one of this code as  
47 follows:

48 (1) For the calendar year two thousand one, fifty million  
49 dollars and for each subsequent calendar year, forty percent of  
50 the state ceiling for that year shall be allocated to the West  
51 Virginia housing development fund for the purpose of issuing  
52 qualified mortgage bonds, qualified mortgage certificates or  
53 bonds for qualified residential rental projects;

54 (2) The amount remaining after the allocation to the West  
55 Virginia housing development fund described in subdivision (1)  
56 of this subsection shall be retained by the West Virginia  
57 development office and shall be referred to in this section as the  
58 “state allocation”;

59 (3) Thirty-five percent of the state allocation shall be set  
60 aside by the development office to be made available for  
61 lessees, purchasers or owners of proposed projects, hereafter in  
62 this section referred to as “nonexempt projects”, which do not  
63 qualify as exempt facilities as defined by United States Internal  
64 Revenue Code. All reservations of private activity bonds for  
65 nonexempt projects shall be approved and awarded by the  
66 committee based upon an evaluation of general economic  
67 benefit and any rule that the council for community and  
68 economic development promulgates pursuant to section three,  
69 article two, chapter five-b of this code: *Provided*, That all  
70 requests or reservations of funds from projects described in this  
71 subsection are submitted to the development office on or before  
72 the first day of November of each calendar year: *Provided*,  
73 *however*, That on the fifteenth day of November of each  
74 calendar year the uncommitted portion of this part of the state  
75 allocation shall revert to and become part of the state allocation  
76 portion described in subsection (g) of this section; and

77       (4) Ten percent of the state allocation shall be made  
78 available for lessees, purchasers or owners of proposed com-  
79 mercial or industrial projects which qualify as exempt facilities  
80 under Section 1394 of the United States Internal Revenue Code.  
81 All reservations of private activity bonds for the projects shall  
82 be approved and awarded by the committee based upon an  
83 evaluation of general economic benefit and any rule that the  
84 council for community and economic development promulgates  
85 pursuant to section three, article two, chapter five-b of this  
86 code: *Provided*, That all requests for reservations of funds from  
87 projects described in this subsection shall be submitted to the  
88 development office on or before the first day of November of  
89 each calendar year: *Provided, however*, That on the fifteenth  
90 day of November of each calendar year the uncommitted  
91 portion of this part of the state allocation shall revert to and  
92 become part of the state allocation portion described in subsec-  
93 tion (g) of this section.

94       (c) The remaining fifty-five percent of the state allocation  
95 shall be made available for lessees, purchasers or owners of  
96 proposed commercial or industrial projects which qualify as  
97 exempt facilities as defined by Section 142(a) of the United  
98 States Internal Revenue Code. All reservations of private  
99 activity bonds for exempt facilities shall be approved and  
100 awarded by the committee based upon an evaluation of general  
101 economic benefit and any rule that the council for community  
102 and economic development promulgates pursuant to section  
103 three, article two, chapter five-b of this code: *Provided*, That no  
104 reservation may be in an amount in excess of fifty percent of  
105 this portion of the state allocation: *Provided, however*, That all  
106 requests for reservations of funds from projects described in  
107 this subsection shall be submitted to the development office on  
108 or before the first day of November of each calendar year:  
109 *Provided further*, That on the fifteenth day of November of  
110 each calendar year the uncommitted portion of this part of the

111 state allocation shall revert to and become part of the state  
112 allocation portion described in subsection (g) of this section.

113 (d) No reservation may be made for any project until the  
114 governmental body seeking the reservation submits a notice of  
115 reservation of funds as provided in subsection (e) of this  
116 section. The governmental body shall first adopt an inducement  
117 resolution approving the prospective issuance of bonds and  
118 setting forth the maximum amount of bonds to be issued. Each  
119 governmental body seeking a reservation of funds following the  
120 adoption of the inducement resolution shall submit a notice of  
121 inducement signed by its clerk, secretary or recorder or other  
122 appropriate official to the development office. The notice shall  
123 include information required by the development office  
124 pursuant to any rule of the council for community and eco-  
125 nomic development. Notwithstanding the foregoing, when a  
126 governmental body proposes to issue bonds for the purpose of:  
127 (i) Constructing, acquiring or equipping a project described in  
128 subdivision (3) or (4), subsection (b) of this section; or (ii)  
129 constructing an energy producing project which relies, in whole  
130 or in part, upon coal waste as fuel, to the extent the project  
131 qualifies as a solid waste facility under Section 142(a)(6) of the  
132 United States Internal Revenue Code of 1986, the project may  
133 be awarded a reservation of funds from the state allocation  
134 available for three years subsequent to the year in which the  
135 notice of reservation of funds is submitted, at the discretion of  
136 the executive director of the development office: *Provided,*  
137 That no discretionary reservation may be made for any single  
138 project described in this subsection in an amount in excess of  
139 thirty-five percent of the state allocation available for the year  
140 subsequent to the year in which the request is made.

141 (e) Currently with or following the submission of its notice  
142 of inducement, the governmental body at any time considered  
143 expedient by it may submit its notice of reservation of funds  
144 which shall include the following information:

- 145       (1) The date of the notice of reservation of funds;
- 146       (2) The identity of the governmental body issuing the  
147 bonds;
- 148       (3) The date of inducement and the prospective date of  
149 issuance;
- 150       (4) The name of the entity for which the bonds are to be  
151 issued;
- 152       (5) The amount of the bond issue or, if the amount of the  
153 bond issue for which a reservation of funds has been made has  
154 been increased, the amount of the increase;
- 155       (6) The type of issue; and
- 156       (7) A description of the project for which the bonds are to  
157 be issued.
- 158       (f) The development office shall accept the notice of  
159 reservation of funds no earlier than the first calendar workday  
160 of the year for which a reservation of funds is sought: *Provided*,  
161 That a notice of reservation of funds with respect to a project  
162 described in subdivision (4), subsection (b) of this section or an  
163 energy producing project that is eligible for a reservation of  
164 funds for a year subsequent to the year in which the notice of  
165 reservation of funds is submitted may contain an application for  
166 funds from a subsequent year's state allocation. Upon receipt  
167 of the notice of reservation of funds, the development office  
168 shall immediately note upon the face of the notice the date and  
169 time of reception.
- 170       (g) If the bond issue for which a reservation has been made  
171 has not been finally closed within one hundred twenty days of  
172 the date of the reservation to be made by the committee, or the  
173 thirty-first of December following the date of reservation if

174 sooner and a statement of bond closure which has been exe-  
175 cuted by the clerk, secretary, recorder or other appropriate  
176 official of the governmental body reserving the bond issue has  
177 not been received by the development office within that time,  
178 then the reservation shall expire and be considered to have been  
179 forfeited and the funds reserved shall be released and revert to  
180 the portion of the state allocation from which the funds were  
181 originally reserved and shall then be made available for other  
182 qualified issues in accordance with this section and the Internal  
183 Revenue Code: *Provided*, That as to any reservation for a  
184 nonexempt project or any reservation for a project described in  
185 subdivision (4), subsection (b) of this section that is forfeited on  
186 or after the first day of November in any calendar year, the  
187 reservation shall revert to the state allocation for allocation by  
188 the industrial revenue bond allocation review committee:  
189 *Provided, however*, That as to any notice of reservation of funds  
190 received by the development office during the month of  
191 December in any calendar year with respect to any project  
192 qualifying as an elective carry forward pursuant to Section  
193 146(f)(5) of the Internal Revenue Code, the notice of reserva-  
194 tion of funds and the reservation to which the notice relates may  
195 not expire or be subject to forfeiture: *Provided further*, That any  
196 unused state ceiling as of the thirty-first day of December in  
197 any year not otherwise subject to a carry forward pursuant to  
198 Section 146(f) of the Internal Revenue Code shall be allocated  
199 to the West Virginia housing development fund which shall be  
200 considered to have elected to carry forward the unused state  
201 ceiling for the purpose of issuing qualified mortgage bonds,  
202 qualified mortgage credit certificates or bonds for qualified  
203 residential rental projects, each as defined in the Internal  
204 Revenue Code. All requests for subsequent reservation of  
205 funds upon loss of a reservation pursuant to this section shall be  
206 treated in the same manner as a new notice of reservation of  
207 funds in accordance with subsections (d) and (e) of this section.



208 (h) Once a reservation of funds has been made for a project  
209 described in subdivision (4), subsection (b) of this section,  
210 notwithstanding the language of subsection (g) of this section,  
211 the reservation shall remain fully available with respect to the  
212 project until the first day of October in the year from which the  
213 reservation was made at which time, if the bond issue has not  
214 been finally closed, the reservation shall expire and be consid-  
215 ered forfeited and the funds reserved are released as provided  
216 in said subsection.

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## CHAPTER 46

**(H. B. 4295 — By Delegates Cann, Varner, Stalnakar and Perry)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §13-2G-14 of the code of West Virginia, 1931, as amended, relating to exempting state bonds from taxation; and clarifying language in this statute.

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

That §13-2G-14 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2G. STATE REFUNDING BOND ACT.**

#### **§13-2G-14. Bonds exempt from taxation.**

1 All bonds of the state, a state agency or state authority  
2 issued hereunder shall be exempt from all state, county, and  
3 municipal taxes, and the exemption includes income, inheri-  
4 tance and property taxes.

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## CHAPTER 47

(Com. Sub. for H. B. 3189 — By Delegates Doyle,  
Leach, Hall, Proudfoot, Boggs and Ashley)

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[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend and reenact §5E-1-8 of the code of West Virginia, 1931, as amended, relating to reducing the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand four.

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

That §5E-1-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

#### §5E-1-8. Tax credits.

1       (a) The total amount of tax credits authorized for a single  
2 qualified company may not exceed two million dollars. The  
3 total amount of tax credits authorized for a single economic  
4 development and technology advancement center may not  
5 exceed one million dollars. Capitalization of the company or  
6 center may be increased pursuant to rule of the authority.

7       (b) (1) The total credits authorized by the authority for all  
8 companies and centers may not exceed a total of ten million  
9 dollars each fiscal year: *Provided*, That for the fiscal year  
10 beginning on the first day of July, one thousand nine hundred  
11 ninety-nine, the total credits authorized for all companies may  
12 not exceed a total of six million dollars: *Provided, however*,

13 That for the fiscal year beginning on the first day of July, two  
14 thousand, the total credits authorized for all companies may not  
15 exceed a total of four million dollars: *Provided further*, That for  
16 the fiscal year beginning on the first day of July, two thousand  
17 one, the total credits authorized for all companies may not  
18 exceed a total of four million dollars: *And provided further*,  
19 That for the fiscal year beginning on the first day of July, two  
20 thousand two, the total credits authorized for all companies may  
21 not exceed a total of three million dollars: *And provided further*,  
22 That for the fiscal year beginning on the first day of July, two  
23 thousand three, the total credits authorized for all companies  
24 may not exceed a total of three million dollars: *And provided*  
25 *further*, That for the fiscal year beginning on the first day of  
26 July, two thousand four, no credits are authorized: *And provided*  
27 *further*, That the capital base of any qualified company other  
28 than an economic development and technology advancement  
29 center qualified under the provisions of article twelve-a, chapter  
30 eighteen-b of this code shall be invested in accordance with the  
31 provisions of this article. The authority shall allocate these  
32 credits to qualified companies and centers in the order that the  
33 companies are qualified.

34 (2) Not more than two million dollars of the credits allowed  
35 under subdivision (1) of this subsection may be allocated by the  
36 authority during each fiscal year to one or more small business  
37 investment companies described in this subdivision. After a  
38 portion of the credits are allocated to small business investment  
39 companies as provided in this section, not more than one  
40 million dollars of the credits allowed under subdivision (1) of  
41 this subsection may be allocated by the authority during each  
42 fiscal year to one or more economic development and technol-  
43 ogy advancement centers qualified by the authority under  
44 article twelve-a, chapter eighteen-b of this code. The remainder  
45 of the tax credits allowed during the fiscal year shall be  
46 allocated by the authority under the provisions of section four,

47 article two of this chapter. The portion of the tax credits  
48 allowed for small business investment companies described in  
49 this subdivision shall be allowed only if allocated by the  
50 authority during the first ninety days of the fiscal year and may  
51 only be allocated to companies that: (A) Were organized on or  
52 after the first day of January, one thousand nine hundred ninety-  
53 nine; (B) are licensed by the small business administration as a  
54 small business investment company under the small business  
55 investment act; and (C) have certified in writing to the authority  
56 on the application for credits under this act that the company  
57 will diligently seek to obtain and thereafter diligently seek to  
58 invest leverage available to the small business investment  
59 companies under the small business investment act. These  
60 credits shall be allocated by the authority in the order that the  
61 companies are qualified. The portion of the tax credits allowed  
62 for economic development and technology advancement centers  
63 described in article twelve-a, chapter eighteen-b of the code  
64 shall be similarly allowed only if allocated by the authority  
65 during the first ninety days of the fiscal year. Any credits which  
66 have not been allocated to qualified companies meeting the  
67 requirements of this subdivision relating to small business  
68 investment companies or to qualified economic development  
69 and technology advancement centers during the first ninety  
70 days of the fiscal year shall be made available and allocated by  
71 the authority under the provisions of section four, article two of  
72 this chapter.

73 (c) Any investor, including an individual, partnership,  
74 limited liability company, corporation or other entity who  
75 makes a capital investment in a qualified West Virginia capital  
76 company is entitled to a tax credit equal to fifty percent of the  
77 investment, except as otherwise provided in this section or in  
78 this article: *Provided*, That the tax credit available to investors  
79 who make a capital investment in an economic development  
80 and technology advancement center shall be one hundred  
81 percent of the investment. The credit allowed by this article

82 shall be taken after all other credits allowed by chapter eleven  
83 of this code. It shall be taken against the same taxes and in the  
84 same order as set forth in subsections (c) through (i), inclusive,  
85 section five, article thirteen-c, chapter eleven of this code. The  
86 credit for investments by a partnership, limited liability  
87 company, a corporation electing to be treated as a subchapter S  
88 corporation or any other entity which is treated as a pass  
89 through entity under federal and state income tax laws may be  
90 divided pursuant to election of the entity's partners, members,  
91 shareholders or owners.

92 (d) The tax credit allowed under this section is to be  
93 credited against the taxpayer's tax liability for the taxable year  
94 in which the investment in a qualified West Virginia capital  
95 company or economic development and technology advance-  
96 ment center is made. If the amount of the tax credit exceeds the  
97 taxpayer's tax liability for the taxable year, the amount of the  
98 credit which exceeds the tax liability for the taxable year may  
99 be carried to succeeding taxable years until used in full, or until  
100 forfeited: *Provided*, That: (i) Tax credits may not be carried  
101 forward beyond fifteen years; and (ii) tax credits may not be  
102 carried back to prior taxable years. Any tax credit remaining  
103 after the fifteenth taxable year is forfeited.

104 (e) The tax credit provided for in this section is available  
105 only to those taxpayers whose investment in a qualified West  
106 Virginia capital company or economic development and  
107 technology advancement center occurs after the first day of  
108 July, one thousand nine hundred eighty-six.

109 (f) The tax credit allowed under this section may not be  
110 used against any liability the taxpayer may have for interest,  
111 penalties or additions to tax.

112 (g) Notwithstanding any provision in this code to the  
113 contrary, the tax commissioner shall publish in the state register

114 the name and address of every taxpayer and the amount, by  
115 category, of any credit asserted under this article. The catego-  
116 ries by dollar amount of credit received are as follows:

- 117 (1) More than \$1.00, but not more than \$50,000;  
118 (2) More than \$50,000, but not more than \$100,000;  
119 (3) More than \$100,000, but not more than \$250,000;  
120 (4) More than \$250,000, but not more than \$500,000;  
121 (5) More than \$500,000, but not more than \$1,000,000; and  
122 (6) More than \$1,000,000.

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## CHAPTER 48

(H. B. 4451 — By Delegates Cann, Pethtel, Perry,  
Palumbo, Browning, Poling and Walters)

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §5E-1-16 and §5E-1-17 of the code of West Virginia, 1931, as amended, relating to the West Virginia capital company act; and clarifying that the economic development authority and tax commissioner are authorized to require certain examination and compliance actions.

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

That §5E-1-16 and §5E-1-17 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.**

§5E-1-16. Examination.

§5E-1-17. Failure to comply.

**§5E-1-16. Examination.**

1           (a) Annually each qualified capital company and center  
2 shall cause its books and records to be audited by an independ-  
3 ent certified public accountant in accordance with generally  
4 accepted auditing and accounting principles. In addition to the  
5 performance of a financial audit, the audit shall address the  
6 methods of operation and conduct of the business of the West  
7 Virginia capital company or center to determine compliance  
8 with this article and that the funds received by the company  
9 have been invested within the time limits required by this  
10 article. Upon completion, a copy of the audit report shall be  
11 certified and sent to the authority.

12           (b) The authority may examine, under oath, any of the  
13 officers, directors, agents, employees or investors of a West  
14 Virginia capital company or center regarding the affairs and  
15 business of the company or center. The authority may issue  
16 subpoenas and subpoenas duces tecum and administer oaths.  
17 Refusal to obey such a subpoena or subpoena duces tecum may  
18 at once be reported to the circuit court of the county in which  
19 the company or center is located or the persons subpoenaed  
20 reside and the circuit court shall enforce obedience to the  
21 subpoena or subpoena duces tecum in the manner provided by  
22 law for compliance with a subpoena or subpoena duces tecum  
23 issued by a circuit court of this state.

24           (c) In addition to the audits herein required, the authority  
25 and the tax commissioner may jointly audit any capital com-  
26 pany or number of capital companies or centers in any year on  
27 a random basis, or for cause, or for any other basis the authority  
28 or the tax commissioner may select. The tax commissioner may  
29 also audit any company or business in which a capital company  
30 has made an investment, or which a capital company proposes

31 to invest, on a random audit selection basis, or for cause, or on  
32 any other basis the tax commissioner may select. Nothing  
33 herein shall be construed to prohibit the tax commissioner from  
34 conducting any audit relating to the administration or enforce-  
35 ment of the tax laws of this state which the tax commissioner  
36 may, in his or her discretion, determine to be appropriate.

**§5E-1-17. Failure to comply.**

1 (a) If the examination conducted pursuant to section sixteen  
2 of this article discloses that a West Virginia capital company or  
3 center is not in compliance with the provisions of this article,  
4 the authority may exercise any of the powers necessary and  
5 appropriate to protect the authority's interest.

6 (b) The authority shall give a West Virginia capital com-  
7 pany or center written notice of any inadequacies in its compli-  
8 ance with the provisions of this article, and specify a period of  
9 time the company has to redress such inadequacies. Failure  
10 within said time period to make corrections will result in further  
11 action by the authority pursuant to this section.

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## CHAPTER 49

(S. B. 480 — By Senator Caldwell)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §29-19-6 of the code of West Vir-  
ginia, 1931, as amended, relating to exempting nonprofit licensed  
nursing homes from registration under the solicitation of charita-  
ble funds act.



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

That §29-19-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

**§29-19-6. Certain persons and organizations exempt from registration.**

1       The following charitable organizations shall not be required  
2 to file an annual registration statement with the secretary of  
3 state:

4       (1) Educational institutions, the curriculums of which, in  
5 whole or in part, are registered or approved by the state board  
6 of education, either directly or by acceptance of accreditation  
7 by an accrediting body recognized by the state board of  
8 education; and any auxiliary associations, foundations and  
9 support groups which are directly responsible to any such  
10 educational institutions;

11       (2) Persons requesting contributions for the relief of any  
12 individual specified by name at the time of the solicitation  
13 when all of the contributions collected without any deductions  
14 whatsoever are turned over to the named beneficiary for his or  
15 her use;

16       (3) Hospitals and licensed nursing homes which are  
17 nonprofit and charitable;

18       (4) Organizations which solicit only within the membership  
19 of the organization by the members thereof: *Provided*, That the  
20 term "membership" shall not include those persons who are  
21 granted a membership upon making a contribution as the result  
22 of solicitation. For the purpose of this section, "member"  
23 means a person having membership in a nonprofit corporation,

24 or other organization, in accordance with the provisions of its  
25 articles of incorporation, bylaws or other instruments creating  
26 its form and organization; and having bona fide rights and  
27 privileges in the organization, such as the right to vote, to elect  
28 officers, directors and issues, to hold office or otherwise as  
29 ordinarily conferred on members of such organizations;

30 (5) Churches, synagogues, associations or conventions of  
31 churches, religious orders or religious organizations that are an  
32 integral part of a church which qualifies as tax exempt under  
33 the provisions of 26 U. S. C. §501(c)(3) and which qualifies  
34 as being exempt from filing an annual return under the provi-  
35 sions of 26 U. S. C. §6033;

36 (6) Any person, firm, corporation or organization that  
37 sponsors a single fund-raising event for the benefit of a named  
38 charitable organization where all or part of the funds collected  
39 are donated to the named charitable organization: *Provided,*  
40 That the named charitable organization receiving the funds is  
41 registered pursuant to this article, reports each of these dona-  
42 tions individually and certifies that no funds were withheld by  
43 the organization that solicited the funds;

44 (7) Any charitable organization that does not employ a  
45 professional solicitor or fund-raiser and does not intend to  
46 solicit and receive and does not actually raise or receive  
47 contributions from the public in excess of twenty-five thousand  
48 dollars during a calendar year.

49 Charitable organizations which do not intend to solicit and  
50 receive in excess of twenty-five thousand dollars, but do receive  
51 in excess of that amount from the public, shall file the annual  
52 registration statement within thirty days after contributions are  
53 in excess of twenty-five thousand dollars.

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## CHAPTER 50

(H. B. 4598 — By Delegates Mahan, Amores and Palumbo)

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[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §49-1-5 of the code of West Virginia, 1931, as amended, relating to restricting courts from requiring conditions on the out-of-home placement of children inconsistent with existing licensing regulations.

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

That §49-1-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 1. PURPOSES; DEFINITIONS.**

#### **§49-1-5. Limitation on out-of-home placement.**

1 Before any child may be directed for placement in a  
2 particular facility or for services of a child welfare agency  
3 licensed by the department, a court shall make inquiry into the  
4 bed space of the facility available to accommodate additional  
5 children and the ability of the child welfare agency to meet the  
6 particular needs of the child. A court shall not order the  
7 placement of a child in a particular facility if it has reached its  
8 licensed capacity or order conditions on the placement of the  
9 child which conflict with licensure regulations applicable to the  
10 facility promulgated pursuant to the provisions of article two-b  
11 of this chapter and articles one-a, nine and seventeen, chapter  
12 twenty-seven of this code. Further, a child welfare agency is not  
13 required to accept placement of a child at a particular facility if

14 the facility remains at licensed capacity or is unable to meet the  
 15 particular needs of the child. A child welfare agency is not  
 16 required to make special dispensation or accommodation,  
 17 reorganize existing child placement, or initiate early release of  
 18 children in placement to reduce actual occupancy at the facility.

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## CHAPTER 51

**(Com. Sub. for H. B. 4037 — By Delegates Williams,  
 Renner, Perry, Tabb, Long, Paxton and Sumner)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §49-5-17 of the code of West Virginia, 1931, as amended, relating to providing certain juvenile justice records to public school officials and limiting disclosure of certain records.

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

That §49-5-17 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-17. Confidentiality of juvenile records.**

1 (a) Records of a juvenile proceeding conducted under this  
 2 chapter are not public records and shall not be disclosed to  
 3 anyone unless disclosure is otherwise authorized by this  
 4 section.

5 (b) Notwithstanding the provisions of subsection (a) of this  
 6 section, a copy of a juvenile's records shall automatically be

7 disclosed to certain school officials, subject to the following  
8 terms and conditions:

9 (1) Only the records of certain juveniles shall be disclosed.  
10 These include and are limited to cases in which:

11 (A) The juvenile has been charged with an offense which:

12 (i) Involves violence against another person;

13 (ii) Involves possession of a dangerous or deadly weapon;

14 or

15 (iii) Involves possession or delivery of a controlled sub-  
16 stance as that term is defined in section one hundred one, article  
17 one, chapter sixty-a of this code; and

18 (B) The juvenile's case has proceeded to a point where one  
19 or more of the following has occurred:

20 (i) A judge, magistrate or referee has determined that there  
21 is probable cause to believe that the juvenile committed the  
22 offense as charged;

23 (ii) A judge, magistrate or referee has placed the juvenile on  
24 probation for the offense;

25 (iii) A judge, magistrate or referee has placed the juvenile  
26 into an improvement period in accordance with section nine of  
27 this article; or

28 (iv) Some other type of disposition has been made of the  
29 case other than dismissal.

30 (2) The circuit court for each judicial circuit in West  
31 Virginia shall designate one person to supervise the disclosure  
32 of juvenile records to certain school officials.

33 (3) If the juvenile attends a West Virginia public school, the  
34 person designated by the circuit court shall automatically  
35 disclose all records of the juvenile's case to the county superin-  
36 tendent of schools in the county in which the juvenile attends  
37 school and to the principal of the school which the juvenile  
38 attends, subject to the following:

39 (A) At a minimum, the records shall disclose the following  
40 information:

41 (i) Copies of the arrest report;

42 (ii) Copies of all investigations;

43 (iii) Copies of any psychological test results and any mental  
44 health records;

45 (iv) Copies of any evaluation reports for probation or  
46 facility placement; and

47 (v) Any other material that would alert the school to  
48 potential danger that the juvenile may pose to himself, herself  
49 or others;

50 (B) The disclosure of the juvenile's psychological test  
51 results and any mental health records shall only be made in  
52 accordance with subdivision (14) of this subsection;

53 (C) If the disclosure of any record to be automatically  
54 disclosed under this section is restricted in its disclosure by the  
55 Health Insurance Portability and Accountability Act of 1996  
56 and any amendments and regulations under the Act, the person  
57 designated by the circuit court shall provide the superintendent  
58 and principal any notice of the existence of the record that is  
59 permissible under the Act and, if applicable, any action that is  
60 required to obtain the record; and

61 (D) When multiple disclosures are required by this subsec-  
62 tion, the person designated by the circuit court is required to  
63 disclose only material in the juvenile record that had not  
64 previously been disclosed to the county superintendent and the  
65 principal of the school which the juvenile attends.

66 (4) If the juvenile attends a private school in West Virginia,  
67 the person designated by the circuit court shall determine the  
68 identity of the highest ranking person at that school, and shall  
69 automatically disclose all records of a juvenile's case to that  
70 person.

71 (5) If the juvenile does not attend school at the time the  
72 juvenile's case is pending, the person designated by the circuit  
73 court shall not transmit the juvenile's records to any school.  
74 However, the person designated by the circuit court shall  
75 transmit the juvenile's records to any school in West Virginia  
76 which the juvenile subsequently attends.

77 (6) The person designated by the circuit court shall not  
78 automatically transmit juvenile records to a school which is not  
79 located in West Virginia. Instead, the person designated by the  
80 circuit court shall contact the out-of-state school, inform it that  
81 juvenile records exist, and make an inquiry regarding whether  
82 the laws of that state permit the disclosure of juvenile records.  
83 If so, the person designated by the circuit court shall consult  
84 with the circuit judge who presided over the case to determine  
85 whether the juvenile records should be disclosed to the out-of-  
86 state school. The circuit judge shall have discretion in determin-  
87 ing whether to disclose the juvenile records, and shall consider  
88 whether the other state's law regarding disclosure provides for  
89 sufficient confidentiality of juvenile records, using this section  
90 as a guide. If the circuit judge orders the juvenile records to be  
91 disclosed, they shall be disclosed in accordance with the  
92 provisions of subdivision (7) of this subsection.

93       (7) The person designated by the circuit court shall transmit  
94 the juvenile's records to the appropriate school official under  
95 cover of a letter emphasizing the confidentiality of such records  
96 and directing the official to consult this section of the code. A  
97 copy of this section of the code shall be transmitted with the  
98 juvenile's records and cover letter.

99       (8) Juvenile records must be treated as absolutely confiden-  
100 tial by the school official to whom they are transmitted, and  
101 nothing contained within the juvenile's records shall be noted  
102 on the juvenile's permanent educational record. The juvenile  
103 records are to be maintained in a secure location and are not to  
104 be copied under any circumstances. However, the principal of  
105 a school to whom the records are transmitted shall have the  
106 duty to disclose the contents of those records to any teacher  
107 who teaches a class in which the subject juvenile is enrolled and  
108 to the regular driver of a school bus in which the subject  
109 juvenile is regularly transported to or from school, except that  
110 the disclosure of the juvenile's psychological test results and  
111 any mental health records shall only be made in accordance  
112 with subdivision (14) of this subsection. Furthermore, any  
113 school official to whom the juvenile's records are transmitted  
114 may disclose the contents of such records to any adult within  
115 the school system who, in the discretion of the school official,  
116 has the need to be aware of the contents of those records.

117       (9) If for any reason a juvenile ceases to attend a school  
118 which possesses that juvenile's records, the appropriate official  
119 at that school shall seal the records and return them to the  
120 circuit court which sent them to that school. If the juvenile has  
121 changed schools for any reason, the former school shall inform  
122 the circuit court of the name and location of the new school  
123 which the juvenile attends or will be attending. If the new  
124 school is located within West Virginia, the person designated  
125 by the circuit court shall forward the juvenile's records to the  
126 juvenile's new school in the same manner as provided in



127 subdivision (7) of this subsection. If the new school is not  
128 located within West Virginia, the person designated by the  
129 circuit court shall handle the juvenile records in accordance  
130 with subdivision (6) of this subsection.

131 If the juvenile has been found not guilty of an offense for  
132 which records were previously forwarded to the juvenile's  
133 school on the basis of a finding of probable cause, the circuit  
134 court shall not forward those records to the juvenile's new  
135 school. However, this shall not affect records related to other  
136 prior or future offenses. If the juvenile has graduated or quit  
137 school, or will otherwise not be attending another school, the  
138 circuit court shall retain the juvenile's records and handle them  
139 as otherwise provided in this article.

140 (10) Under no circumstances shall one school transmit a  
141 juvenile's records to another school.

142 (11) Under no circumstances shall juvenile records be  
143 automatically transmitted to a college, university or other post-  
144 secondary school.

145 (12) No one shall suffer any penalty, civil or criminal, for  
146 accidentally or negligently attributing certain juvenile records  
147 to the wrong person. However, such person shall have the  
148 affirmative duty to promptly correct any mistake that he or she  
149 has made in disclosing juvenile records when the mistake is  
150 brought to his or her attention. A person who intentionally  
151 attributes false information to a certain person shall be sub-  
152 jected to both criminal and civil penalties, in accordance with  
153 subsection (e) of this section.

154 (13) If a judge, magistrate or referee has determined that  
155 there is probable cause to believe that a juvenile has committed  
156 an offense but there has been no final adjudication of the  
157 charge, the records which are transmitted by the circuit court  
158 shall be accompanied by a notice which clearly states in bold

159 print that there has been no determination of delinquency and  
160 that our legal system requires a presumption of innocence.

161 (14) The county superintendent shall designate the school  
162 psychologist or psychologists to receive the juvenile's psycho-  
163 logical test results and any mental health records. The psycholo-  
164 gist designated shall review the juvenile's psychological test  
165 results and any mental health records, and, in the psychologist's  
166 professional judgment, may disclose to the principal of the  
167 school that the juvenile attends and other school employees  
168 who would have a need to know the psychological test results,  
169 mental health records and any behavior that may trigger  
170 violence or other disruptive behavior by the juvenile. Other  
171 school employees includes, but is not limited to, any teacher  
172 who teaches a class in which the subject juvenile is enrolled and  
173 the regular driver of a school bus in which the subject juvenile  
174 is regularly transported to or from school.

175 (c) Notwithstanding the provisions of subsection (a) of this  
176 section, juvenile records may be disclosed, subject to the  
177 following terms and conditions:

178 (1) If a juvenile case is transferred to the criminal jurisdic-  
179 tion of the circuit court pursuant to the provisions of subsection  
180 (c) or (d), section ten of this article, the juvenile records shall be  
181 open to public inspection.

182 (2) If a juvenile case is transferred to the criminal jurisdic-  
183 tion of the circuit court pursuant to the provisions of subsection  
184 (e), (f) or (g), section ten of this article, the juvenile records  
185 shall be open to public inspection only if the juvenile fails to  
186 file a timely appeal of the transfer order, or the Supreme Court  
187 of Appeals refuses to hear or denies an appeal which has been  
188 timely filed.

189 (3) If a juvenile is fourteen years of age or older and a court  
190 has determined there is a probable cause to believe the juvenile

191 committed an offense set forth in subsection (g), section ten of  
192 this article, but the case is not transferred to criminal jurisdic-  
193 tion, the juvenile records shall be open to public inspection  
194 pending trial only if the juvenile is released on bond and no  
195 longer detained or adjudicated delinquent of the offense.

196 (4) If a juvenile is younger than fourteen years of age and  
197 a court has determined there is probable cause to believe that  
198 the juvenile committed the crime of murder under section one,  
199 two or three, article two, chapter sixty-one of this code, or the  
200 crime of sexual assault in the first degree under section three,  
201 article eight-b of said chapter, but the case is not transferred to  
202 criminal jurisdiction, the juvenile records shall be open to  
203 public inspection pending trial only if the juvenile is released  
204 on bond and no longer detained or adjudicated delinquent of the  
205 offense.

206 (5) Upon a written petition and pursuant to a written order,  
207 the circuit court may permit disclosure of juvenile records to:

208 (A) A court which has juvenile jurisdiction and has the  
209 juvenile before it in a juvenile proceeding;

210 (B) A court exercising criminal jurisdiction over the  
211 juvenile which requests such records for the purpose of a  
212 presentence report or disposition proceeding;

213 (C) The juvenile, the juvenile's parents or legal guardian,  
214 or the juvenile's counsel;

215 (D) The officials of a public institution to which the  
216 juvenile is committed if they require such records for transfer,  
217 parole or discharge; or

218 (E) A person who is conducting research. However,  
219 juvenile records may be disclosed for research purposes only

220 upon the condition that information which would identify the  
221 subject juvenile or the juvenile's family shall not be disclosed.

222 (d) Any records open to public inspection pursuant to the  
223 provisions of this section are subject to the same requirements  
224 governing the disclosure of adult criminal records.

225 (e) Any person who willfully violates this section is guilty  
226 of a misdemeanor and, upon conviction thereof, shall be fined  
227 not more than one thousand dollars, or confined in the county  
228 or regional jail for not more than six months, or both fined and  
229 confined, and shall be liable for damages in the amount of three  
230 hundred dollars or actual damages, whichever is greater.

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## CHAPTER 52

(Com. Sub. for H. B. 4649 — By Delegates Amores,  
Fleischauer, Craig and Schadler)

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[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §49-5D-2, §49-5D-3 and §49-5D-3a of the code of West Virginia, 1931, as amended, all relating to child welfare; providing for a child advocacy center participation in multidisciplinary investigative teams; providing for uniform comprehensive assessments of children; preference to in-state placement; including in team, child, the juvenile's attorney, appropriate school official, court-appointed special advocate when available, and a representative from the licensed domestic violence program serving the county, when appropriate and available; requiring team preference of in-state placement; requiring court preference of in-state placement; and requiring that reasons for out-of-state placement be in order.

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

That §49-5D-2, §49-5D-3 and §49-5D-3a of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

§49-5D-3. Multidisciplinary treatment planning process.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

**§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.**

1       (a) The prosecuting attorney shall establish a  
2 multidisciplinary investigative team in each county. The  
3 multidisciplinary team shall be headed and directed by the  
4 prosecuting attorney and shall include as permanent members  
5 the prosecuting attorney or his or her designee, a local child  
6 protective services caseworker from the department of health  
7 and human resources, a local law-enforcement officer employed  
8 by a law-enforcement agency in the county and, where appro-  
9 priate to the particular case under consideration and available,  
10 a child advocacy center representative, and a representative  
11 from the licensed domestic violence program serving the  
12 county. The department of health and human resources and any  
13 local law-enforcement agency or agencies selected by the  
14 prosecuting attorney shall appoint their representatives to the  
15 team by submitting a written designation of the team to the  
16 prosecuting attorney of each county within thirty days of the  
17 prosecutor's request that the appointment be made. Within  
18 fifteen days of the appointment, the prosecuting attorney shall  
19 notify the chief judge of each circuit within which the county is  
20 situated of the names of the representatives so appointed. Any  
21 other person or any other appointee of an agency who may

22 contribute to the team's efforts to assist a minor child as may be  
23 determined by the permanent members of the team may also be  
24 appointed as a member of the team by the prosecutor with  
25 notification to the chief judge.

26 (b) Any permanent member of the multidisciplinary  
27 investigative team shall refer all cases of accidental death of  
28 any child reported to their agency and all cases when a child  
29 dies while in the custody of the state for investigation and  
30 review by the team. The multidisciplinary investigative team  
31 shall meet at regular intervals at least once every calendar  
32 month.

33 (c) The investigative team shall be responsible for coordi-  
34 nating or cooperating in the initial and ongoing investigation of  
35 all civil and criminal allegations pertinent to cases involving  
36 child sexual assault, child sexual abuse, child abuse and neglect,  
37 and shall make a recommendation to the county prosecuting  
38 attorney as to the initiation or commencement of a civil petition  
39 and/or criminal prosecution.

40 (d) State, county and local agencies shall provide the  
41 multidisciplinary investigative team with any information  
42 requested in writing by the team as allowable by law or upon  
43 receipt of a certified copy of the circuit court's order directing  
44 said agencies to release information in its possession relating to  
45 the child. The team shall assure that all information received  
46 and developed in connection with the provisions of this article  
47 remains confidential. For purposes of this section, the term  
48 "confidential" shall be construed in accordance with the  
49 provisions of section one, article seven of this chapter.

### **§49-5D-3. Multidisciplinary treatment planning process.**

1 (a)(1) A multidisciplinary treatment planning process shall  
2 be established within each county of the state, either separately

3 or in conjunction with a contiguous county by the secretary of  
4 the department with advice and assistance from the prosecutor's  
5 advisory council as set forth in section four, article four, chapter  
6 seven of this code.

7 (2) Treatment teams shall assess, plan and implement a  
8 comprehensive, individualized service plan for children who are  
9 victims of abuse or neglect and their families when a judicial  
10 proceeding has been initiated involving the child or children for  
11 juveniles and their families involved in status offense or  
12 delinquency proceedings when, in a status offense proceeding,  
13 the court refers the juvenile for services pursuant to sections  
14 eleven and eleven-a, article five of this chapter and when, in a  
15 delinquency proceeding, the court is considering placing the  
16 juvenile in the department's custody or placing the juvenile  
17 out-of-home at the department's expense pursuant to the  
18 provisions of section thirteen of said article. In any such status  
19 offense or delinquency case, the juvenile probation officer shall  
20 notify the local office of the department of health and human  
21 resources and the division of juvenile services at least five  
22 working days before the court proceeding in order to allow the  
23 multidisciplinary treatment team to convene and develop a  
24 comprehensive individualized service plan for the child:  
25 *Provided*, That such notice is not required in cases where the  
26 child is already in state custody or there exist exigent circum-  
27 stances which justify taking the child immediately into custody  
28 without a judicial proceeding. In developing an individualized  
29 service plan for a child, the team shall utilize a uniform  
30 comprehensive assessment of the child. The department shall  
31 adopt a standard uniform comprehensive assessment instrument  
32 or protocol to be used by treatment teams.

33 (3) Prior to disposition, in each case in which a treatment  
34 planning team has been convened, the team shall advise the  
35 court as to the types of services the team has determined are

36 needed and the type of placement, if any, which will best serve  
37 the needs of the child. If the team determines that an out-of-  
38 home placement will best serve the needs of the child, the team  
39 shall first consider placement at facilities or programs located  
40 within the state. The team may only recommend placement in  
41 an out-of-state facility if it concludes, after considering the best  
42 interests and overall needs of the child, that there are no  
43 available and suitable in-state facilities which can satisfactorily  
44 meet the specific needs of the child.

45 (b) Each treatment team shall be convened and directed by  
46 the child's or family's case manager. The treatment team shall  
47 consist of the child's custodial parent or parents, guardian or  
48 guardians, other immediate family members, the attorney or  
49 attorneys representing the child, the parent or parents of the  
50 child, the child's attorney, the guardian ad litem, if any, the  
51 prosecuting attorney or his or her designee and where appropri-  
52 ate to the particular case under consideration and available, a  
53 court-appointed special advocate, an appropriate school official  
54 and any other person or an agency representative who may  
55 assist in providing recommendations for the particular needs of  
56 the child and family. The child may participate in  
57 multidisciplinary treatment team meetings if such is deemed  
58 appropriate by the multidisciplinary treatment team. For  
59 purposes of delinquency proceedings, the juvenile probation  
60 officer shall be a member of the treatment team.

61 (c) The treatment team shall coordinate its activities and  
62 membership with local family resource networks and coordi-  
63 nate with other local and regional child and family service  
64 planning committees to assure the efficient planning and  
65 delivery of child and family services on a local and regional  
66 level.

67 (d) State, county and local agencies shall provide the  
68 multidisciplinary treatment teams with any information



69 requested in writing by the team as allowable by law or upon  
70 receipt of a certified copy of the circuit court's order directing  
71 said agencies to release information in its possession relating to  
72 the child. The team shall assure that all information received  
73 and developed in connection with the provisions of this article  
74 remain confidential. For purposes of this section, the term  
75 "confidential" shall be construed in accordance with the  
76 provisions of section one, article seven of this chapter.

**§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.**

1 (a) In any case in which a multidisciplinary treatment team  
2 develops an individualized service plan for a child pursuant to  
3 the provisions of section three of this article, the court shall  
4 review the proposed service plan to determine if implementa-  
5 tion of the plan is in the child's best interests. If the  
6 multidisciplinary team cannot agree on a plan or if the court  
7 determines not to adopt the team's recommendations, it shall,  
8 upon motion or sua sponte, schedule and hold within ten days  
9 of such determination, and prior to the entry of an order placing  
10 the child in the custody of the department or in an out-of-home  
11 setting, a hearing to consider evidence from the team as to its  
12 rationale for the proposed service plan. If, after a hearing held  
13 pursuant to the provisions of this section, the court does not  
14 adopt the teams's recommended service plan, it shall make  
15 specific written findings as to why the team's recommended  
16 service plan was not adopted.

17 (b) In any case in which the court decides to order the child  
18 placed in an out-of-state facility or program it shall set forth in  
19 the order directing the placement the reasons why the child was  
20 not placed in an in-state facility or program.

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## CHAPTER 53

(H. B. 4055 — By Delegate Staton)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8A-1, §49-8A-2, §49-8A-3 and §49-8A-4, all relating to the supervision and return of juvenile offenders, juvenile runaways and other juveniles; authorizing and directing the governor to execute an interstate compact for the supervision and return of juvenile offenders, juvenile runaways and other juveniles; purpose; definitions; creation of the interstate commission for juveniles; powers and duties; bylaws; immunity; defense and indemnification; promulgation of rules; dispute resolution; annual assessment on member states; state council for interstate juvenile supervision; effective date; withdrawal from compact; default of a compact state; fines; suspension; termination; severability; binding effect of compact; and appointment of compact administrator.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §49-8A-1, §49-8A-2, §49-8A-3 and §49-8A-4, all to read as follows:

### **ARTICLE 8A. THE INTERSTATE COMPACT FOR JUVENILES.**

- §49-8A-1. Execution of interstate compact for juveniles.
- §49-8A-2. State council for interstate juvenile supervision.
- §49-8A-3. Appointment of compact administrator.
- §49-8A-4. Notification of the effective date of the interstate compact for juveniles.

#### **§49-8A-1. Execution of interstate compact for juveniles.**

1       The governor of this state is authorized and directed to  
2 execute a compact on behalf of the state of West Virginia with  
3 any state or states of the United States legally joining therein,  
4 and substantially as follows:

**ARTICLE I. PURPOSE.**

1       (a) The compacting states to this interstate compact  
2 recognize that each state is responsible for the proper supervi-  
3 sion or return of juveniles, delinquents and status offenders who  
4 are on probation or parole and who have absconded, escaped or  
5 run away from supervision and control and in so doing have  
6 endangered their own safety and the safety of others. The  
7 compacting states also recognize that each state is responsible  
8 for the safe return of juveniles who have run away from home  
9 and in doing so have left their state of residence. The compact-  
10 ing states also recognize that Congress, by enacting the Crime  
11 Control Act, 4 U.S.C. Section 112 (1965), has authorized and  
12 encouraged compacts for cooperative efforts and mutual  
13 assistance in the prevention of crime.

14       (b) It is the purpose of this compact, through means of joint  
15 and cooperative action among the compacting states:

16       (1) To ensure that the adjudicated juveniles and status  
17 offenders subject to this compact are provided adequate  
18 supervision and services in the receiving state as ordered by the  
19 adjudicating judge or parole authority in the sending state;

20       (2) To ensure that the public safety interests of the citizens,  
21 including the victims of juvenile offenders, in both the sending  
22 and receiving states are adequately protected;

23       (3) To return juveniles who have run away, absconded or  
24 escaped from supervision or control or have been accused of an  
25 offense to the state requesting their return;

26 (4) To make contracts for the cooperative  
27 institutionalization in public facilities in member states for  
28 delinquent youth needing special services;

29 (5) To provide for the effective tracking and supervision of  
30 juveniles;

31 (6) To equitably allocate the costs, benefits and obligations  
32 of the compacting states;

33 (7) To establish procedures to manage the movement  
34 between states of juvenile offenders released to the community  
35 under the jurisdiction of courts, juvenile departments, or any  
36 other criminal or juvenile justice agency which has jurisdiction  
37 over juvenile offenders;

38 (8) To ensure immediate notice to jurisdictions where  
39 defined offenders are authorized to travel or to relocate across  
40 state lines;

41 (9) To establish procedures to resolve pending charges  
42 (detainers) against juvenile offenders prior to transfer or release  
43 to the community under the terms of this compact;

44 (10) To establish a system of uniform data collection on  
45 information pertaining to juveniles subject to this compact that  
46 allows access by authorized juvenile justice and criminal justice  
47 officials, and regular reporting of compact activities to heads of  
48 state executive, judicial, and legislative branches and juvenile  
49 and criminal justice administrators;

50 (11) To monitor compliance with rules governing interstate  
51 movement of juveniles and initiate interventions to address and  
52 correct noncompliance;

53 (12) To coordinate training and education regarding the  
54 regulation of interstate movement of juveniles for officials  
55 involved in such activity; and

56 (13) To coordinate the implementation and operation of the  
57 compact with the interstate compact for the placement of  
58 children, the interstate compact for adult offender supervision  
59 and other compacts affecting juveniles, particularly in those  
60 cases where concurrent or overlapping supervision issues arise.

61 (c) It is the policy of the compacting states that the activi-  
62 ties conducted by the interstate commission created herein are  
63 the formation of public policies and therefore are public  
64 business. Furthermore, the compacting states shall cooperate  
65 and observe their individual and collective duties and responsi-  
66 bilities for the prompt return and acceptance of juveniles  
67 subject to the provisions of this compact. The provisions of this  
68 compact shall be reasonably and liberally construed to accom-  
69 plish the purposes and policies of the compact.

#### ARTICLE II. DEFINITIONS.

1 As used in this compact, unless the context clearly requires  
2 a different construction:

3 (a) "Bylaws" means those bylaws established by the  
4 interstate commission for its governance, or for directing or  
5 controlling its actions or conduct.

6 (b) "Compact administrator" means the individual in each  
7 compacting state appointed pursuant to the terms of this  
8 compact, responsible for the administration and management of  
9 the state's supervision and transfer of juveniles subject to the  
10 terms of this compact, the rules adopted by the interstate  
11 commission and policies adopted by the state council under this  
12 compact.

13 (c) "Compacting state" means any state which has enacted  
14 the enabling legislation for this compact.

15 (d) “Commissioner” means the voting representative of  
16 each compacting state appointed pursuant to article III of this  
17 compact.

18 (e) “Court” means any court having jurisdiction over  
19 delinquent, neglected, or dependent children.

20 (f) “Deputy compact administrator” means the individual,  
21 if any, in each compacting state appointed to act on behalf of a  
22 compact administrator pursuant to the terms of this compact  
23 responsible for the administration and management of the  
24 state’s supervision and transfer of juveniles subject to the terms  
25 of this compact, the rules adopted by the interstate commission  
26 and policies adopted by the state council under this compact.

27 (g) “Interstate commission” means the interstate commis-  
28 sion for juveniles created by Article III of this compact.

29 (h) “Juvenile” means any person defined as a juvenile in  
30 any member state or by the rules of the interstate commission,  
31 including:

32 (1) Accused delinquent – a person charged with an offense  
33 that, if committed by an adult, would be a criminal offense;

34 (2) Adjudicated delinquent – a person found to have  
35 committed an offense that, if committed by an adult, would be  
36 a criminal offense;

37 (3) Accused status offender – a person charged with an  
38 offense that would not be a criminal offense if committed by an  
39 adult;

40 (4) Adjudicated status offender - a person found to have  
41 committed an offense that would not be a criminal offense if  
42 committed by an adult; and

43 (i) Nonoffender – a person in need of supervision who has  
44 not been accused or adjudicated a status offender or delinquent.

45 (j) “Noncompacting state” means any state which has not  
46 enacted the enabling legislation for this compact.

47 (k) “Probation or parole” means any kind of supervision or  
48 conditional release of juveniles authorized under the laws of the  
49 compacting states.

50 (l) “Rule” means a written statement by the interstate  
51 commission promulgated pursuant to Article VI of this compact  
52 that is of general applicability, implements, interprets or  
53 prescribes a policy or provision of the compact, or an organiza-  
54 tional, procedural, or practice requirement of the commission,  
55 and has the force and effect of statutory law in a compacting  
56 state, and includes the amendment, repeal, or suspension of an  
57 existing rule.

58 (m) “State” means a state of the United States, the District  
59 of Columbia (or its designee), the Commonwealth of Puerto  
60 Rico, the U.S. Virgin Islands, Guam, American Samoa, and the  
61 Northern Marianas Islands.

### ARTICLE III. INTERSTATE COMMISSION FOR JUVENILES.

1 (a) The compacting states hereby create the “Interstate  
2 Commission for Juveniles.” The commission shall be a body  
3 corporate and joint agency of the compacting states. The  
4 commission shall have all the responsibilities, powers and  
5 duties set forth herein, and such additional powers as may be  
6 conferred upon it by subsequent action of the respective  
7 legislatures of the compacting states in accordance with the  
8 terms of this compact.

9 (b) The interstate commission shall consist of commission-  
10 ers appointed by the appropriate appointing authority in each

11 state pursuant to the rules and requirements of each compacting  
12 state and in consultation with the state council for interstate  
13 juvenile supervision created hereunder. The commissioner shall  
14 be the compact administrator, deputy compact administrator or  
15 designee from that state who shall serve on the interstate  
16 commission in such capacity under or pursuant to the applicable  
17 law of the compacting state.

18 (c) In addition to the commissioners who are the voting  
19 representatives of each state, the interstate commission shall  
20 include individuals who are not commissioners, but who are  
21 members of interested organizations. Such noncommissioner  
22 members must include a member of the national organizations  
23 of governors, legislators, state chief justices, attorneys general,  
24 interstate compact for adult offender supervision, interstate  
25 compact for the placement of children, juvenile justice and  
26 juvenile corrections officials, and crime victims. All  
27 noncommissioner members of the interstate commission shall  
28 be ex officio (nonvoting) members. The interstate commission  
29 may provide in its bylaws for such additional ex officio  
30 (nonvoting) members, including members of other national  
31 organizations, in such numbers as shall be determined by the  
32 commission.

33 (d) Each compacting state represented at any meeting of the  
34 commission is entitled to one vote. A majority of the compact-  
35 ing states shall constitute a quorum for the transaction of  
36 business, unless a larger quorum is required by the bylaws of  
37 the interstate commission.

38 (e) The commission shall meet at least once each calendar  
39 year. The chairperson may call additional meetings and, upon  
40 the request of a simple majority of the compacting states, shall  
41 call additional meetings. Public notice shall be given of all  
42 meetings and meetings shall be open to the public.



43 (f) The interstate commission shall establish an executive  
44 committee, which shall include commission officers, members,  
45 and others as determined by the bylaws. The executive commit-  
46 tee shall have the power to act on behalf of the interstate  
47 commission during periods when the interstate commission is  
48 not in session, with the exception of rule making and/or  
49 amendment to the compact. The executive committee shall  
50 oversee the day-to-day activities of the administration of the  
51 compact managed by an executive director and interstate  
52 commission staff; administers enforcement and compliance  
53 with the provisions of the compact, its bylaws and rules, and  
54 performs such other duties as directed by the interstate commis-  
55 sion or set forth in the bylaws.

56 (g) Each member of the interstate commission shall have  
57 the right and power to cast a vote to which that compacting  
58 state is entitled and to participate in the business and affairs of  
59 the interstate commission. A member shall vote in person and  
60 shall not delegate a vote to another compacting state. However,  
61 a commissioner, in consultation with the state council, shall  
62 appoint another authorized representative, in the absence of the  
63 commissioner from that state, to cast a vote on behalf of the  
64 compacting state at a specified meeting. The bylaws may  
65 provide for members' participation in meetings by telephone or  
66 other means of telecommunication or electronic communica-  
67 tion.

68 (h) The interstate commission's bylaws shall establish  
69 conditions and procedures under which the interstate commis-  
70 sion shall make its information and official records available to  
71 the public for inspection or copying. The interstate commission  
72 may exempt from disclosure any information or official records  
73 to the extent they would adversely affect personal privacy rights  
74 or proprietary interests.

75 (i) Public notice shall be given of all meetings and all  
76 meetings shall be open to the public, except as set forth in the  
77 rules or as otherwise provided in the compact. The interstate  
78 commission and any of its committees may close a meeting to  
79 the public where it determines by two-thirds vote that an open  
80 meeting would be likely to:

81 (1) Relate solely to the interstate commission's internal  
82 personnel practices and procedures;

83 (2) Disclose matters specifically exempted from disclosure  
84 by statute;

85 (3) Disclose trade secrets or commercial or financial  
86 information which is privileged or confidential;

87 (4) Involve accusing any person of a crime, or formally  
88 censuring any person;

89 (5) Disclose information of a personal nature where  
90 disclosure would constitute a clearly unwarranted invasion of  
91 personal privacy;

92 (6) Disclose investigative records compiled for  
93 law-enforcement purposes;

94 (7) Disclose information contained in or related to examina-  
95 tion, operating or condition reports prepared by, or on behalf of  
96 or for the use of, the interstate commission with respect to a  
97 regulated person or entity for the purpose of regulation or  
98 supervision of such person or entity;

99 (8) Disclose information, the premature disclosure of which  
100 would significantly endanger the stability of a regulated person  
101 or entity; or

102 (9) Specifically relate to the interstate commission's  
103 issuance of a subpoena, or its participation in a civil action or  
104 other legal proceeding.

105 (j) For every meeting closed pursuant to the provisions of  
106 subsection (i) above, the interstate commission's legal counsel  
107 shall publicly certify that, in the legal counsel's opinion, the  
108 meeting may be closed to the public, and shall reference each  
109 relevant exemptive provision. The interstate commission shall  
110 keep minutes which shall fully and clearly describe all matters  
111 discussed in any meeting and shall provide a full and accurate  
112 summary of any actions taken, and the reasons therefore,  
113 including a description of each of the views expressed on any  
114 item and the record of any roll call vote (reflected in the vote of  
115 each member on the question). All documents considered in  
116 connection with any action shall be identified in such minutes.

117 (k) The interstate commission shall collect standardized  
118 data concerning the interstate movement of juveniles as  
119 directed through its rules which shall specify the data to be  
120 collected, the means of collection and data exchange and  
121 reporting requirements. Such methods of data collection,  
122 exchange and reporting shall insofar as is reasonably possible  
123 conform to up-to-date technology and coordinate its informa-  
124 tion functions with the appropriate repository of records.

#### ARTICLE IV. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

1 The interstate commission shall have the following powers  
2 and duties:

3 (a) To provide for dispute resolution among compacting  
4 states.

5 (b) To promulgate rules to effect the purposes and obliga-  
6 tions as enumerated in this compact, which shall have the force  
7 and effect of statutory law and shall be binding in the compact-

8 ing states to the extent and in the manner provided in this  
9 compact.

10 (c) To oversee, supervise and coordinate the interstate  
11 movement of juveniles subject to the terms of this compact and  
12 any bylaws adopted and rules promulgated by the interstate  
13 commission.

14 (d) To enforce compliance with the compact provisions, the  
15 rules promulgated by the interstate commission, and the bylaws,  
16 using all necessary and proper means, including, but not limited  
17 to, the use of judicial process.

18 (e) To establish and maintain offices which shall be located  
19 within one or more of the compacting states.

20 (f) To purchase and maintain insurance and bonds.

21 (g) To borrow, accept, hire or contract for services of  
22 personnel.

23 (h) To establish and appoint committees and hire staff  
24 which it deems necessary for the carrying out of its functions  
25 including, but not limited to, an executive committee as  
26 required by Article III which shall have the power to act on  
27 behalf of the interstate commission in carrying out its powers  
28 and duties hereunder.

29 (i) To elect or appoint such officers, attorneys, employees,  
30 agents, or consultants, and to fix their compensation, define  
31 their duties and determine their qualifications.

32 (j) To establish the interstate commission's personnel  
33 policies and programs relating to, inter alia, conflicts of interest,  
34 rates of compensation, and qualifications of personnel.

35 (k) To accept any and all donations and grants of money,  
36 equipment, supplies, materials, and services, and to receive,  
37 utilize, and dispose of it.

38 (l) To lease, purchase, accept contributions or donations of,  
39 or otherwise to own, hold, improve or use any property, real,  
40 personal, or mixed.

41 (m) To sell, convey, mortgage, pledge, lease, exchange,  
42 abandon, or otherwise dispose of any property, real, personal or  
43 mixed.

44 (n) To establish a budget and make expenditures and levy  
45 dues as provided in Article VIII of this compact.

46 (o) To sue and be sued.

47 (p) To adopt a seal and bylaws governing the management  
48 and operation of the interstate commission.

49 (q) To perform such functions as may be necessary or  
50 appropriate to achieve the purposes of this compact.

51 (r) To report annually to the legislatures, governors,  
52 judiciary, and state councils of the compacting states concern-  
53 ing the activities of the interstate commission during the  
54 preceding year. Such reports shall also include any recommen-  
55 dations that may have been adopted by the interstate commis-  
56 sion.

57 (s) To coordinate education, training and public awareness  
58 regarding the interstate movement of juveniles for officials  
59 involved in such activity.

60 (t) To establish uniform standards of the reporting, collect-  
61 ing and exchanging of data.

62 (u) The interstate commission shall maintain its corporate  
63 books and records in accordance with the bylaws.

**ARTICLE V. ORGANIZATION AND OPERATION OF THE INTERSTATE  
COMMISSION.**

Section A. Bylaws.

1 (a) The interstate commission shall, by a majority of the  
2 members present and voting, within twelve months after the  
3 first interstate commission meeting, adopt bylaws to govern its  
4 conduct as may be necessary or appropriate to carry out the  
5 purposes of the compact, including, but not limited to:

6 (1) Establishing the fiscal year of the interstate commission;

7 (2) Establishing an executive committee and such other  
8 committees as may be necessary to;

9 (3) Providing for the establishment of committees govern-  
10 ing any general or specific delegation of any authority or  
11 function of the interstate commission;

12 (4) Providing reasonable procedures for calling and  
13 conducting meetings of the interstate commission, and ensuring  
14 reasonable notice of each such meeting;

15 (5) Establishing the titles and responsibilities of the officers  
16 of the interstate commission;

17 (6) Providing a mechanism for concluding the operations of  
18 the interstate commission and the return of any surplus funds  
19 that may exist upon the termination of the compact after the  
20 payment and/or reserving of all of its debts and obligations.

21 (7) Providing “start-up” rules for initial administration of  
22 the compact; and

23 (8) Establishing standards and procedures for compliance  
24 and technical assistance in carrying out the compact.

Section B. Officers and Staff.

1 (b) (1) The interstate commission shall, by a majority of the  
2 members, elect annually from among its members a chairperson  
3 and a vice chairperson, each of whom shall have such authority  
4 and duties as may be specified in the bylaws. The chairperson  
5 or, in the chairperson's absence or disability, the  
6 vice-chairperson shall preside at all meetings of the interstate  
7 commission. The officers so elected shall serve without  
8 compensation or remuneration from the interstate commission;  
9 provided that, subject to the availability of budgeted funds, the  
10 officers shall be reimbursed for any ordinary and necessary  
11 costs and expenses incurred by them in the performance of their  
12 duties and responsibilities as officers of the interstate commis-  
13 sion.

14 (2) The interstate commission shall, through its executive  
15 committee, appoint or retain an executive director for such  
16 period, upon such terms and conditions and for such compensa-  
17 tion as the interstate commission may deem appropriate. The  
18 executive director shall serve as secretary to the interstate  
19 commission, but shall not be a member and shall hire and  
20 supervise such other staff as may be authorized by the interstate  
21 commission.

Section C. Qualified Immunity, Defense and Indemnification.

1 (c)(1) The commission's executive director and employees  
2 shall be immune from suit and liability, either personally or in  
3 their official capacity, for any claim for damage to or loss of  
4 property or personal injury or other civil liability caused or  
5 arising out of or relating to any actual or alleged act, error, or  
6 omission that occurred, or that such person had a reasonable  
7 basis for believing occurred within the scope of commission

8 employment, duties, or responsibilities; provided, that any such  
9 person shall not be protected from suit or liability for any  
10 damage, loss, injury, or liability caused by the intentional or  
11 willful and wanton misconduct of any such person.

12 (2) The liability of any commissioner, or the employee or  
13 agent of a commissioner, acting within the scope of such  
14 person's employment or duties for acts, errors, or omissions  
15 occurring within such person's state may not exceed the limits  
16 of liability set forth under the constitution and laws of that state  
17 for state officials, employees, and agents. Nothing in this  
18 subsection shall be construed to protect any such person from  
19 suit or liability for any damage, loss, injury, or liability caused  
20 by the intentional or willful and wanton misconduct of any such  
21 person.

22 (3) The interstate commission shall defend the executive  
23 director or the employees or representatives of the interstate  
24 commission and, subject to the approval of the attorney general  
25 of the state represented by any commissioner of a compacting  
26 state, shall defend such commissioner or the commissioner's  
27 representatives or employees in any civil action seeking to  
28 impose liability arising out of any actual or alleged act, error or  
29 omission that occurred within the scope of interstate commis-  
30 sion employment, duties or responsibilities, or that the defen-  
31 dant had a reasonable basis for believing occurred within the  
32 scope of interstate commission employment, duties, or respon-  
33 sibilities, provided that the actual or alleged act, error, or  
34 omission did not result from intentional or willful and wanton  
35 misconduct on the part of such person.

36 (4) The interstate commission shall indemnify and hold the  
37 commissioner of a compacting state, or the commissioner's  
38 representatives or employees, or the interstate commission's  
39 representatives or employees, harmless in the amount of any  
40 settlement or judgment obtained against such persons arising



41 out of any actual or alleged act, error, or omission that occurred  
42 within the scope of interstate commission employment, duties,  
43 or responsibilities, or that such persons had a reasonable basis  
44 for believing occurred within the scope of interstate commis-  
45 sion employment, duties, or responsibilities, provided that the  
46 actual or alleged act, error, or omission did not result from  
47 intentional or willful and wanton misconduct on the part of such  
48 persons.

**ARTICLE VI. RULE-MAKING FUNCTIONS OF THE INTERSTATE COM-  
MISSION.**

1 (a) The interstate commission shall promulgate and publish  
2 rules in order to effectively and efficiently achieve the purposes  
3 of the compact.

4 (b) Rule making shall occur pursuant to the criteria set forth  
5 in this article and the bylaws and rules adopted pursuant  
6 thereto. Such rule making shall substantially conform to the  
7 principles of the "Model State Administrative Procedures Act,"  
8 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or  
9 such other administrative procedures act, as the interstate  
10 commission deems appropriate consistent with due process  
11 requirements under the U.S. Constitution as now or hereafter  
12 interpreted by the U. S. Supreme Court. All rules and amend-  
13 ments shall become binding as of the date specified, as pub-  
14 lished with the final version of the rule as approved by the  
15 commission.

16 (c) When promulgating a rule, the interstate commission  
17 shall, at a minimum:

18 (1) Publish the proposed rule's entire text stating the  
19 reason(s) for that proposed rule;

20           (2) Allow and invite any and all persons to submit written  
21 data, facts, opinions and arguments, which information shall be  
22 added to the record, and be made publicly available;

23           (3) Provide an opportunity for an informal hearing if  
24 petitioned by ten (10) or more persons; and

25           (4) Promulgate a final rule and its effective date, if appro-  
26 priate, based on input from state or local officials, or interested  
27 parties.

28           (d) Allow, not later than sixty days after a rule is promul-  
29 gated, any interested person to file a petition in the United  
30 States District Court for the District of Columbia or in the  
31 federal district court where the interstate commission's princi-  
32 pal office is located for judicial review of such rule. If the court  
33 finds that the interstate commission's action is not supported by  
34 substantial evidence in the rule making record, the court shall  
35 hold the rule unlawful and set it aside. For purposes of this  
36 subsection, evidence is substantial if it would be considered  
37 substantial evidence under the Model State Administrative  
38 Procedures Act.

39           (e) If a majority of the legislatures of the compacting states  
40 rejects a rule, those states may, by enactment of a statute or  
41 resolution in the same manner used to adopt the compact, cause  
42 that such rule shall have no further force and effect in any  
43 compacting state.

44           (f) The existing rules governing the operation of the  
45 "Interstate Compact on Juveniles" superceded by this article  
46 shall be null and void twelve months after the first meeting of  
47 the interstate commission created hereunder.

48           (g) Upon determination by the interstate commission that  
49 a state-of-emergency exists, it may promulgate an emergency  
50 rule which shall become effective immediately upon adoption,

51 provided that the usual rule-making procedures provided  
52 hereunder shall be retroactively applied to said rule as soon as  
53 reasonably possible, but no later than ninety days after the  
54 effective date of the emergency rule.

**ARTICLE VII. OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.**

Section A. Oversight.

1 (a)(1) The interstate commission shall oversee the adminis-  
2 tration and operations of the interstate movement of juveniles  
3 subject to this compact in the compacting states and shall  
4 monitor such activities being administered in noncompacting  
5 states which may significantly affect compacting states.

6 (2) The courts and executive agencies in each compacting  
7 state shall enforce this compact and shall take all actions  
8 necessary and appropriate to effectuate the compact's purposes  
9 and intent.

10 (3) The provisions of this compact and the rules promul-  
11 gated hereunder shall be received by all the judges, public  
12 officers, commissions, and departments of the state government  
13 as evidence of the authorized statute and administrative rules.  
14 All courts shall take judicial notice of the compact and the  
15 rules.

16 (4) In any judicial or administrative proceeding in a  
17 compacting state pertaining to the subject matter of this  
18 compact which may affect the powers, responsibilities or  
19 actions of the interstate commission, it shall be entitled to  
20 receive all service of process in any such proceeding, and shall  
21 have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

1 (b)(1) The compacting states shall report to the interstate  
2 commission on all issues and activities necessary for the  
3 administration of the compact as well as issues and activities  
4 pertaining to compliance with the provisions of the compact  
5 and its bylaws and rules.

6 (2) The interstate commission shall attempt, upon the  
7 request of a compacting state, to resolve any disputes or other  
8 issues which are subject to the compact and which may arise  
9 among compacting states and between compacting and  
10 noncompacting states. The commission shall promulgate a rule  
11 providing for both mediation and binding dispute resolution for  
12 disputes among the compacting states.

13 (3) The interstate commission, in the reasonable exercise of  
14 its discretion, shall enforce the provisions and rules of this  
15 compact using any or all means set forth in Article XI of this  
16 compact.

#### **ARTICLE VIII. FINANCE.**

1 (a) The interstate commission shall pay or provide for the  
2 payment of the reasonable expenses of its establishment,  
3 organization and ongoing activities.

4 (b) The interstate commission shall levy on and collect an  
5 annual assessment from each compacting state to cover the cost  
6 of the internal operations and activities of the interstate com-  
7 mission and its staff which must be in a total amount sufficient  
8 to cover the interstate commission's annual budget as approved  
9 each year. The aggregate annual assessment amount shall be  
10 allocated based upon a formula to be determined by the  
11 interstate commission, taking into consideration the population  
12 of each compacting state and the volume of interstate move-  
13 ment of juveniles in each compacting state and shall promulgate  
14 a rule binding upon all compacting states which governs said  
15 assessment.

16 (c) The interstate commission shall not incur any obliga-  
17 tions of any kind prior to securing the funds adequate to meet  
18 the same; nor shall the interstate commission pledge the credit  
19 of any of the compacting states, except by and with the author-  
20 ity of the compacting state.

21 (d) The interstate commission shall keep accurate accounts  
22 of all receipts and disbursements. The receipts and disburse-  
23 ments of the interstate commission shall be subject to the audit  
24 and accounting procedures established under its bylaws.  
25 However, all receipts and disbursements of funds handled by  
26 the interstate commission shall be audited yearly by a certified  
27 or licensed public accountant and the report of the audit shall be  
28 included in and become part of the annual report of the inter-  
29 state commission.

#### **ARTICLE IX. THE STATE COUNCIL.**

1 Each member state shall create a state council for interstate  
2 juvenile supervision. While each state may determine the  
3 membership of its own state council, its membership must  
4 include at least one representative from the legislative, judicial,  
5 and executive branches of government, victims groups, and the  
6 compact administrator, deputy compact administrator or  
7 designee. Each compacting state retains the right to determine  
8 the qualifications of the compact administrator or deputy  
9 compact administrator. Each state council will advise and may  
10 exercise oversight and advocacy concerning that state's  
11 participation in interstate commission activities and other duties  
12 as may be determined by that state, including, but not limited  
13 to, development of policy concerning operations and procedures  
14 of the compact within that state.

#### **ARTICLE X. COMPACTING STATES, EFFECTIVE DATE AND AMEND- MENT.**

1 (a) Any state, the District of Columbia (or its designee), the  
2 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam,

3 American Samoa, and the Northern Marianas Islands as defined  
4 in Article II of this compact is eligible to become a compacting  
5 state.

6 (b) The compact shall become effective and binding upon  
7 legislative enactment of the compact into law by no less than  
8 thirty-five of the states. The initial effective date shall be the  
9 later of the first day of July, two thousand four, or upon  
10 enactment into law by the thirty-fifth jurisdiction. Thereafter it  
11 shall become effective and binding as to any other compacting  
12 state upon enactment of the compact into law by that state. The  
13 governors of nonmember states or their designees shall be  
14 invited to participate in the activities of the interstate commis-  
15 sion on a nonvoting basis prior to adoption of the compact by  
16 all states and territories of the United States.

17 (c) The interstate commission may propose amendments to  
18 the compact for enactment by the compacting states. No  
19 amendment shall become effective and binding upon the  
20 interstate commission and the compacting states unless and  
21 until it is enacted into law by unanimous consent of the  
22 compacting states.

**ARTICLE XI. WITHDRAWAL, DEFAULT, TERMINATION AND JUDI-  
CIAL ENFORCEMENT.**

**Section A. Withdrawal.**

1 (a) (1) Once effective, the compact shall continue in force  
2 and remain binding upon each and every compacting state;  
3 provided that a compacting state may withdraw from the  
4 compact by specifically repealing the statute which enacted the  
5 compact into law.

6 (2) The effective date of withdrawal is the effective date of  
7 the repeal.

8 (3) The withdrawing state shall immediately notify the  
9 chairperson of the interstate commission in writing upon the  
10 introduction of legislation repealing this compact in the  
11 withdrawing state. The interstate commission shall notify the  
12 other compacting states of the withdrawing state's intent to  
13 withdraw within sixty days of its receipt thereof.

14 (4) The withdrawing state is responsible for all assessments,  
15 obligations and liabilities incurred through the effective date of  
16 withdrawal, including any obligations, the performance of  
17 which extend beyond the effective date of withdrawal.

18 (5) Reinstatement following withdrawal of any compacting  
19 state shall occur upon the withdrawing state reenacting the  
20 compact or upon such later date as determined by the interstate  
21 commission.

#### Section B. Technical Assistance, Fines, Suspension, Termination and Default.

1 (b)(1) If the interstate commission determines that any  
2 compacting state has at any time defaulted in the performance  
3 of any of its obligations or responsibilities under this compact,  
4 or the bylaws or duly promulgated rules, the interstate commis-  
5 sion may impose any or all of the following penalties:

6 (A) Remedial training and technical assistance as directed  
7 by the interstate commission;

8 (B) Alternative dispute resolution;

9 (C) Fines, fees, and costs in such amounts as are deemed to  
10 be reasonable as fixed by the interstate commission; and

11 (D) Suspension or termination of membership in the  
12 compact. Suspension or termination of membership in the  
13 compact shall be imposed only after all other reasonable means

14 of securing compliance under the bylaws and rules have been  
15 exhausted and the interstate commission has therefore deter-  
16 mined that the offending state is in default. Immediate notice of  
17 suspension shall be given by the interstate commission to the  
18 governor, the chief justice or the chief judicial officer of the  
19 state, the majority and minority leaders of the defaulting state's  
20 legislature, and the state council.

21 (2) The grounds for default include, but are not limited to,  
22 failure of a compacting state to perform such obligations or  
23 responsibilities imposed upon it by this compact, the bylaws, or  
24 duly promulgated rules and any other grounds designated in  
25 commission bylaws and rules.

26 (3) The interstate commission shall immediately notify the  
27 defaulting state in writing of the penalty imposed by the  
28 interstate commission and of the default pending a cure of the  
29 default.

30 (4) The commission shall stipulate the conditions and the  
31 time period within which the defaulting state must cure its  
32 default. If the defaulting state fails to cure the default within the  
33 time period specified by the commission, the defaulting state  
34 shall be terminated from the compact upon an affirmative vote  
35 of a majority of the compacting states and all rights, privileges  
36 and benefits conferred by this compact shall be terminated from  
37 the effective date of termination.

38 (5) Within sixty days of the effective date of termination of  
39 a defaulting state, the commission shall notify the governor, the  
40 chief justice or chief judicial officer, the majority and minority  
41 leaders of the defaulting state's legislature, and the state council  
42 of such termination.

43 (6) The defaulting state is responsible for all assessments,  
44 obligations and liabilities incurred through the effective date of



45 termination including any obligations, the performance of  
46 which extends beyond the effective date of termination.

47 (7) The interstate commission shall not bear any costs  
48 relating to the defaulting state unless otherwise mutually agreed  
49 upon in writing between the interstate commission and the  
50 defaulting state.

51 (8) Reinstatement following termination of any compacting  
52 state requires both a reenactment of the compact by the default-  
53 ing state and the approval of the interstate commission pursuant  
54 to the rules.

#### Section C. Judicial Enforcement.

1 (c) The interstate commission may, by majority vote of the  
2 members, initiate legal action in the United States District  
3 Court for the District of Columbia or, at the discretion of the  
4 interstate commission, in the federal district where the interstate  
5 commission has its offices, to enforce compliance with the  
6 provisions of the compact, its duly promulgated rules and  
7 bylaws, against any compacting state in default. In the event  
8 judicial enforcement is necessary the prevailing party shall be  
9 awarded all costs of such litigation including reasonable  
10 attorneys fees.

#### Section D. Dissolution of Compact.

1 (d)(1) The compact dissolves effective upon the date of the  
2 withdrawal or default of the compacting state, which reduces  
3 membership in the compact to one compacting state.

4 (2) Upon the dissolution of this compact, the compact  
5 becomes null and void and shall be of no further force or effect,  
6 and the business and affairs of the interstate commission shall  
7 be concluded and any surplus funds shall be distributed in  
8 accordance with the bylaws.

**ARTICLE XII. SEVERABILITY AND CONSTRUCTION.**

1           (a) The provisions of this compact shall be severable, and  
2 if any phrase, clause, sentence or provision is deemed unen-  
3 forceable, the remaining provisions of the compact shall be  
4 enforceable.

5           (b) The provisions of this compact shall be liberally  
6 construed to effectuate its purposes.

**ARTICLE XIII. BINDING EFFECT OF COMPACT AND OTHER LAWS.****Section A. Other Laws.**

1           (a)(1) Nothing herein prevents the enforcement of any other  
2 law of a compacting state that is not inconsistent with this  
3 compact.

4           (2) All compacting states' laws other than state constitu-  
5 tions and other interstate compacts conflicting with this  
6 compact are superseded to the extent of the conflict.

**Section B. Binding Effect of the Compact.**

1           (b)(1) All lawful actions of the interstate commission,  
2 including all rules and bylaws promulgated by the interstate  
3 commission, are binding upon the compacting states.

4           (2) All agreements between the interstate commission and  
5 the compacting states are binding in accordance with their  
6 terms.

7           (3) Upon the request of a party to a conflict over meaning  
8 or interpretation of interstate commission actions, and upon a  
9 majority vote of the compacting states, the interstate commis-  
10 sion may issue advisory opinions regarding such meaning or  
11 interpretation.

12 (4) In the event any provision of this compact exceeds the  
13 constitutional limits imposed on the legislature of any compact-  
14 ing state, the obligations, duties, powers or jurisdiction sought  
15 to be conferred by such provision upon the interstate commis-  
16 sion shall be ineffective and such obligations, duties, powers or  
17 jurisdiction shall remain in the compacting state and shall be  
18 exercised by the agency thereof to which such obligations,  
19 duties, powers or jurisdiction are delegated by law in effect at  
20 the time this compact becomes effective.

**§49-8A-2. State council for interstate juvenile supervision.**

1 (a) Upon the effective date of the interstate compact for  
2 juveniles, there shall be created a state council for interstate  
3 juvenile supervision. Said state council shall be comprised of a  
4 total of nine members, to be selected and designated as follows:

5 (1) Two members designated by the state Legislature, one  
6 of whom shall be named and appointed by the speaker of the  
7 House, and the other of whom shall be designated by the  
8 president of the Senate;

9 (2) Two members designated by the judiciary, both of  
10 whom shall be named and appointed by the chief justice of the  
11 Supreme Court of Appeals of West Virginia;

12 (3) The compact administrator or a designee of the compact  
13 administrator;

14 (4) Four members to be designated and appointed by the  
15 governor, two of whom must be representatives of state  
16 agencies dealing with juvenile corrections, juvenile placement  
17 or juvenile services, and one of whom must be a representative  
18 of a victims' group.

19 (b) Within ninety days of the effective date of this compact,  
20 the state council shall meet and designate a commissioner who

21 shall represent the state as the compacting state's voting  
22 representative under Article III of this compact.

23 (c) The state council will exercise oversight and advocacy  
24 concerning West Virginia's participation in interstate commis-  
25 sion activities and rule makings, and engage in other duties and  
26 activities as determined by its members, including, but not  
27 limited to, the development of policy concerning the operations  
28 and procedures for implementing the compact and interstate  
29 commission rules within West Virginia.

**§49-8A-3. Appointment of compact administrator.**

1 (a) Upon and after the effective date of the interstate  
2 compact for juveniles, the governor is hereby authorized and  
3 empowered to designate an officer who shall be the compact  
4 administrator and who, acting jointly with like offices of the  
5 other party states, shall be responsible for the administration  
6 and management of this state's supervision and transfer of  
7 juveniles subject to the terms of this compact, the rules adopted  
8 by the interstate commission and the policies adopted by the  
9 state council under this compact. Said compact administrator  
10 shall serve subject to the will and pleasure of the governor, and  
11 must meet the minimum qualifications for the position of  
12 compact administrator, as established by the state council. The  
13 compact administrator is hereby authorized, empowered and  
14 directed to cooperate with all departments, agencies and  
15 officers of and in the government of this state and its subdivi-  
16 sions in facilitating the proper administration of the compact or  
17 of any supplementary agreement or agreements entered into by  
18 this state hereunder.

19 (b) Until such time as the state council has met and estab-  
20 lished minimum qualifications for the position of compact  
21 administrator the individual or administrator who has been  
22 designated to act as the juvenile compact administrator for the  
23 interstate compact on juveniles, pursuant to section three,

24 article eight of this chapter, may perform the duties and  
25 responsibilities of compact administrator under this article.

26 (c) Until such time as the state council has met and desig-  
27 nated a commissioner to vote on behalf of the state of West  
28 Virginia at the interstate commission, the individual or adminis-  
29 trator who has been designated to act as the juvenile compact  
30 administrator for the interstate compact on juveniles, pursuant  
31 to section three, article eight of this chapter, shall function as  
32 the acting commissioner for the state of West Virginia before  
33 the interstate commission formed under the new compact.

**§49-8A-4. Notification of the effective date of the interstate  
compact for juveniles.**

1 Within ten days of the date that the thirty-fifth state adopts  
2 legislation approving this compact, the appointed or designated  
3 juvenile compact administrator under section three, article eight  
4 of this chapter shall advise the governor, the chief justice of the  
5 Supreme Court of Appeals of West Virginia, the speaker of the  
6 House of Delegates and the president of the Senate of the  
7 effective date of this compact.

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## CHAPTER 54

**(Com. Sub. for H. B. 4655 — By Delegates Michael, Cann,  
Foster, Leach, Stalnaker, Boggs and Proudfoot)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §5-16B-10, relating to  
subrogation rights of the children's health insurance plan;

providing that submission of an application for benefits through the children's health insurance agency constitutes an assignment of rights to the agency to recover benefits paid by the agency; requiring that a jury is not to be informed of the interest of the agency; providing for the deduction of attorney fees from the amount paid to the agency; requiring a person with notice of the interests of the agency to withhold the amount of settlement proceeds necessary to reimburse the agency; and, imposing liability on persons who fail to reimburse the agency.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-10, to read as follows:

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.**

**§5-16B-10. Assignment of rights; right of subrogation by children's health insurance agency to the rights of recipients of medical assistance; rules as to effect of subrogation.**

1           (a) Submission of an application to the children's health  
 2 insurance agency for medical assistance is, as a matter of law,  
 3 an assignment of the right of the applicant or legal representa-  
 4 tive thereof, to recovery from personal insurance or other  
 5 sources, including, but not limited to, liable third parties, to the  
 6 extent of the cost of children's health insurance agency services  
 7 paid for by the children's health insurance agency program.  
 8 This assignment of rights does not extend to medicare benefits.  
 9 At the time the application is made, the children's health  
 10 insurance agency shall include a statement along with the  
 11 application that explains that the applicant has assigned his or  
 12 her rights and the legal implications of making an assignment  
 13 as provided in this section.

14        If medical assistance is paid or will be paid to a provider of  
15 medical care on behalf of a recipient of medical assistance  
16 because of any sickness, injury, disease or disability, and  
17 another person is legally liable for the expense, either pursuant  
18 to contract, negligence or otherwise, the children's health  
19 insurance agency shall have a right to recover full reimburse-  
20 ment from any award or settlement for the medical assistance  
21 from the other person, or from the recipient of the assistance if  
22 he or she has been reimbursed by the other person. The chil-  
23 dren's health insurance agency shall be legally assigned the  
24 rights of the recipient against the person so liable, but only to  
25 the extent of the reasonable value of the medical assistance paid  
26 and attributable to the sickness, injury, disease or disability for  
27 which the recipient has received damages. When an action or  
28 claim is brought by a medical assistance recipient or by  
29 someone on his or her behalf against a third party who may be  
30 liable for the injury, disease, disability or death of a medical  
31 assistance recipient, any settlement, judgment or award  
32 obtained is subject to the claim of the children's health insur-  
33 ance agency for reimbursement of an amount sufficient to  
34 reimburse the children's health insurance agency the full  
35 amount of benefits paid on behalf of the recipient under the  
36 medical assistance program for the injury, disease, disability or  
37 death of the medical assistance recipient. The claim of the  
38 children's health insurance agency assigned by the recipient  
39 may not exceed the amount of medical expenses for the injury,  
40 disease, disability or death of the recipient paid by the chil-  
41 dren's health insurance agency on behalf of the recipient. The  
42 right of subrogation created in this section includes all portions  
43 of the cause of action, by either settlement, compromise,  
44 judgment or award, notwithstanding any settlement allocation  
45 or apportionment that purports to dispose of portions of the  
46 cause of action not subject to the subrogation. Any settlement,  
47 compromise, judgment or award that excludes or limits the cost  
48 of medical services or care does not preclude the children's  
49 health insurance agency from enforcing its rights under this

50 section. The children's health insurance agency may compro-  
51 mise, settle and execute a release of any claim, in whole or in  
52 part.

53 (b) Nothing in this section shall be construed so as to  
54 prevent the recipient of medical assistance from maintaining an  
55 action for injuries received by them against any other person  
56 and from including therein, as part of the compensatory  
57 damages sought to be recovered, the amount or amounts of his  
58 or her medical expenses, even though the person received  
59 medical assistance in the payment of the medical expenses, in  
60 whole or in part.

61 If the action be tried by a jury, the jury is not to be informed  
62 as to the interest of the children's health insurance agency, if  
63 any, and the fact is not to be disclosed to the jury at any time.  
64 The trial judge shall, upon the entry of judgment on the verdict,  
65 direct that an amount equal to the amount of medical assistance  
66 given be withheld and paid over to the children's health  
67 insurance agency. Irrespective of whether the case be termi-  
68 nated by judgment or by settlement without trial, from the  
69 amount required to be paid to the children's health insurance  
70 agency there shall be deducted the attorney fees attributable to  
71 the amount in accordance with and in proportion to the fee  
72 arrangement made between the recipient and his or her attorney  
73 of record so that the children's health insurance agency shall  
74 bear the pro rata portion of the attorney fees. Nothing in this  
75 section shall preclude any person who has received medical  
76 assistance from settling any cause of action which he or she  
77 may have against another person and delivering to the chil-  
78 dren's health insurance agency, from the proceeds of the  
79 settlement, the sums received by him or her from the children's  
80 health insurance agency or paid by the children's health  
81 insurance agency for his or her medical assistance. If the other  
82 person is aware of or has been informed of the interest of the  
83 children's health insurance agency in the matter, it shall be the



84 duty of the person to whose benefit the release inures to  
85 withhold so much of the settlement as may be necessary to  
86 reimburse the children's health insurance agency to the extent  
87 of its interest in the settlement. No judgment, award of or  
88 settlement in any action or claim by a medical assistance  
89 recipient to recover damages for injuries, disease or disability,  
90 in which the children's health insurance agency has interest,  
91 shall be satisfied without first giving the children's health  
92 insurance agency notice and reasonable opportunity to establish  
93 its interest. The children's health insurance agency shall have  
94 sixty days from receipt of written notice to advise the recipient  
95 or his or her representative in writing of the children's health  
96 insurance agency's desire to establish its interest through the  
97 assignment. If no written intent is received within the sixty-day  
98 period, then the recipient may proceed and in the event of full  
99 recovery forward to the children's health insurance agency the  
100 portion of the recovery proceeds less the children's health  
101 insurance agency's share of attorney's fees and costs expended  
102 in the matter. In the event of less than full recovery the recipient  
103 and the children's health insurance agency shall agree as to the  
104 amount to be paid to the children's health insurance agency for  
105 its claim. If there is no recovery, the children's health insurance  
106 agency shall under no circumstances be liable for any costs or  
107 attorney's fees expended in the matter. If, after being notified  
108 in writing of a subrogation claim and possible liability of the  
109 recipient, guardian, attorney or personal representative for  
110 failure to subrogate the children's health insurance agency, a  
111 recipient, his or her guardian, attorney or personal representa-  
112 tive disposes of the funds representing the judgment, settlement  
113 or award, without the written approval of the children's health  
114 insurance agency, that person shall be liable to the children's  
115 health insurance agency for any amount that, as a result of the  
116 disposition of the funds, is not recoverable by the children's  
117 health insurance agency. In the event that a controversy arises  
118 concerning the subrogation claims by the children's health  
119 insurance agency, an attorney shall interplead, pursuant to rule

120 twenty-two of the rules of civil procedure, the portion of the  
121 recipient's settlement that will satisfy the children's health  
122 insurance agency exclusive of attorney's fees and costs regard-  
123 less of any contractual arrangement between the client and the  
124 attorney.

125 (c) Nothing contained herein shall authorize the children's  
126 health insurance agency to institute a class action or multiple  
127 plaintiff action against any manufacturer, distributor or vendor  
128 of any product to recover children's health insurance agency  
129 care expenditures paid for by the children's health insurance  
130 agency program.

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## CHAPTER 55

(Com. Sub. for H. B. 4517 — By Delegates Campbell, Cann,  
Susman, Proudfoot, Stalnaker, Evans and Hall)

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[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

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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 division of corrections to be moral obligations of the state and directing payments thereof.**

1 The Legislature has heretofore made findings of fact that  
2 the state has received the benefit of the commodities received

3 and/or services rendered by certain claimants herein and has  
 4 considered these claims against the state, and agencies thereof,  
 5 which have arisen due to overexpenditures of the departmental  
 6 appropriations by officers of the state spending units, the claims  
 7 having been previously considered by the court of claims which  
 8 also found that the state has received the benefit of the com-  
 9 modities received and/or services rendered by the claimants, but  
 10 were denied by the court of claims on the purely statutory  
 11 grounds that to allow the claims would be condoning illegal  
 12 acts contrary to the laws of the state. The Legislature, pursuant  
 13 to its findings of fact and also by the adoption of the findings of  
 14 fact by the court of claims as its own, while not condoning such  
 15 illegal acts, hereby declares it to be the moral obligation of the  
 16 state to pay these claims in the amounts specified below and  
 17 directs the auditor to issue warrants upon receipt of properly  
 18 executed requisitions supported by itemized invoices, state-  
 19 ments or other satisfactory documents as required by section  
 20 ten, article three, chapter twelve of the code of West Virginia,  
 21 one thousand nine hundred thirty-one, as amended, for the  
 22 payments thereof out of any fund appropriated and available for  
 23 the purpose.

24 (a) *Claims against the Division of Corrections:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26	(1) Appalachian Regional Health Care, Inc. . . . .	\$668.00
27	(2) Ashton Medical Associates, Inc. . . . .	\$110.00
28	(3) Associated Radiologists, Inc. . . . .	\$1,171.00
29	(4) Charleston Area Medical Center, Inc. . . . .	\$175,157.09
30	(5) Charleston Psychiatric Group, Inc. . . . .	\$2,804.00
31	(6) Clarksburg Anesthesia Associates . . . . .	\$2,590.00
32	(7) Correctional Medical Services . . . . .	\$810,063.25
33	(8) Davis Memorial Hospital . . . . .	\$27,834.65
34	(9) Federal Bureau of Prisons . . . . .	\$9,583.77
35	(10) Flat Iron Drug Store, Inc. . . . .	\$230.49

36	(11) General Anesthesia Services, Inc. . . . .	\$2,100.00
37	(12) Greenbrier Valley Urology . . . . .	\$1,550.00
38	(13) Integrated Healthcare, Inc. . . . .	\$22,310.73
39	(14) Jan-Care Ambulance . . . . .	\$2,601.50
40	(15) Kanawha Nephrology, Inc. . . . .	\$1,520.00
41	(16) A. K. Katrib, M.D. . . . .	\$2,373.35
42	(17) Monongalia General Hospital . . . . .	\$20,726.88
43	(18) Montgomery General Hospital . . . . .	\$96,085.17
44	(19) William A. Myers, II, DMD . . . . .	\$2,398.45
45	(20) Pocahontas Memorial Hospital . . . . .	\$1,674.14
46	(21) Raleigh General Hospital . . . . .	\$2,141.84
47	(22) Redi-Care, Inc. . . . .	\$760.00
48	(23) Riverside Medical Group, PLLC . . . . .	\$2,111.00
49	(24) Robert A. Rose, M.D. . . . .	\$120.00
50	(25) The Heart Center . . . . .	\$39.00
51	(26) Thomas Memorial Hospital . . . . .	\$5,472.50
52	(27) University Health Associates . . . . .	\$6,858.00
53	(28) Valley Health Care, Inc. . . . .	\$709.00
54	(29) West Virginia University Hospitals, Inc. . . .	\$19,029.78
55	(30) Wheeling Hospital, Inc. . . . .	\$2,038.00

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## CHAPTER 56

**(S. B. 536 — By Senators Love, Sharpe, Edgell, Minear,  
Minard and Ross)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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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; air quality board; alcohol beverage control administration; appraisers licensing board; attorney general; auditor's office; board of accountancy; board of embalmers and funeral directors; board of landscape architects; board of examiners for licensed practical nurses; board of optometry; board of pharmacy; board of physical therapy; board of professional engineers; board of psychologists; board of radiologic technologists; board of registered nurses; board of respiratory care; board of risk and insurance management; board of social work examiners; board of veterinary medicine; bureau of employment programs; bureau of senior services; consolidated public retirement board; department of administration; department of administration - unclaimed property; department of agriculture; department of education; department of health and human resources; department of tax and revenue; development office; division of banking; division of corrections; division of criminal justice services; division of culture and history; division of environmental protection; division of finance; division of forestry; division of highways; division of juvenile services; division of labor; division of motor vehicles; division of natural resources; division of personnel; division of protective services; division of rehabilitation services; division of tourism; education and state employees grievance board; educational broadcasting headquarters; environmental quality board; general services division; geological and economic survey; governor's office; governor's office of technology; health care authority; higher education policy commission; hospital finance authority; human rights commission; human services; information services and communications division; insurance commission; joint committee on government**

**and finance; library commission; lottery commission; message therapists board; miners health safety & training; municipal bond commission; office of emergency services; prosecuting attorneys institute; public defender services; public employees insurance agency; public service commission; public transit; racing commission; real estate commission; regional jail and correctional facility authority; secretary of state; solid waste management board; state fire commission; state rail authority; supreme court; surplus property; travel management; treasurer’s office; veterans’ affairs; veterans’ home; water development authority; workers’ compensation commission; West Virginia ethics commission; West Virginia network; West Virginia parole board and the West Virginia state police to be moral obligations of the state and directing payment thereof.**

1       The Legislature has considered the findings of fact and  
 2 recommendations reported to it by the court of claims concern-  
 3 ing various claims against the state and agencies thereof, and in  
 4 respect to each of the following claims the Legislature adopts  
 5 those findings of fact as its own, and in respect of certain claims  
 6 herein, the Legislature has independently made findings of fact  
 7 and determinations of award and hereby declares it to be the  
 8 moral obligation of the state to pay each such claim in the  
 9 amount specified below and directs the auditor to issue warrants  
 10 for the payment thereof out of any fund appropriated and  
 11 available for the purpose.

12       (a) *Claims against the Adjutant General:*

13       (TO BE PAID FROM GENERAL REVENUE FUND)

14               (1) Verizon West Virginia, Inc. . . . . \$232.04

15       (TO BE PAID FROM NON GENERAL REVENUE FUND)

16 (2) Verizon West Virginia, Inc. . . . . \$5,797.53

17 (b) *Claim against the Air Quality Board:*

18 (TO BE PAID FROM GENERAL REVENUE FUND)

19 (1) Verizon West Virginia, Inc. . . . . \$4.40

20 (c) *Claim against the Alcohol Beverage Control Adminis-*  
21 *tration:*

22 (TO BE PAID FROM NON GENERAL REVENUE FUND)

23 (1) Verizon West Virginia, Inc. . . . . \$2,485.42

24 (d) *Claim against the Appraisers Licensing Board:*

25 (TO BE PAID FROM NON GENERAL REVENUE FUND)

26 (1) Verizon West Virginia, Inc. . . . . \$267.58

27 (e) *Claim against the Attorney General:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29 (1) Verizon West Virginia, Inc. . . . . \$7,118.13

30 (f) *Claim against the Auditor's Office:*

31 (TO BE PAID FROM GENERAL REVENUE FUND)

32 (1) Verizon West Virginia, Inc. . . . . \$4,436.04

33 (g) *Claim against the Board of Accountancy:*

34 (TO BE PAID FROM NON GENERAL REVENUE FUND)

35 (1) Verizon West Virginia, Inc. . . . . \$53.69

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CLAIMS

[Ch. 56

36 (h) *Claim against the Board of Embalmers and Funeral*  
37 *Directors:*

38 (TO BE PAID FROM NON GENERAL REVENUE FUND)

39 (1) Verizon West Virginia, Inc. . . . . \$90.76

40 (i) *Claim against the Board of Landscape Architects:*

41 (TO BE PAID FROM NON GENERAL REVENUE FUND)

42 (1) Verizon West Virginia, Inc. . . . . \$194.62

43 (j) *Claim against the Board of Licensed Practical Nurses:*

44 (TO BE PAID FROM NON GENERAL REVENUE FUND)

45 (1) Verizon West Virginia, Inc. . . . . \$176.67

46 (k) *Claim against the Board of Optometry:*

47 (TO BE PAID FROM NON GENERAL REVENUE FUND)

48 (1) Verizon West Virginia, Inc. . . . . \$249.95

49 (l) *Claim against the Board of Pharmacy:*

50 (TO BE PAID FROM NON GENERAL REVENUE FUND)

51 (1) Verizon West Virginia, Inc. . . . . \$432.86

52 (m) *Claim against the Board of Physical Therapy:*

53 (TO BE PAID FROM NON GENERAL REVENUE FUND)

54 (1) Verizon West Virginia, Inc. . . . . \$246.03

55 (n) *Claim against the Board of Professional Engineers:*



56 (TO BE PAID FROM NON GENERAL REVENUE FUND)

57 (1) Verizon West Virginia, Inc. . . . . \$87.39

58 (o) *Claim against the Board of Psychologists:*

59 (TO BE PAID FROM NON GENERAL REVENUE FUND)

60 (1) Verizon West Virginia, Inc. . . . . \$100.44

61 (p) *Claim against the Board of Radiologic Technologists:*

62 (TO BE PAID FROM NON GENERAL REVENUE FUND)

63 (1) Verizon West Virginia, Inc. . . . . \$54.76

64 (q) *Claims against the Board of Registered Nurses:*

65 (TO BE PAID FROM NON GENERAL REVENUE FUND)

66 (1) Amy H. Carte . . . . . \$3,300.00

67 (2) Verizon West Virginia, Inc. . . . . \$466.04

68 (r) *Claim against the Board of Respiratory Care:*

69 (TO BE PAID FROM NON GENERAL REVENUE FUND)

70 (1) Verizon West Virginia, Inc. . . . . \$70.94

71 (s) *Claim against the Board of Risk and Insurance Man-*  
72 *agement:*

73 (TO BE PAID FROM NON GENERAL REVENUE FUND)

74 (1) Verizon West Virginia, Inc. . . . . \$891.17

75 (t) *Claim against the Board of Social Work Examiners:*

76 (TO BE PAID FROM NON GENERAL REVENUE FUND)

338	CLAIMS	[Ch. 56
77	(1) Verizon West Virginia, Inc. . . . .	\$408.44
78	<i>(u) Claim against the Board of Veterinary Medicine:</i>	
79	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
80	(1) Verizon West Virginia, Inc. . . . .	\$59.22
81	<i>(v) Claim against the Bureau of Employment Programs:</i>	
82	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
83	(1) Verizon West Virginia, Inc. . . . .	\$54,366.86
84	<i>(w) Claim against the Bureau of Senior Services:</i>	
85	(TO BE PAID FROM GENERAL REVENUE FUND)	
86	(1) Verizon West Virginia, Inc. . . . .	\$2,077.92
87	<i>(x) Claim against the Consolidated Public Retirement</i>	
88	<i>Board:</i>	
89	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
90	(1) Verizon West Virginia, Inc. . . . .	\$3,362.33
91	<i>(y) Claim against the Department of Administration:</i>	
92	(TO BE PAID FROM GENERAL REVENUE FUND)	
93	(1) Verizon West Virginia, Inc. . . . .	\$652.70
94	<i>(z) Claim against the Department of Administration -</i>	
95	<i>Unclaimed Agencies:</i>	
96	(TO BE PAID FROM GENERAL REVENUE FUND)	
97	(1) Verizon West Virginia, Inc. . . . .	\$21,803.38

- 98        (aa) *Claims against the Department of Agriculture:*
- 99        (TO BE PAID FROM GENERAL REVENUE FUND)
- 100        (1) Verizon West Virginia, Inc. . . . . . \$9,769.54
- 101        (TO BE PAID FROM NON GENERAL REVENUE FUND)
- 102        (2) Verizon West Virginia, Inc. . . . . . \$2,194.24
- 103        (bb) *Claims against the Department of Education:*
- 104        (TO BE PAID FROM GENERAL REVENUE FUND)
- 105        (1) Manpower . . . . . \$1,855.48
- 106        (2) Verizon West Virginia, Inc. . . . . . \$14,948.54
- 107        (3) Xerox Capital Services, LLC . . . . . \$25,473.89
- 108        (TO BE PAID FROM NON GENERAL REVENUE FUND)
- 109        (4) Verizon West Virginia, Inc. . . . . . \$11,767.31
- 110        (cc) *Claims against the Department of Health and Human*
- 111                *Resources*
- 112        (TO BE PAID FROM GENERAL REVENUE FUND)
- 113        (1) Pomeroy IT Solutions, Inc. . . . . . \$18,724.00
- 114        (2) Verizon West Virginia, Inc. . . . . . \$74,021.64
- 115        (TO BE PAID FROM NON GENERAL REVENUE FUND)
- 116        (3) Verizon West Virginia, Inc. . . . . . \$18,999.79
- 117        (dd) *Claims against the Department of Tax & Revenue:*
- 118        (TO BE PAID FROM GENERAL REVENUE FUND)
- 119        (1) Verizon West Virginia, Inc. . . . . . \$7,837.84

340	CLAIMS	[Ch. 56
120	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
121	(2) Verizon West Virginia, Inc. . . . .	\$14,095.22
122	(ee) <i>Claim against the Development Office:</i>	
123	(TO BE PAID FROM GENERAL REVENUE FUND)	
124	(1) Verizon West Virginia, Inc. . . . .	\$12,865.93
125	(ff) <i>Claim against the Division of Banking:</i>	
126	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
127	(1) Verizon West Virginia, Inc. . . . .	\$970.70
128	(gg) <i>Claims against the Division of Corrections:</i>	
129	(TO BE PAID FROM GENERAL REVENUE FUND)	
130	(1) Barbour County Commission . . . . .	\$7,950.00
131	(2) City of Elkins . . . . .	\$225.00
132	(3) David Steven Myers . . . . .	\$12.00
133	(4) William J. Toncray . . . . .	\$40.00
134	(5) Verizon West Virginia, Inc. . . . .	\$22,164.16
135	(6) Wayne County Commission . . . . .	\$5,525.00
136	(7) WV Regional Jail and Correctional	
137	Facility Authority . . . . .	\$1,923,652.55
138	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
139	(8) Verizon West Virginia, Inc. . . . .	\$1,436.75
140	(hh) <i>Claims against the Division of Criminal Justice</i>	
141	<i>Services:</i>	
142	(TO BE PAID FROM GENERAL REVENUE FUND)	
143	(1) Verizon West Virginia, Inc. . . . .	\$14.88

144	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
145	(2) Verizon West Virginia, Inc. . . . . .	\$2,221.00
146	(ii) <i>Claim against the Division of Culture and History:</i>	
147	(TO BE PAID FROM GENERAL REVENUE FUND)	
148	(1) Verizon West Virginia, Inc. . . . . .	\$4,649.22
149	(jj) <i>Claim against the Division of Environmental Protec-</i>	
150	<i>tion:</i>	
151	(TO BE PAID FROM GENERAL REVENUE FUND)	
152	(1) Verizon West Virginia, Inc. . . . . .	\$8.83
153	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
154	(2) Verizon West Virginia, Inc. . . . . .	\$16,914.85
155	(kk) <i>Claim against the Division of Finance:</i>	
156	(TO BE PAID FROM GENERAL REVENUE FUND)	
157	(1) Verizon West Virginia, Inc. . . . . .	\$3,855.08
158	(ll) <i>Claim against the Division of Forestry:</i>	
159	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
160	(1) Verizon West Virginia, Inc. . . . . .	\$11,350.73
161	(mm) <i>Claims against the Division of Highways:</i>	
162	(TO BE PAID FROM STATE ROAD FUND)	
163	(1) Nicole A. Abel . . . . .	\$200.55
164	(2) Beth Acord . . . . .	\$245.34

165	(3) Ellen F. Andrews .....	\$1,500.00
166	(4) Marian Ashley .....	\$14,571.37
167	(5) Tony G. Bazzie .....	\$54.59
168	(6) Sandra Sue Beard .....	\$102.00
169	(7) Alan and Stephanie Beddow .....	\$7,373.38
170	(8) Amanda Bell .....	\$1,500.00
171	(9) Stacy J. Berry .....	\$500.00
172	(10) Angela Brown .....	\$5,000.00
173	(11) James Brown .....	\$77,353.31
174	(12) Jesse E. Cook and Norma C. Cook .....	\$85.00
175	(13) Brandon Critchfield .....	\$2,928.03
176	(14) Adam F. and Debra L. Dawidowicz .....	\$500.00
177	(15) John and Mary Ann Depto .....	\$8,337.30
178	(16) Mark O. Dills .....	\$2,065.00
179	(17) Laurence W. Domenico .....	\$256.68
180	(18) Sonya Dunham .....	\$9,000.00
181	(19) Heather M. Fox .....	\$213.85
182	(20) Glenn O. Frazier, Jr., and	
183	Sondra Frazier .....	\$1,248.75
184	(21) David C. Friend .....	\$112.65
185	(22) Vernon W. Grant .....	\$1,039.35
186	(23) James L. Groves .....	\$7,000.00
187	(24) Raymond R. Guard .....	\$420.00
188	(25) William F. and	
189	Alice Higginbotham .....	\$1,199.18
190	(26) Richard D. Hite .....	\$100.00
191	(27) Steve and Jack Holbert .....	\$227.57
192	(28) Bobby Wayne and	
193	Maureen Hudnall .....	\$19,999.99
194	(29) Andrea S. Lester .....	\$250.00
195	(30) David R. Martin .....	\$50.21
196	(31) Marvin Chapel Church .....	\$12,695.60
197	(32) Jerry L. May .....	\$485.98
198	(33) Paula J. Mayfield .....	\$12,500.00
199	(34) Carol Sue McCauley and	
200	Pebbles Nicole Maynard .....	\$100.00

201	(35) James McNeely	\$500.00
202	(36) Elijah Montgomery	\$500.00
203	(37) Janet M. Peck	\$1,386.38
204	(38) Martha R. Perrine	\$491.92
205	(39) Christopher Pitts	\$9,000.00
206	(40) Gonzalo Robayo	\$500.00
207	(41) Douglas Runyon	\$500.00
208	(42) Melissa Shaffer	\$82,326.50
209	(43) Sanford and Gloria J. Shaffer	\$159.40
210	(44) Betty Shreve	\$198.21
211	(45) Betty Lou Staton	\$250.00
212	(46) Floretta Taylor	\$875.71
213	(47) Levonia Terrell	\$250.00
214	(48) Verizon West Virginia, Inc.	\$129,106.35
215	(49) Kevin O. and Katrina L. West	\$500.00
216	(50) Kristopher Wiesner	\$95.15
217	(51) Gary L. and Diane L. Wilson	\$51.40
218	(52) Jerry E. Workman	\$381.95

219 (nn) *Claims against the Division of Juvenile Services:*

220 (TO BE PAID FROM GENERAL REVENUE FUND)

221	(1) Primecare Medical, Inc.	\$5,700.56
222	(2) Verizon West Virginia, Inc.	\$9,165.33

223 (oo) *Claims against the Division of Labor:*

224 (TO BE PAID FROM GENERAL REVENUE FUND)

225	(1) Verizon West Virginia, Inc.	\$7,999.81
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226 (pp) *Claims against the Division of Motor Vehicles:*

227 (TO BE PAID FROM STATE ROAD FUND)

228	(1) Scott Alan Renner	\$100.00
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344	CLAIMS	[Ch. 56
229	(2) Verizon West Virginia, Inc. . . . .	\$17,565.20
230	<i>(qq) Claim against the Division of Natural Resources:</i>	
231	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
232	(1) Verizon West Virginia, Inc. . . . .	\$30,936.18
233	<i>(rr) Claim against the Division of Personnel:</i>	
234	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
235	(1) Verizon West Virginia, Inc. . . . .	\$2,173.87
236	<i>(ss) Claim against the Division of Protective Services:</i>	
237	(TO BE PAID FROM GENERAL REVENUE FUND)	
238	(1) Verizon West Virginia, Inc. . . . .	\$109.77
239	<i>(tt) Claim against Division of Rehabilitation Services:</i>	
240	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
241	(1) West Virginia Association of	
242	Rehabilitation Facilities . . . . .	\$4,053.95
243	(2) Verizon West Virginia, Inc. . . . .	\$32,873.85
244	<i>(uu) Claim against the Division of Tourism:</i>	
245	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
246	(1) Verizon West Virginia, Inc. . . . .	\$4,134.82
247	<i>(vv) Claim against the Education and State Employees</i>	
248	<i>Grievance Board:</i>	
249	(TO BE PAID FROM GENERAL REVENUE FUND)	



Ch. 56]	CLAIMS	345
250	(1) Verizon West Virginia, Inc. . . . . .	\$2,870.80
251	(ww) <i>Claim against Educational Broadcasting Headquar-</i>	
252	<i>ters:</i>	
253	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
254	(1) Verizon West Virginia, Inc. . . . . .	\$2,801.00
255	(xx) <i>Claim against the Environmental Quality Board:</i>	
256	(TO BE PAID FROM GENERAL REVENUE FUND)	
257	(1) Verizon West Virginia, Inc. . . . . .	\$211.63
258	(yy) <i>Claim against the General Services Division:</i>	
259	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
260	(1) Verizon West Virginia, Inc. . . . . .	\$716.07
261	(zz) <i>Claim against Geological and Economic Survey:</i>	
262	(TO BE PAID FROM GENERAL REVENUE FUND)	
263	(1) Verizon West Virginia, Inc. . . . . .	\$1,080.09
264	(aaa) <i>Claims against the Governor's Office:</i>	
265	(TO BE PAID FROM GENERAL REVENUE FUND)	
266	(1) Verizon West Virginia, Inc. . . . . .	\$14,416.96
267	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
268	(2) Verizon West Virginia, Inc. . . . . .	\$1,155.85
269	(bbb) <i>Claim against the Governor's Office of Technology:</i>	

346	CLAIMS	[Ch. 56
270	(TO BE PAID FROM SPECIAL REVENUE FUND)	
271	(1) American Society for Quality . . . . .	\$775.00
272	<i>(ccc) Claim against Health Care Authority:</i>	
273	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
274	(1) Verizon West Virginia, Inc. . . . .	\$1,168.61
275	<i>(ddd) Claims against the Higher Education Policy Com-</i>	
276	<i>mission:</i>	
277	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
278	(1) Amanda Trygar . . . . .	\$150.00
279	(2) Verizon West Virginia, Inc. . . . .	\$24,886.55
280	<i>(eee) Claim against the Hospital Finance Authority:</i>	
281	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
282	(1) Verizon West Virginia, Inc. . . . .	\$25.95
283	<i>(fff) Claim against the Human Rights Commission:</i>	
284	(TO BE PAID FROM GENERAL REVENUE FUND)	
285	(1) Verizon West Virginia, Inc. . . . .	\$1,593.10
286	<i>(ggg) Claim against Human Services:</i>	
287	(TO BE PAID FROM GENERAL REVENUE FUND)	
288	(1) Verizon West Virginia, Inc. . . . .	\$122,043.28
289	<i>(hhh) Claim against Information Services and Communica-</i>	
290	<i>tions Division:</i>	

291 (TO BE PAID FROM NON GENERAL REVENUE FUND)

292 (1) Verizon West Virginia, Inc. . . . . \$2,735.58

293 (iii) *Claim against the Insurance Commission:*

294 (TO BE PAID FROM NON GENERAL REVENUE FUND)

295 (1) Verizon West Virginia, Inc. . . . . \$1,974.40

296 (jjj) *Claim against Joint Committee on Government and*  
297 *Finance:*

298 (TO BE PAID FROM GENERAL REVENUE FUND)

299 (1) Verizon West Virginia, Inc. . . . . \$478.88

300 (kkk) *Claim against the Library Commission:*

301 (TO BE PAID FROM NON GENERAL REVENUE FUND)

302 (1) Verizon West Virginia, Inc. . . . . \$5,425.13

303 (lll) *Claim against the Lottery Commission:*

304 (TO BE PAID FROM NON GENERAL REVENUE FUND)

305 (1) Verizon West Virginia, Inc. . . . . \$6,486.97

306 (mmm) *Claim against the Massage Therapists Board:*

307 (TO BE PAID FROM NON GENERAL REVENUE FUND)

308 (1) Verizon West Virginia, Inc. . . . . \$105.35

309 (nnn) *Claim against Miners Health Safety & Training:*

310 (TO BE PAID FROM GENERAL REVENUE FUND)

348	CLAIMS	[Ch. 56
311	(1) Verizon West Virginia, Inc. . . . .	\$2,837.99
312	<i>(ooo) Claim against the Municipal Bond Commission:</i>	
313	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
314	(1) Verizon West Virginia, Inc. . . . .	\$76.33
315	<i>(ppp) Claim against the Office of Emergency Services:</i>	
316	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
317	(1) Verizon West Virginia, Inc. . . . .	\$1,158.04
318	<i>(qqq) Claim against the Prosecuting Attorneys Institute:</i>	
319	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
320	(1) Verizon West Virginia, Inc. . . . .	\$1,211.37
321	<i>(rrr) Claim against Public Defender Services:</i>	
322	(TO BE PAID FROM GENERAL REVENUE FUND)	
323	(1) Verizon West Virginia, Inc. . . . .	\$3,342.39
324	<i>(sss) Claim against the Public Employees Insurance</i>	
325	<i>Agency:</i>	
326	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
327	(1) Verizon West Virginia, Inc. . . . .	\$7,142.17
328	<i>(ttt) Claim against the Public Service Commission:</i>	
329	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
330	(1) Carl Sanders . . . . .	\$771.40
331	(2) Wendell Sweetser . . . . .	\$4,950.00
332	(3) Verizon West Virginia, Inc. . . . .	\$11,662.80

333 (uuu) *Claim against Public Transit:*

334 (TO BE PAID FROM NON GENERAL REVENUE FUND)

335 (1) Verizon West Virginia, Inc. . . . . \$561.53

336 (vvv) *Claim against the Racing Commission:*

337 (TO BE PAID FROM NON GENERAL REVENUE FUND)

338 (1) Verizon West Virginia, Inc. . . . . \$871.37

339 (www) *Claim against the Real Estate Commission:*

340 (TO BE PAID FROM NON GENERAL REVENUE FUND)

341 (1) Verizon West Virginia, Inc. . . . . \$371.79

342 (xxx) *Claims against the Regional Jail and Correctional*  
343 *Facility Authority:*

344 (TO BE PAID FROM NON GENERAL REVENUE FUND)

345 (1) Grant Rogers . . . . . \$109.00

346 (2) Stephen A. Smyth . . . . . \$50.00

347 (3) Verizon West Virginia, Inc. . . . . \$8,103.41

348 (yyy) *Claim against the Secretary of State:*

349 (TO BE PAID FROM GENERAL REVENUE FUND)

350 (1) Verizon West Virginia, Inc. . . . . \$3,094.12

351 (zzz) *Claim against the Solid Waste Management Board:*

352 (TO BE PAID FROM NON GENERAL REVENUE FUND)

353 (1) Verizon West Virginia, Inc. . . . . \$8,051.01

354 (aaaa) *Claim against the State Fire Commission:*

350	CLAIMS	[Ch. 56
355	(TO BE PAID FROM GENERAL REVENUE FUND)	
356	(1) Alltel .....	\$507.12
357	(2) Goodyear Tire and Rubber Company ...	\$438.54
358	(3) Verizon West Virginia, Inc. ....	\$3,364.10
359	<i>(bbbb) Claim against the State Rail Authority:</i>	
360	(TO BE PAID FROM SPECIAL REVENUE FUND)	
361	(1) Garrett B. Kuykendall, Jr. ....	\$4,000.00
362	<i>(cccc) Claim against the Supreme Court:</i>	
363	(TO BE PAID FROM GENERAL REVENUE FUND)	
364	(1) Verizon West Virginia, Inc. ....	\$6,999.95
365	<i>(dddd) Claim against Surplus Property:</i>	
366	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
367	(1) Verizon West Virginia, Inc. ....	\$746.59
368	<i>(eeee) Claim against Travel Management:</i>	
369	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
370	(1) Verizon West Virginia, Inc. ....	\$64.02
371	<i>(ffff) Claim against the Treasurer's Office:</i>	
372	(TO BE PAID FROM GENERAL REVENUE FUND)	
373	(1) Verizon West Virginia, Inc. ....	\$1,016.83
374	(TO BE PAID FROM NON GENERAL REVENUE FUND)	
375	(2) Verizon West Virginia, Inc. ....	\$3,445.94

376 (gggg) *Claim against Veterans' Affairs:*

377 (TO BE PAID FROM GENERAL REVENUE FUND)

378 (1) Verizon West Virginia, Inc. . . . . \$2,320.52

379 (TO BE PAID FROM NON GENERAL REVENUE FUND)

380 (2) Verizon West Virginia, Inc. . . . . \$1,562.32

381 (hhhh) *Claim against Veterans' Home:*

382 (TO BE PAID FROM GENERAL REVENUE FUND)

383 (1) Verizon West Virginia, Inc. . . . . \$344.87

384 (iii) *Claim against the Water Development Authority:*

385 (TO BE PAID FROM NON GENERAL REVENUE FUND)

386 (1) Verizon West Virginia, Inc. . . . . \$847.97

387 (jjjj) *Claim against Workers' Compensation Commission:*

388 (TO BE PAID FROM WORKERS' COMPENSATION FUND)

389 (1) Peggy M. Nelson . . . . . \$500.00

390 (2) Tamaran, Inc. . . . . \$91,442.91

391 (3) Verizon West Virginia, Inc. . . . . \$65,105.54

392 (4) WV School Service Personnel  
393 Association . . . . . \$603.95

394 (kkkk) *Claim against the WV Ethics Commission:*

395 (TO BE PAID FROM GENERAL REVENUE FUND)

396 (1) Verizon West Virginia, Inc. . . . . \$320.07

397 (llll) *Claim against the WV Network:*

398 (TO BE PAID FROM NON GENERAL REVENUE FUND)

352	CODE REPEALED	[Ch. 57
399	(1) Verizon West Virginia, Inc. . . . .	\$269.98
400	(mmmm) <i>Claim against the WV Parole Board:</i>	
401	(TO BE PAID FROM GENERAL REVENUE FUND)	
402	(1) Verizon West Virginia, Inc. . . . .	\$835.18
403	(nnnn) <i>Claim against the WV State Police:</i>	
404	(TO BE PAID FROM GENERAL REVENUE FUND)	
405	(1) Verizon West Virginia, Inc. . . . .	\$37,542.71

406 The Legislature finds that the above moral obligations and  
407 the appropriations made in satisfaction thereof shall be the full  
408 compensation for all claimants, and that prior to the payments to  
409 any claimant provided for in this bill, the court of claims shall  
410 receive a release from said claimant releasing any and all claims  
411 for moral obligations arising from the matters considered by the  
412 Legislature in the finding of the moral obligations and the  
413 making of the appropriations for said claimant. The court of  
414 claims shall deliver all releases obtained from claimants to the  
415 department against which the claim was allowed.

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## CHAPTER 57

**(H. B. 4403— By Delegates Amores, Palumbo and Faircloth)**

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal §7-7-10 of the code of West Virginia, 1931, as amended, relating to the requirement of affidavits acknowledging receipt of compensation.



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

**§1. Repeal of section requiring affidavits acknowledging receipt of compensation.**

1 Section ten, article seven, chapter seven of the code of West  
2 Virginia, one thousand nine hundred thirty-one, as amended, is  
3 hereby repealed.



**CHAPTER 58**

**(S. B. 722 — By Senator Oliverio)**



[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]



AN ACT to repeal §29-5A-11 of the code of West Virginia, 1931, as amended, relating to prohibiting giving away, selling or offering for sale intoxicating liquor in any building, or part thereof, in which boxing or sparring exhibitions are being conducted.

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

**ARTICLE 5A. STATE ATHLETIC COMMISSION.**

**§1. Repeal of section relating to prohibiting giving away, selling or offering for sale intoxicating liquor in any building, or part thereof, in which boxing or sparring exhibitions are being conducted.**

1 Section eleven, article five-a, chapter twenty-nine of the  
2 code of West Virginia, one thousand nine hundred thirty-one,  
3 as amended, is hereby repealed.

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## CHAPTER 59

**(H. B. 4622 — By Delegates Michael, Doyle, Campbell and Boggs)**

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[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to repeal §29-22-22 of the code of West Virginia, 1931, as amended, relating to exemption of lottery prizes from taxation.

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

**§1. Repeal of exemption of lottery prizes from taxation.**

- 1 Section twenty-two, article twenty-two, chapter twenty-nine
- 2 of the code of West Virginia, one thousand nine hundred thirty-
- 3 one, as amended, is hereby repealed.

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## CHAPTER 60

**(H. B. 4286 — By Delegates H. White and Hrutkay)**

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[Passed March 2, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal §33-16-3c of the code of West Virginia, 1931, as amended, relating to mental health parity.

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

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-3c. Repeal of section relating to coverage for alcoholic treatment.**

1 Section three-c, article sixteen, chapter thirty-three of the  
2 code of West Virginia, as amended, is hereby repealed.

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## CHAPTER 61

**(S. B. 319 — By Senators Love, Hunter, White, McKenzie and Rowe)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §25-4-6 of the code of West Virginia, 1931, as amended, relating to young adult offenders found unfit to remain at a center for young adult offenders; specifying entitlement to a hearing before the committing court; providing standard of review; and allowing reliance on record established at the center under specified circumstances.

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

That §25-4-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.**

**§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.**

1 The judge of any court with original criminal jurisdiction  
2 may suspend the imposition of sentence of any young adult, as  
3 defined in this section, convicted of or pleading guilty to a  
4 felony offense, other than an offense punishable by life impris-

5 onment, including, but not limited to, felony violations of the  
6 provisions of chapter seventeen-c of this code, who has attained  
7 his or her eighteenth birthday but has not reached his or her  
8 twenty-third birthday at the time of the sentencing by the court  
9 and commit the young adult to the custody of the West Virginia  
10 commissioner of corrections to be assigned to a center. Young  
11 adult offenders who have previously been committed to a young  
12 adult offender center are not eligible for commitment to this  
13 program. The period of confinement in the center shall be for  
14 a period of not less than six months or longer to successfully  
15 complete the program requirements set by the warden, but in  
16 any event the period of confinement may not exceed two years.  
17 The court shall order a presentence investigation to be con-  
18 ducted and provide the warden with a copy of the presentence  
19 investigation report, along with the commitment order.

20 If, in the opinion of the warden, the young adult offender  
21 proves to be an unfit person to remain in the center, the  
22 offender shall be returned to the committing court to be dealt  
23 with further according to law. The offender is entitled to a  
24 hearing before the committing court to review the warden's  
25 determination. The standard for review is whether the warden,  
26 considering the offender's overall record at the center and the  
27 offender's compliance with the center's rules, regulations,  
28 programs and services, abused his or her discretion in determin-  
29 ing that the offender is an unfit person to remain in the center.  
30 At the hearing before the committing court, the state need not  
31 offer independent proof of the offender's disciplinary infrac-  
32 tions contained in the record of the center, when opportunity for  
33 an administrative hearing on those infractions was previously  
34 made available at the institution. In the event that the court  
35 upholds the warden's determination, the court may sentence the  
36 offender for the crime for which the offender was convicted. In  
37 his or her discretion, the judge may allow the defendant credit  
38 on the sentence for time the offender spent in the center.

39 A young adult offender shall be returned to the jurisdiction  
40 of the court which originally committed the offender when, in  
41 the opinion of the warden, the young adult offender has  
42 satisfactorily completed the center training program. The  
43 offender is then eligible for probation for the offense with  
44 which the offender is charged and the judge of the court shall  
45 immediately place the offender on probation. In the event the  
46 offender's probation is subsequently revoked, the judge shall  
47 impose the sentence the young adult offender would have  
48 originally received had the offender not been committed to the  
49 center and subsequently placed on probation. The court shall,  
50 however, give the offender credit on his or her sentence for the  
51 time spent in the center.

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## CHAPTER 62

(Com. Sub. for S. B. 533 — By Senator Kessler)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §28-7-4, relating to authorizing the division of corrections to charge a fee of up to one hundred dollars to adult offenders applying for transfer under the interstate compact for the supervision of adult offenders; setting up a special revenue account; and providing for expenditure of moneys.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §28-7-4, to read as follows:

**ARTICLE 7. INTERSTATE COMPACT FOR THE SUPERVISION OF  
ADULT OFFENDERS.**

**§28-7-4. Transfer application fee.**

1        On and after the first day of July, two thousand four, the  
2        division of corrections may charge an application fee set by the  
3        division, not to exceed one hundred dollars, to adult offenders  
4        applying for transfer out-of-state under the interstate compact  
5        for the supervision of adult offenders. There is created a special  
6        revenue account in the state treasury designated the “Interstate  
7        Compact for Adult Offenders Fund”. The application fee shall  
8        be deposited in this account and expended to offset the cost of  
9        operating the interstate compact. All funds not expended at  
10       year-end may be retained and carried forward by the division  
11       and used by the division for the same purpose.

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## CHAPTER 63

**(S. B. 316 — By Senators Love, Hunter, White and McKenzie)**

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[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend and reenact §31-20-10 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31-20-10a, all relating to regional jail and correctional facility authority funds; providing statutory procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority; and outlining the allocation of costs for housing inmates.

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

That §31-20-10 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §31-20-10a, all to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.**

§31-20-10. Regional jail and correctional facility authority funds.

§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.

**§31-20-10. Regional jail and correctional facility authority funds.**

1 (a) The regional jail and correctional facility authority may  
2 create special funds in the state treasury to identify various  
3 revenue sources and payment of specific obligations. These  
4 funds may be used for purposes that include, but are not limited  
5 to, the construction, renovation or repair of specific facilities,  
6 cash control, facility maintenance and the individual operations  
7 accounts of facilities operated by the authority. The authority  
8 may create other separate accounts within these funds that it  
9 determines are necessary for the efficient operation of the  
10 authority.

11 (b) Revenues deposited into these funds shall be used to  
12 make payments of interest and shall be pledged as security for  
13 bonds, security interests or notes issued or lease-purchase  
14 obligations entered into with another state entity by the author-  
15 ity pursuant to this article.

16 (c) Whenever the authority determines that the balance in  
17 these funds is in excess of the immediate requirements of this  
18 article, it may request that the excess be invested until needed.  
19 In this case, the excess shall be invested in a manner consistent  
20 with the investment of temporary state funds. Interest earned

21 on any money invested pursuant to this section shall be credited  
22 to these funds.

23 (d) If the authority determines that moneys held in these  
24 funds are in excess of the amount needed to carry out the  
25 purposes of this article, it shall take any action that is necessary  
26 to release the excess and transfer it to the general revenue fund  
27 of the state treasury.

28 (e) These funds consist of the following:

29 (1) Amounts raised by the authority by the sale of bonds or  
30 other borrowing authorized by this article;

31 (2) Moneys collected and deposited in the state treasury  
32 which are specifically designated by acts of the Legislature for  
33 inclusion in these funds;

34 (3) Contributions, grants and gifts from any source, both  
35 public and private, which may be used by the authority for any  
36 project or projects;

37 (4) All sums paid by the counties pursuant to subsection (h)  
38 of this section; and

39 (5) All interest earned on investments made by the state  
40 from moneys deposited in these funds.

41 (f) The amounts deposited in these funds shall be accounted  
42 for and expended in the following manner:

43 (1) Amounts raised by the sale of bonds or other borrowing  
44 authorized by this article shall be deposited in a separate  
45 account within these funds and expended for the purpose of  
46 construction, renovation and repair of correctional facilities,  
47 regional jails and juvenile detention and correctional facilities  
48 for which need has been determined by the authority;



49       (2) Amounts deposited from all other sources shall be  
50 pledged first to the debt service on any bonded indebtedness,  
51 including lease-purchase obligations entered into by the  
52 authority with another state entity or other obligation incurred  
53 by borrowing of the authority;

54       (3) After any requirements of debt service have been  
55 satisfied, the authority shall requisition from these funds the  
56 amounts that are necessary to provide for payment of the  
57 administrative expenses of this article;

58       (4) The authority shall requisition from these funds, after  
59 any requirements of debt service have been satisfied, the  
60 amounts that are necessary for the maintenance and operation  
61 of regional jails that are constructed pursuant to the provisions  
62 of this article and shall expend those amounts for that purpose.  
63 These funds shall make an accounting of all amounts received  
64 from each county by virtue of any filing fees, court costs or  
65 fines required by law to be deposited in these funds and  
66 amounts from the jail improvement funds of the various  
67 counties. After the expenses of administration have been  
68 deducted, the amounts expended in the respective regions from  
69 those sources shall be in proportion to the percentage the  
70 amount contributed to these funds by the counties in each  
71 region bears to the total amount received by these funds from  
72 those sources;

73       (5) Notwithstanding any other provisions of this article,  
74 sums paid into these funds by each county pursuant to subsec-  
75 tion (h) of this section for each inmate shall be placed in a  
76 separate account and shall be requisitioned from these funds to  
77 pay for costs incurred at the regional jail facility at which each  
78 inmate was incarcerated; and

79       (6) Any amounts deposited in these funds from other  
80 sources permitted by this article shall be expended in the

81 respective regions based on particular needs to be determined  
82 by the authority.

83 (g) After a regional jail facility becomes available pursuant  
84 to this article for the incarceration of inmates, each county  
85 within the region shall incarcerate all persons whom the county  
86 would have incarcerated in any jail prior to the availability of  
87 the regional jail facility in the regional jail facility except those  
88 whose incarceration in a local jail facility used as a local  
89 holding facility is specified as appropriate under the standards  
90 and procedures developed pursuant to section nine of this  
91 article and who the sheriff or the circuit court elects to incarcer-  
92 ate therein.

93 (h) When inmates are placed in a regional jail facility  
94 pursuant to subsection (g) of this section, the county shall pay  
95 into the regional jail and correctional facility authority fund a  
96 cost per day for each incarcerated inmate to be determined by  
97 the regional jail and correctional facility authority according to  
98 criteria and by procedures established by legislative rules  
99 proposed for promulgation pursuant to article three, chapter  
100 twenty-nine-a of this code and as established in section ten-a of  
101 this article to cover the costs of operating the regional jail  
102 facilities of this state to maintain each inmate. The per diem  
103 costs for incarcerating inmates may not include the cost of  
104 construction, acquisition or renovation of the regional jail  
105 facilities: *Provided*, That each regional jail facility operating in  
106 this state shall keep a record of the date and time that an inmate  
107 is incarcerated and a county may not be charged for a second  
108 day of incarceration for an individual inmate until that inmate  
109 has remained incarcerated for more than twenty-four hours.  
110 After that, in cases of continuous incarceration, subsequent per  
111 diem charges shall be made upon a county only as subsequent  
112 intervals of twenty-four hours pass from the original time of  
113 incarceration.

**§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.**

1       (a) This section applies to the regional jail and correctional  
2 facility authority, counties, municipalities, the division of  
3 corrections, the United States marshal service, the United States  
4 bureau of prisons and any other entity by whose authority  
5 inmates are incarcerated and maintained in facilities operated  
6 by the authority.

7       (b)(1) The authority shall develop and approve a schedule  
8 of anticipated operational expenditures for each regional jail.  
9 The schedules shall include funds for personal services and  
10 fringe benefits for personnel necessary to the operation of the  
11 facilities, as well as allocations of funds for food, clothing,  
12 utilities, supplies, transportation and all other costs necessary to  
13 operate and maintain the facilities. The operational expenditure  
14 schedule shall include all costs, both direct and indirect, for  
15 operating and maintaining the regional jail. The authority shall  
16 develop and approve an operational expenditure schedule for  
17 each regional jail on an annual basis, consistent with the state  
18 fiscal year.

19       (2) If the actual operational costs exceed the approved  
20 schedule of operational expenditures by more than ten percent  
21 in a line item, the authority's executive director shall add a  
22 temporary surcharge to the cost per inmate day in an amount  
23 sufficient to cover the actual expenditures.

24       (c) The county is responsible for costs incurred by the  
25 authority for housing and maintaining inmates in its facilities  
26 who have not been committed to the custody of the commis-  
27 sioner of corrections.

28       (d) The county is responsible for the costs incurred by the  
29 authority for housing and maintaining inmates who, prior to

30 sentencing, are awaiting transportation to a state correctional  
31 facility for a sixty-day evaluation period as provided in section  
32 seven, article twelve, chapter sixty-two of this code.

33 (e) The division of corrections is responsible for the costs  
34 incurred by the authority for housing and maintaining inmates  
35 who have been sentenced to the custody of the division of  
36 corrections beginning the calendar day following the day the  
37 commitment order was entered into the court record. The  
38 circuit clerk of the county from which the commitment order  
39 has been entered shall immediately transmit by facsimile  
40 machine an advance copy of the certified commitment order to  
41 the division of corrections and to the regional jail in which the  
42 inmate is confined.

43 (f) The division of corrections is responsible for the costs  
44 incurred by the authority for housing and maintaining inmates  
45 who have been held on a parole violation warrant.

46 (g) The division of corrections is responsible for the costs  
47 incurred by the authority for housing and maintaining inmates  
48 who have been returned to a regional jail under court order,  
49 except that the county from which the inmate was charged is  
50 responsible for the per diem costs in the event that a court of  
51 competent jurisdiction sets aside or vacates the order of  
52 commitment to the division of corrections, from the date of the  
53 order or the return of the inmate to a regional jail, whichever is  
54 later.

55 (h) The costs incurred by the authority for housing and  
56 maintaining inmates who are being held as fugitives from  
57 justice from another jurisdiction shall be billed to the fugitive's  
58 demanding jurisdiction, except the costs incurred by the  
59 authority for housing and maintaining any person who is  
60 arrested and confined in one of the authority's facilities on the  
61 basis of the commission of a new crime shall be billed to the

62 arresting county until the pending West Virginia charges have  
63 been properly resolved.

64 (i) Any other entity or jurisdiction, unless otherwise  
65 stipulated in this section, is responsible for any and all costs  
66 associated with housing its inmates in a facility operated by the  
67 authority.

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## CHAPTER 64

**(S. B. 482 — By Senators Love, Minard, Kessler, Rowe, Fanning,  
Jenkins, Ross, McKenzie, Hunter, Smith, Snyder and Edgell)**

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §49-5E-5a of the code of West Virginia, 1931, as amended, relating to reclassifying juvenile detention and corrections facility employees as classified service rather than classified-exempt service.

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

That §49-5E-5a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5E. DIVISION OF JUVENILE SERVICES.**

**§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, the division, when employing any persons to complete  
3 the approved staffing plan of any of its juvenile detention or  
4 corrections facilities, shall employ any person otherwise

5 qualified who applies for a position at the juvenile detention or  
6 corrections facility who was also employed in good standing at  
7 a county or local jail facility, at the time of its closing, that was  
8 closed due to the completion of a regional jail.

9 (b) All persons employed at a juvenile detention or correc-  
10 tions facility shall be employed at a salary and with benefits  
11 consistent with the approved plan of compensation of the  
12 division of personnel, created under section five, article six,  
13 chapter twenty-nine of this code; all such employees shall also  
14 be covered by the policies and procedures of the education and  
15 state employees grievance board, created under section five,  
16 article six-a, chapter twenty-nine of this code and the classified  
17 service protection policies of the division of personnel.

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## CHAPTER 65

**(S. B. 317 — By Senators Love, Hunter, White, McKenzie and Rowe)**

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[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend and reenact §62-12-17 of the code of West Virginia, 1931, as amended, relating to allowing the commissioner of the division of corrections to increase the parolee supervision fee to forty dollars.

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

That §62-12-17 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-17. Conditions of release on parole.**

1 (a) Release and supervision on parole of any person,  
2 including the supervision by the division of corrections of any  
3 person paroled by any other state or by the federal government,  
4 shall be upon the following conditions:

5 (1) That the parolee may not, during the period of his or her  
6 parole, violate any criminal law of this or any other state or of  
7 the United States;

8 (2) That he or she may not, during the period of his or her  
9 parole, leave the state without the consent of the division;

10 (3) That he or she shall comply with the rules prescribed by  
11 the division for his or her supervision by the parole officer;

12 (4) That in every case in which the parolee for a conviction  
13 is seeking parole from an offense against a child, defined in  
14 section twelve, article eight, chapter sixty-one of this code; or  
15 article eight-b or eight-d of said chapter, or similar convictions  
16 from other jurisdictions where the parolee is returning or  
17 attempting to return to this state pursuant to the provisions of  
18 article six, chapter twenty-eight of this code, the parolee may  
19 not live in the same residence as any minor child nor exercise  
20 visitation with any minor child nor may he or she have any  
21 contact with the victim of the offense; and

22 (5) That the parolee, and all federal or foreign state proba-  
23 tioners and parolees whose supervision may have been under-  
24 taken by this state, is required to pay a fee, based on his or her  
25 ability to pay, not to exceed forty dollars per month to defray  
26 costs of supervision.

27 (b) The commissioner shall keep a record of all actions  
28 taken and account for moneys received. No provision of this  
29 section prohibits the division from collecting the fees and

30 conducting the checks upon the effective date of this section.  
31 All moneys shall be deposited in a special account in the state  
32 treasury to be known as the "Parolee's Supervision Fee Fund".  
33 Expenditures from the fund shall be for the purposes of  
34 providing parole supervision required by the provisions of this  
35 code and are not authorized from collections but are to be made  
36 only in accordance with appropriation by the Legislature and in  
37 accordance with the provisions of article three, chapter twelve  
38 of this code and upon the fulfillment of the provisions set forth  
39 in article two, chapter five-a of this code. Amounts collected  
40 which are found, from time to time, to exceed the funds needed  
41 for purposes set forth in this article may be transferred to other  
42 accounts or funds and redesignated for other purposes by  
43 appropriation of the Legislature.

44 (c) The division shall consider the following factors in  
45 determining whether a parolee or probationer is financially able  
46 to pay the fee:

47 (1) Current income prospects for the parolee or probationer,  
48 taking into account seasonal variations in income;

49 (2) Liquid assets of the parolee or probationer, assets of the  
50 parolee or probationer that may provide collateral to obtain  
51 funds and assets of the parolee or probationer that may be  
52 liquidated to provide funds to pay the fee;

53 (3) Fixed debts and obligations of the parolee or proba-  
54 tioner, including federal, state and local taxes and medical  
55 expenses;

56 (4) Child care, transportation and other reasonably neces-  
57 sary expenses of the parolee or probationer related to employ-  
58 ment; and



59 (5) The reasonably foreseeable consequences for the  
60 parolee or probationer if a waiver of, or reduction in, the fee is  
61 denied.

62 (d) In addition, the division may impose, subject to modifi-  
63 cation at any time, any other conditions which the division  
64 considers advisable.

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## CHAPTER 66

(S. B. 444 — By Senators Hunter and Oliverio)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §7-1-3ff of the code of West Virginia, 1931, as amended, relating to authority of county commissions to hire litter control officer; and requiring county litter control officer to enforce litter laws under the litter control program.

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

That §7-1-3ff of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

**§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure**

**for complaints; promulgation of rules governing investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.**

1           (a) Plenary power and authority are hereby conferred upon  
2 every county commission to adopt ordinances regulating the  
3 repair, alteration or improvement, or the vacating and closing  
4 or removal or demolition, or any combination thereof, of any  
5 dwellings or other buildings, except for buildings utilized for  
6 farm purposes on land actually being used for farming, unfit for  
7 human habitation due to dilapidation, defects increasing the  
8 hazard of fire, accidents or other calamities, lack of ventilation,  
9 light or sanitary facilities or any other conditions prevailing in  
10 any dwelling or building, whether used for human habitation or  
11 not, which would cause the dwellings or other buildings to be  
12 unsafe, unsanitary, dangerous or detrimental to the public safety  
13 or welfare, whether the result of natural or manmade force or  
14 effect.

15           (b) Plenary power and authority are hereby conferred upon  
16 every county commission to adopt ordinances regulating the  
17 removal and cleanup of any accumulation of refuse or debris,  
18 overgrown vegetation or toxic spillage or toxic seepage located  
19 on private lands which is determined to be unsafe, unsanitary,  
20 dangerous or detrimental to the public safety or welfare,  
21 whether the result of natural or manmade force or effect.

22           (c) The county commission, in formally adopting ordi-  
23 nances, shall designate an enforcement agency which shall  
24 consist of the county engineer (or other technically qualified  
25 county employee or consulting engineer), county health officer  
26 or his or her designee, a fire chief from a county fire company,

27 the county litter control officer, if the commission chooses to  
28 hire one, and two members at large selected by the county  
29 commission to serve two-year terms. The county sheriff shall  
30 serve as an ex officio member of the enforcement agency and  
31 the county officer charged with enforcing the orders of the  
32 county commission under this section.

33 (d) In addition to the powers and duties imposed by this  
34 section, county litter control officers shall have authority to  
35 issue citations for violations of the provisions of section  
36 twenty-six, article seven, chapter twenty of this code, after  
37 completing a training course offered by the West Virginia  
38 division of natural resources. Nothing in this subsection  
39 supercedes the authority or duty of other law-enforcement  
40 officers to preserve law and order, and enforce the litter control  
41 program.

42 (e) Any ordinance adopted pursuant to the provisions of this  
43 section shall provide fair and equitable rules of procedure and  
44 any other standards considered necessary to guide the enforce-  
45 ment agency, or its agents, in the investigation of dwelling or  
46 building conditions, accumulation of refuse or debris, over-  
47 grown vegetation or toxic spillage or toxic seepage and shall  
48 provide for fair and equitable rules of procedure for instituting  
49 and conducting hearings in the matters before the county  
50 commission. Any entrance upon premises for the purpose of  
51 making examinations shall be made in a manner as to cause the  
52 least possible inconvenience to the persons in possession.

53 (f) Any county commission adopting ordinances authorized  
54 by this section shall hear and determine complaints of the  
55 enforcement agency. Complaints shall be initiated by citation  
56 issued by the county litter control officer or petition of the  
57 county engineer (or other technically qualified county employee  
58 or consulting engineer) on behalf of and at the direction of the

59 enforcement agency, but only after that agency has investigated  
60 and determined that any dwelling, building, accumulation of  
61 refuse or debris, overgrown vegetation or toxic spillage or toxic  
62 seepage is unsafe, unsanitary, dangerous or detrimental to the  
63 public safety or welfare and should be repaired, altered,  
64 improved, vacated, removed, closed, cleaned or demolished.  
65 The county commission shall cause the owner or owners of the  
66 private land in question to be served with a copy of the com-  
67 plaint. Service shall be accomplished in the manner provided  
68 in rule four of the West Virginia rules of civil procedure. The  
69 complaint shall state the findings and recommendations of the  
70 enforcement agency and that unless the owner or owners of the  
71 property file with the clerk of the county commission a written  
72 request for a hearing within ten days of receipt of the complaint,  
73 an order will be issued by the county commission implementing  
74 the recommendations of the enforcement agency. If the owner  
75 or owners of the property file a request for a hearing, the county  
76 commission shall issue an order setting this matter down for  
77 hearing within twenty days. Hearings shall be recorded by  
78 electronic device or by court reporter. The West Virginia rules  
79 of evidence do not apply to the proceedings, but each party has  
80 the right to present evidence and examine and cross-examine all  
81 witnesses. The enforcement agency has the burden of proving  
82 its allegation by a preponderance of the evidence and has the  
83 duty to go forward with the evidence. At the conclusion of the  
84 hearing the county commission shall make findings of fact,  
85 determinations and conclusions of law as to whether the  
86 dwelling or building: Is unfit for human habitation due to  
87 dilapidation; has defects that increase the hazard of fire,  
88 accidents or other calamities, lacks ventilation, light or sanitary  
89 facilities; or any other conditions prevailing in the dwelling or  
90 building, whether used for human habitation or not and whether  
91 the result of natural or manmade force or effect, which would  
92 cause such dwelling or other building to be unsafe, unsanitary,  
93 dangerous or detrimental to the public safety or welfare; or

94 whether there is an accumulation of refuse or debris, overgrown  
95 vegetation, toxic spillage or toxic seepage on private lands  
96 which is determined to be unsafe, unsanitary, dangerous or  
97 detrimental to the public safety or welfare, whether the result of  
98 natural or manmade force or effect. The county commission  
99 has authority to order the owner or owners thereof to repair,  
100 alter, improve, vacate, remove, close, clean up or demolish the  
101 dwelling or building in question or to remove or cleanup any  
102 accumulation of refuse or debris, overgrown vegetation or toxic  
103 spillage or toxic seepage within a reasonable time and to  
104 impose daily civil monetary penalties on the owner or owners  
105 who fail to obey an order. Appeals from the county commis-  
106 sion to the circuit court shall be in accordance with the provi-  
107 sions of article three, chapter fifty-eight of this code.

108 (g) Upon the failure of the owner or owners of the private  
109 land to perform the ordered duties and obligations as set forth  
110 in the order of the county commission, the county commission  
111 may advertise for and seek contractors to make the ordered  
112 repairs, alterations or improvements, or the ordered demolition,  
113 removal or cleanup. The county commission may enter into  
114 any contract with any contractor to accomplish the ordered  
115 repairs, alterations or improvements or the ordered demolition,  
116 removal or cleanup.

117 (h) A civil proceeding may be brought in circuit court by  
118 the county commission against the owner or owners of the  
119 private land which is the subject matter of the order of the  
120 county commission to subject the private land in question to a  
121 lien for the amount of the contractor's costs in making these  
122 ordered repairs, alterations or improvements or ordered  
123 demolition, removal or cleanup, together with any daily civil  
124 monetary penalty imposed and reasonable attorney fees and  
125 court costs and to order and decree the sale of the private land  
126 in question to satisfy the lien and to order and decree that the

127 contractor may enter upon the private land in question at any  
128 and all times necessary to make improvements, or ordered  
129 repairs, alterations or improvements, or ordered demolition,  
130 removal or cleanup. In addition, the county commission shall  
131 have the authority to institute a civil action in a court of  
132 competent jurisdiction against the landowner or other responsi-  
133 ble party for all costs incurred by the county with respect to the  
134 property and for reasonable attorney fees and court costs  
135 incurred in the prosecution of the action.

136 (i) County commissions have the power and authority to  
137 receive and accept grants, subsidies, donations and services in  
138 kind consistent with the objectives of this section.

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## CHAPTER 67

**(H. B. 4634 — By Delegates Cann, Ennis, Swartzmiller,  
Stalnaker, Stemple, Craig and Kominar)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-8-14, relating to requiring persons incarcerated in county or regional jails who have been convicted of a misdemeanor to pay for the costs of up to thirty days of their incarceration; requiring determination of ability to pay; and allowing for modification of assessment based upon need.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-8-14, to read as follows:

**ARTICLE 8. JAIL AND JAILER.**

**§7-8-14. Reimbursement for costs of incarceration.**

1 (a) Notwithstanding any provision to the code to the  
2 contrary and in addition to any fine, cost assessment or fee  
3 authorized or required to be imposed upon a person by virtue of  
4 his or her conviction of a criminal provision of this code, or a  
5 lawfully enacted ordinance of a political subdivision of this  
6 state, a person convicted and incarcerated in a regional jail by  
7 virtue of said conviction may be assessed the costs of up to  
8 thirty days of his or her incarceration.

9 (b) Prior to any person being required to pay the cost of his  
10 or her incarceration pursuant to the provisions of subsection (a)  
11 of this section, a hearing shall be held before the sentencing  
12 court to determine his or her ability to pay. The court may not  
13 sentence a defendant to pay his or her costs of incarceration  
14 unless he or she is or in the foreseeable future will be able to  
15 pay them. In determining the amount and method of payment  
16 of costs, the court shall take account of the financial resources  
17 of the defendant and the nature of the burden that payment of  
18 costs will impose.

19 (c) A defendant who has been sentenced to pay costs and  
20 who is not in willful default in the payment of the costs may at  
21 any time petition the sentencing court for remission of the  
22 payment of costs or of any unpaid portion of the costs. If it  
23 appears to the satisfaction of the court that payment of the  
24 amount due will impose manifest hardship on the defendant or  
25 the defendant's family or dependents, the court may excuse  
26 payment of all or part of the amount due in costs, or modify the  
27 method of payment.

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## CHAPTER 68

**(H. B. 4453 — By Delegates Campbell, Craig, Frederick and Hall)**

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[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend and reenact §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-12, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-20, §7-14D-21 and §7-14D-23 of the code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §7-14D-24a, all relating to benefits and responsibilities in the deputy sheriffs' retirement system generally; providing for membership of certain persons not employed as a deputy when system initiated; changing method for determining contributions to the system's fund; providing for calculation of contributions required upon reemployment as deputy sheriff; removing language providing for benefits upon reaching early retirement age; changing method for calculating retirement benefits; providing right of members to name a beneficiary in certain circumstances; providing for distribution of accumulated contributions to member's estate in certain circumstances; limiting system loans to members; and providing for determining payment of benefits prior to, during and after deputy retiree returns to work as a deputy.

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

That §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-12, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-20, §7-14D-21 and §7-14D-23 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §7-14D-24a, all to read as follows:



**ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**

- §7-14D-2. Definitions.
- §7-14D-5. Members.
- §7-14D-7. Members' contributions; employer contributions.
- §7-14D-12. Annuity options.
- §7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.
- §7-14D-14. Awards and benefits for disability — Duty related.
- §7-14D-15. Same — Due to other causes.
- §7-14D-20. Additional death benefits and scholarships — Dependent children.
- §7-14D-21. Burial benefit.
- §7-14D-23. Loans to members.
- §7-14D-24a. Return to covered employment by retired member.

**§7-14D-2. Definitions.**

1       As used in this article, unless a federal law or regulation or  
2       the context clearly requires a different meaning:

3       (a) "Accrued benefit" means on behalf of any member two  
4       and one-quarter percent of the member's final average salary  
5       multiplied by the member's years of credited service. A  
6       member's accrued benefit may not exceed the limits of Section  
7       415 of the Internal Revenue Code and is subject to the provi-  
8       sions of section nine-a of this article.

9       (b) "Accumulated contributions" means the sum of all  
10       amounts deducted from the compensation of a member, or paid  
11       on his or her behalf pursuant to article ten-c, chapter five of this  
12       code, either pursuant to section seven of this article or section  
13       twenty-nine, article ten, chapter five of this code as a result of  
14       covered employment together with regular interest on the  
15       deducted amounts.

16       (c) "Active military duty" means full-time active duty with  
17       any branch of the armed forces of the United States, including  
18       service with the national guard or reserve military forces when

19 the member has been called to active full-time duty and has  
20 received no compensation during the period of that duty from  
21 any board or employer other than the armed forces.

22 (d) "Actuarial equivalent" means a benefit of equal value  
23 computed upon the basis of the mortality table and interest rates  
24 as set and adopted by the retirement board in accordance with  
25 the provisions of this article.

26 (e) "Annual compensation" means the wages paid to the  
27 member during covered employment within the meaning of  
28 Section 3401(a) of the Internal Revenue Code, but determined  
29 without regard to any rules that limit the remuneration included  
30 in wages based upon the nature or location of employment or  
31 services performed during the plan year plus amounts excluded  
32 under Section 414(h)(2) of the Internal Revenue Code and less  
33 reimbursements or other expense allowances, cash or noncash  
34 fringe benefits or both, deferred compensation and welfare  
35 benefits. Annual compensation for determining benefits during  
36 any determination period may not exceed one hundred fifty  
37 thousand dollars as adjusted for cost of living in accordance  
38 with Section 401(a)(17)(B) of the Internal Revenue Code.

39 (f) "Annual leave service" means accrued annual leave.

40 (g) "Annuity starting date" means the first day of the first  
41 period for which an amount is received as an annuity by reason  
42 of retirement. For purposes of this subsection, if retirement  
43 income payments commence after the normal retirement age,  
44 "retirement" means the later of the last day the member worked  
45 in covered employment and the normal retirement age.

46 (h) "Base salary" means a member's cash compensation  
47 exclusive of overtime from covered employment during the last  
48 twelve months of employment. Until a member has worked  
49 twelve months, annualized base salary is used as base salary.

50 (i) "Board" means the consolidated public retirement board  
51 created pursuant to article ten-d, chapter five of this code.

52 (j) "County commission" has the meaning ascribed to it in  
53 section one, article one, chapter seven of this code.

54 (k) "Covered employment" means either: (1) Employment  
55 as a deputy sheriff and the active performance of the duties  
56 required of a deputy sheriff; or (2) the period of time which  
57 active duties are not performed but disability benefits are  
58 received under section fourteen or fifteen of this article; or (3)  
59 concurrent employment by a deputy sheriff in a job or jobs in  
60 addition to his or her employment as a deputy sheriff where the  
61 secondary employment requires the deputy sheriff to be a  
62 member of another retirement system which is administered by  
63 the consolidated public retirement board pursuant to article ten-  
64 d of chapter five of this code: *Provided*, That the deputy sheriff  
65 contribute to the fund created in section six of this article the  
66 amount specified as the deputy sheriff's contribution in section  
67 seven of this article.

68 (l) "Credited service" means the sum of a member's years  
69 of service, active military duty, disability service and annual  
70 leave service.

71 (m) "Deputy sheriff" means an individual employed as a  
72 county law-enforcement deputy sheriff in this state and as  
73 defined by section two, article fourteen, chapter seven of this  
74 code.

75 (n) "Dependent child" means either:

76 (1) An unmarried person under age eighteen who is:

77 (A) A natural child of the member;

78 (B) A legally adopted child of the member;

79 (C) A child who at the time of the member's death was  
80 living with the member while the member was an adopting  
81 parent during any period of probation; or

82 (D) A stepchild of the member residing in the member's  
83 household at the time of the member's death; or

84 (2) Any unmarried child under age twenty-three:

85 (A) Who is enrolled as a full-time student in an accredited  
86 college or university;

87 (B) Who was claimed as a dependent by the member for  
88 federal income tax purposes at the time of the member's death;  
89 and

90 (C) Whose relationship with the member is described in  
91 subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

92 (o) "Dependent parent" means the father or mother of the  
93 member who was claimed as a dependent by the member for  
94 federal income tax purposes at the time of the member's death.

95 (p) "Disability service" means service received by a  
96 member, expressed in whole years, fractions thereof or both,  
97 equal to one half of the whole years, fractions thereof, or both,  
98 during which time a member receives disability benefits under  
99 section fourteen or fifteen of this article.

100 (q) "Early retirement age" means age forty or over and  
101 completion of twenty years of service.

102 (r) "Effective date" means the first day of July, one  
103 thousand nine hundred ninety-eight.

104 (s) "Final average salary" means the average of the highest  
105 annual compensation received for covered employment by the  
106 member during any five consecutive plan years within the

107 member's last ten years of service. If the member did not have  
108 annual compensation for the five full plan years preceding the  
109 member's attainment of normal retirement age and during that  
110 period the member received disability benefits under section  
111 fourteen or fifteen of this article then "final average salary"  
112 means the average of the monthly salary determined paid to the  
113 member during that period as determined under section  
114 seventeen of this article multiplied by twelve.

115 (t) "Fund" means the West Virginia deputy sheriff retire-  
116 ment fund created pursuant to section six of this article.

117 (u) "Hour of service" means:

118 (1) Each hour for which a member is paid or entitled to  
119 payment for covered employment during which time active  
120 duties are performed. These hours shall be credited to the  
121 member for the plan year in which the duties are performed;  
122 and

123 (2) Each hour for which a member is paid or entitled to  
124 payment for covered employment during a plan year but where  
125 no duties are performed due to vacation, holiday, illness,  
126 incapacity including disability, layoff, jury duty, military duty,  
127 leave of absence, or any combination thereof, and without  
128 regard to whether the employment relationship has terminated.  
129 Hours under this paragraph shall be calculated and credited  
130 pursuant to West Virginia division of labor rules. A member  
131 will not be credited with any hours of service for any period of  
132 time he or she is receiving benefits under section fourteen or  
133 fifteen of this article; and

134 (3) Each hour for which back pay is either awarded or  
135 agreed to be paid by the employing county commission,  
136 irrespective of mitigation of damages. The same hours of  
137 service shall not be credited both under paragraph (1) or (2) of  
138 this subdivision and under this paragraph. Hours under this

139 paragraph shall be credited to the member for the plan year or  
140 years to which the award or agreement pertains, rather than the  
141 plan year in which the award, agreement or payment is made.

142 (v) "Member" means a person first hired as a deputy sheriff  
143 after the effective date of this article, as defined in subsection  
144 (r) of this section, or a deputy sheriff first hired prior to the  
145 effective date and who elects to become a member pursuant to  
146 section five or section seventeen of this article. A member shall  
147 remain a member until the benefits to which he or she is  
148 entitled under this article are paid or forfeited.

149 (w) "Monthly salary" means the portion of a member's  
150 annual compensation which is paid to him or her per month.

151 (x) "Normal form" means a monthly annuity which is one  
152 twelfth of the amount of the member's accrued benefit which  
153 is payable for the member's life. If the member dies before the  
154 sum of the payments he or she receives equals his or her  
155 accumulated contributions on the annuity starting date, the  
156 named beneficiary shall receive in one lump sum the difference  
157 between the accumulated contributions at the annuity starting  
158 date and the total of the retirement income payments made to  
159 the member.

160 (y) "Normal retirement age" means the first to occur of the  
161 following:

162 (1) Attainment of age fifty years and the completion of  
163 twenty or more years of service;

164 (2) While still in covered employment, attainment of at  
165 least age fifty years and when the sum of current age plus years  
166 of service equals or exceeds seventy years;

167 (3) While still in covered employment, attainment of at  
168 least age sixty years and completion of five years of service; or

169 (4) Attainment of age sixty-two years and completion of  
170 five or more years of service.

171 (z) "Partially disabled" means a member's inability to  
172 engage in the duties of deputy sheriff by reason of any medi-  
173 cally determinable physical or mental impairment that can be  
174 expected to result in death or that has lasted or can be expected  
175 to last for a continuous period of not less than twelve months.  
176 A member may be determined partially disabled for the  
177 purposes of this article and maintain the ability to engage in  
178 other gainful employment which exists within the state but  
179 which ability would not enable him or her to earn an amount at  
180 least equal to two thirds of the average annual compensation  
181 earned by all active members of this plan during the plan year  
182 ending as of the most recent thirtieth day of June, as of which  
183 plan data has been assembled and used for the actuarial  
184 valuation of the plan.

185 (aa) "Public employees retirement system" means the West  
186 Virginia public employee's retirement system created by article  
187 ten, chapter five of this code.

188 (bb) "Plan" means the West Virginia deputy sheriff death,  
189 disability and retirement plan established by this article.

190 (cc) "Plan year" means the twelve-month period commenc-  
191 ing on the first day of July of any designated year and ending  
192 the following thirtieth day of June.

193 (dd) "Regular interest" means the rate or rates of interest  
194 per annum, compounded annually, as the board adopts in  
195 accordance with the provisions of this article.

196 (ee) "Retirement income payments" means the annual  
197 retirement income payments payable under the plan.

198 (ff) "Spouse" means the person to whom the member is  
199 legally married on the annuity starting date.

200 (gg) "Surviving spouse" means the person to whom the  
201 member was legally married at the time of the member's death  
202 and who survived the member.

203 (hh) "Totally disabled" means a member's inability to  
204 engage in substantial gainful activity by reason of any medi-  
205 cally determined physical or mental impairment that can be  
206 expected to result in death or that has lasted or can be expected  
207 to last for a continuous period of not less than twelve months.

208 For purposes of this subdivision:

209 (1) A member is totally disabled only if his or her physical  
210 or mental impairment or impairments are so severe that he or  
211 she is not only unable to perform his or her previous work as a  
212 deputy sheriff but also cannot, considering his or her age,  
213 education and work experience, engage in any other kind of  
214 substantial gainful employment which exists in the state  
215 regardless of whether: (A) The work exists in the immediate  
216 area in which the member lives; (B) a specific job vacancy  
217 exists; or (C) the member would be hired if he or she applied  
218 for work.

219 (2) "Physical or mental impairment" is an impairment that  
220 results from an anatomical, physiological or psychological  
221 abnormality that is demonstrated by medically accepted clinical  
222 and laboratory diagnostic techniques.

223 A member's receipt of social security disability benefits  
224 creates a rebuttable presumption that the member is totally  
225 disabled for purposes of this plan. Substantial gainful employ-  
226 ment rebuts the presumption of total disability.



227 (ii) "Year of service." A member shall, except in his or her  
 228 first and last years of covered employment, be credited with  
 229 year of service credit based upon the hours of service performed  
 230 as covered employment and credited to the member during the  
 231 plan year based upon the following schedule:

232	Hours of Service	Year of Service Credited
233	Less than 500 . . . . .	0
234	500 to 999 . . . . .	1/3
235	1,000 to 1,499 . . . . .	2/3
236	1,500 or more . . . . .	1

237 During a member's first and last years of covered employ-  
 238 ment, the member shall be credited with one twelfth of a year  
 239 of service for each month during the plan year in which the  
 240 member is credited with an hour of service. A member is not  
 241 entitled to credit for years of service for any time period during  
 242 which he or she received disability payments under section  
 243 fourteen or fifteen of this article. Except as specifically ex-  
 244 cluded, years of service include covered employment prior to  
 245 the effective date.

246 Years of service which are credited to a member prior to his  
 247 or her receipt of accumulated contributions upon termination of  
 248 employment pursuant to section thirteen of this article or  
 249 section thirty, article ten, chapter five of this code, shall be  
 250 disregarded for all purposes under this plan unless the member  
 251 repays the accumulated contributions with interest pursuant to  
 252 section twelve of this article or had prior to the effective date  
 253 made the repayment pursuant to section eighteen, article ten,  
 254 chapter five of this code.

255 (jj) "Required beginning date" means the first day of April  
256 of the calendar year following the later of: (i) The calendar year  
257 in which the member attains age seventy and one-half; or (ii)  
258 the calendar year in which he or she retires or otherwise  
259 separates from covered employment.

**§7-14D-5. Members.**

1 (a) Any deputy sheriff first employed by a county in  
2 covered employment after the effective date of this article shall  
3 be a member of this retirement system and plan and does not  
4 qualify for membership in any other retirement system adminis-  
5 tered by the board, so long as he or she remains employed in  
6 covered employment.

7 (b) Any deputy sheriff employed in covered employment on  
8 the effective date of this article shall within six months of that  
9 effective date notify in writing both the county commission in  
10 the county in which he or she is employed and the board of his  
11 or her desire to become a member of the plan: *Provided*, That  
12 this time period is extended to the thirtieth day of January, one  
13 thousand nine hundred ninety-nine, in accordance with the  
14 decision of the Supreme Court of Appeals in *West Virginia*  
15 *Deputy Sheriffs' Association, et al v. James L. Sims, et al*, No.  
16 25212: *Provided, however*, That any deputy sheriff employed  
17 in covered employment on the effective date of this article has  
18 an additional time period consisting of the ten-day period  
19 following the day after which the amended provisions of this  
20 section become law to notify in writing both the county  
21 commission in the county in which he or she is employed and  
22 the board of his or her desire to become a member of the plan.  
23 Any deputy sheriff who elects to become a member of the plan  
24 ceases to be a member or have any credit for covered employ-  
25 ment in any other retirement system administered by the board  
26 and shall continue to be ineligible for membership in any other  
27 retirement system administered by the board so long as the

28 deputy sheriff remains employed in covered employment in this  
29 plan: *Provided further*, That any deputy sheriff who elects  
30 during the time period from the first day of July, one thousand  
31 nine hundred ninety-eight, to the thirtieth day of January, one  
32 thousand nine hundred ninety-nine, or who so elects during the  
33 ten-day time period occurring immediately following the day  
34 after the day the amendments made during the one thousand  
35 nine hundred ninety-nine legislative session become law, to  
36 transfer from the public employees retirement system to the  
37 plan created in this article shall contribute to the plan created in  
38 this article at the rate set forth in section seven of this article  
39 retroactive to the first day of July, one thousand nine hundred  
40 ninety-eight. Any deputy sheriff who does not affirmatively  
41 elect to become a member of the plan continues to be eligible  
42 for any other retirement system as is from time to time offered  
43 to other county employees but is ineligible for this plan  
44 regardless of any subsequent termination of employment and  
45 rehire.

46 (c) Any deputy sheriff who was employed as a deputy  
47 sheriff prior to the effective date, but was not employed as a  
48 deputy sheriff on the effective date of this article, shall become  
49 a member upon rehire as a deputy sheriff. For purposes of this  
50 section, the member's years of service and credited service  
51 prior to the effective date shall not be counted for any purposes  
52 under this plan unless: (1) The deputy sheriff has not received  
53 the return of his or her accumulated contributions in the public  
54 employees retirement fund system pursuant to section thirty,  
55 article ten, chapter five of this code; or (2) the accumulated  
56 contributions returned to the member from the public employ-  
57 ees retirement system have been repaid pursuant to section  
58 thirteen of this article. If the conditions of subdivision (1) or (2)  
59 of this subsection are met, all years of the deputy sheriff's  
60 covered employment shall be counted as years of service for the  
61 purposes of this article. Each transferring deputy sheriff shall be  
62 given credited service for the purposes of this article for all

63 covered employment transferred from the public employees  
64 retirement system regardless of whether the credited service (as  
65 that term is defined in section two, article ten, chapter five of  
66 this code) was earned as a deputy sheriff. All service in the  
67 public employees retirement system accrued by a transferring  
68 deputy sheriff shall be transferred into the plan created by this  
69 article and the transferring deputy sheriff shall be given the  
70 same credit for the purposes of this article for all covered  
71 service which is transferred from the public employees retire-  
72 ment system as that transferring deputy sheriff would have  
73 received from the public employees retirement system if the  
74 transfer had not occurred. In connection with each deputy  
75 sheriff receiving credit for prior employment provided in this  
76 subsection, a transfer from public employees retirement system  
77 to this plan shall be made pursuant to the procedures described  
78 in section eight of this article.

79 (d) Once made, the election made under this section is  
80 irrevocable. All deputy sheriffs first employed after the  
81 effective date and deputy sheriffs electing to become members  
82 as described in this section shall be members as a condition of  
83 employment and shall make the contributions required by  
84 section seven of this article.

85 (e) Notwithstanding any other provisions of this article, any  
86 individual who is a leased employee shall not be eligible to  
87 participate in the plan. For purposes of this plan, a "leased  
88 employee" means any individual who performs services as an  
89 independent contractor or pursuant to an agreement with an  
90 employee leasing organization or similar organization. If a  
91 question arises regarding the status of an individual as a leased  
92 employee, the board has final power to decide the question.

**§7-14D-7. Members' contributions; employer contributions.**

1       There shall be deducted from the monthly salary of each  
2 member and paid into the fund an amount equal to eight and  
3 one-half percent of his or her monthly salary. Any active  
4 member who has concurrent employment in an additional job  
5 or jobs and the additional employment requires the deputy  
6 sheriff to be a member of another retirement system which is  
7 administered by the consolidated public retirement board  
8 pursuant to article ten-d, chapter five of this code shall contrib-  
9 ute to the fund the sum of eight and one-half percent of his or  
10 her monthly salary earned as a deputy sheriff as well as the sum  
11 of eight and one-half percent of his or her monthly salary  
12 earned from any additional employment which additional  
13 employment requires the deputy sheriff to be a member of  
14 another retirement which is administered by the consolidated  
15 public retirement board pursuant to article ten-d, chapter five of  
16 this code. An additional amount shall be paid to the fund by the  
17 county commission of the county in which the member is  
18 employed in covered employment in an amount determined by  
19 the board: *Provided*, That in no year may the total of the  
20 contributions provided for in this section, to be paid by the  
21 county commission, exceed ten and one-half percent of the total  
22 payroll for the members in the employ of the county commis-  
23 sion for the preceding fiscal year. If the board finds that the  
24 benefits provided by this article can be actually funded with a  
25 lesser contribution, then the board shall reduce the required  
26 member or employer contributions or both. The sums withheld  
27 each calendar month shall be paid to the fund no later than ten  
28 days following the end of the calendar month.

**§7-14D-12. Annuity options.**

1       Prior to the effective date of retirement, but not thereafter,  
2 a member may elect to receive retirement income payments in  
3 the normal form, or the actuarial equivalent of the normal form  
4 from the following options:

5       (a) *Option A — Joint and Survivor Annuity.* — A life  
6 annuity payable during the joint lifetime of the member and his  
7 or her beneficiary who is a natural person with an insurable  
8 interest in the member's life. Upon the death of either the  
9 member or his or her beneficiary, the benefit shall continue as  
10 a life annuity to the survivor in an amount equal to fifty percent,  
11 sixty-six and two-thirds percent, seventy-five percent or one  
12 hundred percent of the amount paid while both were living as  
13 selected by the member. If the retiring member is married, the  
14 spouse shall sign a waiver of benefit rights if the beneficiary is  
15 to be other than the spouse.

16       (b) *Option B — Contingent Joint and Survivor Annuity.* —  
17 A life annuity payable during the joint lifetime of the member  
18 and his or her beneficiary who must be a natural person with an  
19 insurable interest in the member's life. Upon the death of the  
20 member, the benefit shall continue as a life annuity to the  
21 beneficiary in an amount equal to fifty percent, sixty-six and  
22 two-thirds percent, seventy-five percent or one hundred percent  
23 of the amount paid while both were living as selected by the  
24 member. If the beneficiary dies first, the monthly amount of  
25 benefits may not be reduced, but shall be paid at the amount  
26 that was in effect before the death of the beneficiary. If the  
27 retiring member is married, the spouse shall sign a waiver of  
28 benefit rights if the beneficiary is to be other than the spouse.

29       (c) *Option C — Ten Years Certain and Life Annuity.* — A  
30 life annuity payable during the member's lifetime but in any  
31 event for a minimum of ten years. If the member dies before the  
32 expiration of ten years, the remaining payments shall be made  
33 to a designated beneficiary, if any, or otherwise to the mem-  
34 ber's estate.

35       (d) *Option D — Level Income Annuity.* — A life annuity  
36 payable monthly in an increased amount "A" from the time of  
37 retirement until the member is social security retirement age,

38 and then a lesser amount “B” payable for the member’s lifetime  
39 thereafter, with these amounts computed actuarially to satisfy  
40 the following two conditions:

41 (1) *Actuarial equivalence.* — The actuarial present value at  
42 the date of retirement of the member’s annuity if taken in the  
43 normal form must equal the actuarial present value of the term  
44 life annuity in amount “A” plus the actual present value of the  
45 deferred life annuity in amount “B”; and

46 (2) *Level income.* — The amount “A” equals the amount  
47 “B” plus the amount of the member’s estimated monthly social  
48 security primary insurance amount that would commence at the  
49 date amount “B” becomes payable. For this calculation, the  
50 primary insurance amount is estimated when the member  
51 applies for retirement, using social security law then in effect,  
52 using assumptions established by the board.

53 In the case of a member who has elected the options set  
54 forth in subdivisions (a) and (b) of this section, respectively,  
55 and whose beneficiary dies prior to the member’s death, the  
56 member may name an alternative beneficiary. If an alternative  
57 beneficiary is named within eighteen months following the  
58 death of the prior beneficiary, the benefit shall be adjusted to be  
59 the actuarial equivalent of the benefit the member is receiving  
60 just after the death of the member’s named beneficiary. If the  
61 election is not made until eighteen months after the death of the  
62 prior beneficiary, the amount shall be reduced so that it is only  
63 ninety percent of the actuarial equivalent of the benefit the  
64 member is receiving just after the death of the member’s named  
65 beneficiary.

**§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.**

1 (a) Any member who terminates covered employment and  
2 is not eligible to receive disability benefits under this article is,

3 by written request filed with the board, entitled to receive from  
4 the fund the member's accumulated contributions. Except as  
5 provided in subsection (b) of this section, upon withdrawal the  
6 member shall forfeit his or her accrued benefit and cease to be  
7 a member.

8 (b) Any member who withdraws accumulated contributions  
9 from either this plan or the public employees retirement system  
10 and thereafter becomes reemployed in covered employment  
11 shall not receive any credited service for the prior employment  
12 unless following his or her return to covered employment, the  
13 member redeposits in the fund the amount of the accumulated  
14 contributions submitted on salary earned while a deputy sheriff,  
15 together with interest on the accumulated contributions at the  
16 rate determined by the board from the date of withdrawal to the  
17 date of redeposit. Upon repayment he or she shall receive the  
18 same credit on account of his or her former service as if no  
19 refund had been made. The repayment shall be made in a lump  
20 sum within sixty months of the deputy sheriff's reemployment  
21 or if later, within sixty months of the effective date of this  
22 article.

23 (c) Every member who completes sixty months of covered  
24 employment is eligible, upon cessation of covered employment,  
25 to either withdraw his or her accumulated contributions in  
26 accordance with subsection (a) of this section, or to choose not  
27 to withdraw his or her accumulated contribution and to receive  
28 retirement income payments upon attaining normal retirement  
29 age.

30 (d) Notwithstanding any other provision of this article,  
31 forfeitures under the plan shall not be applied to increase the  
32 benefits any member would otherwise receive under the plan.

**§7-14D-14. Awards and benefits for disability — Duty related.**



1 Any member who after the effective date of this article and  
2 during covered employment: (A) Has been or becomes either  
3 totally or partially disabled by injury, illness or disease; and (B)  
4 the disability is a result of an occupational risk or hazard  
5 inherent in or peculiar to the services required of members; or  
6 (C) the disability was incurred while performing law-enforce-  
7 ment functions during either scheduled work hours or at any  
8 other time; and (D) in the opinion of the board, the member is  
9 by reason of the disability unable to perform adequately the  
10 duties required of a deputy sheriff, is entitled to receive and  
11 shall be paid from the fund in monthly installments during the  
12 lifetime of the member, or if sooner until the member attains  
13 normal retirement age or until the disability sooner terminates,  
14 the compensation under either subdivision (a) or (b) of this  
15 section.

16 (a) If the member is totally disabled, the member shall  
17 receive ninety percent of his or her average full monthly  
18 compensation for the twelve-month contributory period  
19 preceding the member's disability award, or the shorter period  
20 if the member has not worked twelve months.

21 (b) If the member is partially disabled, the member shall  
22 receive forty-five percent of his or her average full monthly  
23 compensation for the twelve-month contributory period  
24 preceding the member's disability award, or the shorter period  
25 if the member has not worked twelve months.

26 If the member remains totally disabled until attaining sixty-  
27 five years of age, the member shall then receive the retirement  
28 benefit provided for in sections eleven and twelve of this  
29 article.

30 If the member remains partially disabled until attaining  
31 sixty years of age the member shall then receive the retirement

32 benefit provided for in sections eleven and twelve of this  
33 article.

**§7-14D-15. Same — Due to other causes.**

1 (a) Any member who after the effective date of this article  
2 and during covered employment: (1) Has been or becomes  
3 totally or partially disabled from any cause other than those set  
4 forth in section fourteen of this article and not due to vicious  
5 habits, intemperance or willful misconduct on his or her part;  
6 and (2) in the opinion of the board, he or she is by reason of the  
7 disability unable to perform adequately the duties required of a  
8 deputy sheriff, is entitled to receive and shall be paid from the  
9 fund in monthly installments during the lifetime of the member,  
10 or if sooner until the member attains normal retirement age or  
11 until the disability sooner terminates the compensation set forth  
12 in, either subsection (b) or (c) of this section.

13 (b) If the member is totally disabled, he or she shall receive  
14 sixty-six and two-thirds percent of his or her average full  
15 monthly compensation for the twelve-month contributory  
16 period preceding the disability award, or the shorter period, if  
17 the member has not worked twelve months.

18 (c) If the member is partially disabled, he or she shall  
19 receive thirty-three and one-third percent of his or her average  
20 full monthly compensation for the twelve-month contributory  
21 period preceding the disability award, or the shorter period, if  
22 the member has not worked twelve months.

23 (d) If the member remains disabled until attaining sixty  
24 years of age, then the member shall receive the retirement  
25 benefit provided for in sections eleven and twelve of this  
26 article.

27 (e) The board shall propose legislative rules for promulga-  
28 tion in accordance with the provisions of article three, chapter

29 twenty-nine-a of this code concerning member disability  
30 payments so as to ensure that the payments do not exceed one  
31 hundred percent of the average current salary in any given  
32 county for the position last held by the member.

**§7-14D-20. Additional death benefits and scholarships — Dependent children.**

1 (a) In addition to the spouse death benefits in sections  
2 eighteen and nineteen of this article, the surviving spouse is  
3 entitled to receive and there shall be paid to the spouse one  
4 hundred dollars monthly for each dependent child.

5 (b) If the surviving spouse dies or if there is no surviving  
6 spouse, the fund shall pay monthly to each dependent child a  
7 sum equal to one fourth of the surviving spouse's entitlement  
8 under either section nineteen or twenty of this article. If there  
9 is neither a surviving spouse nor a dependent child, the fund  
10 shall pay in equal monthly installments to the dependent parents  
11 of the deceased member during their joint lifetimes a sum equal  
12 to the amount which a surviving spouse, without children,  
13 would have received: *Provided*, That when there is only one  
14 dependent parent surviving, that parent is entitled to receive  
15 during his or her lifetime one-half the amount which both  
16 parents, if living, would have been entitled to receive: *Provided*,  
17 *however*, That if there is no surviving spouse, dependent child,  
18 nor dependent parent of the deceased member the accumulated  
19 contributions shall be paid to a named beneficiary or beneficia-  
20 ries: *Provided further*, That if there is no surviving spouse,  
21 dependent child, nor dependent parent of the deceased member,  
22 nor any named beneficiary or beneficiaries then the accumu-  
23 lated contributions shall be paid to the estate of the deceased  
24 member.

25 (c) Any person qualifying as a dependent child under this,  
26 in addition to any other benefits due under this or other sections

27 of this article, is entitled to receive a scholarship to be applied  
28 to the career development education of that person. This sum,  
29 up to but not exceeding six thousand dollars per year, shall be  
30 paid from the fund to any university or college in this state or  
31 to any trade or vocational school or other entity in this state  
32 approved by the board, to offset the expenses of tuition, room  
33 and board, books, fees or other costs incurred in a course of  
34 study at any of these institutions so long as the recipient makes  
35 application to the board on an approved form and under such  
36 rules as the board may provide, and maintains scholastic  
37 eligibility as defined by the institution or the board. The board  
38 may propose legislative rules for promulgation in accordance  
39 with article three, chapter twenty-nine-a of this code which  
40 define age requirements, physical and mental requirements,  
41 scholastic eligibility, disbursement methods, institutional  
42 qualifications and other requirements as necessary and not  
43 inconsistent with this section.

**§7-14D-21. Burial benefit.**

1 Any member who dies as a result of any service related  
2 illness or injury after the effective date is entitled to a lump sum  
3 burial benefit of five thousand dollars. If the member is  
4 married, the burial benefit shall be paid to the member's  
5 spouse. If the member is not married, the burial benefit shall be  
6 paid to the member's estate for the purposes of paying burial  
7 expenses, settling the member's final affairs, or both. Any  
8 unspent balance shall be distributed as a part of the member's  
9 estate.

**§7-14D-23. Loans to members.**

1 (a) A member who is not yet receiving disability or  
2 retirement income benefits from the plan may borrow from the  
3 plan no more than one time in any year an amount up to one  
4 half of his or her accumulated contributions, but not less than

5 five hundred dollars nor more than eight thousand dollars:  
6 *Provided*, That the maximum amount of any loan shall not  
7 exceed the lesser of the following: (1) Eight thousand dollars;  
8 or (2) fifty percent of his or her accumulated contributions. No  
9 member is eligible for more than one outstanding loan at any  
10 time. No loan may be made from the plan if the board deter-  
11 mines that the loans constitute more than fifteen percent of the  
12 amortized cost value of the assets of the plan as of the last day  
13 of the preceding plan year. The board may discontinue the loans  
14 any time it determines that cash flow problems might develop  
15 as a result of the loans. Each loan shall be repaid through  
16 monthly installments over periods of six through sixty months  
17 and carry interest on the unpaid balance and an annual effective  
18 interest rate that is two hundred basis points higher than the  
19 most recent rate of interest used by the board for determining  
20 actuarial contributions levels: *Provided, however*, That interest  
21 charged shall be commercially reasonable in accordance with  
22 the provisions of section 72(p)(2) of the Internal Revenue Code  
23 and federal regulations issued thereunder. Monthly loan  
24 payments shall be calculated to be as nearly equal as possible  
25 with all but the final payment being an equal amount. An  
26 eligible member may make additional loan payments or pay off  
27 the entire loan balance at any time without incurring any  
28 interest penalty. At the member's option, the monthly loan  
29 payment may include a level premium sufficient to provide  
30 declining term insurance with the plan as beneficiary to repay  
31 the loan in full upon the member's death. If a member declines  
32 the insurance and dies before the loan is repaid, the unpaid  
33 balance of the loan shall be deducted from the lump sum  
34 insurance benefits payable under section twenty-one of this  
35 article.

36 (b) A member with an unpaid loan balance who wishes to  
37 retire may have the loan repaid in full by accepting retirement  
38 income payments reduced by deducting from the actuarial  
39 reserve for the accrued benefit the amount of the unpaid balance

40 and then converting the remaining of the reserve to a monthly  
41 pension payable in the form of the annuity desired by the  
42 member.

43 (c) The entire unpaid balance of any loan, and interest due  
44 thereon, shall at the option of the retirement board become due  
45 and payable without further notice or demand upon the occur-  
46 rence with respect to the borrowing member of any of the  
47 following events of default: (1) Any payment of principal and  
48 accrued interest on a loan remains unpaid after the same  
49 become due and payable under the terms of the loan or after  
50 such grace period as may be established in the discretion of the  
51 retirement board; (2) the borrowing member attempts to make  
52 an assignment for the benefit of creditors of his or her benefit  
53 under the retirement system; or (3) any other event of default  
54 set forth in rules promulgated by the board pursuant to the  
55 authority granted in section one, article ten-d, chapter five of  
56 this code: *Provided*, That any offset of an unpaid loan balance  
57 shall be made only at such time as the member is entitled to  
58 receive a distribution under the plan.

59 (d) Loans shall be evidenced by such form of obligations  
60 and shall be made upon such additional terms as to default,  
61 prepayment, security, and otherwise as the retirement board  
62 may determine.

63 (e) Notwithstanding anything herein to the contrary, the  
64 loan program authorized by this section shall comply with the  
65 provisions of section 72(p)(2) and section 401 of the Internal  
66 Revenue Code and the federal regulations issued thereunder.  
67 The retirement board is authorized to: (a) Apply and construe  
68 the provisions of this section and administer the plan loan  
69 program in such a manner as to comply with the provisions of  
70 sections 72(p)(2) and section 401 of the Internal Revenue Code;  
71 (b) adopt plan loan policies or procedures consistent with these  
72 federal law provisions; and (c) take such actions as it deems

73 necessary or appropriate to administer the plan loan program  
74 created hereunder in accordance with these federal law provi-  
75 sions. The retirement board is further authorized in connection  
76 with the plan loan program to take any actions that may at any  
77 time be required by the Internal Revenue Service regarding  
78 compliance with the requirements of section 72(p)(2) or section  
79 401 of the Internal Revenue Code, notwithstanding any  
80 provision in this article to the contrary.

**§7-14D-24a. Return to covered employment by retired member.**

1 The annuity of any member who retires under the provi-  
2 sions of this article and who resumes service in covered  
3 employment shall be suspended while the member continues in  
4 covered employment. The monthly annuity payment for the  
5 month in which the service resumes shall be pro-rated to the  
6 date of commencement of service, and the member shall again  
7 become a contributing member during resumption of service.  
8 At the conclusion of resumed service in covered employment  
9 the member shall have his or her annuity recalculated to take  
10 into account the entirety of service in covered employment.

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## CHAPTER 69

**(S. B. 645 — By Senator Tomblin, Mr. President)**

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[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2-4a, relating to providing a procedure for appointing an interim judge to the court of claims when a sitting judge is temporarily unable to serve.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §14-2-4a, to read as follows:

**ARTICLE 2. CLAIMS AGAINST THE STATE.**

**§14-2-4a. Interim judges.**

1 (a) If at any time two or more of the judges appointed under  
2 section four of this article are temporarily unable, due to illness  
3 or other incapacity, to perform their responsibilities the  
4 president of the Senate and the speaker of the House of Dele-  
5 gates may appoint one or two interim judges to serve under the  
6 conditions specified in this section.

7 (b) Appointments made under this section are temporary.  
8 An interim judge serves under this section until the judge for  
9 whom the interim judge is temporarily replacing can resume his  
10 or her duties. In no event may the interim judge serve for more  
11 than three months unless reappointed.

12 (c) Appointments made under this section shall be made  
13 from a list furnished to the president of the Senate and the  
14 speaker of the House of Delegates by the board of governors of  
15 the West Virginia state bar. The board of governors of the  
16 West Virginia state bar shall annually, on or before the fifteenth  
17 day of January, submit a list of twenty qualified nominees. In  
18 two thousand four, the list shall be submitted before the first  
19 day of April.

20 (d) An interim judge:

21 (1) Is entitled to the same compensation and expense  
22 reimbursement a judge is entitled to under the provisions of  
23 section eight of this article;



24 (2) Shall take the oath of office as required in section nine  
25 of this article;

26 (3) Has all the authority given to a judge under this article;  
27 and

28 (4) Is required to possess the qualifications required of a  
29 judge in section ten of this article.

30 (e) The president of the Senate and the speaker of the  
31 House of Delegates may jointly terminate the appointment of  
32 any interim judge appointed under this section at any time.

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## CHAPTER 70

**(Com. Sub. for H. B. 4123 — By Delegates Schadler and Amores)**

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §50-1-3, §50-1-8 and §50-1-9 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §50-1-9b, all relating to magistrate courts; modifying the criteria upon which magistrate, magistrate court clerk, and magistrate assistant salaries are based; authorizing the Supreme Court of Appeals to create a panel of senior magistrate court clerks; granting authority to senior magistrate court clerks to fill certain vacancies; authorizing the Supreme Court of Appeals to promulgate rules for senior magistrate court clerks; providing for reasonable compensation to senior clerks; providing for reimbursement of certain expenses incurred by senior clerks.

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

That §50-1-3, §50-1-8 and §50-1-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §50-1-9b, all to read as follows:

**ARTICLE 1. COURTS AND OFFICERS.**

§50-1-3. Salaries of magistrates.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-9b. Appointment of senior magistrate court clerks.

**§50-1-3. Salaries of magistrates.**

1 (a) The Legislature finds and declares that:

2 (1) The West Virginia Supreme Court of Appeals has held  
3 that a salary system for magistrates which is based upon the  
4 population that each magistrate serves does not violate the  
5 equal protection clause of the Constitution of the United States;

6 (2) The West Virginia Supreme Court of Appeals has held  
7 that a salary system for magistrates which is based upon the  
8 population that each magistrate serves does not violate section  
9 thirty-nine, article VI of the Constitution of West Virginia;

10 (3) The utilization of a two-tiered salary schedule for  
11 magistrates is an equitable and rational manner by which  
12 magistrates should be compensated for work performed;

13 (4) Organizing the two tiers of the salary schedule into one  
14 tier for magistrates serving less than eight thousand four  
15 hundred in population and the second tier for magistrates  
16 serving eight thousand four hundred or more in population is  
17 rational and equitable given current statistical information  
18 relating to population and caseload; and

19 (5) That all magistrates who fall under the same tier should  
20 be compensated equally.

21 (b) The salary of each magistrate shall be paid by the state.  
22 Magistrates who serve fewer than eight thousand four hundred  
23 in population shall be paid annual salaries of thirty thousand six  
24 hundred twenty-five dollars and magistrates who serve eight  
25 thousand four hundred or more in population shall be paid  
26 annual salaries of thirty-seven thousand dollars: *Provided*, That  
27 on and after the first day of July, two thousand three, magis-  
28 trates who serve fewer than eight thousand four hundred in  
29 population shall be paid annual salaries of thirty-three thousand  
30 six hundred twenty-five dollars and magistrates who serve eight  
31 thousand four hundred or more in population shall be paid  
32 annual salaries of forty thousand dollars.

33 (c) For the purpose of determining the population served by  
34 each magistrate, the number of magistrates authorized for each  
35 county shall be divided into the population of each county. For  
36 the purpose of this article, the population of each county is the  
37 population as determined by the last preceding decennial census  
38 taken under the authority of the United States government.

**§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.**

1 (a) In each county having three or more magistrates the  
2 judge of the circuit court or the chief judge of the circuit court,  
3 if there is more than one judge of the circuit court, shall appoint  
4 a magistrate court clerk. In all other counties the judge may  
5 appoint a magistrate court clerk or may by rule require the  
6 duties of the magistrate court clerk to be performed by the clerk  
7 of the circuit court, in which event the circuit court clerk is  
8 entitled to additional compensation in the amount of two  
9 thousand five hundred dollars per year. The magistrate court  
10 clerk serves at the will and pleasure of the circuit judge.

11 (b) Magistrate court clerks shall be paid a monthly salary  
12 by the state. Magistrate court clerks serving magistrates who  
13 serve less than eight thousand four hundred in population shall  
14 be paid up to one thousand seven hundred forty-eight dollars  
15 per month and magistrate court clerks serving magistrates who  
16 serve eight thousand four hundred or more in population shall  
17 be paid up to two thousand one hundred fifty-seven dollars per  
18 month: *Provided*, That on and after the first day of January, two  
19 thousand two, magistrate court clerks serving magistrates who  
20 serve less than eight thousand four hundred in population shall  
21 be paid up to one thousand nine hundred ninety-eight dollars  
22 per month and magistrate court clerks serving magistrates who  
23 serve eight thousand four hundred or more in population shall  
24 be paid up to two thousand four hundred seven dollars per  
25 month: *Provided, however*, That after the effective date of this  
26 section, any general salary increase granted to all state employ-  
27 ees, whose salaries are not set by statute, expressed as a  
28 percentage increase or an “across-the-board” increase, may also  
29 be granted to magistrate court clerks. For the purpose of  
30 determining the population served by each magistrate, the  
31 number of magistrates authorized for each county shall be  
32 divided into the population of each county. The salary of the  
33 magistrate court clerk shall be established by the judge of the  
34 circuit court, or the chief judge of the circuit court if there is  
35 more than one judge of the circuit court, within the limits set  
36 forth in this section.

37 (c) In addition to other duties that may be imposed by the  
38 provisions of this chapter or by the rules of the Supreme Court  
39 of Appeals or the judge of the circuit court or the chief judge of  
40 the circuit court if there is more than one judge of the circuit  
41 court, it is the duty of the magistrate court clerk to establish and  
42 maintain appropriate dockets and records in a centralized  
43 system for the magistrate court, to assist in the preparation of  
44 the reports required of the court and to carry out on behalf of

45 the magistrates or chief magistrate if a chief magistrate is  
46 appointed, the administrative duties of the court.

47 (d) The magistrate court clerk, or if there is no magistrate  
48 court clerk in the county, the clerk of the circuit court, may  
49 issue all manner of civil process and require the enforcement of  
50 subpoenas and subpoenas duces tecum in magistrate court.

**§50-1-9. Magistrate assistants; salary; duties.**

1 (a) In each county there shall be one magistrate assistant for  
2 each magistrate. Each magistrate assistant shall be appointed by  
3 the magistrate under whose authority and supervision and at  
4 whose will and pleasure he or she shall serve. The assistant  
5 shall not be a member of the immediate family of any magis-  
6 trate and shall not have been convicted of a felony or any  
7 misdemeanor involving moral turpitude and shall reside in the  
8 state of West Virginia. For the purpose of this section, "imme-  
9 diate family" means the relationships of mother, father, sister,  
10 brother, child or spouse.

11 (b) A magistrate assistant shall have the duties, clerical or  
12 otherwise, assigned by the magistrate and prescribed by the  
13 rules of the Supreme Court of Appeals or the judge of the  
14 circuit court or the chief judge of the circuit court if there is  
15 more than one judge of the circuit court. In addition to these  
16 duties, magistrate assistants shall perform and are accountable  
17 to the magistrate court clerks with respect to the following  
18 duties:

19 (1) The preparation of summons in civil actions;

20 (2) The assignment of civil actions to the various magis-  
21 trates;

22 (3) The collection of all costs, fees, fines, forfeitures and  
23 penalties which are payable to the court;

24       (4) The submission of moneys, along with an accounting of  
25 the moneys, to appropriate authorities as provided by law;

26       (5) The daily disposition of closed files which are to be  
27 located in the magistrate clerk's office;

28       (6) All duties related to the gathering of information and  
29 documents necessary for the preparation of administrative  
30 reports and documents required by the rules of the Supreme  
31 Court of Appeals or the judge of the circuit court or the chief  
32 judge of the circuit court if there is more than one judge of the  
33 circuit court;

34       (7) All duties relating to the notification, certification and  
35 payment of jurors serving pursuant to the terms of this chapter;

36       (8) All other duties or responsibilities whereby the magis-  
37 trate assistant is accountable to the magistrate court clerk as  
38 determined by the magistrate.

39       (c) Magistrate assistants shall be paid a monthly salary by  
40 the state. Magistrate assistants serving magistrates who serve  
41 less than eight thousand four hundred in population shall be  
42 paid up to one thousand four hundred seventy-four dollars per  
43 month and magistrate assistants serving magistrates who serve  
44 eight thousand four hundred or more in population shall be paid  
45 up to one thousand seven hundred thirty-two dollars per month:  
46 *Provided*, That on and after the first day of January, two  
47 thousand two, magistrate assistants serving magistrates who  
48 serve less than eight thousand four hundred in population shall  
49 be paid up to one thousand seven hundred twenty-four dollars  
50 per month and magistrate assistants serving magistrates who  
51 serve eight thousand four hundred or more in population shall  
52 be paid up to one thousand nine hundred eighty-two dollars per  
53 month: *Provided, however*, That after the effective date of this  
54 section, any general salary increase granted to all state employ-  
55 ees, whose salaries are not set by statute, expressed as a

56 percentage increase or an “across-the-board” increase, may also  
57 be granted to magistrate assistants. For the purpose of determin-  
58 ing the population served by each magistrate, the number of  
59 magistrates authorized for each county shall be divided into the  
60 population of each county. The salary of the magistrate assistant  
61 shall be established by the magistrate within the limits set forth  
62 in this section.

**§50-1-9b. Appointment of senior magistrate court clerks.**

1 The West Virginia Supreme Court of Appeals is authorized  
2 to create a panel of senior magistrate court clerks to utilize the  
3 talent and experience of former magistrate court clerks of this  
4 state. The Supreme Court of Appeals shall promulgate rules  
5 providing for senior magistrate court clerks to be assigned  
6 duties as needed to serve: (1) In the place of magistrate court  
7 clerks who are on authorized leave or are otherwise unavail-  
8 able; or (2) while there is a vacancy in a magistrate court  
9 clerk’s office. The Supreme Court of Appeals shall further  
10 promulgate rules to provide for: (1) Reimbursement of travel  
11 and other necessary expenses actually incurred while the senior  
12 clerk is serving outside the county of his or her residence; and  
13 (2) reasonable compensation on a per diem basis: *Provided,*  
14 That the per diem and retirement compensation of a senior  
15 magistrate court clerk may not exceed the salary of the magis-  
16 trate court clerk in whose place the senior clerk is serving.

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## CHAPTER 71

(S. B. 418 — By Senator Facemyer)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §50-1-14 of the code of West Virginia, 1931, as amended, relating to authorizing civil process servers employed by a county sheriff to carry firearms and requiring training, continued annual weapons qualifications and bonding through the office of the sheriff.

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

That §50-1-14 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. COURTS AND OFFICERS.**

**§50-1-14. Duties of sheriff; service of process; bailiff.**

1           (a) It shall be the duty of each sheriff to execute all civil  
2 and criminal process from any magistrate court which may be  
3 directed to such sheriff. Process shall be served in the same  
4 manner as provided by law for process from circuit courts.

5           Subject to the supervision of the chief justice of the  
6 Supreme Court of Appeals or of the judge of the circuit court,  
7 or the chief judge thereof if there is more than one judge of the  
8 circuit court, it shall be the duty of the sheriff, or his or her  
9 designated deputy, to serve as bailiff of a magistrate court upon  
10 the request of the magistrate. Such service shall also be subject  
11 to such administrative rules as may be promulgated by the  
12 Supreme Court of Appeals. A writ of mandamus shall lie on  
13 behalf of a magistrate to enforce the provisions of this section.

14           (b) The sheriff of any county may employ, by and with the  
15 consent of the county commission, one or more persons whose  
16 sole duties shall be the service of civil process and the service  
17 of subpoenas and subpoenas duces tecum. Any such person  
18 shall not be considered a deputy or deputy sheriff within the  
19 meaning of subdivision (2), subsection (a), section two, article  
20 fourteen, chapter seven of this code, nor shall any such person



21 be authorized to carry deadly weapons in the performance of his  
22 or her duties: *Provided*, That the sheriff may authorize an  
23 employee whose sole duties involve service of civil process to  
24 carry a firearm if the employee completes all training require-  
25 ments otherwise applicable to deputy sheriffs for the use and  
26 handling of firearms: *Provided, however*, That the sheriff may  
27 authorize previously certified West Virginia law-enforcement  
28 officers to carry a deadly weapon in the performance of the  
29 duties of the officers under the provisions of this section:  
30 *Provided further*, That these officers and employees maintain  
31 yearly weapons qualifications and are bonded through the office  
32 of the sheriff.

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## CHAPTER 72

**(Com. Sub. for H. B. 4148 — By Delegates Brown, DeLong,  
Mahan, R. Thompson, Armstead, Calvert and Faircloth)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §51-10-8 of the code of West Virginia, 1931, as amended; and to amend and reenact §62-1C-14 of said code, all relating to bail bondspersons; requiring the Supreme Court of Appeals to adopt rules specifying the qualifications of persons and corporations applying for authority to engage in the bonding business in West Virginia; allowing bail bondsperson to deliver offenders to county and regional jails without bailpiece; setting requirements; setting forth requirements related to medical treatment of defendant prior to authorities taking custody pursuant to a bailpiece; providing for certain immunities from liability; and providing penalties.

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

That §51-10-8 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §62-1C-14 of said code be amended and reenacted, all to read as follows:

**Chapter**

**51. Courts and Their Officers.**

**62. Criminal Procedure.**

**CHAPTER 51. COURTS AND THEIR OFFICERS.**

**ARTICLE 10. PROFESSIONAL BONDSMEN IN CRIMINAL CASES.**

**§51-10-8. Qualifications of bondsmen; rules to be prescribed by Supreme Court of Appeals; lists of agents to be furnished; renewal of authority to act; false swearing.**

1           (a) The Supreme Court of Appeals shall under reasonable  
 2 rules, specify the qualifications of persons and corporations  
 3 applying for authority to engage in the bonding business in  
 4 criminal cases in the state of West Virginia, and the terms and  
 5 conditions upon which the business may be carried on. After the  
 6 first day of September, two thousand four, no person or  
 7 corporation may, either as principal, or as agent, clerk, or  
 8 representative of another, engage in the bonding business in any  
 9 court regularly exercising criminal jurisdiction until qualified  
 10 pursuant to the rules. The Supreme Court of Appeals, in making  
 11 the rules, and in granting authority to persons to engage in the  
 12 bonding business, shall take into consideration both the  
 13 financial responsibility and the moral qualities of the person so  
 14 applying, and no person may be permitted to engage, either as  
 15 principal or agent, in the business of becoming surety upon  
 16 bonds for compensation in criminal cases, who has ever been  
 17 convicted of any offense involving moral turpitude, or who is  
 18 not known to be a person of good moral character. The court  
 19 shall require every person qualifying to engage in the bonding

20 business as principal to file with the court a list showing the  
21 name, age, and residence of each person employed by the  
22 bondsman as agent, clerk, or representative in the bonding  
23 business, and require an affidavit from each of the persons  
24 stating that the person will abide by the terms and provisions of  
25 this article. The court shall require the authority of each of the  
26 persons to be renewed from time to time at periods the court  
27 may by rule provide. Before the authority may be renewed the  
28 court shall require from each of the persons an affidavit that  
29 since his or her previous qualifications to engage in the bonding  
30 business he or she has abided by the provisions of this article,  
31 and any person swearing falsely in any of the affidavits is guilty  
32 of false swearing.

33 (b) Persons authorized to engage in the bonding business in  
34 criminal cases in the state of West Virginia on the effective date  
35 of the amendments made to this section during the regular  
36 session of the Legislature in two thousand four may continue to  
37 engage in the business until the first day of September, two  
38 thousand four.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 1C. BAIL.

#### **§62-1C-14. Bailpiece; issuance to surety; taking accused into custody.**

1 (a) A bailpiece is a certificate stating that the bail became  
2 such for the accused in a particular case and the amount thereof.  
3 Upon demand therefor, the court, magistrate or clerk shall issue  
4 to the bail bondsperson a bailpiece. Any officer having author-  
5 ity to execute a warrant of arrest shall assist the bail  
6 bondsperson holding such bailpiece to take the accused into  
7 custody and produce him before the court or magistrate. The  
8 bail bondsperson may take the accused into custody and

9 surrender him or her to the court or magistrate without such  
10 bailpiece.

11 (b) If bailpiece is inaccessible due to unavailability of the  
12 courts' circuit clerk or magistrate, the bail bondsperson, or his  
13 or her designee, can take an offender to a regional or county jail  
14 without bailpiece, and the jail must accept the offender;  
15 provided:

16 (1) The bail bondsperson, or his or her designee, delivering  
17 an offender to a jail without a bailpiece issued by the courts'  
18 circuit clerk or magistrate appears on the registered list main-  
19 tained at the jails and approved by the court of original jurisdic-  
20 tion;

21 (2) The bail bondsperson signs an agreement provided by  
22 the jail indicating that the offender has been booked in lieu of  
23 bailpiece. Such agreement shall contain a clause indicating the  
24 incarceration of such offender is lawful and that the jail  
25 accepting the offender shall be held harmless from any claims  
26 of illegal incarceration or other relative charges; thereby, such  
27 bail bondsperson assumes the risk and liability of such incarcer-  
28 ation; and

29 (3) Bailpiece must be applied for by the bail bondsperson  
30 or his or her designee from the courts' circuit clerk or magis-  
31 trate and hand-delivered by the bail bondsperson or his or her  
32 designee to the jail housing such offender on the next judicial  
33 day following the initial intake.

34 (c) Any bail bondsperson who willfully fails to attempt to  
35 obtain the appropriate bailpiece within the allotted time period  
36 provided in subsection (b) of this section is guilty of a misde-  
37 meanor and, upon conviction thereof, shall be prohibited from  
38 continuing to conduct business in this state and shall be fined  
39 not more than one thousand dollars and confined in the regional  
40 or county jail not more than one year.

41 (d) No officer, jailer or other person having authority to  
42 accept offenders in a county or regional jail is required to  
43 accept such offenders being housed in lieu of bailpiece if such  
44 offender appears to be in need of medical attention of a degree  
45 necessitating treatment by a physician. If an offender is refused  
46 pursuant to the provisions of this section, he or she may not be  
47 accepted for detention until the bail bondsperson, or his or her  
48 designee, provides the jailer or persons accepting such offender  
49 with a written clearance from a licensed physician reflecting  
50 that the offender has been examined and, if necessary, treated,  
51 and which states that it is the physician's medical opinion that  
52 the offender can be safely confined in the county or regional  
53 jail.

54 (e) The regional jail authority, the county sheriff, county  
55 commission, or any of their agents or employees, shall be  
56 immune from liability for any claims of illegal incarceration or  
57 other relative charges for any offender accepted into a facility  
58 under this section.

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## CHAPTER 73

**(H. B. 4097— By Delegates Staton, Amores, Kominar and Pino)**

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[Passed March 9, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §59-1-11 of the code of West Virginia, 1931, as amended, relating to clarifying those persons or entities responsible for paying certain fees assessed by the clerk of a circuit court for processing of criminal bonds and bailpiece.

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

That §59-1-11 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. FEES AND ALLOWANCES.**

**§59-1-11. Fees to be charged by clerk of circuit court.**

1       (a) The clerk of a circuit court shall charge and collect for  
2 services rendered as such clerk the following fees, and such  
3 fees shall be paid in advance by the parties for whom such  
4 services are to be rendered:

5       (1) For instituting any civil action under the rules of civil  
6 procedure, any statutory summary proceeding, any extraordi-  
7 nary remedy, the docketing of civil appeals or any other action,  
8 cause, suit or proceeding, one hundred twenty-five dollars, of  
9 which thirty dollars of that amount shall be deposited in the  
10 courthouse facilities improvement fund created by section six,  
11 article twenty-six, chapter twenty-nine of this code and ten  
12 dollars shall be deposited in the special revenue account created  
13 in section six hundred three, article twenty-six, chapter  
14 forty-eight of this code to provide legal services for domestic  
15 violence victims;

16       (2) For instituting an action for medical professional  
17 liability, two hundred sixty dollars, of which ten dollars of that  
18 amount shall be deposited in the courthouse facilities improve-  
19 ment fund created by section six, article twenty-six, chapter  
20 twenty-nine of this code;

21       (3) Beginning on and after the first day of July, one  
22 thousand nine hundred ninety-nine, for instituting an action for  
23 divorce, separate maintenance or annulment, one hundred  
24 thirty-five dollars;

25       (4) For petitioning for the modification of an order involv-  
26 ing child custody, child visitation, child support or spousal  
27 support, eighty-five dollars; and

28 (5) For petitioning for an expedited modification of a child  
29 support order, thirty-five dollars.

30 (b) In addition to the foregoing fees, the following fees  
31 shall likewise be charged and collected:

32 (1) For preparing an abstract of judgment, five dollars;

33 (2) For any transcript, copy or paper made by the clerk for  
34 use in any other court or otherwise to go out of the office, for  
35 each page, fifty cents;

36 (3) For action on suggestion, ten dollars;

37 (4) For issuing an execution, ten dollars;

38 (5) For issuing or renewing a suggestee execution, includ-  
39 ing copies, postage, registered or certified mail fees and the fee  
40 provided by section four, article five-a, chapter thirty-eight of  
41 this code, three dollars;

42 (6) For vacation or modification of a suggestee execution,  
43 one dollar;

44 (7) For docketing and issuing an execution on a transcript  
45 of judgment from magistrate's court, three dollars;

46 (8) For arranging the papers in a certified question, writ of  
47 error, appeal or removal to any other court, ten dollars, of which  
48 five dollars of that amount shall be deposited in the courthouse  
49 facilities improvement fund created by section six, article  
50 twenty-six, chapter twenty-nine of this code;

51 (9) For postage and express and for sending or receiving  
52 decrees, orders or records, by mail or express, three times the  
53 amount of the postage or express charges;

54 (10) For each subpoena, on the part of either plaintiff or  
55 defendant, to be paid by the party requesting the same, fifty  
56 cents;

57 (11) For additional service (plaintiff or appellant) where  
58 any case remains on the docket longer than three years, for each  
59 additional year or part year, twenty dollars.

60 (c) The clerk shall tax the following fees for services in any  
61 criminal case against any defendant convicted in such court:

62 (1) In the case of any misdemeanor, fifty-five dollars;

63 (2) In the case of any felony, seventy-five dollars, of which  
64 ten dollars of that amount shall be deposited in the courthouse  
65 facilities improvement fund created by section six, article  
66 twenty-six, chapter twenty-nine of this code.

67 (d) The clerk of a circuit court shall charge and collect a fee  
68 of twenty-five dollars per bond for services rendered by the  
69 clerk for processing of criminal bonds, and the fee shall be paid  
70 at the time of issuance by the person or entity set forth below:

71 (1) For cash bonds, the fee shall be paid by the person  
72 tendering cash as bond;

73 (2) For recognizance bonds secured by real estate, the fee  
74 shall be paid by the owner of the real estate serving as surety;

75 (3) For recognizance bonds secured by a surety company,  
76 the fee shall be paid by the surety company;

77 (4) For ten percent recognizance bonds with surety, the fee  
78 shall be paid by the person serving as surety; and

79 (5) For ten percent recognizance bonds without surety, the  
80 fee shall be paid by the person tendering ten percent of the bail  
81 amount.



82 In instances in which the total of the bond is posted by  
83 more than one bond instrument, the above fee shall be collected  
84 at the time of issuance of each bond instrument processed by  
85 the clerk, and all fees collected pursuant to this subsection (d)  
86 shall be deposited in the courthouse facilities improvement fund  
87 created by section six, article twenty-six, chapter twenty-nine  
88 of this code. Nothing in this subsection (d) may be construed as  
89 authorizing the clerk to collect the above fee from any person  
90 for the processing of a personal recognizance bond; and

91 (e) The clerk of a circuit court shall charge and collect a fee  
92 of ten dollars for services rendered by the clerk for processing  
93 of bailpiece, and the fee shall be paid by the surety at the time  
94 of issuance. All fees collected pursuant to this subsection (e)  
95 shall be deposited in the courthouse facilities improvement fund  
96 created by section six, article twenty-six, chapter twenty-nine  
97 of this code.

98 (f) No such clerk shall be required to handle or accept for  
99 disbursement any fees, cost or amounts, of any other officer or  
100 party not payable into the county treasury, except it be on order  
101 of the court or in compliance with the provisions of law  
102 governing such fees, costs or accounts.

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## CHAPTER 74

**(Com. Sub. for S. B. 556 — By Senator Minard (By Request))**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §46A-6C-2 of the code of West Virginia, 1931, as amended, relating to credit services organiza-

tions; and exempting retailers of automobiles and trucks from the definition of credit services organizations.

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

That §46A-6C-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6C. CREDIT SERVICES ORGANIZATIONS.**

**§46A-6C-2. Credit services organization.**

1 (a) A credit services organization is a person who, with  
2 respect to the extension of credit by others and in return for the  
3 payment of money or other valuable consideration, provides, or  
4 represents that the person can or will provide, any of the  
5 following services:

6 (1) Improving a buyer's credit record, history or rating;

7 (2) Obtaining an extension of credit for a buyer; or

8 (3) Providing advice or assistance to a buyer with regard to  
9 subdivision (1) or (2) of this subsection.

10 (b) The following are exempt from this article:

11 (1) A person authorized to make loans or extension of credit  
12 under the law of this state or the United States who is subject to  
13 regulation and supervision by this state or the United States, or  
14 a lender approved by the United States secretary of housing and  
15 urban development for participation in a mortgage insurance  
16 program under the National Housing Act (12 U. S. C. Section  
17 1701, *et seq.*);

18 (2) A bank or savings and loan association whose deposit  
19 or accounts are eligible for insurance by the federal deposit

20 insurance corporation or the federal savings and loan insurance  
21 corporation or a subsidiary of such a bank or savings and loan  
22 association;

23 (3) A credit union doing business in this state;

24 (4) A nonprofit organization exempt from taxation under  
25 Section 501(c)(3) of the Internal Revenue Code of 1986;

26 (5) A person licensed as a real estate broker or salesman  
27 under the Real Estate Brokers License Act acting within the  
28 course and scope of that license;

29 (6) A person licensed to practice law in this state acting  
30 within the course and scope of the person's practice as an  
31 attorney;

32 (7) A broker-dealer registered with the securities and  
33 exchange commission or the commodity future trading commis-  
34 sion acting within the course and scope of that regulation;

35 (8) A consumer reporting agency;

36 (9) A person whose primary business is making loans  
37 secured by liens on real property;

38 (10) A person whose primary business is the retail sale of  
39 automobiles and trucks: *Provided*, That the person is not  
40 extending credit for a buyer, excluding assignments; and

41 (11) A person licensed to practice public accounting in this  
42 state acting within the course and scope of the person's practice  
43 as an accountant.

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## CHAPTER 75

(Com. Sub. for H. B. 4364 — By Delegates Stemple, Shaver and Perry)

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §61-2-10b of the code of West Virginia, 1931, as amended, relating to including division of forestry employees in the assault and battery statute with similar state personnel.

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

That §61-2-10b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 2. CRIMES AGAINST THE PERSON.

**§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, probation officers, humane officers, emergency medical service personnel, firefighters, fire marshal, division of forestry employees and county or state correctional employees; penalties.**

1       (a) *Malicious assault.* — Any person who maliciously  
2 shoots, stabs, cuts or wounds or by any means causes bodily  
3 injury with intent to maim, disfigure, disable or kill a police  
4 officer, probation officer, conservation officer, humane officer,  
5 emergency medical service personnel, firefighter, state fire  
6 marshal or employee, division of forestry employee, county

7 correctional employee or state correctional employee, employee  
8 of an urban mass transportation system acting in his or her  
9 official capacity and the person committing the malicious  
10 assault knows or has reason to know that the victim is a police  
11 officer, probation officer, conservation officer, humane officer,  
12 emergency medical service personnel, firefighter, state fire  
13 marshal or employee, division of forestry employee, county  
14 correctional employee, state correctional employee, employee  
15 of an urban mass transportation system acting in his or her  
16 official capacity, is guilty of a felony and, upon conviction  
17 thereof, shall be confined in a correctional facility for not less  
18 than three nor more than fifteen years.

19 (b) *Unlawful assault.* — Any person who unlawfully but  
20 not maliciously shoots, stabs, cuts or wounds or by any means  
21 causes a police officer, probation officer, conservation officer,  
22 humane officer, emergency medical service personnel,  
23 firefighter, state fire marshal or employee, division of forestry  
24 employee, county correctional employee or state correctional  
25 employee, employee of an urban mass transportation system  
26 acting in his or her official capacity, bodily injury with intent to  
27 maim, disfigure, disable or kill him or her and the person  
28 committing the unlawful assault knows or has reason to know  
29 that the victim is a police officer, probation officer, conserva-  
30 tion officer, humane officer, emergency medical service  
31 personnel, firefighter, state fire marshal or employee, division  
32 of forestry employee, county correctional employee, state  
33 correctional employee, employee of an urban mass transporta-  
34 tion system acting in his or her official capacity, is guilty of a  
35 felony and, upon conviction thereof, shall be confined in a  
36 correctional facility for not less than two nor more than five  
37 years.

38 (c) *Battery.* — Any person who unlawfully, knowingly and  
39 intentionally makes physical contact of an insulting or provok-

40 ing nature with a police officer, probation officer, conservation  
41 officer, humane officer, emergency medical service personnel,  
42 firefighter, state fire marshal or employee, division of forestry  
43 employee, county correctional employee, state correctional  
44 employee, employee of a mass transportation system acting in  
45 his or her official capacity, or unlawfully and intentionally  
46 causes physical harm to a police officer, probation officer,  
47 conservation officer, humane officer, emergency medical  
48 service personnel, firefighter, state fire marshal or employee,  
49 division of forestry employee, county correctional employee,  
50 state correctional employee, employee of an urban mass  
51 transportation system acting in such capacity, is guilty of a  
52 misdemeanor and, upon conviction thereof, shall be confined in  
53 the county or regional jail for not less than one month nor more  
54 than twelve months, fined the sum of five hundred dollars, or  
55 both. If any person commits a second such offense, he or she is  
56 guilty of a felony and, upon conviction thereof, shall be  
57 confined in a correctional facility for not less than one year nor  
58 more than three years or fined the sum of one thousand dollars  
59 or both fined and confined. Any person who commits a third  
60 violation of this subsection is guilty of a felony and, upon  
61 conviction thereof, shall be confined in a correctional facility  
62 not less than two years nor more than five years or fined not  
63 more than two thousand dollars or both fined and confined.

64 (d) *Assault.* — Any person who unlawfully attempts to  
65 commit a violent injury to the person of a police officer,  
66 probation officer, conservation officer, humane officer,  
67 emergency medical service personnel, firefighter, state fire  
68 marshal or employee, division of forestry employee, county  
69 correctional employee, state correctional employee, employee  
70 of a mass transportation system acting in his or her official  
71 capacity, or unlawfully commits an act which places a police  
72 officer, probation officer, conservation officer, humane officer,

73 emergency medical service personnel, firefighter, division of  
74 forestry employee, county correctional employee or state  
75 correctional employee, employee of a mass transportation  
76 system acting in his or her official capacity in reasonable  
77 apprehension of immediately receiving a violent injury, is  
78 guilty of a misdemeanor and, upon conviction thereof, shall be  
79 confined in the county or regional jail for not less than  
80 twenty-four hours nor more than six months, fined not more  
81 than two hundred dollars, or both fined and confined.

82 (e) For purposes of this section:

83 (1) "Police officer" means any person employed by the  
84 state police, any person employed by the state to perform law-  
85 enforcement duties, any person employed by a political  
86 subdivision of this state who is responsible for the prevention  
87 or detection of crime and the enforcement of the penal, traffic  
88 or highway laws of this state or employed as a special police  
89 officer as defined in section forty-one, article three of this  
90 chapter.

91 (2) "Employee of an urban mass transportation system"  
92 means any person employed by an urban mass transportation  
93 system as such is defined in section three, article twenty-seven,  
94 chapter eight of this code or by a system that receives federal  
95 transit administration funding under 49 U.S.C. §5307 or 5311.

96 (3) "Division of forestry employee" means an officer,  
97 agent, employee, or servant, whether full-time or not, of the  
98 division of forestry.

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## CHAPTER 76

(Com. Sub. for H. B. 4433 — By Mr. Speaker, Mr. Kiss, and Delegates  
Pino, Webb, Stemple, Schadler, Craig and Amores)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §61-2-29 of the code of West Virginia, 1931, as amended, relating to abuse or neglect of an incapacitated adult; adding the crimes of abuse and neglect of an elder person age sixty-five years or older and the crime of misuse and misappropriation of the funds or assets of an elder person; and creating the crime of misuse or misappropriation of the funds or assets of an elder person through deception, intimidation, coercion, the infliction of bodily injury or the threat of bodily injury; and penalties.

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

That §61-2-29 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 2. CRIMES AGAINST THE PERSON.

**§61-2-29. Abuse or neglect of incapacitated adult; abuse or neglect of elder person; misappropriation or misuse of assets or funds of elder person; misappropriation or misuse of assets or funds of elder person through deception, intimidation, coercion, bodily injury or threats of bodily injury; penalties.**



1 (a) The following words when used in this section have the  
2 meaning ascribed, unless the context clearly indicates other-  
3 wise:

4 (1) “Abuse” means the infliction or threat to inflict physical  
5 pain or injury on an incapacitated adult or elder person;

6 (2) “Caregiver” means an adult who has or shares actual  
7 physical possession or care of an incapacitated adult or elder  
8 person on a full-time or temporary basis, regardless of whether  
9 such person has been designated as a guardian of such adult by  
10 any contract, agreement or legal proceeding. Caregiver includes  
11 health care providers, family members, and any person who  
12 otherwise voluntarily accepts a supervisory role towards an  
13 incapacitated adult or elder person;

14 (3) “Neglect” means: (i) The failure to provide the necessi-  
15 ties of life to an incapacitated adult or elder person; or (ii) the  
16 unlawful expenditure or willful dissipation of the funds or other  
17 assets owned or paid to or for the benefit of an incapacitated  
18 adult or elder person;

19 (4) “Incapacitated adult” means any person who by reason  
20 of physical, mental or other infirmity is unable to physically  
21 carry on the daily activities of life necessary to sustaining life  
22 and reasonable health;

23 (5) “Elder” means a person age sixty-five years or older;

24 (6) “Bodily injury” means substantial physical pain, illness  
25 or any impairment of physical condition; and

26 (7) “Custodian” means a person over the age of eighteen  
27 years who has or shares actual physical possession of care and  
28 custody of an elder person on a full-time or temporary basis,  
29 regardless of whether the person has been granted custody of  
30 the elder person by any contract, agreement or legal proceeding.

31 (b) Any person, caregiver, guardian or custodian who  
32 neglects an incapacitated adult or elder person, or who know-  
33 ingly permits another person to neglect said adult, is guilty of  
34 a misdemeanor and, upon conviction thereof, shall be fined not  
35 less than five hundred dollars nor more than fifteen hundred  
36 dollars, or imprisoned in the county or regional jail for not less  
37 than ninety days nor more than one year, or both fined and  
38 imprisoned.

39 (c) Any person, caregiver, guardian or custodian who  
40 intentionally abuses or neglects an incapacitated adult or elder  
41 person is guilty of a felony and, upon conviction thereof, shall,  
42 in the discretion of the court, be confined in a state correctional  
43 facility for not less than two nor more than ten years.

44 (d) If any person, caregiver, guardian or custodian of an  
45 elder person or incapacitated adult, willfully misappropriates,  
46 or misuses the funds or assets of an incapacitated adult or elder  
47 person for the person's, caregiver's, guardian's, or custodian's  
48 personal use, advantage or wrongful profit or to the advantage  
49 or wrongful profit of another, he or she is guilty of a felony and,  
50 upon conviction thereof, shall be fined not more than five  
51 thousand dollars and incarcerated in a correctional facility not  
52 less than two nor more than ten years.

53 (e) If any person, caregiver, guardian or custodian of an  
54 elder person or incapacitated adult, by means of deception,  
55 intimidation, coercion, infliction of bodily injury or threats of  
56 the infliction of bodily injury, willfully misappropriates, or  
57 misuses the funds or assets of an incapacitated adult or elder  
58 person for the person's, caregiver's, guardian's, or custodian's  
59 personal use, advantage or wrongful profit or to the advantage  
60 or wrongful profit of another, he or she is guilty of a felony and,  
61 upon conviction thereof, shall be fined not more than five  
62 thousand dollars and incarcerated in a correctional facility not  
63 less than five nor more than fifteen years.

64 (f) Nothing in this article shall be construed to mean an  
65 adult is abused or neglected for the sole reason that his or her  
66 independent decision is to rely upon treatment by spiritual  
67 means in accordance with the tenets and practices of a recog-  
68 nized church or religious denomination or organization in lieu  
69 of medical treatment.

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## CHAPTER 77

(S. B. 558 — By Senators Caldwell, Rowe and McKenzie)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §61-3-20 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3-20a, all relating to crimes of embezzlement; removing certain evidentiary presumptions which have been deemed unconstitutional; creating a new crime of embezzlement related to the wilful and fraudulent misuse of a power of attorney or other fiduciary relationship; and providing that such crimes of embezzlement or fraudulent conversion to be punishable as larceny.

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

That §61-3-20 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-3-20a, all to read as follows:

### **ARTICLE 3. CRIMES AGAINST PROPERTY.**

§61-3-20. Embezzlement.

§61-3-20a. Embezzlement by misuse of power of attorney or other fiduciary relationship; penalty.

**§61-3-20. Embezzlement.**

1           If any officer, agent, clerk or servant of this state, or of any  
2 county, district, school district or municipal corporation, or of  
3 any banking institution, or other corporation, or any officer of  
4 public trust in this state, or any agent, clerk or servant of any  
5 firm or person, or company or association of persons not  
6 incorporated, embezzles or fraudulently convert to his own use,  
7 bullion, money, bank notes, drafts, security for money, or any  
8 effects or property of any other person, which shall have come  
9 into his possession, or been placed under his care or manage-  
10 ment, by virtue of his office, place or employment, he shall be  
11 guilty of the larceny thereof. If such guilty person be an officer,  
12 agent, clerk or servant of any banking institution, he shall be  
13 guilty of a felony and, upon conviction thereof, shall be  
14 imprisoned in the penitentiary not less than ten years. And it  
15 shall not be necessary to describe in the indictment, or to  
16 identify upon the trial, the particular bullion, money, bank note,  
17 draft or security for money which is so taken, converted to his  
18 own use or embezzled by him.

19           And whenever any officer, agent, clerk or servant of this  
20 state, or of any county, district, school district or municipal  
21 corporation, shall appropriate or use for his own benefit, or for  
22 the benefit of any other person, any bullion, money, bank notes,  
23 drafts, security for money or funds belonging to this state or to  
24 any such county, district, school district or municipal corpora-  
25 tion, he shall be held to have embezzled the same and be guilty  
26 of the larceny thereof. In the prosecution of any such officer,  
27 agent, clerk or servant of this state or of any county, district,  
28 school district or municipal corporation charged with appropri-  
29 ation or use for his own benefit or the benefit of any other  
30 person, any bullion, money, bank notes, drafts, security for  
31 money or funds belonging to this state or to any county, district,  
32 school district or municipal corporation, it shall not be neces-

33 sary to describe in the indictment, or to identify upon the trial,  
34 the particular bullion, money, bank notes, drafts, security for  
35 money or funds appropriated or used for his own benefit or for  
36 the benefit of any other person.

**§61-3-20a. Embezzlement by misuse of power of attorney or  
other fiduciary relationship; penalty.**

1 Any person who holds a fiduciary power of attorney or who  
2 has a fiduciary relationship with a person and in so doing  
3 wilfully and with intent to defraud embezzles, misappropriates  
4 or fraudulently converts for his or her own benefit, or for the  
5 benefit of another, the assets or property, real or personal, with  
6 which he or she has been entrusted, or misuses or misappropri-  
7 ates funds from the person to whom he or she owes a fiduciary  
8 duty or misuses any account, line of credit or credit card of the  
9 principal for purposes not contemplated by the terms of the  
10 power of attorney instrument or fiduciary relationship, or for  
11 purposes not intended by the principal in the execution of the  
12 power of attorney or for purposes not intended by the fiduciary  
13 relationship, shall be held to have embezzled the same and,  
14 upon conviction, shall be deemed guilty of the larceny thereof.

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## CHAPTER 78

(Com. Sub. for H. B. 2200 — By Delegate Schadler)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §61-3-30 of the code of West Virginia, 1931, as amended, relating to creating the felony offense of injury, defacing or destruction of property causing damage, destruction or diminution in value of twenty-five hundred dollars or more; and providing penalties.

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

That §61-3-30 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-30. Removal, injury to or destruction of property, monuments designating land boundaries and of certain no trespassing signs; penalties.**

1       (a) If any person unlawfully, but not feloniously, takes and  
2 carries away, or destroys, injures or defaces any property, real  
3 or personal, of another, he or she is guilty of a misdemeanor  
4 and, upon conviction thereof, shall be fined not more than five  
5 hundred dollars, or confined in the county or regional jail not  
6 more than one year, or both fined and imprisoned.

7       (b) Any person who unlawfully, willfully and intentionally  
8 destroys, injures or defaces the real or personal property of one  
9 or more other persons or entities during the same act, series of  
10 acts or course of conduct causing a loss in the value of the  
11 property in an amount of two thousand five hundred dollars or  
12 more, is guilty of the felony offense of destruction of property  
13 and, upon conviction thereof, shall be fined not more than two  
14 thousand five hundred dollars or imprisoned in the state  
15 correctional facility for not less than one year nor more than ten  
16 years, or in the discretion of the court, confined in the county or  
17 regional jail not more than one year, or both fined and impris-  
18 oned.

19       (c) If any person breaks down, destroys, injures, defaces or  
20 removes any monument erected for the purpose of designating  
21 the boundaries of a municipality, tract or lot of land, or any tree  
22 marked for that purpose, or any sign or notice upon private  
23 property designating no trespassing upon the property, except  
24 signs or notices posted in accordance with the provisions and  
25 purposes of sections seven, eight and ten, article two, chapter  
26 twenty of this code, he or she is guilty of a misdemeanor and,

27 upon conviction thereof, shall be fined not less than twenty  
28 dollars nor more than two hundred dollars, or confined in the  
29 county or regional jail not less than one nor more than six  
30 months, or both fined and imprisoned. Magistrates have  
31 concurrent jurisdiction of all offenses arising under the provi-  
32 sions of this section. The provisions of this paragraph do not  
33 apply to the owner, or his or her agent, of the lands on which  
34 such signs or notices are posted.

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## CHAPTER 79

**(Com. Sub. for H. B. 4104 — By Delegates Morgan, Kominar,  
Mahan, Stemple, Craig, Amores and Staton)**

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[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-56, relating to creating the crimes of scanning device and reencoder fraud; providing definitions; and establishing criminal penalties therefor.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3-56, to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-56. Scanning device or reencoder fraud; felony; definitions; and penalties.**

1 (a) As used in this section, the term:

2 (1) "Authorized user" means the person to whom a payment  
3 card is issued or any other person acting with the permission of  
4 the person to whom the card is issued;

5 (2) "Merchant" means an owner or operator of any retail  
6 mercantile establishment or any agent, employee, lessee,  
7 consignee, officer, director, franchisee or independent contrac-  
8 tor of the owner or operator. A "merchant" also means a person  
9 who receives from an authorized user of a payment card, or  
10 someone the person believes to be an authorized user, a  
11 payment card or information from a payment card, or what the  
12 person believes to be a payment card or information from a  
13 payment card, as the instrument for obtaining, purchasing or  
14 receiving goods, services, money or anything else of value from  
15 the person;

16 (3) "Payment card" means a credit card, charge card, debit  
17 card, hotel key card, stored value card or any other card that is  
18 issued to an authorized card user and that allows the user to  
19 obtain, purchase or receive goods, services, money or anything  
20 else of value from a merchant;

21 (4) "Reencoder" means an electronic device that places  
22 encoded information from the magnetic strip or stripe of a  
23 payment card onto the magnetic strip or stripe of a different  
24 payment card; and

25 (5) "Scanning device" means a scanner, reader or any other  
26 electronic device that is used to access, read, scan, obtain,  
27 memorize or store, temporarily or permanently, information  
28 encoded on the magnetic strip or stripe of a payment card.

29 (b) Any person who uses a scanning device to access, read,  
30 obtain, memorize or store, temporarily or permanently, infor-  
31 mation encoded on the magnetic strip or stripe of a payment  
32 card without the permission of the authorized user of the  
33 payment card and with the intent to defraud the authorized user,  
34 the issuer of the authorized user's payment card or a merchant  
35 is guilty of a misdemeanor and, upon conviction thereof, shall  
36 be fined not more than two thousand five hundred dollars or



37 confined in a county or regional jail for not more than one year,  
38 or both.

39 (c) Any person who uses a reencoder to place information  
40 encoded on the magnetic strip or stripe of a payment card onto  
41 the magnetic strip or stripe of a different card without the  
42 permission of the authorized user of the card from which the  
43 information is being reencoded and with the intent to defraud  
44 the authorized user, the issuer of the authorized user's payment  
45 card or a merchant is guilty of a misdemeanor and, upon  
46 conviction thereof, shall be fined not more than two thousand  
47 five hundred dollars or confined in a county or regional jail not  
48 more than one year, or both.

49 (d) Notwithstanding the provisions of subsections (b) and  
50 (c) of this section, any person who is convicted of the provi-  
51 sions of subsection (b) or (c) of this section who has previously  
52 been convicted of a violation of either subsection shall be guilty  
53 of a felony and, upon conviction, shall be imprisoned in a state  
54 correctional facility for not less than one nor more than three  
55 years or fined not more than five thousand dollars, or both.

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## CHAPTER 80

**(Com. Sub. for H. B. 4388 — By Delegates Morgan, Craig,  
Leach, Stemple, Varner, Kominar and Smirl)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-57, relating to creating the criminal offense of possession of fraudulently obtained or counterfeit sales receipts or universal product codes or devices to produce counterfeit sales receipts or universal

product codes with the intent to cheat or defraud; creating new felony offense for such illegal activity; and establishing penalties.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3-57, to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-57. Possession of bogus receipts or universal product codes with intent to defraud; penalties.**

1 Any person who, with intent to defraud, possesses fifteen  
 2 or more fraudulently obtained or counterfeit sales receipts or  
 3 fraudulently obtained or counterfeit universal product codes, or  
 4 possesses a device the purpose of which is to manufacture  
 5 counterfeit retail sales receipts or counterfeit universal product  
 6 code labels, is guilty of a felony and, upon conviction thereof,  
 7 shall be fined not less than five hundred dollars nor more than  
 8 five thousand dollars or imprisoned in a state correctional  
 9 facility not less than one year nor more than three years, or  
 10 both.

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## CHAPTER 81

**(Com. Sub. for H. B. 4492 — By Delegates Howard,  
 Caruth, Sobonya and Armstead)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3C-14b, relating to

creating the criminal offense of soliciting certain minors or one believed to be a minor via computer to commit violations of certain criminal laws; and providing penalties.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3C-14b, to read as follows:

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-14b. Soliciting, etc. a minor via computer; penalty.**

1 Any person over the age of eighteen, who knowingly uses  
2 a computer to solicit, entice, seduce or lure, or attempt to  
3 solicit, entice, seduce or lure, a minor known or believed to be  
4 at least four years younger than the person using the computer  
5 or a person he or she believes to be such a minor, to commit  
6 any illegal act proscribed by the provisions of articles eight,  
7 eight-b, eight-c or eight-d of this chapter, or any felony offense  
8 under section four hundred one, article four, chapter sixty-a of  
9 this code, is guilty of a felony and, upon conviction thereof,  
10 shall be fined not more than five thousand dollars or imprisoned  
11 in a state correctional facility not less than two nor more than  
12 ten years, or both.



# CHAPTER 82

**(Com. Sub. for S. B. 508 — By Senators Plymale, Tomblin, Mr.  
President, Edgell, Dempsey and Hunter)**

[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

AN ACT to amend and reenact §29-1-3 of the code of West Virginia, 1931, as amended, relating to membership of the commission on the arts; and expenditure of moneys in the cultural facilities and capital resources matching grant program fund.

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

That §29-1-3 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. DIVISION OF CULTURE AND HISTORY.**

**§29-1-3. Commission on the arts.**

1 (a) The commission on the arts is continued and shall be  
2 composed of fifteen appointed voting members and the ex  
3 officio nonvoting members set forth or authorized for appoint-  
4 ment in this section.

5 (b) (1) The governor shall appoint, by and with the advice  
6 and consent of the Senate, the voting members of the commis-  
7 sion for staggered terms of three years. A person appointed to  
8 fill a vacancy shall be appointed only for the remainder of that  
9 term.

10 (2) No more than eight voting members may be of the same  
11 political party. Effective the first day of July, two thousand  
12 four, no more than three voting members may be from the same  
13 regional educational service agency district created in section  
14 twenty-six, article two, chapter eighteen of this code. Voting  
15 members of the commission shall be appointed so as to fairly  
16 represent both sexes, the ethnic and cultural diversity of the  
17 state and the geographic regions of the state.

18 (3) The commission shall elect one of its members as chair.  
19 It shall meet at the times specified by the chair. Notice of each  
20 meeting shall be given to each member by the chair in compli-  
21 ance with the open meetings laws of the state. A majority of  
22 the voting members constitute a quorum for the transaction of  
23 business. The director of the arts section shall be an ex officio

24 nonvoting member of the commission and shall serve as  
25 secretary. The director or a majority of the members also may  
26 call a meeting upon notice as provided in this section.

27 (4) Each voting member or ex officio nonvoting member of  
28 the commission shall serve without compensation, but shall be  
29 reimbursed for all reasonable and necessary expenses actually  
30 incurred in the performance of the duties of the office; except  
31 that in the event the expenses are paid, or are to be paid, by a  
32 third party, the member or ex officio member, as the case may  
33 be, shall not be reimbursed by the state.

34 (5) Upon recommendation of the commissioner, the  
35 governor also may appoint those officers of the state that are  
36 appropriate to serve on the commission as ex officio nonvoting  
37 members.

38 (c) The commission may:

39 (1) Advise the commissioner and the director of the arts  
40 section concerning the accomplishment of the purposes of that  
41 section and establish a state plan with respect to the arts section;

42 (2) Approve and distribute grants-in-aid and awards from  
43 federal and state funds relating to the purposes of the arts  
44 section;

45 (3) Request, accept or expend federal funds to accomplish  
46 the purposes of the arts section when federal law or regulations  
47 would prohibit those actions by the commissioner or section  
48 director, but would permit them to be done by the commission  
49 on the arts;

50 (4) Otherwise encourage and promote the purposes of the  
51 arts section;

52 (5) Approve rules concerning the professional policies and  
53 functions of the section as promulgated by the director of the  
54 arts section; and

55 (6) Advise and consent to the appointment of the director  
56 by the commissioner.

57 (d) A special revenue account in the state treasury, known  
58 as the "cultural facilities and capital resources matching grant  
59 program fund", is continued. The fund shall consist of moneys  
60 received under section ten, article twenty-two-a of this chapter  
61 and funds from any other source. The moneys in the fund shall  
62 be expended in accordance with the following:

63 (1) Fifty percent of the moneys deposited in the fund shall  
64 be expended by the commission on the arts for capital improve-  
65 ments, preservation and operations of cultural facilities:  
66 *Provided*, That the commission on the arts may use no more  
67 than twenty-five percent of the funding for operations of  
68 cultural facilities pursuant to the rule required by this subdivi-  
69 sion: *Provided, however*, That the commission shall make a  
70 women's veterans memorial statue a priority when expending  
71 the funds: *Provided further*, That the commission shall submit  
72 the plans for the statue to the secretary of administration for his  
73 or her approval. The commission on the arts shall propose rules  
74 for legislative approval in accordance with the provisions of  
75 article three, chapter twenty-nine-a of this code to create a  
76 matching grant program for cultural facilities and capital  
77 resources; and

78 (2) Fifty percent of the moneys deposited in the fund shall  
79 be expended by the division of culture and history for:

80 (A) Capital improvements, preservation and operation of  
81 cultural facilities that are managed by the division; and

82 (B) Capital improvements, preservation and operation of  
83 cultural facilities that are not managed by the division.

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## CHAPTER 83

(Com. Sub. for H. B. 4009 — By Mr. Speaker,  
Mr. Kiss and Delegate Trump)  
[By Request of the Executive]

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-1-11, relating to creating the position of state Americans with disabilities coordinator within the department of administration; powers and duties; authorizing assessing fees to other state agencies for the coordinator's services; creating special fund; annual report; and sunset provision.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-1-11, to read as follows:

### ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

#### §5A-1-11. State Americans with disabilities coordinator.

1 (a) There is hereby created within the department of  
2 administration the position of the state Americans with disabili-  
3 ties coordinator, who shall be appointed by the secretary of the  
4 department of administration with input from the chairperson  
5 from each of the following four councils:

6 (1) The developmental disabilities council;

7 (2) The statewide independent living council;

8 (3) The mental health planning council; and

9 (4) The state rehabilitation council.

10 (b) The coordinator shall be a full-time employee, and shall  
11 have an in-depth working knowledge of the challenges facing  
12 persons with disabilities. The coordinator may be a current  
13 employee of the department of administration or other state  
14 agency employee.

15 (c) The coordinator shall:

16 (1) Advise the director of personnel in the development of  
17 comprehensive policies and programs for the development,  
18 implementation and monitoring of a statewide program to  
19 assure compliance with 42 U.S.C. §12101, *et seq.*, the federal  
20 Americans with Disabilities Act;

21 (2) Assist in the formulation of rules and standards relating  
22 to the review, investigation and resolution of complaints of  
23 discrimination in employment, education, housing and public  
24 accommodation;

25 (3) Consult and collaborate with state and federal agency  
26 officials in the state plan development;

27 (4) Consult and collaborate with agency Americans with  
28 disabilities officers on the appropriate training for managers  
29 and supervisors on regulations and issues;

30 (5) Represent the state on local, state and national commit-  
31 tees and panels related to Americans with disabilities;

32 (6) Advise the governor and agency heads on Americans  
33 with disabilities issues;

34 (7) Consult with state equal employment opportunity  
35 officers on the hiring of persons with disabilities; and

36 (8) Be available to inspect and advise the leasing section of  
37 the division of purchasing on all physical properties owned or



38 leased by the state of West Virginia for compliance with 42  
39 U.S.C. §12101, *et seq.*, the federal Americans with Disabilities  
40 Act.

41 (d)(1) The secretary of the department of administration  
42 may assess, charge and collect fees from each state spending  
43 unit which utilizes the services of the coordinator, for the direct  
44 costs and expenses incurred by the coordinator in providing  
45 those services. Costs and expenses include travel, materials,  
46 equipment and supplies. Moneys shall be collected through the  
47 division of finance.

48 (2) A state spending unit shall agree in writing to all costs  
49 and expenses before the services by the Americans with  
50 disabilities coordinator are rendered.

51 (e) There is hereby created in the department of administra-  
52 tion a special fund to be named the “Americans with Disabili-  
53 ties Coordinator Fund”, which shall be an interest-bearing  
54 account and may be invested in accordance with the provisions  
55 of article six, chapter twelve of this code, with the interest  
56 income a proper credit to the fund. Funds paid into the account  
57 may be derived from the following sources:

58 (1) All moneys received from state spending units for the  
59 costs and expenses incurred by the state Americans with  
60 disabilities coordinator for providing services related to the  
61 state’s implementation and compliance with 42 U.S.C. §12101,  
62 *et seq.*, the federal Americans with Disabilities Act;

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

66 (3) All interest or return on investment accruing to the fund.

67 (f) Moneys in the fund are to be used for the costs and  
68 expenses incurred pursuant to this section. Any balance  
69 including accrued interest in this special fund at the end of any  
70 fiscal year shall not revert to the general revenue fund, but shall

71 remain in the fund for use by the secretary of the department of  
72 administration for providing additional Americans with  
73 disabilities coordinator services within the state of West  
74 Virginia in the ensuing fiscal years.

75 (g) The secretary of the department of administration shall  
76 report annually on the fund to the governor, president of the  
77 Senate and speaker of the House of Delegates. The report must  
78 be on CD ROM or other electronic media and shall not be in  
79 print format.

80 (h) The state Americans with disabilities coordinator shall  
81 continue to exist until the first day of July, two thousand nine,  
82 unless sooner terminated, continued or reestablished pursuant  
83 to the provisions of article ten, chapter four of this code.

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## CHAPTER 84

**(Com. Sub. for H. B. 4156 — By Delegates Webster, Brown, Mahan,  
R. Thompson, Armstead, Calvert and Faircloth)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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**CLERK'S NOTE:** It has been determined that H. B. 4156, originally styled as Chapter 84 was incorrectly enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, H. B. 4156 did not become law.

The text formerly occupied pages 442 through 449, which have been omitted.

**PAGES 443-449  
HAVE BEEN INTENTIONALLY  
OMITTED**

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## CHAPTER 85

(Com. Sub. for H. B. 4605 — By Delegates Amores,  
Fleischauer, Mahan, Brown and Webster)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §48-5-509 and §48-5-608 of the code of West Virginia, 1931, as amended; to amend and reenact §48-27-401, §48-27-902, §48-27-903, §48-27-1001 and §48-27-1102 of said code; to amend and reenact §61-2-9 and §61-2-28 of said code; and to amend and reenact §61-7-4 and §61-7-7 of said code, all relating to domestic violence generally; clarifying the relationship between temporary and final domestic violence protective orders and the provisions of protective measures reflected in temporary or final divorce orders entered in divorce proceedings or other types of domestic proceedings; making the violation of emergency or final protective orders issued by injunctive relief or protective order in a divorce proceeding a misdemeanor; clarifying provisions related to the arrest and criminal enforcement of protective order violations; clarifying the penalties which may be imposed for the first and subsequent violation of such protective orders; authorizing the governor's committee on crime, delinquency and correction to develop and promulgate rules regarding the procedures for the dispatch of matters involving domestic violence; relating to prohibitions against the issuance of licenses and permits to carry concealed weapons and the possession of firearms as they pertain to persons who have been convicted of domestic violence offenses and/or are subject to domestic violence protection orders; and clarifying who is proscribed from possessing a firearm due to domestic violence convictions.

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

That §48-5-509 and §48-5-608 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §48-27-401, §48-27-902, §48-27-903, §48-27-1001 and §48-27-1102 of said code be amended and reenacted; that §61-2-9 and §61-2-28 of said code be amended and reenacted; and that §61-7-4 and §61-7-7 of said code be amended and reenacted, all to read as follows:

**Chapter**

**48. Domestic Relations.**

**61. Crimes and Their Punishment.**

**CHAPTER 48. DOMESTIC RELATIONS.**

**Article**

**5. Divorce.**

**27. Prevention and Treatment of Domestic Violence.**

**ARTICLE 5. DIVORCE.**

**PART 5. TEMPORARY RELIEF DURING PENDENCY OF  
ACTION FOR DIVORCE.**

§48-5-509. Enjoining abuse, emergency protective order.

§48-5-608. Injunctive relief or protective orders.

**§48-5-509. Enjoining abuse, emergency protective order.**

1           (a) The court may enjoin the offending party from mo-  
2    lesting or interfering with the other, or otherwise imposing  
3    any restraint on the personal liberty of the other, or interfer-  
4    ing with the custodial or visitation rights of the other. This  
5    order may enjoin the offending party from:

6           (1) Entering the school, business or place of employment  
7    of the other for the purpose of molesting or harassing the  
8    other;

9           (2) Contacting the other, in person or by telephone, for  
10   the purpose of harassment or threats; or

11 (3) Harassing or verbally abusing the other in a public  
12 place.

13 (b) Any order entered by the court to protect a party from  
14 abuse may grant any other relief authorized by the provisions  
15 of article twenty-seven of this chapter, if the party seeking  
16 the relief has established the grounds for that relief as re-  
17 quired by the provisions of said article.

18 (c) The court, in its discretion, may enter a protective  
19 order, as provided in article twenty-seven of this chapter, as  
20 part of the final relief granted in a divorce action, either as a  
21 part of an order for temporary relief or as part of a separate  
22 order. Notwithstanding the provisions of section five hundred  
23 five of said article, a protective order entered pursuant to the  
24 provisions of this subsection shall remain in effect until a  
25 final order is entered in the divorce, unless otherwise ordered  
26 by the judge.

#### PART 6. JUDGMENT ORDERING DIVORCE.

#### **§48-5-608. Injunctive relief or protective orders.**

1 (a) When allegations of abuse have been proved, the  
2 court shall enjoin the offending party from molesting or in-  
3 terfering with the other, or otherwise imposing any restraint  
4 on the personal liberty of the other or interfering with the  
5 custodial or visitation rights of the other. The order may per-  
6 manently enjoin the offending party from entering the school,  
7 business or place of employment of the other for the purpose  
8 of molesting or harassing the other; or from contacting the  
9 other, in person or by telephone, for the purpose of harass-  
10 ment or threats; or from harassing or verbally abusing the  
11 other in a public place.

12 (b) Any order entered by the court to protect a party from  
13 abuse may grant any other relief authorized to be awarded by  
14 the provisions of article twenty-seven of this chapter, if the  
15 party seeking the relief has established the grounds for that  
16 relief as required by the provisions of said article.

17 (c) The court, in its discretion, may enter a protective  
18 order, as provided by the provisions of article twenty-seven  
19 of this chapter, as part of the final relief in a divorce action,  
20 either as a part of a order for final relief or in a separate or-  
21 der. A protective order entered pursuant to the provisions of  
22 this subsection shall remain in effect for the period of time  
23 ordered by the court not to exceed one hundred eighty days:  
24 *Provided*, That if the court determines that a violation of a  
25 domestic violence protective order entered during or ex-  
26 tended by the divorce action has occurred, it may extend the  
27 protective order for whatever period the court deems neces-  
28 sary to protect the safety of the petitioner and others threat-  
29 ened or at risk.

#### ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

##### PART 4. COORDINATION WITH PENDING COURT ACTIONS.

§48-27-401. Interaction between domestic proceedings

§48-27-902. Violations of protective orders; criminal complaints.

§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

§48-27-1001. Arrest for violations of protective orders.

§48-27-1102. Authorization for the promulgation of legislative rules.

#### **§48-27-401. Interaction between domestic proceedings.**

1 (a) During the pendency of a divorce action, a person  
2 may file for and be granted relief provided by this article  
3 until an order is entered in the divorce action pursuant to part  
4 5-501, *et seq.*

5 (b) If a person who has been granted relief under this  
6 article should subsequently become a party to an action for  
7 divorce, separate maintenance or annulment, such person  
8 shall remain entitled to the relief provided under this article  
9 including the right to file for and obtain any further relief, so  
10 long as no temporary order has been entered in the action for

11 divorce, annulment and separate maintenance, pursuant to  
12 part 5-501, *et seq.*

13 (c) Except as provided in section 5-509 of this chapter  
14 and section 27-402 of this article for a petition and a tempo-  
15 rary emergency protective order, no person who is a party to  
16 a pending action for divorce, separate maintenance or annul-  
17 ment in which an order has been entered pursuant to part 5-  
18 501, *et seq.*, of this chapter, shall be entitled to file for or  
19 obtain relief against another party to that action under this  
20 article until after the entry of a final order which grants or  
21 dismisses the action for divorce, annulment or separate main-  
22 tenance.

23 (d) Notwithstanding the provisions set forth in section  
24 27-505, when an action seeking a divorce, an annulment or  
25 separate maintenance, the allocation of custodial responsibil-  
26 ity or a habeas corpus action to establish custody, the estab-  
27 lishment of paternity, the establishment or enforcement of  
28 child support, or other relief under the provisions of this  
29 chapter is filed or is reopened by petition, motion or other-  
30 wise, then any order issued pursuant to this article which is in  
31 effect on the day the action is filed or reopened shall remain  
32 in full force and effect by operation of this statute until: (1) A  
33 temporary or final order is entered pursuant to the provisions  
34 of part 5-501, *et seq.* or part 6-601 *et seq.* of this chapter; or  
35 (2) an order is entered modifying such order issued pursuant  
36 to this article; or (3) the entry of a final order granting or  
37 dismissing the action.

#### PART 9. SANCTIONS.

#### **§48-27-902. Violations of protective orders; criminal com- plaints.**

1 (a) When a respondent abuses the petitioner or minor  
2 children, or both, or is physically present at any location in  
3 knowing and willful violation of the terms of an emergency  
4 or final protective order under the provisions of this article or  
5 sections 5-509 or 5-608 of this chapter granting the relief



6 pursuant to the provisions of this article, any person autho-  
7 rized to file a petition pursuant to the provisions of section  
8 27-305 or the legal guardian or guardian ad litem may file a  
9 petition for civil contempt as set forth in section 27-901.

10 (b) When any such violation of a valid order has oc-  
11 curred, the petitioner may file a criminal complaint. If the  
12 court finds probable cause upon the complaint, the court shall  
13 issue a warrant for arrest of the person charged.

**\*§48-27-903. Misdemeanor offenses for violation of protective  
order, repeat offenses, penalties.**

1 (a) A respondent who abuses the petitioner or minor  
2 children or who is physically present at any location in know-  
3 ing and willful violation of the terms of: (1) An emergency or  
4 final protective order issued under the provisions of this arti-  
5 cle or sections 5-509 or 5-608 of this chapter granting relief  
6 pursuant to the provisions of this article; or (2) a condition of  
7 bail, probation or parole which has the express intent or ef-  
8 fect of protecting the personal safety of a particular person or  
9 persons is guilty of a misdemeanor and, upon conviction  
10 thereof, shall be confined in the county or regional jail for a  
11 period of not less than one day nor more than one year, which  
12 jail term shall include actual confinement of not less than  
13 twenty-four hours, and shall be fined not less than two hun-  
14 dred fifty dollars nor more than two thousand dollars.

15 (b) A respondent who is convicted of a second or subse-  
16 quent offense under subsection (a) of this section is guilty of  
17 a misdemeanor and, upon conviction thereof, shall be con-  
18 fined in the county or regional jail for not less than three  
19 months nor more than one year, which jail term shall include  
20 actual confinement of not less than twenty-four hours, and  
21 fined not less than five hundred dollars nor more than three  
22 thousand dollars, or both.

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\* **CLERK'S NOTE:** This section was also amended by S. B. 258 (Chapter 86), which passed prior to this act.

## PART 10. ARRESTS.

**§48-27-1001. Arrest for violations of protective orders.**

1       (a) When a law-enforcement officer observes any respon-  
2       dent abuse the petitioner or minor children or the respon-  
3       dent's physical presence at any location in knowing and will-  
4       ful violation of the terms of an emergency or final protective  
5       order issued under the provisions of this article or section 5-  
6       509 or 5-608 of this chapter granting the relief pursuant to the  
7       provisions of this article, he or she shall immediately arrest  
8       the respondent.

9       (b) When a family or household member is alleged to  
10       have committed a violation of the provisions of section 27-  
11       903, a law-enforcement officer may arrest the perpetrator for  
12       said offense where:

13       (1) The law-enforcement officer has observed credible  
14       corroborative evidence, as defined in subsection 27-1002(b),  
15       that the offense has occurred; and

16       (2) The law-enforcement officer has received, from the  
17       victim or a witness, a verbal or written allegation of the facts  
18       constituting a violation of section 27-903; or

19       (3) The law-enforcement officer has observed credible  
20       evidence that the accused committed the offense.

21       (c) Any person who observes a violation of a protective  
22       order as described in this section, or the victim of such abuse  
23       or unlawful presence, may call a local law-enforcement  
24       agency, which shall verify the existence of a current order,  
25       and shall direct a law-enforcement officer to promptly inves-  
26       tigate the alleged violation.

27       (d) Where there is an arrest, the officer shall take the  
28       arrested person before a circuit court or a magistrate and,  
29       upon a finding of probable cause to believe a violation of an  
30       order as set forth in this section has occurred, the court or

31 magistrate shall set a time and place for a hearing in accor-  
32 dance with the West Virginia rules of criminal procedure.

#### PART 11. MISCELLANEOUS PROVISIONS.

##### **§48-27-1102. Authorization for the promulgation of legislative rules.**

1 The governor's committee on crime, delinquency and  
2 correction shall develop and promulgate rules for state,  
3 county and municipal law-enforcement officers, law-enforce-  
4 ment agencies and communications and emergency opera-  
5 tions centers which dispatch law-enforcement officers with  
6 regard to domestic violence: *Provided*, That such rules and  
7 procedures must be consistent with the priority criteria pre-  
8 scribed by generally applicable department procedures. Prior  
9 to the publication of proposed rules, the governor's commit-  
10 tee on crime, delinquency and correction shall convene a  
11 meeting or meetings of an advisory committee to assist in the  
12 development of the rules. The advisory committee shall be  
13 composed of persons invited by the committee to represent  
14 state, county and local law-enforcement agencies and offi-  
15 cers, to represent magistrates and court officials, to represent  
16 victims of domestic violence, to represent shelters receiving  
17 funding pursuant to article 26-101, et seq., of this chapter, to  
18 represent communications and emergency operations centers  
19 that dispatch law enforcement officers and to represent other  
20 persons or organizations who, in the discretion of the com-  
21 mittee, have an interest in the rules. The rules and the revi-  
22 sions thereof as provided in this section shall be promulgated  
23 as legislative rules in accordance with chapter twenty-nine-a  
24 of this code. The committee shall meet at least annually to  
25 review the rules and to propose revisions as a result of  
26 changes in law or policy.

#### **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

##### **Article**

- 2. Crimes Against the Person.**
- 7. Dangerous Weapons.**

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

§61-2-9. Malicious or unlawful assault; assault; battery; penalties.

§61-2-28. Domestic violence — Criminal acts.

**§61-2-9. Malicious or unlawful assault; assault; battery; penalties.**

1 (a) If any person maliciously shoot, stab, cut or wound  
2 any person, or by any means cause him bodily injury with  
3 intent to maim, disfigure, disable or kill, he shall, except  
4 where it is otherwise provided, be guilty of a felony and,  
5 upon conviction, shall be punished by confinement in the  
6 penitentiary not less than two nor more than ten years. If such  
7 act be done unlawfully, but not maliciously, with the intent  
8 aforesaid, the offender shall be guilty of a felony and, upon  
9 conviction, shall, in the discretion of the court, either be con-  
10 fined in the penitentiary not less than one nor more than five  
11 years, or be confined in jail not exceeding twelve months and  
12 fined not exceeding five hundred dollars.

13 (b) *Assault.* — If any person unlawfully attempts to com-  
14 mit a violent injury to the person of another or unlawfully  
15 commits an act which places another in reasonable apprehen-  
16 sion of immediately receiving a violent injury, he shall be  
17 guilty of a misdemeanor and, upon conviction, shall be con-  
18 fined in jail for not more than six months, or fined not more  
19 than one hundred dollars, or both such fine and imprison-  
20 ment.

21 (c) *Battery.* — If any person unlawfully and intentionally  
22 makes physical contact of an insulting or provoking nature  
23 with the person of another or unlawfully and intentionally  
24 causes physical harm to another person, he shall be guilty of  
25 a misdemeanor and, upon conviction, shall be confined in jail  
26 for not more than twelve months, or fined not more than five  
27 hundred dollars, or both such fine and imprisonment.

28 (d) Any person convicted of a violation of subsection (b)  
29 or (c) of this section who has, in the ten years prior to said

30 conviction, been convicted of a violation of either subsection  
31 (b) or (c) of this section where the victim was a current or  
32 former spouse, current or former sexual or intimate partner, a  
33 person with whom the defendant has a child in common, a  
34 person with whom the defendant cohabits or has cohabited, a  
35 parent or guardian, the defendant's child or ward or a mem-  
36 ber of the defendant's household at the time of the offense or  
37 convicted of a violation of section twenty-eight of this article  
38 or has served a period of pretrial diversion for an alleged  
39 violation of subsection (b) or (c) of this section or section  
40 twenty-eight of this article when the victim has such present  
41 or past relationship shall upon conviction be subject to the  
42 penalties set forth in section twenty-eight of this article for a  
43 second, third or subsequent criminal act of domestic violence  
44 offense, as appropriate.

**§61-2-28. Domestic violence — Criminal acts.**

1 (a) *Domestic battery.* — Any person who unlawfully and  
2 intentionally makes physical contact of an insulting or pro-  
3 voking nature with his or her family or household member or  
4 unlawfully and intentionally causes physical harm to his or  
5 her family or household member, is guilty of a misdemeanor  
6 and, upon conviction thereof, shall be confined in a county or  
7 regional jail for not more than twelve months, or fined not  
8 more than five hundred dollars, or both.

9 (b) *Domestic assault.* — Any person who unlawfully  
10 attempts to commit a violent injury against his or her family  
11 or household member or unlawfully commits an act which  
12 places his or her family or household member in reasonable  
13 apprehension of immediately receiving a violent injury, is  
14 guilty of a misdemeanor and, upon conviction thereof, shall  
15 be confined in a county or regional jail for not more than six  
16 months, or fined not more than one hundred dollars, or both.

17 (c) *Second offense.* -- Domestic Assault or Domestic  
18 Battery.

19       A person convicted of a violation of subsection (a) of this  
20 section after having been previously convicted of a violation  
21 of subsection (a) or (b) of this section, after having been con-  
22 victed of a violation of subsection (b) or (c), section nine of  
23 this article where the victim was his or her current or former  
24 spouse, current or former sexual or intimate partner, person  
25 with whom the defendant has a child in common, person with  
26 whom the defendant cohabits or has cohabited, a parent or  
27 guardian, the defendant's child or ward or a member of the  
28 defendant's household at the time of the offense or who has  
29 previously been granted a period of pretrial diversion pursu-  
30 ant to section twenty-two, article eleven of this chapter for a  
31 violation of subsection (a) or (b) of this section, or a violation  
32 of subsection (b) or (c), section nine of this article where the  
33 victim was a current or former spouse, current or former  
34 sexual or intimate partner, person with whom the defendant  
35 has a child in common, person with whom the defendant  
36 cohabits or has cohabited, a parent or guardian, the defen-  
37 dant's child or ward or a member of the defendant's house-  
38 hold at the time of the offense is guilty of a misdemeanor,  
39 and upon conviction thereof, shall be confined in a county or  
40 regional jail for not less than sixty days nor more than one  
41 year, or fined not more than one thousand dollars, or both.

42       A person convicted of a violation of subsection (b) of this  
43 section after having been previously convicted of a violation  
44 of subsection (a) or (b) of this section, after having been con-  
45 victed of a violation of subsection (b) or (c), section nine of  
46 this article where the victim was a current or former spouse,  
47 current or former sexual or intimate partner, person with  
48 whom the defendant has a child in common, person with  
49 whom the defendant cohabits or has cohabited, a parent or  
50 guardian, the defendant's child or ward or a member of the  
51 defendant's household at the time of the offense or having  
52 previously been granted a period of pretrial diversion pursu-  
53 ant to section twenty-two, article eleven of this chapter for a  
54 violation of subsection (a) or (b) of this section or subsection  
55 (b) or (c), section nine of this article where the victim was a  
56 current or former spouse, current or former sexual or intimate

57 partner, person with whom the defendant has a child in com-  
58 mon, person with whom the defendant cohabits or has cohab-  
59 ited, a parent or guardian, the defendant's child or ward or a  
60 member of the defendant's household at the time of the of-  
61 fense shall be confined in a county or regional jail for not less  
62 than thirty days nor more than six months, or fined not more  
63 than five hundred dollars, or both.

64 (d) Any person who has been convicted of a third or  
65 subsequent violation of the provisions of subsection (a) or (b)  
66 of this section, a third or subsequent violation of the provi-  
67 sions of section nine of this article where the victim was a  
68 current or former spouse, current or former sexual or intimate  
69 partner, person with whom the defendant has a child in com-  
70 mon, person with whom the defendant cohabits or has cohab-  
71 ited, a parent or guardian, the defendant's child or ward or a  
72 member of the defendant's household at the time of the of-  
73 fense or who has previously been granted a period of pretrial  
74 diversion pursuant to section twenty-two, article eleven of  
75 this chapter for a violation of subsection (a) or (b) of this  
76 section or a violation of the provisions of section nine of this  
77 article in which the victim was a current or former spouse,  
78 current or former sexual or intimate partner, person with  
79 whom the defendant has a child in common, person with  
80 whom the defendant cohabits or has cohabited, a parent or  
81 guardian, the defendant's child or ward or a member of the  
82 defendant's household at the time of the offense, or any com-  
83 bination of convictions or diversions for these offenses, is  
84 guilty of a felony if the offense occurs within ten years of a  
85 prior conviction of any of these offenses and, upon convic-  
86 tion thereof, shall be confined in a state correctional facility  
87 not less than one nor more than five years or fined not more  
88 than two thousand five hundred dollars, or both.

89 (e) As used in this section, "family or household mem-  
90 ber" means "family or household member" as defined in 48-  
91 27-204 of this code.

92 (f) A person charged with a violation of this section may  
93 not also be charged with a violation of subsection (b) or (c),  
94 section nine of this article for the same act.

95 (g) No law-enforcement officer may be subject to any  
96 civil or criminal action for false arrest or unlawful detention  
97 for effecting an arrest pursuant to this section or pursuant to  
98 48-27-1002 of this code.

#### **ARTICLE 7. DANGEROUS WEAPONS.**

§61-7-4. License to carry deadly weapons; how obtained.

§61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

#### **§61-7-4. License to carry deadly weapons; how obtained.**

1 (a) Except as provided in subsection (h) of this section,  
2 any person desiring to obtain a state license to carry a con-  
3 cealed deadly weapon shall apply to the sheriff of his or her  
4 county for such license, and shall pay to the sheriff, at the  
5 time of application, a fee of seventy-five dollars, of which  
6 fifteen dollars of that amount shall be deposited in the court-  
7 house facilities improvement fund created by section six,  
8 article twenty-six, chapter twenty-nine of this code. Con-  
9 cealed weapons permits may only be issued for pistols or  
10 revolvers. Each applicant shall file with the sheriff, a com-  
11 plete application, as prepared by the superintendent of the  
12 West Virginia state police, in writing, duly verified, which  
13 sets forth only the following licensing requirements:

14 (1) The applicant's full name, date of birth, social secu-  
15 rity number and a description of the applicant's physical  
16 features;

17 (2) That, on the date the application is made, the appli-  
18 cant is a bona fide resident of this state and of the county in  
19 which the application is made and has a valid driver's license  
20 or other state-issued photo identification showing such resi-  
21 dence;



22       (3) That the applicant is twenty-one years of age or older:  
23     *Provided*, That any individual who is less than twenty-one  
24     years of age and possesses a properly issued concealed weap-  
25     ons license as of the effective date of this article shall be  
26     licensed to maintain his or her concealed weapons license  
27     notwithstanding the provisions of this section requiring new  
28     applicants to be at least twenty-one years of age: *Provided*,  
29     *however*, That upon a showing of any applicant who is eigh-  
30     teen years of age or older that he or she is required to carry a  
31     concealed weapon as a condition for employment, and pres-  
32     ents satisfactory proof to the sheriff thereof, then he or she  
33     shall be issued a license upon meeting all other conditions of  
34     this section. Upon discontinuance of employment that re-  
35     quires the concealed weapons license, if the individual issued  
36     the license is not yet twenty-one years of age, then the indi-  
37     vidual issued the license is no longer eligible and must return  
38     his or her license to the issuing sheriff;

39       (4) That the applicant is not addicted to alcohol, a con-  
40     trolled substance or a drug and is not an unlawful user  
41     thereof;

42       (5) That the applicant has not been convicted of a felony  
43     or of an act of violence involving the misuse of a deadly  
44     weapon;

45       (6) That the applicant has not been convicted of a misde-  
46     meanor offense of assault or battery either under the provi-  
47     sions of section twenty-eight, article two of this chapter or  
48     the provisions of subsection (b) or (c), section nine, article  
49     two of this chapter in which the victim was a current or for-  
50     mer spouse, current or former sexual or intimate partner,  
51     person with whom the defendant has a child in common,  
52     person with whom the defendant cohabits or has cohabited, a  
53     parent or guardian, the defendant's child or ward or a mem-  
54     ber of the defendant's household at the time of the offense; or  
55     a misdemeanor offense with similar essential elements in a  
56     jurisdiction other than this state;

57 (7) That the applicant is not under indictment for a felony  
58 offense or is not currently serving a sentence of confinement,  
59 parole, probation or other court-ordered supervision imposed  
60 by a court of any jurisdiction or is the subject of an emer-  
61 gency or temporary domestic violence protective order or is  
62 the subject of a final domestic violence protective order en-  
63 tered by a court of any jurisdiction;

64 (8) That the applicant is physically and mentally compe-  
65 tent to carry such weapon;

66 (9) That the applicant has not been adjudicated to be  
67 mentally incompetent;

68 (10) That the applicant has qualified under the minimum  
69 requirements set forth in subsection (d) of this section for  
70 handling and firing such weapon: *Provided*, That this require-  
71 ment shall be waived in the case of a renewal applicant who  
72 has previously qualified;

73 (11) That the applicant authorizes the sheriff of the  
74 county, or his or her designee, to conduct an investigation  
75 relative to the information contained in the application.

76 (b) The sheriff shall conduct an investigation which shall  
77 verify that the information required in subdivisions (1), (2),  
78 (3), (5), (6), (8) and (9), subsection (a) of this section are true  
79 and correct.

80 (c) Sixty dollars of the application fee and any fees for  
81 replacement of lost or stolen licenses received by the sheriff  
82 shall be deposited by the sheriff into a concealed weapons  
83 license administration fund. Such fund shall be administered  
84 by the sheriff and shall take the form of an interest bearing  
85 account with any interest earned to be compounded to the  
86 fund. Any funds deposited in this concealed weapon license  
87 administration fund are to be expended by the sheriff to pay  
88 for the costs associated with issuing concealed weapons li-  
89 censes. Any surplus in the fund on hand at the end of each  
90 fiscal year may be expended for other law-enforcement pur-

91 poses or operating needs of the sheriff's office, as the sheriff  
92 may consider appropriate.

93 (d) All persons applying for a license must complete a  
94 training course in handling and firing a handgun. The suc-  
95 cessful completion of any of the following courses fulfills  
96 this training requirement:

97 (1) Any official national rifle association handgun safety  
98 or training course;

99 (2) Any handgun safety or training course or class avail-  
100 able to the general public offered by an official law-enforce-  
101 ment organization, community college, junior college, col-  
102 lege or private or public institution or organization or hand-  
103 gun training school utilizing instructors duly certified by such  
104 institution;

105 (3) Any handgun training or safety course or class con-  
106 ducted by a handgun instructor certified as such by the state  
107 or by the national rifle association;

108 (4) Any handgun training or safety course or class con-  
109 ducted by any branch of the United States military, reserve or  
110 national guard.

111 A photocopy of a certificate of completion of any of the  
112 courses or classes or an affidavit from the instructor, school,  
113 club, organization or group that conducted or taught said  
114 course or class attesting to the successful completion of the  
115 course or class by the applicant or a copy of any document  
116 which shows successful completion of the course or class  
117 shall constitute evidence of qualification under this section.

118 (e) All concealed weapons license applications must be  
119 notarized by a notary public duly licensed under article four,  
120 chapter twenty-nine of this code. Falsification of any portion  
121 of the application constitutes false swearing and is punishable  
122 under the provisions of section two, article five, chapter  
123 sixty-one of this code.

124 (f) If the information in the application is found to be true  
125 and correct, the sheriff shall issue a license. The sheriff shall  
126 issue or deny the license within forty-five days after the ap-  
127 plication is filed if all required background checks authorized  
128 by this section are completed.

129 (g) Before any approved license shall be issued or be-  
130 come effective, the applicant shall pay to the sheriff a fee in  
131 the amount of fifteen dollars which the sheriff shall forward  
132 to the superintendent of the West Virginia state police within  
133 thirty days of receipt. Any such license shall be valid for five  
134 years throughout the state, unless sooner revoked.

135 (h) All persons holding a current and valid concealed  
136 weapons license as of the sixteenth day of December, one  
137 thousand nine hundred ninety-five, shall continue to hold a  
138 valid concealed weapons license until his or her license ex-  
139 pires or is revoked as provided for in this article: *Provided,*  
140 That all reapplication fees shall be waived for applications  
141 received by the first day of January, one thousand nine hun-  
142 dred ninety-seven, for any person holding a current and valid  
143 concealed weapons license as of the sixteenth day of Decem-  
144 ber, one thousand nine hundred ninety-five, which contains  
145 use restrictions placed upon the license as a condition of  
146 issuance by the issuing circuit court. Any licenses reissued  
147 pursuant to this subsection will be issued for the time period  
148 of the original license.

149 (i) Each license shall contain the full name, social secu-  
150 rity number and address of the licensee and a space upon  
151 which the signature of the licensee shall be signed with pen  
152 and ink. The issuing sheriff shall sign and attach his or her  
153 seal to all license cards. The sheriff shall provide to each new  
154 licensee a duplicate license card, in size similar to other state  
155 identification cards and licenses, suitable for carrying in a  
156 wallet, and such license card is deemed a license for the pur-  
157 poses of this section.

158 (j) The superintendent of the West Virginia state police  
159 shall prepare uniform applications for licenses and license

160 cards showing that such license has been granted and shall do  
161 any other act required to be done to protect the state and see  
162 to the enforcement of this section.

163 (k) In the event an application is denied, the specific  
164 reasons for the denial shall be stated by the sheriff denying  
165 the application. Any person denied a license may file, in the  
166 circuit court of the county in which the application was made,  
167 a petition seeking review of the denial. Such petition shall be  
168 filed within thirty days of the denial. The court shall then  
169 determine whether the applicant is entitled to the issuance of  
170 a license under the criteria set forth in this section. The appli-  
171 cant may be represented by counsel, but in no case shall the  
172 court be required to appoint counsel for an applicant. The  
173 final order of the court shall include the court's findings of  
174 fact and conclusions of law. If the final order upholds the  
175 denial, the applicant may file an appeal in accordance with  
176 the rules of appellate procedure of the supreme court of ap-  
177 peals.

178 (l) In the event a license is lost or destroyed, the person  
179 to whom the license was issued may obtain a duplicate or  
180 substitute license for a fee of five dollars by filing a notarized  
181 statement with the sheriff indicating that the license has been  
182 lost or destroyed.

183 (m) The sheriff shall, immediately after the license is  
184 granted as aforesaid, furnish the superintendent of the West  
185 Virginia state police a certified copy of the approved applica-  
186 tion. It shall be the duty of the sheriff to furnish to the super-  
187 intendent of the West Virginia state police at any time so  
188 requested a certified list of all such licenses issued in the  
189 county. The superintendent of the West Virginia state police  
190 shall maintain a registry of all persons who have been issued  
191 concealed weapons licenses.

192 (n) All licensees must carry with them a state-issued  
193 photo identification card with the concealed weapons license  
194 whenever the licensee is carrying a concealed weapon. Any  
195 licensee who fails to have in his or her possession a state-

196 issued photo identification card and a current concealed  
197 weapons license while carrying a concealed weapon shall be  
198 guilty of a misdemeanor and, upon conviction thereof, shall  
199 be fined not less than fifty or more than two hundred dollars  
200 for each offense.

201 (o) The sheriff shall deny any application or revoke any  
202 existing license upon determination that any of the licensing  
203 application requirements established in this section have been  
204 violated by the licensee.

205 (p) No person who is engaged in the receipt, review or in  
206 the issuance or revocation of a concealed weapon license  
207 shall incur any civil liability as the result of the lawful perfor-  
208 mance of his or her duties under this article.

209 (q) Notwithstanding the provisions of subsection (a) of  
210 this section, with respect to application by a former law-en-  
211 forcement officer honorably retired from agencies governed  
212 by article fourteen, chapter seven of this code; article four-  
213 teen, chapter eight of this code; article two, chapter fifteen of  
214 this code; and article seven, chapter twenty of this code, an  
215 honorably retired officer is exempt from payment of fees and  
216 costs as otherwise required by this section, and the applica-  
217 tion of the honorably retired officer shall be granted without  
218 proof or inquiry by the sheriff as to those requirements set  
219 forth in subdivision (9), subsection (a) of this section, if the  
220 officer meets the remainder of the requirements of this sec-  
221 tion and has the approval of the appropriate chief law-en-  
222 forcement officer.

**§61-7-7. Persons prohibited from possessing firearms; classifica-  
tions; reinstatement of rights to possess; of-  
fenses; penalties.**

1 (a) Except as provided for in this section, no person shall  
2 possess a firearm as such is defined in section two of this  
3 article who:

- 4 (1) Has been convicted in any court of a crime punish-  
5 able by imprisonment for a term exceeding one year;
- 6 (2) Is addicted to alcohol;
- 7 (3) Is an unlawful user of or addicted to any controlled  
8 substance;
- 9 (4) Has been adjudicated as a mental defective or who  
10 has been involuntarily committed to a mental institution;
- 11 (5) Being an alien is illegally or unlawfully in the United  
12 States;
- 13 (6) Has been discharged from the armed forces under  
14 dishonorable conditions;
- 15 (7) Is subject to a domestic violence protective order that:
- 16 (A) Was issued after a hearing of which such person  
17 received actual notice and at which such person had an op-  
18 portunity to participate;
- 19 (B) Restrains such person from harassing, stalking or  
20 threatening an intimate partner of such person or child of  
21 such intimate partner or person, or engaging in other conduct  
22 that would place an intimate partner in reasonable fear of  
23 bodily injury to the partner or child; and
- 24 (C)(i) Includes a finding that such person represents a  
25 credible threat to the physical safety of such intimate partner  
26 or child; or
- 27 (ii) By its terms explicitly prohibits the use, attempted  
28 use or threatened use of physical force against such intimate  
29 partner or child that would reasonably be expected to cause  
30 bodily injury; or
- 31 (8) Has been convicted of a misdemeanor offense of  
32 assault or battery either under the provisions of section  
33 twenty-eight, article two of this chapter or the provisions of

34 subsection (b) or (c), section nine, article two of this chapter  
35 in which the victim was a current or former spouse, current  
36 or former sexual or intimate partner, person with whom the  
37 defendant has a child in common, person with whom the  
38 defendant cohabits or has cohabited, a parent or guardian, the  
39 defendant's child or ward or a member of the defendant's  
40 household at the time of the offense or has been convicted in  
41 any court of any jurisdiction of a comparable misdemeanor  
42 crime of domestic violence.

43 Any person who violates the provisions of this subsection  
44 shall be guilty of a misdemeanor and, upon conviction  
45 thereof, shall be fined not less than one hundred dollars nor  
46 more than one thousand dollars or confined in the county jail  
47 for not less than ninety days nor more than one year, or both.

48 (b) Notwithstanding the provisions of subsection (a) of  
49 this section, any person:

50 (1) Who has been convicted in this state or any other  
51 jurisdiction of a felony crime of violence against the person  
52 of another or of a felony sexual offense; or

53 (2) Who has been convicted in this state or any other  
54 jurisdiction of a felony controlled substance offense involv-  
55 ing a Schedule I controlled substance other than marijuana, a  
56 Schedule II or a Schedule III controlled substance as such are  
57 defined in sections two hundred four, two hundred five and  
58 two hundred six, article two, chapter sixty-a of this code and  
59 who possesses a firearm as such is defined in section two of  
60 this article shall be guilty of a felony and, upon conviction  
61 thereof, shall be confined in a state correctional facility for  
62 not more than five years or fined not more than five thousand  
63 dollars, or both. The provisions of subsection (c) of this sec-  
64 tion shall not apply to persons convicted of offenses referred  
65 to in this subsection or to persons convicted of a violation of  
66 this subsection.

67 (c) Any person prohibited from possessing a firearm by  
68 the provisions of subsection (a) of this section may petition



69 the circuit court of the county in which he or she resides to  
70 regain the ability to possess a firearm and if the court finds  
71 by clear and convincing evidence that the person is compe-  
72 tent and capable of exercising the responsibility concomitant  
73 with the possession of a firearm, the court may enter an order  
74 allowing the person to possess a firearm if such possession  
75 would not violate any federal law.

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## CHAPTER 86

**(Com. Sub. for S. B. 258 — By Senators Caldwell, Dempsey,  
Minard, Minear, Rowe, Unger, Hunter and White)**

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[Passed February 19, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §48-27-310, §48-27-802 and §48-27-903 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §48-28-1, §48-28-2, §48-28-3, §48-28-4, §48-28-5, §48-28-6, §48-28-7, §48-28-8, §48-28-9 and §48-28-10, all relating to the enforcement of domestic violence protective orders generally; granting full faith and credit to out-of-state protection orders; expanding the West Virginia state police registry of in-state protective orders to include registration of out-of-state protection orders; expanding offenses and penalties for violations of in-state protective orders to include violations of conditions of bail, probation or parole which are intended to protect the personal safety of another; adopting the uniform interstate enforcement of domestic violence protection orders act; setting forth definitions; providing for enforcement of out-of-state protection orders even if the relief sought would not be available in West Virginia; setting forth criteria for enforcement of out-of-state protection orders, including protection provisions of valid out-of-state orders governing custody and visitation and mutual protection orders; providing that an out-of-state protection

order which appears authentic on its face is presumed to be valid; providing for nonjudicial enforcement of out-of-state protection orders by law-enforcement officers with probable cause to believe that a valid protection order exists and has been violated; providing for registration of an out-of-state protection order with the West Virginia state police; providing that registration is not a prerequisite to enforcement of an out-of-state protection order; providing immunity from civil or criminal liability for law-enforcement or other government officers or agencies for good faith acts or omissions undertaken in the course of enforcing an out-of-state protection order; providing criminal penalties for violation of out-of-state protection orders or conditions of bail, probation or parole; specifying that a protected individual may pursue other remedies; urging a construction of the act that encompasses uniformity of application and construction with other states that adopt it; and specifying the orders and actions to which the act is applicable.

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

That §48-27-310, §48-27-802 and §48-27-903 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §48-28-1, §48-28-2, §48-28-3, §48-28-4, §48-28-5, §48-28-6, §48-28-7, §48-28-8, §48-28-9 and §48-28-10, all to read as follows:

**Article**

**27. Prevention and Treatment of Domestic Violence.**

**28. Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.**

**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

§48-27-310. Full faith and credit.

§48-27-802. Maintenance of registry by state police.

§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

**§48-27-310. Full faith and credit.**

1 Any protective order issued pursuant to this article shall  
2 be effective throughout the state in every county. Any pro-  
3 tection order issued by any other state of the United States,  
4 the District of Columbia, Puerto Rico, the United States Vir-  
5 gin Islands or any territory or insular possession subject to  
6 the jurisdiction of the United States or any Indian tribe or  
7 band that has jurisdiction to issue protection orders shall be  
8 accorded full faith and credit and enforced in accordance  
9 with the provisions of article twenty-eight of this chapter.

**§48-27-802. Maintenance of registry by state police.**

1 (a) The West Virginia state police shall maintain a regis-  
2 try in which it shall enter certified copies of protective orders  
3 entered by courts from every county in this state pursuant to  
4 the provisions of this article and of protection orders issued  
5 by another jurisdiction pursuant to its law: *Provided*, That the  
6 provisions of this subsection are not effective until a central  
7 automated state law-enforcement information system is de-  
8 veloped.

9 (b) A petitioner who obtains a protective order pursuant  
10 to this article, or a protection order from another jurisdiction  
11 pursuant to its law, may register that order in any county  
12 within this state where the petitioner believes enforcement  
13 may be necessary.

14 (c) A West Virginia protective order may be registered  
15 by the petitioner in a county other than the issuing county by  
16 obtaining a copy of the order of the issuing court, certified by  
17 the clerk of that court, and presenting that certified order to  
18 the local office of the West Virginia state police where the  
19 order is to be registered.

20 (d) Upon receipt of a certified order for registration, the  
21 local office of the West Virginia state police shall provide  
22 certified copies to any law-enforcement agency within its  
23 jurisdiction, including any municipal police office and the  
24 office of the sheriff.

25 (e) Nothing in this section precludes the enforcement of  
26 an order in a county other than the county or jurisdiction in  
27 which the order was issued if the petitioner has not registered  
28 the order in the county in which an alleged violation of the  
29 order occurs.

**\*§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.**

1 (a) A respondent who abuses the petitioner or minor  
2 children or who is physically present at any location in know-  
3 ing and willful violation of the terms of: (1) An emergency or  
4 final protective order issued under the provisions of this arti-  
5 cle or section five hundred nine, article five of this chapter  
6 granting relief pursuant to the provisions of this article; or (2)  
7 a condition of bail, probation or parole which has the express  
8 intent or effect of protecting the personal safety of a particu-  
9 lar person or persons is guilty of a misdemeanor and, upon  
10 conviction thereof, shall be confined in the county or regional  
11 jail for a period of not less than one day nor more than one  
12 year, which jail term shall include actual confinement of not  
13 less than twenty-four hours, and shall be fined not less than  
14 two hundred fifty dollars nor more than two thousand dollars.

15 (b) A respondent who is convicted of a second or subse-  
16 quent offense under subsection (a) of this section is guilty of  
17 a misdemeanor and, upon conviction thereof, shall be con-  
18 fined in the county or regional jail for not less than three  
19 months nor more than one year, which jail term shall include  
20 actual confinement of not less than twenty-four hours, and  
21 fined not less than five hundred dollars nor more than three  
22 thousand dollars, or both.

**ARTICLE 28. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT.**

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4605 (Chapter 85), which passed subsequent to this act.

- §48-28-1. Title.
- §48-28-2. Definitions.
- §48-28-3. Judicial enforcement of order.
- §48-28-4. Nonjudicial enforcement of order.
- §48-28-5. Registration of order.
- §48-28-6. Immunity.
- §48-28-7. Criminal offenses and penalties.
- §48-28-8. Other remedies.
- §48-28-9. Uniformity of application and construction.
- §48-28-10. Transitional provision.

#### **§48-28-1. Title.**

- 1 This article may be cited as the “Uniform Interstate En-
- 2 forcement of Domestic Violence Protection Orders Act”.

#### **§48-28-2. Definitions.**

- 1 In this article:

- 2 (1) “Court” means a circuit court, family court or magis-
- 3 trate court which has jurisdiction over domestic violence
- 4 proceedings pursuant to article twenty-seven of this chapter.

- 5 (2) “Foreign protection order” means a protection order
- 6 issued by a tribunal of another state.

- 7 (3) “Issuing state” means the state whose tribunal issues
- 8 a protection order.

- 9 (4) “Mutual foreign protection order” means a foreign
- 10 protection order that includes provisions in favor of both the
- 11 protected individual seeking enforcement of the order and the
- 12 respondent.

- 13 (5) “Protected individual” means an individual protected
- 14 by a protection order.

- 15 (6) “Protection order” means an injunction or other order,
- 16 issued by a tribunal under the domestic violence, family vio-
- 17 lence or antistalking laws of the issuing state, to prevent an

18 individual from engaging in violent or threatening acts  
19 against, harassment of, contact or communication with, or  
20 physical proximity to another individual.

21 (7) “West Virginia protective order” means an order  
22 issued pursuant to article twenty-seven of this chapter or to  
23 section five hundred nine, article five of this chapter.

24 (8) “Respondent” means the individual against whom  
25 enforcement of a protection order is sought.

26 (9) “State” means a state of the United States, the District  
27 of Columbia, Puerto Rico, the United States Virgin Islands or  
28 any territory or insular possession subject to the jurisdiction  
29 of the United States. The term includes an Indian tribe or  
30 band that has jurisdiction to issue protection orders.

31 (10) “Tribunal” means a court, agency or other entity  
32 authorized by law to issue or modify a protection order.

### **§48-28-3. Judicial enforcement of order.**

1 (a) A person authorized by the law of this state to seek  
2 enforcement of a West Virginia protective order may seek  
3 enforcement of a valid foreign protection order in a court of  
4 this state. The court shall enforce the terms of the order,  
5 including terms that provide relief that a court of this state  
6 would lack power to provide but for this section. The court  
7 shall enforce the order, whether the order was obtained by  
8 independent action or in another proceeding, if it was issued  
9 in response to a complaint, petition or motion filed by or on  
10 behalf of an individual seeking protection. In a proceeding to  
11 enforce a foreign protection order, the court shall follow the  
12 procedures of this state for the enforcement of West Virginia  
13 protective orders.

14 (b) A court of this state may not enforce a foreign protec-  
15 tion order issued by a tribunal of a state that does not recog-  
16 nize the standing of a protected individual to seek enforce-  
17 ment of the order.

18 (c) A court of this state shall enforce the provisions of a  
19 valid foreign protection order which govern custody and  
20 visitation if the order was issued in accordance with the juris-  
21 dictional requirements governing the issuance of custody and  
22 visitation orders in the issuing state or under federal law and  
23 with the requirements set out in subsection (d) of this section.

24 (d) A foreign protection order is valid if it:

25 (1) Identifies the protected individual and the respondent;

26 (2) Is currently in effect;

27 (3) Was issued by a tribunal that had jurisdiction over the  
28 parties and subject matter under the law of the issuing state;  
29 and

30 (4) Was issued after the respondent was given reasonable  
31 notice and had an opportunity to be heard before the tribunal  
32 issued the order or, in the case of an order ex parte, the re-  
33 spondent was given notice and has had or will have an oppor-  
34 tunity to be heard within a reasonable time after the order  
35 was issued in a manner consistent with the respondent's  
36 rights to due process of law.

37 (e) A foreign protection order which appears authentic on  
38 its face is presumed to be valid.

39 (f) Absence of any of the criteria for validity of a foreign  
40 protection order is an affirmative defense in an action seeking  
41 enforcement of the order.

42 (g) A court of this state may enforce provisions of a mu-  
43 tual foreign protection order which favor a respondent only  
44 if:

45 (1) The respondent filed a written pleading seeking a  
46 protection order from the tribunal of the issuing state; and

47 (2) The tribunal of the issuing state made specific find-  
48 ings in favor of the respondent.

**§48-28-4. Nonjudicial enforcement of order.**

1       (a) A law-enforcement officer of this state, upon deter-  
2 mining that there is probable cause to believe that a valid  
3 foreign protection order exists and that the order has been  
4 violated, shall enforce the order as if it were a West Virginia  
5 protective order. Presentation of a foreign protection order  
6 that identifies both the protected individual and the respon-  
7 dent and that appears, on its face, to be authentic and cur-  
8 rently in effect constitutes probable cause to believe that a  
9 valid foreign protection order exists. For the purposes of this  
10 section, the protection order may be inscribed on a tangible  
11 medium or may have been stored in an electronic or other  
12 medium if it is retrievable in perceivable form. Presentation  
13 of a certified copy of a protection order is not required for  
14 enforcement.

15       (b) If a foreign protection order is not presented, a  
16 law-enforcement officer of this state may consider other  
17 credible information in determining whether there is probable  
18 cause to believe that a valid foreign protection order exists.

19       (c) If a law-enforcement officer of this state determines  
20 that an otherwise valid foreign protection order cannot be  
21 enforced because the respondent has not been notified of or  
22 served with the order, the officer shall inform the respondent  
23 of the order, make a reasonable effort to serve the order upon  
24 the respondent and allow the respondent a reasonable oppor-  
25 tunity to comply with the order before enforcing the order.

26       (d) Registration or filing of an order in this state is not  
27 required for the enforcement of a valid foreign protection  
28 order pursuant to this article.

**§48-28-5. Registration of order.**

1       (a) Any individual may register a foreign protection order  
2 in this state by:



3 (1) Presenting a certified copy of the order to a local  
4 office of the West Virginia state police for registration in  
5 accordance with the provisions of section eight hundred two,  
6 article twenty-seven of this chapter; or

7 (2) Presenting a certified copy of the order to the clerk of  
8 the court in which enforcement may be sought and request  
9 that the order be forwarded to the West Virginia state police  
10 for registration in accordance with the provisions of section  
11 eight hundred two, article twenty-seven of this chapter.

12 (b) An individual registering a foreign protection order  
13 shall file an affidavit by the protected individual stating that,  
14 to the best of the protected individual's knowledge, the order  
15 is currently in effect.

16 (c) Upon receipt of a foreign protection order for regis-  
17 tration, the local office of the West Virginia state police  
18 shall:

19 (1) Provide certified copies of the order to any law-en-  
20 forcement agency within its jurisdiction, including any mu-  
21 nicipal police office and the office of the sheriff;

22 (2) Register the order in accordance with the provisions  
23 of this section and of section eight hundred two, article  
24 twenty-seven of this chapter;

25 (3) Furnish to the individual registering the order a certi-  
26 fied copy of the registered order.

27 (d) A registered foreign protection order that is shown to  
28 be inaccurate or not currently in effect must be corrected or  
29 removed from the registry.

30 (e) A foreign protection order registered under this article  
31 may be entered in any existing state or federal registry of  
32 protection orders in accordance with applicable law.

33 (f) A fee may not be charged for the registration of a  
34 foreign protection order.

**§48-28-6. Immunity.**

1 This state or a local governmental agency, or a  
2 law-enforcement officer, prosecuting attorney, clerk of court  
3 or any state or local governmental official acting in an offi-  
4 cial capacity, is immune from civil and criminal liability for  
5 an act or omission arising out of the registration or enforce-  
6 ment of a foreign protection order or the detention or arrest of  
7 an alleged violator of a foreign protection order if the act or  
8 omission was done in good faith in an effort to comply with  
9 this article.

**§48-28-7. Criminal offenses and penalties.**

1 (a) A respondent who abuses, as that term is defined in  
2 section two hundred two, article twenty-seven of this chapter,  
3 a protected individual or who is physically present at any  
4 location in knowing and willful violation of the terms of: (1)  
5 A valid foreign protection order; (2) a protection order en-  
6 tered in any pending foreign divorce action which enjoins the  
7 offending party from molesting or interfering with another  
8 party or interfering with the custodial or visitation rights of  
9 another person; or (3) a condition of bail, probation or parole  
10 imposed in another state which has the express intent or ef-  
11 fect of protecting the personal safety of a particular person or  
12 persons is guilty of a misdemeanor and, upon conviction  
13 thereof, shall be confined in the county or regional jail for a  
14 period of not less than one day nor more than one year, which  
15 jail term shall include actual confinement of not less than  
16 twenty-four hours, and shall be fined not less than two hun-  
17 dred fifty dollars nor more than two thousand dollars.

18 (b) A respondent who is convicted of a second or subse-  
19 quent offense under subsection (a) of this section is guilty of  
20 a misdemeanor and, upon conviction thereof, shall be con-  
21 fined in the county or regional jail for not less than three  
22 months nor more than one year, which jail term shall include  
23 actual confinement of not less than twenty-four hours, and  
24 fined not less than five hundred dollars nor more than three  
25 thousand dollars.

**§48-28-8. Other remedies.**

1 A protected individual who pursues remedies under this  
2 article is not precluded from pursuing other legal or equitable  
3 remedies against the respondent.

**§48-28-9. Uniformity of application and construction.**

1 In applying and construing this act, consideration must be  
2 given to the need to promote uniformity of the law with re-  
3 spect to its subject matter among states that enact it.

**§48-28-10. Transitional provision.**

1 This article applies to:

2 (a) Foreign protection orders issued before the effective  
3 date of this article; and

4 (b) Continuing actions for enforcement of foreign protec-  
5 tion orders commenced before the effective date of this arti-  
6 cle. A request for enforcement, made on or after the effective  
7 date of this article, of a foreign protection order based on  
8 violations which occurred before the effective date of this  
9 article is governed by this article.

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**CHAPTER 87**

**(S. B. 166 — By Senators Tomblin, Mr. President, and Sprouse)**  
**[By Request of the Executive]**

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[Passed February 5, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended,  
by adding thereto a new section, designated §8-11-1b; to

amend and reenact §17B-4-3 of said code; to amend and reenact §17C-5-2, §17C-5-6a and §17C-5-8 of said code; to amend and reenact §17C-5A-1, §17C-5A-1a, §17C-5A-2 and §17C-5A-3a of said code; to amend and reenact §20-7-18 and §20-7-18b of said code; to amend and reenact §33-6A-1 of said code; to amend said code by adding thereto a new section, designated §50-3-2b; and to amend said code by adding thereto a new section, designated §59-1-11a, all relating to driving a motor vehicle or operating a motorized vessel while under the influence of alcohol, controlled substances or drugs; limiting the prior offenses that can be used to enhance sentences to those that occurred within the ten-year period next preceding the date of arrest in the current proceeding; and imposing additional costs on defendants convicted of offenses involving the driving of a motor vehicle or operating a motorized vessel while under the influence of alcohol, controlled substances or drugs for the use of counties and municipalities.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-11-1b; that §17B-4-3 of said code be amended and reenacted; that §17C-5-2, §17C-5-6a and §17C-5-8 of said code be amended and reenacted; that §17C-5A-1, §17C-5A-1a, §17C-5A-2 and §17C-5A-3a of said code be amended and reenacted; that §20-7-18 and §20-7-18b of said code be amended and reenacted; that §33-6A-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §50-3-2b; and that said code be amended by adding thereto a new section, designated §59-1-11a, all to read as follows:

**Chapter**

- 8. Municipal Corporations.**
- 17b. Motor Vehicle Driver's Licenses.**
- 17c. Traffic Regulations and Laws of the Road.**
- 20. Natural Resources.**
- 33. Insurance.**
- 50. Magistrate Courts.**
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

**CHAPTER 8. MUNICIPAL CORPORATIONS.****ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.****§8-11-1b. Additional costs in certain criminal proceedings.**

1        In each criminal case before a mayor or in the municipal  
2 court of a municipality in which the defendant is convicted,  
3 whether by plea or at trial, under the provisions of a municipi-  
4 pal ordinance which has the same elements as an offense  
5 described in section two, article five, chapter seventeen-c of  
6 this code or section eighteen-b, article seven, chapter twenty  
7 of this code, there shall be imposed, in addition to other  
8 costs, fines, forfeitures or penalties as may be allowed by  
9 law, costs in the amount of fifty-five dollars. The clerk of  
10 each municipal court, or other person designated to receive  
11 fines and costs, shall, for purposes of further defraying the  
12 cost to the municipality of enforcing the provisions of the  
13 ordinance or ordinances described in this section and related  
14 provisions, deposit these moneys in the general revenue fund  
15 of the municipality. The provisions of this section shall be  
16 effective after the thirtieth day of June, two thousand four.

**CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.****ARTICLE 4. VIOLATIONS OF LICENSE PROVISIONS.****§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.**

1        (a) Except as otherwise provided in subsection (b) or (d)  
2 of this section, any person who drives a motor vehicle on any  
3 public highway of this state at a time when his or her privi-  
4 lege to do so has been lawfully suspended or revoked by this

5 state or any other jurisdiction is, for the first offense, guilty  
6 of a misdemeanor and, upon conviction thereof, shall be  
7 fined not less than one hundred dollars nor more than five  
8 hundred dollars; for the second offense, the person is guilty  
9 of a misdemeanor and, upon conviction thereof, shall be  
10 confined in a county or regional jail for a period of ten days  
11 and, in addition to the mandatory jail sentence, shall be fined  
12 not less than one hundred dollars nor more than five hundred  
13 dollars; for the third or any subsequent offense, the person is  
14 guilty of a misdemeanor and, upon conviction thereof, shall  
15 be confined in a county or regional jail for six months and, in  
16 addition to the mandatory jail sentence, shall be fined not less  
17 than one hundred fifty dollars nor more than five hundred  
18 dollars.

19 (b) Any person who drives a motor vehicle on any public  
20 highway of this state at a time when his or her privilege to do  
21 so has been lawfully revoked for driving under the influence  
22 of alcohol, controlled substances or other drugs, or for driv-  
23 ing while having an alcoholic concentration in his or her  
24 blood of eight hundredths of one percent or more, by weight,  
25 or for refusing to take a secondary chemical test of blood  
26 alcohol content, is, for the first offense, guilty of a misde-  
27 meanor and, upon conviction thereof, shall be confined in a  
28 county or regional jail for six months and in addition to the  
29 mandatory jail sentence, shall be fined not less than one hun-  
30 dred dollars nor more than five hundred dollars; for the sec-  
31 ond offense, the person is guilty of a misdemeanor and, upon  
32 conviction thereof, shall be confined in a county or regional  
33 jail for a period of one year and, in addition to the mandatory  
34 jail sentence, shall be fined not less than one thousand dollars  
35 nor more than three thousand dollars; for the third or any  
36 subsequent offense, the person is guilty of a felony and, upon  
37 conviction thereof, shall be imprisoned in a state correctional  
38 facility for not less than one year nor more than three years  
39 and, in addition to the mandatory prison sentence, shall be  
40 fined not less than three thousand dollars nor more than five  
41 thousand dollars.

42 (c) Upon receiving a record of the first or subsequent  
43 conviction of any person under subsection (b) of this section  
44 upon a charge of driving a vehicle while the license of such  
45 person was lawfully suspended or revoked, the division shall  
46 extend the period of such suspension or revocation for an  
47 additional period of one year from and after the date such  
48 person would otherwise have been entitled to apply for a new  
49 license. Upon receiving a record of the second or subsequent  
50 conviction of any person under subsection (a) of this section  
51 upon a charge of driving a vehicle while the license of such  
52 person was lawfully suspended or revoked, the division shall  
53 extend the period of such suspension or revocation for an  
54 additional period of one year from and after the date such  
55 person would otherwise have been entitled to apply for a new  
56 license.

57 (d) Any person who drives a motor vehicle on any public  
58 highway of this state at a time when his or her privilege to do  
59 so has been lawfully suspended for driving while under the  
60 age of twenty-one years with an alcohol concentration in his  
61 or her blood of two hundredths of one percent or more, by  
62 weight, but less than eight hundredths of one percent, by  
63 weight, is guilty of a misdemeanor and, upon conviction  
64 thereof, shall be confined in a county or regional jail for  
65 twenty-four hours or shall be fined not less than fifty dollars  
66 nor more than five hundred dollars, or both.

67 (e) An order for home detention by the court pursuant to  
68 the provisions of article eleven-b, chapter sixty-two of this  
69 code may be used as an alternative sentence to any period of  
70 incarceration required by this section.

## **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

### **Article**

#### **5. Serious Traffic Offenses.**

##### **5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving under the Influence of Alcohol, Controlled Sub- stances or Drugs.**

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

§17C-5-8. Interpretation and use of chemical test.

**§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.**

1 (a) Any person who:

2 (1) Drives a vehicle in this state while he or she:

3 (A) Is under the influence of alcohol; or

4 (B) Is under the influence of any controlled substance; or

5 (C) Is under the influence of any other drug; or

6 (D) Is under the combined influence of alcohol and any  
7 controlled substance or any other drug; or

8 (E) Has an alcohol concentration in his or her blood of  
9 eight hundredths of one percent or more, by weight; and

10 (2) When so driving does any act forbidden by law or  
11 fails to perform any duty imposed by law in the driving of the  
12 vehicle, which act or failure proximately causes the death of  
13 any person within one year next following the act or failure;  
14 and

15 (3) Commits the act or failure in reckless disregard of the  
16 safety of others, and when the influence of alcohol, con-  
17 trolled substances or drugs is shown to be a contributing  
18 cause to the death, is guilty of a felony and, upon conviction  
19 thereof, shall be imprisoned in a state correctional facility for  
20 not less than one nor more than ten years and shall be fined  
21 not less than one thousand dollars nor more than three thou-  
22 sand dollars.



23 (b) Any person who:

24 (1) Drives a vehicle in this state while he or she:

25 (A) Is under the influence of alcohol; or

26 (B) Is under the influence of any controlled substance; or

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

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

30 (E) Has an alcohol concentration in his or her blood of  
31 eight hundredths of one percent or more, by weight; and

32 (2) When so driving does any act forbidden by law or  
33 fails to perform any duty imposed by law in the driving of the  
34 vehicle, which act or failure proximately causes the death of  
35 any person within one year next following the act or failure,  
36 is guilty of a misdemeanor and, upon conviction thereof,  
37 shall be confined in the county or regional jail for not less  
38 than ninety days nor more than one year and shall be fined  
39 not less than five hundred dollars nor more than one thousand  
40 dollars.

41 (c) Any person who:

42 (1) Drives a vehicle in this state while he or she:

43 (A) Is under the influence of alcohol; or

44 (B) Is under the influence of any controlled substance; or

45 (C) Is under the influence of any other drug; or

46 (D) Is under the combined influence of alcohol and any  
47 controlled substance or any other drug; or

48 (E) Has an alcohol concentration in his or her blood of  
49 eight hundredths of one percent or more, by weight; and

50 (2) When so driving does any act forbidden by law or  
51 fails to perform any duty imposed by law in the driving of the  
52 vehicle, which act or failure proximately causes bodily injury  
53 to any person other than himself or herself, is guilty of a  
54 misdemeanor and, upon conviction thereof, shall be confined  
55 in the county or regional jail for not less than one day nor  
56 more than one year, which jail term is to include actual con-  
57 finement of not less than twenty-four hours, and shall be  
58 fined not less than two hundred dollars nor more than one  
59 thousand dollars.

60 (d) Any person who:

61 (1) Drives a vehicle in this state while he or she:

62 (A) Is under the influence of alcohol; or

63 (B) Is under the influence of any controlled substance; or

64 (C) Is under the influence of any other drug; or

65 (D) Is under the combined influence of alcohol and any  
66 controlled substance or any other drug; or

67 (E) Has an alcohol concentration in his or her blood of  
68 eight hundredths of one percent or more, by weight;

69 (2) Is guilty of a misdemeanor and, upon conviction  
70 thereof, shall be confined in the county or regional jail for not  
71 less than one day nor more than six months, which jail term  
72 is to include actual confinement of not less than twenty-four  
73 hours, and shall be fined not less than one hundred dollars  
74 nor more than five hundred dollars.

75 (e) Any person who, being an habitual user of narcotic  
76 drugs or amphetamine or any derivative thereof, drives a  
77 vehicle in this state, is guilty of a misdemeanor and, upon  
78 conviction thereof, shall be confined in the county or regional  
79 jail for not less than one day nor more than six months, which  
80 jail term is to include actual confinement of not less than

81 twenty-four hours, and shall be fined not less than one hun-  
82 dred dollars nor more than five hundred dollars.

83 (f) Any person who:

84 (1) Knowingly permits his or her vehicle to be driven in  
85 this state by any other person who:

86 (A) Is under the influence of alcohol; or

87 (B) Is under the influence of any controlled substance; or

88 (C) Is under the influence of any other drug; or

89 (D) Is under the combined influence of alcohol and any  
90 controlled substance or any other drug; or

91 (E) Has an alcohol concentration in his or her blood of  
92 eight hundredths of one percent or more, by weight;

93 (2) Is guilty of a misdemeanor and, upon conviction  
94 thereof, shall be confined in the county or regional jail for not  
95 more than six months and shall be fined not less than one  
96 hundred dollars nor more than five hundred dollars.

97 (g) Any person who knowingly permits his or her vehicle  
98 to be driven in this state by any other person who is an habit-  
99 ual user of narcotic drugs or amphetamine or any derivative  
100 thereof, is guilty of a misdemeanor and, upon conviction  
101 thereof, shall be confined in the county or regional jail for not  
102 more than six months and shall be fined not less than one  
103 hundred dollars nor more than five hundred dollars.

104 (h) Any person under the age of twenty-one years who  
105 drives a vehicle in this state while he or she has an alcohol  
106 concentration in his or her blood of two hundredths of one  
107 percent or more, by weight, but less than eight hundredths of  
108 one percent, by weight, for a first offense under this subsec-  
109 tion, is guilty of a misdemeanor and, upon conviction thereof,  
110 shall be fined not less than twenty-five dollars nor more than

111 one hundred dollars. For a second or subsequent offense  
112 under this subsection, the person is guilty of a misdemeanor  
113 and, upon conviction thereof, shall be confined in the county  
114 or regional jail for twenty-four hours, and shall be fined not  
115 less than one hundred dollars nor more than five hundred  
116 dollars. A person who is charged with a first offense under  
117 the provisions of this subsection may move for a continuance  
118 of the proceedings, from time to time, to allow the person to  
119 participate in the vehicle alcohol test and lock program as  
120 provided for in section three-a, article five-a of this chapter.  
121 Upon successful completion of the program, the court shall  
122 dismiss the charge against the person and expunge the per-  
123 son's record as it relates to the alleged offense. In the event  
124 the person fails to successfully complete the program, the  
125 court shall proceed to an adjudication of the alleged offense.  
126 A motion for a continuance under this subsection may not be  
127 construed as an admission or be used as evidence.

128 A person arrested and charged with an offense under the  
129 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of  
130 this section may not also be charged with an offense under  
131 this subsection arising out of the same transaction or occur-  
132 rence.

133 (i) Any person who:

134 (1) Drives a vehicle in this state while he or she:

135 (A) Is under the influence of alcohol; or

136 (B) Is under the influence of any controlled substance; or

137 (C) Is under the influence of any other drug; or

138 (D) Is under the combined influence of alcohol and any  
139 controlled substance or any other drug; or

140 (E) Has an alcohol concentration in his or her blood of  
141 eight hundredths of one percent or more, by weight; and

142 (2) The person when so driving has on or within the mo-  
143 tor vehicle one or more other persons who are unemancipated  
144 minors who have not reached their sixteenth birthday, is  
145 guilty of a misdemeanor and, upon conviction thereof, shall  
146 be confined in the county or regional jail for not less than two  
147 days nor more than twelve months, which jail term is to in-  
148 clude actual confinement of not less than forty-eight hours,  
149 and shall be fined not less than two hundred dollars nor more  
150 than one thousand dollars.

151 (j) A person violating any provision of subsection (b),  
152 (c), (d), (e), (f), (g) or (i) of this section, for the second of-  
153 fense under this section, is guilty of a misdemeanor and,  
154 upon conviction thereof, shall be confined in the county or  
155 regional jail for not less than six months nor more than one  
156 year, and the court may, in its discretion, impose a fine of not  
157 less than one thousand dollars nor more than three thousand  
158 dollars.

159 (k) A person violating any provision of subsection (b),  
160 (c), (d), (e), (f), (g) or (i) of this section, for the third or any  
161 subsequent offense under this section, is guilty of a felony  
162 and, upon conviction thereof, shall be imprisoned in a state  
163 correctional facility for not less than one nor more than three  
164 years, and the court may, in its discretion, impose a fine of  
165 not less than three thousand dollars nor more than five thou-  
166 sand dollars.

167 (l) For purposes of subsections (j) and (k) of this section  
168 relating to second, third and subsequent offenses, the follow-  
169 ing types of convictions are to be regarded as convictions  
170 under this section:

171 (1) Any conviction under the provisions of subsection  
172 (a), (b), (c), (d), (e) or (f) of this section or under a prior en-  
173 actment of this section for an offense which occurred within  
174 the ten-year period immediately preceding the date of arrest  
175 in the current proceeding;

176 (2) Any conviction under a municipal ordinance of this  
177 state or any other state or a statute of the United States or of  
178 any other state of an offense which has the same elements as  
179 an offense described in subsection (a), (b), (c), (d), (e), (f) or  
180 (g) of this section, which offense occurred within the ten-year  
181 period immediately preceding the date of arrest in the current  
182 proceeding.

183 (m) A person may be charged in a warrant or indictment  
184 or information for a second or subsequent offense under this  
185 section if the person has been previously arrested for or  
186 charged with a violation of this section which is alleged to  
187 have occurred within the applicable time period for prior  
188 offenses, notwithstanding the fact that there has not been a  
189 final adjudication of the charges for the alleged previous  
190 offense. In that case, the warrant or indictment or informa-  
191 tion must set forth the date, location and particulars of the  
192 previous offense or offenses. No person may be convicted of  
193 a second or subsequent offense under this section unless the  
194 conviction for the previous offense has become final.

195 (n) The fact that any person charged with a violation of  
196 subsection (a), (b), (c), (d) or (e) of this section, or any per-  
197 son permitted to drive as described under subsection (f) or (g)  
198 of this section, is or has been legally entitled to use alcohol, a  
199 controlled substance or a drug does not constitute a defense  
200 against any charge of violating subsection (a), (b), (c), (d),  
201 (e), (f) or (g) of this section.

202 (o) For purposes of this section, the term "controlled  
203 substance" has the meaning ascribed to it in chapter sixty-a of  
204 this code.

205 (p) The sentences provided herein upon conviction for a  
206 violation of this article are mandatory and may not be subject  
207 to suspension or probation: *Provided*, That the court may  
208 apply the provisions of article eleven-a, chapter sixty-two of  
209 this code to a person sentenced or committed to a term of one  
210 year or less. An order for home detention by the court pursu-

211 ant to the provisions of article eleven-b of said chapter may  
212 be used as an alternative sentence to any period of incarceration  
213 tion required by this section. An order for supervision or  
214 participation in a community corrections program created  
215 pursuant to article eleven-c, chapter sixty-two of this code  
216 may be used as an alternative sentence to any period of incarceration  
217 required by this section.

**§17C-5-6a. Taking a child into custody; driving a motor vehicle  
with any amount of blood alcohol.**

1 (a) A preliminary breath analysis may be administered to  
2 a child whenever a law-enforcement official has reasonable  
3 cause to believe the child to have been driving a motor vehicle  
4 with any amount of alcohol in his or her blood for the  
5 purpose of determining the child's blood alcohol content.  
6 Such breath analysis must be administered as soon as possible  
7 after the law-enforcement officer arrives at a reasonable  
8 belief that the child has been driving a motor vehicle with  
9 any amount of alcohol in his or her blood. Any preliminary  
10 breath analysis administered pursuant to this subsection must  
11 be administered with a device and in a manner approved by  
12 the division of health for that purpose. If a preliminary  
13 breath analysis is administered, the results shall be used  
14 solely for the purpose of guiding the officer in deciding  
15 whether the child, at the time of driving the motor vehicle,  
16 had an alcohol concentration in his or her blood of two hundredths  
17 of one percent or more, by weight, and should, therefore, be taken  
18 into custody to administer a secondary test in  
19 accordance with the provisions of this section.

20 (b) A child may be taken into custody by a  
21 law-enforcement official without a warrant or court order if  
22 the official has reasonable grounds to believe the child to  
23 have been driving a motor vehicle with any amount of alcohol  
24 in his or her blood. If a preliminary breath analysis is  
25 administered and the results of the analysis indicate that the  
26 child has an alcohol concentration in his or her blood of less  
27 than two hundredths of one percent, by weight, the child may

28 not be taken into custody unless other grounds exist under  
29 subsection (b), section eight, article five, chapter forty-nine  
30 of this code. Upon taking a child into custody pursuant to the  
31 provisions of this section, the official shall take all reasonable  
32 steps to cause notification to be made to the child's parent or  
33 custodian or, if the parent or custodian cannot be located, to a  
34 close relative.

35 (c) Upon taking a child into custody pursuant to this sec-  
36 tion, the official shall take the child to a facility where a sec-  
37 ondary test of the child's blood or urine may be administered  
38 at the direction of the official or a test of the child's breath  
39 may be administered by the official. The law-enforcement  
40 agency by which such law-enforcement official is employed  
41 shall designate whether the secondary test is a test of either  
42 blood, breath or urine: *Provided*, That if the test so desig-  
43 nated is a blood test and the child refuses to submit to the  
44 blood test, then the law-enforcement official taking the child  
45 into custody shall designate in lieu thereof a breath test to be  
46 administered. Notwithstanding the provisions of section  
47 seven of this article, a refusal to submit to a blood test only  
48 shall not result in the revocation of the child's license to oper-  
49 ate a motor vehicle in this state. Any child taken into custody  
50 pursuant to this section shall be given a written statement  
51 advising him or her that a refusal to submit to a secondary  
52 test of either blood, breath or urine, as finally designated by  
53 the law-enforcement agency or official in accordance with  
54 this subsection, will result in the suspension of his or her  
55 license to operate a motor vehicle in this state for a period of  
56 at least thirty days or a revocation of the license for a period  
57 up to life.

58 (d) If the law-enforcement official taking the child into  
59 custody is employed by a law-enforcement agency which  
60 does not have available the testing equipment or facilities  
61 necessary to conduct any secondary breath test which may be  
62 administered pursuant to the provisions of this section, then  
63 the official who took the child into custody may request an-  
64 other qualified person to administer a secondary breath test:



65 *Provided*, That the breath test shall be administered in the  
66 presence of the official who took the child into custody. The  
67 results of such breath test may be used in evidence to the  
68 same extent and in the same manner as if such test had been  
69 conducted by the law-enforcement official who took the child  
70 into custody. The qualified person administering the breath  
71 test must be a member of the West Virginia state police, the  
72 sheriff of the county wherein the child was taken into custody  
73 or any deputy of such sheriff or a law-enforcement official of  
74 another municipality within the county wherein the child was  
75 taken into custody. Only the person actually administering  
76 the secondary breath test is competent to testify as to the  
77 results and the veracity of the test. If the secondary test is a  
78 blood test, the test shall be conducted in accordance with the  
79 provisions of section six of this article.

80 (e) After taking the child into custody, if the  
81 law-enforcement official has reasonable cause to believe that  
82 the act of the child in driving the motor vehicle is such that it  
83 would provide grounds for arrest for an offense defined under  
84 the provisions of section two of this article if the child were  
85 an adult, then the official shall proceed to treat the child in  
86 the same manner as any other child taken into custody with-  
87 out a warrant or court order, in accordance with the provi-  
88 sions of section eight of this article.

89 (f) If the results of any secondary test administered pur-  
90 suant to this section indicate that the child, at the time of  
91 driving the motor vehicle, had an alcohol concentration in his  
92 or her blood of eight hundredths of one percent or less, by  
93 weight, and if the law-enforcement official does not have  
94 reasonable cause to believe that the act of the child in driving  
95 the motor vehicle is such that it would provide grounds for  
96 arrest for an offense defined under the provisions of section  
97 two of this article if the child were an adult, then the official  
98 shall release the child: *Provided*, That if the results of any  
99 secondary test administered pursuant to this section indicate  
100 that the child, at the time of driving the motor vehicle, had an  
101 alcohol concentration in his or her blood of two hundredths

102 of one percent or more, by weight, the child shall only be  
103 released to a parent or custodian, or to some other responsible  
104 adult.

**§17C-5-8. Interpretation and use of chemical test.**

1 (a) Upon trial for the offense of driving a motor vehicle  
2 in this state while under the influence of alcohol, controlled  
3 substances or drugs, or upon the trial of any civil or criminal  
4 action arising out of acts alleged to have been committed by  
5 any person driving a motor vehicle while under the influence  
6 of alcohol, controlled substances or drugs, evidence of the  
7 amount of alcohol in the person's blood at the time of the  
8 arrest or of the acts alleged, as shown by a chemical analysis  
9 of his or her blood, breath or urine, is admissible, if the sam-  
10 ple or specimen was taken within two hours from and after  
11 the time of arrest or of the acts alleged. The evidence gives  
12 rise to the following presumptions or has the following ef-  
13 fect:

14 (1) Evidence that there was, at that time, five hundredths  
15 of one percent or less, by weight, of alcohol in his or her  
16 blood, is prima facie evidence that the person was not under  
17 the influence of alcohol;

18 (2) Evidence that there was, at that time, more than five  
19 hundredths of one percent and less than eight hundredths of  
20 one percent, by weight, of alcohol in the person's blood is  
21 relevant evidence, but it is not to be given prima facie effect  
22 in indicating whether the person was under the influence of  
23 alcohol;

24 (3) Evidence that there was, at that time, eight hundredths  
25 of one percent or more, by weight, of alcohol in his or her  
26 blood, shall be admitted as prima facie evidence that the  
27 person was under the influence of alcohol.

28 (b) A determination of the percent, by weight, of alcohol  
29 in the blood shall be based upon a formula of:

30 (1) The number of grams of alcohol per one hundred  
31 cubic centimeters of blood;

32 (2) The number of grams of alcohol per two hundred ten  
33 liters of breath;

34 (3) The number of grams of alcohol per sixty-seven mil-  
35 liliters of urine; or

36 (4) The number of grams of alcohol per eighty-six milli-  
37 liters of serum.

38 (c) A chemical analysis of a person's blood, breath or  
39 urine, in order to give rise to the presumptions or to have the  
40 effect provided for in subsection (a) of this section, must be  
41 performed in accordance with methods and standards ap-  
42 proved by the state division of health. A chemical analysis of  
43 blood or urine to determine the alcoholic content of blood  
44 shall be conducted by a qualified laboratory or by the state  
45 police scientific laboratory of the criminal identification  
46 bureau of the West Virginia state police.

47 (d) The provisions of this article do not limit the intro-  
48 duction in any administrative or judicial proceeding of any  
49 other competent evidence bearing on the question of whether  
50 the person was under the influence of alcohol, controlled  
51 substances or drugs.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION  
AND REVOCATION OF LICENSES FOR DRIVING  
UNDER THE INFLUENCE OF ALCOHOL, CON-  
TROLLED SUBSTANCES OR DRUGS.**

§17C-5A-1. Implied consent to administrative procedure; revocation for driving  
under the influence of alcohol, controlled substances or refusal  
to submit to secondary chemical test.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alco-  
hol, controlled substances or drugs.

§17C-5A-2. Hearing; revocation; review.

§17C-5A-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.

**§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.**

1       (a) Any person who is licensed to operate a motor vehicle  
2 in this state and who drives a motor vehicle in this state shall  
3 be deemed to have given his or her consent by the operation  
4 thereof, subject to the provisions of this article, to the proce-  
5 dure set forth in this article for the determination of whether  
6 his or her license to operate a motor vehicle in this state  
7 should be revoked because he or she did drive a motor vehi-  
8 cle while under the influence of alcohol, controlled sub-  
9 stances or drugs, or combined influence of alcohol or con-  
10 trolled substances or drugs, or did drive a motor vehicle  
11 while having an alcoholic concentration in his or her blood of  
12 eight hundredths of one percent or more, by weight, or did  
13 refuse to submit to any designated secondary chemical test,  
14 or did drive a motor vehicle while under the age of  
15 twenty-one years with an alcohol concentration in his or her  
16 blood of two hundredths of one percent or more, by weight,  
17 but less than eight hundredths of one percent, by weight.

18       (b) Any law-enforcement officer arresting a person for an  
19 offense described in section two, article five of this chapter or  
20 for an offense described in a municipal ordinance which has  
21 the same elements as an offense described in said section  
22 shall report to the commissioner of the division of motor  
23 vehicles by written statement within forty-eight hours the  
24 name and address of the person so arrested. The report shall  
25 include the specific offense with which the person is charged  
26 and, if applicable, a copy of the results of any secondary tests  
27 of blood, breath or urine. The signing of the statement re-  
28 quired to be signed by this subsection shall constitute an oath  
29 or affirmation by the person signing the statement that the  
30 statements contained therein are true and that any copy filed

31 is a true copy. The statement shall contain upon its face a  
32 warning to the officer signing that to willfully sign a state-  
33 ment containing false information concerning any matter or  
34 thing, material or not material, is false swearing and is a mis-  
35 demeanor.

36 (c) If, upon examination of the written statement of the  
37 officer and the tests results described in subsection (b) of this  
38 section, the commissioner shall determine that a person was  
39 arrested for an offense described in section two, article five  
40 of this chapter or for an offense described in a municipal  
41 ordinance which has the same elements as an offense de-  
42 scribed in said section, and that the results of any secondary  
43 test or tests indicate that at the time the test or tests were  
44 administered the person had, in his or her blood, an alcohol  
45 concentration of eight hundredths of one percent or more, by  
46 weight, or at the time the person was arrested he or she was  
47 under the influence of alcohol, controlled substances or  
48 drugs, the commissioner shall make and enter an order revok-  
49 ing the person's license to operate a motor vehicle in this  
50 state. If the results of the tests indicate that at the time the  
51 test or tests were administered the person was under the age  
52 of twenty-one years and had an alcohol concentration in his  
53 or her blood of two hundredths of one percent or more, by  
54 weight, but less than eight hundredths of one percent, by  
55 weight, the commissioner shall make and enter an order sus-  
56 pending the person's license to operate a motor vehicle in this  
57 state. A copy of the order shall be forwarded to the person by  
58 registered or certified mail, return receipt requested, and shall  
59 contain the reasons for the revocation or suspension and de-  
60 scribe the applicable revocation or suspension periods pro-  
61 vided for in section two of this article. No revocation or  
62 suspension shall become effective until ten days after receipt  
63 of a copy of the order.

64 (d) Any law-enforcement officer taking a child into cus-  
65 tody under the provisions of section six-a, article five of this  
66 chapter who has reasonable cause to believe that the child, at  
67 the time of driving the motor vehicle, had an alcohol concen-

68 tration in his or her blood of two hundredths of one percent or  
69 more, by weight, or that the act of the child in driving the  
70 motor vehicle was such that it would provide grounds for  
71 arrest for an offense defined under the provisions of section  
72 two of said article if the child were an adult, shall report to  
73 the commissioner of the division of motor vehicles by written  
74 statement within forty-eight hours the name and address of  
75 the child.

76 (e) If applicable, the report shall include a description of  
77 the specific offense with which the child could have been  
78 charged if the child were an adult, and a copy of the results of  
79 any secondary tests of blood, breath or urine. The signing of  
80 the statement required to be signed by this subsection shall  
81 constitute an oath or affirmation by the person signing such  
82 statement that the statements contained therein are true and  
83 that any copy filed is a true copy. Such statement shall con-  
84 tain upon its face a warning to the officer signing that to will-  
85 fully sign a statement containing false information concern-  
86 ing any matter or thing, material or not material, is false  
87 swearing and is a misdemeanor.

88 (f) Upon examination of the written statement of the  
89 officer and any test results described in subsection (d) of this  
90 section, if the commissioner determines that the results of the  
91 tests indicate that at the time the test or tests were adminis-  
92 tered the child had, in his or her blood, an alcohol concentra-  
93 tion of two hundredths of one percent or more, by weight, but  
94 also determines that the act of the child in driving the motor  
95 vehicle was not such that it would provide grounds for arrest  
96 for an offense defined under the provisions of subsection (a),  
97 (b), (c), (d), (e), (f) or (g), section two, article five of this  
98 chapter if the child were an adult, the commissioner shall  
99 make and enter an order suspending the child's license to  
100 operate a motor vehicle in this state. If the commissioner  
101 determines that the act of the child in driving the motor vehi-  
102 cle was such that it would provide grounds for arrest for an  
103 offense defined under the provisions of subsection (a), (b),  
104 (c), (d), (e), (f) or (g), section two, article five of this chapter

105 if the child were an adult, the commissioner shall make and  
106 enter an order revoking the child's license to operate a motor  
107 vehicle in this state. A copy of such order shall be forwarded  
108 to the child by registered or certified mail, return receipt  
109 requested, and shall contain the reasons for the suspension or  
110 revocation and describe the applicable suspension or revoca-  
111 tion periods provided for in section two of this article. No  
112 suspension or revocation shall become effective until ten  
113 days after receipt of a copy of such order.

**§17C-5A-1a. Revocation upon conviction for driving under the  
influence of alcohol, controlled substances or  
drugs.**

1 (a) If a person is convicted for an offense defined in sec-  
2 tion two, article five of this chapter or for an offense de-  
3 scribed in a municipal ordinance which has the same ele-  
4 ments as an offense described in said section because the  
5 person did drive a motor vehicle while under the influence of  
6 alcohol, controlled substances or drugs, or the combined  
7 influence of alcohol or controlled substances or drugs, or did  
8 drive a motor vehicle while having an alcoholic concentra-  
9 tion in his or her blood of eight hundredths of one percent or  
10 more, by weight, or did drive a motor vehicle while under the  
11 age of twenty-one years with an alcohol concentration in his  
12 or her blood of two hundredths of one percent or more, by  
13 weight, but less than eight hundredths of one percent, by  
14 weight, and if the person does not act to appeal the conviction  
15 within the time periods described in subsection (b) of this  
16 section, the person's license to operate a motor vehicle in this  
17 state shall be revoked or suspended in accordance with the  
18 provisions of this section.

19 (b) The clerk of the court in which a person is convicted  
20 for an offense described in section two, article five of this  
21 chapter or for an offense described in a municipal ordinance  
22 which has the same elements as an offense described in said  
23 section shall forward to the commissioner a transcript of the  
24 judgment of conviction. If the conviction is the judgment of

25 a magistrate court, the magistrate court clerk shall forward  
26 the transcript when the person convicted has not requested an  
27 appeal within twenty days of the sentencing for such conviction.  
28 If the conviction is the judgment of a mayor or police  
29 court judge or municipal court judge, the clerk or recorder  
30 shall forward the transcript when the person convicted has  
31 not perfected an appeal within ten days from and after the  
32 date upon which the sentence is imposed. If the conviction is  
33 the judgment of a circuit court, the circuit clerk shall forward  
34 the transcript when the person convicted has not filed a notice  
35 of intent to file a petition for appeal or writ of error  
36 within thirty days after the judgment was entered.

37 (c) If, upon examination of the transcript of the judgment  
38 of conviction, the commissioner shall determine that the  
39 person was convicted for an offense described in section two,  
40 article five of this chapter or for an offense described in a  
41 municipal ordinance which has the same elements as an offense  
42 described in said section because the person did drive a  
43 motor vehicle while under the influence of alcohol, controlled  
44 substances or drugs, or the combined influence of  
45 alcohol or controlled substances or drugs, or did drive a motor  
46 vehicle while having an alcoholic concentration in his or  
47 her blood of eight hundredths of one percent or more, by  
48 weight, the commissioner shall make and enter an order revoking  
49 the person's license to operate a motor vehicle in this  
50 state. If the commissioner determines that the person was  
51 convicted of driving a motor vehicle while under the age of  
52 twenty-one years with an alcohol concentration in his or her  
53 blood of two hundredths of one percent or more, by weight,  
54 but less than eight hundredths of one percent, by weight, the  
55 commissioner shall make and enter an order suspending the  
56 person's license to operate a motor vehicle in this state. The  
57 order shall contain the reasons for the revocation or suspension  
58 and the revocation or suspension periods provided for in  
59 section two of this article. Further, the order shall give the  
60 procedures for requesting a hearing which is to be held in  
61 accordance with the provisions of said section. The person  
62 shall be advised in the order that because of the receipt of a



63 transcript of the judgment of conviction by the commissioner  
64 a presumption exists that the person named in the transcript  
65 of the judgment of conviction is the person named in the  
66 commissioner's order and such constitutes sufficient evidence  
67 to support revocation or suspension and that the sole purpose  
68 for the hearing held under this section is for the person re-  
69 questing the hearing to present evidence that he or she is not  
70 the person named in the transcript of the judgment of convic-  
71 tion. A copy of the order shall be forwarded to the person by  
72 registered or certified mail, return receipt requested. No  
73 revocation or suspension shall become effective until ten  
74 days after receipt of a copy of the order.

75 (d) The provisions of this section shall not apply if an  
76 order reinstating the operator's license of the person has been  
77 entered by the commissioner prior to the receipt of the tran-  
78 script of the judgment of conviction.

79 (e) For the purposes of this section, a person is convicted  
80 when the person enters a plea of guilty or is found guilty by a  
81 court or jury.

**§17C-5A-2. Hearing; revocation; review.**

1 (a) Upon the written request of a person whose license to  
2 operate a motor vehicle in this state has been revoked or  
3 suspended under the provisions of section one of this article  
4 or section seven, article five of this chapter, the commis-  
5 sioner of the division of motor vehicles shall stay the imposi-  
6 tion of the period of revocation or suspension and afford the  
7 person an opportunity to be heard. The written request must  
8 be filed with the commissioner in person or by registered or  
9 certified mail, return receipt requested, within thirty calendar  
10 days after receipt of a copy of the order of revocation or sus-  
11 pension or no hearing will be granted. The hearing shall be  
12 before the commissioner or a hearing examiner retained by  
13 the commissioner who shall rule on evidentiary issues and  
14 submit proposed findings of fact and conclusions of law for  
15 the consideration of the commissioner and all of the pertinent

16 provisions of article five, chapter twenty-nine-a of this code  
17 shall apply. The hearing shall be held at an office of the  
18 division located in or near the county wherein the arrest was  
19 made in this state or at some other suitable place in the  
20 county wherein the arrest was made if an office of the divi-  
21 sion is not available.

22 (b) Any such hearing shall be held within one hundred  
23 eighty days after the date upon which the commissioner re-  
24 ceived the timely written request therefor unless there is a  
25 postponement or continuance. The commissioner may post-  
26 pone or continue any hearing on the commissioner's own  
27 motion or upon application for each person for good cause  
28 shown. The commissioner shall adopt and implement by a  
29 procedural rule written policies governing the postponement  
30 or continuance of any such hearing on the commissioner's  
31 own motion or for the benefit of any law-enforcement officer  
32 or any person requesting the hearing, and such policies shall  
33 be enforced and applied to all parties equally. For the pur-  
34 pose of conducting the hearing, the commissioner shall have  
35 the power and authority to issue subpoenas and subpoenas  
36 duces tecum in accordance with the provisions of section one,  
37 article five, chapter twenty-nine-a of this code: *Provided,*  
38 That the notice of hearing to the appropriate law-enforcement  
39 officers by registered or certified mail, return receipt re-  
40 quested, shall constitute a subpoena to appear at the hearing  
41 without the necessity of payment of fees by the division of  
42 motor vehicles.

43 (c) Law-enforcement officers shall be compensated for  
44 the time expended in their travel and appearance before the  
45 commissioner by the law-enforcement agency by whom they  
46 are employed at their regular rate if they are scheduled to be  
47 on duty during said time or at their regular overtime rate if  
48 they are scheduled to be off duty during said time.

49 (d) The principal question at the hearing shall be whether  
50 the person did drive a motor vehicle while under the influ-  
51 ence of alcohol, controlled substances or drugs, or did drive a

52 motor vehicle while having an alcohol concentration in the  
53 person's blood of eight hundredths of one percent or more, by  
54 weight, or did refuse to submit to the designated secondary  
55 chemical test, or did drive a motor vehicle while under the  
56 age of twenty-one years with an alcohol concentration in his  
57 or her blood of two hundredths of one percent or more, by  
58 weight, but less than eight hundredths of one percent, by  
59 weight.

60 The commissioner may propose a legislative rule in com-  
61 pliance with the provisions of article three, chapter  
62 twenty-nine-a of this code, which rule may provide that if a  
63 person accused of driving a motor vehicle while under the  
64 influence of alcohol, controlled substances or drugs, or ac-  
65 cused of driving a motor vehicle while having an alcohol  
66 concentration in the person's blood of eight hundredths of one  
67 percent or more, by weight, or accused of driving a motor  
68 vehicle while under the age of twenty-one years with an alco-  
69 hol concentration in his or her blood of two hundredths of  
70 one percent or more, by weight, but less than eight hun-  
71 dredths of one percent, by weight, intends to challenge the  
72 results of any secondary chemical test of blood, breath or  
73 urine, or intends to cross-examine the individual or individu-  
74 als who administered the test or performed the chemical anal-  
75 ysis, the person shall, within an appropriate period of time  
76 prior to the hearing, notify the commissioner in writing of  
77 such intention. The rule may provide that when there is a  
78 failure to comply with the notice requirement, the results of  
79 the secondary test, if any, shall be admissible as though the  
80 person and the commissioner had stipulated the admissibility  
81 of such evidence. Any such rule shall provide that the rule  
82 shall not be invoked in the case of a person who is not repre-  
83 sented by counsel unless the communication from the com-  
84 missioner to the person establishing a time and place for the  
85 hearing also informed the person of the consequences of the  
86 person's failure to timely notify the commissioner of the  
87 person's intention to challenge the results of the secondary  
88 chemical test or cross-examine the individual or individuals

89 who administered the test or performed the chemical analy-  
90 sis.

91 (e) In the case of a hearing wherein a person is accused  
92 of driving a motor vehicle while under the influence of alco-  
93 hol, controlled substances or drugs, or accused of driving a  
94 motor vehicle while having an alcohol concentration in the  
95 person's blood of eight hundredths of one percent or more, by  
96 weight, or accused of driving a motor vehicle while under the  
97 age of twenty-one years with an alcohol concentration in his  
98 or her blood of two hundredths of one percent or more, by  
99 weight, but less than eight hundredths of one percent, by  
100 weight, the commissioner shall make specific findings as to:  
101 (1) Whether the arresting law-enforcement officer had rea-  
102 sonable grounds to believe the person to have been driving  
103 while under the influence of alcohol, controlled substances or  
104 drugs, or while having an alcohol concentration in the per-  
105 son's blood of eight hundredths of one percent or more, by  
106 weight, or to have been driving a motor vehicle while under  
107 the age of twenty-one years with an alcohol concentration in  
108 his or her blood of two hundredths of one percent or more, by  
109 weight, but less than eight hundredths of one percent, by  
110 weight; (2) whether the person was lawfully placed under  
111 arrest for an offense involving driving under the influence of  
112 alcohol, controlled substances or drugs, or was lawfully taken  
113 into custody for the purpose of administering a secondary  
114 test; and (3) whether the tests, if any, were administered in  
115 accordance with the provisions of this article and article five  
116 of this chapter.

117 (f) If, in addition to a finding that the person did drive a  
118 motor vehicle while under the influence of alcohol, con-  
119 trolled substances or drugs, or did drive a motor vehicle  
120 while having an alcohol concentration in the person's blood  
121 of eight hundredths of one percent or more, by weight, or did  
122 drive a motor vehicle while under the age of twenty-one  
123 years with an alcohol concentration in his or her blood of two  
124 hundredths of one percent or more, by weight, but less than  
125 eight hundredths of one percent, by weight, the commissioner

126 also finds by a preponderance of the evidence that the person  
127 when so driving did an act forbidden by law or failed to per-  
128 form a duty imposed by law, which act or failure proximately  
129 caused the death of a person and was committed in reckless  
130 disregard of the safety of others, and if the commissioner  
131 further finds that the influence of alcohol, controlled sub-  
132 stances or drugs or the alcohol concentration in the blood was  
133 a contributing cause to the death, the commissioner shall  
134 revoke the person's license for a period of ten years: *Pro-*  
135 *vided*, That if the commissioner has previously suspended or  
136 revoked the person's license under the provisions of this sec-  
137 tion or section one of this article within the ten years immedi-  
138 ately preceding the date of arrest, the period of revocation  
139 shall be for the life of the person.

140 (g) If, in addition to a finding that the person did drive a  
141 motor vehicle while under the influence of alcohol, con-  
142 trolled substances or drugs, or did drive a motor vehicle  
143 while having an alcohol concentration in the person's blood  
144 of eight hundredths of one percent or more, by weight, the  
145 commissioner also finds by a preponderance of the evidence  
146 that the person when so driving did an act forbidden by law  
147 or failed to perform a duty imposed by law, which act or  
148 failure proximately caused the death of a person, the commis-  
149 sioner shall revoke the person's license for a period of five  
150 years: *Provided*, That if the commissioner has previously  
151 suspended or revoked the person's license under the provi-  
152 sions of this section or section one of this article within the  
153 ten years immediately preceding the date of arrest, the period  
154 of revocation shall be for the life of the person.

155 (h) If, in addition to a finding that the person did drive a  
156 motor vehicle while under the influence of alcohol, con-  
157 trolled substances or drugs, or did drive a motor vehicle  
158 while having an alcohol concentration in the person's blood  
159 of eight hundredths of one percent or more, by weight, the  
160 commissioner also finds by a preponderance of the evidence  
161 that the person when so driving did an act forbidden by law  
162 or failed to perform a duty imposed by law, which act or

163 failure proximately caused bodily injury to a person other  
164 than himself or herself, the commissioner shall revoke the  
165 person's license for a period of two years: *Provided*, That if  
166 the commissioner has previously suspended or revoked the  
167 person's license under the provisions of this section or section  
168 one of this article within the ten years immediately preceding  
169 the date of arrest, the period of revocation shall be ten years:  
170 *Provided, however*, That if the commissioner has previously  
171 suspended or revoked the person's license more than once  
172 under the provisions of this section or section one of this  
173 article within the ten years immediately preceding the date of  
174 arrest, the period of revocation shall be for the life of the  
175 person.

176 (i) If the commissioner finds by a preponderance of the  
177 evidence that the person did drive a motor vehicle while un-  
178 der the influence of alcohol, controlled substances or drugs,  
179 or did drive a motor vehicle while having an alcohol concen-  
180 tration in the person's blood of eight hundredths of one per-  
181 cent or more, by weight, or finds that the person, being an  
182 habitual user of narcotic drugs or amphetamine or any deriva-  
183 tive thereof, did drive a motor vehicle, or finds that the per-  
184 son knowingly permitted the person's vehicle to be driven by  
185 another person who was under the influence of alcohol, con-  
186 trolled substances or drugs, or knowingly permitted the per-  
187 son's vehicle to be driven by another person who had an alco-  
188 hol concentration in his or her blood of eight hundredths of  
189 one percent or more, by weight, the commissioner shall re-  
190 voke the person's license for a period of six months: *Pro-*  
191 *vided*, That if the commissioner has previously suspended or  
192 revoked the person's license under the provisions of this sec-  
193 tion or section one of this article within the ten years immedi-  
194 ately preceding the date of arrest, the period of revocation  
195 shall be ten years: *Provided, however*, That if the commis-  
196 sioner has previously suspended or revoked the person's li-  
197 cense more than once under the provisions of this section or  
198 section one of this article within the ten years immediately  
199 preceding the date of arrest, the period of revocation shall be  
200 for the life of the person.

201 (j) If, in addition to a finding that the person did drive a  
202 motor vehicle while under the age of twenty-one years with  
203 an alcohol concentration in his or her blood of two hun-  
204 dredths of one percent or more, by weight, but less than eight  
205 hundredths of one percent, by weight, the commissioner also  
206 finds by a preponderance of the evidence that the person  
207 when so driving did an act forbidden by law or failed to per-  
208 form a duty imposed by law, which act or failure proximately  
209 caused the death of a person, and if the commissioner further  
210 finds that the alcohol concentration in the blood was a con-  
211 tributing cause to the death, the commissioner shall revoke  
212 the person's license for a period of five years: *Provided*, That  
213 if the commissioner has previously suspended or revoked the  
214 person's license under the provisions of this section or section  
215 one of this article within the ten years immediately preceding  
216 the date of arrest, the period of revocation shall be for the life  
217 of the person.

218 (k) If, in addition to a finding that the person did drive a  
219 motor vehicle while under the age of twenty-one years with  
220 an alcohol concentration in his or her blood of two hun-  
221 dredths of one percent or more, by weight, but less than eight  
222 hundredths of one percent, by weight, the commissioner also  
223 finds by a preponderance of the evidence that the person  
224 when so driving did an act forbidden by law or failed to per-  
225 form a duty imposed by law, which act or failure proximately  
226 caused bodily injury to a person other than himself or herself,  
227 and if the commissioner further finds that the alcohol concen-  
228 tration in the blood was a contributing cause to the bodily  
229 injury, the commissioner shall revoke the person's license for  
230 a period of two years: *Provided*, That if the commissioner has  
231 previously suspended or revoked the person's license under  
232 the provisions of this section or section one of this article  
233 within the ten years immediately preceding the date of arrest,  
234 the period of revocation shall be ten years: *Provided, how-*  
235 *ever*, That if the commissioner has previously suspended or  
236 revoked the person's license more than once under the provi-  
237 sions of this section or section one of this article within the

238 ten years immediately preceding the date of arrest, the period  
239 of revocation shall be for the life of the person.

240 (l) If the commissioner finds by a preponderance of the  
241 evidence that the person did drive a motor vehicle while un-  
242 der the age of twenty-one years with an alcohol concentration  
243 in his or her blood of two hundredths of one percent or more,  
244 by weight, but less than eight hundredths of one percent, by  
245 weight, the commissioner shall suspend the person's license  
246 for a period of sixty days: *Provided*, That if the commissioner  
247 has previously suspended or revoked the person's license  
248 under the provisions of this section or section one of this  
249 article, the period of revocation shall be for one year, or until  
250 the person's twenty-first birthday, whichever period is longer.

251 (m) If, in addition to a finding that the person did drive a  
252 motor vehicle while under the influence of alcohol, con-  
253 trolled substances or drugs, or did drive a motor vehicle  
254 while having an alcohol concentration in the person's blood  
255 of eight hundredths of one percent or more, by weight, the  
256 commissioner also finds by a preponderance of the evidence  
257 that the person when so driving did have on or within the  
258 motor vehicle another person who has not reached his or her  
259 sixteenth birthday, the commissioner shall revoke the per-  
260 son's license for a period of one year: *Provided*, That if the  
261 commissioner has previously suspended or revoked the per-  
262 son's license under the provisions of this section or section  
263 one of this article within the ten years immediately preceding  
264 the date of arrest, the period of revocation shall be ten years:  
265 *Provided, however*, That if the commissioner has previously  
266 suspended or revoked the person's license more than once  
267 under the provisions of this section or section one of this  
268 article within the ten years immediately preceding the date of  
269 arrest, the period of revocation shall be for the life of the  
270 person.

271 (n) For purposes of this section, where reference is made  
272 to previous suspensions or revocations under this section, the  
273 following types of criminal convictions or administrative



274 suspensions or revocations shall also be regarded as suspen-  
275 sions or revocations under this section or section one of this  
276 article:

277 (1) Any administrative revocation under the provisions of  
278 the prior enactment of this section for conduct which oc-  
279 curred within the ten years immediately preceding the date of  
280 arrest.

281 (2) Any suspension or revocation on the basis of a con-  
282 viction under a municipal ordinance of another state or a  
283 statute of the United States or of any other state of an offense  
284 which has the same elements as an offense described in sec-  
285 tion two, article five of this chapter, for conduct which oc-  
286 curred within the ten years immediately preceding the date of  
287 arrest.

288 (3) Any revocation under the provisions of section seven,  
289 article five of this chapter, for conduct which occurred within  
290 the ten years immediately preceding the date of arrest.

291 (o) In the case of a hearing wherein a person is accused  
292 of refusing to submit to a designated secondary test, the com-  
293 missioner shall make specific findings as to: (1) Whether the  
294 arresting law-enforcement officer had reasonable grounds to  
295 believe the person had been driving a motor vehicle in this  
296 state while under the influence of alcohol, controlled sub-  
297 stances or drugs; (2) whether the person was lawfully placed  
298 under arrest for an offense relating to driving a motor vehicle  
299 in this state while under the influence of alcohol, controlled  
300 substances or drugs; (3) whether the person refused to submit  
301 to the secondary test finally designated in the manner pro-  
302 vided in section four, article five of this chapter; and (4)  
303 whether the person had been given a written statement advis-  
304 ing the person that the person's license to operate a motor  
305 vehicle in this state would be revoked for at least one year  
306 and up to life if the person refused to submit to the test fi-  
307 nally designated in the manner provided in said section.

308 (p) If the commissioner finds by a preponderance of the  
309 evidence that: (1) The arresting law-enforcement officer had  
310 reasonable grounds to believe the person had been driving a  
311 motor vehicle in this state while under the influence of alco-  
312 hol, controlled substances or drugs; (2) the person was law-  
313 fully placed under arrest for an offense relating to driving a  
314 motor vehicle in this state while under the influence of alco-  
315 hol, controlled substances or drugs; (3) the person refused to  
316 submit to the secondary chemical test finally designated; and  
317 (4) the person had been given a written statement advising  
318 the person that the person's license to operate a motor vehicle  
319 in this state would be revoked for a period of at least one year  
320 and up to life if the person refused to submit to the test fi-  
321 nally designated, the commissioner shall revoke the person's  
322 license to operate a motor vehicle in this state for the periods  
323 specified in section seven, article five of this chapter. The  
324 revocation period prescribed in this subsection shall run con-  
325 currently with any other revocation period ordered under this  
326 section or section one of this article arising out of the same  
327 occurrence.

328 (q) If the commissioner finds to the contrary with respect  
329 to the above issues, the commissioner shall rescind his or her  
330 earlier order of revocation or shall reduce the order of revo-  
331 cation to the appropriate period of revocation under this sec-  
332 tion or section seven, article five of this chapter.

333 A copy of the commissioner's order made and entered  
334 following the hearing shall be served upon the person by  
335 registered or certified mail, return receipt requested. During  
336 the pendency of any such hearing, the revocation of the per-  
337 son's license to operate a motor vehicle in this state shall be  
338 stayed.

339 If the commissioner shall after hearing make and enter an  
340 order affirming the commissioner's earlier order of revoca-  
341 tion, the person shall be entitled to judicial review as set forth  
342 in chapter twenty-nine-a of this code. The commissioner  
343 may not stay enforcement of the order. The court may grant

344 a stay or supersede as of the order only upon motion and  
345 hearing, and a finding by the court upon the evidence pre-  
346 sented, that there is a substantial probability that the appellant  
347 shall prevail upon the merits, and the appellant will suffer  
348 irreparable harm if the order is not stayed: *Provided*, That in  
349 no event shall the stay or supersede as of the order exceed  
350 one hundred fifty days. Notwithstanding the provisions of  
351 section four, article five of said chapter, the commissioner  
352 may not be compelled to transmit a certified copy of the tran-  
353 script of the hearing to the circuit court in less than sixty  
354 days.

355 (r) In any revocation or suspension pursuant to this sec-  
356 tion, if the driver whose license is revoked or suspended had  
357 not reached the driver's eighteenth birthday at the time of the  
358 conduct for which the license is revoked or suspended, the  
359 driver's license shall be revoked or suspended until the  
360 driver's eighteenth birthday or the applicable statutory period  
361 of revocation or suspension prescribed by this section, which-  
362 ever is longer.

363 (s) Funds for this section's hearing and appeal process  
364 may be provided from the drunk driving prevention fund, as  
365 created by section forty-one, article two, chapter fifteen of  
366 this code, upon application for such funds to the commission  
367 on drunk driving prevention.

**§17C-5A-3a. Establishment of and participation in the motor  
vehicle alcohol test and lock program.**

1 (a) The division of motor vehicles shall control and regu-  
2 late a motor vehicle alcohol test and lock program for per-  
3 sons whose licenses have been revoked pursuant to this arti-  
4 cle or the provisions of article five of this chapter. Such  
5 program shall include the establishment of a users' fee for  
6 persons participating in the program which shall be paid in  
7 advance and deposited into the driver's rehabilitation fund.  
8 Except where specified otherwise, the use of the term "pro-  
9 gram" in this section refers to the motor vehicle alcohol test

10 and lock program. The commissioner of the division of mo-  
11 tor vehicles shall propose legislative rules for promulgation  
12 in accordance with the provisions of chapter twenty-nine-a of  
13 this code for the purpose of implementing the provisions of  
14 this section. Such rules shall also prescribe those require-  
15 ments which, in addition to the requirements specified by this  
16 section for eligibility to participate in the program, the com-  
17 missioner determines must be met to obtain the commis-  
18 sioner's approval to operate a motor vehicle equipped with a  
19 motor vehicle alcohol test and lock system. For purposes of  
20 this section, a "motor vehicle alcohol test and lock system"  
21 means a mechanical or computerized system which, in the  
22 opinion of the commissioner, prevents the operation of a  
23 motor vehicle when, through the system's assessment of the  
24 blood alcohol content of the person operating or attempting  
25 to operate the vehicle, such person is determined to be under  
26 the influence of alcohol.

27 (b) (1) Any person whose license has been revoked pur-  
28 suant to this article or the provisions of article five of this  
29 chapter is eligible to participate in the program when such  
30 person's minimum revocation period as specified by subsec-  
31 tion (c) of this section has expired and such person is enrolled  
32 in or has successfully completed the safety and treatment  
33 program or presents proof to the commissioner within sixty  
34 days of receiving approval to participate by the commissioner  
35 that he or she is enrolled in a safety and treatment program:  
36 *Provided*, That no person whose license has been revoked  
37 pursuant to the provisions of section one-a of this article for  
38 conviction of an offense defined in subsection (a) or (b),  
39 section two, article five of this chapter, or pursuant to the  
40 provisions of subsection (f) or (g), section two of this article,  
41 shall be eligible for participation in the program: *Provided*,  
42 *however*, That any person whose license is revoked pursuant  
43 to this article or pursuant to article five of this chapter for an  
44 act which occurred either while participating in or after suc-  
45 cessfully completing the program shall not again be eligible  
46 to participate in such program.

47       (2) Any person whose license has been suspended pursu-  
48 ant to the provisions of subsection (1), section two of this  
49 article for driving a motor vehicle while under the age of  
50 twenty-one years with an alcohol concentration in his or her  
51 blood of two hundredths of one percent or more, by weight,  
52 but less than eight hundredths of one percent, by weight, is  
53 eligible to participate in the program after thirty days have  
54 elapsed from the date of the initial suspension, during which  
55 time the suspension was actually in effect: *Provided*, That in  
56 the case of a person under the age of eighteen, the person  
57 shall be eligible to participate in the program after thirty days  
58 have elapsed from the date of the initial suspension, during  
59 which time the suspension was actually in effect, or after the  
60 person's eighteenth birthday, whichever is later. Before the  
61 commissioner approves a person to operate a motor vehicle  
62 equipped with a motor vehicle alcohol test and lock system,  
63 the person must agree to thereafter comply with the following  
64 conditions:

65       (A) If not already enrolled, the person will enroll in and  
66 complete the educational program provided for in subsection  
67 (c), section three of this article at the earliest time that place-  
68 ment in the educational program is available, unless good  
69 cause is demonstrated to the commissioner as to why place-  
70 ment should be postponed;

71       (B) The person will pay all costs of the educational pro-  
72 gram, any administrative costs and all costs assessed for any  
73 suspension hearing.

74       (3) Notwithstanding the provisions of this section to the  
75 contrary, no person eligible to participate in the program  
76 shall operate a motor vehicle unless approved to do so by the  
77 commissioner.

78       (c) For purposes of this section, "minimum revocation  
79 period" means the portion which has actually expired of the  
80 period of revocation imposed by the commissioner pursuant  
81 to this article or the provisions of article five of this chapter

82 upon a person eligible for participation in the program as  
83 follows:

84 (1) For a person whose license has been revoked for a  
85 first offense for six months pursuant to the provisions of  
86 section one-a of this article for conviction of an offense de-  
87 fined in section two, article five of this chapter, or pursuant to  
88 subsection (i), section two of this article, the minimum period  
89 of revocation before such person is eligible for participation  
90 in the test and lock program is thirty days, and the minimum  
91 period for the use of the ignition interlock device is five  
92 months, or that period described in subdivision (1), subsec-  
93 tion (e) of this section, whichever period is greater;

94 (2) For a person whose license has been revoked for a  
95 first offense pursuant to section seven, article five of this  
96 chapter, refusal to submit to a designated secondary chemical  
97 test, the minimum period of revocation before such person is  
98 eligible for participation in the test and lock program is thirty  
99 days, and the minimum period for the use of the ignition  
100 interlock device is nine months, or the period set forth in  
101 subdivision (1), subsection (e) of this section, whichever  
102 period is greater;

103 (3) For a person whose license has been revoked for a  
104 second offense pursuant to the provisions of section one-a of  
105 this article for conviction of an offense defined in section  
106 two, article five of this chapter, or pursuant to section two of  
107 this article, the minimum period of revocation before such  
108 person is eligible for participation in the test and lock pro-  
109 gram is nine months, and the minimum period for the use of  
110 the ignition interlock device is eighteen months, or that pe-  
111 riod set forth in subdivision (2), subsection (e) of this section,  
112 whichever period is greater;

113 (4) For a person whose license has been revoked for any  
114 other period of time pursuant to the provisions of section  
115 one-a of this article for conviction of an offense defined in  
116 section two, article five of this chapter, or pursuant to section

117 two of this article or pursuant to section seven, article five of  
118 this chapter, the minimum period of revocation is eighteen  
119 months, and the minimum period for the use of the ignition  
120 interlock device is two years, or that period set forth in subdivi-  
121 sion (3), subsection (e) of this section, whichever period is  
122 greater;

123 (5) An applicant for the test and lock program must not  
124 have been convicted of any violation of section three, article  
125 four, chapter seventeen-b of this code, for driving while the  
126 applicant's driver's license was suspended or revoked, within  
127 the two-year period preceding the date of application for  
128 admission to the test and lock program;

129 (6) The commissioner is hereby authorized to allow indi-  
130 viduals in the test and lock program an additional device or  
131 devices if such is necessary for employment purposes.

132 (d) Upon permitting an eligible person to participate in  
133 the program, the commissioner shall issue to such person,  
134 and such person shall be required to exhibit on demand, a  
135 driver's license which shall reflect that such person is re-  
136 stricted to the operation of a motor vehicle which is equipped  
137 with an approved motor vehicle alcohol test and lock system.

138 (e) Any person who has completed the safety and treat-  
139 ment program and who has not violated the terms required by  
140 the commissioner of such person's participation in the motor  
141 vehicle alcohol test and lock program shall be entitled to the  
142 restoration of such person's driver's license upon the expira-  
143 tion of:

144 (1) One hundred eighty days of the full revocation period  
145 imposed by the commissioner for a person described in sub-  
146 division (1) or (2), subsection (c) of this section;

147 (2) The full revocation period imposed by the commis-  
148 sioner for a person described in subdivision (3), subsection  
149 (c) of this section;

150 (3) One year from the date a person described in subdivi-  
151 sion (4), subsection (c) of this section is permitted to operate  
152 a motor vehicle by the commissioner.

153 (f) A person whose license has been suspended pursuant  
154 to the provisions of subsection (l), section two of this article  
155 who has completed the educational program, and who has not  
156 violated the terms required by the commissioner of such  
157 person's participation in the motor vehicle alcohol test and  
158 lock program shall be entitled to the reinstatement of his or  
159 her driver's license six months from the date the person is  
160 permitted to operate a motor vehicle by the commissioner.  
161 When a license has been reinstated pursuant to this subsec-  
162 tion, the records ordering the suspension, records of any ad-  
163 ministrative hearing, records of any blood alcohol test results  
164 and all other records pertaining to the suspension shall be  
165 expunged by operation of law: *Provided*, That a person shall  
166 be entitled to expungement under the provisions of this sub-  
167 section only once. The expungement shall be accomplished  
168 by physically marking the records to show that such records  
169 have been expunged and by securely sealing and filing the  
170 records. Expungement shall have the legal effect as if the  
171 suspension never occurred. The records shall not be dis-  
172 closed or made available for inspection and, in response to a  
173 request for record information, the commissioner shall reply  
174 that no information is available. Information from the file  
175 may be used by the commissioner for research and statistical  
176 purposes so long as the use of such information does not  
177 divulge the identity of the person.

178 (g) In addition to any other penalty imposed by this code,  
179 any person who operates a motor vehicle not equipped with  
180 an approved motor vehicle alcohol test and lock system dur-  
181 ing such person's participation in the motor vehicle alcohol  
182 test and lock program is guilty of a misdemeanor and, upon  
183 conviction thereof, shall be confined in the county or regional  
184 jail for a period not less than one month nor more than six  
185 months and fined not less than one hundred dollars nor more  
186 than five hundred dollars. Any person who assists another



187 person required by the terms of such other person's participa-  
188 tion in the motor vehicle alcohol test and lock program to use  
189 a motor vehicle alcohol test and lock system in any effort to  
190 bypass the system is guilty of a misdemeanor and, upon con-  
191 viction thereof, shall be confined in the county or regional  
192 jail not more than six months and fined not less than one  
193 hundred dollars nor more than one thousand dollars: *Pro-*  
194 *vided*, That notwithstanding any provision of this code to the  
195 contrary, a person enrolled and participating in the test and  
196 lock program may operate a motor vehicle solely at his or her  
197 job site if such is a condition of his or her employment.

## CHAPTER 20. NATURAL RESOURCES.

### ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, acci-  
dent or casualty accident reports.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs;  
penalties.

#### **§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.**

1 (a) No person shall operate a motorboat, jet ski or other  
2 motorized vessel or manipulate any water skis, surfboard or  
3 similar device in a reckless or negligent manner so as to en-  
4 danger the life, limb or property of any person.

5 (b) No person shall operate any motorboat, jet ski or  
6 other motorized vessel, or manipulate any water skis, surf-  
7 board or similar device while under the influence of alcohol  
8 or a controlled substance or drug, under the combined influ-  
9 ence of alcohol and any controlled substance or any other  
10 drug, or while having an alcohol concentration in his or her  
11 blood of eight hundredths of one percent or more, by weight.

12 (c) It shall be the duty of the operator of a vessel in-  
13 volved in a collision, accident or other casualty, so far as he  
14 or she can do so without serious danger to his or her own

15 vessel, crew and passengers (if any), to render to other per-  
16 sons affected by the collision, accident or other casualty such  
17 assistance as may be practicable and as may be necessary in  
18 order to save them from or minimize any danger caused by  
19 the collision, accident or other casualty, and also to give his  
20 or her name, address and identification of his or her vessel in  
21 writing to any person injured and to the owner of any prop-  
22 erty damaged in the collision, accident or other casualty.

23 (d) The operator of a vessel involved in a collision, acci-  
24 dent or other casualty shall file an accident report with the  
25 director if the incident results in a loss of life, in a personal  
26 injury that requires medical treatment beyond first aid or in  
27 excess of five hundred dollars damage to a vessel or other  
28 property. The report shall be made on such forms and con-  
29 tain information as prescribed by the director. Upon a re-  
30 quest duly made by an authorized official or agency of the  
31 United States, any information compiled or otherwise avail-  
32 able to the director pursuant to this subsection shall be trans-  
33 mitted to the official or agency.

**§20-7-18b. Operating under influence of alcohol, controlled  
substances or drugs; penalties.**

1 (a) Any person who:

2 (1) Operates a motorboat, jet ski or other motorized ves-  
3 sel in this state while:

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

5 (B) He or she is under the influence of any controlled  
6 substance; or

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

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

10 (E) He or she has an alcohol concentration in his or her  
11 blood of eight hundredths of one percent or more, by weight;  
12 and

13 (2) When so operating does any act forbidden by law or  
14 fails to perform any duty imposed by law in the operating of  
15 the motorboat, jet ski or other motorized vessel, which act or  
16 failure proximately causes the death of any person within one  
17 year next following the act or failure; and

18 (3) Commits the act or failure in reckless disregard of the  
19 safety of others, and when the influence of alcohol, con-  
20 trolled substances or drugs is shown to be a contributing  
21 cause to the death, is guilty of a felony and, upon conviction  
22 thereof, shall be imprisoned in the state correctional facility  
23 for not less than one nor more than ten years and shall be  
24 fined not less than one thousand dollars nor more than three  
25 thousand dollars.

26 (b) Any person who:

27 (1) Operates a motorboat, jet ski or other motorized ves-  
28 sel in this state while:

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

30 (B) He or she is under the influence of any controlled  
31 substance; or

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

33 (D) He or she is under the combined influence of alcohol  
34 and any controlled substance or any other drug; or

35 (E) He or she has an alcohol concentration in his or her  
36 blood of eight hundredths of one percent or more, by weight;  
37 and

38 (2) When so operating does any act forbidden by law or  
39 fails to perform any duty imposed by law in the operating of

40 the motorboat, jet ski or other motorized vessel, which act or  
41 failure proximately causes the death of any person within one  
42 year next following the act or failure, is guilty of a misde-  
43 meanor and, upon conviction thereof, shall be confined in the  
44 county or regional jail for not less than ninety days nor more  
45 than one year and shall be fined not less than five hundred  
46 dollars nor more than one thousand dollars.

47 (c) Any person who:

48 (1) Operates a motorboat, jet ski or other motorized ves-  
49 sel in this state while:

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

51 (B) He or she is under the influence of any controlled  
52 substance; or

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

54 (D) He or she is under the combined influence of alcohol  
55 and any controlled substance or any other drug; or

56 (E) He or she has an alcohol concentration in his or her  
57 blood of eight hundredths of one percent or more, by weight;  
58 and

59 (2) When so operating does any act forbidden by law or  
60 fails to perform any duty imposed by law in the operating of  
61 the motorboat, jet ski or other motorized vessel, which act or  
62 failure proximately causes bodily injury to any person other  
63 than himself or herself, is guilty of a misdemeanor and, upon  
64 conviction thereof, shall be confined in the county or regional  
65 jail for not less than one day nor more than one year, which  
66 jail term shall include actual confinement of not less than  
67 twenty-four hours, and shall be fined not less than two hun-  
68 dred dollars nor more than one thousand dollars.

69 (d) Any person who:

70 (1) Operates a motorboat, jet ski or other motorized ves-  
71 sel in this state while:

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

73 (B) He or she is under the influence of any controlled  
74 substance; or

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

76 (D) He or she is under the combined influence of alcohol  
77 and any controlled substance or any other drug; or

78 (E) He or she has an alcohol concentration in his or her  
79 blood of eight hundredths of one percent or more, by weight;

80 (2) Is guilty of a misdemeanor and, upon conviction  
81 thereof, shall be confined in the county or regional jail for not  
82 less than one day nor more than six months, which jail term  
83 shall include actual confinement of not less than twenty-four  
84 hours, and shall be fined not less than one hundred dollars  
85 nor more than five hundred dollars.

86 (e) Any person who, being an habitual user of narcotic  
87 drugs or amphetamine or any derivative thereof, operates a  
88 motorboat, jet ski or other motorized vessel in this state, is  
89 guilty of a misdemeanor and, upon conviction thereof, shall  
90 be confined in the county or regional jail for not less than one  
91 day nor more than six months, which jail term shall include  
92 actual confinement of not less than twenty-four hours, and  
93 shall be fined not less than one hundred dollars nor more than  
94 five hundred dollars.

95 (f) Any person who:

96 (1) Knowingly permits his or her motorboat, jet ski or  
97 other motorized vessel to be operated in this state by any  
98 other person who is:

99 (A) Under the influence of alcohol; or

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

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

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

104 (E) Has an alcohol concentration in his or her blood of  
105 eight hundredths of one percent or more, by weight;

106 (2) Is guilty of a misdemeanor and, upon conviction  
107 thereof, shall be confined in the county or regional jail for not  
108 more than six months and shall be fined not less than one  
109 hundred dollars nor more than five hundred dollars.

110 (g) Any person who knowingly permits his or her motor-  
111 boat, jet ski or other motorized vessel to be operated in this  
112 state by any other person who is an habitual user of narcotic  
113 drugs or amphetamine or any derivative thereof, is guilty of a  
114 misdemeanor and, upon conviction thereof, shall be confined  
115 in the county or regional jail for not more than six months  
116 and shall be fined not less than one hundred dollars nor more  
117 than five hundred dollars.

118 (h) Any person under the age of twenty-one years who  
119 operates a motorboat, jet ski or other motorized vessel in this  
120 state while he or she has an alcohol concentration in his or  
121 her blood of two hundredths of one percent or more, by  
122 weight, but less than eight hundredths of one percent, by  
123 weight, shall, for a first offense under this subsection, be  
124 guilty of a misdemeanor and, upon conviction thereof, shall  
125 be fined not less than twenty-five dollars nor more than one  
126 hundred dollars. For a second or subsequent offense under  
127 this subsection, such person is guilty of a misdemeanor and,  
128 upon conviction thereof, shall be confined in the county or  
129 regional jail for twenty-four hours, and shall be fined not less  
130 than one hundred dollars nor more than five hundred dollars.

131 A person arrested and charged with an offense under the  
132 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of

133 this section may not also be charged with an offense under  
134 this subsection arising out of the same transaction or occur-  
135 rence.

136 (i) Any person who:

137 (1) Operates a motorboat, jet ski or other motorized ves-  
138 sel in this state while:

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

140 (B) He or she is under the influence of any controlled  
141 substance; or

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

143 (D) He or she is under the combined influence of alcohol  
144 and any controlled substance or any other drug; or

145 (E) He or she has an alcohol concentration in his or her  
146 blood of eight hundredths of one percent or more, by weight;  
147 and

148 (2) The person when so operating has on or within the  
149 motorboat, jet ski or other motorized vessel one or more  
150 other persons who are unemancipated minors who have not  
151 reached their sixteenth birthday, shall be guilty of a misde-  
152 meanor and, upon conviction thereof, shall be confined in the  
153 county or regional jail for not less than two days nor more  
154 than twelve months, which jail term shall include actual con-  
155 finement of not less than forty-eight hours, and shall be fined  
156 not less than two hundred dollars nor more than one thousand  
157 dollars.

158 (j) A person violating any provision of subsection (b),  
159 (c), (d), (e), (f), (g) or (i) of this section, for the second of-  
160 fense under this section, is guilty of a misdemeanor and,  
161 upon conviction thereof, shall be confined in the county or  
162 regional jail for a period of not less than six months nor more  
163 than one year, and the court may, in its discretion, impose a

164 fine of not less than one thousand dollars nor more than three  
165 thousand dollars.

166 (k) A person violating any provision of subsection (b),  
167 (c), (d), (e), (f), (g) or (i) of this section shall, for the third or  
168 any subsequent offense under this section, be guilty of a fel-  
169 ony and, upon conviction thereof, shall be imprisoned in a  
170 state correctional facility for not less than one nor more than  
171 three years, and the court may, in its discretion, impose a fine  
172 of not less than three thousand dollars nor more than five  
173 thousand dollars.

174 (l) For purposes of subsections (j) and (k) of this section  
175 relating to second, third and subsequent offenses, the follow-  
176 ing types of convictions shall be regarded as convictions  
177 under this section:

178 (1) Any conviction under the provisions of subsection  
179 (a), (b), (c), (d), (e) or (f) of this section for an offense which  
180 occurred on or after the effective date of this section;

181 (2) Any conviction under the provisions of subsection (a)  
182 or (b) of this section for an offense which occurred within a  
183 period of five years immediately preceding the date of the  
184 offense; and

185 (3) Any conviction under a municipal ordinance of this  
186 state or any other state or a statute of the United States or of  
187 any other state of an offense which has the same elements as  
188 an offense described in subsection (a), (b), (c), (d), (e), (f) or  
189 (g) of this section, which offense occurred after the effective  
190 date of this section.

191 (m) A person may be charged in a warrant or indictment  
192 or information for a second or subsequent offense under this  
193 section if the person has been previously arrested for or  
194 charged with a violation of this section which is alleged to  
195 have occurred within the applicable time periods for prior  
196 offenses, notwithstanding the fact that there has not been a  
197 final adjudication of the charges for the alleged previous



198 offense. The warrant or indictment or information shall set  
199 forth the date, location and particulars of the previous offense  
200 or offenses. No person may be convicted of a second or sub-  
201 sequent offense under this section unless the conviction for  
202 the previous offense has become final.

203 (n) The fact that any person charged with a violation of  
204 subsection (a), (b), (c), (d) or (e) of this section, or any per-  
205 son permitted to operate as described under subsection (f) or  
206 (g) of this section, is or has been legally entitled to use alco-  
207 hol, a controlled substance or a drug shall not constitute a  
208 defense against any charge of violating subsection (a), (b),  
209 (c), (d), (e), (f) or (g) of this section.

210 (o) For purposes of this section, the term "controlled  
211 substance" shall have the meaning ascribed to it in chapter  
212 sixty-a of this code.

213 (p) The sentences provided herein upon conviction for a  
214 violation of this article are mandatory and may not be subject  
215 to suspension or probation: *Provided*, That the court may  
216 apply the provisions of article eleven-a, chapter sixty-two of  
217 this code to a person sentenced or committed to a term of one  
218 year or less. An order for home detention by the court pursu-  
219 ant to the provisions of article eleven-b of said chapter may  
220 be used as an alternative sentence to any period of incarcera-  
221 tion required by this section.

## CHAPTER 33. INSURANCE.

### ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

#### §33-6A-1. Cancellation prohibited except for specified rea- sons; notice.

1 No insurer once having issued or delivered a policy pro-  
2 viding automobile liability insurance for a private passenger  
3 automobile may, after the policy has been in effect for sixty  
4 days, or in case of renewal effective immediately, issue or

5 cause to issue a notice of cancellation during the term of the  
6 policy except for one or more of the reasons specified in this  
7 section:

8 (a) The named insured fails to make payments of pre-  
9 mium for the policy or any installment of the premium when  
10 due;

11 (b) The policy is obtained through material misrepresen-  
12 tation;

13 (c) The insured violates any of the material terms and  
14 conditions of the policy;

15 (d) The named insured or any other operator, either resid-  
16 ing in the same household or who customarily operates an  
17 automobile insured under the policy:

18 (1) Has had his or her operator's license suspended or  
19 revoked during the policy period including suspension or  
20 revocation for failure to comply with the provisions of article  
21 five-a, chapter seventeen-c of this code, regarding consent for  
22 a chemical test for intoxication: *Provided*, That when a li-  
23 cense is suspended for sixty days by the commissioner of the  
24 division of motor vehicles because a person drove a motor  
25 vehicle while under the age of twenty-one years with an alco-  
26 hol concentration in his or her blood of two hundredths of  
27 one percent or more, by weight, but less than eight hun-  
28 dredths of one percent, by weight, pursuant to subsection (1),  
29 section two of said article, the suspension shall not be  
30 grounds for cancellation; or

31 (2) Is or becomes subject to epilepsy or heart attacks and  
32 the individual cannot produce a certificate from a physician  
33 testifying to his or her ability to operate a motor vehicle;

34 (e) The named insured or any other operator, either resid-  
35 ing in the same household or who customarily operates an  
36 automobile insured under such policy, is convicted of or

37 forfeits bail during the policy period for any of the following  
38 reasons:

39 (1) Any felony or assault involving the use of a motor  
40 vehicle;

41 (2) Negligent homicide arising out of the operation of a  
42 motor vehicle;

43 (3) Operating a motor vehicle while under the influence  
44 of alcohol or of any controlled substance or while having an  
45 alcohol concentration in his or her blood of eight hundredths  
46 of one percent or more, by weight;

47 (4) Leaving the scene of a motor vehicle accident in  
48 which the insured is involved without reporting it as required  
49 by law;

50 (5) Theft of a motor vehicle or the unlawful taking of a  
51 motor vehicle;

52 (6) Making false statements in an application for a motor  
53 vehicle operator's license;

54 (7) Three or more moving traffic violations committed  
55 within a period of twelve months, each of which results in  
56 three or more points being assessed on the driver's record by  
57 the division of motor vehicles, whether or not the insurer  
58 renewed the policy without knowledge of all such violations.  
59 Notice of any cancellation made pursuant to this subsection  
60 shall be mailed to the named insured either during the current  
61 policy period or during the first full policy period following  
62 the date that the third moving traffic violation is recorded by  
63 the division of motor vehicles.

64 Notwithstanding any of the provisions of this section to  
65 the contrary, no insurer may cancel a policy of automobile  
66 liability insurance without first giving the insured thirty days'  
67 notice of its intention to cancel: *Provided*, That cancellation

68 of the insurance policy by the insurer for failure of consider-  
69 ation to be paid by the insured upon initial issuance of the  
70 insurance policy is effective upon the expiration of ten days'  
71 notice of cancellation to the insured.

## **CHAPTER 50. MAGISTRATE COURTS.**

### **ARTICLE 3. COSTS, FINES AND RECORDS.**

#### **§50-3-2b. Additional costs in certain criminal proceedings.**

1 In each criminal case before a magistrate court in which  
2 the defendant is convicted, whether by plea or at trial, under  
3 the provisions of section two, article five, chapter seventeen-  
4 c of this code or section eighteen-b, article seven, chapter  
5 twenty of this code, there shall be imposed, in addition to  
6 other costs, fines, forfeitures or penalties as may be allowed  
7 by law, costs in the amount of fifty-five dollars. A magistrate  
8 court shall, on or before the tenth day of the month following  
9 the month in which the costs imposed in this section were  
10 collected, remit an amount equal to the amount from each of  
11 the criminal proceedings in which the costs specified in this  
12 section were collected to the magistrate court clerk or, if  
13 there is no magistrate court clerk, to the clerk of the circuit,  
14 together with information as may be required by the rules of  
15 the supreme court of appeals and the rules of the office of  
16 chief inspector. At the end of each month, for purposes of  
17 further defraying the cost to the county of enforcing the pro-  
18 visions of section two, article five, chapter seventeen-c of this  
19 code or section eighteen-b, article seven, chapter twenty of  
20 this code and related provisions, these moneys shall be paid  
21 to the sheriff of the county and deposited in the general reve-  
22 nue fund of the county. The provisions of this section shall  
23 be effective after the thirtieth day of June, two thousand four.

## **CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.**

### **ARTICLE 1. FEES AND ALLOWANCES.**

**§59-1-11a. Additional costs in certain criminal proceedings.**

1 (a) Except as provided in subsections (b) and (c) of this  
2 section, in each criminal case before a circuit court in which  
3 the defendant is convicted, whether by plea or at trial, under  
4 the provisions of section two, article five, chapter seventeen-  
5 c of this code or section eighteen-b, article seven, chapter  
6 twenty of this code, there shall be imposed, in addition to  
7 other costs, fines, forfeitures or penalties as may be allowed  
8 by law, costs in the amount of fifty-five dollars. For pur-  
9 poses of further defraying the cost to the county of enforcing  
10 the provisions of section two, article five, chapter seventeen-  
11 c of this code or section eighteen-b, article seven, chapter  
12 twenty of this code and related provisions, the clerk of the  
13 circuit court shall, on or before the tenth day of the month  
14 following the month in which the costs imposed in this sec-  
15 tion were collected, remit an amount equal to the amount  
16 from each of the criminal proceedings in which the costs  
17 specified in this subsection were collected to the sheriff of  
18 the county who shall deposit the same in the general revenue  
19 fund of the county.

20 (b) In each criminal case before a circuit court upon ap-  
21 peal from a magistrate court in which the defendant is con-  
22 victed, whether by plea or at trial in the circuit court, under  
23 the provisions of section two, article five, chapter seventeen-  
24 c of this code or section eighteen-b, article seven, chapter  
25 twenty of this code, there shall be imposed, in addition to  
26 other costs, fines, forfeitures or penalties as may be allowed  
27 by law, costs in the amount of fifty-five dollars. For pur-  
28 poses of further defraying the cost to the county of enforcing  
29 the provisions of section two, article five, chapter seventeen-  
30 c of this code or section eighteen-b, article seven, chapter  
31 twenty of this code and related provisions, the clerk of the  
32 circuit court shall, on or before the tenth day of the month  
33 following the month in which the costs imposed in this sec-  
34 tion were collected, remit an amount equal to the amount  
35 from each of the criminal proceedings in which the costs

36 specified in this subsection were collected to the sheriff of  
37 the county who shall deposit the same in the general revenue  
38 fund of the county. The provisions of this subsection shall  
39 not require payment of the costs imposed by this subsection  
40 to the circuit court where the costs have been paid in the  
41 magistrate court.

42 (c) In each criminal case before a circuit court upon ap-  
43 peal from a municipal proceeding in which the defendant is  
44 convicted, whether by plea or at trial in the circuit court,  
45 under the provisions of a municipal ordinance which has the  
46 same elements as an offense described in section two, article  
47 five, chapter seventeen-c of this code or section eighteen-b,  
48 article seven, chapter twenty of this code, there shall be im-  
49 posed, in addition to other costs, fines, forfeitures or penalties  
50 as may be allowed by law, costs in the amount of fifty-five  
51 dollars. For purposes of further defraying the cost to the  
52 municipality of enforcing the provisions of the ordinance or  
53 ordinances described in this subsection and related provi-  
54 sions, the clerk of the circuit court shall, on or before the  
55 tenth day of the month following the month in which the  
56 costs imposed in this section were collected, remit an amount  
57 equal to the amount from each of the criminal proceedings in  
58 which the costs specified in this subsection were collected to  
59 the clerk of the municipal court or other person designated to  
60 receive fines and costs for the municipality from which the  
61 conviction was appealed who shall deposit these moneys in  
62 the general revenue fund of the municipality. The provisions  
63 of this subsection shall not require payment of the costs im-  
64 posed by this subsection to the circuit court where the costs  
65 have been paid to the clerk of the municipal court or other  
66 person designated to receive fines and costs for the munic-  
67 ipality.

68 (d) The provisions of this section shall be effective after  
69 the thirtieth day of June, two thousand four.

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## CHAPTER 88

(Com. Sub. for H. B. 4607— By Delegates Cann, Pethtel,  
Frederick, Palumbo and Caruth)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §13-2C-3a of the code of West Virginia, 1931, as amended; and to amend and reenact §31-15-5 of said code, all relating to the economic development authority board; conferring the authority and duties of the industrial revenue bond allocation review committee to the board of the West Virginia economic development authority; and adding members to the board of the economic development authority.

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

That §13-2C-3a of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §31-15-5 of said code be amended and reenacted, all to read as follows:

**Chapter**

**13. Public Bonded Indebtedness.**

**31. Corporations.**

**CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.**

**ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.**

**§13-2C-3a. Continuation of industrial revenue bond allocation review committee; appointment, terms of members; voting; expenses; duties.**

1 (a) There is continued the West Virginia industrial revenue  
2 bond allocation review committee consisting of the members of  
3 the board of the West Virginia economic development authority  
4 created by article fifteen, chapter thirty-one of this code.

5 (b) Members are not entitled to compensation for services  
6 performed as members, but are entitled to reimbursement for all  
7 reasonable and necessary expenses actually incurred in the  
8 performance of their duties: *Provided*, That no member may be  
9 eligible for expenses for meetings of both the board of the West  
10 Virginia economic development authority and the West  
11 Virginia industrial revenue bond allocation review committee  
12 when the meetings are held on the same day.

13 (c) A majority of the members of the committee constitutes  
14 a quorum for the purpose of conducting business. The affirma-  
15 tive vote of at least the majority of the members present is  
16 necessary for any action taken by vote of the committee. No  
17 vacancy in the membership of the committee impairs the right  
18 of a quorum to exercise all the rights and perform all the duties  
19 of the committee.

20 (d) The committee shall review and evaluate all applica-  
21 tions for reservation of funds submitted to the development  
22 office by a governmental body pursuant to the provisions of  
23 subsections (d) and (e), section twenty-one of this article, and  
24 shall make reservations of the state allocation (as defined in  
25 subdivision (2), subsection (b) of section twenty-one of this  
26 article) pursuant to subdivision (3), subsection (b) and subsec-  
27 tion (c) of section twenty-one of this article.

## **CHAPTER 31. CORPORATIONS.**

### **ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHOR- ITY.**



**§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.**

1 (a) The West Virginia economic development authority is  
2 continued as a body corporate and politic, constituting a public  
3 corporation and government instrumentality.

4 (b) The authority shall be composed of a board of members  
5 consisting of a chairman, who shall be the governor, or his or  
6 her designated representative, the tax commissioner and seven  
7 members who shall be appointed by the governor, by and with  
8 the advice and consent of the Senate, and who shall be broadly  
9 representative of the geographic regions of the state. One  
10 member of the House of Delegates to be appointed by the  
11 speaker and one member of the Senate to be appointed by the  
12 president shall serve on the board in an advisory capacity as ex  
13 officio, nonvoting members. The board shall direct the exercise  
14 of all the powers given to the authority in this article. The  
15 governor shall also be the chief executive officer of the author-  
16 ity, and shall designate the treasurer and the secretary of the  
17 board.

18 (c) As appointments expire, each subsequent appointment  
19 shall be for a full four-year term. Any member whose term has  
20 expired shall serve until his or her successor has been duly  
21 appointed and qualified. Any person appointed to fill a vacancy  
22 shall serve only for the unexpired term. Any member is eligible  
23 for reappointment.

24 (d) The governor may, by written notice filed with the  
25 secretary of the authority, from time to time, delegate to any  
26 subordinate the power to represent him or her at any meeting of  
27 the authority. In that case, the subordinate has the same power  
28 and privileges as the governor and may vote on any question.

29 (e) Members of the authority are not entitled to compensa-  
30 tion for services performed as members, but are entitled to  
31 reimbursement for all reasonable and necessary expenses  
32 actually incurred in the performance of their duties.

33 (f) A majority of the members constitutes a quorum for the  
34 purpose of conducting business. Except in the case of a loan or  
35 insurance application or unless the bylaws require a larger  
36 number, action may be taken by majority vote of the members  
37 present. Approval or rejection of a loan or insurance application  
38 shall be made by majority vote of the full membership of the  
39 board.

40 (g) The board shall manage the property and business of the  
41 authority and may prescribe, amend, adopt and repeal bylaws  
42 and rules and regulations governing the manner in which the  
43 business of the authority is conducted.

44 (h) The board shall, without regard to the provisions of civil  
45 service laws applicable to officers and employees of the state of  
46 West Virginia, appoint any necessary managers, assistant  
47 managers, officers, employees, attorneys and agents for the  
48 transaction of its business, fix their compensation, define their  
49 duties and provide a system of organization to fix responsibility  
50 and promote efficiency. Any appointee of the board may be  
51 removed at the discretion of the board. The authority may  
52 reimburse any state spending unit for any special expense  
53 actually incurred in providing any service or the use of any  
54 facility to the authority.

55 (i) In cases of any vacancy in the office of a voting mem-  
56 ber, the vacancy shall be filled by the governor. Any member  
57 appointed to fill a vacancy in the board occurring prior to the  
58 expiration of the term for which his or her predecessor was  
59 appointed shall be appointed for the remainder of the term.

60 (j) The governor may remove a member in the case of  
61 incompetence, neglect of duty, gross immorality or malfeasance  
62 in office, and may declare the member's office vacant and  
63 appoint a person for the vacancy as provided in other cases of  
64 vacancy.

65 (k) The secretary of the board shall keep a record of the  
66 proceedings of the board and perform any other duties deter-  
67 mined appropriate by the board. The treasurer shall be custo-  
68 dian of all funds of the authority and shall be bonded in the  
69 amount designated by other members of the board.

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## CHAPTER 89

**(H. B. 4131 — By Delegates Mezzatesta, Cann, Frederick,  
Stalnaker, Sumner and Walters)**

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[Passed February 11, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18B-3D-2 of the code of West Virginia, 1931, as amended, relating to the workforce development initiative program; updating terms; and requiring certain reporting to the legislative oversight commission on workforce investment for economic development.

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

That §18B-3D-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.**

**§18B-3D-2. Workforce development initiative program created;  
program administration.**

1 (a) For the purposes of this article “Council” means the  
2 council for community and economic development as defined  
3 in section two, article two, chapter five-b of this code.

4 (b) There is hereby created under the council, a workforce  
5 development initiative program to administer and oversee  
6 grants to community and technical colleges to achieve the  
7 purposes of this article in accordance with legislative intent.  
8 The primary responsibility of the council as it relates to the  
9 workforce development initiative program is to administer the  
10 state fund for community and technical college and workforce  
11 development including setting criteria for grant applications,  
12 receiving applications for grants, making determinations on  
13 distribution of funds, and evaluating the performance of  
14 workforce development initiatives.

15 (c) The council shall review and approve the expenditure of  
16 all grant funds, including development of application criteria,  
17 the review and selection of applicants for funding, and the  
18 annual review and justification of applicants for grant renewal.

19 (1) To aid in decisionmaking, the council shall appoint an  
20 advisory committee consisting of the vice chancellor for  
21 community and technical colleges, the secretary of education  
22 and the arts or a designee, the assistant state superintendent for  
23 technical and adult education, the chair of the council for  
24 community and technical college education, and the chair of the  
25 West Virginia workforce investment council. The advisory  
26 committee shall review all applications for workforce develop-  
27 ment initiative grants and make a report including recommen-  
28 dations for distributing grant funds to the council. The advisory  
29 committee also shall make recommendations on methods to

30 share among the community and technical colleges any  
31 curricula developed as a result of a workforce development  
32 initiative grant.

33 (2) When determining which grant proposals will be  
34 funded, the council shall give special consideration to proposals  
35 by community and technical colleges that involve businesses  
36 with fewer than fifty employees.

37 (3) The council also shall weigh each proposal to avoid  
38 awarding grants which will have the ultimate effect of provid-  
39 ing unfair advantage to employers new to the state who will be  
40 in direct competition with established local businesses.

41 (d) The council may allocate a reasonable amount, not to  
42 exceed five percent up to a maximum of fifty thousand dollars  
43 of the funds available for grants on an annual basis, for general  
44 program administration.

45 (e) The head of the council shall report to the legislative  
46 oversight commission on workforce investment for economic  
47 development on the status of the workforce development  
48 initiative program by the first day of December, two thousand  
49 four, and annually thereafter by the first day of December.

50 (f) Moneys appropriated or otherwise available for the  
51 workforce development initiative program shall be allocated by  
52 line item to an appropriate account. Any moneys remaining in  
53 the fund at the close of a fiscal year shall be carried forward for  
54 use in the next fiscal year.

55 (g) Nothing in this article requires a specific level of  
56 appropriation by the Legislature.

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## CHAPTER 90

(S. B. 573 — By Senators Rowe and McCabe)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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A BILL to amend and reenact §31-15-2 and §31-15-3 of the code of West Virginia, 1931, as amended, all relating to providing a procedure for the economic development authority to address employment and economic development problems of minority populations of this state.

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

That §31-15-2 and §31-15-3 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.**

**§31-15-2. Legislative findings.**

1       It is hereby determined and declared as a matter of legisla-  
2     tive finding: (a) That unemployment exists in many areas of the  
3     state and may well come about, from time to time, in other  
4     areas of the state; (b) that in some areas of the state, unemploy-  
5     ment is a serious problem and has been for so long a period of  
6     time that, without remedial measures, it may become so in other  
7     areas of the state; (c) that economic insecurity due to unem-  
8     ployment is a serious menace to the health, safety, morals and  
9     general welfare of the people of the entire state; (d) that  
10    widespread industry unemployment produces indigency which  
11    falls with crushing force upon all unemployed workers and

12 ultimately upon the state in the form of welfare and unemploy-  
13 ment compensation; (e) that the absence of employment and  
14 business opportunities for youth is a serious threat to the  
15 strength and permanence of their faith in our American political  
16 and economic institutions and the philosophy of freedom on  
17 which those institutions are based; (f) that lack of employment  
18 and business opportunities has resulted in thousands of workers  
19 and their families leaving the state to find such opportunities  
20 elsewhere and that this exodus has adversely affected the tax  
21 base of counties and municipalities resulting in an impairment  
22 of their financial ability to support education and other local  
23 government services; (g) that security against unemployment  
24 and the spread of indigency and economic stagnation can best  
25 be provided by the promotion, attraction, stimulation, rehabili-  
26 tation and revitalization of commerce, tourism, industry and  
27 manufacturing; (h) that the present and future health, safety,  
28 morals, right to gainful employment and general welfare of the  
29 people of the state require as a public purpose the promotion  
30 and development of new and expanded coal and other energy  
31 production, industrial, commercial, tourist and manufacturing  
32 enterprises within this state; (i) that the means and measures  
33 being authorized for the financing of projects, including the  
34 insuring of loans or other debt issued for working capital or the  
35 refinancing of existing debt of an enterprise, are, as a matter of  
36 public policy, for the public purposes of the several counties,  
37 municipalities and the state; (j) that the device under which  
38 private community industrial development organizations in the  
39 state acquire or build industrial buildings or sites and equip the  
40 same with funds raised through popular subscription, loans or  
41 otherwise for lease and sale to new or expanding industries has  
42 proven effective in creating new employment and business  
43 opportunities locally, is in accord with the American tradition  
44 of community initiative and enterprise and requires and  
45 deserves encouragement and support from the state as a means  
46 toward alleviation of unemployment and economic distress; (k)  
47 that community industrial development corporations in the state

48 have invested substantial funds in successful coal production,  
49 industrial projects and are experiencing difficulty in undertak-  
50 ing additional projects by reason of the partial inadequacy of  
51 their own funds potentially available from local subscription  
52 sources and by reason of limitations of local financial institu-  
53 tions in providing additional and sufficiently sizable first deed  
54 of trust or mortgage loans or letters of credit and other forms of  
55 credit enhancement; (l) that minority business ownership,  
56 especially among African-Americans in the area of Charleston,  
57 West Virginia, is proportionately less than minority business  
58 ownership nationwide and statewide, the unemployment rate for  
59 African-Americans recently has been about twice the unem-  
60 ployment rate for caucasians and significantly higher in some  
61 counties with a greater concentration of African-Americans and  
62 an urgent need exists to encourage African-Americans and  
63 minority business ownership and higher employment; (m) that  
64 an urgent need exists to stimulate a larger flow of private  
65 investment funds from banks, investment houses, insurance  
66 companies and other financial institutions into projects; (n) that  
67 by increasing the number of projects presenting attractive  
68 opportunities for private investment, a larger portion of the  
69 private capital available in this state for investment can be put  
70 to use for the general economic development of the state; (o)  
71 that the availability of financial assistance through the creation  
72 of an insurance fund will promote the economic development  
73 of the state; and that it is in the public interest, in order to  
74 address the needs aforesaid, that a state instrumentality be  
75 created as a public body corporate with full powers to accept  
76 grants, gifts and appropriations, to generate revenues, to borrow  
77 money and issue its bonds, notes, commercial paper, other debt  
78 instruments and security interests to the end that funds obtained  
79 thereby may be used to furnish money and credit to approved  
80 industrial development agencies or enterprises or to promote  
81 the establishment of new projects or to retain existing projects.

**§31-15-3. Purposes of article.**



1       The purposes of this article shall be to provide for the  
2 formation of a public economic development authority to  
3 promote, assist, encourage and, in conjunction with such  
4 banking corporations or institutions, trust companies, savings  
5 banks, building and loan associations, insurance companies or  
6 related corporations, partnerships, foundations, nonprofit  
7 organizations or other institutions, to develop and advance the  
8 business prosperity and economic welfare of the state of West  
9 Virginia; to encourage and assist in the location of new business  
10 and industry; to stimulate and assist in the expansion of all  
11 kinds of business activity which will tend to promote the  
12 business development and maintain the economic stability of  
13 this state, provide maximum opportunities for employment,  
14 encourage thrift and improve the standard of living of the  
15 citizens of this state; to cooperate and act in conjunction with  
16 other organizations, public or private, the objects of which are  
17 the promotion and advancement of industrial, commercial,  
18 tourist or manufacturing developments in this state; to borrow  
19 moneys and to issue its bonds, notes, commercial paper, other  
20 debt instruments and security interests as well as creating an  
21 insurance fund for credit enhancement purposes; to furnish  
22 money and credit or credit enhancement to approved industrial  
23 development agencies or enterprises in this state or for the  
24 promotion of new projects or to retain existing projects or to  
25 financially assist projects by insuring bonds, notes, loans and  
26 other instruments, including, but not limited to, the insuring of  
27 financing of working capital or the refinancing of existing debt  
28 of an enterprise, thereby establishing a source of credit and  
29 credit enhancement not otherwise available; to review state  
30 procurement policies and practices to assure that they meet  
31 federal and state requirements and that they effectively encour-  
32 age meaningful participation of African-Americans and other  
33 minority persons in the process of competing for and awarding  
34 of state contracts for goods and services; to encourage the state  
35 to continue to support and expand small business incubator  
36 programs, including the program at institutions of higher

37 education in the state; to encourage new and minority small  
38 business development; to undertake initiatives to encourage  
39 minority business ownership similar to those efforts used to  
40 encourage greater rates of business ownership among women;  
41 to assist community and economic development corporations to  
42 provide effective technical and business advisory services to  
43 minority-owned and -operated enterprises; to encourage  
44 industry, banks and other private businesses to hire Afri-  
45 can-Americans and other minority persons; to encourage  
46 governmental agencies and bodies and businesses to be more  
47 aggressive in establishing diversity-conscious practices as  
48 employers and for their operations; to enlist traditional and  
49 nontraditional lending institutions to be more creative and  
50 favorable to lending in minority communities and to minority  
51 persons, especially for business enterprises; to encourage small  
52 business start-up and expansion and provide funding to assist  
53 minority vendors to meet bid bonding requirements; and to  
54 encourage workforce investment boards to be accountable for  
55 educating poor and minority persons for jobs better than  
56 low-paying service jobs. These purposes are hereby declared  
57 to be public purposes for which public money may be spent and  
58 are purposes which will promote the health, safety, morals,  
59 right to gainful employment, business opportunities and general  
60 welfare of the inhabitants of the state.

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## CHAPTER 91

**(Com. Sub. for S. B. 408 — By Senators Snyder,  
Helmick, Ross and Unger)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact § 11-8-6f of the code of West Virginia, 1931, as amended; and to amend and reenact § 18-9A-11 of said code, all relating generally to levies by county boards of education and expenditure of property taxes collected from the levies; allowing growth counties to use provisions of growth county school facilities act; providing that high-growth counties may place certain property tax revenues in a growth county school facilities act fund to be used for the benefit of school facilities in the high-growth county; allowing moneys in the fund to be carried over from year to year; and providing that revenues deposited in a growth county school facilities act fund are not considered local share for purposes of the state aid formula.

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

That § 11-8-6f of the code of West Virginia, 1931, as amended, be amended and reenacted; and that § 18-9A-11 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 11. Taxation.
- 18. Education.

**CHAPTER 11. TAXATION.**

**ARTICLE 8. LEVIES.**

**§11-8-6f. Effect on regular school board levy rate when appraisal results in tax increase; creation and implementation of growth county school facilities act; creation of growth county school facilities act fund.**

- 1 (a) Notwithstanding any other provision of law, where any
- 2 annual appraisal, triennial appraisal or general valuation of
- 3 property would produce a statewide aggregate assessment that
- 4 would cause an increase of one percent or more in the total
- 5 property tax revenues that would be realized were the then

6 current regular levy rates of the county boards of education to  
7 be imposed, the rate of levy for county boards of education  
8 shall be reduced uniformly statewide and proportionately for all  
9 classes of property for the forthcoming tax year so as to cause  
10 the rate of levy to produce no more than one hundred one  
11 percent of the previous year's projected statewide aggregate  
12 property tax revenues from extending the county board of  
13 education levy rate, unless subsection (b) of this section is  
14 complied with. The reduced rates of levy shall be calculated in  
15 the following manner: (1) The total assessed value of each  
16 class of property as it is defined by section five, article eight of  
17 this chapter for the assessment period just concluded shall be  
18 reduced by deducting the total assessed value of newly created  
19 properties not assessed in the previous year's tax book for each  
20 class of property; (2) the resulting net assessed value of Class  
21 I property shall be multiplied by .01; the value of Class II by  
22 .02; and the values of Class III and IV, each by .04; (3) total the  
23 current year's property tax revenue resulting from regular levies  
24 for the boards of education throughout this state and multiply  
25 the resulting sum by one hundred one percent: *Provided*, That  
26 the one hundred one percent figure shall be increased by the  
27 amount the boards of educations' increased levy provided for in  
28 subsection (b), section eight, article one-c of this chapter; (4)  
29 divide the total regular levy tax revenues, thus increased in  
30 subdivision (3), of this subsection, by the total weighted net  
31 assessed value as calculated in subdivision (2) of this subsec-  
32 tion and multiply the resulting product by one hundred; the  
33 resulting number is the Class I regular levy rate, stated as  
34 cents-per-one hundred dollars of assessed value; and (5) the  
35 Class II rate is two times the Class I rate; Classes III and IV,  
36 four times the Class I rate as calculated in the preceding  
37 subdivision.

38 An additional appraisal or valuation due to new construc-  
39 tion or improvements, including beginning recovery of natural  
40 resources, to existing real property or newly acquired personal

41 property shall not be an annual appraisal or general valuation  
42 within the meaning of this section, nor shall the assessed value  
43 of the improvements be included in calculating the new tax levy  
44 for purposes of this section. Special levies shall not be included  
45 in any calculations under this section.

46 (b) After conducting a public hearing, the Legislature may,  
47 by act, increase the rate above the reduced rate required in  
48 subsection (a) of this section if an increase is determined to be  
49 necessary.

50 (c) *Growth county school facilities act. -- Legislative*  
51 *Findings. --*

52 The Legislature finds and declares that there has been,  
53 overall, a statewide decline in enrollment in the public schools  
54 of this state; due to this decline, most public schools have  
55 ample space for students, teachers and administrators; however,  
56 some counties of this state have experienced significant  
57 increases in enrollment due to significant growth in those  
58 counties; that those counties experiencing significant increases  
59 do not have adequate facilities to accommodate students,  
60 teachers and administrators. Therefore, the Legislature finds  
61 that county commissions in those high-growth counties should  
62 have the authority to designate revenues generated from the  
63 application of the regular school board levy due to new con-  
64 struction or improvements placed in a growth county school  
65 facilities act fund be used for school facilities in those counties  
66 to promote the best interests of this state's students.

67 (1) For the purposes of this subsection, "growth county"  
68 means any county that has experienced an increase in second  
69 month net enrollment, excluding kindergarten students less than  
70 five years of age without an individualized education program,  
71 of fifty or more during any three of the last five years, as  
72 determined by the department of education.

73           (2) The provisions of this subsection shall only apply to any  
74 growth county, as defined in subdivision (1) of this subsection,  
75 that, by resolution of its county board of education, chooses to  
76 use the provisions of this subsection.

77           (3) For any growth county, as defined in subdivision (1) of  
78 this subsection, that adopts a resolution choosing to use the  
79 provisions of this subsection, pursuant to subdivision (2) of this  
80 subsection, assessed values resulting from additional appraisal  
81 or valuation due to new construction or improvements, includ-  
82 ing beginning recovery of natural resources, to existing real  
83 property or newly acquired personal property, shall be desig-  
84 nated as new property values and identified by the county  
85 assessor. The statewide regular school board levy rate as  
86 established by the Legislature shall be applied to the assessed  
87 value designated as new property values and the resulting  
88 property tax revenues collected from application of the regular  
89 school board levy rate shall be placed in a separate account,  
90 designated as the growth counties school facilities act fund.  
91 Revenues deposited in the growth counties school facilities act  
92 fund shall be appropriated by the county board of education for  
93 construction, maintenance or repair of school facilities.  
94 Revenues in the fund may be carried over for an indefinite  
95 length of time and may be used as matching funds for the  
96 purpose of obtaining funds from the school building authority  
97 or for the payment of bonded indebtedness incurred for school  
98 facilities. Estimated school board revenues generated from  
99 application of the regular school board levy rate to new  
100 property values are not to be considered as local funds for  
101 purposes of the computation of local share under the provisions  
102 of section eleven, article nine-a, chapter eighteen of this code.

103           (d) This section, as amended during the legislative session  
104 in the year two thousand four, shall be effective as to any  
105 regular levy rate imposed for the county boards of education for  
106 taxes due and payable on or after the first day of July, two

107 thousand four. If any provision of this section is held invalid,  
108 the invalidity shall not affect other provisions or applications of  
109 this section which can be given effect without the invalid  
110 provision or its application and to this end the provisions of this  
111 section are declared 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) On the basis of each county's certificates of valuation as  
2 to all classes of property as determined and published by the  
3 assessors pursuant to section six, article three, chapter eleven of  
4 this code for the next ensuing fiscal year in reliance upon the  
5 assessed values annually developed by each county assessor  
6 pursuant to the provisions of articles one-c and three of said  
7 chapter, the state board shall for each county compute by  
8 application of the levies for general current expense purposes,  
9 as defined in section two of this article, the amount of revenue  
10 which the levies would produce if levied upon one hundred  
11 percent of the assessed value of each of the several classes of  
12 property contained in the report or revised report of the value,  
13 made to it by the tax commissioner as follows:

14 (1) The state board shall first take ninety-five percent of the  
15 amount ascertained by applying these rates to the total assessed  
16 public utility valuation in each classification of property in the  
17 county.

18 (2) The state board shall then apply these rates to the  
19 assessed taxable value of other property in each classification  
20 in the county as determined by the tax commissioner and shall  
21 deduct therefrom five percent as an allowance for the usual

22 losses in collections due to discounts, exonerations, delinquen-  
23 cies and the like. All of the amount so determined shall be  
24 added to the ninety-five percent of public utility taxes computed  
25 as provided in subdivision (1) of this subsection and this total  
26 shall be further reduced by the amount due each county  
27 assessor's office pursuant to the provisions of section eight,  
28 article one-c, chapter eleven of this code and this amount shall  
29 be the local share of the particular county.

30 As to any estimations or preliminary computations of local  
31 share that may be required prior to the report to the Legislature  
32 by the tax commissioner, the state board of education shall use  
33 the most recent projections or estimations that may be available  
34 from the tax department for that purpose.

35 (b) Whenever in any year a county assessor or a county  
36 commission shall fail or refuse to comply with the provisions  
37 of this section in setting the valuations of property for assess-  
38 ment purposes in any class or classes of property in the county,  
39 the state tax commissioner shall review the valuations for  
40 assessment purposes made by the county assessor and the  
41 county commission and shall direct the county assessor and the  
42 county commission to make corrections in the valuations as  
43 necessary so that they shall comply with the requirements of  
44 chapter eleven of this code and this section and the tax commis-  
45 sioner shall enter the county and fix the assessments at the  
46 required ratios. Refusal of the assessor or the county commis-  
47 sion to make the corrections constitutes grounds for removal  
48 from office.

49 (c) For the purposes of any computation made in accor-  
50 dance with the provisions of this section, in any taxing unit in  
51 which tax increment financing is in effect pursuant to the  
52 provisions of article eleven-b, chapter seven of this code, the  
53 assessed value of a related private project shall be the base  
54 assessed value as defined in section two of said article.



55 (d) For purposes of any computation made in accordance  
56 with the provisions of this section, in any county where the  
57 county board of education has adopted a resolution choosing to  
58 use the provisions of the growth county school facilities act set  
59 forth in section six-f, article eight, chapter eleven of this code,  
60 estimated school board revenues generated from application of  
61 the regular school board levy rate to new property values, as  
62 that term is designated in said section, may not be considered  
63 local share funds and shall be subtracted before the computa-  
64 tions in subdivisions (1) and (2), subsection (a) of this section  
65 are made.

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## CHAPTER 92

**(S. B. 448 — By Senators Plymale, Edgell, Boley, Bowman, Caldwell,  
Dempsey, Hunter, Oliverio, Sprouse, Unger and White)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to repeal §18B-1A-8 of the code of West Virginia, 1931, as amended; to repeal §18B-1B-7 of said code; to repeal §18B-3C-7 of said code; to repeal §18B-6-2a, §18B-6-3a, §18B-6-4a and §18B-6-4b of said code; to amend and reenact §18-2-1 of said code; to amend and reenact §18B-1-1a, §18B-1-2, §18B-1-3 and §18B-1-6 of said code; to amend and reenact §18B-1A-2, §18B-1A-3, §18B-1A-4, §18B-1A-5 and §18B-1A-6 of said code; to amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code; to amend said code by adding thereto a new section, designated §18B-1B-11; to amend and reenact §18B-2A-1 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-6; to amend and reenact §18B-2B-1, §18B-2B-2, §18B-2B-3,

§18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7 and §18B-2B-8 of said code; to amend said code by adding thereto a new section, designated §18B-2B-6a; to amend and reenact §18B-2C-3 and §18B-2C-4 of said code; to amend and reenact §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10 and §18B-3C-12 of said code; to amend and reenact §18B-4-1, §18B-4-2 and §18B-4-7 of said code; to amend and reenact §18B-5-4 of said code; to amend and reenact §18B-6-1 and §18B-6-1a of said code; to amend said code by adding thereto five new sections, designated §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-5 and §18B-6-6; to amend and reenact §18B-7-1 of said code; to amend said code by adding thereto a new section, designated §18B-7-12; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-10-2 of said code; and to amend said code by adding thereto a new section, designated §18B-10-1b, all relating to education generally; higher education; community and technical college education; post-secondary education; state board membership; powers and duties of higher education policy commission and council for community and technical college education; goals for post-secondary education; definitions; transferring certain rules and expanding and clarifying rule-making authority; developing and approving institutional compacts and master plans; establishing benchmarks and indicators; authorizing emergency rule; selecting peer institutions; legislative financing goals; budget authority of commission and council; provision of baccalaureate and graduate education; reducing duration of certain grants; higher education personnel; developing public policy agenda; commission membership; consistency and cooperation among commission, council and certain boards and groups; establishing priorities and distributing funds for capital projects; employment of staff; appointments to boards and commissions; transfer of certain course credits; approval of new institutions, programs and courses; employment of chancellor for higher education; powers and duties; evaluations and contracts; appointment of institutional presidents; evaluations; role of governing and advisory boards,

commission and council in appointments; requiring study of certain institutions providing post-secondary education; requiring reports to legislative oversight commission on education accountability; powers and duties of governing boards and institutional boards of advisors; authority of governing board in determining institutional status; changing status of certain baccalaureate institutions; establishing or continuing governing and advisory boards for certain institutions; membership; terms of office; legislative findings; employment of chancellor for community and technical college education; evaluations and contracts; maintenance of employee benefits; council membership and terms of office; qualifications; jurisdiction and authority of council; employment of staff; tuition and fees; certain fee transfer; developing standards for remedial and developmental courses; higher education report card; authorization to withdraw certain powers from a governing board; transfer and expansion of certain administrative, programmatic and budgetary control; establishing certain deadlines for commission and council; transferring certain fund and authorizing expenditures; employee transfer; powers and duties of chancellor; establishing and conforming structure of certain advisory groups; membership and terms of office; exceptions; meetings; development of search and screening guidelines; establishing certain advisory groups; clarifying certain expenses; modifying deadline for attaining independent accreditation; exceptions; council options; district consortia elimination; community and technical college consortia districts established; consortia powers, duties, responsibilities and operation; modifying title of certain employees; continuation in office; council authority over certain degree programs; service and fee requirement modification and limitation; employee reorganization; supervision of certain employees; essential services; employment of vice chancellor for administration; deadline for employment; modifying certain purchasing and competitive bidding requirements; certain employee seniority and displacement authority modification; duty of council regarding personnel classification

system; creation, collection and use of certain fees; and eliminating certain obsolete provisions.

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

That §18B-1A-8 of the code of West Virginia, 1931, as amended, be repealed; that §18B-1B-7 of said code be repealed; that §18B-3C-7 of said code be repealed; that §18B-6-2a, §18B-6-3a, §18B-6-4a and §18B-6-4b of said code be repealed; that §18-2-1 of said code be amended and reenacted; that §18B-1-1a, §18B-1-2, §18B-1-3 and §18B-1-6 of said code be amended and reenacted; that §18B-1A-2, §18B-1A-3, §18B-1A-4, §18B-1A-5 and §18B-1A-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-11; that §18B-2A-1 and §18B-2A-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2A-6; that §18B-2B-1, §18B-2B-2, §18B-2B-3, §18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7 and §18B-2B-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2B-6a; that §18B-2C-3 and §18B-2C-4 of said code be amended and reenacted; that §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10 and §18B-3C-12 of said code be amended and reenacted; that §18B-4-1, §18B-4-2 and §18B-4-7 of said code be amended and reenacted; that §18B-5-4 of said code be amended and reenacted; that §18B-6-1 and §18B-6-1a of said code be amended and reenacted; that said code be amended by adding thereto five new sections, designated §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-5 and §18B-6-6; that §18B-7-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-7-12; that §18B-9-1 and §18B-9-2 of said code be amended and reenacted; that §18B-10-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-10-1b, all to read as follows:

**Chapter****18. Education.****18B. Higher Education.****CHAPTER 18. EDUCATION.****ARTICLE 2. STATE BOARD OF EDUCATION.****§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.**

1       There is a state board of education, to be known as the West  
2 Virginia board of education, which is a corporation and as such  
3 may contract and be contracted with, plead and be impleaded,  
4 sue and be sued, and have and use a common seal. The state  
5 board consists of twelve members, of whom one is the state  
6 superintendent of schools, ex officio; one of whom is the  
7 chancellor of the higher education policy commission, ex  
8 officio; and one of whom is the chancellor of the West Virginia  
9 council for community and technical college education, ex  
10 officio, none of whom is entitled to vote. The other nine  
11 members are citizens of the state, appointed by the governor, by  
12 and with the advice and consent of the Senate, for overlapping  
13 terms of nine years. Terms of office begin on the fifth day of  
14 November of the appropriate year and end on the fourth day of  
15 November of the appropriate year. At least two, but not more  
16 than three, members are appointed from each congressional  
17 district.

18       No more than five of the appointive members may belong  
19 to the same political party and no person is eligible for appoint-  
20 ment to membership on the state board who is a member of any  
21 political party executive committee or holds any other public  
22 office or public employment under the federal government or  
23 under the government of this state or any of its political  
24 subdivisions, or who is an appointee or employee of the board.  
25 Members are eligible for reappointment. Any vacancy on the

26 board shall be filled by the governor by appointment for the  
27 unexpired term.

28 Notwithstanding the provisions of section four, article six,  
29 chapter six of this code, a member of the state board may not be  
30 removed from office by the governor except for official  
31 misconduct, incompetence, neglect of duty or gross immorality  
32 and then only in the manner prescribed by law for the removal  
33 by the governor of state elective officers.

34 Before exercising any authority or performing any duties as  
35 a member of the state board, each member shall qualify as such  
36 by taking and subscribing to the oath of office prescribed by  
37 section five, article IV of the Constitution of West Virginia, the  
38 certificate whereof shall be filed with the secretary of state. A  
39 suitable office in the state department of education at the state  
40 capitol shall be provided for use by the state board.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **Article**

1. **Governance.**
  - 1A. **Compact with Higher Education for the Future of West Virginia.**
  - 1B. **Higher Education Policy Commission.**
  - 2A. **Institutional Boards of Governors.**
  - 2B. **West Virginia Council for Community and Technical College Education.**
  - 2C. **West Virginia Community and Technical College.**
  - 3C. **Community and Technical College System.**
4. **General Administration.**
5. **Higher Education Budgets and Expenditures.**
6. **Advisory Councils and Boards.**
7. **Personnel Generally.**
9. **Classified Employee Salary Schedule and Classification System.**
10. **Fees and Other Money Collected at State Institutions of Higher Education.**

### **ARTICLE 1. GOVERNANCE.**

§18B-1-1a. Goals for post-secondary education.

§18B-1-2. Definitions.

§18B-1-3. Transfer of powers, duties, property, obligations, etc.

§18B-1-6. Rulemaking.

**§18B-1-1a. Goals for post-secondary education.**

1 (a) *Findings.* -- The Legislature finds that post-secondary  
2 education is vital to the future of West Virginia. For the state  
3 to realize its considerable potential in the twenty-first century,  
4 it must have a system for the delivery of post-secondary  
5 education which is competitive in the changing national and  
6 global environment, is affordable within the fiscal constraints  
7 of the state and for the state's residents to participate and has  
8 the capacity to deliver the programs and services necessary to  
9 meet regional and statewide needs.

10 (1) West Virginia leads a national trend toward an aging  
11 population wherein a declining percentage of working-age  
12 adults will be expected to support a growing percentage of  
13 retirees. Public school enrollments statewide have declined and  
14 will continue to do so for the foreseeable future with a few  
15 notable exceptions in growing areas of the state. As the state  
16 works to expand and diversify its economy, it is vitally impor-  
17 tant that young people entering the workforce from our educa-  
18 tion systems have the knowledge and skills to succeed in the  
19 economy of the twenty-first century. It is equally important,  
20 however, that working-age adults who are the large majority of  
21 the current and potential workforce also possess the requisite  
22 knowledge and skills and the ability to continue learning  
23 throughout their lifetimes. The reality for West Virginia is that  
24 its future rests not only on how well its youth are educated, but  
25 also on how well it educates its entire population of any age.

26 (2) Post-secondary education is changing throughout the  
27 nation. Place-bound adults, employers and communities are  
28 demanding education and student services that are accessible at  
29 any time, at any place and at any pace. Institutions are seizing

30 the opportunity to provide academic content and support  
31 services on a global scale by designing new courseware,  
32 increasing information technology-based delivery, increasing  
33 access to library and other information resources and develop-  
34 ing new methods to assess student competency rather than "seat  
35 time" as the basis for recognizing learning, allocating resources  
36 and ensuring accountability. In this changing environment, the  
37 state must take into account the continuing decline in the public  
38 school-age population, the limits of its fiscal resources and the  
39 imperative need to serve the educational needs of working-age  
40 adults. West Virginia cannot afford to finance quality higher  
41 education systems that aspire to offer a full array of programs  
42 while competing among themselves for a dwindling pool of  
43 traditional applicants. The competitive position of the state and  
44 its institutions will depend fundamentally on its capacity to  
45 reinforce the quality and differentiation of its institutions  
46 through policies that encourage focus and collaboration.

47 (3) The accountability system in West Virginia must be  
48 well equipped to address cross-cutting issues such as regional  
49 economic and workforce development, community and techni-  
50 cal college services, collaboration with the public schools to  
51 improve quality and student participation rates, access to  
52 graduate education and other broad issues of state interest.  
53 Severe fiscal constraints require West Virginia to make  
54 maximum use of existing assets to meet new demands. New  
55 investments must be targeted to those initiatives designed to  
56 enhance and reorient existing capacity, provide incentives for  
57 collaboration and focus on the new demands. It must have a  
58 single accountability point for developing, building consensus  
59 around and sustaining attention to the public policy agenda and  
60 for allocating resources consistent with this policy agenda.

61 (4) The state should make the best use of the expertise that  
62 private institutions of higher education can offer and recognize



63 the importance of their contributions to the economic, social  
64 and cultural well-being of their communities.

65 (5) The system of public higher education should be open  
66 and accessible to all persons, including persons with disabilities  
67 and other persons with special needs.

68 (b) *Compact with higher education.* -- In pursuance of these  
69 findings, it is the intent of the Legislature to engage higher  
70 education in a statewide compact for the future of West  
71 Virginia, as provided in article one-a of this chapter, that  
72 focuses on a public policy agenda that includes, but is not  
73 limited to, the following:

74 (1) Diversifying and expanding the economy of the state;

75 (2) Increasing the competitiveness of the state's workforce  
76 and the availability of professional expertise by increasing the  
77 number of college degrees produced to the level of the national  
78 average and significantly improving the level of adult func-  
79 tional literacy; and

80 (3) Creating a system of higher education that is equipped  
81 to succeed at producing these results.

82 (c) *Elements of the compact with higher education.* -- It is  
83 the intent of the Legislature that the compact with higher  
84 education include the following elements:

85 (1) A step-by-step process, as provided in articles one-b and  
86 three-c of this chapter, which will enable the state to achieve its  
87 public policy agenda through a system of higher education  
88 equipped to assist in producing the needed results. This process  
89 includes, but is not limited to, separate institutional compacts  
90 with state institutions of higher education that describe changes  
91 in institutional missions in the areas of research, graduate  
92 education, admission standards, community and technical

93 college education and geographical areas of responsibility to  
94 accomplish the following:

95 (A) A capacity within higher education to conduct research  
96 to enhance West Virginia in the eyes of the larger economic and  
97 educational community and to provide a basis for West  
98 Virginia's improved capacity to compete in the new economy  
99 through research oriented to state needs;

100 (B) Access to stable and continuing graduate-level pro-  
101 grams in every region of the state, particularly in teacher  
102 education related to teaching within a subject area to improve  
103 teacher quality;

104 (C) Universities, colleges and community and technical  
105 colleges that have focused missions, individual points of  
106 distinction and quality and strong links with the educational,  
107 economic and social revitalization of their regions and the state  
108 of West Virginia;

109 (D) Greater access and capacity to deliver technical  
110 education, workforce development and other higher education  
111 services to place-bound adults, thus improving the general  
112 levels of post-secondary educational attainment and literacy;

113 (E) Independently accredited community and technical  
114 colleges in every region of the state that:

115 (i) Assess regional needs;

116 (ii) Ensure access to comprehensive community and  
117 technical college and workforce development services within  
118 each of their respective regions;

119 (iii) Convene and serve as a catalyst for local action in  
120 collaboration with regional leaders, employers and other  
121 educational institutions;

122 (iv) Provide and, as necessary, broker educational services;

123 (v) Provide necessary student services;

124 (vi) Fulfill such other aspects of the community and  
125 technical college mission and general provisions for community  
126 and technical colleges as provided for in article three-c of this  
127 chapter; and

128 (vii) Maximize use of existing infrastructure and resources  
129 within their regions to increase access, including, but not  
130 limited to, vocational technical centers, schools, libraries,  
131 industrial parks and work sites.

132 (2) Providing additional resources, subject to availability  
133 and appropriation by the Legislature as provided in article one-a  
134 of this chapter, to make the state institutions of higher education  
135 more competitive with their peers, to assist them in accomplish-  
136 ing the elements of the public policy agenda and to ensure the  
137 continuity of academic programs and services to students.

138 (3) Establishing a process for the allocation of additional  
139 resources which focuses on achieving the elements of the public  
140 policy agenda and streamlines accountability for the  
141 step-by-step progress toward achieving these elements within  
142 a reasonable time frame as provided in article one-a of this  
143 chapter.

144 (4) Providing additional flexibility to the state institutions  
145 of higher education by making permanent the exceptions  
146 granted to higher education relating to travel rules and vehicles  
147 pursuant to sections forty-eight through fifty-three, inclusive,  
148 article three, chapter five-a of this code and section eleven,  
149 article three, chapter twelve of this code.

150 (5) Revising the higher education governance structure to  
151 make it more responsive to state and regional needs.

152 (d) *General goals for post-secondary education.* -- In  
153 pursuance of the findings and the development of institutional  
154 compacts with higher education for the future of West Virginia  
155 pursuant to article one-a of this chapter, it is the intent of the  
156 Legislature to establish general goals for post-secondary  
157 education and to have the commission and council report the  
158 progress toward achieving these goals in the higher education  
159 report card required pursuant to section eight, article one-b of  
160 this chapter and, where applicable, have the goals made a part  
161 of the institutional compacts. The Legislature establishes the  
162 general goals as follows:

163 (1) The overall focus of education is on a lifelong process  
164 which is to be as seamless as possible at all levels and is to  
165 encourage citizens of all ages to increase their knowledge and  
166 skills. Efforts in pursuit of this goal include, but are not limited  
167 to, the following:

168 (A) Collaboration, coordination and interaction between  
169 public and post-secondary education to:

170 (i) Improve the quality of public education, particularly  
171 with respect to ensuring that the needs of public schools for  
172 teachers and administrators are met;

173 (ii) Inform public school students, their parents and teachers  
174 of the academic preparation that students need to be prepared  
175 adequately to succeed in their selected fields of study and career  
176 plans, including academic career fairs; and

177 (iii) Improve instructional programs in the public schools  
178 so that the students enrolling in post-secondary education are  
179 adequately prepared;

180 (B) Collaboration, coordination and interaction among  
181 public and post-secondary education, the governor's council on  
182 literacy and the governor's workforce investment office to

183 promote the effective and efficient utilization of workforce  
184 investment and other funds to:

185 (i) Provide to individuals and employers greatly improved  
186 access to information and services on education and training  
187 programs, financial assistance, labor markets and job place-  
188 ment;

189 (ii) Increase awareness among the state's citizens of the  
190 opportunities available to them to improve their basic literacy,  
191 workforce and post-secondary skills and credentials; and

192 (iii) Improve citizens' motivation to take advantage of  
193 available opportunities by making the system more seamless  
194 and user friendly;

195 (C) Collaboration, coordination and interaction between  
196 public and post-secondary education on the development of  
197 seamless curriculum in technical preparation programs of study  
198 between the secondary and post-secondary levels; and

199 (D) Opportunities for advanced high school students to  
200 obtain college credit prior to high school graduation.

201 (2) The number of degrees produced per capita by West  
202 Virginia institutions of higher education is at the national  
203 average. Efforts in pursuit of this goal include, but are not  
204 limited to, the following:

205 (A) Collaboration, coordination and interaction between  
206 public and post-secondary education, the governor's council on  
207 literacy and the governor's workforce investment office to  
208 promote to individuals of all ages the benefits of increased  
209 post-secondary educational attainment;

210 (B) Assistance in overcoming the financial barriers to  
211 post-secondary education for both traditional and nontraditional  
212 students;

213 (C) An environment within post-secondary education that  
214 is student-friendly and that encourages and assists students in  
215 the completion of degree requirements within a reasonable time  
216 frame. The environment also should expand participation for  
217 the increasingly diverse student population;

218 (D) A spirit of entrepreneurship and flexibility within  
219 post-secondary education that is responsive to the needs of the  
220 current workforce and other nontraditional students for upgrad-  
221 ing and retraining college-level skills; and

222 (E) The expanded use of technology for instructional  
223 delivery and distance learning.

224 (3) All West Virginians, whether traditional or nontradi-  
225 tional students, displaced workers or those currently employed,  
226 have access to post-secondary educational opportunities  
227 through their community and technical colleges, colleges and  
228 universities which:

229 (A) Are relevant and affordable;

230 (B) Allow them to gain transferrable credits and associate  
231 or higher level degrees;

232 (C) Provide quality technical education and skill training;  
233 and

234 (D) Are responsive to business, industry, labor and commu-  
235 nity needs.

236 (4) State institutions of higher education prepare students  
237 to practice good citizenship and to compete in a global econ-

238 omy in which good jobs require an advanced level of education  
239 and skill which far surpasses former requirements. Efforts in  
240 pursuit of this goal include, but are not limited to, the follow-  
241 ing:

242 (A) The development of entrepreneurial skills through  
243 programs such as the rural entrepreneurship through action  
244 learning (REAL) program, which include practical experience  
245 in market analysis, business plan development and operations;

246 (B) Elements of citizenship development are included  
247 across the curriculum in core areas, including practical applica-  
248 tions such as community service, civic involvement and  
249 participation in charitable organizations and in the many  
250 opportunities for the responsible exercise of citizenship that  
251 higher education institutions provide;

252 (C) Students are provided opportunities for internships,  
253 externships, work study and other methods to increase their  
254 knowledge and skills through practical application in a work  
255 environment;

256 (D) College graduates meet or exceed national and interna-  
257 tional standards for skill levels in reading, oral and written  
258 communications, mathematics, critical thinking, science and  
259 technology, research and human relations;

260 (E) College graduates meet or exceed national and interna-  
261 tional standards for performance in their fields through national  
262 accreditation of programs and through outcomes assessment of  
263 graduates; and

264 (F) Admission and exit standards for students, professional  
265 staff development, program assessment and evaluation and  
266 other incentives are used to improve teaching and learning.

267 (5) State institutions of higher education exceed peer  
268 institutions in other states in measures of institutional produc-  
269 tivity and administrative efficiency. Efforts in pursuit of this  
270 goal include, but are not limited to:

271 (A) The establishment of systematic ongoing mechanisms  
272 for each state institution of higher education to set goals, to  
273 measure the extent to which those goals are met and to use the  
274 results of quantitative evaluation processes to improve institu-  
275 tional effectiveness;

276 (B) The combination and use of resources, technology and  
277 faculty to their maximum potential in a way that makes West  
278 Virginia higher education more productive than its peer  
279 institutions in other states while maintaining educational  
280 quality; and

281 (C) The use of systemic program review to determine how  
282 much duplication is necessary to maintain geographic access  
283 and to eliminate unnecessary duplication.

284 (6) Post-secondary education enhances state efforts to  
285 diversify and expand the economy of the state. Efforts in  
286 pursuit of this goal include, but are not limited to, the follow-  
287 ing:

288 (A) The focus of resources on programs and courses which  
289 offer the greatest opportunities for students and the greatest  
290 opportunity for job creation and retention in the state;

291 (B) The focus of resources on programs supportive of West  
292 Virginia employment opportunities and the emerging  
293 high-technology industries;

294 (C) Closer linkages among higher education and business,  
295 labor, government and community and economic development  
296 organizations; and



297 (D) Clarification of institutional missions and shifting of  
298 resources to programs which meet the current and future  
299 workforce needs of the state.

300 (7) Faculty and administrators are compensated at a level  
301 competitive with peer institutions to attract and keep quality  
302 personnel at state institutions of higher education.

303 (8) The tuition and fee levels for in-state students are  
304 competitive with those of peer institutions and the tuition and  
305 fee levels for out-of-state students are set at a level which at  
306 least covers the full cost of instruction.

#### **§18B-1-2. Definitions.**

1 The following words when used in this chapter and chapter  
2 eighteen-c of this code have the meaning hereinafter ascribed  
3 to them unless the context clearly indicates a different meaning:

4 (a) Effective the first day of July, two thousand five,  
5 "regional campus" means West Virginia university at  
6 Parkersburg and West Virginia university institute of technol-  
7 ogy.

8 (b)"Governing boards" or "boards" means the institutional  
9 boards of governors created pursuant to section one, article  
10 two-a of this chapter;

11 (c)"Freestanding community and technical colleges" means  
12 southern West Virginia community and technical college, West  
13 Virginia northern community and technical college and eastern  
14 West Virginia community and technical college which may not  
15 be operated as branches or off-campus locations of any other  
16 state institution of higher education;

17 (d) "Community college" or "community colleges" means  
18 community and technical college or colleges as those terms are  
19 defined in this section;

20 (e) "Community and technical college", in the singular or  
21 plural, means the freestanding community and technical  
22 colleges and other state institutions of higher education which  
23 deliver community and technical college education. This  
24 definition includes southern West Virginia community and  
25 technical college, West Virginia northern community and  
26 technical college, eastern West Virginia community and  
27 technical college, New River community and technical college,  
28 West Virginia university at Parkersburg, the community and  
29 technical college at West Virginia university institute of  
30 technology, the community and technical college of Shepherd,  
31 Fairmont state community and technical college, Marshall  
32 community and technical college and West Virginia state  
33 community and technical college;

34 (f) "Community and technical college education" means the  
35 programs, faculty, administration and funding associated with  
36 the mission of community and technical colleges as provided in  
37 article three-c of this chapter;

38 (g) "Essential conditions" means those conditions which  
39 shall be met by community and technical colleges as provided  
40 in section three, article three-c of this chapter;

41 (h) "Higher education institution" means any institution as  
42 defined by Sections 401(f), (g) and (h) of the federal Higher  
43 Education Facilities Act of 1963, as amended;

44 (i) "Higher education policy commission", "policy commis-  
45 sion" or "commission" means the commission created pursuant  
46 to section one, article one-b of this chapter;

47 (j) "Chancellor for higher education" means the chief  
48 executive officer of the higher education policy commission  
49 employed pursuant to section five, article one-b of this chapter;

50 (k) "Chancellor for community and technical college  
51 education" means the chief executive officer of the West  
52 Virginia council for community and technical college education  
53 employed pursuant to section three, article two-b of this  
54 chapter;

55 (l) "Chancellor" means the chancellor for higher education  
56 where the context refers to a function of the higher education  
57 policy commission. "Chancellor" means chancellor for  
58 community and technical college education where the context  
59 refers to a function of the West Virginia council for community  
60 and technical college education;

61 (m) "Institutional operating budget" or "operating budget"  
62 means for any fiscal year an institution's total unrestricted  
63 education and general funding from all sources in the prior  
64 fiscal year, including, but not limited to, tuition and fees and  
65 legislative appropriation, and any adjustments to that funding  
66 as approved by the commission or council based on compari-  
67 sons with peer institutions or to reflect consistent components  
68 of peer operating budgets;

69 (n) "Community and technical college education program"  
70 means any college-level course or program beyond the high  
71 school level provided through a public institution of higher  
72 education resulting in or which may result in a two-year  
73 associate degree award including an associate of arts, an  
74 associate of science and an associate of applied science;  
75 certificate programs and skill sets; developmental education;  
76 continuing education; collegiate credit and noncredit workforce  
77 development programs; and transfer and baccalaureate parallel  
78 programs. All such programs are under the jurisdiction of the  
79 council. Any reference to "post-secondary vocational education  
80 programs" means community and technical college education  
81 programs as defined in this subsection;

82 (o) "Rule" or "rules" means a regulation, standard, policy  
83 or interpretation of general application and future effect;

84 (p) For the purposes of this chapter and chapter eighteen-c  
85 of this code, "senior administrator" means the vice chancellor  
86 for administration employed by the commission with the advice  
87 and consent of the council in accordance with section two,  
88 article four of this chapter;

89 (q) "State college" means Bluefield state college, Concord  
90 college, Fairmont state college, Glenville state college, Shep-  
91 herd college, West Liberty state college or West Virginia state  
92 college;

93 (r) "State institution of higher education" means any  
94 university, college or community and technical college under  
95 the jurisdiction of a governing board as that term is defined in  
96 this section;

97 (s) Until the first day of July, two thousand five, "regional  
98 campus" means West Virginia university at Parkersburg,  
99 Potomac state college of West Virginia university and West  
100 Virginia university institute of technology;

101 (t) The advisory board previously appointed for the West  
102 Virginia graduate college is known as the "board of visitors"  
103 and shall provide guidance to the Marshall university graduate  
104 college;

105 (u) "Institutional compact" means the compact between the  
106 commission or council and a state institution of higher educa-  
107 tion under its jurisdiction, as described in section two, article  
108 one-a of this chapter;

109 (v) "Peer institutions", "peer group" or "peers" means  
110 public institutions of higher education used for comparison

111 purposes and selected by the commission pursuant to section  
112 three, article one-a of this chapter;

113 (w) "Administratively linked community and technical  
114 college" means a community and technical college created  
115 pursuant to section eight, article three-c of this chapter;

116 (x) "Sponsoring institution" means a state institution of  
117 higher education that maintains an administrative link to a  
118 community and technical college pursuant to section eight,  
119 article three-c of this chapter;

120 (y) "Collaboration" means entering into an agreement with  
121 one or more providers of education services in order to enhance  
122 the scope, quality or efficiency of education services;

123 (z) "Broker" or "brokering" means serving as an agent on  
124 behalf of students, employers, communities or responsibility  
125 areas to obtain education services not offered at that institution.  
126 These services include courses, degree programs or other  
127 services contracted through an agreement with a provider of  
128 education services either in-state or out-of-state; and

129 (aa) "Council" means the West Virginia council for  
130 community and technical college education created pursuant to  
131 article two-b of this chapter.

**§18B-1-3. Transfer of powers, duties, property, obligations, etc.**

1 (a) All powers, duties and authorities transferred to the  
2 board of regents pursuant to former provisions of chapter  
3 eighteen of this code and transferred to the board of trustees and  
4 board of directors which were created as the governing boards  
5 pursuant to the former provisions of this chapter and all powers,  
6 duties and authorities of the board of trustees and board of  
7 directors, to the extent they are in effect on the seventeenth day  
8 of June, two thousand, are hereby transferred to the interim

9 governing board created in article one-c of this chapter and  
10 shall be exercised and performed by the interim governing  
11 board until the first day of July, two thousand one, as such  
12 powers, duties and authorities may apply to the institutions  
13 under its jurisdiction.

14 (b) Title to all property previously transferred to or vested  
15 in the board of trustees and the board of directors and property  
16 vested in either of the boards separately, formerly existing  
17 under the provisions of this chapter, are hereby transferred to  
18 the interim governing board created in article one-c of this  
19 chapter until the first day of July, two thousand one. Property  
20 transferred to or vested in the board of trustees and board of  
21 directors shall include:

22 (1) All property vested in the board of governors of West  
23 Virginia university and transferred to and vested in the West  
24 Virginia board of regents;

25 (2) All property acquired in the name of the state board of  
26 control or the West Virginia board of education and used by or  
27 for the state colleges and universities and transferred to and  
28 vested in the West Virginia board of regents;

29 (3) All property acquired in the name of the state commis-  
30 sion on higher education and transferred to and vested in the  
31 West Virginia board of regents; and

32 (4) All property acquired in the name of the board of  
33 regents and transferred to and vested in the respective board of  
34 trustees and board of directors.

35 (c) Each valid agreement and obligation previously  
36 transferred to or vested in the board of trustees and board of  
37 directors formerly existing under the provisions of this chapter  
38 is hereby transferred to the interim governing board until the  
39 first day of July, two thousand one, as those agreements and

40 obligations may apply to the institutions under its jurisdiction.  
41 Valid agreements and obligations transferred to the board of  
42 trustees and board of directors shall include:

43 (1) Each valid agreement and obligation of the board of  
44 governors of West Virginia university transferred to and  
45 deemed the agreement and obligation of the West Virginia  
46 board of regents;

47 (2) Each valid agreement and obligation of the state board  
48 of education with respect to the state colleges and universities  
49 transferred to and deemed the agreement and obligation of the  
50 West Virginia board of regents;

51 (3) Each valid agreement and obligation of the state  
52 commission on higher education transferred to and deemed the  
53 agreement and obligation of the West Virginia board of regents;  
54 and

55 (4) Each valid agreement and obligation of the board of  
56 regents transferred to and deemed the agreement and obligation  
57 of the respective board of trustees and board of directors.

58 (d) All orders, resolutions and rules adopted or promulgated  
59 by the respective board of trustees and board of directors and in  
60 effect immediately prior to the first day of July, two thousand,  
61 are hereby transferred to the interim governing board until the  
62 first day of July, two thousand one, and shall continue in effect  
63 and shall be deemed the orders, resolutions and rules of the  
64 interim governing board until rescinded, revised, altered or  
65 amended by the commission or the governing boards in the  
66 manner and to the extent authorized and permitted by law.  
67 Such orders, resolutions and rules shall include:

68 (1) Those adopted or promulgated by the board of gover-  
69 nors of West Virginia university and in effect immediately prior  
70 to the first day of July, one thousand nine hundred sixty-nine,

71 unless and until rescinded, revised, altered or amended by the  
72 board of regents in the manner and to the extent authorized and  
73 permitted by law;

74 (2) Those respecting state colleges and universities adopted  
75 or promulgated by the West Virginia board of education and in  
76 effect immediately prior to the first day of July, one thousand  
77 nine hundred sixty-nine, unless and until rescinded, revised,  
78 altered or amended by the board of regents in the manner and  
79 to the extent authorized and permitted by law;

80 (3) Those adopted or promulgated by the state commission  
81 on higher education and in effect immediately prior to the first  
82 day of July, one thousand nine hundred sixty-nine, unless and  
83 until rescinded, revised, altered or amended by the board of  
84 regents in the manner and to the extent authorized and permit-  
85 ted by law; and

86 (4) Those adopted or promulgated by the board of regents  
87 prior to the first day of July, one thousand nine hundred  
88 eighty-nine, unless and until rescinded, revised, altered or  
89 amended by the respective board of trustees or board of  
90 directors in the manner and to the extent authorized and  
91 permitted by law.

92 (e) Title to all real property transferred to or vested in the  
93 interim governing board pursuant to this section of the code is  
94 hereby transferred to the commission effective the first day of  
95 July, two thousand one. The board of governors for each  
96 institution may request that the commission transfer title to the  
97 board of governors of any real property specifically identifiable  
98 with that institution or the commission may initiate the transfer.  
99 Any such request must be made within two years of the  
100 effective date of this section and be accompanied by an  
101 adequate legal description of the property.



102       The title to any real property that is jointly utilized by  
103 institutions or for statewide programs under the jurisdiction of  
104 the commission shall be retained by the commission.

105       (f) Ownership of or title to any other property, materials,  
106 equipment or supplies obtained or purchased by the interim  
107 governing board or the previous governing boards on behalf of  
108 an institution is hereby transferred to the board of governors of  
109 that institution effective the first day of July, two thousand one.

110       (g) Each valid agreement and obligation previously  
111 transferred or vested in the interim governing board and which  
112 was undertaken or agreed to on behalf of an institution or  
113 institutions is hereby transferred to the board of governors of  
114 the institution or institutions for whose benefit the agreement  
115 was entered into or the obligation undertaken effective the first  
116 day of July, two thousand one.

117       (1) The obligations contained in revenue bonds issued by  
118 the previous governing boards under the provisions of section  
119 eight, article ten of this chapter and article twelve-b, chapter  
120 eighteen of this code are hereby transferred to the commission  
121 and each institution shall transfer to the commission those funds  
122 the commission determines are necessary to pay that institu-  
123 tion's share of bonded indebtedness.

124       (2) The obligations contained in revenue bonds issued on  
125 behalf of a state institution of higher education pursuant to any  
126 other section of this code is hereby transferred to the board of  
127 governors of the institution on whose behalf the bonds were  
128 issued.

129       (h) All orders, resolutions, policies and rules:

130       (1) Adopted or promulgated by the respective board of  
131 trustees, board of directors or interim governing board and in  
132 effect immediately prior to the first day of July, two thousand

133 one, are hereby transferred to the commission effective the first  
134 day of July, two thousand one, and continue in effect until  
135 rescinded, revised, altered, amended or transferred to the  
136 governing boards by the commission as provided in this section  
137 and in section six of this article.

138 (2) Adopted or promulgated by the commission relating  
139 solely to community and technical colleges or community and  
140 technical college education, or rules which the council finds  
141 necessary for the exercise of its lawful powers and duties  
142 pursuant to the provisions of this chapter, may be adopted by  
143 the council and continue in effect until rescinded, revised,  
144 altered, amended or transferred to the governing boards under  
145 the jurisdiction of the council pursuant to section six of this  
146 article. Nothing in this section requires the initial rules of the  
147 commission that are adopted by the council to be promulgated  
148 again under the procedure set forth in article three-a, chapter  
149 twenty-nine-a of this code unless such rules are rescinded,  
150 revised, altered or amended.

151 (3) Adopted or promulgated by the commission relating to  
152 multiple types of public institutions of higher education or  
153 community and technical college education as well as baccalau-  
154 reate and post-baccalaureate education are transferred to the  
155 council in part as follows:

156 (A) That portion of the rule relating solely to community  
157 and technical colleges or community and technical college  
158 education is transferred to the council and continues in effect  
159 until rescinded, revised, altered, amended or transferred to the  
160 governing boards by the council as provided in this section and  
161 in section six of this article;

162 (B) That portion of the rule relating to institutions or  
163 education other than community and technical colleges is  
164 retained by the commission and continues in effect until

165 rescinded, revised, altered, amended or transferred to the  
166 governing boards by the commission as provided in this section  
167 and in section six of this article.

168 (i) The commission may, in its sole discretion, transfer any  
169 rule, other than a legislative rule, to the jurisdiction of the  
170 governing boards of the institutions under its jurisdiction who  
171 may rescind, revise, alter or amend any rule so transferred  
172 pursuant to rules adopted by the commission pursuant to section  
173 six of this article.

174 The council may, in its sole discretion, transfer any rule,  
175 other than a legislative rule, to the jurisdiction of the governing  
176 boards of the institutions under its jurisdiction who may  
177 rescind, revise, alter or amend any rule so transferred pursuant  
178 to rules adopted by the council pursuant to section six of this  
179 article.

180 (j) As to any title, agreement, obligation, order, resolution,  
181 rule or any other matter about which there is some uncertainty,  
182 misunderstanding or question, the matter shall be summarized  
183 in writing and sent to the commission which shall make a  
184 determination regarding such matter within thirty days of  
185 receipt thereof.

186 (k) Rules or provisions of law which refer to other provi-  
187 sions of law which were repealed, rendered inoperative or  
188 superseded by the provisions of this section shall remain in full  
189 force and effect to such extent as may still be applicable to  
190 higher education and may be so interpreted. Such references  
191 include, but are not limited to, references to sections and prior  
192 enactments of article twenty-six, chapter eighteen of this code  
193 and code provisions relating to retirement, health insurance,  
194 grievance procedures, purchasing, student loans and savings  
195 plans. Any determination which needs to be made regarding

196 applicability of any provision of law shall first be made by the  
197 commission.

**§18B-1-6. Rulemaking.**

1 (a) The commission is hereby empowered to promulgate,  
2 adopt, amend or repeal rules, in accordance with the provisions  
3 of article three-a, chapter twenty-nine-a of this code, subject to  
4 the provisions of section three of this article.

5 (b) The council is hereby empowered to promulgate, adopt,  
6 amend or repeal rules, in accordance with the provisions of  
7 article three-a, chapter twenty-nine-a of this code and subject to  
8 the provisions of section three of this article. This grant of rule-  
9 making power extends only to those areas over which the  
10 council has been granted specific authority and jurisdiction by  
11 law.

12 (c) The commission and council each shall promulgate a  
13 rule to guide the development and approval of rules, guidelines  
14 and other policy statements made by their respective governing  
15 boards. The rules promulgated by the commission and council  
16 shall include, but are not limited to, the following provisions:

17 (1) A procedure to ensure that public notice is given and  
18 that the right of interested parties to have a fair and adequate  
19 opportunity to respond is protected;

20 (2) Designation of a single location where all proposed and  
21 approved rules, guidelines and other policy statements can be  
22 accessed by the public;

23 (3) A procedure to maximize internet access to all proposed  
24 and approved rules, guidelines and other policy statements to  
25 the extent technically and financially feasible.

26 (d) On and after the effective date of this section, and  
27 notwithstanding any other provision of this code to the contrary,  
28 any rule heretofore required by law to be promulgated as a  
29 legislative rule prior to the first day of July, two thousand one,  
30 may not be considered to be a legislative rule for the purposes  
31 of article three-a, chapter twenty-nine-a of this code except for  
32 the following:

33 (1) The legislative rule required by subsection (c), section  
34 eight of this article;

35 (2) The legislative rule required by section eight-a of this  
36 article;

37 (3) The legislative rule required by section two, article  
38 one-a of this chapter;

39 (4) The legislative rule required by section four, article  
40 one-b of this chapter;

41 (5) The legislative rule required by section one, article  
42 three, chapter eighteen-c of this code;

43 (6) The legislative rule required by section one, article four,  
44 chapter eighteen-c of this code;

45 (7) The legislative rule required by section seven, article  
46 five, chapter eighteen-c of this code; and

47 (8) The legislative rule required by section one, article six,  
48 chapter eighteen-c of this code.

49 (e) Nothing in this section requires that any rule reclassified  
50 or transferred under this section be promulgated again under the  
51 procedures set out in article three-a, chapter twenty-nine-a of  
52 this code unless the rule is amended or modified.

53 (f) The commission and council each shall file with the  
54 legislative oversight commission on education accountability  
55 any rule it proposes to promulgate, adopt, amend or repeal  
56 under the authority of this article.

**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE  
FUTURE OF WEST VIRGINIA.**

- §18B-1A-2. Institutional compacts with state institutions of higher education;  
establishment and review process.
- §18B-1A-3. Peer institutions.
- §18B-1A-4. Legislative financing goals.
- §18B-1A-5. Financing; institutional operating budgets, additional funding.
- §18B-1A-6. Graduate education.

**§18B-1A-2. Institutional compacts with state institutions of  
higher education; establishment and review  
process.**

1 (a) Each state college and university shall prepare an  
2 institutional compact for submission to the commission. Each  
3 community and technical college shall prepare an institutional  
4 compact for submission to the council. When the process  
5 herein provided is completed, the institutional compacts shall  
6 form the agreements between the institutions of higher educa-  
7 tion and the commission or council, respectively, and, ulti-  
8 mately, between the institutions of higher education and the  
9 people of West Virginia on how the institutions will use their  
10 resources to address the intent of the Legislature and the goals  
11 set forth in section one-a, article one of this chapter. The  
12 compacts shall contain the following:

13 (1) A step-by-step process to accomplish the intent of the  
14 Legislature and the goals set forth in section one-a, article one  
15 of this chapter as organized by the commission and council.  
16 The step-by-step process shall be delineated by objectives and  
17 shall set forth a time line for achieving the objectives which  
18 shall, where applicable, include benchmarks to measure

19 institutional progress as defined in subsection (e) of this  
20 section.

21 (2) A determination of the mission of the institution which  
22 specifically addresses changes, as applicable, in the areas of  
23 research, graduate education, baccalaureate education, revised  
24 admission requirements, community and technical colleges and  
25 such other areas as the commission or council determines  
26 appropriate. In the determination of mission, the institutions  
27 and the commission or council shall consider the report  
28 completed by the national center for higher education manage-  
29 ment systems pursuant to the legislative study as provided in  
30 section seven, article three of this chapter;

31 (3) A plan which is calculated to make any changes in  
32 institutional mission and structure within a six-year period;

33 (4) A statement of the geographic areas of responsibility,  
34 where applicable, for each goal to be accomplished as provided  
35 in subsection (d) of this section;

36 (5) A detailed statement of how the compact is aligned with  
37 and will be implemented in conjunction with the master plan of  
38 the institution;

39 (6) Such other items, requirements or initiatives, required  
40 by the commission or council, designed to accomplish the intent  
41 of the Legislature and the goals set forth in section one-a,  
42 article one of this chapter or other public policy goals estab-  
43 lished by the commission or council.

44 (b) Each institutional compact shall be updated annually  
45 and shall follow the same general guidelines contained in  
46 subsection (a) of this section.

47 (c) Development and updating of the institutional compacts  
48 is subject to the following:

49       (1) The ultimate responsibility for developing and updating  
50 the institutional compacts at the institutional level resides with  
51 the institutional board of advisors or the board of governors, as  
52 appropriate;

53       (2) The ultimate responsibility for developing and adopting  
54 the final version of the state college and university institutional  
55 compacts resides with the commission. The ultimate responsi-  
56 bility for developing and adopting the final version of the  
57 community and technical college institutional compacts resides  
58 with the council;

59       (3) Each institution shall submit its compact to the commis-  
60 sion or council annually by the fifteenth day of November;

61       (4) The commission and council shall review each compact  
62 of the institutions under their respective jurisdictions and either  
63 adopt the compact or return it with specific comments for  
64 change or improvement. The commission and council shall  
65 continue this process as long as each considers advisable;

66       (5) By the first day of May annually, if the institutional  
67 compact of any institution as presented by that institution is not  
68 adopted by the commission or council, then the commission or  
69 council is empowered and directed to develop and adopt the  
70 institutional compact for the institution and the institution is  
71 bound by the compact so adopted; and

72       (6) As far as practicable, the commission and council each  
73 shall establish uniform processes and forms for the develop-  
74 ment and submission of the institutional compacts by the  
75 institutions under their respective jurisdictions. As a part of this  
76 function, the commission and council shall organize the  
77 statements of legislative intent and goals contained in section  
78 one-a, article one of this chapter in a manner that facilitates the  
79 purposes of this subdivision and the purposes of this section.



80 (d) The commission and council shall assign geographic  
81 areas of responsibility to the state institutions of higher educa-  
82 tion under their respective jurisdictions as a part of their  
83 institutional compacts to ensure that all areas of the state are  
84 provided necessary programs and services to achieve the public  
85 policy agenda. The benchmarks established in the institutional  
86 compacts shall include measures of programs and services by  
87 geographic area throughout the assigned geographic area of  
88 responsibility.

89 (e) The compacts shall contain benchmarks used to deter-  
90 mine progress toward meeting the goals established in the  
91 compacts. The benchmarks shall meet the following criteria:

92 (1) They shall be as objective as possible;

93 (2) They shall be directly linked to the goals in the com-  
94 pacts;

95 (3) They shall be measured by the indicators described in  
96 subsection (f) of this section; and

97 (4) Where applicable, they shall be used to measure  
98 progress in geographic areas of responsibility.

99 (f) The commission and council each shall establish by  
100 legislative rule indicators which measure the degree to which  
101 the goals and objectives set forth in section one-a, article one of  
102 this chapter are being addressed and met by the institutions  
103 under their respective jurisdictions. The benchmarks estab-  
104 lished in subsection (e) of this section shall be measured by the  
105 indicators.

106 (1) The Legislature finds that an emergency exists; there-  
107 fore, not later than the first day of October, two thousand four,  
108 the council shall file as an emergency rule a legislative rule  
109 pertaining to benchmarks and indicators in accordance with the

110 provisions of article three-a, chapter twenty-nine-a of this code.  
111 The rule pertaining to benchmarks and indicators in effect for  
112 the commission at the time of the effective date of this section  
113 remains in effect for the institutions under its jurisdiction.

114 (2) The legislative rules shall set forth at the least the  
115 following as pertains to all state institutions of higher educa-  
116 tion:

117 (A) The indicators used to measure the degree to which the  
118 goals and objectives are being met;

119 (B) Uniform definitions for the various data elements to be  
120 used in establishing the indicators;

121 (C) Guidelines for the collection and reporting of data; and

122 (D) Sufficient detail within the benchmarks and indicators  
123 to:

124 (i) Provide measurable evidence that the pursuits of the  
125 institution are targeting the educational needs of the citizens of  
126 the state and the components of the compacts and master plans;

127 (ii) Delineate the goals and benchmarks for an institution so  
128 that the commission or council can precisely measure the  
129 degree to which progress is being made toward achieving the  
130 goals for post-secondary education provided in section one-a,  
131 article one of this chapter; and

132 (iii) Distinctly identify specific goals within the master plan  
133 or compact of an institution that are not being met or toward  
134 which sufficient progress is not being made.

135 (3) In addition to any other requirement, the legislative rule  
136 established by the council shall set forth at the least the follow-  
137 ing as pertains to community and technical college education:

138 (A) Benchmarks and indicators which are targeted to  
139 identify:

140 (i) The degree to which progress is being made by institu-  
141 tions toward meeting the goals for post-secondary education  
142 and the essential conditions provided in section three, article  
143 three-c of this chapter;

144 (ii) Information and data necessary to be considered by the  
145 council in making the determination required by section three,  
146 article two-c of this chapter;

147 (iii) The degree to which progress is being made in the  
148 areas considered by the council for the purpose of making the  
149 determination required by section three, article two-c of this  
150 chapter; and

151 (B) Sufficient detail within the benchmarks and indicators  
152 to provide clear evidence to support an objective determination  
153 by the council that an institution's progress toward achieving  
154 the goals for post-secondary education and the essential  
155 conditions is so deficient that implementation of the provisions  
156 of section four, article two-c of this chapter is warranted and  
157 necessary.

158 (g) The commission or the council, as appropriate, shall  
159 approve the master plans developed by the boards of governors  
160 and the institutional boards of advisors pursuant to section four,  
161 article two-a of this chapter or section one, article six of this  
162 chapter, as appropriate.

**§18B-1A-3. Peer institutions.**

1 (a) The commission shall select not fewer than ten peer  
2 institutions for each state institution of higher education in West  
3 Virginia, including, but not limited to, independently accredited  
4 community and technical colleges.

5 (b) When selecting peers, the commission shall abide by the  
6 following conditions:

7 (1) The peer institutions shall be selected from among  
8 institutions throughout the United States and not solely from the  
9 states that are members of the southern regional education  
10 board.

11 (2) The peer institutions for community and technical  
12 colleges shall be selected in collaboration with the council.

13 (3) The peer institutions, as selected by the commission,  
14 shall be used as benchmarks for comparison purposes only and  
15 are not intended to reflect funding goals for West Virginia  
16 institutions of higher education. Such a use is inappropriate  
17 since institutions selected as peers for a state institution may be  
18 located in an area of high per capita income or have their  
19 funding subject to other factors that make its use unrealistic for  
20 setting funding goals in West Virginia. The peer institutions  
21 shall be used for comparison in the following areas:

22 (A) To determine adjustments to base operating budgets as  
23 described in section five of this article;

24 (B) To determine comparable levels of tuition;

25 (C) To determine comparable faculty and staff teaching  
26 requirements and other workloads; and

27 (D) For such other purposes as the law may require or the  
28 commission may find useful or necessary.

29 (4) The commission shall contract with a national, inde-  
30 pendent education consulting firm to assist in the unbiased  
31 selection of peer institutions for each West Virginia institution.

32 (5) The commission shall select peer institutions for each  
33 institution through an open, deliberative, objective process and

34 in consultation with the institutional boards of governors or  
35 boards of advisors, as appropriate, intended to achieve broad  
36 understanding of the basis for this selection in the higher  
37 education community and the Legislature.

38 (6) Final peer selection is subject to the approval of the  
39 legislative oversight commission on education accountability.

40 (7) In selecting peer institutions, the commission shall use  
41 criteria such as, but not limited to:

42 (A) Institutional mission;

43 (B) Institutional size related to full-time equivalent stu-  
44 dents;

45 (C) The proportions of full-time and part-time students;

46 (D) The level of academic programs, including, but not  
47 limited to, number of degrees granted at the associate, baccalau-  
48 reate, masters, doctoral and first-professional level;

49 (E) The characteristics of academic programs such as health  
50 sciences, professional, technical or liberal arts and sciences; and

51 (F) The level of research funding from federal competitive  
52 funding sources.

53 (8) Subject to the approval of the legislative oversight  
54 commission on education accountability, the commission shall  
55 review and make necessary adjustments to peer institutions at  
56 least every six years or as necessary based on changes in  
57 institutional missions as approved in institutional compacts or  
58 in changes at peer institutions. The commission shall review  
59 and make adjustments to peer institutions for community and  
60 technical colleges in collaboration with the council.

61 (9) Nothing herein prevents the commission from using the  
62 same peers or peer groups for more than one institution of  
63 higher education.

**§18B-1A-4. Legislative financing goals.**

1 (a) The Legislature recognizes that the higher education  
2 goals set forth in section one-a, article one of this chapter are of  
3 utmost importance. The Legislature further recognizes that  
4 meeting the goals may require the appropriation of funds above  
5 the current operating budgets of the institutions.

6 (b) It is, therefore, the desire of the Legislature to increase  
7 funding annually for higher education at a rate not less than the  
8 annual percentage increase in the overall general revenue  
9 budget.

10 (c) If the commission or council, or both, determines that  
11 appropriations are insufficient to fund the requirements of the  
12 institutional compacts under its jurisdiction, the commission or  
13 council first shall consider extending the length of the compacts  
14 or otherwise modifying the compacts to allow the institutions  
15 to achieve the benchmarks in the compacts. If modifications to  
16 the institutional compacts are not sufficient to allow the  
17 institutions to meet their benchmarks, the commission or  
18 council, or both, shall recommend to the Legislature methods  
19 of making the higher education system more efficient. The  
20 methods may include, but are not limited to, the following:

21 (1) Administrative efficiencies;

22 (2) Consolidation of services;

23 (3) Elimination of programs;

24 (4) Consolidating institutions; and

25 (5) Closing institutions.

**§18B-1A-5. Financing; institutional operating budgets, additional funding.**

1           (a) *Budget request and appropriations.* -- The commission  
2 and council each has the responsibility to develop a budget for  
3 the state system of higher education under its respective  
4 jurisdiction. The commission submits the budget request for  
5 higher education, including the budget request as developed by  
6 the council, to the governor before the first day of September  
7 annually. The budget requests of the commission and the  
8 council specifically shall include the amount of the institutional  
9 operating budgets, as defined in section two, article one of this  
10 chapter, required for all state institutions of higher education  
11 under their respective jurisdictions. The budget appropriation  
12 for the state systems of higher education under this chapter and  
13 other provisions of the law shall consist of separate control  
14 accounts or institutional control accounts, or some combination  
15 of such accounts, for appropriation of institutional operating  
16 budgets and other funds. The commission and council each is  
17 responsible for allocating state appropriations to supplement  
18 institutional operating budgets in accordance with this section.  
19 In addition to the institutional operating budget and incentive  
20 funding, however, the commission and council each is responsi-  
21 ble for allocating funds that are appropriated to it for other  
22 purposes. In order to determine institutional allocations, it is  
23 the responsibility of the institutions and their respective  
24 institutional boards of governors or advisors, as appropriate to  
25 provide to the commission or council documentation on  
26 institutional progress toward mission enhancement, preliminary  
27 peer comparison calculations, performance of increased  
28 productivity and academic quality and measurable attainment  
29 in fulfilling state priorities as set forth in this article. The  
30 documentation shall be provided to the commission or council  
31 no later than the first day of October annually.

32           (b) *Legislative funding priorities.* --

33       (1) The Legislature recognizes the current funding model  
34 has not moved all state institutions equitably towards compara-  
35 ble peer funding levels. The model has left West Virginia  
36 institutions at a competitive disadvantage to their national  
37 peers.

38       (2) The Legislature acknowledges that the resource  
39 allocation model used to comply with enrolled committee  
40 substitute for Senate bill no. 547, passed during the legislative  
41 session of one thousand nine hundred ninety-five, alleviated  
42 some of the disparity that exists among state institutions'  
43 operating budgets, but left significant differences between the  
44 institutions and their national peers.

45       (3) The Legislature recognizes that a system of independ-  
46 ently accredited community and technical colleges is essential  
47 to the economic vitality of the state.

48       (4) The Legislature places great importance on achieving  
49 the priority goals outlined in the public policy agenda and  
50 believes the state institutions of higher education should play a  
51 vital role in facilitating the attainment of these goals.

52       (5) The Legislature also believes it is imperative that the  
53 state make progress on narrowing the peer inequity while  
54 balancing the need for sustaining the quality of our institutions.

55       (6) It is the charge of the commission and council to  
56 allocate all funds appropriated in excess of the fiscal year two  
57 thousand one general revenue appropriations in alignment with  
58 the legislative funding priorities listed below. The commission  
59 and council shall consider the priorities and assign a percentage  
60 of the total appropriation of new funds to each priority.

61       (A) *Peer equity.* -- Funds appropriated for this purpose  
62 increase the level of the institutional operating budget for state  
63 institutions of higher education comparable to their peer



64 institutions. The allocation shall provide, subject to the  
65 availability of funds and legislative appropriations, for a  
66 systematic adjustment of the institutional operating budgets to  
67 move all institutions' funding in the direction of levels compa-  
68 rable with their peers. Institutional allocations shall be calcu-  
69 lated as follows:

70 (i) A calculation shall be made of the deficiency in per  
71 student funding of each institution in comparison with the mean  
72 per student funding of the peer institutions as defined by the  
73 commission pursuant to section three of this article;

74 (ii) For all institutions that are deficient in comparison with  
75 peer institutions, the amounts of the deficiencies shall be  
76 totaled;

77 (iii) A ratio of the amount of the deficiency for an institu-  
78 tion divided by the total amounts of deficiency for all West  
79 Virginia institutions shall be established for each institution;  
80 and

81 (iv) The allocation to each institution shall be calculated by  
82 multiplying the ratio by the total amount of money in the  
83 account;

84 (B) *Independently accredited community and technical*  
85 *colleges development.* -- Funds appropriated for this purpose  
86 will ensure a smooth transition, where required, from "compo-  
87 nent" community and technical colleges to independently  
88 accredited community and technical colleges as defined in  
89 section two, article one of this chapter. Appropriations for this  
90 purpose are to be allocated only to those institutions having  
91 approved compacts with the council that expressly include the  
92 transition of their component community colleges to independ-  
93 ently accredited status and have demonstrated measurable  
94 progress towards this goal. By the first day of July, two  
95 thousand five, or when all required community and technical

96 colleges are independently accredited, whichever first occurs,  
97 funds for this purpose shall be allocated to the incentives for  
98 institutional contributions to state priorities;

99 (C) *Research challenge.* -- Funds appropriated for this  
100 purpose shall assist public colleges and universities in West  
101 Virginia to compete on a national and international basis by  
102 providing incentives to increase their capacity to compete  
103 successfully for research funding. The Legislature intends for  
104 institutions to collaborate in the development and execution of  
105 research projects to the extent practicable and to target research  
106 to the needs of the state as established in the public policy  
107 agenda and linked to the future competitiveness of this state.

108 (i) The commission shall develop criteria for awarding  
109 grants to institutions under this account, which may include, but  
110 are not limited to, the following:

111 (I) Grants to be used to match externally funded,  
112 peer-reviewed research;

113 (II) Grants to be used to match funds for strategic institu-  
114 tional investments in faculty and other resources to increase  
115 research capacity;

116 (III) Grants to support funding for new research centers and  
117 projects that will foster economic development and workforce  
118 investment within the state. These grants shall be limited to  
119 five years and each research center or project funded shall  
120 receive a decreasing award each year and shall be required to be  
121 supported solely by external funding within five years;

122 (ii) The commission may establish an advisory council  
123 consisting of nationally prominent researchers and scientists,  
124 including representatives from outside the state, to assist in  
125 developing the criteria for awarding grants under this account.

126 (iii) For the purposes of making the distributions from this  
127 account, the commission shall establish the definition for  
128 research, research funds and any other terms as may be neces-  
129 sary to implement this subdivision; and

130 (D) *Incentives for institutional contributions to state*  
131 *priorities.* -- Funds appropriated for this purpose provide  
132 incentives to institutions which demonstrate success toward  
133 advancing the goals of the public policy agenda as set forth in  
134 section one-a, article one of this chapter and to provide incen-  
135 tives for mission enhancement as set forth in section two of this  
136 article.

137 (E) *Sustained quality support.* -- The commission and  
138 council shall provide additional operating funds to institutions  
139 under their respective jurisdictions with approved compacts.  
140 The commission and council shall allocate these funds on an  
141 equal percentage basis to all institutions. The commission or  
142 council may delay distribution of these funds to any institution  
143 which does not demonstrate measurable progress towards the  
144 goals provided in its compact with the commission or council.

145 (c) *Allocations to institutional operating budgets.* -- For the  
146 purposes of this subsection, the commission and council each  
147 shall establish by rule pursuant to subsection (f), section two of  
148 this article the method for measuring the progress of each  
149 institution towards meeting the benchmarks of its institutional  
150 compact.

151 (d) *Allocation of appropriations to the institutions.* --  
152 Appropriations in this section shall be allocated to the state  
153 institutions of higher education in the following manner:

154 (1) Each fiscal year appropriations from the funds shall be  
155 allocated only to institutions which have:

156 (A) Approved compacts, pursuant to section two of this  
157 article; and

158 (B) Achieved their annual benchmarks for accomplishing  
159 the goals of their compacts, as approved by the commission or  
160 council.

161 (2) If an institution has not achieved all of its annual  
162 benchmarks, the commission or council may distribute a  
163 portion of the funds to the institution based on its progress as  
164 the commission or council determines appropriate. The  
165 commission and council each shall establish by rule, pursuant  
166 to subsection (f), section two of this article, the method for  
167 measuring the progress of each institution toward meeting the  
168 benchmarks of its institutional compact.

169 (e) Nothing in this section limits the appropriation or  
170 collection of fees necessary to effectuate the operation and  
171 purpose of the commission or council.

**§18B-1A-6. Graduate education.**

1 (a) *Intent.* -- It is the intent of the Legislature to address the  
2 need for high quality graduate education programs to be  
3 available throughout the state.

4 (b) *Findings.* -- The Legislature makes the following  
5 findings:

6 (1) Since West Virginia ranks below its competitor states  
7 in graduate degree production, particularly in the areas that are  
8 important to the state's competitive position in the new econ-  
9 omy of the twenty-first century, there is a considerable need for  
10 greater access to graduate education, especially at the master's  
11 degree level;

12       (2) There is a significant disparity in access to part-time  
13 graduate degree programs among the different regions of the  
14 state and part-time graduate enrollments are heavily concen-  
15 trated in the counties immediately surrounding Marshall  
16 university and West Virginia university;

17       (3) There is a particular need for increased access to  
18 graduate programs linked directly to the revitalization of the  
19 regional economies of the state; and

20       (4) There is a particular need for improved quality and  
21 accessibility of preservice and in-service programs for teachers  
22 in subject matter fields.

23       (c) In order to meet the need for graduate education, the  
24 commission shall be responsible for accomplishing the follow-  
25 ing:

26       (1) Ensuring that West Virginia university and Marshall  
27 university expand access to master's degree programs through-  
28 out West Virginia, with a strong emphasis on collaboration with  
29 the baccalaureate colleges and community and technical  
30 colleges in each region;

31       (2) Ensuring that any institution providing a master's  
32 degree program under the provisions of this section provides a  
33 meaningful, coherent program by offering courses in such a  
34 way that students, including place-bound adults, have ample  
35 opportunity to complete a degree in a reasonable period of time;

36       (3) Focusing on providing courses that enhance the profes-  
37 sional skills of teachers in their subject areas; and

38       (4) Ensuring that programs are offered in the most  
39 cost-effective manner to expand access throughout the region  
40 and the state.

41 (d) Concord college, Fairmont state college, Glensville state  
42 college, Shepherd college, West Liberty state college and West  
43 Virginia state college shall meet the need for graduate educa-  
44 tion in their regions by following the procedures outlined  
45 below.

46 (1) The institutions shall develop as graduate centers for  
47 their regions to broker access to graduate programs by contract-  
48 ing with accredited colleges and universities in and out of the  
49 state. These programs shall be related directly to each region's  
50 education and economic needs.

51 (2) The institutions may begin collaborative programs with  
52 other institutions leading to the granting of master's degrees in  
53 selected areas that are demonstrated to be related directly to the  
54 needs of their regions and that draw on faculty strengths. An  
55 institution may continue to offer collaborative programs aimed  
56 at meeting the documented needs with the approval of the  
57 commission or, if a sustained need still exists, the institution  
58 may move to the next level.

59 (3) If the graduate education needs of the region have not  
60 been met through brokering and collaborative programs, the  
61 institution may explore the option of beginning its own gradu-  
62 ate-level program leading to the granting of a master's degree.  
63 The institution may begin its own master's degree program if  
64 it can meet the following conditions as determined by the  
65 commission:

66 (A) Demonstrate that the institution has successfully  
67 completed each of the steps required before exploring develop-  
68 ment of its own master's degree program;

69 (B) Provide evidence based on experience gained in the  
70 brokering and collaborative arrangements that a sustained  
71 demand exists for the program;

72 (C) Demonstrate that the baccalaureate institution has the  
73 capacity to provide the program;

74 (D) Demonstrate that the core mission of the baccalaureate  
75 institution will not be impaired by offering the graduate  
76 program;

77 (E) Provide evidence that the graduate program has a  
78 reasonable expectation of being accredited;

79 (F) Demonstrate that the need documented in subdivision  
80 (B) of this subsection is not currently being met by any other  
81 state institution of higher education; and

82 (G) The commission may designate one of the institutions  
83 listed in subsection (d) of this section to develop and implement  
84 no more than four of its own masters level programs as a pilot  
85 project: *Provided*, That the selected institution shall move  
86 toward and achieve regional accreditation of the masters  
87 program within a reasonable time as determined by the com-  
88 mission. The institution shall be selected based on the follow-  
89 ing:

90 (i) Sufficient credentialed faculty to offer quality programs  
91 in the areas selected;

92 (ii) Sufficient unmet demand for the programs; and

93 (iii) Sustainable unmet demand based on generally accepted  
94 projections for population growth in the region served by the  
95 institution.

96 The programs authorized by this clause may not be re-  
97 stricted by the provisions of subdivisions (1), (2) and (3) of this  
98 subsection nor by the provisions of subsection (e) of this  
99 section.

100 (e) There is an urgent need for master's degree programs  
101 for teachers in disciplines or subject areas, such as mathematics,  
102 science, history, literature, foreign languages and the arts.  
103 Currently, master's-level courses in education that are offered  
104 in the regions served by the state universities are primarily in  
105 areas such as guidance and counseling, administration, special  
106 education and other disciplines unrelated to teaching in subject  
107 areas. If this need is not being met in a region through the  
108 procedure established in subsection (d) of this section, then the  
109 graduate center in that region may plan a master's degree  
110 program in education focused on teaching in subject area fields  
111 in which the demand is not being met. No institution may  
112 begin a graduate program under the provisions of this section  
113 until the program has been reviewed and approved by the  
114 commission. The commission shall approve only those  
115 programs, as authorized by this subsection, that emphasize  
116 serving the needs of teachers and schools in the colleges'  
117 immediate regions. In determining whether a program should  
118 be approved, the commission also shall rely upon the recom-  
119 mendations of the statewide task force on teacher quality  
120 provided for in section eight, article fourteen of this chapter.

121 (f) The commission shall review all graduate programs  
122 being offered under the provisions of this section and, using the  
123 criteria established for program startup in subsection (d) of this  
124 section, determine which programs should be discontinued.

125 (g) At least annually, the governing boards shall evaluate  
126 graduate programs developed pursuant to the provisions of this  
127 section and report to the commission on the following:

128 (1) The number of programs being offered and the courses  
129 offered within each program;

130 (2) The disciplines in which programs are being offered;

131 (3) The locations and times at which courses are offered;



132 (4) The number of students enrolled in the program; and

133 (5) The number of students who have obtained master's  
134 degrees through each program.

135 The governing boards shall provide the commission with  
136 any additional information the commission requests in order to  
137 make a determination on the viability of a program.

138 (h) In developing any graduate program under the provi-  
139 sions of this section, institutions shall consider delivering  
140 courses at times and places convenient to adult students who are  
141 employed full time. Institutions shall place an emphasis on  
142 extended degree programs, distance learning and off-campus  
143 centers which utilize the cost-effective nature of extending  
144 existing university capacity to serve the state rather than  
145 duplicating the core university capacity and incurring the  
146 increased cost of developing master's degree programs at other  
147 institutions throughout the state.

148 (i) Brokering institutions shall invite proposals from other  
149 public institutions of higher education for service provision  
150 prior to contracting with other institutions: *Provided*, That if  
151 institutions propose providing graduate programs in service  
152 areas other than in their responsibility district, the institution  
153 seeking to establish a program shall work through the district's  
154 lead institution in providing those services.

155 (j) In addition to the approval required by the commission,  
156 authorization for any institution to offer a master's degree  
157 program under the provisions of this section is subject to the  
158 formal approval processes established by the governing boards.

#### **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

§18B-1B-1. Higher education policy commission established; development of  
public policy agenda.

- §18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
- §18B-1B-4. Powers and duties of higher education policy commission.
- §18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.
- §18B-1B-6. Appointment of institutional presidents; evaluation.
- §18B-1B-11. Study of licensing and oversight of certain institutions providing post-secondary education.

**§18B-1B-1. Higher education policy commission established; development of public policy agenda.**

1       There is hereby created the "higher education policy  
2 commission", hereinafter referred to as the "commission". It is  
3 the intent of the Legislature that the commission be responsible  
4 to develop, gain consensus around and oversee the public policy  
5 agenda for higher education and other statewide issues pursuant  
6 to section one-a, article one of this chapter under the following  
7 conditions:

8       (a) It is the responsibility of the commission to work  
9 collaboratively with the council to develop and gain consensus  
10 around the public policy agenda for community and technical  
11 colleges.

12       (b) It is the responsibility of the council to oversee the  
13 implementation of the public policy agenda for the institutions  
14 under its jurisdiction.

15       (c) All matters of governance not specifically assigned to  
16 the commission or council by law are the duty and responsibil-  
17 ity of the governing boards.

**§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.**

1 (a) The commission is comprised of ten members. One is  
2 the secretary of education and the arts, ex officio. One is the  
3 state superintendent of schools, ex officio. One is the chair of  
4 the West Virginia council for community and technical college  
5 education who is an ex officio, nonvoting member.

6 (b) The other seven members of the commission are  
7 citizens of the state, appointed by the governor, by and with the  
8 advice and consent of the Senate. Prior to appointment, the  
9 governor shall interview each candidate to assure that the  
10 person selected understands and is committed to achieving the  
11 goals and objectives as set forth in the institutional compacts  
12 and in section one-a, article one of this chapter. The governor  
13 shall invite the president of the Senate, the speaker of the House  
14 of Delegates, the chairs of the Senate and House of Delegates  
15 committees on finance and education and such other legislative  
16 leaders as the governor may determine to participate in inter-  
17 viewing potential candidates. Each member appointed to the  
18 commission by the governor shall represent the public interest  
19 and shall be committed to the legislative intent and goals set  
20 forth in said section.

21 (c) The governor may not appoint any person to be a  
22 member of the commission who is an officer, employee or  
23 member of the council or an advisory board of any state college  
24 or university; an officer or member of any political party  
25 executive committee; the holder of any other public office or  
26 public employment under the government of this state or any of  
27 its political subdivisions; an appointee or employee of any  
28 governing board; or an immediate family member of any  
29 employee under the jurisdiction of the commission, the council  
30 or any governing board. Of the members appointed by the  
31 governor from the public at large, no more than four thereof  
32 may belong to the same political party and at least two shall be  
33 appointed from each congressional district.

34 (d) The terms of the members appointed by the governor  
35 are for overlapping terms of four years.

36 (e) The governor shall appoint a member to fill any vacancy  
37 among the seven members appointed by the governor, by and  
38 with the advice and consent of the Senate. Any member  
39 appointed to fill a vacancy serves for the unexpired term of the  
40 vacating member. The governor shall fill the vacancy within  
41 thirty days of the occurrence of the vacancy.

42 (f) A member appointed by the governor may not serve  
43 more than two consecutive terms.

44 (g) Before exercising any authority or performing any  
45 duties as a member of the commission, each member shall  
46 qualify as such by taking and subscribing to the oath of office  
47 prescribed by section five, article IV of the Constitution of  
48 West Virginia and the certificate thereof shall be filed with the  
49 secretary of state.

50 (h) A member of the commission appointed by the governor  
51 may not be removed from office by the governor except for  
52 official misconduct, incompetence, neglect of duty or gross  
53 immorality and then only in the manner prescribed by law for  
54 the removal of the state elective officers by the governor.

**§18B-1B-4. Powers and duties of higher education policy commission.**

1 (a) The primary responsibility of the commission is to  
2 develop, establish and implement policy that will achieve the  
3 goals and objectives found in section one-a, article one of this  
4 chapter. The commission shall exercise its authority and carry  
5 out its responsibilities in a manner that is consistent and not in  
6 conflict with the powers and duties assigned by law to the West  
7 Virginia council for community and technical college educa-

8 tion. To that end, the commission has the following powers and  
9 duties relating to the institutions under its jurisdiction:

10 (1) Develop, oversee and advance the public policy agenda  
11 pursuant to section one, article one-a of this chapter to address  
12 major challenges facing the state, including, but not limited to,  
13 the goals and objectives found in section one-a, article one of  
14 this chapter and including specifically those goals and objec-  
15 tives pertaining to the compacts created pursuant to section two,  
16 article one-a of this chapter and to develop and implement the  
17 master plan described in section nine of this article for the  
18 purpose of accomplishing the mandates of this section;

19 (2) Develop, oversee and advance the implementation  
20 jointly with the council of a financing policy for higher educa-  
21 tion in West Virginia. The policy shall meet the following  
22 criteria:

23 (A) Provide an adequate level of education and general  
24 funding for institutions pursuant to section five, article one-a of  
25 this chapter;

26 (B) Serve to maintain institutional assets, including, but not  
27 limited to, human and physical resources and deferred mainte-  
28 nance;

29 (C) Invest and provide incentives for achieving the priority  
30 goals in the public policy agenda, including, but not limited to,  
31 those found in section one-a, article one of this chapter; and

32 (D) Incorporate the plan for strategic funding to strengthen  
33 capacity for support of community and technical college  
34 education established by the West Virginia council for commu-  
35 nity and technical college education pursuant to the provisions  
36 of section six, article two-b of this chapter;

37 (3) In collaboration with the council, create a policy  
38 leadership structure capable of the following actions:

39 (A) Developing, building public consensus around and  
40 sustaining attention to a long-range public policy agenda. In  
41 developing the agenda, the commission and council shall seek  
42 input from the Legislature and the governor and specifically  
43 from the state board of education and local school districts in  
44 order to create the necessary linkages to assure smooth,  
45 effective and seamless movement of students through the public  
46 education and post-secondary education systems and to ensure  
47 that the needs of public school courses and programs can be  
48 fulfilled by the graduates produced and the programs offered;

49 (B) Ensuring that the governing boards carry out their duty  
50 effectively to govern the individual institutions of higher  
51 education; and

52 (C) Holding the higher education institutions and the higher  
53 education systems as a whole accountable for accomplishing  
54 their missions and implementing the provisions of the com-  
55 pacts;

56 (4) Develop and adopt each institutional compact;

57 (5) Review and adopt the annual updates of the institutional  
58 compacts;

59 (6) Serve as the accountability point to:

60 (A) The governor for implementation of the public policy  
61 agenda; and

62 (B) The Legislature by maintaining a close working  
63 relationship with the legislative leadership and the legislative  
64 oversight commission on education accountability;

65 (7) Jointly with the council, promulgate legislative rules  
66 pursuant to article three-a, chapter twenty-nine-a of this code to  
67 fulfill the purposes of section five, article one-a of this chapter;

68 (8) Establish and implement a peer group for each institu-  
69 tion as described in section three, article one-a of this chapter;

70 (9) Establish and implement the benchmarks and perfor-  
71 mance indicators necessary to measure institutional achieve-  
72 ment towards state policy priorities and institutional missions  
73 pursuant to section two, article one-a of this chapter;

74 (10) Annually report to the Legislature and to the legislative  
75 oversight commission on education accountability during the  
76 January interim meetings on a date and at a time and location  
77 to be determined by the president of the Senate and the speaker  
78 of the House of Delegates. The report shall address at least the  
79 following:

80 (A) The performance of its system of higher education  
81 during the previous fiscal year, including, but not limited to,  
82 progress in meeting goals stated in the compacts and progress  
83 of the institutions and the higher education system as a whole  
84 in meeting the goals and objectives set forth in section one-a,  
85 article one of this chapter;

86 (B) An analysis of enrollment data collected pursuant to  
87 section one, article ten of this chapter and recommendations for  
88 any changes necessary to assure access to high-quality,  
89 high-demand education programs for West Virginia residents;

90 (C) The priorities established for capital investment needs  
91 pursuant to subdivision (11) of this subsection and the justifica-  
92 tion for such priority;

93 (D) Recommendations of the commission for statutory  
94 changes needed to further the goals and objectives set forth in  
95 section one-a, article one of this chapter;

96 (11) Establish a formal process for identifying needs for  
97 capital investments and for determining priorities for these  
98 investments. It is the responsibility of the commission to assure  
99 a fair distribution of funds for capital projects between the  
100 commission and the council. To that end the commission shall  
101 take the following steps:

102 (A) Receive the list of priorities developed by the council  
103 for capital investment for the institutions under the council's  
104 jurisdiction pursuant to subsection (b), section six, article two-b  
105 of this chapter;

106 (B) Place the ranked list of projects on the agenda for action  
107 within sixty days of the date on which the list was received;

108 (C) Select a minimum of three projects from the list  
109 submitted by the council to be included on the ranked list  
110 established by the commission. At least one of the three  
111 projects selected must come from the top two priorities estab-  
112 lished by the council.

113 (12) Maintain guidelines for institutions to follow concern-  
114 ing extensive capital projects. The guidelines shall provide a  
115 process for developing capital projects, including, but not  
116 limited to, the notification by an institution to the commission  
117 of any proposed capital project which has the potential to  
118 exceed one million dollars in cost. Such a project may not be  
119 pursued by an institution without the approval of the commis-  
120 sion. An institution may not participate directly or indirectly  
121 with any public or private entity in any capital project which  
122 has the potential to exceed one million dollars in cost;



123 (13) Acquire legal services as are considered necessary,  
124 including representation of the commission, its institutions,  
125 employees and officers before any court or administrative body,  
126 notwithstanding any other provision of this code to the contrary.  
127 The counsel may be employed either on a salaried basis or on  
128 a reasonable fee basis. In addition, the commission may, but is  
129 not required to, call upon the attorney general for legal assis-  
130 tance and representation as provided by law;

131 (14) Employ a chancellor for higher education pursuant to  
132 section five of this article;

133 (15) Employ other staff as necessary and appropriate to  
134 carry out the duties and responsibilities of the commission and  
135 the council, in accordance with the provisions of article four of  
136 this chapter;

137 (16) Provide suitable offices in Charleston for the chancel-  
138 lor, vice chancellors and other staff;

139 (17) Advise and consent in the appointment of the presi-  
140 dents of the institutions of higher education under its jurisdic-  
141 tion pursuant to section six of this article. The role of the  
142 commission in approving an institutional president is to assure  
143 through personal interview that the person selected understands  
144 and is committed to achieving the goals and objectives as set  
145 forth in the institutional compact and in section one-a, article  
146 one of this chapter;

147 (18) Approve the total compensation package from all  
148 sources for presidents of institutions under its jurisdiction, as  
149 proposed by the governing boards. The governing boards must  
150 obtain approval from the commission of the total compensation  
151 package both when institutional presidents are employed  
152 initially and afterward when any change is made in the amount  
153 of the total compensation package;

154       (19) Establish and implement the policy of the state to  
155 assure that parents and students have sufficient information at  
156 the earliest possible age on which to base academic decisions  
157 about what is required for students to be successful in college,  
158 other post-secondary education and careers related, as far as  
159 possible, to results from current assessment tools in use in West  
160 Virginia;

161       (20) Approve and implement a uniform standard jointly  
162 with the council to determine which students shall be placed in  
163 remedial or developmental courses. The standard shall be  
164 aligned with college admission tests and assessment tools used  
165 in West Virginia and shall be applied uniformly by the govern-  
166 ing boards throughout the public higher education system. The  
167 chancellors shall develop a clear, concise explanation of the  
168 standard which they shall communicate to the state board of  
169 education and the state superintendent of schools;

170       (21) Review and approve or disapprove capital projects as  
171 described in subdivision (11) of this subsection;

172       (22) Jointly with the council, develop and implement an  
173 oversight plan to manage systemwide technology such as the  
174 following:

175       (A) Expanding distance learning and technology networks  
176 to enhance teaching and learning, promote access to quality  
177 educational offerings with minimum duplication of effort; and

178       (B) Increasing the delivery of instruction to nontraditional  
179 students, to provide services to business and industry and  
180 increase the management capabilities of the higher education  
181 system;

182       (23) Establish and implement policies and procedures to  
183 ensure that students may transfer and apply toward the require-  
184 ments for a bachelor's degree the maximum number of credits

185 earned at any regionally accredited in-state or out-of-state  
186 community and technical college with as few requirements to  
187 repeat courses or to incur additional costs as is consistent with  
188 sound academic policy;

189 (24) Establish and implement policies and procedures to  
190 ensure that students may transfer and apply toward the require-  
191 ments for a degree the maximum number of credits earned at  
192 any regionally accredited in-state or out-of-state higher educa-  
193 tion institution with as few requirements to repeat courses or to  
194 incur additional costs as is consistent with sound academic  
195 policy;

196 (25) Establish and implement policies and procedures to  
197 ensure that students may transfer and apply toward the require-  
198 ments for a master's degree the maximum number of credits  
199 earned at any regionally accredited in-state or out-of-state  
200 higher education institution with as few requirements to repeat  
201 courses or to incur additional costs as is consistent with sound  
202 academic policy;

203 (26) Establish and implement policies and programs, in  
204 cooperation with the council and the institutions of higher  
205 education, through which students who have gained knowledge  
206 and skills through employment, participation in education and  
207 training at vocational schools or other education institutions, or  
208 internet-based education programs, may demonstrate by  
209 competency-based assessment that they have the necessary  
210 knowledge and skills to be granted academic credit or advanced  
211 placement standing toward the requirements of an associate  
212 degree or a bachelor's degree at a state institution of higher  
213 education;

214 (27) Seek out and attend regional, national and international  
215 meetings and forums on education and workforce development-  
216 related topics, as in the commission's discretion is critical for

217 the performance of their duties as members, for the purpose of  
218 keeping abreast of education trends and policies to aid it in  
219 developing the policies for this state to meet the established  
220 education goals and objectives pursuant to section one-a, article  
221 one of this chapter;

222 (28) Develop, establish and implement guidelines for  
223 higher education governing boards and institutions to follow  
224 when considering capital projects. The guidelines shall include,  
225 but not be limited to, the following:

226 (A) That the governing boards and institutions not approve  
227 or promote projects that give competitive advantage to new  
228 private sector projects over existing West Virginia businesses,  
229 unless the commission determines such private sector projects  
230 are in the best interest of the students, the institution and the  
231 community to be served; and

232 (B) That the governing boards and institutions not approve  
233 or promote projects involving private sector businesses which  
234 would have the effect of reducing property taxes on existing  
235 properties or avoiding, in whole or in part, the full amount of  
236 taxes which would be due on newly developed or future  
237 properties;

238 (29) Consider and submit to the appropriate agencies of the  
239 executive and legislative branches of state government a budget  
240 that reflects recommended appropriations from the commission  
241 and the institutions under its jurisdiction. The commission shall  
242 submit as part of its budget proposal the separate recommended  
243 appropriations it received from the council both for the council  
244 and the institutions under the council's jurisdiction. The  
245 commission annually shall submit the proposed institutional  
246 allocations based on each institution's progress toward meeting  
247 the goals of its institutional compact;

248       (30) The commission has the authority to assess institutions  
249 under its jurisdiction for the payment of expenses of the  
250 commission or for the funding of statewide higher education  
251 services, obligations or initiatives related to the goals set forth  
252 for the provision of public higher education in the state;

253       (31) Promulgate rules allocating reimbursement of appro-  
254 priations, if made available by the Legislature, to institutions of  
255 higher education for qualifying noncapital expenditures  
256 incurred in the provision of services to students with physical,  
257 learning or severe sensory disabilities;

258       (32) Make appointments to boards and commissions where  
259 this code requires appointments from the state college system  
260 board of directors or the university of West Virginia system  
261 board of trustees which were abolished effective the thirtieth  
262 day of June, two thousand, except in those cases where the  
263 required appointment has a specific and direct connection to the  
264 provision of community and technical college education, the  
265 appointment shall be made by the council. Notwithstanding  
266 any provisions of this code to the contrary, the commission or  
267 the council may appoint one of its own members or any other  
268 citizen of the state as its designee. The commission and council  
269 shall appoint the total number of persons in the aggregate  
270 required to be appointed by these previous governing boards;

271       (33) Pursuant to the provisions of article three-a, chapter  
272 twenty-nine-a of this code and section six, article one of this  
273 chapter, promulgate rules as necessary or expedient to fulfill the  
274 purposes of this chapter. The commission and the council shall  
275 promulgate a uniform joint legislative rule for the purpose of  
276 standardizing, as much as possible, the administration of  
277 personnel matters among the institutions of higher education;

278       (34) Determine when a joint rule among the governing  
279 boards of the institutions under its jurisdiction is necessary or

280 required by law and, in those instances and in consultation with  
281 the governing boards, promulgate the joint rule;

282 (35) Implement a policy jointly with the council whereby  
283 course credit earned at a community and technical college  
284 transfers for program credit at any other state institution of  
285 higher education and is not limited to fulfilling a general  
286 education requirement; and

287 (36) Promulgate a joint rule with the council establishing  
288 tuition and fee policy for all institutions of higher education.  
289 The rule shall include, but is not limited to, the following:

290 (A) Comparisons with peer institutions;

291 (B) Differences among institutional missions;

292 (C) Strategies for promoting student access;

293 (D) Consideration of charges to out-of-state students; and

294 (E) Such other policies as the commission and council  
295 consider appropriate.

296 (b) In addition to the powers and duties listed in subsection  
297 (a) of this section, the commission has the following general  
298 powers and duties related to its role in developing, articulating  
299 and overseeing the implementation of the public policy agenda:

300 (1) Planning and policy leadership including a distinct and  
301 visible role in setting the state's policy agenda and in serving as  
302 an agent of change;

303 (2) Policy analysis and research focused on issues affecting  
304 the system as a whole or a geographical region thereof;

305 (3) Development and implementation of institutional  
306 mission definitions including use of incentive funds to influ-

307 ence institutional behavior in ways that are consistent with  
308 public priorities;

309 (4) Academic program review and approval for institutions  
310 under its jurisdiction including the use of institutional missions  
311 as a template to judge the appropriateness of both new and  
312 existing programs and the authority to implement needed  
313 changes;

314 (5) Development of budget and allocation of resources,  
315 including reviewing and approving institutional operating and  
316 capital budgets and distributing incentive and perfor-  
317 mance-based funding;

318 (6) Administration of state and federal student aid programs  
319 under the supervision of the vice chancellor for administration,  
320 including promulgation of any rules necessary to administer  
321 those programs;

322 (7) Serving as the agent to receive and disburse public  
323 funds when a governmental entity requires designation of a  
324 statewide higher education agency for this purpose;

325 (8) Development, establishment and implementation of  
326 information, assessment and accountability systems, including  
327 maintenance of statewide data systems that facilitate long-term  
328 planning and accurate measurement of strategic outcomes and  
329 performance indicators;

330 (9) Jointly with the council, developing, establishing and  
331 implementing policies for licensing and oversight for both  
332 public and private degree-granting and nondegree-granting  
333 institutions that provide post-secondary education courses or  
334 programs in the state pursuant to the findings and policy  
335 recommendations to be determined as set forth in section eleven  
336 of this article;

337 (10) Development, implementation and oversight of  
338 statewide and regionwide projects and initiatives related to  
339 providing post-secondary education at the baccalaureate level  
340 and above such as those using funds from federal categorical  
341 programs or those using incentive and performance-based  
342 funding from any source; and

343 (11) Quality assurance that intersects with all other duties  
344 of the commission particularly in the areas of planning, policy  
345 analysis, program review and approval, budgeting and informa-  
346 tion and accountability systems.

347 (c) In addition to the powers and duties provided for in  
348 subsections (a) and (b) of this section and any other powers and  
349 duties as may be assigned to it by law, the commission has such  
350 other powers and duties as may be necessary or expedient to  
351 accomplish the purposes of this article.

352 (d) The commission is authorized to withdraw specific  
353 powers of any governing board of an institution under its  
354 jurisdiction for a period not to exceed two years if the commis-  
355 sion makes a determination that:

356 (1) The governing board has failed for two consecutive  
357 years to develop an institutional compact as required in article  
358 one of this chapter;

359 (2) The commission has received information, substantiated  
360 by independent audit, of significant mismanagement or failure  
361 to carry out the powers and duties of the board of governors  
362 according to state law; or

363 (3) Other circumstances which, in the view of the commis-  
364 sion, severely limit the capacity of the board of governors to  
365 carry out its duties and responsibilities.



366 (4) The period of withdrawal of specific powers may not  
367 exceed two years during which time the commission is autho-  
368 rized to take steps necessary to reestablish the conditions for  
369 restoration of sound, stable and responsible institutional  
370 governance.

**§18B-1B-5. Employment of chancellor for higher education;  
office; powers and duties generally; employ-  
ment of vice chancellors.**

1 (a) The commission, created pursuant to section one of this  
2 article, shall employ a chancellor for higher education who is  
3 the chief executive officer of the commission and who serves  
4 at its will and pleasure.

5 (b) The commission shall set the qualifications for the  
6 position of chancellor and shall conduct a thorough nationwide  
7 search for qualified candidates. A qualified candidate is one  
8 who meets at least the following criteria:

9 (1) Possesses an excellent academic and administrative  
10 background;

11 (2) Demonstrates strong communication skills;

12 (3) Has significant experience and an established national  
13 reputation as a professional in the field of higher education;

14 (4) Is free of institutional or regional biases; and

15 (5) Holds or retains no other administrative position within  
16 a system of higher education while employed as chancellor.

17 (c) The commission shall conduct written performance  
18 evaluations of the chancellor annually and may offer the  
19 chancellor a contract not to exceed three years. At the end of  
20 each contract period, the commission shall review the evalua-

21 tions and make a determination by vote of its members on  
22 continuing employment and compensation level.

23 (d) When filling a vacancy in the position of chancellor, the  
24 commission shall enter into an initial employment contract for  
25 one year with the candidate selected. At the end of the initial  
26 contract period, and each contract period thereafter, the  
27 commission shall review the evaluations and make a determina-  
28 tion by vote of its members on continuing employment and  
29 compensation level for the chancellor.

30 (e) The chancellor shall be compensated on a basis in  
31 excess of, but not to exceed twenty percent greater than, the  
32 base salary of any president of a state institution of higher  
33 education or the administrative head of a governing board.

34 (f) The commission may employ a vice chancellor for  
35 health sciences who serves at the will and pleasure of the  
36 commission. The vice chancellor for health sciences shall  
37 coordinate the West Virginia university school of medicine, the  
38 Marshall university school of medicine and the West Virginia  
39 school of osteopathic medicine and also shall provide assistance  
40 to the governing boards on matters related to medical education  
41 and health sciences. The vice chancellor for health sciences  
42 shall perform all duties assigned by the chancellor, the commis-  
43 sion and state law. In the case of a vacancy in the office of vice  
44 chancellor of health sciences, the duties assigned to this office  
45 by law are the responsibility of the chancellor or a designee.

46 (g) The commission shall employ a vice chancellor for  
47 administration pursuant to section two, article four of this  
48 chapter.

49 (h) The commission may employ a vice chancellor for state  
50 colleges who serves at the will and pleasure of the commission.  
51 It is the duty and responsibility of the vice chancellor for state  
52 colleges to:

53 (1) Provide assistance to the commission, the chancellor  
54 and the state colleges on matters related to or of interest and  
55 concern to these institutions;

56 (2) Advise, assist and consult regularly with the institu-  
57 tional presidents and institutional boards of governors of each  
58 state college;

59 (3) Serve as an advocate and spokesperson for the state  
60 colleges to represent them and to make their interests, views  
61 and issues known to the chancellor, the commission and  
62 governmental agencies;

63 (4) Perform all duties assigned by the chancellor, the  
64 commission and state law.

65 In addition, the vice chancellor for state colleges has the  
66 responsibility and the duty to provide staff assistance to the  
67 institutional presidents and governing boards to the extent  
68 practicable.

69 (i) On behalf of the commission, the chancellor may enter  
70 into agreements with any state agency or political subdivision  
71 of the state, any state higher education institution or any other  
72 person or entity to enlist staff assistance to implement the  
73 powers and duties assigned by the commission or by state law.

74 (j) The chancellor is responsible for the daily operations of  
75 the commission and has the following responsibilities relating  
76 to the commission and the institutions under its jurisdiction:

77 (1) To carry out policy and program directives of the  
78 commission;

79 (2) To develop and submit annual reports on the implemen-  
80 tation plan to achieve the goals and objectives set forth in

81 section one-a, article one of this chapter and in the institutional  
82 compacts;

83 (3) To prepare and submit to the commission for its  
84 approval the proposed budget of the commission including the  
85 offices of the chancellor and the vice chancellors;

86 (4) To assist the governing boards in developing rules,  
87 subject to the provisions of section six, article one of this  
88 chapter. Nothing in this chapter requires the rules of the  
89 governing boards to be filed pursuant to the rule-making  
90 procedures provided in article three-a, chapter twenty-nine-a of  
91 this code. The chancellor is responsible for ensuring that any  
92 policy which is required to be uniform across the institutions is  
93 applied in a uniform manner;

94 (5) To perform all other duties and responsibilities assigned  
95 by the commission or by state law.

96 (k) The chancellor shall be reimbursed for all actual and  
97 necessary expenses incurred in the performance of all assigned  
98 duties and responsibilities.

99 (l) The chancellor, with the commission, advises the  
100 Legislature on matters of higher education in West Virginia.  
101 The chancellor shall work closely with the legislative oversight  
102 commission on education accountability and with the elected  
103 leadership of the state to ensure that they are fully informed  
104 about higher education issues and that the commission fully  
105 understands the goals for higher education that the Legislature  
106 has established by law.

107 (m) The chancellor may design and develop for consider-  
108 ation by the commission new statewide or regional initiatives  
109 in accordance with the goals set forth in section one-a, article  
110 one of this chapter and the public policy agenda articulated by  
111 the commission. In those instances where the initiatives to be

112 proposed have a direct and specific impact or connection to  
113 community and technical college education as well as to  
114 baccalaureate and graduate education, the chancellor for higher  
115 education and the chancellor for community and technical  
116 college education shall design and develop the initiatives jointly  
117 for consideration by the commission and the council.

118 (n) The chancellor shall work closely with members of the  
119 state board of education and with the state superintendent of  
120 schools to assure that the following goals are met:

121 (1) Development and implementation of a seamless  
122 kindergarten-through-college system of education; and

123 (2) Appropriate coordination of missions and programs. To  
124 further the goals of cooperation and coordination between the  
125 commission and the state board of education, the chancellor  
126 serves as an ex officio, nonvoting member of the state board of  
127 education.

**§18B-1B-6. Appointment of institutional presidents; evaluation.**

1 (a) *Appointment of institutional presidents.* -- Appointment  
2 of presidents of the public institutions of higher education shall  
3 be made as follows:

4 (1) Subject to the approval of the commission, the govern-  
5 ing board of the institution appoints a president for Bluefield  
6 state college, Concord college, Fairmont state college, Glenville  
7 state college, Marshall university, Shepherd college, West  
8 Liberty state college, West Virginia school of osteopathic  
9 medicine, West Virginia state college and West Virginia  
10 university.

11 (2) Subject to the approval of the council and to the  
12 provisions of article three-c of this chapter, the governing board  
13 of West Virginia University appoints the president of the

14 regional campus known as West Virginia university at  
15 Parkersburg. When selecting candidates for consideration to  
16 fill the office of president, the governing board shall use the  
17 search and screening process provided for in section one, article  
18 six of this chapter.

19 Subject to the approval of the commission, the governing  
20 board of West Virginia University appoints the president of the  
21 regional campus known as West Virginia university institute of  
22 technology. The president of each regional campus serves at  
23 the will and pleasure of the appointing governing board.

24 (3) Subject to the approval of the council, the governing  
25 board of the community and technical college appoints a  
26 president for eastern West Virginia community and technical  
27 college, southern West Virginia community and technical  
28 college and West Virginia northern community and technical  
29 college.

30 (4) Subject to the approval of the council, the governing  
31 board of the sponsoring institution appoints a president for each  
32 administratively linked community and technical colleges  
33 which shares a physical campus location with the sponsoring  
34 institution, including Fairmont state community and technical  
35 college, Marshall community and technical college, the  
36 community and technical college at West Virginia university  
37 institute of technology and West Virginia state community and  
38 technical college.

39 (5) Subject to the approval of the council, the governing  
40 board of the community and technical college appoints a  
41 president for each administratively linked community and  
42 technical college which does not share a physical campus  
43 location with the sponsoring institution, including New River  
44 community and technical college and the community and  
45 technical college of Shepherd.

46 Subject to the approval of the council, the governing board  
47 of the sponsoring institution appoints a president for each of  
48 these two community and technical colleges until the institution  
49 gains independent accreditation.

50 (b) *Other appointments.* -- Effective the first day of July,  
51 two thousand five, the institutional president shall appoint a  
52 provost to be the administrative head of the Potomac campus of  
53 West Virginia University.

54 (c) *Evaluation of presidents.* -- The appointing governing  
55 board shall conduct written performance evaluations of each  
56 institution's president, including the presidents of administra-  
57 tively linked community and technical colleges. Evaluations  
58 shall be done in every fourth year of employment as president,  
59 recognizing unique characteristics of the institution and  
60 utilizing institutional personnel, institutional boards of advisors  
61 as appropriate, staff of the appropriate governing board and  
62 persons knowledgeable in higher education matters who are not  
63 otherwise employed by a governing board. A part of the  
64 evaluation shall be a determination of the success of the  
65 institution in meeting the requirements of its institutional  
66 compact.

**§18B-1B-11. Study of licensing and oversight of certain institu-  
tions providing post-secondary education.**

1 (a) The commission and the council shall conduct a joint  
2 study of current policies relating to licensing and oversight of  
3 both public and private degree-granting and nondegree-granting  
4 entities providing post-secondary education programs or  
5 courses within the state or from locations outside this state  
6 through distance learning or any technology methods.

7 (b) The study shall include, but is not limited to, the  
8 following:

9 (1) The strengths and weaknesses of current state and  
 10 higher education policies including a determination of how well  
 11 the policies protect consumers and whether such protection  
 12 should be expanded;

13 (2) The appropriate entity within public higher education to  
 14 assume licensing and oversight of each type of institution;

15 (3) The standards to be used for program approval or a  
 16 method to develop such standards; and

17 (4) The requirements for fees and bonding.

18 The commission and the council shall report their findings,  
 19 conclusions and recommendations, together with drafts of any  
 20 legislation necessary to effectuate the recommendations, to the  
 21 legislative oversight commission on education accountability  
 22 by the first day of December, two thousand four.

#### ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

§18B-2A-4. Powers and duties of governing boards generally.

§18B-2A-6. University status for public baccalaureate institutions of higher education.

#### **§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.**

1 (a) A board of governors is continued at each of the  
 2 following institutions: Bluefield state college, Concord college,  
 3 eastern West Virginia community and technical college,  
 4 Fairmont state college, Glenville state college, Marshall  
 5 university, Shepherd college, southern West Virginia commu-  
 6 nity and technical college, West Liberty state college, West  
 7 Virginia northern community and technical college, the West



8 Virginia school of osteopathic medicine, West Virginia state  
9 college and West Virginia university.

10 (b) For the community and technical college of Shepherd  
11 and New River community and technical college the institu-  
12 tional board of advisors remains in place until the institution  
13 achieves independent accreditation as provided in section eight,  
14 article three-c of this chapter.

15 (1) As long as the institutional board of advisors remains in  
16 place, the chairperson of the board of advisors serves as an ex  
17 officio, voting member of the board of governors of the  
18 sponsoring institution;

19 (2) When the community and technical college achieves  
20 independent accreditation, the board of advisors is abolished  
21 and a board of governors is established with members ap-  
22 pointed pursuant to this section;

23 (3) When a board of governors is established for the  
24 community and technical college:

25 (A) The chairperson of the governing board of the sponsor-  
26 ing institution serves as an ex officio, nonvoting member of the  
27 governing board of the community and technical college board  
28 of governors; and

29 (B) The chairperson of the governing board of the commu-  
30 nity and technical college serves as an ex officio, nonvoting  
31 member of the governing board of the sponsoring institution.

32 (4) In making the initial appointments to these boards of  
33 governors, the governor shall appoint those persons who are lay  
34 members of the institutional boards of advisors, except in the  
35 case of death, resignation or failure to be confirmed by the  
36 Senate.

37 (c) The institutional board of governors for Marshall  
38 university consists of sixteen persons and the institutional board  
39 of governors for West Virginia university consists of seventeen  
40 persons. Each other board of governors consists of twelve  
41 persons.

42 (d) Each board of governors includes the following mem-  
43 bers:

44 (1) A full-time member of the faculty with the rank of  
45 instructor or above duly elected by the faculty of the respective  
46 institution;

47 (2) A member of the student body in good academic  
48 standing, enrolled for college credit work and duly elected by  
49 the student body of the respective institution;

50 (3) A member from the institutional classified employees  
51 duly elected by the classified employees of the respective  
52 institution; and

53 (4) For the institutional board of governors at Marshall  
54 university, twelve lay members appointed by the governor, by  
55 and with the advice and consent of the Senate, pursuant to this  
56 section and, additionally, the chairperson of the institutional  
57 board of advisors of Marshall community and technical college  
58 serving as an ex officio, voting member.

59 (5) For the institutional board of governors at West Virginia  
60 university, twelve lay members appointed by the governor by  
61 and with the advice and consent of the senate pursuant to this  
62 section and, additionally, the chairperson of the institutional  
63 board of advisors of the community and technical college at  
64 West Virginia university institute of technology and West  
65 Virginia university at Parkersburg.

66       (6) For each institutional board of governors of an institu-  
67       tion that does not have an administratively linked community  
68       and technical college under its jurisdiction, nine lay members  
69       appointed by the governor, by and with the advice and consent  
70       of the Senate, pursuant to this section.

71       (7) For each institutional board of governors which has an  
72       administratively linked community and technical college under  
73       its jurisdiction:

74       (A) Eight lay members appointed by the governor, by and  
75       with the advice and consent of the Senate, pursuant to this  
76       section and, additionally, the chairperson of the institutional  
77       board of advisors of the administratively linked community and  
78       technical college; and

79       (B) Of the eight lay members appointed by the governor,  
80       one shall be the superintendent of a county board of education  
81       from the area served by the institution.

82       (e) Of the eight or nine members appointed by the gover-  
83       nor, no more than five may be of the same political party. Of  
84       the twelve members appointed by the governor to the governing  
85       boards of Marshall university and West Virginia university, no  
86       more than seven may be of the same political party. Of the  
87       eight or nine members appointed by the governor, at least six  
88       shall be residents of the state. Of the twelve members ap-  
89       pointed by the governor to the governing boards of Marshall  
90       university and West Virginia university, at least eight shall be  
91       residents of the state.

92       (f) The student member serves for a term of one year. Each  
93       term begins on the first day of July.

94       (g) The faculty member serves for a term of two years.  
95       Each term begins on the first day of July. Faculty members are

96 eligible to succeed themselves for three additional terms, not to  
97 exceed a total of eight consecutive years.

98 (h) The member representing classified employees serves  
99 for a term of two years. Each term begins on the first day of  
100 July. Members representing classified employees are eligible  
101 to succeed themselves for three additional terms, not to exceed  
102 a total of eight consecutive years.

103 (i) The appointed lay citizen members serve terms of four  
104 years each and are eligible to succeed themselves for no more  
105 than one additional term.

106 (j) A vacancy in an unexpired term of a member shall be  
107 filled for the unexpired term within thirty days of the occur-  
108 rence of the vacancy in the same manner as the original  
109 appointment or election. Except in the case of a vacancy, all  
110 elections shall be held and all appointments shall be made no  
111 later than the thirtieth day of June preceding the commence-  
112 ment of the term. Each board of governors shall elect one of its  
113 appointed lay members to be chairperson in June of each year.  
114 A member may not serve as chairperson for more than two  
115 consecutive years.

116 (k) The appointed members of the institutional boards of  
117 governors serve staggered terms of four years.

118 (l) A person is ineligible for appointment to membership on  
119 a board of governors of a state institution of higher education  
120 under the following conditions:

121 (1) For a baccalaureate institution or university, a person is  
122 ineligible for appointment who is an officer, employee or  
123 member of any other board of governors, a member of an  
124 institutional board of advisors of any public institution of higher  
125 education, an employee of any institution of higher education,

126 an officer or member of any political party executive commit-  
127 tee, the holder of any other public office or public employment  
128 under the government of this state or any of its political  
129 subdivisions or a member of the council or commission. This  
130 subsection does not prevent the representative from the faculty,  
131 classified employees, students or chairpersons of the boards of  
132 advisors or the superintendent of a county board of education  
133 from being members of the governing boards.

134 (2) For a community and technical college, a person is  
135 ineligible for appointment who is an officer, employee or  
136 member of any other board of governors; a member of an  
137 institutional board of advisors of any public institution of higher  
138 education; an employee of any institution of higher education;  
139 an officer or member of any political party executive commit-  
140 tee; the holder of any other public office, other than an elected  
141 county office, or public employment, other than employment by  
142 the county board of education, under the government of this  
143 state or any of its political subdivisions; or a member of the  
144 council or commission. This subsection does not prevent the  
145 representative from the faculty, classified employees, students  
146 or chairpersons of the boards of advisors from being members  
147 of the governing boards.

148 (m) Before exercising any authority or performing any  
149 duties as a member of a governing board, each member shall  
150 qualify as such by taking and subscribing to the oath of office  
151 prescribed by section five, article IV of the Constitution of  
152 West Virginia and the certificate thereof shall be filed with the  
153 secretary of state.

154 (n) A member of a governing board appointed by the  
155 governor may not be removed from office by the governor  
156 except for official misconduct, incompetence, neglect of duty  
157 or gross immorality and then only in the manner prescribed by  
158 law for the removal of the state elective officers by the gover-  
159 nor.

160 (o) The president of the institution shall make available  
161 resources of the institution for conducting the business of its  
162 board of governors. The members of the board of governors  
163 serve without compensation, but are reimbursed for all reason-  
164 able and necessary expenses actually incurred in the perfor-  
165 mance of official duties under this article upon presentation of  
166 an itemized sworn statement of expenses. All expenses  
167 incurred by the board of governors and the institution under this  
168 section are paid from funds allocated to the institution for that  
169 purpose.

**§18B-2A-4. Powers and duties of governing boards generally.**

1 Each governing board separately has the following powers  
2 and duties:

3 (a) Determine, control, supervise and manage the financial,  
4 business and education policies and affairs of the state institu-  
5 tions of higher education under its jurisdiction;

6 (b) Develop a master plan for the institutions under its  
7 jurisdiction except the administratively linked community and  
8 technical colleges which retain an institutional board of  
9 advisors shall develop their master plans subject to the provi-  
10 sions of section one, article six of this chapter. The ultimate  
11 responsibility for developing and updating the master plans at  
12 the institutional level resides with the board of governors, or  
13 board of advisors, as applicable, but the ultimate responsibility  
14 for approving the final version of the institutional master plans,  
15 including periodic updates, resides with the commission or  
16 council, as appropriate. Each master plan shall include, but not  
17 be limited to, the following:

18 (1) A detailed demonstration of how the master plan will be  
19 used to meet the goals and objectives of the institutional  
20 compact;

21 (2) A well-developed set of goals outlining missions,  
22 degree offerings, resource requirements, physical plant needs,  
23 personnel needs, enrollment levels and other planning  
24 determinates and projections necessary in such a plan to assure  
25 that the needs of the institution's area of responsibility for a  
26 quality system of higher education are addressed;

27 (3) Documentation of the involvement of the commission  
28 or council, as appropriate, institutional constituency groups,  
29 clientele of the institution and the general public in the develop-  
30 ment of all segments of the institutional master plan.

31 The plan shall be established for periods of not less than  
32 three nor more than six years and shall be revised periodically  
33 as necessary, including the addition or deletion of degree  
34 programs as, in the discretion of the appropriate governing  
35 board, may be necessary;

36 (c) Prescribe for the institutions under its jurisdiction, in  
37 accordance with its master plan and the compact for each  
38 institution, specific functions and responsibilities to meet the  
39 higher education needs of its area of responsibility and to avoid  
40 unnecessary duplication;

41 (d) Direct the preparation of a budget request for the  
42 institutions under its jurisdiction, such request to relate directly  
43 to missions, goals and projections as found in the institutional  
44 master plans and the institutional compacts;

45 (e) Consider, revise and submit to the commission or  
46 council, as appropriate, a budget request on behalf of the  
47 institutions under its jurisdiction;

48 (f) Review, at least every five years, all academic programs  
49 offered at the institutions under its jurisdiction. The review  
50 shall address the viability, adequacy and necessity of the  
51 programs in relation to its institutional master plan, the institu-

52 tional compact and the education and workforce needs of its  
53 responsibility district. As a part of the review, each governing  
54 board shall require the institutions under its jurisdiction to  
55 conduct periodic studies of its graduates and their employers to  
56 determine placement patterns and the effectiveness of the  
57 education experience. Where appropriate, these studies should  
58 coincide with the studies required of many academic disciplines  
59 by their accrediting bodies;

60 (g) The governing boards shall ensure that the sequence and  
61 availability of academic programs and courses offered by the  
62 institutions under their jurisdiction is such that students have  
63 the maximum opportunity to complete programs in the time  
64 frame normally associated with program completion. Each  
65 governing board is responsible to see that the needs of nontradi-  
66 tional college-age students are appropriately addressed and, to  
67 the extent it is possible for the individual governing board to  
68 control, to assure core course work completed at institutions  
69 under its jurisdiction is transferable to any other state institution  
70 of higher education for credit with the grade earned;

71 (h) Subject to the provisions of article one-b of this chapter,  
72 the appropriate governing board has the exclusive authority to  
73 approve the teacher education programs offered in the institu-  
74 tion under its control. In order to permit graduates of teacher  
75 education programs to receive a degree from a nationally  
76 accredited program and in order to prevent expensive duplica-  
77 tion of program accreditation, the commission may select and  
78 utilize one nationally recognized teacher education program  
79 accreditation standard as the appropriate standard for program  
80 evaluation;

81 (i) Utilize faculty, students and classified employees in  
82 institutional-level planning and decisionmaking when those  
83 groups are affected;



84 (j) Subject to the provisions of federal law and pursuant to  
85 the provisions of article nine of this chapter and to rules  
86 adopted by the commission and the council, administer a  
87 system for the management of personnel matters, including, but  
88 not limited to, personnel classification, compensation and  
89 discipline for employees at the institutions under their jurisdic-  
90 tion;

91 (k) Administer a system for hearing employee grievances  
92 and appeals. Notwithstanding any other provision of this code  
93 to the contrary, the procedure established in article six-a,  
94 chapter twenty-nine of this code is the exclusive mechanism for  
95 hearing prospective employee grievances and appeals. In  
96 construing the application of said article to grievances of higher  
97 education employees, the following apply:

98 (1) "Chief administrator" means the president of a state  
99 institution of higher education as to those employees employed  
100 by the institution and the appropriate chancellor as to those  
101 employees employed by the commission or council;

102 (2) The state division of personnel may not be a party to nor  
103 have any authority regarding a grievance initiated by a higher  
104 education employee; and

105 (3) The provisions of this section supersede and replace the  
106 grievance procedure set out in article twenty-nine, chapter  
107 eighteen of this code for any grievance initiated by a higher  
108 education employee after the first day of July, two thousand  
109 one;

110 (l) Solicit and utilize or expend voluntary support, including  
111 financial contributions and support services, for the institutions  
112 under its jurisdiction;

113 (m) Appoint a president for the institutions under its  
114 jurisdiction subject to the provisions of section six, article one-b  
115 of this chapter;

116 (n) Conduct written performance evaluations of the  
117 president pursuant to section six, article one-b of this chapter;

118 (o) Employ all faculty and staff at the institution under its  
119 jurisdiction. Such employees operate under the supervision of  
120 the president, but are employees of the governing board;

121 (p) Submit to the commission or council, as appropriate, no  
122 later than the first day of November of each year an annual  
123 report of the performance of the institution under its jurisdiction  
124 during the previous fiscal year as compared to stated goals in its  
125 master plan and institutional compact;

126 (q) Enter into contracts or consortium agreements with the  
127 public schools, private schools or private industry to provide  
128 technical, vocational, college preparatory, remedial and  
129 customized training courses at locations either on campuses of  
130 the public institution of higher education or at off-campus  
131 locations in the institution's responsibility district. To accom-  
132 plish this goal, the boards are permitted to share resources  
133 among the various groups in the community;

134 (r) Provide and transfer funding and property to certain  
135 corporations pursuant to section ten, article twelve of this  
136 chapter;

137 (s) Delegate, with prescribed standards and limitations, the  
138 part of its power and control over the business affairs of the  
139 institution to the president in any case where it considers the  
140 delegation necessary and prudent in order to enable the institu-  
141 tion to function in a proper and expeditious manner and to meet  
142 the requirements of its institutional compact. If a governing  
143 board elects to delegate any of its power and control under the

144 provisions of this subsection, it shall notify the appropriate  
145 chancellor. Any such delegation of power and control may be  
146 rescinded by the appropriate governing board or the chancellor  
147 at any time, in whole or in part;

148 (t) Unless changed by the commission or the council, as  
149 appropriate, the governing boards shall continue to abide by  
150 existing rules setting forth standards for acceptance of advanced  
151 placement credit for their respective institutions. Individual  
152 departments at institutions of higher education may, upon  
153 approval of the institutional faculty senate, require higher  
154 scores on the advanced placement test than scores designated  
155 by the appropriate governing board when the credit is to be used  
156 toward meeting a requirement of the core curriculum for a  
157 major in that department;

158 (u) Each governing board, or its designee, shall consult,  
159 cooperate and work with the state treasurer and the state auditor  
160 to update as necessary and maintain an efficient and  
161 cost-effective system for the financial management and  
162 expenditure of special revenue and appropriated state funds at  
163 the institutions under its jurisdiction that ensures that properly  
164 submitted requests for payment be paid on or before due date  
165 but, in any event, within fifteen days of receipt in the state  
166 auditor's office;

167 (v) The governing boards in consultation with the appropri-  
168 ate chancellor and the secretary of the department of adminis-  
169 tration shall develop, update as necessary and maintain a plan  
170 to administer a consistent method of conducting personnel  
171 transactions, including, but not limited to, hiring, dismissal,  
172 promotions and transfers at the institutions under their jurisdic-  
173 tion. Each such personnel transaction shall be accompanied by  
174 the appropriate standardized system or forms which will be  
175 submitted to the respective governing board and the department  
176 of finance and administration;

177 (w) Notwithstanding any other provision of this code to the  
178 contrary, the governing boards may transfer funds from any  
179 account specifically appropriated for their use to any corre-  
180 sponding line item in a general revenue account at any agency  
181 or institution under their jurisdiction as long as such transferred  
182 funds are used for the purposes appropriated. The governing  
183 boards may transfer funds from appropriated special revenue  
184 accounts for capital improvements under their jurisdiction to  
185 special revenue accounts at agencies or institutions under their  
186 jurisdiction as long as such transferred funds are used for the  
187 purposes appropriated;

188 (x) Notwithstanding any other provision of this code to the  
189 contrary, the governing boards may acquire legal services as are  
190 considered necessary, including representation of the governing  
191 boards, their institutions, employees and officers before any  
192 court or administrative body. The counsel may be employed  
193 either on a salaried basis or on a reasonable fee basis. In  
194 addition, the governing boards may, but are not required to, call  
195 upon the attorney general for legal assistance and representation  
196 as provided by law; and

197 (y) Each governing board which has under its jurisdiction  
198 an administratively linked community and technical college or  
199 a regional campus offering community and technical college  
200 education programs shall create within the administrative  
201 structure of its governing board a subcommittee for community  
202 and technical college education. The subcommittee shall have  
203 at least four members, one of whom is the chairperson of the  
204 board of advisors of the community and technical college or, in  
205 the case of the governing board of West Virginia university,  
206 both the member representing the community and technical  
207 college and the member representing the regional campus;

**§18B-2A-6. University status for public baccalaureate institu-  
tions of higher education.**

1 (a) The purpose of this section is to redesignate certain  
2 existing public baccalaureate institutions as universities and to  
3 provide a mechanism for other public baccalaureate institutions  
4 to become universities. The change in name is based on each  
5 institution's ability to meet minimum standards developed and  
6 adopted by the commission.

7 (b) Each governing board of a public baccalaureate institu-  
8 tion is authorized to make changes which would further its  
9 eligibility to attain university status:

10 (1) If the college meets the eligibility requirements estab-  
11 lished by the commission to attain university status and if the  
12 commission grants university status, then the governing board  
13 shall determine the effective date on which the public baccalau-  
14 reate institution becomes a university; and

15 (2) On and after the effective date designated by the  
16 governing board, the baccalaureate institution shall be desig-  
17 nated a university.

18 (c) Concord college, Fairmont state college, Shepherd  
19 college and West Virginia state college, having met the  
20 eligibility requirements established by the commission to attain  
21 university status, are hereby designated as universities on the  
22 effective date of this section.

23 (d) An institution may not request or seek additional state  
24 appropriations as a result of the redesignation provided for in  
25 this section. No consequences, including the need to meet  
26 future accreditation requirements in order to maintain university  
27 status, which arise as a result of designating an existing state  
28 college as a university, provide sufficient justification for an  
29 institution to request or in any way seek additional state funds.

30 (e) Notwithstanding any provision of this code to the  
31 contrary, Marshall university and West Virginia university are,

32 and remain, the only research and doctoral degree-granting  
33 public institutions of higher education in this state.

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.**

- §18B-2B-1. Legislative findings; intent; purpose.
- §18B-2B-2. Definitions.
- §18B-2B-3. West Virginia council for community and technical college education; supervision of chancellor; chief executive officer.
- §18B-2B-4. Appointment, composition and terms of council.
- §18B-2B-5. Meetings and compensation.
- §18B-2B-6. Powers and duties of the council.
- §18B-2B-6a. Transfer of funds; council authority to expend funds.
- §18B-2B-7. Powers and duties of the chief executive officer.
- §18B-2B-8. State advisory committee of community and technical college presidents.

**§18B-2B-1. Legislative findings; intent; purpose.**

1 (a) The Legislature hereby finds that:

2 (1) The goals, objectives and purposes contained in enrolled  
3 Senate Bill No. 653, passed during the two thousand regular  
4 legislative session, reflected the research findings available to  
5 the Legislature at the time; since then, however, additional  
6 research indicates that, while enrolled Senate Bill No. 653 moves  
7 in the appropriate direction of independent accreditation and  
8 meeting essential conditions for public community and technical  
9 colleges, the legislation does not take the final steps that are  
10 considered to be necessary by independent researchers. This  
11 position is clearly demonstrated by the recent research findings  
12 and recommendations cited below:

13 (A) "West Virginia: A Vision Shared! Economic Develop-  
14 ment: A Plan for West Virginia's Future", hereinafter cited in  
15 this article and article two-c of this chapter as the *Market Street*  
16 *Report*, is a research document commissioned by the West  
17 Virginia council for community and economic development to

18 assess the economic competitiveness of the state. The report  
19 makes a number of findings and recommendations important to  
20 public community and technical college education:

21 (i) The state needs to adopt and implement a specific focus  
22 on technical education; in particular, it needs to move away from  
23 the traditionally isolated and limited vocational programming  
24 towards a systematic approach of teaching technical skills that  
25 employers need today;

26 (ii) The state needs to establish a strong technical education  
27 system that is separate from the university system and is  
28 responsive to the needs of business throughout the state;

29 (iii) The state needs to establish as a high-level priority the  
30 training and retraining of its working-age adults to help them  
31 acquire and maintain the competitive skills they need to succeed  
32 in today's economy; and

33 (iv) The state needs to emphasize the role of lifelong  
34 learning as a critical piece of its overall education and training  
35 system if the state is to make the transition to the new economy.

36 (B) The *Report to the Legislative Oversight Commission on*  
37 *Education Accountability*, hereinafter cited in this article and  
38 article two-c as the *McClenney Report*, is a study required by  
39 provisions of enrolled Senate bill no. 653 and conducted by Dr.  
40 Kay McClenney. The research found that:

41 (i) The participation rate in West Virginia community and  
42 technical college education is substantially lower than will be  
43 necessary if the state is to achieve its goals for economic  
44 development and prosperity for its citizens;

45 (ii) The low visibility of the component community and  
46 technical colleges effectively restricts access for the West

47 Virginians who most need encouragement to participate in  
48 post-secondary education and training;

49 (iii) It is not clear that the parent institutions of the compo-  
50 nent community colleges actually embrace the community  
51 college mission;

52 (iv) The community and technical college developmental  
53 education programs are underserving by far the evident needs of  
54 the population, especially as that service relates to nontraditional  
55 students;

56 (v) Adults over age twenty-five are under represented in the  
57 community and technical college student populations;

58 (vi) Technical education program development and enroll-  
59 ment are not at the levels necessary to serve the needs of the  
60 state;

61 (vii) Independent accreditation and the essential conditions  
62 required by enrolled Senate bill no. 653 are necessary, but not  
63 sufficient alone to provide a strong enough tool to accomplish  
64 the state's goal to strengthen community and technical college  
65 education;

66 (viii) The community and technical college will not be able  
67 to operate optimally until they move out of the shadow of their  
68 "parent" institutions, with the flexibility and autonomy to  
69 establish a uniquely community college identity, culture,  
70 program mix, outreach capacity and approach to teaching and  
71 learning;

72 (ix) The development of stronger support mechanisms for  
73 the community and technical colleges should be an extension of  
74 the ongoing step-by-step process for achieving the goals for post  
75 secondary education in the state;



76 (x) Building on the foundations laid in enrolled committee  
77 substitute for Senate bill no. 547 and enrolled Senate bill no.  
78 653, the Legislature should now establish the further systemic  
79 and policy supports that are needed for the community and  
80 technical college to thrive, perform and meet state goals;

81 (xi) Implementation will necessarily be incremental;

82 (xii) The consistent focus at the state level should be on the  
83 statewide mission of raising educational attainment, increasing  
84 adult literacy, promoting workforce and economic development  
85 and ensuring access to advanced education for the citizens of  
86 West Virginia;

87 (xiii) The solution must ensure a high degree of flexibility  
88 and autonomy at the local level, preserving the ability of  
89 community and technical colleges to respond rapidly and  
90 effectively to local needs;

91 (xiv) At the same time, there is serious and recognized need  
92 for statewide leadership, coordination and support for the work  
93 of the community and technical colleges and the advocacy for  
94 the public priorities that these institutions are charged to address;

95 and therefore

96 (xv) The state needs to create a community college support  
97 capacity at the state level that will bring leadership, coordina-  
98 tion, technical support, advocacy and critical mass to a statewide  
99 network of local community and technical college campuses.

100 (C) *The Report and Recommendations of the Implementation*  
101 *Board to the West Virginia Higher Education Policy Commis-*  
102 *sion*, hereinafter cited in this article and article two-c of this  
103 chapter as the *Implementation Board Report*, is a study required  
104 by enrolled Senate bill no. 653 to determine the most effective  
105 and efficient method to deliver community and technical college

106 services in the former responsibility areas of Marshall university,  
107 West Virginia state college and West Virginia university  
108 institute of technology. The *Implementation Board Report* states  
109 its goals and vision for community and technical college  
110 education in the advantage valley region as one of a dynamic,  
111 vital and vibrant community college network which offers:

112 (i) Affordable, quality training and education to students;

113 (ii) Represents a recognized path of choice to success in the  
114 knowledge economy for thousands of West Virginians; and

115 (iii) Provides West Virginia businesses with the highly  
116 skilled workforce necessary to meet their evolving needs in the  
117 global knowledge economy.

118 (D) In furtherance of their goals, the *Implementation Board*  
119 *Report* recommended formation of the advantage valley commu-  
120 nity college network:

121 (i) To enhance economic development through coordinated  
122 leadership and a delivery system for education and training  
123 initiatives;

124 (ii) To provide accountability through a separate compact  
125 and through independent accreditation of each of the affected  
126 community and technical colleges; and

127 (iii) To enhance education opportunities for the citizens of  
128 the area and assist in overcoming the barrier of accessibility in  
129 higher education.

130 (b) Based on the recent research cited above, the Legislature  
131 further finds that:

132 (1) The recommendations of the *Market Street Report*  
133 clearly point out the shortcomings of the state's current approach

134 to providing post-secondary education and programs and show  
135 the consequences of failing to change appropriately;

136 (2) The research, findings, vision and goals set forth in the  
137 *McClenney Report* and the *Implementation Board Report* are  
138 noteworthy and, although written, in part, to address specific  
139 institutions, have broad application statewide for community and  
140 technical colleges;

141 (3) The research shows that:

142 (A) A need exists to enhance community and technical  
143 college education in West Virginia through the delivery of  
144 services that meet the goals of this chapter and that are delivered  
145 pursuant to the process for meeting the essential conditions  
146 established in section three, article three-c of this chapter;

147 (B) A need exists for statewide leadership, coordination and  
148 support for the work of the community and technical colleges  
149 and for advocacy for the public priorities these institutions are  
150 charged to address;

151 (C) Community and technical colleges need to be efficient,  
152 avoiding duplication and the burden of bureaucracy while  
153 recognizing fiscal realities;

154 (D) Community and technical colleges need a high degree of  
155 flexibility and local autonomy to preserve and expand their  
156 ability to respond rapidly and effectively to local or regional  
157 needs;

158 (E) Community and technical colleges need state-level  
159 support and leadership that recognize differences among regions  
160 of the state and among institutions and accept the reality that  
161 institutions are at different stages in their development and have  
162 different challenges and capabilities;

163 (F) Clear benchmarks and regular monitoring are required to  
164 assess the progress of community and technical colleges toward  
165 meeting the established goals and for meeting the essential  
166 conditions, including independent accreditation, established in  
167 this chapter;

168 (G) Implementation will necessarily be incremental;

169 (4) Certain acts to streamline accountability, to make  
170 maximum use of existing assets to meet new demands and target  
171 funding to initiatives designed to enhance and reorient existing  
172 capacity and to provide incentives for brokering and collabora-  
173 tion require that the role of the joint commission for voca-  
174 tional-technical- occupational education be reexamined.

175 (c) *Legislative intent.* -- The intent of the Legislature in  
176 enacting this article is to address the research findings cited  
177 above by reconstituting the joint commission for vocational-  
178 technical-occupational education as the West Virginia council  
179 for community and technical college education in order to  
180 reorient the mission, role and responsibilities consistent with and  
181 supportive of the mission, role and responsibilities of the  
182 commission, the goals for post-secondary education and  
183 accountability for assisting the public community and technical  
184 colleges, branches, centers, regional centers and other delivery  
185 sites with a community and technical college mission in achiev-  
186 ing the state's public policy agenda.

187 (d) *Purpose.* -- The purpose of this article is to provide for  
188 the development of a leadership and support mechanism for the  
189 community and technical colleges, branches, centers, regional  
190 centers and other delivery sites with a community and technical  
191 college mission to assist them in meeting the essential conditions  
192 and in the step-by-step implementation process for achieving the  
193 goals for community and technical college education as provided  
194 for in article three-c of this chapter and to promote coordination

195 and collaboration among secondary and post-secondary voca-  
196 tional- technical-occupational and adult basic education pro-  
197 grams as provided for in this chapter and chapter eighteen of this  
198 code. The focus of this leadership and support mechanism is to  
199 encourage development of a statewide mission to raise education  
200 attainment, increase adult literacy, promote workforce and  
201 economic development and ensure access to secondary and  
202 post-secondary education for the citizens of the state while  
203 maintaining the local autonomy and flexibility necessary to the  
204 success of community and technical education.

**§18B-2B-2. Definitions.**

1 The following words when used in this article have the  
2 meaning hereinafter ascribed to them unless the context clearly  
3 indicates a different meaning:

4 (a) "Adult basic education" means adult basic skills educa-  
5 tion designed to improve the basic literacy needs of adults,  
6 including information processing skills, communication skills  
7 and computational skills, leading to a high school equivalency  
8 diploma under the jurisdiction of the state board of education.

9 (b) "Post-secondary vocational-technical-occupational  
10 education" means any course or program beyond the high school  
11 level that results in, or may result in, the awarding of a two-year  
12 associate degree, certificate or other credential from an institu-  
13 tion under the jurisdiction of a governing board or other public  
14 or private education provider.

15 (c) "Secondary vocational-technical-occupational education"  
16 means any course or program at the high school level that results  
17 in, or may result in, a high school diploma or its equivalent  
18 under the jurisdiction of the state board of education.

19 (d) "Chancellor for community and technical college  
20 education" means the chief executive officer of the West

21 Virginia council for community and technical college education  
22 employed pursuant to section three, article two-b of this chapter.  
23 Any reference in this code to the vice chancellor for community  
24 and technical college education and workforce development  
25 means the chancellor for community and technical college  
26 education.

27 (e) "West Virginia council for community and technical  
28 college education" or "council" means the council established  
29 pursuant to section three of this article. Any reference in this  
30 code to the joint commission for voca-  
31 tional-technical-occupational education means the West Virginia  
32 council for community and technical college education.

**§18B-2B-3. West Virginia council for community and technical  
college education; supervision of chancellor;  
chief executive officer.**

1 (a) There is continued the West Virginia council for commu-  
2 nity and technical college education. The council has all the  
3 powers and duties assigned by law to the joint commission for  
4 vocational-technical-occupational education prior to the effec-  
5 tive date of this section and such other powers and duties as may  
6 be assigned by law.

7 (b) The council shall employ a chancellor for community  
8 and technical college education. The chancellor serves as chief  
9 executive officer of the council at the will and pleasure of the  
10 council. The chancellor shall be compensated at a level set by  
11 the council not to exceed eighty percent of the annual salary of  
12 the chancellor for higher education.

13 (1) The vice chancellor for community and technical college  
14 education and workforce development, as the current chief  
15 executive officer of the council, shall continue in such capacity  
16 upon the effective date of this section, and shall be the chancel-  
17 lor for community and technical college education.

18 (A) The council shall conduct a written performance  
19 evaluation of the chancellor one year after the effective date of  
20 this section. The council shall report the results of the evaluation  
21 to the legislative oversight commission on education account-  
22 ability during the legislative interim meeting period following  
23 the evaluation.

24 (B) After reviewing the evaluation, the council shall make a  
25 determination by vote of its members on continuing employment  
26 and compensation level for the chancellor.

27 (C) After the initial contract period, the council shall conduct  
28 written performance evaluations of the chancellor annually and  
29 may offer the chancellor a contract of longer term, but not to  
30 exceed three years. At the end of each contract period, the  
31 council shall review the evaluations and make a determination  
32 by vote of its members on continuing employment and level of  
33 compensation.

34 (D) When a vacancy occurs in the position of chancellor, the  
35 council shall enter into an initial employment contract for one  
36 year with the candidate selected to fill the vacancy. At the end  
37 of the initial period, the council shall make a determination by  
38 vote of its members on continuing employment and compensa-  
39 tion level for the chancellor and shall continue thereafter as set  
40 forth in paragraph (C) of this subdivision.

41 (2) The chancellor maintains all benefits of employment  
42 held, accrued and afforded as the vice chancellor for community  
43 and technical college education and workforce development.  
44 Such benefits include, but are not limited to, retirement benefits,  
45 continued membership in the same retirement system, any  
46 insurance coverage and sick and annual leave. For the purposes  
47 of leave conversion established in section thirteen, article  
48 sixteen, chapter five of this code, the chancellor is not a new  
49 employee, and the prohibition on conversion does not apply if

50 the chancellor was eligible for leave conversion while serving as  
51 vice chancellor on the day preceding the effective date of this  
52 section. On the effective date of this section, for the purpose of  
53 section thirteen, article sixteen, chapter five of this code, the  
54 chancellor:

55 (A) Maintains all sick and annual leave accrued, and all  
56 rights to convert the leave that had been accrued as vice chancel-  
57 lor; and

58 (B) Continues to maintain his or her status for eligibility  
59 under the provisions and application of said section as applied  
60 while serving as vice chancellor on the day preceding the  
61 effective date of this section.

**\*§18B-2B-4. Appointment, composition and terms of council.**

1 (a) The council is comprised of thirteen members selected as  
2 follows:

3 (1) Eight members appointed by the governor, with the  
4 advice and consent of the Senate:

5 (A) One member shall be appointed from each community  
6 and technical college consortia district as established in this  
7 section.

8 (B) Prior to appointment, the governor shall interview each  
9 candidate to assure that the person selected understands and is  
10 committed to achieving the goals and objectives as set forth in  
11 the institutional compacts and in section one-a, article one of this  
12 chapter. The governor shall invite the president of the Senate,  
13 the speaker of the House of Delegates, the chairs of the Senate  
14 and House of Delegates committees on finance and education  
15 and such other legislative leaders as the governor may determine

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\* CLERK'S NOTE: This section was also amended by S. B. 524 (Chapter 109), which passed prior to this act.



16 to participate in interviewing potential candidates. Each member  
17 appointed to the council by the governor shall represent the  
18 public interest and shall be committed to the legislative intent  
19 and goals set forth in section one-a, article one of this chapter.

20 (2) The chairperson of the West Virginia workforce invest-  
21 ment council;

22 (3) The executive director of the West Virginia development  
23 office, or designee;

24 (4) The president of the West Virginia AFL-CIO, or a  
25 designee;

26 (5) The chair of the higher education policy commission who  
27 serves as an ex officio, nonvoting member of the council; and

28 (6) The assistant superintendent for technical and adult  
29 education of the state department of education who serves as an  
30 ex officio, nonvoting member of the council;

31 (b) Any appointed member shall be a citizen of the state,  
32 shall represent the public interest and shall understand and be  
33 committed to achieving the goals and objectives set forth in  
34 section one-a, article one of this chapter, the essential conditions  
35 set forth in article three-c of this chapter, and the goals for  
36 secondary and post-secondary vocational-technical-occupational  
37 and adult basic education in the state. Any appointed member  
38 shall represent the interests of the business, labor and employer  
39 communities and demonstrate knowledge of the education needs  
40 of the various regions, attainment levels and age groups within  
41 the state.

42 (c) The governor may not appoint any person to be a  
43 member of the council who is an officer, employee or member  
44 of an advisory board of any state college or university, the holder  
45 of any other public office or public employment under the

46 government of this state or any of its political subdivisions, an  
47 appointee or employee of any governing board or an immediate  
48 family member of any employee under the jurisdiction of the  
49 commission or any governing board. An individual may not  
50 serve on the council who is engaged in providing, or employed  
51 by a person or company whose primary function is to provide,  
52 workforce development services and activities.

53 (d) Members of the council serve for staggered terms of four  
54 years. Notwithstanding the provisions of subdivision (1),  
55 subsection (a) of this section, on the effective date of this section  
56 any current member of the council maintains his or her appoint-  
57 ment to the council and continues to serve for the remainder of  
58 the term for which originally appointed. Any additional  
59 appointment required by the provisions of said subdivision shall  
60 represent a consortia district not otherwise represented on the  
61 council.

#### **§18B-2B-5. Meetings and compensation.**

1 (a) The council shall hold at least eight meetings annually  
2 and may meet more often at the call of the chairperson. One  
3 such meeting shall be a public forum for the discussion of the  
4 goals and standards for workforce development, economic  
5 development and vocational education in the state.

6 (b) The council shall hold an annual meeting each June for  
7 the purpose of electing officers for the next fiscal year. At the  
8 annual meeting, the council shall elect from its appointed  
9 members a chairperson and other officers as it may consider  
10 necessary or desirable. The chairperson and other officers are  
11 elected for two-year terms commencing on the first day of July  
12 following the annual meeting. The chairperson of the board may  
13 serve no more than two consecutive two-year terms as chair,  
14 except that the member serving as chairperson of the council on  
15 the effective date of this section is eligible to serve a two-year

16 term regardless of the number of consecutive terms already  
17 served.

18 (c) Members of the council serve without compensation.  
19 Members shall be reimbursed for all reasonable and necessary  
20 expenses actually incurred in the performance of official duties  
21 under this article upon presentation of an itemized sworn  
22 statement of their expenses. An ex officio member of the  
23 council who is an employee of the state is reimbursed by the  
24 employing agency.

25 (d) A majority of the members appointed constitutes a  
26 quorum for conducting the business of the council. All action  
27 taken by the council shall be by majority vote of the members  
28 present.

**§18B-2B-6. Powers and duties of the council.**

1 (a) The council is the sole agency responsible for administra-  
2 tion of vocational-technical-occupational education and commu-  
3 nity and technical college education in the state. The council has  
4 jurisdiction and authority over the community and technical  
5 colleges and the system of community and technical college  
6 education as a whole, including community and technical college  
7 education programs as defined in section two, article one of this  
8 chapter.

9 (b) As relates to the authority established in subsection (a)  
10 of this section, the council has the following powers and duties:

11 (1) Develop, oversee and advance the public policy agenda  
12 as it relates to community and technical college education to  
13 address major challenges facing the state, including, but not  
14 limited to, the goals and objectives found in section one-a, article  
15 one of this chapter and including specifically those goals and  
16 objectives pertaining to the compacts created pursuant to section  
17 two, article one-a of this chapter and to develop and implement

18 the master plan described in section nine of this article for the  
19 purpose of accomplishing the mandates of this section;

20 (2) Jointly with the commission, develop, oversee and  
21 advance the implementation of a financing policy for higher  
22 education in West Virginia. The policy shall meet the following  
23 criteria:

24 (A) Provide an adequate level of education and general  
25 funding for institutions pursuant to section five, article one-a of  
26 this chapter;

27 (B) Serve to maintain institutional assets, including, but not  
28 limited to, human and physical resources and deferred mainte-  
29 nance;

30 (C) Invest and provide incentives for achieving the priority  
31 goals in the public policy agenda, including, but not limited to,  
32 those found in section one-a, article one of this chapter; and

33 (D) Establish for incorporation into the financing policy for  
34 higher education in West Virginia a plan for strategic funding to  
35 strengthen capacity for support of community and technical  
36 college education;

37 (3) Create a policy leadership structure relating to commu-  
38 nity and technical college education capable of the following  
39 actions:

40 (A) Developing, building public consensus around and  
41 sustaining attention to a long-range public policy agenda. In  
42 developing the agenda, the council shall seek input from the  
43 Legislature and the governor and specifically from the state  
44 board of education and local school districts in order to create  
45 the necessary linkages to assure smooth, effective and seamless  
46 movement of students through the public education and  
47 post-secondary education systems and to ensure that the needs

48 of public school courses and programs can be fulfilled by the  
49 graduates produced and the programs offered;

50 (B) Ensuring that the governing boards of the institutions  
51 under the council's jurisdiction carry out their duty effectively  
52 to govern the individual institutions of higher education; and

53 (C) Holding the community and technical college institu-  
54 tions and the community and technical college system as a whole  
55 accountable for accomplishing their missions and implementing  
56 the provisions of the compacts;

57 (4) To develop for inclusion in the statewide public agenda,  
58 a plan for raising education attainment, increasing adult literacy,  
59 promoting workforce and economic development and ensuring  
60 access to advanced education for the citizens of West Virginia;

61 (5) To provide statewide leadership, coordination, support,  
62 and technical assistance to the community and technical colleges  
63 and to provide a focal point for visible and effective advocacy  
64 for their work and for the public policy agenda approved by the  
65 commission and council. For the institutions under their  
66 jurisdiction, this responsibility includes, but is not limited to:

67 (A) Ensuring that the governing boards carry out their duty  
68 effectively to govern the individual institutions of higher  
69 education; and

70 (B) Holding the institutions and the system as a whole  
71 accountable for accomplishing their missions and implementing  
72 the provisions of the compacts;

73 (6) To review and adopt annually all institutional compacts  
74 for the community and technical colleges pursuant to the  
75 provisions of section two, article one-a of this chapter;

76 (7) Serve as the accountability point to:

77 (A) The governor for implementation by the community and  
78 technical colleges of their role in advancing the public policy  
79 agenda; and

80 (B) The Legislature by maintaining a close working relation-  
81 ship with the legislative leadership and the legislative oversight  
82 commission on education accountability;

83 (8) Jointly with the commission, promulgate a legislative  
84 rule pursuant to article three-a, chapter twenty-nine-a of this  
85 code to fulfill the purposes of section five, article one-a of this  
86 chapter;

87 (9) Establish and implement the benchmarks and perfor-  
88 mance indicators necessary to measure institutional achievement  
89 towards state policy priorities and institutional missions;

90 (10) Review the progress of community and technical  
91 colleges in every region of West Virginia. The review includes,  
92 but is not limited to, evaluating and reporting annually to the  
93 legislative oversight commission on education accountability on  
94 the step-by-step implementation required in article three-c of this  
95 chapter;

96 (11) Annually report to the Legislature and to the legislative  
97 oversight commission on education accountability during the  
98 January interim meetings on a date and at a time and location to  
99 be determined by the president of the Senate and the speaker of  
100 the House of Delegates. The report shall address at least the  
101 following:

102 (A) The performance of the community and technical  
103 college system during the previous fiscal year, including, but not  
104 limited to, progress in meeting goals stated in the compacts and  
105 progress of the institutions and the system as a whole in meeting  
106 the goals and objectives set forth in section one-a, article one of  
107 this chapter;

108 (B) The priorities established for capital investment needs  
109 pursuant to subdivision (12) of this subsection and the justifica-  
110 tion for such priority;

111 (C) Recommendations of the council for statutory changes  
112 necessary to further the goals and objectives set forth in section  
113 one-a, article one of this chapter;

114 (12) Establish a formal process for identifying needs for  
115 capital investments and for determining priorities for these  
116 investments. When the needs have been determined, the council  
117 shall take the following steps:

118 (A) Develop a ranked list of the top ten projects for capital  
119 investment for the institutions under its jurisdiction;

120 (B) Convey the ranked list to the commission for its consid-  
121 eration pursuant to section four, article one-b of this chapter;

122 (13) Draw upon the expertise available within the governor's  
123 workforce investment office and the West Virginia development  
124 office as a resource in the area of workforce development and  
125 training;

126 (14) Acquire legal services as are considered necessary,  
127 including representation of the council, its institutions, employ-  
128 ees and officers before any court or administrative body,  
129 notwithstanding any other provision of this code to the contrary.  
130 The counsel may be employed either on a salaried basis or on a  
131 reasonable fee basis. In addition, the council may, but is not  
132 required to, call upon the attorney general for legal assistance  
133 and representation as provided by law;

134 (15) Employ a chancellor for community and technical  
135 college education pursuant to section three of this article;

136       (16) Employ other staff as necessary and appropriate to carry  
137 out the duties and responsibilities of the council consistent with  
138 the provisions of section two, article four of this chapter;

139       (17) Employ other staff as necessary and appropriate to carry  
140 out the duties and responsibilities of the council who are  
141 employed solely by the council;

142       (18) Provide suitable offices in Charleston for the chancellor  
143 and other staff;

144       (19) Approve the total compensation package from all  
145 sources for presidents of community and technical colleges, as  
146 proposed by the governing boards. The governing boards must  
147 obtain approval from the council of the total compensation  
148 package both when presidents are employed initially and  
149 subsequently when any change is made in the amount of the total  
150 compensation package;

151       (20) Establish and implement policies and procedures to  
152 ensure that students may transfer and apply toward the require-  
153 ments for a degree the maximum number of credits earned at any  
154 regionally accredited in-state or out-of-state higher education  
155 institution with as few requirements to repeat courses or to incur  
156 additional costs as is consistent with sound academic policy;

157       (21) Establish and implement policies and programs, jointly  
158 with the community and technical colleges, through which  
159 students who have gained knowledge and skills through employ-  
160 ment, participation in education and training at vocational  
161 schools or other education institutions, or internet-based  
162 education programs, may demonstrate by competency-based  
163 assessment that they have the necessary knowledge and skills to  
164 be granted academic credit or advanced placement standing  
165 toward the requirements of an associate degree or a bachelor's  
166 degree at a state institution of higher education;



167       (22) Seek out and attend regional and national meetings and  
168 forums on education and workforce development-related topics,  
169 as in the council's discretion is critical for the performance of  
170 their duties as members for the purpose of keeping abreast of  
171 community and technical college education trends and policies  
172 to aid it in developing the policies for this state to meet the  
173 established education goals and objectives pursuant to section  
174 one-a, article one of this chapter;

175       (23) Assess community and technical colleges for the  
176 payment of expenses of the council or for the funding of  
177 statewide services, obligations or initiatives related specifically  
178 to the provision of community and technical college education;

179       (24) Promulgate rules allocating reimbursement of appropri-  
180 ations, if made available by the Legislature, to community and  
181 technical colleges for qualifying noncapital expenditures  
182 incurred in the provision of services to students with physical,  
183 learning or severe sensory disabilities;

184       (25) Assume the prior authority of the commission in  
185 examining and approving tuition and fee increase proposals  
186 submitted by community and technical college governing boards  
187 as provided in section one, article ten of this chapter.

188       (26) Consider and submit to the commission, a single budget  
189 for community and technical college education that reflects  
190 recommended appropriations for community and technical  
191 colleges and that:

192       (A) Considers the progress of each institution toward  
193 meeting the essential conditions set forth in section three, article  
194 three-c of this chapter, including independent accreditation; and

195       (B) Considers the progress of each institution toward  
196 meeting the goals established in its institutional compact;

197 (27) Administer and distribute the independently accredited  
198 community and technical college development account;

199 (28) Establish a plan of strategic funding to strengthen  
200 capacity for support of community and technical college  
201 education in all areas of the state;

202 (29) Foster coordination among all state-level, regional and  
203 local entities providing post-secondary vocational education or  
204 workforce development and coordinate all public institutions and  
205 entities that have a community and technical college mission;

206 (30) Assume the principal responsibility for overseeing the  
207 implementation of the step-by-step process for achieving  
208 independent accreditation and for meeting the essential condi-  
209 tions pursuant to article three-c of this chapter;

210 (31) Advise and consent in the appointment of the presidents  
211 of the community and technical colleges pursuant to section six,  
212 article one-b of this chapter. The role of the council in approv-  
213 ing a president is to assure through personal interview that the  
214 person selected understands and is committed to achieving the  
215 goals and objectives as set forth in the institutional compact and  
216 in section one-a, article one of this chapter;

217 (32) Provide a single, statewide link for current and prospec-  
218 tive employers whose needs extend beyond one locality;

219 (33) Provide a mechanism that serves two or more institu-  
220 tions to facilitate joint problem-solving in areas including, but  
221 not limited to:

222 (A) Defining faculty roles and personnel policies;

223 (B) Delivering high-cost technical education programs  
224 across the state;

225 (C) Providing one-stop service for workforce training to be  
226 delivered by multiple institutions; and

227 (D) Providing opportunities for resource-sharing and  
228 collaborative ventures;

229 (34) Provide support and technical assistance to develop,  
230 coordinate, and deliver effective and efficient community and  
231 technical college education programs and services in the state;

232 (35) Assist the community and technical colleges in estab-  
233 lishing and promoting links with business, industry and labor in  
234 the geographic areas for which each of the community and  
235 technical colleges is responsible;

236 (36) Develop alliances among the community and technical  
237 colleges for resource sharing, joint development of courses and  
238 courseware, and sharing of expertise and staff development;

239 (37) Serve aggressively as an advocate for development of  
240 a seamless curriculum;

241 (38) Cooperate with the governor's P-20 council of West  
242 Virginia to remove barriers relating to transfer and articulation  
243 between and among community and technical colleges, state  
244 colleges and universities and public education, preschool  
245 through grade twelve;

246 (39) Encourage the most efficient utilization of available  
247 resources;

248 (40) Coordinate with the commission in informing public  
249 school students, their parents and teachers of the academic  
250 preparation that students need in order to be prepared adequately  
251 to succeed in their selected fields of study and career plans,  
252 including presentation of academic career fairs;

253 (41) Jointly with the commission, approve and implement a  
254 uniform standard, as developed by the chancellors, to determine  
255 which students shall be placed in remedial or developmental  
256 courses. The standard shall be aligned with college admission  
257 tests and assessment tools used in West Virginia and shall be  
258 applied uniformly by the governing boards throughout the public  
259 higher education system. The chancellors shall develop a clear,  
260 concise explanation of the standard which the governing boards  
261 shall communicate to the state board of education and the state  
262 superintendent of schools;

263 (42) Develop and implement strategies and curriculum for  
264 providing developmental education which shall be applied by  
265 any state institution of higher education providing developmental  
266 education.

267 (43) Develop a statewide system of community and technical  
268 college programs and services in every region of West Virginia  
269 for competency-based certification of knowledge and skills,  
270 including a statewide competency-based associate degree  
271 program;

272 (44) Review and approve all institutional master plans for  
273 the community and technical colleges;

274 (45) Establish policies or rules for promulgation that are  
275 necessary or expedient for the effective and efficient perfor-  
276 mance of community and technical colleges in the state;

277 (46) In its sole discretion, transfer any rule under its jurisdic-  
278 tion, other than a legislative rule, to the jurisdiction of the  
279 governing boards who may rescind, revise, alter or amend any  
280 rule so transferred pursuant to rules adopted by the council;

281 (47) Establish benchmarks and performance indicators for  
282 community and technical colleges to measure institutional  
283 progress toward meeting the goals as outlined in section one-a,

284 article one of this chapter and in meeting the essential conditions  
285 established in article three-c of this chapter;

286 (48) Develop for inclusion in the higher education report  
287 card, as defined in section eight, article one-b of this chapter, a  
288 separate section on community and technical colleges. This  
289 section shall include, but is not limited to, evaluation of the  
290 institutions based upon the benchmarks and indicators developed  
291 in subdivision (47) of this subsection;

292 (49) Facilitate continuation of the advantage valley commu-  
293 nity college network under the leadership and direction of  
294 Marshall community and technical college;

295 (50) Initiate and facilitate creation of other regional networks  
296 of affiliated community and technical colleges that the council  
297 finds to be appropriate and in the best interests of the citizens to  
298 be served;

299 (51) Develop with the state board of education state plans for  
300 secondary and post-secondary vocational-technical-occupational  
301 and adult basic education, including, but not limited to:

302 (A) Policies to strengthen vocational-technical-occupational  
303 and adult basic education; and

304 (B) Programs and methods to assist in the improvement,  
305 modernization and expanded delivery of vocational- techni-  
306 cal-occupational and adult basic education programs;

307 (52) Distribute federal vocational education funding  
308 provided under the Carl D. Perkins Vocational and Technical  
309 Education Act of 1998, PL 105-332, with an emphasis on  
310 distributing financial assistance among secondary and  
311 post-secondary vocational-technical-occupational and adult basic  
312 education programs to help meet the public policy agenda.

313 In distributing funds the council shall use the following  
314 guidelines:

315 (A) The board of education shall continue to be the fiscal  
316 agent for federal vocational education funding;

317 (B) The percentage split between the board of education and  
318 the council shall be determined by rule promulgated by the  
319 council under the provisions of article three-a, chapter  
320 twenty-nine-a of this code. The council shall first obtain the  
321 approval of the board of education before proposing a rule;

322 (53) Collaborate, cooperate and interact with all secondary  
323 and post-secondary vocational-technical-occupational and adult  
324 basic education programs in the state, including the programs  
325 assisted under the federal Carl D. Perkins Vocational and  
326 Technical Education Act of 1998, PL 105-332, and the  
327 Workforce Investment Act of 1998, to promote the development  
328 of seamless curriculum and the elimination of duplicative  
329 programs;

330 (54) Coordinate the delivery of vocational- techni-  
331 cal-occupational and adult basic education in a manner designed  
332 to make the most effective use of available public funds to  
333 increase accessibility for students;

334 (55) Analyze and report to the West Virginia board of  
335 education on the distribution of spending for voca-  
336 tional-technical-occupational and adult basic education in the  
337 state and on the availability of vocational-technical-occupational  
338 and adult basic education activities and services within the state;

339 (56) Promote the delivery of vocational-technical-occupa-  
340 tional education, adult basic education and community and  
341 technical college education programs in the state which empha-  
342 size the involvement of business, industry and labor organiza-  
343 tions;

344 (57) Promote public participation in the provision of  
345 vocational-technical-occupational education, adult basic  
346 education and community and technical education at the local  
347 level, emphasizing programs which involve the participation of  
348 local employers and labor organizations;

349 (58) Promote equal access to quality vocational-techni-  
350 cal-occupational education, adult basic education and commu-  
351 nity and technical college education programs to handicapped  
352 and disadvantaged individuals, adults in need of training and  
353 retraining, single parents, homemakers, participants in programs  
354 designed to eliminate sexual bias and stereotyping and criminal  
355 offenders serving in correctional institutions;

356 (59) Meet annually between the months of October and  
357 December with the advisory committee of community and  
358 technical college presidents created pursuant to section eight of  
359 this article to discuss those matters relating to community and  
360 technical college education in which advisory committee  
361 members or the council may have an interest;

362 (60) Accept and expend any gift, grant, contribution,  
363 bequest, endowment or other money for the purposes of this  
364 article;

365 (61) Assume the powers set out in section five, article three  
366 of this chapter. The rules previously promulgated by the state  
367 college system board of directors pursuant to that section and  
368 transferred to the commission are hereby transferred to the  
369 council and shall continue in effect until rescinded, revised,  
370 altered or amended by the council;

371 (62) Pursuant to the provisions of article three-a, chapter  
372 twenty-nine-a of this code and section six, article one of this  
373 chapter, promulgate rules as necessary or expedient to fulfill the  
374 purposes of this chapter. The council and commission shall  
375 promulgate a uniform joint legislative rule for the purpose of

376 standardizing, as much as possible, the administration of  
377 personnel matters among the institutions of higher education;

378 (63) Determine when a joint rule among the governing  
379 boards of the community and technical colleges is necessary or  
380 required by law and, in those instances and in consultation with  
381 the governing boards, promulgate the joint rule;

382 (64) Promulgate a joint rule with the commission establish-  
383 ing tuition and fee policy for all institutions of higher education.  
384 The rule shall include, but is not limited to, the following:

385 (A) Comparisons with peer institutions;

386 (B) Differences among institutional missions;

387 (C) Strategies for promoting student access;

388 (D) Consideration of charges to out-of-state students; and

389 (E) Such other policies as the commission and council  
390 consider appropriate;

391 (65) In cooperation with the West Virginia division of  
392 highways, study a method for increasing the signage signifying  
393 community and technical college locations along the state  
394 interstate highways, and report to the legislative oversight  
395 commission on education accountability regarding any recom-  
396 mendations and required costs; and

397 (66) Implement a policy jointly with the commission  
398 whereby any course credit earned at a community and technical  
399 college transfers for program credit at any other state institution  
400 of higher education and is not limited to fulfilling a general  
401 education requirement.

402 (c) In addition to the powers and duties listed in subsections  
403 (a) and (b) of this section, the council has the following general



404 powers and duties related to its role in developing, articulating  
405 and overseeing the implementation of the public policy agenda  
406 for community and technical colleges:

407 (1) Planning and policy leadership including a distinct and  
408 visible role in setting the state's policy agenda for the delivery  
409 of community and technical college education and in serving as  
410 an agent of change;

411 (2) Policy analysis and research focused on issues affecting  
412 the community and technical college system as a whole or a  
413 geographical region thereof;

414 (3) Development and implementation of each community  
415 and technical college mission definition including use of  
416 incentive funds to influence institutional behavior in ways that  
417 are consistent with public priorities;

418 (4) Academic program review and approval for the institu-  
419 tions under its jurisdiction, including the use of institutional  
420 missions as a template to judge the appropriateness of both new  
421 and existing programs and the authority to implement needed  
422 changes;

423 (5) Development of budget and allocation of resources for  
424 institutions delivering community and technical college educa-  
425 tion, including reviewing and approving institutional operating  
426 and capital budgets and distributing incentive and perfor-  
427 mance-based funding;

428 (6) Acting as the agent to receive and disburse public funds  
429 related to community and technical college education when a  
430 governmental entity requires designation of a statewide higher  
431 education agency for this purpose;

432 (7) Development, establishment and implementation of  
433 information, assessment and accountability systems, including

434 maintenance of statewide data systems that facilitate long-term  
435 planning and accurate measurement of strategic outcomes and  
436 performance indicators for community and technical colleges;

437 (8) Jointly with the commission, development, establishment  
438 and implementation of policies for licensing and oversight of  
439 both public and private degree-granting and nondegree-granting  
440 institutions that provide post-secondary education courses or  
441 programs pursuant to the findings and policy recommendations  
442 to be determined as set forth in section eleven, article one-b of  
443 this chapter;

444 (9) Development, implementation and oversight of statewide  
445 and regionwide projects and initiatives related specifically to  
446 providing community and technical college education such as  
447 those using funds from federal categorical programs or those  
448 using incentive and performance-based funding from any source;  
449 and

450 (10) Quality assurance that intersects with all other duties of  
451 the council particularly in the areas of planning, policy analysis,  
452 program review and approval, budgeting and information and  
453 accountability systems.

454 (d) The council is authorized to withdraw specific powers of  
455 a governing board under its jurisdiction for a period not to  
456 exceed two years if the council makes a determination that:

457 (1) The governing board has failed for two consecutive years  
458 to develop an institutional compact as required in article one of  
459 this chapter;

460 (2) The council has received information, substantiated by  
461 independent audit, of significant mismanagement or failure to  
462 carry out the powers and duties of the board of governors  
463 according to state law; or

464 (3) Other circumstances which, in the view of the council,  
465 severely limit the capacity of the board of governors to carry out  
466 its duties and responsibilities.

467 The period of withdrawal of specific powers may not exceed  
468 two years during which time the council is authorized to take  
469 steps necessary to reestablish the conditions for restoration of  
470 sound, stable and responsible institutional governance.

471 (e) In addition to the powers and duties provided for in  
472 subsections (a) and (b), (c) and (d) of this section and any other  
473 powers and duties as may be assigned to it by law, the council  
474 has:

475 (1) Such other powers and duties as may be necessary or  
476 expedient to accomplish the purposes of this article; and

477 (2) All powers, duties and responsibilities directly related to  
478 community and technical colleges and community and technical  
479 college education that were vested in the commission prior to the  
480 effective date of this section.

481 (f) When the council and commission, each, is required to  
482 consent, cooperate, collaborate or provide input into the actions  
483 of the other:

484 (1) The body acting first shall convey its decision in the  
485 matter to the other body with a request for concurrence in the  
486 action;

487 (2) The commission or the council, as the receiving body,  
488 shall place the proposal on its agenda and shall take final action  
489 within sixty days of the date when the request for concurrence is  
490 received; and

491 (3) If the receiving body fails to take final action within sixty  
492 days, the original proposal stands and is binding on both the  
493 commission and the council.

**§18B-2B-6a. Transfer of funds; council authority to expend funds.**

1 On the effective date of this section, the unexpended balance  
2 remaining in the appropriation for the West Virginia council for  
3 community and technical education is transferred from the  
4 commission to the authority of the council to be expended by the  
5 council to carry out the purposes of this article.

**§18B-2B-7. Powers and duties of the chief executive officer.**

1 The chancellor for community and technical college  
2 education is the chief executive officer of the council and as such  
3 may exercise the powers and duties assigned by the council. The  
4 chancellor has the following powers and duties:

5 (1) To serve as the principal accountability point for the  
6 council for implementation of the public policy agenda as it  
7 relates to community and technical colleges;

8 (2) To assume principal responsibility for directing and  
9 assisting the work of the council; and

10 (3) To supervise and direct staff of the council as necessary  
11 and appropriate to carry out the duties and responsibilities of this  
12 article.

13 (A) On the effective date of this section, all personnel  
14 employed by the commission and under the supervision of the  
15 vice chancellor for community and technical college education  
16 and workforce development on the first day of January, two  
17 thousand four, are transferred to the jurisdiction of the council

18 and are under the direct supervision of the chancellor for  
19 community and technical college education.

20 (B) Prior to the first day of October, two thousand four, any  
21 such employee, including the chief executive officer of the  
22 council, may not be terminated or have his or her salary or  
23 benefit level reduced as the result of the governance reorganiza-  
24 tion set forth in this article.

25 (4) On behalf of the council, the chancellor may enter into  
26 agreements with any state agency or political subdivision of the  
27 state, any state higher education institution or any other person  
28 or entity to enlist staff assistance to implement the powers and  
29 duties assigned to the council by state law.

30 (5) The chancellor is responsible for the day-to-day opera-  
31 tions of the council and has the following responsibilities:

32 (A) To carry out policy and program directives of the  
33 council;

34 (B) To develop and submit annual reports on the implemen-  
35 tation plan to achieve the goals and objectives set forth in section  
36 one-a, article one of this chapter and in the institutional com-  
37 pacts;

38 (C) To prepare and submit to the council for its approval the  
39 proposed budget of the council including the office of the  
40 chancellor and necessary staff;

41 (D) To assist the governing boards in developing rules,  
42 subject to the provisions of section six, article one of this  
43 chapter. Nothing in this chapter requires the rules of the  
44 governing boards to be filed pursuant to the rule-making  
45 procedures provided in article three-a, chapter twenty-nine-a of  
46 this code. The chancellor is responsible for ensuring that any  
47 policy which is required to be uniform across the institutions

48 under the jurisdiction of the council is applied in a uniform  
49 manner; and

50 (E) To perform all other duties and responsibilities assigned  
51 by the council or by state law.

52 (6) The chancellor shall be reimbursed for all actual and  
53 necessary expenses incurred in the performance of all assigned  
54 duties and responsibilities.

55 (7) The council is the primary advocate for community and  
56 technical college education and, with the chancellor, advises the  
57 Legislature on matters of community and technical college  
58 education in West Virginia. The chancellor shall work closely  
59 with the legislative oversight commission on education account-  
60 ability and with the elected leadership of the state to ensure that  
61 they are fully informed about community and technical college  
62 education issues and that the council fully understands the goals  
63 for higher education that the Legislature has established by law.

64 (8) The chancellor may design and develop for consideration  
65 by the council new statewide or regional initiatives directly  
66 related to community and technical college education and in  
67 accordance with the goals set forth in section one-a, article one  
68 of this chapter and the public policy agenda.

69 (9) The chancellor shall work closely with members of the  
70 state board of education and with the state superintendent of  
71 schools to assure that the following goals are met:

72 (A) Development and implementation of a seamless kinder-  
73 garten-through-college system of education; and

74 (B) Appropriate coordination of missions and programs. To  
75 further the goals of cooperation and coordination between the  
76 council and the state board of education, the chancellor serves as  
77 an ex officio, nonvoting member of the state board of education.

**§18B-2B-8. State advisory committee of community and technical college presidents.**

1 (a) There is continued the state advisory committee of  
2 community and technical college presidents. For the purposes  
3 of this section, the state advisory committee of community and  
4 technical college presidents is referred to as the "advisory  
5 committee".

6 (b) Each president of a public community and technical  
7 college, as defined in section one, article six of this chapter, is a  
8 member of the advisory committee. An administrative head of  
9 a component, branch, center, regional center or other delivery  
10 site with a community and technical college mission may be a  
11 member if considered appropriate.

12 (c) The chancellor serves as chair of the advisory committee.  
13 The advisory committee shall meet at least once each quarter and  
14 may meet at such other times as called by the chair or by a  
15 majority of the members.

16 (d) The advisory committee shall communicate to the  
17 council on matters of importance to the group. It shall meet  
18 annually between the months of October and December with the  
19 council to discuss those matters relating to community and  
20 technical college education in which advisory committee  
21 members or the council may have an interest.

22 (e) The chancellor shall prepare meeting minutes which shall  
23 be made available, upon request, to the public.

**ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.**

§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.

§18B-2C-4. Authority of council in creating West Virginia community and technical college.

**§18B-2C-3. Authority and duty of council to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.**

1 (a) The council annually shall review and analyze all the  
2 public community and technical colleges, and any branches,  
3 centers, regional centers or other delivery sites with a commu-  
4 nity and technical college mission, to determine their progress  
5 toward meeting the goals and objectives set forth in section  
6 one-a, article one of this chapter and toward advancing the  
7 purposes, goals and objectives set forth in article three-c of this  
8 chapter.

9 (b) The analysis required in subsection (a) of this section  
10 shall be based, in whole or in part, upon the findings made  
11 pursuant to the rule establishing benchmarks and indicators  
12 required to be promulgated by the council in section six, article  
13 two-b of this chapter.

14 (c) Based upon their analysis in subsections (a) and (b) of  
15 this section, the council shall make a determination whether any  
16 one or more of the following conditions exists:

17 (1) One or more of the component community and technical  
18 colleges required to do so has not achieved or is not making  
19 sufficient, satisfactory progress toward achieving the essential  
20 conditions, including independent accreditation;

21 (2) One or more of the public community and technical  
22 colleges, branches, centers, regional centers and other delivery  
23 sites with a community and technical college mission requires  
24 financial assistance or other support to meet the goals and  
25 essential conditions set forth in this chapter;



26 (3) It is in the best interests of the people of the state or a  
27 region within the state to have a single, accredited institution  
28 which can provide an umbrella of statewide accreditation;

29 (4) It is in the best interests of the people of the state or a  
30 region of the state to have one accredited institution able to  
31 extend accreditation to institutions and entities required to seek  
32 independent accreditation;

33 (5) One or more of the public community and technical  
34 colleges, branches, centers, regional centers or other delivery  
35 sites with a community and technical college mission requests  
36 from the council the type of assistance which can best be  
37 delivered through implementation of the provisions of section  
38 four of this article. Institutional requests that may be considered  
39 by the council include, but are not limited to, assistance in  
40 seeking and/or attaining independent accreditation, in meeting  
41 the goals for post-secondary education established in section  
42 one-a, article one of this chapter, in meeting the essential  
43 conditions set forth in section three, article three-c of this  
44 chapter, or in establishing and implementing regional networks.

45 (6) One or more public community and technical colleges,  
46 branches, centers, regional centers or other delivery sites with a  
47 community and technical college mission has not met, or is not  
48 making sufficient, satisfactory progress toward meeting, the  
49 goals set forth in section one-a, article one of this chapter; and

50 (7) The council determines that it is in the best interests of  
51 the people of the state or a region of the state to create a state-  
52 wide, independently accredited community and technical  
53 college.

54 (d) The council may not make a determination subject to the  
55 provisions of subsection (c) of this section that a condition does  
56 not exist based upon a finding that the higher education entity  
57 lacks sufficient funds to make sufficient, satisfactory progress.

58 (e) By the first day of December annually, the council shall  
59 prepare and file with the legislative oversight commission on  
60 education accountability a written report on the findings and  
61 determinations required by this section, together with a detailed  
62 history of any actions taken by the council under the authority of  
63 this article.

**§18B-2C-4. Authority of council in creating West Virginia community and technical college.**

1 (a) Subject to the provisions of subsection (c), section three  
2 of this article, if the council makes a determination that one or  
3 more of the conditions exists, then the council is authorized to  
4 create the West Virginia community and technical college.

5 (b) As soon as practicable after the council determines that  
6 the college should be created, the council shall notify the  
7 governor, the president of the Senate, the speaker of the House  
8 of Delegates and the legislative oversight commission on  
9 education accountability of the proposed actions. The council  
10 shall conduct a study regarding the procedures, findings and  
11 determinations considered necessary prior to any creation of the  
12 college and shall report its findings to the legislative oversight  
13 commission on education accountability. The council may not  
14 create the college prior to the report being received by the  
15 legislative oversight commission on education accountability.

16 (c) On or before the first day of December of the year in  
17 which the college is created, the council shall certify to the  
18 legislative oversight commission on education accountability  
19 proposed legislation to accomplish the purposes of this article  
20 for those matters requiring statutory change.

**ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

§18B-3C-2. Purposes of article.

§18B-3C-3. Essential conditions for community and technical college programs and services.

- §18B-3C-4. Community and technical college consortia planning districts.
- §18B-3C-5. Appointment of community and technical college presidents.
- §18B-3C-6. Community and technical college programs.
- §18B-3C-8. Process for achieving independently accredited community and technical colleges.
- §18B-3C-9. Increasing flexibility for community and technical colleges.
- §18B-3C-10. Freestanding community and technical colleges; tuition and fees.
- §18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.

**§18B-3C-2. Purposes of article.**

1       The general purposes of this article are the following:

2       (a) To establish community and technical college education  
3 that is well articulated with the public schools and four-year  
4 colleges; that makes maximum use of shared facilities, faculty,  
5 staff, equipment and other resources; that encourages traditional  
6 and nontraditional students and adult learners to pursue a  
7 lifetime of learning; that serves as an instrument of economic  
8 development; and that has the independence and flexibility to  
9 respond quickly to changing needs;

10       (b) To charge the respective governing boards with provid-  
11 ing community and technical college education at state institu-  
12 tions of higher education under their jurisdiction that has the  
13 administrative, programmatic and budgetary control necessary  
14 to allow maximum flexibility and responsiveness to district and  
15 community needs. Education services shall be provided  
16 consistent with the goal of sharing facilities, faculty, staff,  
17 equipment and other resources within and among the districts,  
18 the other systems of public and higher education and other  
19 education and training programs;

20       (c) To establish the essential conditions for community and  
21 technical college programs and services, as defined in section  
22 three of this article, necessary to ensure that each region of West

23 Virginia is served by a community and technical college meeting  
24 the needs of the people of the region;

25 (d) To establish a mechanism for assuring that, where  
26 applicable, a transition plan for meeting the essential conditions  
27 is developed by each relevant community and technical college;

28 (e) To establish community and technical college consortia  
29 districts for each of the community and technical colleges to  
30 ensure accountability that the full range of community and  
31 technical college education programs and services is provided in  
32 all areas of the state, including the implementation of seamless  
33 curricula and the West Virginia EDGE, "Earn a Degree Graduate  
34 Early" program;

35 (f) To define the full range of programs and services that  
36 each community and technical college has the responsibility to  
37 provide; and

38 (g) To establish such other policies and procedures necessary  
39 to ensure that the needs of West Virginia, its people and its  
40 businesses are met for the programs and services that can be  
41 provided through a comprehensive system of community and  
42 technical colleges.

**§18B-3C-3. Essential conditions for community and technical  
college programs and services.**

1 The Legislature hereby establishes the following essential  
2 conditions for community and technical college programs and  
3 services:

4 (a) Independent accreditation by the higher learning com-  
5 mission of the north central association of colleges and schools  
6 (NCA), by the first day of July, two thousand five, reflecting  
7 external validation that academic programs, services, faculty,  
8 governance, financing and other policies are aligned with the

9 community and technical college mission of the institution. An  
10 institution meets this requirement if on such date the council  
11 determines that the institution is on target to meet independent  
12 accreditation status. A community and technical college  
13 continues to share the accreditation of the sponsoring institution  
14 until such time as independent accreditation is achieved;

15 (b) A full range of community and technical college services  
16 offered as specified in section six of this article;

17 (c) Programmatic approval consistent with the provisions of  
18 section nine of this article;

19 (d) A fee structure competitive with its peer institutions;

20 (e) Basic services, some of which may be obtained under  
21 contract with existing institutions in the region. These basic  
22 services shall include, but are not limited to, the following:

23 (1) Student services, including, but not limited to, advising,  
24 academic counseling, financial aid and provision of the first line  
25 of academic mentoring and mediation;

26 (2) Instructional support services;

27 (3) Access to information and library services;

28 (4) Physical space in which courses can be offered;

29 (5) Access to necessary technology for students, faculty and  
30 mentors;

31 (6) Monitoring and assessment; and

32 (7) Administrative services, including, but not limited to,  
33 registration, fee collection and bookstore and other services for  
34 the distribution of learning materials;

35 (f) A president who is the chief executive officer of the  
36 community and technical college appointed and serving pursuant  
37 to the terms of section six, article one-b of this chapter. The  
38 president reports directly to the institutional board of governors.  
39 It is the responsibility of the board of governors to provide  
40 sufficient time at each meeting for the president to discuss issues  
41 relevant to the mission of the community and technical college;

42 (g) An institutional board of governors or an institutional  
43 board of advisors appointed and serving as required by law;

44 (h) A full-time core faculty, complemented by persons  
45 engaged through contract or other arrangements, including:

46 (1) College and university faculty, to teach community  
47 college courses; and

48 (2) Qualified business, industry and labor persons engaged  
49 as adjunct faculty in technical areas;

50 (i) A faculty personnel policy, formally established to be  
51 separate and distinct from that of other institutions, which  
52 includes, but is not limited to, appointment, promotion, workload  
53 and, if appropriate, tenure pursuant to section nine of this article.  
54 These policies shall be appropriate for the community and  
55 technical college mission and may not be linked to the policies  
56 of any other institution;

57 (j) Community and technical colleges designed and operat-  
58 ing as open-provider centers with the authority and flexibility to  
59 draw on the resources of the best and most appropriate provider  
60 to ensure that community and technical college services are  
61 available and delivered in the region in a highly responsive  
62 manner. A community and technical college may contract with  
63 other institutions and providers as necessary to obtain the  
64 academic programs and resources to complement those available

65 through a sponsoring college, where applicable, in order to meet  
66 the region's needs;

67 (k) Separately identified state funding allocations for each of  
68 the community and technical colleges.

69 (l) Full budgetary authority for the president of the institu-  
70 tion, subject to accountability to its governing board, including  
71 authority to retain all tuition and fees generated by the commu-  
72 nity and technical college for use to carry out its mission.

**§18B-3C-4. Community and technical college consortia planning districts.**

1 (a) Unless otherwise designated, the president of each  
2 community and technical college facilitates the formation of  
3 community and technical college consortia in the state, which  
4 includes representatives of community and technical colleges,  
5 public vocational-technical education centers, and public  
6 baccalaureate institutions offering associate degrees. The  
7 community and technical college consortium shall:

8 (1) Complete a comprehensive assessment of the district to  
9 determine what education and training programs are necessary  
10 to meet the short and long-term workforce development needs of  
11 the district;

12 (2) Coordinate efforts with regional labor market informa-  
13 tion systems to identify the ongoing needs of business and  
14 industry, both current and projected, and to provide information  
15 to assist in an informed program of planning and  
16 decisionmaking;

17 (3) Plan and develop a unified effort between the community  
18 and technical colleges and public vocational-technical education  
19 to meet the documented workforce development needs of the  
20 district through individual and cooperative programs, shared

21 facilities, faculty, staff, equipment and other resources and the  
22 development and use of distance learning and other education  
23 technologies;

24 (4) Regularly review and revise curricula to ensure that the  
25 workforce needs are met, develop new programs and phase out  
26 or modify existing programs as appropriate to meet such needs,  
27 streamline procedures for designing and implementing custom-  
28 ized training programs;

29 (5) Increase the integration of secondary and post-secondary  
30 curriculum and programs that are targeted to meet regional labor  
31 market needs, including implementation of seamless curricula  
32 project in all major career pathways and the West Virginia  
33 EDGE, “Earn a Degree Graduate Early” program;

34 (6) Plan and implement integrated professional development  
35 activities for secondary and post-secondary faculty, staff and  
36 administrators;

37 (7) Ensure that program graduates have attained the compe-  
38 tencies required for successful employment through the involve-  
39 ment of business, industry and labor in establishing student  
40 credentialing;

41 (8) Performance assessment of student knowledge and skills  
42 which may be gained from multiple sources so that students gain  
43 credit toward program completion and advance more rapidly  
44 without repeating course work in which they already possess  
45 competency;

46 (9) Cooperate with workforce investment boards in estab-  
47 lishing one-stop-shop career centers with integrated employment  
48 and training and labor market information systems that enable  
49 job seekers to assess their skills, identify and secure needed  
50 education training and secure employment and employers to  
51 locate available workers;



52       (10) Increase the integration of adult literacy, adult basic  
53 education, federal Work Force Investment Act and community  
54 and technical college programs and services to expedite the  
55 transition of adults from welfare to gainful employment; and

56       (11) Establish a single point of contact for employers and  
57 potential employers to access education and training programs  
58 throughout the district.

59       (b) The community and technical college education consor-  
60 tium shall cooperate with the regional workforce investment  
61 board in the district and shall participate in any development or  
62 amendment to the regional workforce investment plan.

63       (c) To carry out the provisions of this section, community  
64 and technical college consortia planning districts are established  
65 and defined as follows:

66       (1) Northern panhandle community and technical college  
67 district includes Hancock, Brooke, Ohio, Marshall and Wetzel  
68 counties.

69       (A) The facilitating institution is West Virginia northern  
70 community and technical college.

71       (B) Participating institutions include West Virginia northern  
72 community and technical college; John Marshall high school;  
73 Cameron high school; John D. Rockefeller center; and other  
74 public vocational technical schools offering post-secondary  
75 programs.

76       (2) North central West Virginia community and technical  
77 college district includes Monongalia, Marion, Preston, Taylor,  
78 Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis,  
79 Calhoun, Gilmer and Upshur counties.

80 (A) The facilitating institution is Fairmont state community  
81 and technical college.

82 (B) Participating institutions include Fairmont state commu-  
83 nity and technical college; Glenville state college; Randolph  
84 county vocational-technical center; Monongalia county technical  
85 education center; united technical center; Marion county  
86 technical center; Fred W. Eberly technical center; and other  
87 public vocational technical schools offering post-secondary  
88 programs.

89 (3) Mid-Ohio valley community and technical college  
90 district includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson  
91 and Roane counties.

92 (A) The facilitating institution is West Virginia university at  
93 Parkersburg.

94 (B) Participating institutions includes West Virginia  
95 university at Parkersburg; West Virginia northern community  
96 and technical college; Roane-Jackson technical center; Gaston  
97 Caperton center; Wood County technical center; and other public  
98 vocational technical schools offering post-secondary programs.

99 (4) Potomac highlands community and technical college  
100 district includes Tucker, Pendleton, Grant, Hardy, Mineral and  
101 Hampshire counties.

102 (A) The facilitating institution is eastern West Virginia  
103 community and technical college.

104 (B) Participating institutions include eastern West Virginia  
105 community and technical college; South Branch career and  
106 technical center; Mineral County technical center; and other  
107 public vocational technical schools offering post-secondary  
108 programs.

109 (5) Shenandoah valley community and technical college  
110 district includes Berkeley, Jefferson and Morgan counties.

111 (A) The facilitating institution is the community and  
112 technical college of Shepherd.

113 (B) Participating institutions include the community and  
114 technical college of Shepherd; James Rumsey technical institute;  
115 and other public vocational technical schools offering  
116 post-secondary programs.

117 (6) Advantage valley community and technical college  
118 district includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason  
119 and Wayne counties.

120 (A) The facilitating institution is Marshall community and  
121 technical college.

122 (B) Every five years the council shall:

123 (i) Evaluate the progress of the advantage valley consortia  
124 toward achieving the goals and benchmarks of its compact;

125 (ii) Evaluate the progress of each community and technical  
126 college in the district toward achieving the goals and  
127 benchmarks of its institutional compact;

128 (iii) Determine which community and technical college in  
129 the district would best serve the needs of the district for the  
130 following five-year period if serving as the facilitating institu-  
131 tion; and

132 (iv) Designate the community and technical college selected  
133 pursuant to subparagraph (iii) of this paragraph to serve as the  
134 facilitating institution for the following five-year period.

135 (C) Participating institutions include Marshall community  
136 and technical college; the community and technology college at

137 West Virginia university institute of technology; West Virginia  
138 state community and technical college; Carver career center;  
139 Garnet career center; Ben Franklin career center; Putnam County  
140 vocational-technical-occupational center; Cabell County  
141 career-technical center; and other public vocational technical  
142 schools offering post-secondary programs.

143 (7) Southern mountains community and technical college  
144 district includes Lincoln, Boone, Logan, Mingo, Wyoming and  
145 McDowell counties.

146 (A) The facilitating institution is southern West Virginia  
147 community and technical college.

148 (B) Participating institutions include southern West Virginia  
149 community and technical college; New River community and  
150 technical college; Boone County career and technical center;  
151 Wyoming County vocational-technical center; Ralph R. Willis  
152 Career and technical center; McDowell County career and  
153 technology center; Mingo County vocation-technical center;  
154 Charles Yeager technical center; and other public vocational  
155 technical schools offering post-secondary programs.

156 (8) Southeastern community and technical college district  
157 includes Raleigh, Summers, Fayette, Nicholas, Webster,  
158 Pocahontas, Greenbrier, Monroe and Mercer counties.

159 (A) The facilitating institution is New River community and  
160 technical college.

161 (B) Participating institutions include New River community  
162 and technical college; southern West Virginia community and  
163 technical college; the community and technical college at West  
164 Virginia university institute of technology; Bluefield state  
165 college; academy of careers and technology; Fayette plateau  
166 vocation-technology center; Summers County high school;  
167 Monroe County technical center; Mercer County technical

168 center; and other public vocational technical schools offering  
169 post-secondary programs.

170 (d) In the role of the facilitating institution of the community  
171 and technical college district, the college:

172 (1) Communicates to the council;

173 (2) Facilitates the delivery of comprehensive community and  
174 technical college education in the region, which includes the  
175 seven areas of comprehensive community and technical college  
176 education delivery as required by section six of this article; and

177 (3) Facilitates development of statement of commitment  
178 signed by all participating institutions in the region as to how  
179 community and technical college education will be delivered.

180 (e) Participating institutions are not subordinate to the  
181 facilitating institution but will sign the statement of commitment  
182 to participate.

183 (f) The council shall:

184 (1) Establish guidelines for community and technical college  
185 consortia development;

186 (2) Set goals for each consortium based upon legislative  
187 goals for the delivery of comprehensive community and techni-  
188 cal college education; and

189 (3) Establish a format for development of a consortium  
190 compact outlining plans for achieving stated goals to be submit-  
191 ted to the council for approval on or before the fifteenth day of  
192 November, two thousand four.

193 (g) On or before the fifteenth day of November, two  
194 thousand four, each consortium shall submit to the council for  
195 approval a compact which outlines plans for obtaining the stated

196 goals. Each compact shall include the implementation of  
197 seamless curricula and the West Virginia EDGE, “Earn a Degree  
198 Graduate Early” program, and be updated annually.

199 (h) The council annually shall evaluate the progress made in  
200 meeting the compact goals for each community and technical  
201 college consortia through the development and collection of  
202 performance indicator data.

**§18B-3C-5. Appointment of community and technical college  
presidents.**

1 The administrative head of a community and technical  
2 college is the president who is chosen pursuant to the terms of  
3 section six, article one-b of this chapter. Any individual  
4 employed as provost of an administratively linked community  
5 and technical college on the first day of January, two thousand  
6 four, continues as the administrative head of the institution and  
7 becomes the community and technical college president on the  
8 effective date of this section.

**§18B-3C-6. Community and technical college programs.**

1 (a) The mission of each community and technical college  
2 includes the following programs which may be offered on or off  
3 campus, at the work site, in the public schools and at other  
4 locations and at times that are convenient for the intended  
5 population:

6 (1) Career and technical education skill sets, certificates,  
7 associate of applied science and selected associate of science  
8 degree programs for students seeking immediate employment,  
9 individual entrepreneurship skills, occupational development,  
10 skill enhancement and career mobility;

11       (2) Transfer education associate of arts and associate of  
12 science degree programs for students whose education goal is to  
13 transfer into a baccalaureate degree program;

14       (3) Developmental/remedial education courses, literacy  
15 education, tutorials, skills development labs and other services  
16 for students who need to improve their skills in mathematics,  
17 English, reading, study skills, computers and other basic skill  
18 areas;

19       (4) Workforce training and retraining and contract education  
20 with business and industry to train or retrain employees;

21       (5) Continuing development assistance and education credit  
22 and noncredit courses for professional and self-development,  
23 certification and licensure and literacy training;

24       (6) Community service workshops, lectures, seminars,  
25 clinics, concerts, theatrical performances and other noncredit  
26 activities to meet the cultural, civic and personal interests and  
27 needs of the community; and

28       (7) Cooperative arrangements with the public school system  
29 for the seamless progression of students through programs of  
30 study which are calculated to begin at the secondary level and  
31 conclude at the community and technical college level.

32       (b) All administrative, programmatic and budgetary control  
33 over community and technical college education within the  
34 institution is vested in the president, subject to rules adopted by  
35 the council. The president with the institutional board of  
36 governors or institutional board of advisors, as appropriate, is  
37 responsible for the regular review, revision, elimination and  
38 establishment of programs within the institution to assure that  
39 the needs of the community and technical college consortia  
40 district are met. It is the intent of the Legislature that the  
41 program review and approval process for community and

42 technical college education be separate and distinct from  
43 baccalaureate education and subject to the provisions of section  
44 nine of this article.

45 (c) Independently accredited community and technical  
46 colleges shall serve as higher education centers for their regions  
47 by brokering with colleges, universities and other providers, in  
48 state and out of state, to ensure the coordinated access of  
49 students, employers and other clients to needed programs and  
50 services.

**§18B-3C-8. Process for achieving independently accredited community and technical colleges.**

1 (a) By the first day of July, two thousand five, West Virginia  
2 shall have a statewide network of independently accredited  
3 community and technical colleges serving every region of the  
4 state. This section does not apply to the freestanding community  
5 and technical colleges or West Virginia university at  
6 Parkersburg.

7 (b) To be eligible for funds appropriated to develop inde-  
8 pendently accredited community and technical colleges, a state  
9 institution of higher education shall demonstrate the following:

10 (1) That it has as a part of its institutional compact approved  
11 by the council a step-by-step plan with measurable benchmarks  
12 for developing an independently accredited community and  
13 technical college that meets the essential conditions set forth in  
14 section three of this article;

15 (2) That it is able to offer evidence to the satisfaction of the  
16 council that it is making progress toward accomplishing the  
17 benchmarks established in its institutional compact for develop-  
18 ing an independently accredited community and technical  
19 college; and



20 (3) That it has submitted an expenditure schedule approved  
21 by the council which sets forth a proposed plan of expenditures  
22 for funds allocated to it from the fund.

23 (c) The following are recommended strategies for moving  
24 from the current arrangement of "component" community and  
25 technical colleges to the legislatively mandated statewide  
26 network of independently accredited community and technical  
27 colleges serving every region of the state. The Legislature  
28 recognizes that there may be other means to achieve this ultimate  
29 objective; however, it is the intent of the Legislature that the  
30 move from the current arrangement of "component" community  
31 and technical colleges to the legislatively mandated statewide  
32 network of independently accredited community and technical  
33 colleges serving every region of the state shall be accomplished.  
34 The following recommendations are designed to reflect signifi-  
35 cant variations among regions and the potential impacts on the  
36 sponsoring institutions.

37 (1) *New River community and technical college. --*

38 (A) There is continued the multicampus entity known as  
39 New River community and technical college, administratively  
40 linked to Bluefield state college. New River community and  
41 technical college is headquartered in the Beckley higher educa-  
42 tion center and incorporates the campuses of Greenbrier commu-  
43 nity college center of New River community and technical  
44 college and Nicholas community college center of New River  
45 community and technical college. New River community and  
46 technical college shall be an independently accredited commu-  
47 nity and technical college. The council shall appoint an institu-  
48 tional board of advisors, pursuant to section one, article six of  
49 this chapter, for New River community and technical college  
50 which is separate from the institutional board of governors of  
51 Bluefield state college. The board of advisors shall become the

52 board of governors pursuant to section one, article two-a of this  
53 chapter when the institution achieves independent accreditation.

54 (B) Bluefield state college may continue associate degree  
55 programs in areas of particular institutional strength which are  
56 closely articulated to their baccalaureate programs and missions  
57 or which are of a high-cost nature and can best be provided  
58 through direct coordination with a baccalaureate institution. Any  
59 such program shall be delivered under the authority of the  
60 council and through contract with the community and technical  
61 college. The terms of the contract shall be negotiated between  
62 the council and the governing board of the sponsoring institu-  
63 tion. The final contract is approved by the council. Such a  
64 program shall be evaluated according to the benchmarks and  
65 indicators for community and technical college education  
66 developed by the council. If the council determines that the  
67 program is making insufficient progress toward accomplishing  
68 the benchmarks, the program shall thereafter be delivered by the  
69 community and technical college.

70 (C) Bluefield state college may continue the associate of  
71 science degree in nursing which is an existing nationally  
72 accredited associate degree program in an area of particular  
73 institutional strength and which is closely articulated to the  
74 baccalaureate program and mission. The program is of a high-  
75 cost nature and can best be provided through direct administra-  
76 tion by a baccalaureate institution. This program may not be  
77 transferred to New River community and technical college or  
78 any other community and technical college as long as the  
79 program maintains national accreditation and is seamlessly  
80 coordinated into the baccalaureate program at the institution.

81 (D) By the first day of July, two thousand five, New River  
82 community and technical college shall be independently  
83 accredited. The president and the board of governors of  
84 Bluefield state college are responsible for obtaining independent

85 accreditation of the community and technical college. If the  
86 multicampus entity known as New River community and  
87 technical college has not obtained independent accreditation by  
88 this date, the council shall choose one of the following options:

89 (i) Create New River as a freestanding community and  
90 technical college; or

91 (ii) Assign the responsibility for obtaining independent  
92 accreditation to another state institution of higher education.

93 (E) The president and the board of governors of Bluefield  
94 state college also are accountable to the council for ensuring that  
95 the full range of community and technical college services is  
96 available throughout the region and that New River community  
97 and technical college adheres to the essential conditions pursuant  
98 to section three of this article.

99 (F) As an independently accredited community and technical  
100 college, New River also shall serve as a higher education center  
101 for its region by brokering with other colleges, universities and  
102 other providers, in state and out of state, both public and private,  
103 to ensure the coordinated access of students, employers and  
104 other clients to needed programs and services.

105 (G) New River community and technical college shall  
106 participate in the planning and development of a unified effort  
107 involving multiple providers to meet the documented education  
108 and workforce development needs in the region. Nothing in this  
109 subdivision prohibits or limits any existing, or the continuation  
110 of any existing, affiliation between mountain state university,  
111 West Virginia university institute of technology and West  
112 Virginia university. The objective is to assure students and  
113 employers in the area that there is coordination and efficient use  
114 of resources among the separate programs and facilities, existing  
115 and planned, in the Beckley area.

116       (2) *Fairmont state community and technical college.* --  
117 Fairmont state community and technical college is an independ-  
118 ently accredited community and technical college. The commu-  
119 nity and technical college is developed on the base of the  
120 component community and technical college of Fairmont state  
121 college. Subject to the provisions of this section, the president  
122 and the governing board of Fairmont state college are responsi-  
123 ble, according to a plan approved by the council, for step-by-step  
124 implementation of the independently accredited community and  
125 technical college which adheres to the essential conditions  
126 pursuant to section three of this article. Subject to the provisions  
127 of section twelve of this article, the community and technical  
128 college will remain administratively linked to Fairmont state  
129 college. Fairmont state college may continue associate degree  
130 programs in areas of particular institutional strength which are  
131 closely articulated to their baccalaureate programs and missions  
132 or which are of a high-cost nature and can best be provided in  
133 direct coordination with a baccalaureate institution. Any such  
134 program shall be delivered under the authority of the council and  
135 through contract with the community and technical college. The  
136 terms of the contract shall be negotiated between the council and  
137 the governing board of the sponsoring institution. The final  
138 contract is approved by the council. Such a program shall be  
139 evaluated according to the benchmarks and indicators for  
140 community and technical college education developed by the  
141 council. If the council determines that the program is making  
142 insufficient progress toward accomplishing the benchmarks, the  
143 program shall thereafter be delivered by the community and  
144 technical college.

145       (3) *Marshall community and technical college.* -- Marshall  
146 community and technical college is an independently accredited  
147 community and technical college. The new community and  
148 technical college is developed on the base of the component  
149 community and technical college of Marshall university. Subject  
150 to the provisions of this section, the president and the governing

151 board of Marshall university are responsible, according to a plan  
152 approved by the council, for step-by-step implementation of the  
153 new independently accredited community and technical college  
154 which adheres to the essential conditions pursuant to section  
155 three of this article. Subject to the provisions of section twelve  
156 of this article, the community and technical college will remain  
157 administratively linked to Marshall university. Marshall  
158 university may continue associate degree programs in areas of  
159 particular institutional strength which are closely articulated to  
160 their baccalaureate programs and missions or which are of a  
161 high-cost nature and can best be provided in direct coordination  
162 with a baccalaureate institution. Any such program shall be  
163 delivered under the authority of the council and through contract  
164 with the community and technical college. The terms of the  
165 contract shall be negotiated between the council and the govern-  
166 ing board of the sponsoring institution. The final contract is  
167 approved by the council. Such a program shall be evaluated  
168 according to the benchmarks and indicators for community and  
169 technical college education developed by the council. If the  
170 council determines that the program is making insufficient  
171 progress toward accomplishing the benchmarks, the program  
172 shall thereafter be delivered by the community and technical  
173 college.

174 (4) *The community and technical college of Shepherd.* -- The  
175 community and technical college of Shepherd shall become an  
176 independently accredited community and technical college. The  
177 new community and technical college is developed on the base  
178 of the component community and technical college of Shepherd  
179 college. Subject to the provisions of this section, the president  
180 and the governing board of Shepherd college are responsible,  
181 according to a plan approved by the council, for step-by-step  
182 implementation of the new independently accredited community  
183 and technical college which adheres to the essential conditions  
184 pursuant to section three of this article. Subject to the provisions  
185 of section twelve of this article, the community and technical

186 college will remain administratively linked to Shepherd college.  
187 Shepherd college may continue associate degree programs in  
188 areas of particular institutional strength which are closely  
189 articulated to their baccalaureate programs and missions or  
190 which are of a high-cost nature and can best be provided in direct  
191 coordination with a baccalaureate institution. Any such program  
192 shall be delivered under the authority of the council and through  
193 contract with the community and technical college. The terms  
194 of the contract shall be negotiated between the council and the  
195 governing board of the sponsoring institution. The final contract  
196 is approved by the council. Such a program shall be evaluated  
197 according to the benchmarks and indicators for community and  
198 technical college education developed by the council. If the  
199 council determines that the program is making insufficient  
200 progress toward accomplishing the benchmarks, the program  
201 shall thereafter be delivered by the community and technical  
202 college.

203       (5) *West Virginia state community and technical college.* --  
204 West Virginia state community and technical college shall  
205 become an independently accredited community and technical  
206 college. The new community and technical college is developed  
207 on the base of the component community and technical college  
208 of West Virginia state college. Subject to the provisions of this  
209 section, the president and the governing board of West Virginia  
210 state college are responsible, according to a plan approved by the  
211 council, for step-by-step implementation of the new independ-  
212 ently accredited community and technical college which adheres  
213 to the essential conditions pursuant to section three of this  
214 article. Subject to the provisions of section twelve of this article,  
215 the community and technical college will remain administra-  
216 tively linked to West Virginia state college. West Virginia state  
217 college may continue associate degree programs in areas of  
218 particular institutional strength which are closely articulated to  
219 their baccalaureate programs and missions or which are of a  
220 high-cost nature and can best be provided in direct coordination

221 with a baccalaureate institution. Any such program shall be  
222 delivered under the authority of the council and through contract  
223 with the community and technical college. The terms of the  
224 contract shall be negotiated between the council and the govern-  
225 ing board of the sponsoring institution. The final contract is  
226 approved by the council. Such a program shall be evaluated  
227 according to the benchmarks and indicators for community and  
228 technical college education developed by the council. If the  
229 council determines that the program is making insufficient  
230 progress toward accomplishing the benchmarks, the program  
231 shall thereafter be delivered by the community and technical  
232 college.

233 (6) *The community and technical college at West Virginia*  
234 *university institute of technology.* -- The community and  
235 technical college at West Virginia university institute of technol-  
236 ogy is an independently accredited community and technical  
237 college. The new community and technical college is developed  
238 on the base of the component community and technical college  
239 of West Virginia university institute of technology. Subject to  
240 the provisions of this section, the president and the governing  
241 board of West Virginia university institute of technology are  
242 responsible, according to a plan approved by the commission, for  
243 step-by-step implementation of the new independently accred-  
244 ited community and technical college which adheres to the  
245 essential conditions pursuant to section three of this article.  
246 Subject to the provisions of section twelve of this article, the  
247 community and technical college will remain administratively  
248 linked to West Virginia university institute of technology. West  
249 Virginia university institute of technology may continue  
250 associate degree programs in areas of particular institutional  
251 strength which are closely articulated to their baccalaureate  
252 programs and missions or which are of a high-cost nature and  
253 can best be provided in direct coordination with a baccalaureate  
254 institution. Any such program shall be delivered under the  
255 authority of the council and through contract with the commu-

256 nity and technical college. The terms of the contract shall be  
257 negotiated between the council and the governing board of the  
258 sponsoring institution. The final contract is approved by the  
259 council. Such a program shall be evaluated according to the  
260 benchmarks and indicators for community and technical college  
261 education developed by the council. If the council determines  
262 that the program is making insufficient progress toward accom-  
263 plishing the benchmarks, the program shall thereafter be  
264 delivered by the community and technical college.

265 (d) For each administratively linked community and  
266 technical college which fails to achieve independent accredita-  
267 tion by the first day of July, two thousand five, the council shall  
268 choose one of the following options:

269 (1) Create the administratively linked institution as a  
270 freestanding community and technical college; or

271 (2) Assign the responsibility for obtaining independent  
272 accreditation to another state institution of higher education.

273 The president and the board of governors of each sponsoring  
274 institution is accountable to the council for ensuring that the  
275 community and technical college is able to meet the conditions  
276 for independent accreditation and adheres to the essential  
277 conditions pursuant to section three of this article.

**§18B-3C-9. Increasing flexibility for community and technical colleges.**

1 (a) Notwithstanding any rules or procedures of the governing  
2 boards to the contrary, the community and technical colleges  
3 have the authority and the duty to:

4 (1) Incorporate the most effective and efficient use of  
5 technology in accessing and delivering courses and programs in



6 order to make the best use of available resources and to control  
7 costs;

8 (2) Incorporate a model to offer occupational program  
9 curricula in smaller modules to accommodate specific student  
10 and employer needs and to gain sufficient flexibility in format-  
11 ting courses;

12 (3) Serve as a facilitator for education programs from  
13 outside delivery sources to meet the needs of the residents and  
14 employers of the district; and

15 (4) Employ faculty in the most effective manner to serve the  
16 core mission of the community and technical college.

17 (A) To that end, the freestanding community and technical  
18 colleges may employ faculty for an indefinite period without a  
19 grant of tenure and shall work toward a staffing goal of no more  
20 than twenty percent of the faculty holding tenure or being  
21 tenure-track employees. Tenured faculty employed by the  
22 freestanding community and technical colleges before the first  
23 day of July, one thousand nine hundred ninety-nine, are not  
24 affected by this provision.

25 (B) All community and technical colleges, other than those  
26 set forth in paragraph (A) of this subdivision, may employ  
27 faculty for an indefinite period without a grant of tenure. The  
28 immediate goal is to use this provision as a tool to assist the  
29 community and technical colleges in meeting the essential  
30 conditions provided for in section three of this article and in  
31 gaining independent accreditation status. The ultimate goal is to  
32 provide the flexibility community and technical colleges need to  
33 meet the needs of the state by working toward having no more  
34 than twenty percent of the core faculty holding tenure or being  
35 tenure-track employees. Tenured faculty employed by commu-  
36 nity and technical colleges other than freestanding community  
37 and technical colleges on the thirtieth day of June, two thousand,

38 may not be affected by this provision. Tenure may not be denied  
39 to a faculty member solely as a result of change in employing  
40 institution necessitated by the change to independently accred-  
41 ited community and technical colleges.

42 (b) The governing boards shall adopt a model of program  
43 approval for the community and technical colleges that permits  
44 occupational programs to be customized to meet needs without  
45 requiring approval by any governing board or other agency of  
46 government. The model shall incorporate a post-audit review of  
47 such programs on a three-year cycle to determine the effective-  
48 ness of the programs in meeting district needs.

49 (c) The council shall promulgate rules to implement the  
50 provisions of this section and shall file these rules for review and  
51 approval with the chancellor no later than the first day of  
52 December, two thousand four.

**§18B-3C-10. Freestanding community and technical colleges;  
tuition and fees.**

1 (a) Each governing board may fix tuition and establish and  
2 set such other fees to be charged students at its community and  
3 technical college as it considers appropriate, subject to the  
4 provisions of this subsection and article ten of this chapter.

5 (1) The governing board, in consultation with the council,  
6 also may establish special fees for such purposes as, including,  
7 but not limited to, health services, student activities, student  
8 recreation, athletics or any other extracurricular purposes. The  
9 council shall determine which fees, if any, do not apply to the  
10 entire student population and to which students such fees do not  
11 apply. Such special fees may be used only for the purposes for  
12 which collected.

13 (2) A community and technical college may contract with  
14 any other state institution of higher education for the participa-

15 tion of its students in programs, activities or services of the other  
16 institution and for the use of such fees collected.

17 (b) All tuition and fee charges in the total aggregate shall  
18 comply with the terms of the institution’s compact approved by  
19 the council, based on peer comparisons or cost of instruction as  
20 set forth in the goals for post-secondary education pursuant to  
21 section one-a, article one of this chapter.

**§18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.**

1 (a) *Intent and purposes.* --

2 (1) It is the intent of the Legislature to establish community  
3 and technical colleges in every region of the state that meet the  
4 essential conditions of section three of this article.

5 (2) The Legislature finds that, in order to increase efficiency,  
6 reduce costs and, generally, to facilitate the effective transition  
7 from community and technical colleges which are components  
8 of existing institutions of higher education to community and  
9 technical colleges which meet the essential conditions, it is  
10 appropriate to maintain an administrative link between the  
11 community and technical colleges and the sponsoring institu-  
12 tions.

13 (3) This section defines the relationship between an adminis-  
14 tratively linked community and technical college and its  
15 sponsoring institution.

16 (b) Where an independently accredited community and  
17 technical college is linked administratively to a sponsoring state  
18 college or university in order to ensure efficient use of limited  
19 resources, the following conditions apply:

20 (1) The community and technical college shall be accredited  
21 separately from the sponsoring institution;

22 (2) All state funding allocations for the community and  
23 technical college shall be transferred directly to the community  
24 and technical college. The sponsoring institution may charge  
25 fees for administrative overhead costs subject to a schedule  
26 approved by the council.

27 (A) By the first day of December, two thousand four, the  
28 council shall develop a new model, or select an existing model,  
29 for services to be provided by sponsoring institutions and the  
30 fees to be charged administratively linked community and  
31 technical colleges for the services. The fee schedule shall be  
32 based upon the reasonable and customary fee for any service and  
33 shall bear a rational relationship to the cost of providing the  
34 service. Nothing in this paragraph requires the council to adopt  
35 a particular model for service delivery.

36 (B) With the approval of the council, a community and  
37 technical college and the sponsoring institution may customize  
38 the model to fit their needs;

39 (3) Policies shall be formally established to ensure the  
40 separation of academic and faculty personnel policies of the  
41 community and technical college from those of the sponsoring  
42 institution. These policies include, but are not limited to,  
43 appointment, promotion, workload and, if appropriate, tenure;  
44 and

45 (4) The council may authorize a community and technical  
46 college to decline any service of the sponsoring institution  
47 provided in subsection (c) of this section if the council deter-  
48 mines that the service is not appropriate for the community and  
49 technical college, or that declining the service is in the best  
50 interest of the community and technical college. Any service

51 declined may be obtained from an alternate source with the  
52 approval of the council.

53 (c) The sponsoring institution which is administratively  
54 linked to a community and technical college shall provide the  
55 following services:

56 (1) Personnel management;

57 (2) Recordkeeping;

58 (3) Payroll;

59 (4) Accounting;

60 (5) Legal services;

61 (6) Registration;

62 (7) Student aid;

63 (8) Student records; and

64 (9) Such other services as determined to be necessary and  
65 appropriate by the council.

66 (d) The institutional governing board shall appoint the  
67 president of the community and technical college, who serves at  
68 the will and pleasure of the governing board.

69 (e) The governing board and the council are responsible for  
70 the step-by-step development of the community and technical  
71 college and for compliance with the essential conditions, all as  
72 required by this article.

73 (f) The president of the community and technical college has  
74 such responsibilities, powers and duties in the development of  
75 the community and technical college and in compliance with the

76 essential conditions, as directed by the governing board or as are  
77 necessary for the proper implementation of the provisions of this  
78 act.

79 (g) Notwithstanding any other provision of this code to the  
80 contrary, the commission shall take necessary steps to ensure  
81 that institutional bonded indebtedness is secure and that each  
82 administratively linked community and technical college  
83 assumes its fair share of any institutional debt acquired while it  
84 was part of the baccalaureate institution.

85 (h) The community and technical college is encouraged to  
86 secure academic services from the sponsoring institution when  
87 it is in the best interests of the students to be served, the commu-  
88 nity and technical college and the sponsoring institution. In  
89 determining whether or not to secure services from the sponsor-  
90 ing institution, the community and technical college shall  
91 consider the following:

92 (1) The cost of the academic services;

93 (2) The quality of the academic services;

94 (3) The availability, both as to time and place, of the  
95 academic services; and

96 (4) Such other considerations as the community and techni-  
97 cal college finds appropriate taking into account the best  
98 interests of the students to be served, the community and  
99 technical college, and the sponsoring institution. Nothing in this  
100 article prohibits any state institution of higher education from  
101 purchasing or brokering remedial or developmental courses from  
102 a community and technical college.

#### **ARTICLE 4. GENERAL ADMINISTRATION.**

§18B-4-1. Employment of chancellors; designation of staff; offices.

§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

**§18B-4-1. Employment of chancellors; designation of staff; offices.**

1 (a) The council and commission each shall employ a  
2 chancellor to assist in the performance of their respective duties  
3 and responsibilities subject to the following conditions:

4 (1) Each chancellor serves at the will and pleasure of the  
5 hiring body.

6 (2) Neither chancellor may hold or retain any other adminis-  
7 trative position within the system of higher education while  
8 employed as chancellor.

9 (3) Each chancellor is responsible for carrying out the  
10 directives of the body by whom employed and shall work with  
11 that body in developing policy options.

12 (4) The commission shall designate a limited number of  
13 positions that are under the direct control and supervision of the  
14 chancellor for higher education. These positions form the  
15 nuclear staff of the chancellor's office and may equal no more  
16 than fifteen percent of the total number of staff employed by the  
17 commission.

18 Nevertheless, regardless of the number or title of the  
19 positions so designated, the commission is responsible to the  
20 council and the chancellor for community and technical college  
21 education for providing services in areas essential to exercising  
22 the powers and duties assigned to the council by law. The  
23 commission may not charge the council any fee for the provision  
24 of these essential services. The service areas include, but are not  
25 limited to, legal services, research, technology, computing,  
26 finance and facilities, academic affairs, telecommunications,

27 human resources, student services and any other general areas  
28 the council considers to be essential to the exercise of its legal  
29 authority. The services are provided under the general supervi-  
30 sion of the vice chancellor for administration.

31 (5) For the purpose of developing or evaluating policy  
32 options, the chancellors may request the assistance of the  
33 presidents and staff of the institutions under their respective  
34 jurisdictions.

35 (b) In addition to the staff positions designated in subdivi-  
36 sion (4), subsection (a) of this section, the vice chancellor for  
37 administration, employed pursuant to section two of this article,  
38 serves the offices of the chancellors to discharge jointly the  
39 duties and responsibilities of the council and commission.

40 (c) The vice chancellor for health sciences shall coordinate  
41 the West Virginia university school of medicine, the Marshall  
42 university school of medicine and the West Virginia school of  
43 osteopathic medicine.

44 (d) Suitable offices for the vice chancellor of administration  
45 and other staff shall be provided in Charleston.

**§18B-4-2. Employment of vice chancellor for administration;  
office; powers and duties generally.**

1 (a) By and with the advice and consent of the council, the  
2 commission shall employ a vice chancellor for administration  
3 who may not be dismissed without the consent of the council:

4 (1) The individual serving as vice chancellor for administra-  
5 tion on the effective date of this section may continue to serve on  
6 an interim basis until the commission and the council have  
7 agreed, jointly, on a candidate to fill the position;



8       (2) The interim vice chancellor for administration may be  
9 considered as a candidate for the position;

10       (3) The position shall be filled on a permanent basis no later  
11 than the first day of October, two thousand four; and

12       (4) Any vacancy occurring in this position shall be filled  
13 pursuant to the requirements of this section.

14       (b) Any reference in this chapter or chapter eighteen-c of this  
15 code to the senior administrator means the vice chancellor for  
16 administration.

17       (c) The vice chancellor for administration has a ministerial  
18 duty, in consultation with and under direction of the chancellors,  
19 to perform such functions, tasks and duties as may be necessary  
20 to carry out the policy directives of the council and commission  
21 and such other duties as may be prescribed by law.

22       (d) The vice chancellor for administration shall supervise  
23 such professional, administrative, clerical and other employees  
24 as may be necessary to these duties and shall delineate staff  
25 responsibilities as considered desirable and appropriate. It is the  
26 responsibility of the vice chancellor for administration, within  
27 the parameters of the total resources available, to supervise and  
28 direct the staff in such a way that the staff and resource needs of  
29 the council, the commission and the offices of the chancellors  
30 are met.

31       (e) Any employee of the commission or the council whose  
32 job duties meet criteria listed in the system of job classifications  
33 as stated in article nine of this chapter is accorded the job title,  
34 compensation and rights established in the article as well as all  
35 other rights and privileges accorded classified employees by the  
36 provisions of this code.

37 (f) The office of the vice chancellor for administration and  
38 all personnel, except for the chancellor for community and  
39 technical college education and staff transferred to the jurisdic-  
40 tion of the council pursuant to subsection (a), section seven,  
41 article two-b of this chapter, who are employed on the first day  
42 of January, two thousand four, within the higher education  
43 central office and the West Virginia network for educational  
44 telecomputing remain under the jurisdiction of the commission.  
45 Prior to the first day of October, two thousand four, any such  
46 employee may not be terminated or have his or her salary and  
47 benefit levels reduced as the result of the higher education  
48 reorganization that occurs on the effective date of this section.

49 (g) The vice chancellor for administration shall follow state  
50 and national education trends and gather data on higher educa-  
51 tion needs.

52 (h) The vice chancellor for administration, in accordance  
53 with established guidelines and in consultation with and under  
54 the direction of the chancellors, shall administer, oversee or  
55 monitor all state and federal student assistance and support  
56 programs administered on the state level, including those  
57 provided for in chapter eighteen-c of this code.

58 (i) The vice chancellor for administration has a fiduciary  
59 responsibility to administer the tuition and registration fee  
60 capital improvement revenue bond accounts of the governing  
61 boards.

62 (j) The vice chancellor for administration shall administer  
63 the purchasing system or systems of the council and commis-  
64 sion, the offices of the chancellors and the governing boards. By  
65 mutual agreement, the commission and the council may delegate  
66 authority for the purchasing systems or portions thereof to the  
67 institution presidents.

68 (k) The vice chancellor for administration is responsible for  
69 the management of the West Virginia network for educational  
70 telecomputing (WVNET). The vice chancellor for administra-  
71 tion shall establish a computer advisory board, which shall be  
72 representative of higher education and other users of the West  
73 Virginia network for educational telecomputing as the commis-  
74 sion and council determine appropriate. It is the responsibility  
75 of the computer advisory board to recommend to the commission  
76 and the council policies for a statewide shared computer system.

77 (l) The central office, under the direction of the vice  
78 chancellor for administration, shall provide necessary staff  
79 support to the commission, the council and offices of the  
80 chancellors.

81 (m) The vice chancellor for administration may administer  
82 any program or service authorized or required to be performed  
83 by the board of trustees or the board of directors on the thirtieth  
84 day of June, two thousand, and not specifically assigned to  
85 another agency. In addition, the vice chancellor for administra-  
86 tion may administer any program or service authorized or  
87 required to be performed by the commission, council or chancel-  
88 lers, but not assigned specifically to the commission, council or  
89 chancellors. Any such program or service may include, but is  
90 not limited to, telecommunications activities and other programs  
91 and services provided for under grants and contracts from federal  
92 and other external funding sources.

**§18B-4-7. Accreditation of institutions of higher education;  
standards for degrees.**

1 The council shall make rules for the accreditation of  
2 community and technical colleges in this state and shall deter-  
3 mine the minimum standards for conferring degrees. The  
4 commission shall make rules for the accreditation of colleges

5 and universities in this state and shall determine the minimum  
6 standards for conferring degrees. An institution of higher  
7 education may not confer any degree on any basis of work or  
8 merit below the minimum standards prescribed by the council or  
9 commission. Nothing in this section infringes upon the rights,  
10 including rights to award degrees, granted to any institution by  
11 charter given according to law, or by actions of the council or  
12 commission or their predecessors, prior to the effective date of  
13 this section. With the approval of the commission, governing  
14 boards of institutions which currently offer substantial under-  
15 graduate course offerings and a master's degree in a discipline  
16 are authorized to grant baccalaureate degrees in that discipline.

17 Except as otherwise provided in this section, a charter or  
18 other instrument containing the right to confer degrees of higher  
19 education status may not be granted by the state of West Virginia  
20 to any institution, association or organization within the state,  
21 nor may any such degree be awarded, until the condition of  
22 conferring the degree has first been approved in writing by the  
23 council or commission.

#### **ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

##### **§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.**

1 (a) The council, commission and each governing board,  
2 through the vice chancellor for administration, shall purchase or  
3 acquire all materials, supplies, equipment, services and printing  
4 required for that governing board or the council or commission,  
5 as appropriate, and the state institutions of higher education  
6 under their jurisdiction. The commission and council jointly  
7 shall adopt rules governing and controlling acquisitions and  
8 purchases in accordance with the provisions of this section. The  
9 rules shall assure that the council, commission and governing  
10 boards:

11 (1) Do not preclude any person from participating and  
12 making sales thereof to the governing board or to the council or  
13 commission except as otherwise provided in section five of this  
14 article. Provision of consultant services such as strategic  
15 planning services will not preclude or inhibit the governing  
16 boards, council or commission from considering any qualified  
17 bid or response for delivery of a product or a commodity because  
18 of the rendering of those consultant services;

19 (2) Establish and prescribe specifications, in all proper cases,  
20 for materials, supplies, equipment, services and printing to be  
21 purchased;

22 (3) Adopt and prescribe such purchase order, requisition or  
23 other forms as may be required;

24 (4) Negotiate for and make purchases and acquisitions in  
25 such quantities, at such times and under contract, in the open  
26 market or through other accepted methods of governmental  
27 purchasing as may be practicable in accordance with general  
28 law;

29 (5) Advertise for bids on all purchases exceeding twenty-five  
30 thousand dollars, to purchase by means of sealed bids and  
31 competitive bidding or to effect advantageous purchases through  
32 other accepted governmental methods and practices;

33 (6) Post notices of all acquisitions and purchases for which  
34 competitive bids are being solicited in the purchasing office of  
35 the specified institution involved in the purchase, at least two  
36 weeks prior to making such purchases and ensure that the notice  
37 is available to the public during business hours;

38 (7) Provide for purchasing in the open market;

39 (8) Provide for vendor notification of bid solicitation and  
40 emergency purchasing;

41 (9) Provide that competitive bids are not required for  
42 purchases of twenty-five thousand dollars or less; and

43 (10) Provide for not fewer than three bids where bidding is  
44 required. If fewer than three bids are submitted, an award may  
45 be made from among those received.

46 (b) The council, commission or each governing board,  
47 through the vice chancellor for administration, may issue a check  
48 in advance to a company supplying postage meters for postage  
49 used by that board, the council or commission and by the state  
50 institutions of higher education under their jurisdiction.

51 (c) When a purchase is to be made by bid, any or all bids  
52 may be rejected. However, all purchases based on advertised bid  
53 requests shall be awarded to the lowest responsible bidder taking  
54 into consideration the qualities of the articles to be supplied,  
55 their conformity with specifications, their suitability to the  
56 requirements of the governing boards, council or commission  
57 and delivery terms. The preference for resident vendors as  
58 provided in section thirty-seven, article three, chapter five-a of  
59 this code apply to the competitive bids made pursuant to this  
60 section.

61 (d) The governing boards, council and commission shall  
62 maintain a purchase file, which shall be a public record and open  
63 for public inspection. After the award of the order or contract,  
64 the governing boards, council and commission shall indicate  
65 upon the successful bid that it was the successful bid and shall  
66 further indicate why bids are rejected and, if the mathematical  
67 low vendor is not awarded the order or contract, the reason  
68 therefor. A record in the purchase file may not be destroyed  
69 without the written consent of the legislative auditor. Those files

70 in which the original documentation has been held for at least  
71 one year and in which the original documents have been  
72 reproduced and archived on microfilm or other equivalent  
73 method of duplication may be destroyed without the written  
74 consent of the legislative auditor. All files, no matter the storage  
75 method, shall be open for inspection by the legislative auditor  
76 upon request.

77 (e) The commission and council also jointly shall adopt rules  
78 to prescribe qualifications to be met by any person who is to be  
79 employed as a buyer pursuant to this section. These rules shall  
80 require that a person may not be employed as a buyer unless that  
81 person, at the time of employment, either is:

82 (1) A graduate of an accredited college or university; or

83 (2) Has at least four years' experience in purchasing for any  
84 unit of government or for any business, commercial or industrial  
85 enterprise.

86 (f) Any person making purchases and acquisitions pursuant  
87 to this section shall execute a bond in the penalty of fifty  
88 thousand dollars, payable to the state of West Virginia, with a  
89 corporate bonding or surety company authorized to do business  
90 in this state as surety thereon, in form prescribed by the attorney  
91 general and conditioned upon the faithful performance of all  
92 duties in accordance with this section and sections five through  
93 eight, inclusive, of this article and the rules of the governing  
94 board and the council and commission. In lieu of separate bonds  
95 for such buyers, a blanket surety bond may be obtained. Any  
96 such bond shall be filed with the secretary of state. The cost of  
97 any such bond shall be paid from funds appropriated to the  
98 applicable governing board or the council or commission.

99 (g) All purchases and acquisitions shall be made in consider-  
100 ation and within limits of available appropriations and funds and

101 in accordance with applicable provisions of article two, chapter  
102 five-a of this code relating to expenditure schedules and quar-  
103 terly allotments of funds.

104 (h) The governing boards, council and commission may  
105 make requisitions upon the auditor for a sum to be known as an  
106 advance allowance account, not to exceed five percent of the  
107 total of the appropriations for the governing board, council or  
108 commission, and the auditor shall draw a warrant upon the  
109 treasurer for such accounts. All advance allowance accounts  
110 shall be accounted for by the applicable governing board or the  
111 council or commission once every thirty days or more often if  
112 required by the state auditor.

113 (i) Contracts entered into pursuant to this section shall be  
114 signed by the applicable governing board or the council or  
115 commission in the name of the state and shall be approved as to  
116 form by the attorney general. A contract which requires  
117 approval as to form by the attorney general is considered  
118 approved if the attorney general has not responded within fifteen  
119 days of presentation of the contract. A contract or a change  
120 order for that contract and notwithstanding any other provision  
121 of this code to the contrary, associated documents such as  
122 performance and labor/material payments, bonds and certificates  
123 of insurance which use terms and conditions or standardized  
124 forms previously approved by the attorney general and do not  
125 make substantive changes in the terms and conditions of the  
126 contract do not require approval by the attorney general. The  
127 attorney general shall make a list of those changes which he or  
128 she deems to be substantive and the list, and any changes thereto,  
129 shall be published in the state register. A contract that exceeds  
130 fifteen thousand dollars shall be filed with the state auditor. If  
131 requested to do so, the governing boards, council or commission  
132 shall make all contracts available for inspection by the state  
133 auditor. The governing board, council or commission, as



134 appropriate, shall prescribe the amount of deposit or bond to be  
135 submitted with a bid or contract, if any, and the amount of  
136 deposit or bond to be given for the faithful performance of a  
137 contract.

138 (j) If the governing board, council or commission purchases  
139 or contracts for materials, supplies, equipment, services and  
140 printing contrary to the provisions of sections four through seven  
141 of this article or the rules pursuant thereto, such purchase or  
142 contract is void and of no effect.

143 (k) Any governing board or the council or commission, as  
144 appropriate, may request the director of purchases to make  
145 available, from time to time, the facilities and services of that  
146 department to the governing boards, council or commission in  
147 the purchase and acquisition of materials, supplies, equipment,  
148 services and printing and the director of purchases shall cooper-  
149 ate with that governing board, council or commission, as  
150 appropriate, in all such purchases and acquisitions upon such  
151 request.

152 (l) Each governing board or the council or commission, as  
153 appropriate, shall permit private institutions of higher education  
154 to join as purchasers on purchase contracts for materials,  
155 supplies, services and equipment entered into by that governing  
156 board or the council or commission. Any private school desiring  
157 to join as purchasers on such purchase contracts shall file with  
158 that governing board or the council or commission an affidavit  
159 signed by the president of the institution of higher education or  
160 a designee requesting that it be authorized to join as purchaser on  
161 purchase contracts of that governing board or the council or  
162 commission, as appropriate. The private school shall agree that  
163 it is bound by such terms and conditions as that governing board  
164 or the council or commission may prescribe and that it will be

165 responsible for payment directly to the vendor under each  
166 purchase contract.

167 (m) Notwithstanding any other provision of this code to the  
168 contrary, the governing boards, council and commission, as  
169 appropriate, may make purchases from cooperative buying  
170 groups, consortia, the federal government or from federal  
171 government contracts if the materials, supplies, services,  
172 equipment or printing to be purchased is available from coopera-  
173 tive buying groups, consortia, the federal government or from a  
174 federal contract and purchasing from the cooperative buying  
175 groups, consortia, federal government or from a federal govern-  
176 ment contract would be the most financially advantageous  
177 manner of making the purchase.

178 (n) An independent performance audit of all purchasing  
179 functions and duties which are performed at any institution of  
180 higher education shall be performed each fiscal year. The joint  
181 committee on government and finance shall conduct the perfor-  
182 mance audit and the governing boards, council and commission,  
183 as appropriate, are responsible for paying the cost of the audit  
184 from funds appropriated to the governing boards, council or  
185 commission.

186 (o) The governing boards shall require each institution under  
187 their respective jurisdictions to notify and inform every vendor  
188 doing business with that institution of the provisions of section  
189 fifty-four, article three, chapter five-a of this code, also known  
190 as the "prompt pay act of 1990".

191 (p) Consultant services, such as strategic planning services,  
192 may not preclude or inhibit the governing boards, council or  
193 commission from considering any qualified bid or response for  
194 delivery of a product or a commodity because of the rendering  
195 of those consultant services.

196 (q) After the commission or council, as appropriate, has  
197 granted approval for lease-purchase arrangements by the  
198 governing boards, a governing board may enter into  
199 lease-purchase arrangements for capital improvements, including  
200 equipment. Any lease-purchase arrangement so entered shall  
201 constitute a special obligation of the state of West Virginia. The  
202 obligation under a lease-purchase arrangement so entered may  
203 be from any funds legally available to the institution and must be  
204 cancelable at the option of the governing board or institution at  
205 the end of any fiscal year. The obligation, any assignment or  
206 securitization thereof, never constitutes an indebtedness of the  
207 state of West Virginia or any department, agency or political  
208 subdivision thereof, within the meaning of any constitutional  
209 provision or statutory limitation, and may not be a charge against  
210 the general credit or taxing powers of the state or any political  
211 subdivision thereof. Such facts shall be plainly stated in any  
212 lease-purchase agreement. Further, the lease-purchase agree-  
213 ment shall prohibit assignment or securitization without consent  
214 of the lessee and the approval of the attorney general of West  
215 Virginia. Proposals for any arrangement must be requested in  
216 accordance with the requirements of this section and any rules or  
217 guidelines of the commission and council. In addition, any  
218 lease-purchase agreement which exceeds one hundred thousand  
219 dollars total shall be approved by the attorney general of West  
220 Virginia. The interest component of any lease-purchase obliga-  
221 tion is exempt from all taxation of the state of West Virginia,  
222 except inheritance, estate and transfer taxes. It is the intent of  
223 the Legislature that if the requirements set forth in the Internal  
224 Revenue Code of 1986, as amended, and any regulations  
225 promulgated pursuant thereto are met, the interest component of  
226 any lease-purchase obligation also is exempt from the gross  
227 income of the recipient for purposes of federal income taxation  
228 and may be designated by the governing board or the president  
229 of the institution as a bank-qualified obligation.

230 (r) Notwithstanding any other provision of this code to the  
231 contrary, the commission, council and governing boards have the  
232 authority, in the name of the state, to lease, or offer to lease, as  
233 lessee, any grounds, buildings, office or other space in accor-  
234 dance with this paragraph and as provided below:

235 (1) The commission, council and governing boards have sole  
236 authority to select and to acquire by contract or lease all grounds,  
237 buildings, office space or other space, the rental of which is  
238 necessarily required by the commission, council or governing  
239 boards for the institutions under their jurisdiction. The chief  
240 executive officer of the commission, council or an institution  
241 shall certify the following:

242 (A) That the grounds, buildings, office space or other space  
243 requested is necessarily required for the proper function of the  
244 commission, council or institution;

245 (B) That the commission, council or institution will be  
246 responsible for all rent and other necessary payments in connec-  
247 tion with the contract or lease; and

248 (C) That satisfactory grounds, buildings, office space or  
249 other space is not available on grounds and in buildings currently  
250 owned or leased by the commission, council or the institution.

251 Before executing any rental contract or lease, the commis-  
252 sion, council or a governing board shall determine the fair rental  
253 value for the rental of the requested grounds, buildings, office  
254 space or other space, in the condition in which they exist, and  
255 shall contract for or lease the premises at a price not to exceed  
256 the fair rental value.

257 (2) The commission, council and governing boards are  
258 authorized to enter into long-term agreements for buildings, land  
259 and space for periods longer than one fiscal year but not to

260 exceed forty years. Any purchase of real estate, any  
261 lease-purchase agreement and any construction of new buildings  
262 or other acquisition of buildings, office space or grounds  
263 resulting therefrom, pursuant to the provisions of this subsection  
264 shall be presented by the policy commission or council, as  
265 appropriate, to the joint committee on government and finance  
266 for prior review. Any such lease shall contain, in substance, all  
267 the following provisions:

268 (A) That the commission, council or governing board, as  
269 lessee, has the right to cancel the lease without further obligation  
270 on the part of the lessee upon giving thirty days' written notice  
271 to the lessor at least thirty days prior to the last day of the  
272 succeeding month;

273 (B) That the lease is considered canceled without further  
274 obligation on the part of the lessee if the Legislature or the  
275 federal government fails to appropriate sufficient funds therefor  
276 or otherwise acts to impair the lease or cause it to be canceled;  
277 and

278 (C) That the lease is considered renewed for each ensuing  
279 fiscal year during the term of the lease unless it is canceled by  
280 the commission, council or governing board before the end of  
281 the then-current fiscal year.

282 (3) The commission, council or institution which is granted  
283 any grounds, buildings, office space or other space leased in  
284 accordance with this section may not order or make permanent  
285 changes of any type thereto, unless the commission, council or  
286 governing board, as appropriate, has first determined that the  
287 change is necessary for the proper, efficient and economically  
288 sound operation of the institution. For purposes of this section,  
289 a "permanent change" means any addition, alteration, improve-  
290 ment, remodeling, repair or other change involving the expendi-

291 ture of state funds for the installation of any tangible thing which  
292 cannot be economically removed from the grounds, buildings,  
293 office space or other space when vacated by the institution.

294 (4) Leases and other instruments for grounds, buildings,  
295 office or other space, once approved by the commission, council  
296 or governing board, may be signed by the chief executive officer  
297 of the commission, council or institution. Any lease or instru-  
298 ment exceeding one hundred thousand dollars annually shall be  
299 approved as to form by the attorney general. A lease or other  
300 instrument for grounds, buildings, office or other space that  
301 contains a term, including any options, of more than six months  
302 for its fulfillment shall be filed with the state auditor.

303 (5) The commission and council jointly may promulgate  
304 rules they consider necessary to carry out the provisions of this  
305 section.

#### **ARTICLE 6. ADVISORY COUNCILS AND BOARDS.**

§18B-6-1. Institutional boards of advisors for regional campuses and certain  
administratively linked community and technical colleges.

§18B-6-1a. Definitions.

§18B-6-2. State advisory council of faculty.

§18B-6-3. Institutional faculty senate.

§18B-6-4. State advisory council of students.

§18B-6-5. State advisory councils of classified employees.

§18B-6-6. Institutional classified employee council.

#### **§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.**

1 (a) There is hereby continued or established institutional  
2 boards of advisors as follows:

3 (1) For each regional campus. The chairperson of the board  
4 of advisors of West Virginia university at Parkersburg serves as

5 an ex officio, voting member of the governing board of West  
6 Virginia university;

7 (2) For administratively linked community and technical  
8 colleges which share a physical location with the sponsoring  
9 institution. This category includes Fairmont state community  
10 and technical college, Marshall community and technical  
11 college, West Virginia state community and technical college  
12 and the community and technical college at West Virginia  
13 university institute of technology. The chairperson of the board  
14 of advisors of each administratively linked community and  
15 technical college serves as an ex officio, voting member of the  
16 sponsoring institution's board of governors or, in the case of the  
17 community and technical college at West Virginia university  
18 institute of technology, the chairperson of the board of advisors  
19 serves as an ex officio voting member of the governing board of  
20 West Virginia university;

21 (3) For New River community and technical college and the  
22 community and technical college of Shepherd, until these  
23 institutions achieve independent accreditation. As long as New  
24 River community and technical college or the community and  
25 technical college of Shepherd retains a board of advisors and  
26 remains administratively linked to the baccalaureate institution,  
27 the chairperson of that board of advisors serves as an ex officio,  
28 voting member of the governing board of Bluefield state college  
29 or Shepherd college, respectively.

30 (b) The lay members of the institutional boards of advisors  
31 for the regional campuses are appointed by the board of gover-  
32 nors.

33 (c) The lay members of the institutional boards of advisors  
34 established for the administratively linked community and

35 technical colleges are appointed by the West Virginia council for  
36 community and technical college education.

37 (d) The board of advisors consists of fifteen members,  
38 including a full-time member of the faculty with the rank of  
39 instructor or above duly elected by the faculty of the respective  
40 institution; a member of the student body in good academic  
41 standing, enrolled for college credit work and duly elected by the  
42 student body of the respective institution; a member from the  
43 institutional classified employees duly elected by the classified  
44 employees of the respective institution; and twelve lay persons  
45 appointed pursuant to this section who have demonstrated a  
46 sincere interest in and concern for the welfare of that institution  
47 and who are representative of the population of its responsibility  
48 district and fields of study. At least eight of the twelve lay  
49 persons appointed shall be residents of the state. Of the lay  
50 members who are residents of the state, at least two shall be  
51 alumni of the respective institution and no more than a simple  
52 majority may be of the same political party.

53 (e) The student member serves for a term of one year  
54 beginning upon appointment in July, two thousand four, and  
55 ending on the thirtieth day of April, two thousand five. Thereaf-  
56 ter the term shall begin on the first day of May. The member  
57 from the faculty and the classified employees, respectively,  
58 serves for a term of two years beginning upon appointment in  
59 July, two thousand four, and ending on the thirtieth day of April,  
60 two thousand five. Thereafter the term shall begin on the first  
61 day of May; and the twelve lay members serve terms of four  
62 years each beginning upon appointment in July, two thousand  
63 four. Thereafter, the term shall begin on the first day of May.  
64 All members are eligible to succeed themselves for no more than  
65 one additional term. A vacancy in an unexpired term of a  
66 member shall be filled for the remainder of the unexpired term  
67 within thirty days of the occurrence thereof in the same manner



68 as the original appointment or election. Except in the case of a  
69 vacancy:

70 (1) Commencing in two thousand five, all elections shall be  
71 held and all appointments shall be made no later than the  
72 thirtieth day of April preceding the commencement of the term;  
73 and

74 (2) Terms of members begin on the first day of May  
75 following election, except for two thousand four only, terms  
76 begin upon appointment in July.

77 (f) Each board of advisors shall hold a regular meeting at  
78 least quarterly, commencing in May of each year. Additional  
79 meetings may be held upon the call of the chairperson, president  
80 of the institution or upon the written request of at least five  
81 members. A majority of the members constitutes a quorum for  
82 conducting the business of the board of advisors.

83 (g) One of the twelve lay members shall be elected as  
84 chairperson by the board of advisors in May of each year, except  
85 that the chairperson elected in two thousand four shall be elected  
86 in July. No member may serve as chairperson for more than two  
87 consecutive years.

88 (h) The president of the institution shall make available  
89 resources of the institution for conducting the business of the  
90 board of advisors. The members of the board of advisors shall  
91 be reimbursed for all reasonable and necessary expenses actually  
92 incurred in the performance of their official duties under this  
93 section upon presentation of an itemized sworn statement  
94 thereof. All expenses incurred by the boards of advisors and the  
95 institutions under this section shall be paid from funds allocated  
96 to the institutions for that purpose.

97 (i) Prior to the submission by the president to its governing  
98 board, the board of advisors shall review all proposals of the  
99 institution in the areas of mission, academic programs, budget,  
100 capital facilities and such other matters as requested by the  
101 president of the institution or its governing board or otherwise  
102 assigned to it by law. The board of advisors shall comment on  
103 each such proposal in writing, with such recommendations for  
104 concurrence therein or revision or rejection thereof as it consid-  
105 ers proper. The written comments and recommendations shall  
106 accompany the proposal to the governing board and the govern-  
107 ing board shall include the comments and recommendations in  
108 its consideration of and action on the proposal. The governing  
109 board shall promptly acknowledge receipt of the comments and  
110 recommendations and shall notify the board of advisors in  
111 writing of any action taken thereon.

112 (j) Prior to their implementation by the president, the board  
113 of advisors shall review all proposals regarding institution-wide  
114 personnel policies. The board of advisors may comment on the  
115 proposals in writing.

116 (k) The board of advisors shall provide advice and assistance  
117 to the president and the governing board in areas including, but  
118 not limited to, the following:

119 (1) Establishing closer connections between higher educa-  
120 tion and business, labor, government and community and  
121 economic development organizations to give students greater  
122 opportunities to experience the world of work. Examples of  
123 such experiences include business and community service  
124 internships, apprenticeships and cooperative programs;

125 (2) Communicating better and serving the current workforce  
126 and workforce development needs of their service area, includ-  
127 ing the needs of nontraditional students for college-level skills

128 upgrading and retraining and the needs of employers for specific  
129 programs of limited duration; and

130 (3) Assessing the performance of the institution's graduates  
131 and assisting in job placement.

132 (1) When a vacancy occurs in the office of president of the  
133 institution, the board of advisors shall serve as a search and  
134 screening committee for candidates to fill the vacancy under  
135 guidelines established by the council. When serving as a search  
136 and screening committee, the board of advisors and its governing  
137 board are each authorized to appoint up to three additional  
138 persons to serve on the committee as long as the search and  
139 screening process is in effect. The three additional appointees of  
140 the board of advisors shall be faculty members of the institution.  
141 For the purposes of the search and screening process only, the  
142 additional members shall possess the same powers and rights as  
143 the regular members of the board of advisors, including reim-  
144 bursement for all reasonable and necessary expenses actually  
145 incurred. Following the search and screening process, the  
146 committee shall submit the names of at least three candidates to  
147 the council, or to the governing board in the case of West  
148 Virginia university institute of technology, for consideration. If  
149 the council or governing board rejects all candidates submitted,  
150 the committee shall submit the names of at least three additional  
151 candidates and this process shall be repeated until the council or  
152 governing board approves one of the candidates submitted. In  
153 all cases, the governing board shall make the appointment with  
154 the approval of the council or the commission in the case of  
155 West Virginia university institute of technology. The governing  
156 board or the council shall provide all necessary staff assistance  
157 to the board of advisors in its role as a search and screening  
158 committee.

159 (m) The boards of advisors shall develop a master plan for  
160 those administratively linked community and technical colleges  
161 which retain boards of advisors. The ultimate responsibility for  
162 developing and updating the master plans at the institutional  
163 level resides with the institutional board of advisors, but the  
164 ultimate responsibility for approving the final version of these  
165 institutional master plans, including periodic updates, resides  
166 with the council. The plan shall include, but not be limited to,  
167 the following:

168 (1) A detailed demonstration of how the master plan will be  
169 used to meet the goals and objectives of the institutional  
170 compact;

171 (2) A well-developed set of goals outlining missions, degree  
172 offerings, resource requirements, physical plant needs, personnel  
173 needs, enrollment levels and other planning determinates and  
174 projections necessary in such a plan to assure that the needs of  
175 the institution's area of responsibility for a quality system of  
176 higher education are addressed;

177 (3) Documentation of the involvement of the commission,  
178 institutional constituency groups, clientele of the institution and  
179 the general public in the development of all segments of the  
180 institutional master plan.

181 The plan shall be established for periods of not less than  
182 three nor more than six years and shall be revised periodically as  
183 necessary, including recommendations on the addition or  
184 deletion of degree programs as, in the discretion of the board of  
185 advisors, may be necessary.

**§18B-6-1a. Definitions.**

1 For the purposes of this article, the following words have the  
2 meanings specified unless the context clearly indicates a  
3 different meaning:

4 (a) “Advisory council of classified employees” or “classified  
5 council” means the state advisory organization of classified  
6 employees created pursuant to section five of this article.

7 (b) “Advisory council of faculty” or “faculty council” means  
8 the state advisory organization of faculty created pursuant to  
9 section two of this article.

10 (c) “Advisory council of students” or “student advisory  
11 council” means the state advisory organization of students  
12 created pursuant to section four of this article.

13 (d) “Classified employee”, in the singular or plural, means  
14 any regular full-time or regular part-time employee of a govern-  
15 ing board, the commission, the council or the West Virginia  
16 network for educational telecomputing who holds a position that  
17 is assigned a particular job title and pay grade in accordance with  
18 the personnel classification system established by law.

19 (e) “Community and technical college” means eastern West  
20 Virginia community and technical college, Fairmont state  
21 community and technical college, Marshall community and  
22 technical college, New River community and technical college,  
23 West Virginia northern community and technical college, the  
24 community and technical college of Shepherd, southern West  
25 Virginia community and technical college, West Virginia state  
26 community and technical college, the community and technical  
27 college at West Virginia university institute of technology, West  
28 Virginia university at Parkersburg and any other community and  
29 technical college so designated by the Legislature.

30 (f) "Council" means the West Virginia council for commu-  
31 nity and technical college education created pursuant to section  
32 three, article two-b of this chapter.

33 (g) "Institutional classified employee council" or "staff  
34 council" means the advisory group of classified employees  
35 formed at a state institution of higher education pursuant to  
36 section six of this article.

37 (h) "Institutional faculty senate", "faculty senate" or "faculty  
38 assembly" means the advisory group of faculty formed at a state  
39 institution of higher education pursuant to section three of this  
40 article.

41 (i) "State institution of higher education", in the singular or  
42 plural, means the institutions as defined in section two, article  
43 one of this chapter and, additionally, Fairmont state community  
44 and technical college, Marshall community and technical  
45 college, New River community and technical college, Potomac  
46 state college of West Virginia university, Robert C. Byrd health  
47 sciences Charleston division of West Virginia university, the  
48 community and technical college of Shepherd, West Virginia  
49 state community and technical college, West Virginia university  
50 at Parkersburg, West Virginia university institute of technology,  
51 the community and technical college at West Virginia university  
52 institute of technology, the higher education policy commission,  
53 the West Virginia council for community and technical college  
54 education, the West Virginia network for educational  
55 telecomputing and any other institution so designated by the  
56 Legislature.

**§18B-6-2. State advisory council of faculty.**

1 (a) There is continued the state advisory council of faculty.

2 (b) *Election of members and terms of office.* --

3       (1) During the month of April of each odd-numbered year,  
4 each president of a state institution of higher education, at the  
5 direction of the faculty council and in accordance with proce-  
6 dures established by the faculty council, shall convene a meeting  
7 or otherwise institute a balloting process to elect one faculty  
8 member from each institution of higher education to serve on the  
9 faculty council.

10       (2) Terms of the members are for two years and begin on the  
11 first day of July of each odd-numbered year. Members are  
12 eligible to succeed themselves.

13       (3) For the year two thousand four only, each president of an  
14 administratively linked community and technical college shall  
15 consult with the faculty council during the month of July to  
16 establish procedures and convene a meeting or otherwise  
17 institute a balloting process to elect one faculty member from  
18 that institution to serve on the faculty council. Members so  
19 elected shall take office upon election and serve until the next  
20 regularly scheduled election held pursuant to this section;  
21 thereafter, faculty members elected to represent administratively  
22 linked community and technical colleges serve a regular  
23 two-year term.

24       (c) The faculty council shall meet at least once each quarter  
25 and may meet at such other times as called by the chairperson or  
26 by a majority of its members. One of the quarterly meetings  
27 shall be during the month of July, at which meeting the faculty  
28 council shall elect a chairperson from among its members. The  
29 chairperson may serve no more than two consecutive terms as  
30 chair. A member may not vote by proxy at the election. In the  
31 event of a tie in the last vote taken for such election, a member  
32 authorized by the faculty council shall select the chairperson by  
33 lot from the names of those persons tied. Immediately following  
34 the election of a chairperson, and in the manner prescribed by

35 this section for the election of a chairperson, the faculty council  
36 shall elect a member to preside over meetings in the absence of  
37 the chairperson. If the chairperson vacates the position, the  
38 faculty council shall meet and elect a new chairperson to fill the  
39 unexpired term within thirty days following the vacancy.

40 (d) The faculty council, through its chairperson and in any  
41 appropriate manner, shall communicate to the commission or the  
42 council, as appropriate, matters of higher education in which the  
43 faculty members have an interest.

44 (e) The commission and council each shall meet annually  
45 between the months of October and December with the faculty  
46 council to discuss matters of higher education in which the  
47 faculty members or the commission or council may have an  
48 interest.

49 (f) Members of the faculty council serve without compensa-  
50 tion. Members are entitled to reimbursement for actual and  
51 necessary expenses, including travel expenses, incurred in the  
52 performance of their official duties. Expenses are paid from  
53 funds allocated to the state institution of higher education which  
54 the member serves.

55 (g) The faculty council shall prepare minutes of its meetings,  
56 which minutes shall be available, upon request, to any faculty  
57 member of a state institution of higher education represented on  
58 the faculty council.

**§18B-6-3. Institutional faculty senate.**

1 (a) Effective the first day of July, two thousand four, a  
2 faculty senate is established at each institution of higher educa-  
3 tion, except for those institutions which choose to establish a  
4 faculty assembly. In the latter case, all faculty participate in the  
5 faculty assembly and the requirements of subsections (b) and (c)



6 of this section do not apply. Members and officers of an  
7 organized, campus-level advisory group of faculty who are  
8 serving prior to the effective date of this section may continue to  
9 serve with all the rights, privileges and responsibilities pre-  
10 scribed herein until the time that members elected as set forth in  
11 subsection (b) of this section assume office.

12 (b) Members of each faculty senate are elected as follows:

13 (1) During the month of April of each even-numbered year,  
14 each president of a state institution of higher education, at the  
15 direction of the faculty and in accordance with procedures  
16 established by the faculty, shall convene a meeting or otherwise  
17 institute a balloting process to elect the members of the faculty  
18 senates, except that for two thousand four only, the election shall  
19 take place in July.

20 (2) Selection procedures shall provide for appropriate  
21 representation of all academic units within the institution.

22 (3) The faculty member who is elected to serve on the  
23 faculty council is an ex officio, voting member of the faculty  
24 senate and reports to the faculty senate on meetings of the  
25 faculty council and the board of governors.

26 (c) Members serve a term of two years, which term begins  
27 on the first day of July of each even-numbered year, except for  
28 the year two thousand four when terms begin upon election.  
29 Members of the faculty senate are eligible to succeed them-  
30 selves.

31 (d) Each faculty senate shall elect a chairperson from among  
32 its members. The chairperson serves a term of two years, and  
33 may serve no more than two consecutive terms as chairperson.

34 (e) The faculty senate meets quarterly and may meet at such  
35 other times as called by the chairperson or by a majority of the  
36 members. With appropriate notification to the president of the  
37 institution, the chairperson may convene a faculty senate  
38 meeting for the purpose of sharing information and discussing  
39 issues affecting faculty and the effective and efficient manage-  
40 ment of the institution.

41 (f) The president of the institution shall meet at least  
42 quarterly with the faculty senate to discuss matters affecting  
43 faculty and the effective and efficient management of the  
44 institution.

45 (g) The governing board of the institution shall meet at least  
46 annually with the faculty senate to discuss matters affecting  
47 faculty and the effective and efficient management of the  
48 institution.

**§18B-6-4. State advisory council of students.**

1 (a) There is continued the state advisory council of students.

2 (b) During the month of April of each year, each student  
3 government organization at each institution of higher education  
4 shall elect a student to serve on the student advisory council.  
5 Terms of the members of the student advisory council are for  
6 one year and begin on the first day of September of each year.  
7 A duly elected member currently serving on the advisory council  
8 of students may continue to serve until a new member from that  
9 institution is elected pursuant to the provisions of this section.  
10 Members of the student advisory council are eligible to succeed  
11 themselves.

12 (c) The student advisory council shall meet at least once  
13 each quarter. One of the quarterly meetings shall be during the  
14 month of September, at which meeting the student advisory

15 council shall elect a chairperson. A member may not vote by  
16 proxy at the election. In the event of a tie in the last vote taken  
17 for the election, a member authorized by the student advisory  
18 council shall select the chairperson by lot from the names of  
19 those persons tied. Immediately following the election of a  
20 chairperson, the student advisory council shall elect, in the  
21 manner prescribed by this section for the election of a chairper-  
22 son, a member of the council to preside over meetings in the  
23 absence of the chairperson. If the chairperson vacates the  
24 position, the student advisory council shall meet and elect a new  
25 chairperson to fill the unexpired term within thirty days follow-  
26 ing the vacancy.

27 (d) The student advisory council, through its chairperson and  
28 in any appropriate manner, shall communicate to the commission  
29 or the council, as appropriate, matters of higher education in  
30 which the student members have an interest.

31 (e) At the request of the chairperson of the student advisory  
32 council, the commission and council each shall meet annually,  
33 between the months of October and December, with the student  
34 advisory council to discuss matters of higher education in which  
35 the student members or the commission or council have an  
36 interest.

37 (f) Members of the student advisory council serve without  
38 compensation, but are entitled to reimbursement for actual and  
39 necessary expenses, including travel expenses, incurred in the  
40 performance of their official duties. Expenses are paid from  
41 funds allocated to the state institution of higher education in  
42 which the student is enrolled.

43 (g) The student advisory council shall prepare minutes of its  
44 meetings. The minutes shall be available, upon request, to any

45 student of a state institution of higher education represented on  
46 the council.

**§18B-6-5. State advisory councils of classified employees.**

1 (a) There is hereby continued the state advisory council of  
2 classified employees.

3 (b) *Election of members and terms of office.* --

4 (1) During the month of April of each odd-numbered year,  
5 each president of a state institution of higher education, at the  
6 direction of the classified council and in accordance with  
7 procedures established by the classified council, shall convene  
8 a meeting or otherwise institute a balloting process to elect one  
9 classified employee from each institution of higher education to  
10 serve on the classified council.

11 (2) Terms of the members are for two years and begin on the  
12 first day of July of each odd-numbered year. Members are  
13 eligible to succeed themselves.

14 (3) For the year two thousand four only, each president of an  
15 administratively linked community and technical college shall  
16 consult with the classified council during the month of July to  
17 establish procedures and convene a meeting or otherwise  
18 institute a balloting process to elect one classified employee  
19 from that institution to serve on the classified council. Members  
20 so elected take office upon election and serve until the next  
21 regularly scheduled election held pursuant to this section;  
22 thereafter, classified employees elected to represent administra-  
23 tively linked community and technical colleges serve a regular  
24 two-year term.

25 (c) The classified council shall meet at least once each  
26 quarter and may meet at such other times as called by the

27 chairperson or by a majority of its members. One of the  
28 quarterly meetings shall be during the month of July, at which  
29 meeting the classified council shall elect a chairperson from  
30 among its members. The chairperson may serve no more than  
31 two consecutive terms as chairperson. A member may not vote  
32 by proxy at the election. In the event of a tie in the last vote  
33 taken for the election, a member authorized by the classified  
34 council shall select the chairperson by lot from the names of  
35 those persons tied. Immediately following the election of a  
36 chairperson, the classified council shall elect, in the manner  
37 prescribed by this section for the election of a chairperson, a  
38 member of the classified council to preside over meetings in the  
39 absence of the chairperson. If the chairperson vacates the  
40 position, the classified council shall meet and elect a new  
41 chairperson to fill the unexpired term within thirty days follow-  
42 ing the vacancy.

43 (d) The classified council, through its chairperson and in any  
44 appropriate manner, shall communicate to the commission or the  
45 council, as appropriate, matters of higher education in which the  
46 classified employees have an interest.

47 (e) The commission and council each shall meet annually,  
48 between the months of October and December, with the classi-  
49 fied council to discuss matters of higher education in which the  
50 classified employees or the commission or council have an  
51 interest.

52 (f) Members of the classified council serve without compen-  
53 sation, but are entitled to reimbursement for actual and necessary  
54 expenses, including travel expenses, incurred in the performance  
55 of their official duties. Expenses are paid from funds allocated  
56 to the state institution of higher education which the member  
57 serves.

58 (g) The classified council shall prepare minutes of its  
59 meetings. The minutes shall be available, upon request, to any  
60 classified employee of a state institution of higher education  
61 represented on the classified council.

**§18B-6-6. Institutional classified employee council.**

1 (a) There is continued at each institution of higher education  
2 an institutional classified employee advisory council to be  
3 known as the staff council.

4 (b) During the month of April of each odd-numbered year,  
5 each president of a state institution of higher education, at the  
6 direction of the staff council and in accordance with procedures  
7 established by the staff council, shall convene a meeting or  
8 otherwise institute a balloting process to elect members of the  
9 staff council, except that for two thousand four only, the election  
10 shall take place in July. Members are elected as follows:

11 (1) Two classified employees from the administra-  
12 tive/managerial sector;

13 (2) Two classified employees from the profes-  
14 sional/nonteaching sector;

15 (3) Two classified employees from the paraprofessional  
16 sector;

17 (4) Two classified employees from the secretarial/clerical  
18 sector;

19 (5) Two classified employees from the physical  
20 plant/maintenance sector;

21 (6) The classified employee who is elected to serve on the  
22 advisory council of classified employees serves as an ex officio,

23 voting member of the staff council. This member shall report to  
24 the staff council on meetings of the classified council and the  
25 board of governors; and

26 (7) Classified employees at Marshall university and West  
27 Virginia university may elect five classified employees from  
28 each of the five sectors to serve on the staff council.

29 (c) Members serve a term of two years, which term begins  
30 on the first day of July of each odd-numbered year. Members of  
31 the staff council are eligible to succeed themselves.

32 (d) Classified employees shall select one of their members  
33 to serve as chairperson. All classified employees at the institu-  
34 tion are eligible to vote for the chairperson by any method  
35 approved by a majority of their members. The chairperson is  
36 eligible to succeed himself or herself.

37 (e) The staff council shall meet at least monthly or at the call  
38 of the chairperson. With appropriate notification to the president  
39 of the institution, the chairperson may convene staff council  
40 meetings for the purpose of sharing information and discussing  
41 issues affecting the classified employees or the efficient and  
42 effective operations of the institution.

43 (f) The president of the institution shall meet at least  
44 quarterly with the staff council to discuss matters affecting  
45 classified employees.

46 (g) The governing board of the institution shall meet at least  
47 annually with the staff council to discuss matters affecting  
48 classified employees and the effective and efficient management  
49 of the institution.

**ARTICLE 7. PERSONNEL GENERALLY.**

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing workforce; preferred recall list; renewal of listing; notice of vacancies.

§18B-7-12. Maintenance of benefits for employees.

**§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing workforce; preferred recall list; renewal of listing; notice of vacancies.**

1 (a) Definitions for terms used in this section are in accordance with those provided in section two, article nine of this chapter, except that the provisions of this section apply only to classified employees whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year. This section also applies to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply. Any classified employee involuntarily transferred to a position in nonclassified status may only exercise the rights set out in this section for positions equivalent to or lower than the last job class the employee held.

13 (b) All decisions by the appropriate governing board, the council or commission or its agents at state institutions of higher education concerning reductions in workforce of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution desires to lay off a more senior employee, the institution shall demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other



27 equivalent or lower job class for which the senior employee is  
28 qualified. If an employee refuses to accept a position in a lower  
29 job class, the employee retains all rights of recall provided in this  
30 section. If two or more employees accumulate identical senior-  
31 ity, the priority is determined by a random selection system  
32 established by the employees and approved by the institution.

33 (c) Any employee laid off during a furlough or reduction in  
34 workforce is placed upon a preferred recall list and is recalled to  
35 employment by the institution on the basis of seniority. An  
36 employee's listing with an institution remains active for a period  
37 of one calendar year from the date of termination or furlough or  
38 from the date of the most recent renewal. If an employee fails to  
39 renew the listing with the institution, the employee's name may  
40 be removed from the list. An employee placed upon the  
41 preferred list shall be recalled to any position opening by the  
42 institution within the classifications in which the employee had  
43 previously been employed or to any lateral position for which  
44 the employee is qualified. An employee on the preferred recall  
45 list does not forfeit the right to recall by the institution if  
46 compelling reasons require the employee to refuse an offer of  
47 reemployment by the institution.

48 The institution shall notify all employees maintaining active  
49 listings on the preferred recall list of all position openings that  
50 periodically exist. The notice shall be sent by certified mail to  
51 the last known address of the employee. It is the duty of each  
52 employee listed to notify the institution of any change in address  
53 and to timely renew the listing with the institution. A position  
54 opening may not be filled by the institution, whether temporary  
55 or permanent, until all employees on the preferred recall list  
56 have been properly notified of existing vacancies and have been  
57 given an opportunity to accept reemployment.

58 (d) A nonexempt classified employee,, who applies and  
59 meets the minimum qualifications for a nonexempt job opening  
60 at the institution where currently employed, whether the job is a  
61 lateral transfer or a promotion, shall be transferred or promoted  
62 before a new person is hired.

63 (1) This subsection does not apply if the hiring is affected  
64 by:

65 (A) Mandates in affirmative action plans; or

66 (B) The requirements of Public Law 101-336, the Americans  
67 with Disabilities Act.

68 (2) This subsection applies to any nonexempt classified  
69 employee, including:

70 (A) One who has not accumulated a minimum total of one  
71 thousand forty hours during the calendar year; and

72 (B) One whose contract does not extend over at least nine  
73 months of a calendar year.

74 (3) If more than one qualified, nonexempt classified  
75 employee applies, the best-qualified nonexempt classified  
76 employee is awarded the position. In instances where the  
77 classified employees are equally qualified, the nonexempt  
78 classified employee with the greatest amount of continuous  
79 seniority at that institution is awarded the position.

80 (4) A nonexempt classified employee is one to whom the  
81 provisions of the federal Fair Labor Standards Act, as amended,  
82 apply.

83 (e) In addition to any other information required, any  
84 application for personnel governed by the provisions of this  
85 section shall include the applicant's social security number.

86 (f) Regardless of the level of seniority for any employee, for  
87 the purposes of this section:

88 (1) In the case of a reduction in force, an employee at a  
89 community and technical college may not displace any employee  
90 of an institution under the jurisdiction of the commission.

91 (2) In the case of a reduction in force, an employee at an  
92 institution under the jurisdiction of the commission may not  
93 displace any employee of a community and technical college.

94 (3) For the purpose of this subsection, an employee perform-  
95 ing a dual service for a sponsoring institution and an administra-  
96 tively linked community and technical college is an employee at  
97 an institution under the jurisdiction of the commission if the  
98 sponsoring institution receives a fee from the administratively  
99 linked community and technical college for the service per-  
100 formed by that employee.

**§18B-7-12. Maintenance of benefits for employees.**

1 (a) On the effective date of this section, any individual  
2 employed on the day preceding the effective date of this section  
3 by the chancellor for higher education or commission maintains  
4 all benefits of employment held, accrued and afforded prior to  
5 the effective date of this section. Such benefits include, but are  
6 not limited to, retirement benefits, continued membership in the  
7 same retirement system, any insurance coverage, and sick and  
8 annual leave. For the purposes of leave conversion established  
9 in section thirteen, article sixteen, chapter five of this code, an  
10 employee is not a new employee, and the prohibition on conver-  
11 sion does not apply if the employee was eligible for leave

12 conversion on the day preceding the effective date of this  
13 section. For the purpose of section thirteen, article sixteen,  
14 chapter five of this code:

15 (1) Each employee maintains all sick and annual leave  
16 accrued, and all rights to convert the leave that had been accrued  
17 on the day preceding the effective date of this section; and

18 (2) Each employee continues to maintain his or her status for  
19 eligibility under the provisions and application of said section  
20 thirteen as applied to the employee on the day preceding the  
21 effective date of this section.

22 (b) Prior to the first day of October, two thousand four, an  
23 employee may not be terminated, or have his or her salary or  
24 benefit levels reduced as the result of the higher education  
25 reorganization set forth in this article.

**ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSI-  
FICATION SYSTEM.**

§18B-9-1. Legislative purpose.

§18B-9-2. Definitions.

**§18B-9-1. Legislative purpose.**

1 The purpose of the Legislature in the enactment of this  
2 article is to require the commission and council jointly to  
3 establish, control, supervise and manage a complete, uniform  
4 system of personnel classification in accordance with the  
5 provisions of this article for all employees other than faculty and  
6 nonclassified employees at state institutions of higher education.

**§18B-9-2. Definitions.**

1 As used in this article:

2 (a) "Classified employee" or "employee" means any regular  
3 full-time or regular part-time employee of a governing board, the  
4 commission or the council, including all employees of the West  
5 Virginia network for educational telecomputing, who hold a  
6 position that is assigned a particular job title and pay grade in  
7 accordance with the personnel classification system established  
8 by this article or by the commission and council;

9 (b) "Nonclassified employee" means an individual who is  
10 responsible for policy formation at the department or institu-  
11 tional level, or reports directly to the president, or is in a position  
12 considered critical to the institution by the president pursuant to  
13 policies adopted by the governing board. The percentage of  
14 personnel placed in the category of "nonclassified" at any given  
15 institution may not exceed ten percent of the total number of  
16 employees of that institution who are eligible for membership in  
17 any state retirement system of the state of West Virginia or other  
18 retirement plan authorized by the state: *Provided*, That an  
19 additional ten percent of the total number of employees of that  
20 institution as defined in this subsection may be placed in the  
21 category of "nonclassified" if they are in a position considered  
22 critical to the institution by the president. Final approval of such  
23 placement shall be with the appropriate governing board;

24 (c) "Job description" means the specific listing of duties and  
25 responsibilities as determined by the appropriate governing  
26 board, the commission or council and associated with a particu-  
27 lar job title;

28 (d) "Job title" means the name of the position or job as  
29 defined by the appropriate governing board, the commission or  
30 council;

31 (e) "Merit increases and salary adjustments" means the  
32 amount of additional salary increase allowed on a merit basis or

33 to rectify salary inequities or accommodate competitive market  
34 conditions in accordance with rules established by the governing  
35 boards, the commission or council;

36 (f) "Pay grade" means the number assigned by the commis-  
37 sion and council to a particular job title and refers to the vertical  
38 column heading of the salary schedule established in section  
39 three of this article;

40 (g) "Personnel classification system" means the process of  
41 job categorization adopted by the commission and council  
42 jointly by which job title, job description, pay grade and  
43 placement on the salary schedule are determined;

44 (h) "Salary" means the amount of compensation paid  
45 through the state treasury per annum to a classified employee;

46 (i) "Schedule" or "salary schedule" means the grid of annual  
47 salary figures established in section three of this 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 and  
50 refers to the horizontal column heading of the salary schedule  
51 established in section three of this article. For the purpose of  
52 placement on the salary schedule, employment for nine months  
53 or more equals one year of experience, but a classified employee  
54 may not accrue more than one year of experience during any  
55 given fiscal year. Employment for less than full time or less  
56 than nine months during any fiscal year shall be prorated. In  
57 accordance with rules established by the commission and council  
58 jointly, a classified employee may be granted additional years of  
59 experience not to exceed the actual number of years of prior,  
60 relevant work or experience at accredited institutions of higher  
61 education other than state institutions of higher education.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

§18B-10-1b. Special equity fee; purpose; exemptions.

§18B-10-2. Higher education resource fee.

**§18B-10-1b. Special equity fee; purpose; exemptions.**

1 In addition to the other fees provided in this article, each  
2 governing board has the authority to impose, collect and expend  
3 the proceeds of a special equity fee under the following condi-  
4 tions:

5 (a) The fee shall be used solely for the purpose of complying  
6 with the athletic provisions of 20 U. S. C. 1681, *et seq.*, known  
7 as Title IX of the Education Amendment of 1972;

8 (b) The fee is exempt from limitations on fee increases set  
9 forth in this article for three years from the effective date of this  
10 section;

11 (c) The fee may not be used by an institution to advance its  
12 classification of participation in its athletics governing body; and

13 (d) The fee may not be imposed upon part-time students or  
14 students enrolled in an administratively linked community and  
15 technical college.

**§18B-10-2. Higher education resource fee.**

1 In addition to the fees specifically provided for in section  
2 one of this article, all students enrolled for credit at a state  
3 institution of higher education shall pay a higher education  
4 resource fee. The commission and council jointly shall fix the  
5 fee rates for the various institutions and classes of students under  
6 their respective jurisdictions and may from time to time change  
7 these rates. The amount of the fee charged at each institution

8 shall be prorated for part-time students. The fee imposed by this  
9 section is in addition to the maximum fees allowed to be  
10 collected under the provision of section one of this article and is  
11 not limited thereby. Refunds of the fee may be made in the same  
12 manner as any other fee collected at state institutions of higher  
13 education.

14 Ninety percent of the total fees collected at each institution  
15 pursuant to this section shall be deposited in a special fund in the  
16 state treasury for the institution at which the fees are collected  
17 and may be used by the institution for libraries and library  
18 supplies, including books, periodicals, subscriptions and  
19 audiovisual materials, instructional equipment and materials; and  
20 for the improvement in quality and scope of student services.  
21 Up to ten percent of the fee collections from institutions under  
22 the jurisdiction of the commission shall be deposited in a special  
23 fund and expended or allocated by the commission to meet  
24 general operating expenses of the commission or to fund  
25 statewide programs. Up to ten percent of the fee collections  
26 from institutions under the jurisdiction of the council shall be  
27 deposited in a special fund and expended or allocated by the  
28 council to meet general operating expenses of the council or to  
29 fund statewide programs. The boards shall, to the maximum  
30 extent practicable, offset the impact, if any, on financially needy  
31 students of any potential fee increases under this section by  
32 allocating an appropriate amount of such fee revenue to the state  
33 scholarship program to be expended in accordance with the  
34 provisions of article five, chapter eighteen-c of this code.

35 The commission and council each shall, on or before the first  
36 day of July annually, provide the legislative auditor with a report  
37 of the projected fee collections for the board and each of its  
38 institutions and the expenditures proposed for such fee.



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## CHAPTER 93

(Com. Sub. for H. B. 4043 — By Delegates Mezzatesta, Williams,  
Renner, Perry, Paxton, Swartzmiller and Shaver)

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[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-3f, relating to establishing the priority for early childhood education in the basic skills of reading, mathematics and English language arts; making certain findings; stating intent and purpose; limiting scope of statewide assessments in early childhood; and requiring state board rule.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-3f, to read as follows:

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-3f. Building the basics early childhood curriculum; legislative findings; state board rule.**

1       (a) *Legislative findings.* — The Legislature makes the  
2 following findings:

3       (1) Children entering early childhood education programs  
4 have significant differences in their cognitive development,  
5 mastery of the early basic skills and readiness for instruction in  
6 a formal setting;

7       (2) Mastery of the basic skills of reading, mathematics and  
8 English language arts is the foundation for all further learning  
9 and, therefore, providing the instruction necessary for each  
10 child to attain mastery in these basic skills must be the priority  
11 for early childhood education programs;

12       (3) Deficiencies in the basic skills of reading, mathematics  
13 and English language arts that persist in children beyond the  
14 early childhood years become more difficult to overcome as  
15 they retard further progress in building the basics and lead to  
16 significant gaps in the basic knowledge needed to comprehend  
17 more advanced content in other subject areas; and

18       (4) Intensive instruction, early detection and intervention to  
19 correct student deficiencies in the basic skills of reading,  
20 mathematics and English language arts during early childhood  
21 education are more effective strategies for improving student  
22 performance than the alternatives such as grade level retention,  
23 social promotion and referral for special services and can lessen  
24 the prevalence of low basic skills as a contributing factor in  
25 student truancy, delinquency and dropout rates.

26       (b) *Intent and purpose.* — The intent and purpose of this  
27 section is to establish the priority for early childhood education  
28 to provide intensive instruction in the basic skills of reading,  
29 mathematics and English language arts, along with early  
30 detection and intervention strategies to correct student deficien-  
31 cies, to address the findings of this section.

32       (c) *State board rule.* — On or before the first day of July,  
33 two thousand four, the state board shall adopt rules to effectuate  
34 the intent and purpose of this section, including, but not limited  
35 to, provisions that address the following:

36       (1) Reading, mathematics and English language arts are the  
37 only subjects that are required to be taught daily in kindergarten  
38 through grade two early childhood education programs;

39 (2) Instruction in other subject matter in kindergarten  
40 through grade two shall be oriented to reinforce instruction in  
41 reading, mathematics and English language arts;

42 (3) Strategies for the early detection and intervention to  
43 correct student deficiencies in reading, mathematics and  
44 English language arts shall be employed throughout the  
45 instructional term in each of the early childhood grades to help  
46 students achieve mastery in these subjects, including allowing  
47 flexibility in student schedules to provide additional time and  
48 instruction for students who are below mastery in these subjects  
49 in grades three and four;

50 (4) Accountability for student performance on the statewide  
51 assessment of student performance in the early childhood  
52 grades shall only include the basic skills of reading, mathemat-  
53 ics and English language arts; and

54 (5) Any other provisions considered necessary by the state  
55 board to achieve the intent and purpose of this section.

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## CHAPTER 94

**(H. B. 4669 — By Delegates Tabb, Williams, Paxton, Beach,  
Crosier, Swartzmiller and Long)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-3g, relating to requiring establishment of special five-year demonstration professional development school project; making certain findings;

providing certain powers and duties of state superintendent with respect to project; requiring reports; and excluding requirement of specific appropriations.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-3g, to read as follows:

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-3g. Special demonstration professional development school project for improving academic achievement.**

1 (a) The Legislature makes the following findings:

2 (1) Well-educated children and families are essential for  
3 maintaining safe and economically sound communities;

4 (2) Low student achievement is associated with increased  
5 delinquent behavior, higher drug use and pregnancy rates, and  
6 higher unemployment and adult incarceration rates;

7 (3) Each year, more students enter school with circum-  
8 stances in their lives that schools are ill-prepared to accommo-  
9 date;

10 (4) Ensuring access for all students to the rigorous curricu-  
11 lum they deserve requires effective teaching strategies that  
12 include, but are not limited to, using a variety of instructional  
13 approaches, using varied curriculum materials, engaging parent  
14 and community involvement and support in the educational  
15 process, and providing the professional development, support  
16 and leadership necessary for an effective school; and

17       (5) The achievement of all students can be dramatically  
18 improved when schools focus on factors within their control,  
19 such as the instructional day, curriculum and teaching practices.

20       (b) The purpose of this section is to provide for the estab-  
21 lishment of a special five-year demonstration professional  
22 development school project to improve the academic achieve-  
23 ment of all children. The program shall be under the direction  
24 of the state superintendent and shall be for a period of five years  
25 beginning with the two thousand four – two thousand five  
26 school year. The intent of this section is to provide a special  
27 demonstration environment wherein the public schools included  
28 in the demonstration project may work in collaboration with  
29 higher education, community organizations and the state board  
30 to develop and implement strategies that may be replicated in  
31 other public schools with significant enrollments of disadvan-  
32 taged, minority and under-achieving students to improve  
33 academic achievement. For this purpose, the state superinten-  
34 dent has the following powers and duties with respect to the  
35 demonstration project:

36       (1) To select for participation in the demonstration project  
37 three public elementary or middle schools with significant  
38 enrollments of disadvantaged, minority and under-achieving  
39 students in each county in which the number of the African  
40 American students is five percent or more of the total second  
41 month enrollment;

42       (2) To require cooperation from the county board of the  
43 county wherein a demonstration project school is located to  
44 facilitate program implementation and avoid any reallocation  
45 of resources for the schools that are disproportionate with those  
46 for other schools of the county of similar classification,  
47 accreditation status and federal Title I identification;

48 (3) To require specialized training and knowledge of the  
49 needs, learning styles and strategies that will most effectively  
50 improve the performance of disadvantaged, minority and under-  
51 achieving students in demonstration project schools. These  
52 powers include, but not limited to, the authority to craft job  
53 descriptions with requirements regarding training and experi-  
54 ence and the right to specify job duties which are related to job  
55 performance that reflect the mission of the demonstration  
56 project school;

57 (4) To provide specifications and direct the county board to  
58 post the positions for school personnel employed at the demon-  
59 stration project school that encompass the special qualifications  
60 and any additional duties that will be required of the personnel  
61 as established in the job descriptions authorized pursuant to  
62 subdivision (3) of this section. The assertion that the job  
63 descriptions and postings are narrowly defined may not be used  
64 as the basis for the grievance of an employment decision for  
65 positions at a demonstration project school;

66 (5) To direct the department of education, the center for  
67 professional development and the regional educational service  
68 agency to provide any technical assistance and professional  
69 development necessary for successful implementation of the  
70 demonstration school programs, including, but not limited to,  
71 any early intervention or other programs of the department to  
72 assist low performing schools;

73 (6) To collaborate and enter into agreements with colleges  
74 and universities willing to assist with efforts at a demonstration  
75 school to improve student achievement, including, but not  
76 limited to, the operation of a professional development school  
77 program model: *Provided*, That the expenditure of any funds  
78 appropriated for the state board or department for this purpose  
79 shall be subject to approval of the state board;

80       (7) To require collaboration with local community organi-  
81 zations to improve student achievement and increase the  
82 involvement of parents and guardians in improving student  
83 achievement;

84       (8) To provide for an independent evaluation of the  
85 demonstration school project, its various programs and their  
86 effectiveness on improving student academic achievement; and

87       (9) To recommend to the state board and the county board  
88 the waiver of any of their respective policies that impede the  
89 implementation of demonstration school programs.

90       (c) The state superintendent shall make status reports to the  
91 legislative oversight commission on education accountability  
92 and to the state board annually and may include in those reports  
93 any recommendations based on the progress of the demonstra-  
94 tion project that he or she considers either necessary for  
95 improving the operations of the demonstration project or  
96 prudent for improving student achievement in other public  
97 schools through replication of successful demonstration school  
98 programs. The state superintendent shall make a recommenda-  
99 tion to the Legislature not later than its regular session, two  
100 thousand ten, for continuation or termination of the program,  
101 which recommendation shall be accompanied by the findings  
102 and recommendations of the independent evaluation and these  
103 findings and recommendations shall be a major factor consid-  
104 ered by the superintendent in making his or her recommenda-  
105 tion.

106       (d) Nothing in this section shall require any specific level  
107 of appropriation by the Legislature.

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## CHAPTER 95

**(H. B. 4111 — By Delegates Mezzatesta and Williams)**

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[Passed January 23, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18-2E-5 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-5-7a of said code, all relating to education; state board of education; county boards of education; modifying powers and authorities; legislative findings, purpose and intent; process for improving education; education standards and accountability measures; office of education performance audits; school accreditation and school system approval; intervention to correct impairments; and disposition of school property in flood control projects.

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

That §18-2E-5 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-5-7a of said code be amended and reenacted, all to read as follows:

**Article**

**2E. High Quality Educational Programs.**

**5. County Board of Education.**

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-5. Process for improving education; education standards and accountability measures; office of education performance audits; school accreditation and**



**school system approval; intervention to correct impairments.**

1       (a) *Legislative findings, purpose and intent.* —

2       (1) The Legislature finds that the process for improving  
3 education includes four primary elements, these being:

4       (A) Standards which set forth the things that students  
5 should know and be able to do as the result of a thorough and  
6 efficient education including measurable criteria to evaluate  
7 student performance and progress;

8       (B) Assessments of student performance and progress  
9 toward meeting the standards;

10       (C) A system for holding schools and school systems  
11 accountable for student performance and progress toward  
12 obtaining a high quality education which is delivered in an  
13 efficient manner; and

14       (D) A method for building the capacity and improving the  
15 efficiency of schools and school systems to improve student  
16 performance and progress.

17       (2) The Legislature further finds that as the constitutional  
18 body charged with the general supervision of schools as  
19 provided by general law, the state board has the authority and  
20 the responsibility to establish the standards, assess the perfor-  
21 mance and progress of students against the standards, hold  
22 schools and school systems accountable, and assist schools and  
23 school systems to build capacity and improve efficiency so that  
24 the standards are met, including, when necessary, seeking  
25 additional resources in consultation with the Legislature and the  
26 governor.

27       (3) The Legislature also finds that as the constitutional body  
28 charged with providing for a thorough and efficient system of  
29 schools, the Legislature has the authority and the responsibility  
30 to establish and be engaged constructively in the determination  
31 of the things that students should know and be able to do as the  
32 result of a thorough and efficient education. This determination  
33 is made by using the process for improving education to  
34 determine when school improvement is needed, by evaluating  
35 the results and the efficiency of the system of schools, by  
36 ensuring accountability, and by providing for the necessary  
37 capacity and its efficient use.

38       (4) Therefore, the purpose of this section is to establish a  
39 process for improving education that includes the four primary  
40 elements as set forth in subdivision (1) of this subsection to  
41 provide assurances that a thorough and efficient system of  
42 schools is being provided for all West Virginia public school  
43 students on an equal education opportunity basis and that the  
44 high quality standards are, at a minimum, being met.

45       (5) The intent of the Legislature in enacting this section is  
46 to establish a process through which the Legislature, the  
47 governor and the state board can work in the spirit of coopera-  
48 tion and collaboration intended in the process for improving  
49 education to consult and examine, when necessary, the perfor-  
50 mance and progress of students, schools and school systems and  
51 consider alternative measures to ensure that all students  
52 continue to receive the thorough and efficient education to  
53 which they are entitled. However, nothing in this section  
54 requires any specific level of funding by the Legislature.

55       (b) *Unified county and school improvement plans.* — The  
56 state board shall promulgate rules in accordance with article  
57 three-b, chapter twenty-nine-a of this code establishing a  
58 unified county improvement plan for each county board and a

59 unified school improvement plan for each public school in this  
60 state. The rules shall specify that the unified school improve-  
61 ment plan shall include all appropriate plans required by law  
62 including, but not limited to, the following:

63 (1) The report required to be delivered to the county-wide  
64 council on productive and safe schools pursuant to subsection  
65 (f), section two, article five-a of this chapter;

66 (2) Plans or applications required in the area of technology  
67 pursuant to 20 U.S.C. §6845, section seven, article two-e of this  
68 chapter, state board policy or rule or any other county, state or  
69 federal law;

70 (3) The strategic plan to manage the integration of special  
71 needs students as required by section five, article five-a of this  
72 chapter; and

73 (4) The school based improvement plan set forth in the  
74 Elementary and Secondary Education Act pursuant to 29 U.S.C.  
75 §6301, *et seq.*

76 The plans are required to be included only to the extent  
77 permitted by state and federal law.

78 (c) *High quality education standards and efficiency*  
79 *standards.* — In accordance with the provisions of article three-  
80 b, chapter twenty-nine-a of this code, the state board shall adopt  
81 and periodically review and update high quality education  
82 standards for student, school and school system performance  
83 and processes in the following areas:

84 (1) Curriculum;

85 (2) Workplace readiness skills;

86 (3) Finance;

- 87 (4) Transportation;
- 88 (5) Special education;
- 89 (6) Facilities;
- 90 (7) Administrative practices;
- 91 (8) Training of county board members and administrators;
- 92 (9) Personnel qualifications;
- 93 (10) Professional development and evaluation;
- 94 (11) Student performance and progress;
- 95 (12) School and school system performance and progress;
- 96 (13) A code of conduct for students and employees;
- 97 (14) Indicators of efficiency; and
- 98 (15) Any other areas determined by the state board.

99 (d) *Performance measures.* — The standards shall assure  
100 that all graduates are prepared for gainful employment or for  
101 continuing post-secondary education and training and that  
102 schools and school systems are making progress in achieving  
103 the education goals of the state.

104 The standards shall include measures of student perfor-  
105 mance and progress and measures of school and school system  
106 performance, progress and processes that enable student  
107 performance. The measures of student performance and  
108 progress and school and school system performance, progress  
109 and processes shall include, but are not limited to, the follow-  
110 ing:

111 (1) The acquisition of student proficiencies as indicated by  
112 student performance and progress by grade level measured,  
113 where possible, by a uniform statewide assessment program;

114 (2) School attendance rates;

115 (3) The student dropout rate;

116 (4) The high school graduation rate;

117 (5) The percentage of graduates who enrolled in college and  
118 the percentage of graduates who enrolled in other post-second-  
119 ary education within one year following high school graduation;

120 (6) The percentage of graduates who received additional  
121 certification of their skills, competence and readiness for  
122 college, other post-secondary education or employment above  
123 the level required for graduation; and

124 (7) The percentage of students who enrolled in and the  
125 percentage of students who successfully completed advanced  
126 placement, dual credit and honors classes, respectively, by  
127 grade level.

128 (e) *Indicators of efficiency.* — In accordance with the  
129 provisions of article three-b, chapter twenty-nine-a of this code,  
130 the state board shall adopt and periodically review and update  
131 indicators of efficiency for student and school system perfor-  
132 mance and processes in the following areas:

133 (1) Curriculum delivery including, but not limited to, the  
134 use of distance learning;

135 (2) Transportation;

136 (3) Facilities;

137 (4) Administrative practices;

138 (5) Personnel;

139 (6) Utilization of regional educational service agency  
140 programs and services, including programs and services that  
141 may be established by their assigned regional educational  
142 service agency, or other regional services that may be initiated  
143 between and among participating county boards; and

144 (7) Any other indicators as determined by the state board.

145 (f) *Assessment and accountability of school and school*  
146 *system performance and processes.* — In accordance with the  
147 provisions of article three-b, chapter twenty-nine-a of this code,  
148 the state board shall establish by rule a system of education  
149 performance audits which measures the quality of education  
150 and the preparation of students based on the standards and  
151 measures of student, school and school system performance,  
152 progress and processes, including, but not limited to, the  
153 standards and measures set forth in subsections (c) and (d) of  
154 this section. The system of education performance audits shall  
155 assist the state board, the Legislature and the governor in  
156 ensuring that the standards and measures established pursuant  
157 to this section are, at a minimum, being met and that a thorough  
158 and efficient system of schools is being provided.

159 The system of education performance audits shall include:

160 (1) The assessment of student performance and progress,  
161 school and school system performance and progress, and the  
162 processes in place in schools and school systems which enable  
163 student performance and progress;

164 (2) The review of school and school system unified  
165 improvement plans; and

166 (3) The periodic on-site review of school and school system  
167 performance and progress and compliance with the standards.

168       (g) *Uses of school and school system assessment informa-*  
169 *tion.* — The state board and the process for improving educa-  
170 tion council established pursuant to section five-c of this article  
171 shall use information from the system of education performance  
172 audits to assist them in ensuring that a thorough and efficient  
173 system of schools is being provided and to improve student,  
174 school and school system performance and progress. Informa-  
175 tion from the system of education performance audits further  
176 shall be used by the state board for these purposes, including,  
177 but not limited to, the following: (1) Determining school  
178 accreditation and school system approval status; (2) holding  
179 schools and school systems accountable for the efficient use of  
180 existing resources to meet or exceed the standards; and (3)  
181 targeting additional resources when necessary to improve  
182 performance and progress. Primary emphasis in determining  
183 school accreditation and school system approval status is based  
184 on student performance and progress, school and school system  
185 performance and progress and such other measures as selected  
186 by the state board. The state board shall make accreditation  
187 information available to the Legislature, the governor, the  
188 general public and to any individuals who request the informa-  
189 tion, subject to the provisions of any act or rule restricting the  
190 release of information.

191       Based on the assessment of student, school and school  
192 system performance and progress, the state board shall establish  
193 early detection and intervention programs using the available  
194 resources of the department of education, the regional educa-  
195 tional service agencies, the center for professional development  
196 and the principals academy, as appropriate, to assist under-  
197 achieving schools and school systems to improve performance  
198 before conditions become so grave as to warrant more substan-  
199 tive state intervention. Assistance shall include, but is not  
200 limited to, providing additional technical assistance and  
201 programmatic, professional staff development, providing  
202 monetary, staffing and other resources where appropriate, and,

203 if necessary, making appropriate recommendations to the  
204 process for improving education council.

205 (h) *Office of education performance audits.* —

206 (1) To assist the state board and the process for improving  
207 education council in the operation of a system of education  
208 performance audits that will enable them to evaluate whether a  
209 thorough and efficient education is being provided, and to assist  
210 the state board in making determinations regarding the accredi-  
211 tation status of schools and the approval status of school  
212 systems, the state board shall establish an office of education  
213 performance audits which shall be operated under the direction  
214 of the state board independently of the functions and supervi-  
215 sion of the state department of education and state superinten-  
216 dent. The office of education performance audits shall report  
217 directly to and be responsible to the state board in carrying out  
218 its duties under the provisions of this section.

219 (2) The office shall be headed by a director who shall be  
220 appointed by the state board and who shall serve at the will and  
221 pleasure of the state board. The salary of the director shall not  
222 exceed the salary of the state superintendent of schools.

223 (3) The state board shall organize and sufficiently staff the  
224 office to fulfill the duties assigned to it by law and by the state  
225 board. Employees of the state department of education who are  
226 transferred to the office of education performance audits retain  
227 their benefit and seniority status with the department of  
228 education.

229 (4) Under the direction of the state board, the office of  
230 education performance audits shall receive from the West  
231 Virginia education information system staff research and  
232 analysis data on the performance and progress of students,  
233 schools and school systems, and shall receive assistance, as  
234 determined by the state board, from staff at the state department



235 of education, the regional education service agencies, the center  
236 for professional development, the principals academy and the  
237 state school building authority to carry out the duties assigned  
238 to the office.

239 (5) In addition to other duties which may be assigned to it  
240 by the state board or by statute, the office of education perfor-  
241 mance audits also shall:

242 (A) Assure that all statewide assessments of student  
243 performance are secure as required in section one-a of this  
244 article;

245 (B) Administer all accountability measures as assigned by  
246 the state board, including, but not limited to, the following:

247 (i) Processes for the accreditation of schools and the  
248 approval of school systems. These processes shall focus on  
249 those measurable criteria related to student performance and  
250 progress and to the delivery of instruction which will enable  
251 student performance and progress; and

252 (ii) Recommendations to the state board on appropriate  
253 action, including, but not limited to, accreditation and approval  
254 action;

255 (C) Determine, in conjunction with the assessment and  
256 accountability processes, what capacity may be needed by  
257 schools and school systems to meet the standards established by  
258 the Legislature and the state board, and recommend to the  
259 school, the school system, the state board and the process for  
260 improving education council, plans to establish those needed  
261 capacities;

262 (D) Determine, in conjunction with the assessment and  
263 accountability processes, whether statewide system deficiencies  
264 exist in the capacity to establish and maintain a thorough and

265 efficient system of schools, including the identification of  
266 trends and the need for continuing improvements in education,  
267 and report those deficiencies and trends to the state board and  
268 the process for improving education council;

269 (E) Determine, in conjunction with the assessment and  
270 accountability processes, staff development needs of schools  
271 and school systems to meet the standards established by the  
272 Legislature and the state board, and make recommendations to  
273 the state board, the process for improving education council, the  
274 center for professional development, the regional educational  
275 service agencies, the higher education policy commission, and  
276 the county boards;

277 (F) Identify, in conjunction with the assessment and  
278 accountability processes, exemplary schools and school systems  
279 and best practices that improve student, school and school  
280 system performance, and make recommendations to the state  
281 board and the process for improving education council for  
282 recognizing and rewarding exemplary schools and school  
283 systems and promoting the use of best practices. The state  
284 board shall provide information on best practices to county  
285 school systems and shall use information identified through the  
286 assessment and accountability processes to select schools of  
287 excellence; and

288 (G) Develop reporting formats, such as check lists, which  
289 shall be used by the appropriate administrative personnel in  
290 schools and school systems to document compliance with  
291 various of the applicable laws, policies and process standards  
292 as considered appropriate and approved by the state board,  
293 including, but not limited to, compliance with limitations on the  
294 number of pupils per teacher in a classroom and the number of  
295 split grade classrooms. Information contained in the reporting  
296 formats shall be examined during an on-site review to deter-  
297 mine compliance with laws, policies and standards. Intentional

298 and grossly negligent reporting of false information is ground  
299 for dismissal.

300 (i) *On-site reviews.* —

301 (1) At the direction of the state board or by weighted  
302 selection by the office of education performance audits, an on-  
303 site review shall be conducted by the office of education  
304 performance audits of any school or school system for pur-  
305 poses, including, but not limited to, the following:

306 (A) Verifying data reported by the school or county board;

307 (B) Documenting compliance with policies and laws;

308 (C) Evaluating the effectiveness and implementation status  
309 of school and school system unified improvement plans;

310 (D) Investigating official complaints submitted to the state  
311 board that allege serious impairments in the quality of educa-  
312 tion in schools or school systems;

313 (E) Investigating official complaints submitted to the state  
314 board that allege that a school or county board is in violation of  
315 policies or laws under which schools and county boards  
316 operate; and

317 (F) Determining and reporting whether required reviews  
318 and inspections have been conducted by the appropriate  
319 agencies, including, but not limited to, the state fire marshal,  
320 the health department, the school building authority and the  
321 responsible divisions within the department of education, and  
322 whether noted deficiencies have been or are in the process of  
323 being corrected. The office of education performance audits  
324 may not conduct a duplicate review or inspection nor mandate  
325 more stringent compliance measures.

326           (2) The selection of schools and school systems for an on-  
327 site review shall use a weighted sample so that those with lower  
328 performance and progress indicators and those that have not  
329 had a recent on-site review have a greater likelihood of being  
330 selected. The director of the office of education performance  
331 audits shall notify the county superintendent of schools five  
332 school days prior to commencing an on-site review of the  
333 county school system and shall notify both the county superin-  
334 tendent and the principal five school days prior to commencing  
335 an on-site review of an individual school: *Provided*, That the  
336 state board may direct the office of education performance  
337 audits to conduct an unannounced on-site review of a school or  
338 school system if the state board believes circumstances warrant  
339 an unannounced on-site review.

340           (3) The office of education performance audits may conduct  
341 on-site reviews which are limited in scope to specific areas in  
342 addition to full reviews which cover all areas.

343           (4) An on-site review of a school or school system shall  
344 include a person or persons who has expert knowledge and  
345 experience in the area or areas to be reviewed and who is  
346 designated by the state board from the department of education  
347 and the agencies responsible for assisting the office. If the size  
348 of the school or school system being reviewed necessitates the  
349 use of an on-site review team or teams, the person or persons  
350 designated by the state board shall advise and assist the director  
351 to appoint the team or teams. The person or persons designated  
352 by the state board shall be the team leaders.

353           The persons designated by the state board shall be responsi-  
354 ble for completing the report on the findings and recommenda-  
355 tions of the on-site review in their area of expertise. It is the  
356 intent of the Legislature that the persons designated by the state  
357 board participate in all on-site reviews that involve their area of  
358 expertise to the extent practicable so that the on-site review

359 process will evaluate compliance with the standards in a  
360 uniform, consistent and expert manner.

361 (5) The office of education performance audits shall  
362 reimburse a county board for the costs of substitutes required to  
363 replace county board employees while they are serving on a  
364 review team.

365 (6) At the conclusion of an on-site review of a school  
366 system, the director and team leaders shall hold an exit confer-  
367 ence with the superintendent and shall provide an opportunity  
368 for principals to be present for at least the portion of the  
369 conference pertaining to their respective schools. In the case of  
370 an on-site review of a school, the exit conference shall be held  
371 with the principal and the superintendent shall be provided the  
372 opportunity to be present.

373 (7) The office of education performance audits shall report  
374 the findings of the on-site reviews to the state board for  
375 inclusion in the evaluation and determination of a school's or  
376 county board's accreditation or approval status as applicable.  
377 The report on the findings of an on-site review shall be submit-  
378 ted to the state board within thirty days following the conclu-  
379 sion of the on-site review and to the county superintendent and  
380 principals of schools within the reviewed school system within  
381 forty-five days following the conclusion of the on-site review.  
382 A copy of the report shall be provided to the process for  
383 improving education council.

384 (j) *School accreditation.* — The state board annually shall  
385 review the information from the system of education perfor-  
386 mance audits submitted for each school and shall issue to every  
387 school one of the following approval levels: Exemplary  
388 accreditation status, full accreditation status, temporary  
389 accreditation status, conditional accreditation status, or seri-  
390 ously impaired status.

391 (1) Full accreditation status shall be given to a school when  
392 the school's performance and progress on the standards adopted  
393 by the state board pursuant to subsections (c) and (d) of this  
394 section are at a level which would be expected when all of the  
395 high quality education standards are being met. A school which  
396 meets or exceeds the measures of student performance and  
397 progress set forth in subsection (d) of this section, and which  
398 does not have any deficiencies which would endanger student  
399 health or safety or other extraordinary circumstances as defined  
400 by the state board, shall remain on full accreditation status for  
401 six months following an on-site review in which other deficien-  
402 cies are noted. The school shall have an opportunity to correct  
403 those deficiencies, notwithstanding other provisions of this  
404 subsection.

405 (2) Temporary accreditation status shall be given to a  
406 school when the measure of the school's performance and  
407 progress is below the level required for full accreditation status.  
408 Whenever a school is given temporary accreditation status, the  
409 county board shall ensure that the school's unified improvement  
410 plan is revised to increase the performance and progress of the  
411 school to a full accreditation status level. The revised unified  
412 school improvement plan shall include objectives, a time line,  
413 a plan for evaluation of the success of the improvements, cost  
414 estimates, and a date certain for achieving full accreditation.  
415 The revised plan shall be submitted to the state board for  
416 approval.

417 (3) Conditional accreditation status shall be given to a  
418 school when the school's performance and progress on the  
419 standards adopted by the state board are below the level  
420 required for full accreditation, but the school's unified improve-  
421 ment plan has been revised to achieve full accreditation status  
422 by a date certain, the plan has been approved by the state board  
423 and the school is meeting the objectives and time line specified  
424 in the revised plan.

425       (4) Exemplary accreditation status shall be given to a  
426 school when the school's performance and progress on the  
427 standards adopted by the state board pursuant to subsections (c)  
428 and (d) of this section substantially exceed the minimal level  
429 which would be expected when all of the high quality education  
430 standards are being met. The state board shall promulgate  
431 legislative rules in accordance with the provisions of article  
432 three-b, chapter twenty-nine-a, designated to establish standards  
433 of performance and progress to identify exemplary schools.

434       (5) The state board shall establish and adopt standards of  
435 performance and progress to identify seriously impaired schools  
436 and the state board may declare a school seriously impaired  
437 whenever extraordinary circumstances exist as defined by the  
438 state board.

439       (A) These circumstances shall include, but are not limited  
440 to, the following:

441       (i) The failure of a school on temporary accreditation status  
442 to obtain approval of its revised unified school improvement  
443 plan within a reasonable time period as defined by the state  
444 board;

445       (ii) The failure of a school on conditional accreditation  
446 status to meet the objectives and time line of its revised unified  
447 school improvement plan; or

448       (iii) The failure of a school to achieve full accreditation by  
449 the date specified in the revised plan.

450       (B) Whenever the state board determines that the quality of  
451 education in a school is seriously impaired, the state board shall  
452 appoint a team of improvement consultants to make recommen-  
453 dations within sixty days of appointment for correction of the  
454 impairment. When the state board approves the recommenda-  
455 tions, they shall be communicated to the county board. If

456 progress in correcting the impairment as determined by the state  
457 board is not made within six months from the time the county  
458 board receives the recommendations, the state board shall place  
459 the county board on temporary approval status and provide  
460 consultation and assistance to the county board to assist it in the  
461 following areas:

462 (i) Improving personnel management;

463 (ii) Establishing more efficient financial management  
464 practices;

465 (iii) Improving instructional programs and rules; or

466 (iv) Making any other improvements that are necessary to  
467 correct the impairment.

468 (C) If the impairment is not corrected by a date certain as  
469 set by the state board:

470 (i) The state board shall appoint a monitor who shall be  
471 paid at county expense to cause improvements to be made at the  
472 school to bring it to full accreditation status within a reasonable  
473 time period as determined by the state board. The monitor's  
474 work location shall be at the school and the monitor shall work  
475 collaboratively with the principal. The monitor shall, at a  
476 minimum, report monthly to the state board on the measures  
477 being taken to improve the school's performance and the  
478 progress being made. The reports may include requests for  
479 additional assistance and recommendations required in the  
480 judgment of the monitor to improve the school's performance,  
481 including, but not limited to, the need for targeting resources  
482 strategically to eliminate deficiencies;

483 (ii) The state board may make a determination, in its sole  
484 judgment, that the improvements necessary to provide a  
485 thorough and efficient education to the students at the school



486 cannot be made without additional targeted resources, in which  
487 case, it shall establish a plan in consultation with the county  
488 board that includes targeted resources from sources under the  
489 control of the state board and the county board to accomplish  
490 the needed improvements. Nothing in this subsection shall be  
491 construed to allow a change in personnel at the school to  
492 improve school performance and progress, except as provided  
493 by law;

494 (iii) If the impairment is not corrected within one year after  
495 the appointment of a monitor, the state board may make a  
496 determination, in its sole judgment, that continuing a monitor  
497 arrangement is not sufficient to correct the impairment and may  
498 intervene in the operation of the school to cause improvements  
499 to be made that will provide assurances that a thorough and  
500 efficient system of schools will be provided. This intervention  
501 may include, but is not limited to, establishing instructional  
502 programs, taking such direct action as may be necessary to  
503 correct the impairments, declaring the position of principal is  
504 vacant and assigning a principal for the school who shall serve  
505 at the will and pleasure of and, under the sole supervision of,  
506 the state board: *Provided*, That prior to declaring that the  
507 position of the principal is vacant, the state board must make a  
508 determination that all other resources needed to correct the  
509 impairment are present at the school. If the principal who was  
510 removed elects not to remain an employee of the county board,  
511 then the principal assigned by the state board shall be paid by  
512 the county board. If the principal who was removed elects to  
513 remain an employee of the county board, then the following  
514 procedure applies:

515 (I) The principal assigned by the state board shall be paid  
516 by the state board until the next school term, at which time the  
517 principal assigned by the state board shall be paid by the county  
518 board;

519 (II) The principal who was removed shall be placed on the  
520 preferred recall list for all positions in the county for which the  
521 principal is certified, as defined in section seven, article four of  
522 this chapter; and

523 (III) The principal who was removed shall be paid by the  
524 county board and may be assigned to administrative duties,  
525 without the county board being required to post that position  
526 until the end of the school term;

527 (6) The county board shall take no action nor refuse any  
528 action if the effect would be to impair further the school in  
529 which the state board has intervened.

530 (7) The state board may appoint a monitor pursuant to the  
531 provisions of this subsection to assist the school principal after  
532 intervention in the operation of a school is completed.

533 (k) *Transfers from seriously impaired schools.* — When-  
534 ever a school is determined to be seriously impaired and fails to  
535 improve its status within one year, any student attending the  
536 school may transfer once to the nearest fully accredited school,  
537 subject to approval of the fully accredited school and at the  
538 expense of the school from which the student transferred.

539 (l) *School system approval.* — The state board annually  
540 shall review the information submitted for each school system  
541 from the system of education performance audits and issue one  
542 of the following approval levels to each county board: Full  
543 approval, temporary approval, conditional approval, or  
544 nonapproval.

545 (1) Full approval shall be given to a county board whose  
546 education system meets or exceeds all of the high quality  
547 standards for student, school and school system performance,  
548 progress and processes adopted by the state board and whose  
549 schools have all been given full, temporary or conditional

550 accreditation status. A school system which meets or exceeds  
551 the measures of student performance and progress set forth in  
552 subsection (d) of this section, and which does not have any  
553 deficiencies which would endanger student health or safety or  
554 other extraordinary circumstances as defined by the state board,  
555 shall remain on full accreditation status for six months follow-  
556 ing an on-site review in which other deficiencies are noted. The  
557 school shall have an opportunity to correct those deficiencies,  
558 notwithstanding other provisions of this subsection.

559 (2) Temporary approval shall be given to a county board  
560 whose education system is below the level required for full  
561 approval. Whenever a county board is given temporary ap-  
562 proval status, the county board shall revise its unified county  
563 improvement plan to increase the performance and progress of  
564 the school system to a full approval status level. The revised  
565 plan shall include objectives, a time line, a plan for evaluation  
566 of the success of the improvements, a cost estimate, and a date  
567 certain for achieving full approval. The revised plan shall be  
568 submitted to the state board for approval.

569 (3) Conditional approval shall be given to a county board  
570 whose education system is below the level required for full  
571 approval, but whose unified county improvement plan meets  
572 the following criteria:

573 (i) The plan has been revised to achieve full approval status  
574 by a date certain;

575 (ii) The plan has been approved by the state board; and

576 (iii) The county board is meeting the objectives and time  
577 line specified in the revised plan.

578 (4) Nonapproval status shall be given to a county board  
579 which fails to submit and gain approval for its unified county  
580 improvement plan or revised unified county improvement plan

581 within a reasonable time period as defined by the state board or  
582 which fails to meet the objectives and time line of its revised  
583 unified county improvement plan or fails to achieve full  
584 approval by the date specified in the revised plan.

585 (A) The state board shall establish and adopt additional  
586 standards to identify school systems in which the program may  
587 be nonapproved and the state board may issue nonapproval  
588 status whenever extraordinary circumstances exist as defined by  
589 the state board.

590 (B) Whenever a county board has more than a casual  
591 deficit, as defined in section one, article one of this chapter, the  
592 county board shall submit a plan to the state board specifying  
593 the county board's strategy for eliminating the casual deficit.  
594 The state board either shall approve or reject the plan. If the  
595 plan is rejected, the state board shall communicate to the county  
596 board the reason or reasons for the rejection of the plan. The  
597 county board may resubmit the plan any number of times.  
598 However, any county board that fails to submit a plan and gain  
599 approval for the plan from the state board before the end of the  
600 fiscal year after a deficit greater than a casual deficit occurred  
601 or any county board which, in the opinion of the state board,  
602 fails to comply with an approved plan may be designated as  
603 having nonapproval status.

604 (C) Whenever nonapproval status is given to a school  
605 system, the state board shall declare a state of emergency in the  
606 school system and shall appoint a team of improvement  
607 consultants to make recommendations within sixty days of  
608 appointment for correcting the emergency. When the state  
609 board approves the recommendations, they shall be communi-  
610 cated to the county board. If progress in correcting the emer-  
611 gency, as determined by the state board, is not made within six  
612 months from the time the county board receives the recommen-  
613 dations, the state board shall intervene in the operation of the

614 school system to cause improvements to be made that will  
615 provide assurances that a thorough and efficient system of  
616 schools will be provided. This intervention may include, but is  
617 not limited to, the following:

618 (i) Limiting the authority of the county superintendent and  
619 county board as to the expenditure of funds, the employment  
620 and dismissal of personnel, the establishment and operation of  
621 the school calendar, the establishment of instructional programs  
622 and rules and any other areas designated by the state board by  
623 rule, which may include delegating decision-making authority  
624 regarding these matters to the state superintendent;

625 (ii) Declaring that the office of the county superintendent  
626 is vacant;

627 (iii) Delegating to the state superintendent both the author-  
628 ity to conduct hearings on personnel matters and school closure  
629 or consolidation matters and, subsequently, to render the  
630 resulting decisions, and the authority to appoint a designee for  
631 the limited purpose of conducting hearings while reserving to  
632 the state superintendent the authority to render the resulting  
633 decisions;

634 (iv) Functioning in lieu of the county board of education in  
635 a transfer, sale, purchase or other transaction regarding real  
636 property; and

637 (v) Taking any direct action necessary to correct the  
638 emergency including, but not limited to, the following:

639 (I) Delegating to the state superintendent the authority to  
640 replace administrators and principals in low performing schools  
641 and to transfer them into alternate professional positions within  
642 the county at his or her discretion; and

643 (II) Delegating to the state superintendent the authority to  
644 fill positions of administrators and principals with individuals  
645 determined by the state superintendent to be the most qualified  
646 for the positions. Any authority related to intervention in the  
647 operation of a county board granted under this paragraph is not  
648 subject to the provisions of article four, chapter eighteen-a of  
649 this code;

650 (m) Notwithstanding any other provision of this section, the  
651 state board may intervene immediately in the operation of the  
652 county school system with all the powers, duties and responsi-  
653 bilities contained in subsection (l) of this section, if the state  
654 board finds the following:

655 (1) That the conditions precedent to intervention exist as  
656 provided in this section; and that delaying intervention for any  
657 period of time would not be in the best interests of the students  
658 of the county school system; or

659 (2) That the conditions precedent to intervention exist as  
660 provided in this section and that the state board had previously  
661 intervened in the operation of the same school system and had  
662 concluded that intervention within the preceding five years.

663 (n) *Capacity*. — The process for improving education  
664 includes a process for targeting resources strategically to  
665 improve the teaching and learning process. Development of  
666 unified school and school system improvement plans, pursuant  
667 to subsection (b) of this section, is intended, in part, to provide  
668 mechanisms to target resources strategically to the teaching and  
669 learning process to improve student, school and school system  
670 performance. When deficiencies are detected through the  
671 assessment and accountability processes, the revision and  
672 approval of school and school system unified improvement  
673 plans shall ensure that schools and school systems are effi-  
674 ciently using existing resources to correct the deficiencies.

675 When the state board determines that schools and school  
676 systems do not have the capacity to correct deficiencies, the  
677 state board shall work with the county board to develop or  
678 secure the resources necessary to increase the capacity of  
679 schools and school systems to meet the standards and, when  
680 necessary, seek additional resources in consultation with the  
681 Legislature and the governor.

682 The state board shall recommend to the appropriate body  
683 including, but not limited to, the process for improving educa-  
684 tion council, the Legislature, county boards, schools and  
685 communities methods for targeting resources strategically to  
686 eliminate deficiencies identified in the assessment and account-  
687 ability processes. When making determinations on recommen-  
688 dations, the state board shall include, but is not limited to, the  
689 following methods:

690 (1) Examining reports and unified improvement plans  
691 regarding the performance and progress of students, schools  
692 and school systems relative to the standards and identifying the  
693 areas in which improvement is needed;

694 (2) Determining the areas of weakness and of ineffective-  
695 ness that appear to have contributed to the substandard perfor-  
696 mance and progress of students or the deficiencies of the school  
697 or school system;

698 (3) Determining the areas of strength that appear to have  
699 contributed to exceptional student, school and school system  
700 performance and progress and promoting their emulation  
701 throughout the system;

702 (4) Requesting technical assistance from the school  
703 building authority in assessing or designing comprehensive  
704 educational facilities plans;

705 (5) Recommending priority funding from the school  
706 building authority based on identified needs;

707 (6) Requesting special staff development programs from the  
708 center for professional development, the principals academy,  
709 higher education, regional educational service agencies and  
710 county boards based on identified needs;

711 (7) Submitting requests to the Legislature for appropriations  
712 to meet the identified needs for improving education;

713 (8) Directing county boards to target their funds strategi-  
714 cally toward alleviating deficiencies;

715 (9) Ensuring that the need for facilities in counties with  
716 increased enrollment are appropriately reflected and recom-  
717 mended for funding;

718 (10) Ensuring that the appropriate person or entity is held  
719 accountable for eliminating deficiencies; and

720 (11) Ensuring that the needed capacity is available from the  
721 state and local level to assist the school or school system in  
722 achieving the standards and alleviating the deficiencies.

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

##### **§18-5-7a. Disposition of school property in flood control projects.**

1 (a) If at any time the board ascertains that any land or part  
2 thereof then being used for school purposes is to be included in  
3 any federal flood control project the board may:

4 (1) Sell, dismantle, remove or relocate any buildings  
5 thereon;

6 (2) Contract with the United States of America, or any  
7 instrumentality, agency or political subdivision thereof, for the



8 sale or exchange of its interest in the land or any part thereof;  
9 and

10 (3) Without auction sell or exchange its interest in the land  
11 or any part thereof to the United States of America, or any  
12 instrumentality, agency or political subdivision thereof, in  
13 accordance with the terms and provisions of the contract.

14 (b) If the flood control project is proposed in a county  
15 where the state board of education has intervened in the  
16 operation of the county school system pursuant to the provi-  
17 sions of section five, article two-e of this chapter or any other  
18 constitutional or statutory authority to intervene, the powers  
19 granted in this section are vested in the state board.

20 (c) Notwithstanding the provisions of section seven of this  
21 article, neither the grantor of the land or any part thereof nor his  
22 heirs or assigns has the right to purchase the land or any part  
23 thereof or have any other rights whatever under section seven  
24 of this article.



## CHAPTER 96

**(Com. Sub. for H. B. 4001 — By Mr. Speaker,  
Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

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**CLERK'S NOTE:** It has been determined that H. B. 4001, originally styled as Chapter 96 was incorrectly enrolled and signed by the Governor in an incorrect form.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, H. B. 4001 did not become law.

The text formerly occupied pages 775 through 827, which have been omitted.

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## CHAPTER 97

(Com. Sub. for H. B. 4072 — By Delegates Swartzmiller,  
Stemple, Shaver, Renner, Long, Perry and Tabb)

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[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend and reenact §18-2E-7 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7, all relating to an education technology strategic plan for public education and higher education; including basic skills and SUCCESS in plan; findings; intent, purpose and goals; education technology strategic plan advisory committee; strategies to be included in plan; state board of education and higher education policy commission approval and adoption; expenditures in accordance with the plan; and the report to the legislative oversight commission on education accountability and joint committee on government and finance.

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

That §18-2E-7 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7, all to read as follows:

**Article**

**2E. High Quality Educational Programs.**

**2J. Public and Higher Education Technology Strategic Plan.**

**ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

**§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.**

1           (a) The Legislature finds that teachers must be provided the  
2 support, assistance and teaching tools necessary to meet  
3 individual student instructional needs on a daily basis in a  
4 classroom of students who differ in learning styles, learning  
5 rates and in motivation to learn. The Legislature further finds  
6 that attaining a solid foundation in the basic skills of reading,  
7 composition and arithmetic is essential for advancement in  
8 higher education, occupational and avocational pursuits and that  
9 computers are an effective tool for the teacher in corrective,  
10 remedial and enrichment activities. Therefore, the state board  
11 shall ensure that the resources to be used to provide services to  
12 students in the earliest grade level and higher grade levels as  
13 resources become available are included in the education  
14 technology strategic plan required by article two-j of this  
15 chapter. The provision of services to students shall be based on  
16 a plan developed by each individual school team.

17           Computer hardware and software shall be purchased in  
18 accordance with the education technology strategic plan  
19 adopted pursuant to article two-j of this chapter.

20           The state board shall develop and provide a program to  
21 ensure adequate teacher training, continuous teacher support  
22 and updates. The program shall be consistent with the education  
23 technology strategic plan adopted pursuant to article two-j of  
24 this chapter.

25           To the extent practicable, the technology shall be used to  
26 enhance student access to learning tools and resources outside  
27 of the normal school day, such as: Before and after school; in  
28 the evenings, on weekends and during vacations; and for  
29 student use for homework, remedial work, independent learn-  
30 ing, career planning and adult basic education.

31 (b) The Legislature finds that the continued implementation  
32 of computer use under this section for high quality basic skills  
33 development and remediation in the middle schools, junior high  
34 schools and high schools is necessary to meet the goal that high  
35 school graduates will be prepared fully for college, other post-  
36 secondary education or gainful employment. Further, the  
37 implementation should provide a technology infrastructure at  
38 the middle schools, junior high schools and high schools  
39 capable of supporting multiple technology based learning  
40 strategies designed to enable students to achieve at higher  
41 academic levels. The technology infrastructure should facilitate  
42 student development in the following areas:

43 (1) Attaining basic computer skills such as word process-  
44 ing, spreadsheets, data bases, internet usage, telecommunica-  
45 tions and graphic presentations;

46 (2) Learning critical thinking and decision-making skills;

47 (3) Applying academic knowledge in real life situations  
48 through simulated workplace programs;

49 (4) Understanding the modern workplace environment,  
50 particularly in remote areas of the state, by bringing the  
51 workplace to the school;

52 (5) Making informed career decisions based upon informa-  
53 tion on labor markets and the skills required for success in  
54 various occupations;

55 (6) Gaining access to labor markets and job placement;

56 (7) Obtaining information and assistance about college and  
57 other post-secondary education opportunities and financial aid;  
58 and

59       (8) Other uses for acquiring the necessary skills and  
60 information to make a smooth transition from high school to  
61 college, other post-secondary education or gainful employment.

62       Therefore, the state board also shall address the findings of  
63 this subsection regarding the continued implementation of  
64 computer hardware and software and technical planning support  
65 in the middle schools, junior high schools and high schools of  
66 the state in the education technology strategic plan required by  
67 article two-j of this chapter.

#### **ARTICLE 2J. PUBLIC AND HIGHER EDUCATION TECHNOLOGY STRATEGIC PLAN.**

§18-2J-1. Findings.

§18-2J-2. Intent and purpose; goals.

§18-2J-3. Education technology strategic plan advisory committee.

§18-2J-4. Education technology strategic plan.

§18-2J-5. State board and higher education policy commission approval and adoption.

§18-2J-6. Allocation and expenditure of appropriations.

§18-2J-7. Report to the legislative oversight commission on education accountability.

#### **§18-2J-1. Findings.**

1       (a) The Legislature finds that:

2       (1) Technology is being used in public schools as an  
3 instructional tool that enables teachers to meet the individual  
4 instructional needs of students who differ in learning styles,  
5 learning rates and the motivation to learn;

6       (2) Technology is being used in public schools as an  
7 effective resource for providing corrective, remedial and  
8 enrichment activities to help students achieve proficiency at  
9 grade level or above in the basic skills of reading, composition  
10 and arithmetic that are essential for advancement to more

11 rigorous curriculum and success in higher education, occupa-  
12 tional and avocational pursuits;

13 (3) Technology is being used in public schools to ensure  
14 that all students have a basic level of computer literacy that will  
15 enable them to participate fully in a society in which computers  
16 are an ever more prevalent medium for social, economic, and  
17 informational interaction;

18 (4) Technology is being used in public schools to provide  
19 greater access for students to advanced curricular offerings,  
20 virtual field trips, problem solving and team building exercises,  
21 reference information and source knowledge than could be  
22 provided efficiently through traditional on-site delivery  
23 formats;

24 (5) Technology is being used in public schools to help  
25 students obtain information on post-secondary educational  
26 opportunities, financial aid, and the credentials and skills  
27 required in various occupations that will help them better  
28 prepare for a successful transition following high school;

29 (6) Technology is being used in public schools to help  
30 students learn to think critically, apply academic knowledge in  
31 real life situations, make decisions, and gain an understanding  
32 of the modern workplace environment through simulated  
33 workplace programs;

34 (7) Technology is being used in public schools as a resource  
35 for teachers by providing them with access to sample lesson  
36 plans, curriculum resources, on-line staff development, continu-  
37 ing education and college course-work;

38 (8) Technology is being used in public schools as a tool for  
39 managing information, reporting on measures of accountability,

40 analyzing student learning and helping to improve student,  
41 school and school system performance;

42 (9) Technology is being used in state institutions of higher  
43 education for teaching, learning and research for all students  
44 across all disciplines and programs;

45 (10) Technology is being used in state institutions of higher  
46 education by students, staff and faculty to discover, create,  
47 communicate and collaborate, as well as to enhance research  
48 and economic development activities;

49 (11) Technology is being used in state institutions of higher  
50 education for digital age literacy, problem solving, creativity,  
51 effective communication, collaboration and high productivity  
52 skills essential for West Virginia citizens in a rapidly changing  
53 global economy;

54 (12) Technology is being used by libraries in higher  
55 education to offer reference services in a virtual environment  
56 online;

57 (13) Technology is being used by libraries in higher  
58 education to create and share cataloging records. It is possible  
59 to create a seamless resource for sharing these resources  
60 between public and higher education; and

61 (14) Technology is being used in libraries in higher  
62 education to offer electronic document delivery services to  
63 distance education students and to a multitude of professionals  
64 throughout the state.

65 (b) Each use of technology set forth in this section shall  
66 apply to public education, higher education or both, as appro-  
67 priate. The determination of whether the use of technology  
68 applies to public education, higher education or both shall be

69 made by the education technology strategic plan advisory  
70 committee, the state board and the higher education policy  
71 commission.

**§18-2J-2. Intent and purpose; goals.**

1 (a) The intent and purpose of this article is to establish a  
2 unified approach to the administration and allocation of funds  
3 for technology that is used for public education and higher  
4 education purposes in this state which meets the following  
5 goals:

6 (1) Maintaining a reasonable balance in the resources  
7 allocated among the customary diverse uses of technology in  
8 the public schools and the state institutions of higher education,  
9 while allowing flexibility to address unanticipated priority  
10 needs and unusual local circumstances;

11 (2) Providing for uniformity in technological hardware and  
12 software standards and procedures to achieve interoperability  
13 between public schools and higher education to the extent that  
14 the uniformity is considered prudent for reducing acquisition  
15 cost, avoiding duplication, promoting expeditious repair and  
16 maintenance and facilitating user training, while allowing  
17 flexibility for local innovations and options when the objectives  
18 relating to uniformity are reasonably met;

19 (3) Preserving the integrity of governance, administration,  
20 standards and accountability for technology in the public  
21 schools and institutions of higher education under the jurisdic-  
22 tion of the state board and the higher education policy commis-  
23 sion, while encouraging collaborative service delivery and  
24 infrastructure investments with other entities that will reduce  
25 cost, avoid duplication or improve services, particularly with  
26 respect to other entities such as the educational broadcasting



27 system, public libraries and other governmental agencies with  
28 compatible technology interests;

29 (4) Improving the long-term ability of the state board and  
30 the higher education policy commission to efficiently manage  
31 and direct the resources available for technology in the public  
32 schools and the institutions of higher education concurrent with  
33 evolving technological capabilities and applications;

34 (5) Fostering closer communication between faculty,  
35 students and administrators;

36 (6) Providing for individualized instruction, accommodat-  
37 ing a variety of learning styles of students or faculty members;

38 (7) Advancing new and traditional ways of learning through  
39 alternative approaches in curriculum to integrate education,  
40 research and technology into life long learning strategies;

41 (8) Offering new approaches to administration and account-  
42 ability within the education system through technology applica-  
43 tion;

44 (9) Promoting the collaboration of schools, libraries,  
45 researchers, community members, state agencies, organizations,  
46 business and industry, post-secondary institutions and public  
47 virtual learning environments to meet the needs of all learners;

48 (10) Recognizing that information literacy is a fundamental  
49 competency for life-long learning and information literacy is  
50 incorporated into the curricula of higher education and the  
51 workplace;

52 (11) Creating the appropriate infrastructure to ensure, as  
53 required, a sustainable, cost effective and transparent migration  
54 to new technology platforms;

55 (12) Creating and maintaining compatible and secure  
56 technology systems that enhance the efficient operation of all  
57 educational systems;

58 (13) Assessing, evaluating and publicizing the effects of  
59 technology use by educators and students toward student  
60 learning and achievement; and

61 (14) Increasing student access to high quality blended  
62 distance learning curriculum using real time interactive and  
63 online distance education tools.

64 (b) Each goal set forth in this section shall apply to public  
65 education, higher education or both, as appropriate. The  
66 determination of whether a goal applies to public education,  
67 higher education or both shall be made by the education  
68 technology strategic plan advisory committee, the state board  
69 and the higher education policy commission.

**§18-2J-3. Education technology strategic plan advisory committee.**

1 (a) On or before the first day of July, two thousand four,  
2 there is established an education technology strategic plan  
3 advisory committee to be composed of sixteen members. The  
4 Governor shall appoint, by and with the advice and consent of  
5 the Senate, the following eleven voting members to the advisory  
6 committee:

7 (1) Five voting members representing public education  
8 some or all of which may be from a list of five recommended  
9 appointees which shall be submitted by the state board;

10 (2) Five voting members representing higher education  
11 some or all of which may be from a list of five recommended

12 appointees which shall be submitted by the higher education  
13 policy commission; and

14 (3) One voting member who is a business representative  
15 with knowledge of technology management practices of large  
16 corporations and has contributed and advanced technology in  
17 education in West Virginia.

18 (b) The chief technology officer of Marshall university, or  
19 a designee, and the chief technology officer of West Virginia  
20 university, or a designee, shall be ex officio nonvoting members  
21 of the advisory committee. The state superintendent shall  
22 designate two positions within the department of education, and  
23 the persons employed in those position shall be ex officio  
24 nonvoting members of the advisory committee. Additionally,  
25 the West Virginia library commissioner shall be an ex officio  
26 nonvoting member.

27 (c) The business representative shall serve as chair of the  
28 advisory committee. The advisory committee shall meet as  
29 necessary, but shall hold no less than four meetings annually.  
30 A majority of the voting members constitutes a quorum for  
31 conducting the business of the advisory committee.

32 (d) Voting members of the advisory committee shall serve  
33 for terms of three years, except that of the original appoint-  
34 ments, three members shall be appointed for one year; four  
35 members shall be appointed for two years; and four members  
36 shall be appointed for three years. No member may serve more  
37 than two consecutive full terms nor may any member be  
38 appointed to a term which results in the member serving more  
39 than six consecutive years.

40 (e) Members of the advisory committee shall serve without  
41 compensation, but shall be reimbursed by the Governor for all

42 reasonable and necessary expenses actually incurred in the  
43 performance of their official duties under this article upon  
44 presentation of an itemized sworn statement of their expenses,  
45 except that any member of the advisory committee who is an  
46 employee of the state shall be reimbursed by the employing  
47 agency.

**§18-2J-4. Education technology strategic plan.**

1 (a) The education technology strategic plan advisory  
2 committee shall develop an education technology strategic plan  
3 that achieves the intent and purpose of this article. The plan  
4 shall be a continuing plan that covers a period of not less than  
5 three and not more than five years and is updated annually. In  
6 addition to other strategies considered necessary for achieving  
7 the intent and purpose of this section, the education technology  
8 strategic plan shall address the following:

9 (1) The strategy for using technology in the public schools  
10 and in the institutions of higher education of the state consistent  
11 with the intent and purpose of this article for each of the  
12 purposes for which the Legislature finds that technology is used  
13 in public schools and institutions of higher education as  
14 described in section one of this article and for any other  
15 purposes considered necessary by the state board and the higher  
16 education policy commission for using technology in the public  
17 schools and institutions of higher education to improve perfor-  
18 mance and progress;

19 (2) The strategy for allocating the resources available and  
20 developing the capacity necessary to achieve the purposes  
21 addressed in the plan. The strategy shall allow for reasonable  
22 flexibility for:

23 (A) County boards and regional education service agencies  
24 to receive assistance with the development and implementation  
25 of technological solutions designed to improve performance,  
26 enrich the curriculum and increase student access to high level  
27 courses;

28 (B) County boards, regional education service agencies and  
29 institutional boards of governors to implement technological  
30 solutions that address local priorities consistent with achieving  
31 the major objectives set forth in the education technology  
32 strategic plan; and

33 (C) Using the most cost effective alternative allowable  
34 pursuant to section six of this article for expending funds for  
35 technology acquisition and implementation consistent with the  
36 goals of the plan;

37 (3) For public education, the strategy for using technology  
38 to maintain equity in the array and quality of educational  
39 offerings and professional qualifications among the counties  
40 notwithstanding circumstances of geography and population  
41 density;

42 (4) For public education, the strategy for developing and  
43 using the capacity of the public school system to implement,  
44 support and maintain technology in the public schools through  
45 the allocation of funds either directly or through contractual  
46 agreements with county boards and regional education service  
47 agencies for labor, materials and other costs associated with the  
48 installation, set-up, internet hook-up, wiring, repair and  
49 maintenance of technology in the public schools and state  
50 institutions of higher education;

51 (5) The strategy for ensuring that the capabilities and  
52 capacities of the technology infrastructure within the state and

53 its various regions is adequate for acceptable performance of  
54 the technology being implemented in the public schools and the  
55 state institutions of higher education, for developing the  
56 necessary capabilities and capacities, or for pursuing alternative  
57 solutions;

58 (6) The strategy for maximizing student access to learning  
59 tools and resources at all times including before and after  
60 school or class, in the evenings, on weekends and holidays, and  
61 for public education, non instructional days, and during  
62 vacations for student use for homework, remedial work,  
63 independent learning, career planning and adult basic educa-  
64 tion;

65 (7) The strategy for providing access to individualized  
66 instruction through computer-based technology, video and other  
67 technology-based instruction;

68 (8) The strategy for improving teaching and learning and  
69 the ability to meet individual students' needs to increase student  
70 achievement;

71 (9) The strategy for improving curriculum delivery to help  
72 meet the needs for educational equity across the state;

73 (10) The strategy for improving delivery of professional  
74 development;

75 (11) The strategy for improving the efficiency and produc-  
76 tivity of administrators;

77 (12) The strategy for encouraging development by the  
78 private sector and acquisition by districts of technologies and  
79 applications appropriate for education;

80 (13) The strategy for ensuring efficient and equitable use of  
81 technology at all levels from primary school through higher  
82 education, including vocational and adult education;

83 (14) The strategy for taking advantage of bulk purchasing  
84 abilities to the maximum extent feasible. This may include, but  
85 is not limited to:

86 (A) A method of recording all technology purchases across  
87 both the public education system and the higher education  
88 system;

89 (B) Combining the purchasing power of the public educa-  
90 tion system and the higher education system with the purchas-  
91 ing power of other state entities or all state entities; or

92 (C) A method of allowing public education and higher  
93 education to purchase from competitively bid contracts initiated  
94 through the southern regional education board educational  
95 technology cooperative and the American  
96 TelEdCommunications Alliance;

97 (15) A strategy for seeking funding through grants, gifts,  
98 donations or any other source for uses related to education  
99 technology; and

100 (16) A strategy for allowing any other flexibility that is  
101 determined to be needed for the effective use of technology in  
102 public education and higher education.

103 (b) Each strategy to be included in the education technology  
104 strategic plan pursuant to this section shall apply to public  
105 education, higher education or both, as appropriate. The  
106 determination of whether the strategy applies to public educa-  
107 tion, higher education or both shall be made by the education

108 technology strategic plan advisory committee, the state board  
109 and the higher education policy commission.

110 (c) Nothing in this section may be construed to conflict  
111 with a state higher education institution's mission as set forth  
112 in its compact.

**§18-2J-5. State board and higher education policy commission approval and adoption.**

1 On or before the first day of November, two thousand four,  
2 and each year thereafter, the education technology strategic  
3 plan advisory committee shall submit the education technology  
4 strategic plan to the state board and the higher education policy  
5 commission for approval and adoption. This time line also shall  
6 be in accordance with the federal E-rate discount program. If  
7 the state board, the higher education policy commission or both  
8 do not approve and adopt the plan, the state board, the higher  
9 education policy commission and the education technology  
10 strategic plan advisory committee shall collaborate in address-  
11 ing any objection, agree to a plan and then formally approve  
12 and adopt the plan agreed to. The procedure for collaboration  
13 shall be determined through agreement of the state board, the  
14 higher education policy commission and the education technol-  
15 ogy strategic plan advisory committee. The plan shall become  
16 effective the school year following the time of approval and  
17 adoption by both the state board and the higher education policy  
18 commission.

**§18-2J-6. Allocation and expenditure of appropriations.**

1 (a) The state board, regional education service agencies, the  
2 higher education policy commission and the state institutions of  
3 higher education shall allocate and expend appropriations for  
4 technology in the public schools or the state institutions of



5 higher education, as appropriate, in accordance with the  
6 education technology strategic plan except that expenditures  
7 from grants which can only be used for certain purposes are not  
8 subject to this requirement. For public education, the expendi-  
9 tures shall be made directly, or through lease-purchase arrange-  
10 ments pursuant to the provisions of article three, chapter five-a  
11 of this code, or through contractual agreements or grants to  
12 county boards and regional education service agencies or any  
13 combination of the foregoing options as shall best implement  
14 the strategic plan in the most cost effective manner.

15 (b) Nothing in this section requires any specific level of  
16 appropriation by the Legislature.

**§18-2J-7. Report to the legislative oversight commission on  
education accountability.**

1 The state board and the higher education policy commis-  
2 sion shall report to the legislative oversight commission on  
3 education accountability annually as soon as practical following  
4 the annual adoption and approval of the education technology  
5 strategic plan. Additionally, as soon as practical following the  
6 annual adoption and approval of the education technology  
7 strategic plan, the state board and the higher education policy  
8 commission shall submit copies of the report to the joint  
9 committee on government and finance. The report shall  
10 summarize the expenditures and other related activities under-  
11 taken to achieve the objectives of the plan during the past fiscal  
12 year, all modifications made in the updated education technol-  
13 ogy strategic plan and any other matters considered important  
14 by the state board and the higher education policy commission  
15 to inform the Legislature on the state of education technology  
16 in the public schools and the institutions of higher education.

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## CHAPTER 98

**(Com. Sub. for H. B. 4271 — By Delegates Foster,  
Palumbo, Hatfield and Iaquina)**

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[Passed March 12, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-22b, relating to permitting public and private school students to self-administer asthma medication when certain conditions are met; providing for revocation of permission; limiting liability for injury; providing certain definitions; and providing for state board rule.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-22b, to read as follows:

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

**§18-5-22b. Providing for self-administration of asthma medication; definitions; conditions; indemnity from liability; rules.**

1       (a) For the purposes of this section, the following words  
2       have the meanings specified unless the context clearly indicates  
3       a different meaning:

4       (1) “Medication” means asthma medicine, prescribed by:

5       (A) A physician licensed to practice medicine in all its  
6       branches; or

7 (B) A physician assistant who has been delegated the  
8 authority to prescribe asthma medications by a supervising  
9 physician; or

10 (C) An advanced practice registered nurse who has a  
11 written collaborative agreement with a collaborating physician.  
12 Such agreement shall delegate the authority to prescribe the  
13 medications for a student that pertain to the student's asthma  
14 and that have an individual prescription label.

15 (2) "Self-administration" or "self-administer" means a  
16 student's discretionary use of prescribed asthma medication.

17 (b) A student enrolled in a public, private, parochial or  
18 denominational school located within this state may possess and  
19 self-administer asthma medication subject to the following  
20 conditions:

21 (1) The parents or guardians of the student have provided  
22 to the school:

23 (A) A written authorization for the self-administration of  
24 asthma medication; and

25 (B) A written statement from the physician or advanced  
26 practice registered nurse which contains the name, purpose,  
27 appropriate usage and dosage of the student's medication and  
28 the time or times at which, or the special circumstances under  
29 which, the medication is to be administered;

30 (2) The student has demonstrated the ability and under-  
31 standing to self-administer asthma medication by:

32 (A) Passing an assessment by the school nurse evaluating  
33 the student's technique of self-administration and level of  
34 understanding of the appropriate use of the asthma medication;  
35 or

36 (B) In the case of nonpublic schools that do not have a  
37 school nurse, providing to the school from the student's  
38 physician or advanced practice registered nurse written verifica-  
39 tion that the student has passed such an assessment; and

40 (3) The parents or guardians of the student have acknowl-  
41 edged in writing that they have read and understand a notice  
42 provided by the county board or nonpublic school that:

43 (A) The school, county school board or nonpublic school  
44 and its employees and agents are exempt from any liability,  
45 except for willful and wanton conduct, as a result of any injury  
46 arising from the self-administration of asthma medication by  
47 the student; and

48 (B) The parents or guardians indemnify and hold harmless  
49 the school, the county board of education or nonpublic school  
50 and its employees or guardians and agents against any claims  
51 arising out of the self-administration of the medication by the  
52 student.

53 (c) The information provided to the school pursuant to  
54 subsection (b) of this section shall be kept on file in the office  
55 of the school nurse or, in the absence of a school nurse, in the  
56 office of the school administrator.

57 (d) Permission for a student to self-administer asthma  
58 medication is effective for the school year for which it is  
59 granted and shall be renewed each subsequent school year if the  
60 requirements of this section are met.

61 (e) Permission to self-administer medication may be  
62 revoked if the administrative head of the school finds that the  
63 student's technique of self-administration and understanding of  
64 the use of the asthma medication is not appropriate or is  
65 willfully disregarded.

66 (f) A student with asthma who has met the requirements of  
67 this section may possess and use asthma medication:

68 (1) In school;

69 (2) At a school-sponsored activity;

70 (3) Under the supervision of school personnel; or

71 (4) Before or after normal school activities, such as before  
72 school or after school care on school operated property.

73 (g) The state board shall promulgate rules necessary to  
74 effectuate the provisions of this section in accordance with the  
75 provisions of article three-b, chapter twenty-nine-a of this code.

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## CHAPTER 99

**(H. B. 4737 — By Delegates Romine, Poling, Stemple,  
Williams, Renner, Fragale and Paxton)**

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18-7A-14b of the code of West Virginia, 1931, as amended, relating to providing options for members of teachers retirement to make contributions for periods of temporary total disability.

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

That §18-7A-14b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.****§18-7A-14b. Members' option to make contributions for periods of temporary total disability.**

1 Any member who was absent from work while receiving  
2 temporary total disability benefits pursuant to the provisions of  
3 chapter twenty-three of this code as a result of a compensable  
4 injury received in the course of and as a result of his or her  
5 employment with the covered employer, may purchase credited  
6 service for that time period or those time periods the member  
7 was absent from work as a result of a compensable injury and  
8 receiving temporary total disability benefits: *Provided*, That the  
9 member returned to work with his or her covered employer  
10 within one year following the cessation of temporary total  
11 disability benefits. The member desiring to purchase such  
12 credited service may do so only by lump sum payment from  
13 personal funds within two years of the end of the disability  
14 period for which credit is sought to be purchased: *Provided*,  
15 *however*, That in order to purchase such service credit, the  
16 member shall pay to the board his or her regular contribution  
17 and an equal amount that represents the employer's contribu-  
18 tion, based on the salary the member was receiving immediately  
19 prior to having sustained such compensable injury: *Provided*  
20 *further*, That the member purchasing service credit under the  
21 provisions of this section may not be charged interest. The  
22 maximum number of years of service credit that may be  
23 purchased under this section shall not exceed two: *And provided*  
24 *further*, That each year purchased under this section shall count  
25 as a year of experience for purposes of the increment set forth  
26 in section two or section eight-a, article four, chapter eighteen-a  
27 of this code, as applicable.

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## CHAPTER 100

(Com. Sub. for H. B. 2268 — By Delegates Susman, Poling,  
Perry, Beach, Renner, Hartman and Tabb)

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[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18-7A-38 of the code of West Virginia, 1931, as amended; to amend and reenact §18A-2-3 of said code; and to amend and reenact §18C-4-2 of said code, all relating to the maximum number of days a retired teacher may accept employment; the employment of retired teachers in areas of critical need and shortage; defining area of critical need and shortage; adding conditions for expanding use of retired teachers to provide service as substitute teachers in areas of critical need and shortage; requiring certain vacancies to continue to be posted; providing for future expiration of provisions; providing priority for certain applicants for the Underwood-Smith scholarships; and technical amendments.

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

That §18-7A-38 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §18A-2-3 of said code be amended and reenacted; and that §18C-4-2 of said code be amended and reenacted, all to read as follows:

### Chapter

- 18. Education.
- 18A. School Personnel.
- 18C. Student Loans; Scholarships and State Aid.

## CHAPTER 18. EDUCATION.

### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

**§18-7A-38. Maximum number of days a retired teacher may accept employment; calculating days worked for retirants engaged in substitute teaching.**

1 (a) The Legislature finds that:

2 (1) The consolidated public retirement board has deter-  
3 mined that retired substitute teachers should not perform  
4 substitute teaching without limit;

5 (2) The consolidated public retirement board has estab-  
6 lished, by rule, a maximum number of days in which a retired  
7 teacher may accept employment prior to having his or her  
8 retirement benefit reduced; and

9 (3) There have been inconsistencies in the manner in which  
10 county boards calculate the maximum number of days estab-  
11 lished by rule.

12 (b) The consolidated public retirement board may not set  
13 forth in rule a maximum number of days in which a retired  
14 teacher may accept employment prior to having his or her  
15 retirement benefit reduced that is less than one hundred forty  
16 days.

17 (c) For the purpose of calculating whether a retired substi-  
18 tute teacher has exceeded the maximum number of days in  
19 which a substitute teacher may accept employment without  
20 incurring a reduction in his or her retirement benefit, the  
21 number of days worked shall be determined by:

22 (1) Totaling the number of hours worked; and

23 (2) Dividing by the standard number of hours that a full-  
24 time teacher works per day.

**CHAPTER 18A. SCHOOL PERSONNEL.**



**ARTICLE 2. SCHOOL PERSONNEL.****§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.**

1 (a) The county superintendent, subject to approval of the  
2 county board, may employ and assign substitute teachers to any  
3 of the following duties: (1) To fill the temporary absence of any  
4 teacher or an unexpired school term made vacant by resigna-  
5 tion, death, suspension or dismissal; (2) to fill a teaching  
6 position of a regular teacher on leave of absence; and (3) to  
7 perform the instructional services of any teacher who is  
8 authorized by law to be absent from class without loss of pay,  
9 providing the absence is approved by the board of education in  
10 accordance with the law. The substitute shall be a duly certified  
11 teacher.

12 (b) Notwithstanding any other provision of this code to the  
13 contrary, a substitute teacher who has been assigned as a  
14 classroom teacher in the same classroom continuously for more  
15 than one half of a grading period and whose assignment  
16 remains in effect two weeks prior to the end of the grading  
17 period, shall remain in the assignment until the grading period  
18 has ended, unless the principal of the school certifies that the  
19 regularly employed teacher has communicated with and  
20 assisted the substitute with the preparation of lesson plans and  
21 monitoring student progress or has been approved to return to  
22 work by his or her physician. For the purposes of this section,  
23 teacher and substitute teacher, in the singular or plural, mean  
24 professional educator as defined in section one, article one, of  
25 this chapter.

26 (c)(1) The Legislature hereby finds and declares that due to  
27 a shortage of qualified substitute teachers, a compelling state  
28 interest exists in expanding the use of retired teachers to

29 provide service as substitute teachers in areas of critical need  
30 and shortage. The Legislature further finds that diverse circum-  
31 stances exist among the counties for the expanded use of retired  
32 teachers as substitutes. For the purposes of this subsection,  
33 “area of critical need and shortage” means an area of certifica-  
34 tion and training in which the number of available substitute  
35 teachers in the county who hold certification and training in that  
36 area and who are not retired is insufficient to meet the projected  
37 need for substitute teachers.

38 (2) A person receiving retirement benefits under the  
39 provisions of article seven-a of this chapter or who is entitled to  
40 retirement benefits during the fiscal year in which that person  
41 retired may accept employment as a substitute teacher for an  
42 unlimited number of days each fiscal year without affecting the  
43 monthly retirement benefit to which the retirant is otherwise  
44 entitled if the following conditions are satisfied:

45 (A) The county board adopts a policy recommended by the  
46 superintendent to address areas of critical need and shortage;

47 (B) The policy sets forth the areas of critical need and  
48 shortage in the county in accordance with the definition of area  
49 of critical need and shortage set forth in subdivision (1) of this  
50 subsection;

51 (C) The policy provides for the employment of retired  
52 teachers as substitute teachers during the school year on an  
53 expanded basis in areas of critical need and shortage as pro-  
54 vided in this subsection;

55 (D) The policy provides that a retired teacher may be  
56 employed as a substitute teacher in an area of critical need and  
57 shortage on an expanded basis as provided in this subsection  
58 only when no other teacher who holds certification and training  
59 in the area and who is not retired is available and accepts the  
60 substitute assignment;

61 (E) The policy is effective for one school year only and is  
62 subject to annual renewal by the county board;

63 (F) The state board approves the policy and the use of  
64 retired teachers as substitute teachers on an expanded basis in  
65 areas of critical need and shortage as provided in this subsec-  
66 tion; and

67 (G) Prior to employment of a substitute teacher beyond the  
68 post-retirement employment limitations established by the  
69 consolidated public retirement board, the superintendent of the  
70 affected county submits to the consolidated public retirement  
71 board, in a form approved by the retirement board, an affidavit  
72 signed by the superintendent stating the name of the county, the  
73 fact that the county has adopted a policy to employ retired  
74 teachers as substitutes to address areas of critical need and  
75 shortage and the name or names of the person or persons to be  
76 employed pursuant to the policy.

77 (3) Any person who retires and begins work as a substitute  
78 teacher within the same employment term shall lose those  
79 retirement benefits attributed to the annuity reserve, effective  
80 from the first day of employment as a retiree substitute in that  
81 employment term and ending with the month following the date  
82 the retiree ceases to perform service as a substitute.

83 (4) Retired teachers employed to perform expanded  
84 substitute service pursuant to this subsection are considered  
85 day-to-day, temporary, part-time employees. The substitutes are  
86 not eligible for additional pension or other benefits paid to  
87 regularly employed employees and shall not accrue seniority.

88 (5) When a retired teacher is employed as a substitute to fill  
89 a vacant position, the county board shall continue to post the  
90 vacant position until it is filled with a regularly employed  
91 teacher.

92 (6) Until this subsection is expired pursuant to subdivision  
93 (7) of this subsection, the state board, annually, shall report to  
94 the joint committee on government and finance prior to the first  
95 day of February of each year. Additionally, a copy shall be  
96 provided to the legislative oversight commission on education  
97 accountability. The report shall contain information indicating  
98 the effectiveness of the provisions of this subsection on  
99 expanding the use of retired substitute teachers to address areas  
100 of critical need and shortage.

101 (7) The provisions of this subsection shall expire on the  
102 thirtieth day of June, two thousand six.

103 (d)(1) Notwithstanding any other provision of this code to  
104 the contrary, each year a county superintendent may employ  
105 prospective employable professional personnel on a reserve list  
106 at the county level subject to the following conditions:

107 (A) The county board adopts a policy to address areas of  
108 critical need and shortage as identified by the state board. The  
109 policy shall include authorization to employ prospective  
110 employable professional personnel;

111 (B) The county board posts a notice of the areas of critical  
112 need and shortage in the county in a conspicuous place in each  
113 school for at least ten working days; and

114 (C) There are not any potentially qualified applicants  
115 available and willing to fill the position.

116 (2) Prospective employable professional personnel may  
117 only be employed from candidates at a job fair who have or will  
118 graduate from college in the current school year or whose  
119 employment contract with a county board has or will be  
120 terminated due to a reduction in force in the current fiscal year.

121 (3) Prospective employable professional personnel em-  
122 ployed are limited to three full-time prospective employable

123 professional personnel per one hundred professional personnel  
124 employed in a county or twenty-five full-time prospective  
125 employable professional personnel in a county, whichever is  
126 less.

127 (4) Prospective employable professional personnel shall be  
128 granted benefits at a cost to the county board and as a condition  
129 of the employment contract as approved by the county board.

130 (5) Regular employment status for prospective employable  
131 professional personnel may be obtained only in accordance with  
132 the provisions of section seven-a, article four of this chapter.

133 (e) The state board annually shall review the status of  
134 employing personnel under the provisions of subsection (d) of  
135 this section and annually shall report to the legislative oversight  
136 commission on education accountability on or before the first  
137 day of November of each year. The report shall include, but not  
138 be limited to, the following:

139 (A) The counties that participated in the program;

140 (B) The number of personnel hired;

141 (C) The teaching fields in which personnel were hired;

142 (D) The venue from which personnel were employed;

143 (E) The place of residency of the individual hired; and

144 (F) The state board's recommendations on the prospective  
145 employable professional personnel program.

## **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

### **ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PRO- GRAM.**

#### **§18C-4-2. Selection criteria and procedures.**

1 (a) The governor shall designate an existing scholarship  
2 selection agency or panel to select the recipients of Under-  
3 wood-Smith teacher scholarships who meet the eligibility  
4 criteria set forth in subsection (b) of this section. If no such  
5 agency or panel exists, the governor shall appoint a scholarship  
6 selection panel for this purpose which shall consist of seven  
7 persons representative of public school administrators, teachers,  
8 including preschool teachers, and parents.

9 (b) Eligibility for an Underwood-Smith teacher scholarship  
10 award shall be limited to West Virginia resident students who:

11 (1) Have graduated or are graduating from high school and  
12 rank in the top ten percent of their graduating class or the top  
13 ten percent statewide of those West Virginia students taking the  
14 American college test;

15 (2) Have a cumulative grade point average of at least three  
16 and twenty-five one hundredths on a possible scale of four after  
17 successfully completing two years of course work at an  
18 approved institution of higher education;

19 (3) Are public school aides or paraprofessionals as defined  
20 in section eight, article four, chapter eighteen-a of this code and  
21 who have a cumulative grade point average of at least three and  
22 twenty-five one hundredths on a possible scale of four after  
23 successfully completing two years of course work at an  
24 approved institution of higher education; or

25 (4) Are graduate students at the master's degree level who  
26 have graduated or are graduating in the top ten percent of their  
27 college graduating class.

28 (c) In accordance with the rules of the commission, the vice  
29 chancellor for administration shall develop criteria and proce-  
30 dures for the selection of scholarship recipients that reflect the  
31 purposes of this article and the areas in which particular efforts

32 will be made in the selection of scholars as set forth in section  
33 one of this article and which also may include, but not be  
34 limited to, the grade point average of the applicant, involvement  
35 in extracurricular activities, financial need, current academic  
36 standing and an expression of interest in teaching as expressed  
37 in an essay written by the applicant. Such criteria and proce-  
38 dures further may require the applicant to furnish letters of  
39 recommendation from teachers and others. It is the intent of the  
40 Legislature that academic abilities be the primary criteria for  
41 selecting scholarship recipients: *Provided*, That the qualified  
42 applicants with the highest academic abilities who intend to  
43 pursue teaching careers in areas of critical need and shortage as  
44 determined by the state board of education shall be given  
45 priority.

46 (d) In developing the selection criteria and procedures to be  
47 used by the panel, the vice chancellor for administration shall  
48 solicit the views of public and private education agencies and  
49 institutions and other interested parties. These views: (1) Shall  
50 be solicited by means of written and published selection criteria  
51 and procedures in final form for implementation; and (2) may  
52 be solicited by means of public hearings on the present and  
53 projected teacher needs of the state or any other methods the  
54 vice chancellor for administration may determine to be appro-  
55 priate to gather the information.

56 (e) The vice chancellor for administration shall make  
57 application forms for Underwood-Smith teacher scholarships  
58 available to public and private high schools in the state and in  
59 other locations convenient to applicants, parents and others, and  
60 shall make an effort to attract students from low-income  
61 backgrounds, ethnic or racial minority students, students with  
62 disabilities, and women or minority students who show interest  
63 in pursuing teaching careers in mathematics and science and  
64 who are underrepresented in those fields.

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## CHAPTER 101

(H. B. 4478 — By Delegates Kuhn, Renner, Canterbury,  
Beach, Tabb, Poling and Hamilton)

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[Passed March 11, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend and reenact §18-9-3a of the code of West Virginia, 1931, as amended, relating to lengthening the time period within which county boards are required to publish a year-end financial statement; and increasing the threshold dollar amount paid to persons, firms and corporations that must be revealed in the statement.

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

That §18-9-3a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. SCHOOL FINANCES.**

**§18-9-3a. Preparation, publication and disposition of financial statements by county boards of education.**

1       The county board of every county, within ninety days after  
2 the beginning of each fiscal year, shall prepare on a form to be  
3 prescribed by the state tax commissioner and the state superin-  
4 tendent of free schools, and cause to be published a statement  
5 revealing: (a) The receipts and expenditures of the board during  
6 the previous fiscal year arranged under descriptive headings; (b)  
7 the name of each firm, corporation, and person who received  
8 more than two hundred fifty dollars in the aggregate from all  
9 funds during the previous fiscal year, together with the aggre-  
10 gate amount received from all funds and the purpose for which



11 paid: *Provided*, That such statement shall not include the name  
12 of any person who has entered into a contract with this board  
13 pursuant to the provisions of sections two, three, four and five,  
14 article two, chapter eighteen-a of this code; and (c) all debts of  
15 the board, the purpose for which each debt was contracted, its  
16 due date, and to what date the interest thereon has been paid.  
17 Such statement shall be published as a Class I-0 legal advertise-  
18 ment in compliance with the provisions of article three, chapter  
19 fifty-nine of this code, and the publication area for such  
20 publication shall be the county. The county board shall pay the  
21 cost of publishing such statement from the maintenance fund of  
22 the board.

23 As soon as is practicable following the close of the fiscal  
24 year, a copy of the published statement herein required shall be  
25 filed by the county board with the state tax commissioner and  
26 with the state superintendent of free schools.

27 The county board shall transmit to any resident of the  
28 county requesting the same a copy of the published statement  
29 for the fiscal year designated, supplemented by a list of the  
30 names of all school personnel employed by the board during  
31 such fiscal year showing the amount paid to each, and a list of  
32 the names of each firm, corporation, and person who received  
33 less than five hundred dollars from any fund during such fiscal  
34 year showing the amount paid to each and the purpose for  
35 which paid.

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## CHAPTER 102

**(H. B. 4601 — By Delegates Mezzatesta, Williams, Tabb,  
Renner, Swartzmiller, Kuhn and Hartman)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18-9A-7 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code, all relating to public education; suspending basic foundation allocation for bus replacement and providing allocation for academic trips for one school year; school building authority; redefining certain terms; correcting references; allowing expenditure of certain moneys for vocational programs at comprehensive high schools and vocational schools cooperating with community and technical college programs; encouraging cooperation relating to vocational technical facilities; authorizing appropriation of up to certain amount of school construction funds for budget purposes for next school year only; providing that excess lottery revenues not be transferred to school construction fund for the next school year only, with funds made available for legislative appropriation; project submission and evaluation; requiring facilities plan as condition of receiving funds; providing for certain guidelines and procedures by authority for plans, plan modifications and evaluating projects; clarifying that certain revenues can only be expended on projects authorized in accordance with the guidelines and procedures section; and providing for certified list of projects to joint committee.

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

That §18-9A-7 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code be amended and reenacted, all to read as follows:

**Article**

**9A. Public School Support.**

**9D. School Building Authority.**

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

**§18-9A-7. Foundation allowance for transportation cost.**

1       The allowance in the foundation school program for each  
 2       county for transportation shall be the sum of the following  
 3       computations:

4       (1) Eighty-five percent of the transportation cost within  
5 each high-density county and ninety percent of the transporta-  
6 tion cost within each low-density county for maintenance,  
7 operation and related costs, exclusive of all salaries: *Provided,*  
8 That for any county that uses an alternative fuel such as  
9 compressed natural gas or other acceptable alternative fuel for  
10 the operation of all or any portion of its school bus system, the  
11 allowance in the foundation school program for the county for  
12 that portion of its school bus system shall be ninety-five percent  
13 of the transportation cost for maintenance, operation and related  
14 costs, exclusive of all salaries, incurred by the use of the  
15 alternatively fueled school buses: *Provided, however,* That any  
16 county using an alternative fuel and qualifying for the addi-  
17 tional allowance shall submit a plan regarding the intended  
18 future use of alternatively fueled school buses;

19       (2) The total cost, within each county, of insurance premi-  
20 ums on buses, buildings and equipment used in transportation:  
21 *Provided,* That the premiums were procured through competi-  
22 tive bidding;

23       (3) An amount equal to eight and one-third percent of the  
24 current replacement value of the bus fleet within each county as  
25 determined by the state board. The amount shall only be used  
26 for the replacement of buses. Buses purchased after the first day  
27 of July, one thousand nine hundred ninety-nine, that are driven  
28 one hundred eighty thousand miles, regardless of year model,  
29 will be subject to the replacement value of eight and one-third  
30 percent as determined by the state board: *Provided,* That for the  
31 school year beginning on the first day of July, two thousand  
32 four, only, the allowance in the foundation school program for  
33 each county for transportation shall not include an amount for  
34 the replacement of buses. In addition, in any school year in  
35 which its net enrollment increases when compared to the net  
36 enrollment the year immediately preceding, a school district  
37 may apply to the state superintendent for funding for an  
38 additional bus. The state superintendent shall make a decision

39 regarding each application based upon an analysis of the  
40 individual school district's net enrollment history and transpor-  
41 tation needs: *Provided, however,* That the superintendent shall  
42 not consider any application which fails to document that the  
43 county has applied for federal funding for additional buses. If  
44 the state superintendent finds that a need exists, a request for  
45 funding shall be included in the budget request submitted by the  
46 state board for the upcoming fiscal year;

47 (4) Eighty-five percent of the cost of contracted transporta-  
48 tion services and public utility transportation within each high-  
49 density county and ninety percent of the cost of contracted  
50 transportation services and public utility transportation within  
51 each low-density county;

52 (5) Aid in lieu of transportation equal to the state average  
53 amount per pupil for each pupil receiving the aid within each  
54 county; and

55 (6) Ninety-five percent of the transportation cost for  
56 maintenance, operation and related costs, exclusive of all  
57 salaries, for transporting students to and from classes at a  
58 multicounty vocational center.

59 The total state share for this purpose shall be the sum of the  
60 county shares: *Provided,* That no county shall receive an  
61 allowance which is greater than one-third above the computed  
62 state average allowance per transportation mile multiplied by  
63 the total transportation mileage in the county: *Provided,*  
64 *however,* That one half of one percent of the transportation  
65 allowance distributed to each county shall be for the purpose of  
66 trips related to academic classroom curriculum and not related  
67 to any extracurricular activity: *Provided further,* That for the  
68 school year beginning on the first day of July, two thousand  
69 four, only the transportation allowance of each county shall  
70 include an allocation for the purpose of trips related to aca-  
71 demic classroom curriculum and not related to any extracurric-

72 ular activity. The allocation shall equal the amount distributed  
 73 to the county for this purpose in the school year beginning on  
 74 the first day of July, two thousand three: *And provided further,*  
 75 That any remaining funds credited to a county for the purpose  
 76 of trips related to academic classroom curriculum during the  
 77 fiscal year shall be carried over for use in the same manner the  
 78 next fiscal year and shall be separate and apart from, and in  
 79 addition to, the appropriation for the next fiscal year: *And*  
 80 *provided further,* That the state board may request a county to  
 81 document the use of funds for trips related to academic class-  
 82 room curriculum if the board determines that it is necessary.

#### **ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

§18-9D-2. Definitions.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation; etc.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

#### **§18-9D-2. Definitions.**

1 The following terms, wherever used or referred to in this  
 2 article, have the following meanings unless a different meaning  
 3 clearly appears from the context:

4 (1) "Authority" means the school building authority of  
 5 West Virginia or, if the authority is abolished, any board or

6 officer succeeding to the principal functions of the school  
7 building authority or to whom the powers given to the authority  
8 are given by law;

9 (2) "Bonds" means bonds issued by the authority pursuant  
10 to this article;

11 (3) "Construction project" means a project in the further-  
12 ance of a facilities plan with a cost of the project greater than  
13 five hundred thousand dollars for the new construction,  
14 expansion or major renovation of facilities, buildings and  
15 structures for school purposes, including the acquisition of land  
16 for current or future use in connection with the construction  
17 project, as well as new or substantial upgrading of existing  
18 equipment, machinery, furnishings, installation of utilities and  
19 other similar items convenient in connection with placing the  
20 construction project into operation: *Provided*, That a construc-  
21 tion project may not include such items as books, computers or  
22 equipment used for instructional purposes, fuel, supplies,  
23 routine utility services fees, routine maintenance costs, ordinary  
24 course of business improvements and other items which are  
25 customarily considered to result in a current or ordinary course  
26 of business operating charge: *Provided, however*, That a  
27 construction project may not include a major improvement  
28 project;

29 (4) "Cost of project" means the cost of construction,  
30 expansion, renovation, repair and safety upgrading of facilities,  
31 buildings and structures for school purposes; the cost of land,  
32 equipment, machinery, furnishings, installation of utilities and  
33 other similar items convenient in connection with placing the  
34 project into operation; and the cost of financing, interest during  
35 construction, professional service fees and all other charges or  
36 expenses necessary, appurtenant or incidental to the foregoing,  
37 including the cost of administration of this article;

38       (5) “Facilities plan” means a ten-year countywide compre-  
39 hensive educational facilities plan established by the county  
40 board in accordance with guidelines adopted by the authority to  
41 meet the goals and objectives of this article that: (i) Addresses  
42 the existing school facilities and facility needs of the county to  
43 provide a thorough and efficient education in accordance with  
44 the provisions of this code and policies of the state board; (ii)  
45 best serves the needs of the individual student, the general  
46 school population and the communities served by the facilities;  
47 (iii) includes a school major improvement plan as defined in  
48 this section; (iv) is updated annually to reflect projects com-  
49 pleted, current enrollment projections and new or continuing  
50 needs; and (v) is approved by the state board and the authority  
51 prior to the distribution of state funds pursuant to this article to  
52 any county board or other entity applying for funds;

53       (6) “Project” means a construction project or a major  
54 improvement project;

55       (7) “Region” means the area encompassed within and  
56 serviced by a regional educational service agency established  
57 pursuant to section twenty-six, article two of this chapter;

58       (8) “Revenue” or “revenues” means moneys deposited in  
59 the school building capital improvements fund pursuant to the  
60 operation of section ten, article nine-a of this chapter; moneys  
61 deposited in the school construction fund pursuant to the  
62 operation of section thirty, article fifteen, chapter eleven of this  
63 code and pursuant to the operation of section eighteen, article  
64 twenty-two, chapter twenty-nine of this code; moneys deposited  
65 in the school building debt service fund pursuant to section  
66 eighteen, article twenty-two, chapter twenty-nine of this code;  
67 moneys deposited in the school major improvement fund  
68 pursuant to the operation of section thirty, article fifteen,  
69 chapter eleven of this code; any moneys received, directly or  
70 indirectly, from any source for use in any project completed

71 pursuant to this article; and any other moneys received by the  
72 authority for the purposes of this article;

73 (9) "School major improvement plan" means a ten-year  
74 school maintenance plan that: (i) Is prepared by a county board  
75 of education in accordance with the guidelines established by  
76 the authority and incorporated in its countywide comprehensive  
77 educational facilities plan or is prepared by the state board of  
78 education or the administrative council of an area vocational  
79 educational center in accordance with the guidelines if the  
80 entities seek funding from the authority for a major improve-  
81 ment project; (ii) addresses the regularly scheduled mainte-  
82 nance for all school facilities of the county or under the  
83 jurisdiction of the entity seeking funding; (iii) includes a  
84 projected repair and replacement schedule for all school  
85 facilities of the county or of entity seeking funding; (iv)  
86 addresses the major improvement needs of each school within  
87 the county or under the jurisdiction of the entity seeking  
88 funding; and (v) is required prior to the distribution of state  
89 funds for a major improvement project pursuant to this article  
90 to the county board, state board or administrative council; and

91 (10) "School major improvement project" means a project  
92 with a cost greater than fifty thousand dollars and less than five  
93 hundred thousand dollars for the renovation, expansion, repair  
94 and safety upgrading of existing school facilities, buildings and  
95 structures, including the substantial repair or upgrading of  
96 equipment, machinery, building systems, utilities and other  
97 similar items convenient in connection with such renovation,  
98 repair or upgrading in the furtherance of a school major  
99 improvement plan: *Provided*, That a major improvement project  
100 may not include such items as books, computers or equipment  
101 used for instructional purposes, fuel, supplies, routine utility  
102 services fees, routine maintenance costs, ordinary course of  
103 business improvements and other items which are customarily



104 considered to result in a current or ordinary course of business  
105 operating charge.

**§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.**

1 (a) There is continued in the state treasury a school building  
2 capital improvements fund to be expended by the authority as  
3 provided in this article. The school building capital improve-  
4 ments fund shall be an interest-bearing account with interest  
5 credited to and deposited in the school building capital im-  
6 provements fund and expended in accordance with the provi-  
7 sions of this article.

8 The school building authority may pledge all or any part of  
9 the revenues paid into the school building capital improvements  
10 fund that are needed to meet the requirements of any revenue  
11 bond issue or issues authorized by this article prior to the  
12 twentieth day of July, one thousand nine hundred ninety-three,  
13 or revenue bonds issued to refund revenue bonds issued prior to  
14 that date, including the payment of principal of, interest and  
15 redemption premium, if any, on the revenue bonds and the  
16 establishing and maintaining of a reserve fund or funds for the  
17 payment of the principal of, interest and redemption premium,  
18 if any, on the revenue bond issue or issues when other moneys  
19 pledged may be insufficient for the payment of the principal,  
20 interest and redemption premium, including any additional  
21 protective pledge of revenues that the authority in its discretion  
22 has provided by resolution authorizing the issuance of the  
23 bonds or in any trust agreement made in connection with the  
24 bond issue. Additionally, the authority may provide in the

25 resolution and in the trust agreement for priorities on the  
26 revenues paid into the school building capital improvements  
27 fund that are necessary for the protection of the prior rights of  
28 the holders of bonds issued at different times under the provi-  
29 sions of this article.

30 Any balance remaining in the school building capital  
31 improvements fund after the authority has issued bonds  
32 authorized by this article and after the requirements of all funds,  
33 including reserve funds established in connection with the  
34 bonds issued prior to the twentieth day of July, one thousand  
35 nine hundred ninety-three, pursuant to this article have been  
36 satisfied may be used for the redemption of any of the outstand-  
37 ing bonds issued under this article which by their terms are then  
38 redeemable, or for the purchase of the bonds at the market  
39 price, but not exceeding the price, if any, at which the bonds are  
40 in the same year redeemable and all bonds redeemed or  
41 purchased shall immediately be canceled and shall not again be  
42 issued.

43 The school building authority, in its discretion, may use the  
44 moneys in the school building capital improvements fund to  
45 finance the cost of projects authorized in accordance with the  
46 provisions of section sixteen of this article on a cash basis. Any  
47 pledge of moneys in the fund for revenue bonds issued prior to  
48 the twentieth day of July, one thousand nine hundred  
49 ninety-three, is a prior and superior charge on the fund over the  
50 use of any of the moneys in the fund to pay for the cost of any  
51 project on a cash basis: *Provided*, That any expenditures from  
52 the fund, other than for the retirement of revenue bonds, may  
53 only be made by the authority in accordance with the provisions  
54 of this article.

55 (b) There is continued in the state treasury a special revenue  
56 fund named the school building debt service fund into which  
57 shall be deposited the amounts specified in section eighteen,

58 article twenty-two, chapter twenty-nine of this code. All  
59 amounts deposited in the fund shall be pledged to the repay-  
60 ment of the principal, interest and redemption premium, if any,  
61 on any revenue bonds or refunding revenue bonds authorized by  
62 this article: *Provided*, That deposited moneys may not be  
63 pledged to the repayment of any revenue bonds issued prior to  
64 the first day of January, one thousand nine hundred ninety-four,  
65 or with respect to revenue bonds issued for the purpose of  
66 refunding revenue bonds issued prior to the first day of January,  
67 one thousand nine hundred ninety-four. Additionally, the  
68 authority may provide in the resolution and in the trust agree-  
69 ment for priorities on the revenues paid into the school building  
70 debt service fund that are necessary for the protection of the  
71 prior rights of the holders of bonds issued at different times  
72 under the provisions of this article. On or prior to the first day  
73 of May of each year, the authority shall certify to the state  
74 lottery director the principal and interest and coverage ratio  
75 requirements for the following fiscal year on any revenue bonds  
76 issued on or after the first day of January, one thousand nine  
77 hundred ninety-four, and for which moneys deposited in the  
78 school building debt service fund have been pledged, or will be  
79 pledged, for repayment pursuant to this section.

80 After the authority has issued bonds authorized by this  
81 article and after the requirements of all funds have been  
82 satisfied, including coverage and reserve funds established in  
83 connection with the bonds issued pursuant to this article, any  
84 balance remaining in the school building debt service fund may  
85 be used for the redemption of any of the outstanding bonds  
86 issued under this article which, by their terms, are then redeem-  
87 able or for the purchase of the outstanding bonds at the market  
88 price, but not to exceed the price, if any, at which the bonds are  
89 redeemable and all bonds redeemed or purchased shall be  
90 immediately canceled and shall not again be issued: *Provided*,  
91 That after the authority has issued bonds authorized by this  
92 article and after the requirements of debt service and all

93 associated funds have been satisfied for the fiscal year, includ-  
94 ing coverage and reserve funds established in connection with  
95 the bonds issued pursuant to this article, any remaining balance  
96 in the school building debt service fund may be transferred to  
97 the school construction fund created in subsection (c) of this  
98 section and used by the school building authority in its discre-  
99 tion to finance the cost of school construction or improvement  
100 projects authorized in accordance with the provisions of section  
101 sixteen of this article on a cash basis.

102 (c) There is continued in the state treasury a special revenue  
103 fund named the school construction fund into which shall be  
104 deposited the amounts specified in section thirty, article fifteen,  
105 chapter eleven of this code and section eighteen-a, article  
106 twenty-two, chapter twenty-nine of this code, together with any  
107 moneys appropriated to the fund by the Legislature: *Provided,*  
108 That for the school year beginning the first day of July, two  
109 thousand and four, only, funds from the excess lottery allocated  
110 in section eighteen-a, article twenty-two, chapter twenty-nine  
111 of this code shall not be transferred to the school construction  
112 fund and, in lieu thereof, made available for legislative appro-  
113 priation: *Provided, however,* That for the school year beginning  
114 the first day of July, two thousand and four, only, up to five  
115 million dollars of the amounts in the fund may be appropriated  
116 by the Legislature for budget shortfalls. Expenditures from the  
117 school construction fund shall be for the purposes set forth in  
118 this article, including lease-purchase payments under agree-  
119 ments made pursuant to subsection (e), section fifteen of this  
120 article and section nine, article five of this chapter and are  
121 authorized from collections in accordance with the provisions  
122 of article three, chapter twelve of this code and from other  
123 revenues annually appropriated by the Legislature from lottery  
124 revenues as authorized by section eighteen, article twenty-two,  
125 chapter twenty-nine of this code pursuant to the provisions set  
126 forth in article two, chapter five-a of this code. Amounts  
127 collected which are found, from time to time, to exceed the

128 funds needed for purposes set forth in this article may be  
129 transferred to other accounts or funds and redesignated for other  
130 purposes by appropriation of the Legislature. The school  
131 construction fund shall be an interest-bearing account, with the  
132 interest credited to and deposited in the school construction  
133 fund and expended in accordance with the provisions of this  
134 article. Deposits to and expenditures from the school construc-  
135 tion fund are subject to the provisions of subsection (k), section  
136 fifteen of this article.

137       (d) There is continued in the state treasury a special revenue  
138 fund named the school major improvement fund into which  
139 shall be deposited the amounts specified in section thirty, article  
140 fifteen, chapter eleven of this code, together with any moneys  
141 appropriated to the fund by the Legislature. Expenditures from  
142 the school major improvement fund shall be for the purposes set  
143 forth in this article and are authorized from collections in  
144 accordance with the provisions of article three, chapter twelve  
145 of this code and from other revenues annually appropriated by  
146 the Legislature from lottery revenues as authorized by section  
147 eighteen, article twenty-two, chapter twenty-nine of this code  
148 pursuant to the provisions set forth in article two, chapter five-a  
149 of this code. Amounts collected which are found, from time to  
150 time, to exceed the funds needed for purposes set forth in this  
151 article may be transferred to other accounts or funds and  
152 redesignated for other purposes by appropriation of the Legisla-  
153 ture. The school major improvement fund shall be an interest-  
154 bearing account, with interest being credited to and deposited  
155 in the school major improvement fund and expended in  
156 accordance with the provisions of this article.

157       (e) The Legislature finds and declares that the Supreme  
158 Court of Appeals of West Virginia has held that the issuance of  
159 additional revenue bonds authorized under the school building  
160 authority act, as enacted in this article prior to the twentieth day  
161 of July, one thousand nine hundred ninety-three, constituted an

162 indebtedness of the state in violation of section four, article X  
163 of the Constitution of West Virginia, but that revenue bonds  
164 issued under this article prior to the twentieth day of July, one  
165 thousand nine hundred ninety-three, are not invalid. The  
166 Legislature further finds and declares that the financial capacity  
167 of a county to construct, lease and improve school facilities  
168 depends upon the county's bonding capacity (local property  
169 wealth), voter willingness to pass bond issues and the county's  
170 ability to reallocate other available county funds instead of  
171 criteria related to educational needs or upon the ability of the  
172 school building authority created in this article to issue bonds  
173 that comply with the holding of the West Virginia Supreme  
174 Court of Appeals or otherwise assist counties with the financing  
175 of facilities construction and improvement. The Legislature  
176 further finds and declares that this section, as well as section  
177 eighteen, article twenty-two, chapter twenty-nine of this code,  
178 have been reenacted during the first extraordinary session of the  
179 West Virginia Legislature in the year one thousand nine  
180 hundred ninety-four in an attempt to comply with the holding  
181 of the Supreme Court of Appeals of West Virginia.

182       The Legislature further finds and declares that it intends,  
183 through the reenactment of this section and section eighteen,  
184 article twenty-two, chapter twenty-nine of this code, to dedicate  
185 a source of state revenues to special revenue funds for the  
186 purposes of paying the debt service on bonds and refunding  
187 bonds issued subsequent to the first day of January, one  
188 thousand nine hundred ninety-four, the proceeds of which will  
189 be used for the construction and improvement of school  
190 building facilities. The Legislature further finds and declares  
191 that it intends, through the reenactment of this section and  
192 section thirty, article fifteen, chapter eleven of this code and  
193 section eighteen, article twenty-two, chapter twenty-nine of this  
194 code, to appropriate revenues to two special revenue funds for  
195 the purposes of construction and improvement of school  
196 building facilities. Furthermore, the Legislature intends to

197 encourage county boards to maintain existing levels of county  
198 funding for construction, improvement and maintenance of  
199 school building facilities and to generate additional county  
200 funds for those purposes through bonds and special levies  
201 whenever possible. The Legislature further encourages the  
202 school building authority, the state board and county boards of  
203 education to propose uniform project specifications for compa-  
204 rable projects whenever possible to meet county needs at the  
205 lowest possible cost.

206 The Legislature further finds and declares that it intends,  
207 through the reenactment of this section and section eighteen,  
208 article twenty-two, chapter twenty-nine of this code, to comply  
209 with the provisions of sections four and six, article X of the  
210 Constitution of West Virginia; and section one, article XII of  
211 said Constitution.

**§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.**

1 (a) The maximum aggregate face value of bonds that may  
2 be issued by the authority, for which the moneys in the school  
3 building debt service fund are to be pledged, is four hundred  
4 million dollars. The issuance of revenue bonds under the  
5 provisions of this article shall be authorized, from time to time,  
6 by resolution or resolutions of the school building authority  
7 which shall set forth the proposed projects authorized in  
8 accordance with the provisions of section sixteen of this article  
9 and provide for the issuance of bonds in amounts sufficient,  
10 when sold as provided in this section, to provide moneys  
11 considered sufficient by the authority to pay the costs, less the  
12 amounts of any other funds available for the costs or from any  
13 appropriation, grant or gift for the costs: *Provided*, That bond  
14 issues from which bond revenues are to be distributed in  
15 accordance with section fifteen of this article for projects  
16 authorized pursuant to the provisions of section sixteen of this  
17 article are not required to set forth the proposed projects in the

18 resolution. The resolution shall prescribe the rights and duties  
19 of the bondholders and the school building authority and, for  
20 that purpose, may prescribe the form of the trust agreement  
21 referred to in this section. The bonds may be issued, from time  
22 to time, in such amounts; shall be of such series; bear such date  
23 or dates; mature at such time or times not exceeding forty years  
24 from their respective dates; bear interest at such rate or rates; be  
25 in such denominations; be in such form, either coupon or  
26 registered, carrying such registration, exchangeability and  
27 interchangeability privileges; be payable in such medium of  
28 payment and at such place or places within or without the state;  
29 be subject to such terms of redemption at such prices not  
30 exceeding one hundred five percent of the principal amount of  
31 the bonds; and be entitled to such priorities on the revenues  
32 paid into the fund pledged for repayment of the bonds as may  
33 be provided in the resolution authorizing the issuance of the  
34 bonds or in any trust agreement made in connection with the  
35 bonds: *Provided, however,* That revenue bonds issued on or  
36 after the first day of January, one thousand nine hundred ninety-  
37 four, which are secured by lottery proceeds shall mature at such  
38 time or times not exceeding ten years from their respective  
39 dates.

40 (b) The bonds shall be signed by the governor, and by the  
41 president or vice president of the authority, under the great seal  
42 of the state, attested by the secretary of state, and the coupons  
43 attached to the bonds shall bear the facsimile signature of the  
44 president or vice president of the authority. In case any of the  
45 officers whose signatures appear on the bonds or coupons cease  
46 to be officers before the delivery of the bonds, the signatures  
47 shall nevertheless be valid and sufficient for all purposes the  
48 same as if the officers had remained in office until the delivery.  
49 The revenue bonds shall be sold in the manner determined by  
50 the authority to be for the best interests of the state.



51 (c) Any pledge of revenues made by the school building  
52 authority for revenue bonds issued prior to the twentieth day of  
53 July, one thousand nine hundred ninety-three, pursuant to this  
54 article is valid and binding between the parties from the time  
55 the pledge is made; and the revenues pledged shall immediately  
56 be subject to the lien of the pledge without any further physical  
57 delivery of the revenues pledged or further act. The lien of the  
58 pledge is valid and binding against all parties having claims of  
59 any kind in tort, contract or otherwise, irrespective of whether  
60 the parties have notice of the lien of the pledge, and the pledge  
61 shall be a prior and superior charge over any other use of the  
62 revenues pledged.

63 (d) The proceeds of any bonds shall be used solely for the  
64 purpose or purposes as may be generally or specifically set  
65 forth in the resolution authorizing those bonds and shall be  
66 disbursed in the manner and with the restrictions, if any, that  
67 the authority provides in the resolution authorizing the issuance  
68 of the bonds or in the trust agreement referred to in this section  
69 securing the bonds. If the proceeds of the bonds, by error in  
70 calculations or otherwise, are less than the cost of any projects  
71 specifically set forth in the resolution, additional bonds may in  
72 like manner be issued to provide the amount of the deficiency;  
73 and unless otherwise provided for in the resolution or trust  
74 agreement hereinafter mentioned, the additional bonds shall be  
75 considered to be of the same issue and are entitled to payment  
76 from the same fund, without preference or priority, as the bonds  
77 before issued for the projects. If the proceeds of bonds issued  
78 for the projects specifically set forth in the resolution authoriz-  
79 ing the bonds issued by the authority exceed the cost of the  
80 bonds, the surplus may be used for any other projects autho-  
81 rized in accordance with the provisions of section sixteen of this  
82 article or in any other manner that the resolution authorizing the  
83 bonds provides. Prior to the preparation of definitive bonds, the  
84 authority may, under like restrictions, issue temporary bonds

85 with or without coupons, exchangeable for definitive bonds  
86 upon the issuance of the definitive bonds.

87 (e) After the issuance of any of revenue bonds, the revenues  
88 pledged for the revenue bonds shall not be reduced as long as  
89 any of the revenue bonds are outstanding and unpaid except  
90 under the terms, provisions and conditions that are contained in  
91 the resolution, trust agreement or other proceedings under  
92 which the revenue bonds were issued.

93 (f) The revenue bonds and the revenue refunding bonds and  
94 bonds issued for combined purposes, together with the interest  
95 on the bonds, are exempt from all taxation by the state of West  
96 Virginia, or by any county, school district, municipality or  
97 political subdivision thereof.

98 (g) To meet the operational costs of the school building  
99 authority, the school building authority may transfer to a special  
100 revenue account in the state treasury interest on any debt  
101 service reserve funds created within any resolution authorizing  
102 the issue of bonds or any trust agreement made in connection  
103 with the bonds for expenditure in accordance with legislative  
104 appropriation or allocation of appropriation.

105 (h) Any school construction bonds issued under this section  
106 shall be issued on parity with any existing school building  
107 authority bonds previously issued under this article.

**§18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation; etc.**

1 (a) It is the intent of the Legislature to empower the school  
2 building authority to facilitate and provide state funds and to  
3 administer all federal funds provided for the construction and  
4 major improvement of school facilities so as to meet the  
5 educational needs of the people of this state in an efficient and  
6 economical manner. The authority shall make funding determi-  
7 nations in accordance with the provisions of this article and  
8 shall assess existing school facilities and each facility's school  
9 major improvement plan in relation to the needs of the individ-  
10 ual student, the general school population, the communities  
11 served by the facilities and facility needs statewide.

12 (b) An amount that is no more than three percent of the sum  
13 of moneys that are determined by the authority to be available  
14 for distribution during the then current fiscal year from: (1)  
15 Moneys paid into the school building capital improvements  
16 fund pursuant to section ten, article nine-a of this chapter; (2)  
17 the issuance of revenue bonds for which moneys in the school  
18 building debt service fund are pledged as security; (3) moneys  
19 paid into the school construction fund pursuant to section six of  
20 this article; and (4) any other moneys received by the authority,  
21 except moneys paid into the school major improvement fund  
22 pursuant to section six of this article, may be allocated and may  
23 be expended by the authority for projects authorized in accor-  
24 dance with the provisions of section sixteen of this article that  
25 service the educational community statewide or, upon applica-  
26 tion by the state board, for educational programs that are under  
27 the jurisdiction of the state board. In addition, upon application  
28 by the state board or the administrative council of an area  
29 vocational educational center established pursuant to article  
30 two-b of this chapter, the authority may allocate and expend  
31 under this subsection moneys for school major improvement  
32 projects authorized in accordance with the provisions of section  
33 sixteen of this article proposed by the state board or an adminis-  
34 trative council for school facilities under the direct supervision  
35 of the state board or an administrative council, respectively.

36 Furthermore, upon application by a county board, the authority  
37 may allocate and expend under this subsection moneys for  
38 school major improvement projects for vocational programs at  
39 comprehensive high schools, vocational schools cooperating  
40 with community and technical college programs, or both. Each  
41 county board is encouraged to cooperate with community and  
42 technical colleges in the use of existing or development of new  
43 vocational technical facilities. All projects eligible for funds  
44 from this subsection shall be submitted directly to the authority  
45 which shall be solely responsible for the project's evaluation:  
46 *Provided*, That the authority may not expend any moneys for a  
47 school major improvement project proposed by the state board  
48 or the administrative council of an area vocational educational  
49 center unless the state board or an administrative council has  
50 submitted a ten-year facilities plan: *Provided, however*, That the  
51 authority shall, before allocating any moneys to the state board  
52 or the administrative council of an area vocational educational  
53 center for a school improvement project, consider all other  
54 funding sources available for the project.

55 (c) An amount that is no more than two percent of the  
56 moneys that are determined by the authority to be available for  
57 distribution during the current fiscal year from: (1) Moneys  
58 paid into the school building capital improvements fund  
59 pursuant to section ten, article nine-a of this chapter; (2) the  
60 issuance of revenue bonds for which moneys in the school  
61 building debt service fund are pledged as security; (3) moneys  
62 paid into the school construction fund pursuant to section six of  
63 this article; and (4) any other moneys received by the authority,  
64 except moneys deposited into the school major improvement  
65 fund, shall be set aside by the authority as an emergency fund  
66 to be distributed in accordance with the guidelines adopted by  
67 the authority.

68 (d) An amount that is no more than five percent of the  
69 moneys that are determined by the authority to be available for

70 distribution during the current fiscal year from: (1) Moneys  
71 paid into the school building capital improvements fund  
72 pursuant to section ten, article nine-a of this chapter; (2) the  
73 issuance of revenue bonds for which moneys in the school  
74 building debt service fund are pledged as security; (3) moneys  
75 paid into the school construction fund pursuant to section six of  
76 this article; and (4) any other moneys received by the authority,  
77 except moneys deposited into the school major improvement  
78 fund, may be reserved by the authority for multiuse vocational-  
79 technical education facilities projects that may include post-  
80 secondary programs as a first priority use. The authority may  
81 allocate and expend under this subsection moneys for any  
82 purposes authorized in this article on multiuse voca-  
83 tional-technical education facilities projects, including equip-  
84 ment and equipment updates at the facilities, authorized in  
85 accordance with the provisions of section sixteen of this article.  
86 If the projects approved under this subsection do not require the  
87 full amount of moneys reserved, moneys above the amount  
88 required may be allocated and expended in accordance with  
89 other provisions of this article. A county board, the state board,  
90 an administrative council or the joint administrative board of a  
91 vocational-technical education facility which includes post-  
92 secondary programs may propose projects for facilities or  
93 equipment, or both, which are under the direct supervision of  
94 the respective body: *Provided*, That the authority shall, before  
95 allocating any moneys for a project under this subsection,  
96 consider all other funding sources available for the project.

97 (e) The remaining moneys determined by the authority to  
98 be available for distribution during the then current fiscal year  
99 from: (1) Moneys paid into the school building capital improve-  
100 ments fund pursuant to section ten, article nine-a of this  
101 chapter; (2) the issuance of revenue bonds for which moneys in  
102 the school building debt service fund are pledged as security;  
103 (3) moneys paid into the school construction fund pursuant to  
104 section six of this article; and (4) any other moneys received by

105 the authority, except moneys deposited into the school major  
106 improvement fund, shall be allocated and expended on the basis  
107 of need and efficient use of resources for projects funded in  
108 accordance with the provisions of section sixteen of this article.

109 (f) If a county board of education proposes to finance a  
110 project that is authorized in accordance with section sixteen of  
111 this article through a lease with an option to purchase leased  
112 premises upon the expiration of the total lease period pursuant  
113 to an investment contract, the authority may allocate no moneys  
114 to the county board in connection with the project: *Provided,*  
115 That the authority may transfer moneys to the state board of  
116 education which, with the authority, shall lend the amount  
117 transferred to the county board to be used only for a one-time  
118 payment due at the beginning of the lease term, made for the  
119 purpose of reducing annual lease payments under the invest-  
120 ment contract, subject to the following conditions:

121 (1) The loan shall be secured in the manner required by the  
122 authority, in consultation with the state board, and shall be  
123 repaid in a period and bear interest at a rate as determined by  
124 the state board and the authority and shall have any terms and  
125 conditions that are required by the authority, all of which shall  
126 be set forth in a loan agreement among the authority, the state  
127 board and the county board;

128 (2) The loan agreement shall provide for the state board and  
129 the authority to defer the payment of principal and interest upon  
130 any loan made to the county board during the term of the  
131 investment contract, and annual renewals of the investment  
132 contract, among the state board, the authority, the county board  
133 and a lessor: *Provided,* That in the event a county board which  
134 has received a loan from the authority for a one-time payment  
135 at the beginning of the lease term does not renew the subject  
136 lease annually until performance of the investment contract in  
137 its entirety is completed, the county board is in default and the

138 principal of the loan, together with all unpaid interest accrued  
139 to the date of the default, shall, at the option of the authority, in  
140 consultation with the state board, become due and payable  
141 immediately or subject to renegotiation among the state board,  
142 the authority and the county board: *Provided, however,* That if  
143 a county board renews the lease annually through the perfor-  
144 mance of the investment contract in its entirety, the county  
145 board shall exercise its option to purchase the leased premises:  
146 *Provided further,* That the failure of the county board to make  
147 a scheduled payment pursuant to the investment contract  
148 constitutes an event of default under the loan agreement: *And*  
149 *provided further,* That upon a default by a county board, the  
150 principal of the loan, together with all unpaid interest accrued  
151 to the date of the default, shall, at the option of the authority, in  
152 consultation with the state board, become due and payable  
153 immediately or subject to renegotiation among the state board,  
154 the authority and the county board: *And provided further,* That  
155 if the loan becomes due and payable immediately, the authority,  
156 in consultation with the state board, shall use all means avail-  
157 able under the loan agreement and law to collect the outstand-  
158 ing principal balance of the loan, together with all unpaid  
159 interest accrued to the date of payment of the outstanding  
160 principal balance; and

161 (3) The loan agreement shall provide for the state board and  
162 the authority to forgive all principal and interest of the loan  
163 upon the county board purchasing the leased premises pursuant  
164 to the investment contract and performance of the investment  
165 contract in its entirety.

166 (g) To encourage county boards to proceed promptly with  
167 facilities planning and to prepare for the expenditure of any  
168 state moneys derived from the sources described in this section,  
169 any county board or other entity to whom moneys are allocated  
170 by the authority that fails to expend the money within three  
171 years of the allocation shall forfeit the allocation and thereafter

172 is ineligible for further allocations pursuant to this section until  
173 it is ready to expend funds in accordance with an approved  
174 facilities plan: *Provided*, That the authority may authorize an  
175 extension beyond the three-year forfeiture period not to exceed  
176 an additional two years. Any amount forfeited shall be added to  
177 the total funds available in the school construction fund of the  
178 authority for future allocation and distribution. Funds may not  
179 be distributed for any project under this article unless the  
180 responsible entity has a facilities plan approved by the state  
181 board and the school building authority and is prepared to  
182 commence expenditure of the funds during the fiscal year in  
183 which the moneys are distributed.

184 (h) The remaining moneys that are determined by the  
185 authority to be available for distribution during the then current  
186 fiscal year from moneys paid into the school major improve-  
187 ment fund pursuant to section six of this article shall be  
188 allocated and distributed on the basis of need and efficient use  
189 of resources for projects authorized in accordance with the  
190 provisions of section sixteen of this article: *Provided*, That the  
191 moneys may not be distributed for any project under this  
192 section unless the responsible entity has a facilities plan  
193 approved by the state board and the authority and is to com-  
194 mence expenditures of the funds during the fiscal year in which  
195 the moneys are distributed: *Provided, however*, That any  
196 moneys allocated to a project and not distributed for that project  
197 shall be deposited in an account to the credit of the project, the  
198 principal amount to remain to the credit of and available to the  
199 project for a period of two years. Any moneys which are  
200 unexpended after a two-year period shall be redistributed on the  
201 basis of need from the school major improvement fund in that  
202 fiscal year.

203 (i) No local matching funds may be required under the  
204 provisions of this section. However, the responsibilities of the  
205 county boards of education to maintain school facilities are not



206 negated by the provisions of this article. To be eligible to  
207 receive an allocation of school major improvement funds from  
208 the authority, a county board must have expended in the  
209 previous fiscal year an amount of county moneys equal to or  
210 exceeding the lowest average amount of money included in the  
211 county board's maintenance budget over any three of the  
212 previous five years and must have budgeted an amount equal to  
213 or greater than the average in the current fiscal year: *Provided,*  
214 That the state board shall promulgate rules relating to county  
215 boards' maintenance budgets, including items which shall be  
216 included in the budgets.

217 (j) Any county board may use moneys provided by the  
218 authority under this article in conjunction with local funds  
219 derived from bonding, special levy or other sources. Distribu-  
220 tion to a county board, or to the state board or the administra-  
221 tive council of an area vocational educational center pursuant  
222 to subsection (b) of this section, may be in a lump sum or in  
223 accordance with a schedule of payments adopted by the  
224 authority pursuant to guidelines adopted by the authority.

225 (k) Funds in the school construction fund shall first be  
226 transferred and expended as follows:

227 Any funds deposited in the school construction fund shall  
228 be expended first in accordance with an appropriation by the  
229 Legislature. To the extent that funds are available in the school  
230 construction fund in excess of that amount appropriated in any  
231 fiscal year, the excess funds may be expended for projects  
232 authorized in accordance with the provisions of section sixteen  
233 of this article. Any projects which the authority identified and  
234 announced for funding on or before the first day of August, one  
235 thousand nine hundred ninety-five, or identified and announced  
236 for funding on or before the thirty-first day of December, one  
237 thousand nine hundred ninety-five, shall be funded by the

238 authority in an amount which is not less than the amount  
239 specified when the project was identified and announced.

240 (l) It is the intent of the Legislature to encourage county  
241 boards to explore and consider arrangements with other  
242 counties that may facilitate the highest and best use of all  
243 available funds, which may result in improved transportation  
244 arrangements for students or which otherwise may create  
245 efficiencies for county boards and the students. In order to  
246 address the intent of the Legislature contained in this subsec-  
247 tion, the authority shall grant preference to those projects which  
248 involve multicounty arrangements as the authority shall  
249 determine reasonable and proper.

250 (m) County boards shall submit all designs for construction  
251 of new school buildings to the school building authority for  
252 review and approval prior to preparation of final bid docu-  
253 ments: *Provided*, That a vendor who has been debarred pursu-  
254 ant to the provisions of sections thirty-three-a through thirty-  
255 three-f, inclusive, article three, chapter five-a of this code, may  
256 not bid on or be awarded a contract under this section.

257 (n) The authority may elect to disburse funds for approved  
258 construction projects over a period of more than one year  
259 subject to the following:

260 (1) The authority may not approve the funding of a school  
261 construction project over a period of more than three years;

262 (2) The authority may not approve the use of more than  
263 fifty percent of the revenue available for distribution in any  
264 given fiscal year for projects that are to be funded over a period  
265 of more than one year; and

266 (3) In order to encourage local participation in funding  
267 school construction projects, the authority may set aside limited  
268 funding, not to exceed five hundred thousand dollars, in reserve

269 for one additional year to provide a county the opportunity to  
270 complete financial planning for a project prior to the allocation  
271 of construction funds. Any funding shall be on a reserve basis  
272 and converted to a part of the construction grant only after all  
273 project budget funds have been secured and all county commit-  
274 ments have been fulfilled. Failure of the county to solidify the  
275 project budget and meet its obligations to the state within  
276 eighteen months of the date the funding is set aside by the  
277 authority will result in expiration of the reserve and the funds  
278 shall be reallocated by the authority in the succeeding funding  
279 cycle.

**§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.**

1 (a) The authority shall establish guidelines and procedures  
2 to promote the intent and purposes of this article and assure the  
3 prudent and resourceful expenditure of state funds for projects  
4 under this article including, but not limited to, the following:

5 (1) Guidelines and procedures for the facilities plans,  
6 school major improvement plans and projects submitted in the  
7 furtherance of the plans that address, but are not limited to, the  
8 following:

9 (A) All of the elements of the respective plans as defined in  
10 section two of this article;

11 (B) The procedures for a county to submit a preliminary  
12 plan, a plan outline or a proposal for a plan to the authority  
13 prior to the submission of the facilities plan. The preliminary  
14 plan, plan outline or proposal for a plan shall be the basis for a

15 consultation meeting between representatives of the county and  
16 members of the authority, including at least one citizen mem-  
17 ber, which shall be held promptly following submission of the  
18 preliminary plan, plan outline or proposal for a plan to assure  
19 understanding of the general goals of this article and the  
20 objective criteria by which projects will be evaluated, to discuss  
21 ways the plan may be structured to meet those goals, and to  
22 assure efficiency and productivity in the project approval  
23 process;

24 (C) The manner, time line and process for the submission  
25 of each plan and annual plan updates to the authority;

26 (D) The requirements for public hearings, comments or  
27 other means of providing broad-based input on plans and  
28 projects under this article within a reasonable time period as the  
29 authority may consider appropriate. The submission of each  
30 plan must be accompanied by a synopsis of all comments  
31 received and a formal comment by the county board, the state  
32 board or the administrative council of an area vocational  
33 educational center submitting the plan;

34 (E) Any project specifications and maintenance specifica-  
35 tions considered appropriate by the authority including, but not  
36 limited to, such matters as energy efficiency, preferred siting,  
37 construction materials, maintenance plan and any other matter  
38 related to how the project is to proceed;

39 (F) A prioritization by the county board, the state board or  
40 the administrative council submitting the plan of each project  
41 contained in the plan. In prioritizing the projects, the county  
42 board, the state board or the administrative council submitting  
43 the plan shall make determinations in accordance with the  
44 objective criteria formulated by the school building authority in  
45 accordance with this section. The priority list is one of the

46 criteria that shall be considered by the authority deciding how  
47 the available funds should be expended;

48 (G) The objective means to be set forth in the plan and used  
49 in evaluating implementation of the overall plan and each  
50 project included in the plan. The evaluation must measure how  
51 the plan addresses the goals of this article and any guidelines  
52 adopted under this article, and how each project is in further-  
53 ance of the facilities plan and school major improvement plan,  
54 as applicable, as well as the importance of the project to the  
55 overall success of the facilities plan or school major improve-  
56 ment plan and the overall goals of the authority; and

57 (H) Any other matters considered by the authority to be  
58 important reflections of how a construction project or a major  
59 improvement project or projects will further the overall goals  
60 of this article.

61 (2) Guidelines and procedures which may be adopted by the  
62 authority for requiring that a county board modify, update,  
63 supplement or otherwise submit changes or additions to an  
64 approved facilities plan or for requiring that a county board, the  
65 state board or the administrative council of an area vocational  
66 educational center modify, update, supplement or otherwise  
67 submit changes or additions to an approved school major  
68 improvement plan. The authority shall provide reasonable  
69 notification and sufficient time for the change or addition as  
70 delineated in guidelines developed by the authority.

71 (3) Guidelines and procedures for evaluating project  
72 proposals that are submitted to the authority that address, but  
73 are not limited to, the following:

74 (A) Any project funded by the authority must be in further-  
75 ance of the facilities plan or school major improvement plan

76 and in compliance with the guidelines established by the  
77 authority;

78 (B) If a project is to benefit more than one county in the  
79 region, the facilities plan must state the manner in which the  
80 cost and funding of the project will be apportioned among the  
81 counties;

82 (C) If a county board proposes to finance a construction  
83 project through a lease with an option to purchase pursuant to  
84 an investment contract as described in subsection (f), section  
85 fifteen of this article, the specifications for the project must  
86 include the term of the lease, the amount of each lease payment,  
87 including the payment due upon exercise of the option to  
88 purchase, and the terms and conditions of the proposed invest-  
89 ment contract; and

90 (D) The objective criteria for the evaluation of projects  
91 which shall include, but are not limited to, the following:

92 (i) How the current facilities do not meet and how the plan  
93 and any project under the plan meets the following:

94 (I) Student health and safety including, but not limited to,  
95 critical health and safety needs;

96 (II) Economies of scale, including compatibility with  
97 similar schools that have achieved the most economical  
98 organization, facility use and pupil-teacher ratios;

99 (III) Reasonable travel time and practical means of address-  
100 ing other demographic considerations;

101 (IV) Multicounty and regional planning to achieve the most  
102 effective and efficient instructional delivery system;

103 (V) Curriculum improvement and diversification, including  
104 the use of instructional technology, distance learning and access  
105 to advanced courses in science, mathematics, language arts and  
106 social studies;

107 (VI) Innovations in education;

108 (VII) Adequate space for projected student enrollments;

109 (VIII) The history of efforts taken by the county board to  
110 propose or adopt local school bond issues or special levies to  
111 the extent constitutionally permissible; and

112 (IX) Regularly scheduled preventive maintenance; and

113 (ii) How the project will assure the prudent and resourceful  
114 expenditure of state funds and achieve the purposes of this  
115 article for constructing, expanding, renovating or otherwise  
116 improving and maintaining school facilities for a thorough and  
117 efficient education.

118 (4) Guidelines and procedures for evaluating projects for  
119 funding that address, but are not limited to, the following:

120 (A) Requiring each county board's facilities plan and  
121 school major improvement plan to prioritize all the construction  
122 projects or major improvement projects, respectively, within the  
123 county. A school major improvement plan submitted by the  
124 state board or the administrative council of an area vocational  
125 educational center shall prioritize all the school improvement  
126 projects contained in the plan. The priority list shall be one of  
127 the criteria to be considered by the authority in determining  
128 how available funds shall be expended. In prioritizing the  
129 projects, the county board, the state board or the administrative  
130 council submitting a plan shall make determinations in accor-  
131 dance with the objective criteria formulated by the school  
132 building authority;

133 (B) The return to each county submitting a project proposal  
134 an explanation of the evaluative factors underlying the decision  
135 of the authority to fund or not to fund the project; and

136 (C) The allocation and expenditure of funds in accordance  
137 with this article, subject to the availability of funds.

138 (b) Prior to final action on approving projects for funding  
139 under this article, the authority shall submit a certified list of  
140 the projects to the joint committee on government and finance.

141 (c) The state department of education shall conduct on-site  
142 inspections, at least annually, of all facilities which have been  
143 funded wholly or in part by moneys from the authority or state  
144 board to ensure compliance with the county board's facilities  
145 plan and school major improvement plan as related to the  
146 facilities; to preserve the physical integrity of the facilities to  
147 the extent possible; and to otherwise extend the useful life of  
148 the facilities: *Provided*, That the state board shall submit reports  
149 regarding its on-site inspections of facilities to the authority  
150 within thirty days of completion of the on-site inspections:  
151 *Provided, however*, That the state board shall promulgate rules  
152 regarding the on-site inspections and matters relating thereto,  
153 in consultation with the authority, as soon as practical and shall  
154 submit proposed rules for legislative review no later than the  
155 first day of December, one thousand nine hundred ninety-four.

156 (d) Based on its on-site inspection or notification by the  
157 authority to the state board that the changes or additions to a  
158 county's board facilities plan or school major improvement  
159 plan required by the authority have not been implemented  
160 within the time period prescribed by the authority, the state  
161 board shall restrict the use of the necessary funds or otherwise  
162 allocate funds from moneys appropriated by the Legislature for  
163 those purposes set forth in section nine, article nine-a of this  
164 chapter.



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## CHAPTER 103

(Com. Sub. for H. B. 4085 — By Delegate Beane)

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact § 18-10L-3, § 18-10L-4 and § 18-10L-5 of the code of West Virginia, 1931, as amended, all relating generally to the Ron Yost personal assistance services act; modifying definitions; clarifying requirements to receive personal assistance services; providing that the division of rehabilitation services shall directly or through contract administer program; providing that the statewide independent living council shall appoint members of board; duties of board members; board to approve contracts proposed by division of rehabilitation services; providing that no member of board can receive services through program; and duties of recipients.

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

That § 18-10L-3, § 18-10L-4 and § 18-10L-5 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.**

§18-10L-3. Definitions.

§18-10L-4. Program requirements.

§18-10L-5. Funding.

#### **§18-10L-3. Definitions.**

- 1 The following words and phrases, when used in this article,
- 2 have the following meanings unless the context clearly indi-
- 3 cates otherwise:

4 (1) “Personal assistance services” means:

5 (A) Those basic and ancillary services that enable eligible  
6 individuals to live in their homes and communities rather than  
7 in institutions and to carry out functions of daily living, self-  
8 care and mobility;

9 (B) Basic services include, but are not limited to, getting in  
10 and out of a bed, wheelchair or motor vehicle; assistance with  
11 routine bodily functions, such as health maintenance activities;  
12 bathing and personal hygiene; dressing and grooming; and  
13 feeding, including preparation and cleanup.

14 (2) “Personal assistant” means an individual of the con-  
15 sumer’s choice who provides personal assistance services for  
16 the eligible individual.

17 (3) “Recipient” means any individual receiving funds  
18 through the Ron Yost personal assistance program.

19 (4) “Ron Yost personal assistance program functional  
20 assessment tool” means the written and physical evaluation  
21 used to determine eligibility of individuals to receive services  
22 and the hours of service to be provided under this article.

**§18-10L-4. Program requirements.**

1 (a) To be eligible for assistance from the Ron Yost personal  
2 assistance program, a recipient must have a physical, mental or  
3 sensory impairment that affects one or more major life activity,  
4 and who:

5 (1) Experiences any physical, mental or sensory impair-  
6 ment, or combination of impairments, which can be expected to  
7 recur or last for a period of not less than twelve months as  
8 determined by the evaluation conducted using the Ron Yost  
9 personal assistance program functional assessment tool;

10       (2) Requires assistance to complete functions of daily  
11 living, self-care and mobility, including, but not limited to,  
12 those functions included in the definition of personal assistance  
13 services;

14       (3) Must apply for medicaid and provide written documen-  
15 tation of eligibility or denial to the board; and

16       (4) Is currently not receiving personal assistance services  
17 through medicaid.

18       (b) The division of rehabilitation services shall, directly or  
19 through contract approved by the Ron Yost personal assistance  
20 services board:

21       (1) Administer the personal assistance services program in  
22 accordance with the state plan for independent living estab-  
23 lished pursuant to the provisions of section seven, article ten-m  
24 of this chapter; and

25       (2) Provide training, information, and referral services  
26 relating to state and federal payroll taxes, deductions and  
27 withholding, and wage withholding for child support and  
28 workers' compensation, to recipients as necessary.

29       (c) The West Virginia statewide independent living council,  
30 established pursuant to section six, article ten-m of this chapter,  
31 shall:

32       (1) Appoint members to the Ron Yost personal assistance  
33 services board to fulfill the functions as set forth in subsection  
34 (d) of this section. The board shall be composed of individuals  
35 with disabilities: *Provided*, That one member shall be a  
36 representative of the West Virginia statewide independent  
37 living council with a disability; and

38       (2) Develop and update as necessary, the Ron Yost personal  
39 assistance program functional assessment tool.

40 (d) The Ron Yost personal assistance services board shall:

41 (1) Determine eligibility and approve hours of service for  
42 all applicants based on functional assessments conducted using  
43 the Ron Yost personal assistance program functional assess-  
44 ment tool. Each determination shall be in writing, a copy of  
45 which shall be provided to the applicant;

46 (2) Monitor disbursements and utilization of the program;

47 (3) Survey consumer satisfaction and recommend program  
48 revisions to the division of rehabilitation services;

49 (4) Develop and maintain a waiting list for those eligible  
50 individuals who cannot be served immediately;

51 (5) Contract with public or private entities to assist in  
52 fulfilling the functions set forth in this subsection;

53 (6) Approve contracts proposed by the division of rehabili-  
54 tation services with a public or private entity for the fiscal  
55 management of the program established under this article; and

56 (7) Establish operating procedures.

57 (e) No member of the board is eligible to receive personal  
58 assistance services through the program provided for in this  
59 article.

60 (f) Recipients shall:

61 (1) Apply for services through medicaid and provide a copy  
62 of that determination to the board;

63 (2) Comply with the employer responsibilities of hiring,  
64 supervising and, if needed, terminating the employment of a  
65 personal assistant;

66 (3) Manage his or her own financial and legal affairs  
67 regarding the Ron Yost personal assistance program; and

68 (4) Designate an individual, if necessary, to assist in  
69 fulfilling the functions set forth in this subsection.

**§18-10L-5. Funding.**

1 (a) There is hereby created in the state treasury a special  
2 fund designated the “Ron Yost Personal Assistance Services  
3 Fund”. The fund shall be an appropriated account within the  
4 division of rehabilitation services and the moneys shall be  
5 expended exclusively for the purposes of this article.

6 (b) Funds made available for programs under this article  
7 may be used only for the planning, designing, delivering and  
8 administering of personal assistance services and training. The  
9 division of rehabilitation services may use not more than seven  
10 percent of the total allocation for administrative costs.

11 (c) The division of rehabilitation services may apply for and  
12 use all funding sources to carry out this program, including  
13 state and federal funds, program fees and other allocated  
14 moneys.

15 (d) Funds shall be disbursed in a manner that ensures  
16 maximum consumer control of the services provided under the  
17 program.

18 (e) Personal assistance services shall be available only to  
19 the extent funding is available through annual appropriations of  
20 state, federal and other allotted funds.

21 (f) Funds or services provided to eligible individuals by the  
22 personal assistance services program under this article shall not  
23 be considered as income to those individuals for any purpose

24 under this code or under the rules of any agency of state  
25 government.

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## CHAPTER 104

(H. B. 4553 — By Delegates Tabb, Swartzmiller,  
Crosier, Hartman, Poling, Renner and Long)

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18A-3-1 of the code of West Virginia, 1931, as amended, relating to standards for awarding certificates to teach in the public schools; and establishing condition on award of certificates to teachers certified by another state.

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

That §18A-3-1 Enacting Section of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**

**§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.**

- 1 (a) The education of professional educators in the state shall
- 2 be under the general direction and control of the state board of
- 3 education after consultation with the secretary of education and
- 4 the arts and the chancellor for higher education who shall
- 5 represent the interests of teacher preparation programs within
- 6 the institutions of higher education in this state as those

7 institutions are defined in section two, article one, chapter  
8 eighteen-b of this code.

9 The education of professional educators in the state  
10 includes all programs leading to certification to teach or serve  
11 in the public schools including: (1) Those programs in all  
12 institutions of higher education, including student teaching in  
13 the public schools; (2) beginning teacher internship programs;  
14 (3) the granting of West Virginia certification to persons who  
15 received their preparation to teach outside the boundaries of this  
16 state, except as provided in subsection (b) of this section; (4)  
17 any alternative preparation programs in this state leading to  
18 certification, including programs established pursuant to the  
19 provisions of section one-a of this article and programs which  
20 are in effect on the effective date of this section; and (5) any  
21 continuing professional education, professional development  
22 and in-service training programs for professional educators  
23 employed in the public schools in the state.

24 (b) The state board of education, after consultation with the  
25 secretary of education and the arts and the chancellor for higher  
26 education who shall represent the interests of teacher prepara-  
27 tion programs within the institutions of higher education in this  
28 state as those institutions are defined in section two, article one,  
29 chapter eighteen-b of this code, shall adopt standards for the  
30 education of professional educators in the state and for the  
31 awarding of certificates valid in the public schools of this state  
32 subject to the following conditions:

33 (1) The standards approved by the board for teacher  
34 preparation shall include a provision for the study of multicul-  
35 tural education. As used in this section, multicultural education  
36 means the study of the pluralistic nature of American society  
37 including its values, institutions, organizations, groups, status  
38 positions and social roles;

39       (2) Effective the first day of January, one thousand nine  
40 hundred ninety-three, the standards approved by the board shall  
41 also include a provision for the study of classroom management  
42 techniques and shall include methods of effective management  
43 of disruptive behavior which shall include societal factors and  
44 their impact on student behavior; and

45       (3) Effective on the effective date of this section, any  
46 teacher who has graduated from a teacher preparation program  
47 at a regionally accredited institution of higher education and  
48 who holds a valid teaching certificate or certificates issued by  
49 another state shall be, upon application, awarded a teaching  
50 certificate or certificates for the same grade level or levels and  
51 subject area or areas valid in the public schools of this state,  
52 subject only to the provisions of section ten of this article.

53       (c) To give prospective teachers the teaching experience  
54 needed to demonstrate competence as a prerequisite to certifica-  
55 tion, the state board of education may enter into an agreement  
56 with county boards for the use of the public schools. Such  
57 agreement shall recognize student teaching as a joint responsi-  
58 bility of the teacher preparation institution and the cooperating  
59 public schools and shall include: (1) The minimum qualifica-  
60 tions for the employment of public school teachers selected as  
61 supervising teachers; (2) the remuneration to be paid public  
62 school teachers by the state board, in addition to their contrac-  
63 tual salaries, for supervising student teachers; and (3) minimum  
64 standards to guarantee the adequacy of the facilities and  
65 program of the public school selected for student teaching. The  
66 student teacher, under the direction and supervision of the  
67 supervising teacher, shall exercise the authority of a substitute  
68 teacher.

69       (d) The state superintendent of schools may issue certifi-  
70 cates to graduates of teacher education programs and alternative  
71 teacher education programs approved by the state board of



72 education and in accordance with this section and rules adopted  
73 by the state board after consultation with the secretary of  
74 education and the arts and the chancellor for higher education.  
75 A certificate to teach shall not be granted to any person who is  
76 not a citizen of the United States, is not of good moral character  
77 and physically, mentally and emotionally qualified to perform  
78 the duties of a teacher and who has not attained the age of  
79 eighteen years on or before the first day of October of the year  
80 in which his or her certificate is issued; except that an exchange  
81 teacher from a foreign country, or an alien person who meets  
82 the requirements to teach, may be granted a permit to teach  
83 within the public schools of the state.

84 (e) In consultation with the secretary of education and the  
85 arts and the chancellor for higher education, institutions of  
86 higher education approved for teacher preparation may cooper-  
87 ate with each other, with the center for professional develop-  
88 ment and with one or more county boards in the organization  
89 and operation of centers to provide selected phases of the  
90 teacher preparation program such as student teaching, begin-  
91 ning teacher internship programs, instruction in methodology  
92 and seminar programs for college students, teachers with  
93 provisional certification, professional support team members  
94 and supervising teachers.

95 The institutions of higher education, the center for profes-  
96 sional development and county boards may by mutual agree-  
97 ment budget and expend funds for the operation of the centers  
98 through payments to the appropriate fiscal office of the partici-  
99 pating institutions, the center for professional development and  
100 the county boards.

101 (f) The provisions of this section shall not be construed to  
102 require the discontinuation of an existing student teacher  
103 training center or school which meets the standards of the state  
104 board of education.

105 (g) All institutions of higher education approved for teacher  
 106 preparation in the school year of one thousand nine hundred  
 107 sixty-two—sixty-three shall continue to hold that distinction so  
 108 long as they meet the minimum standards for teacher prepara-  
 109 tion. Nothing contained herein shall infringe upon the rights  
 110 granted to any institution by charter given according to law  
 111 previous to the adoption of this code.

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## CHAPTER 105

(H. B. 4552 — By Delegates Tabb, Williams, Renner,  
 Shelton, Crosier, Long and Canterbury)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18A-3-6 of the code of West Virginia, 1931, as amended, relating to grounds for the revocation of teacher certificates; providing additional specification of grounds; and limitations.

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

That §18A-3-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**

**§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.**

1 The state superintendent may, after ten days' notice and  
 2 upon proper evidence, revoke the certificates of any teacher for  
 3 any of the following causes: Intemperance; untruthfulness;

4 cruelty; immorality; the conviction of a felony or a guilty plea  
5 or a plea of no contest to a felony charge; the conviction, guilty  
6 plea or plea of no contest to any charge involving sexual  
7 misconduct with a minor or a student; or for using fraudulent,  
8 unapproved or insufficient credit to obtain the certificates:  
9 *Provided*, That the certificates of a teacher may not be revoked  
10 for any matter for which the teacher was disciplined, less than  
11 dismissal, by the county board that employs the teacher, nor for  
12 which the teacher is meeting or has met an improvement plan  
13 determined by the county board, unless it can be proven by  
14 clear and convincing evidence that the teacher has committed  
15 one of the offences listed in this subsection and his or her  
16 actions render him or her unfit to teach: *Provided, however*,  
17 That in order for any conduct of a teacher involving intemper-  
18 ance; cruelty; immorality; or using fraudulent, unapproved or  
19 insufficient credit to obtain the certificates to constitute grounds  
20 for the revocation of the certificates of the teacher, there must  
21 be a rational nexus between the conduct of the teacher and the  
22 performance of his or her job. The state superintendent may  
23 designate the West Virginia commission for professional  
24 teaching standards or members thereof to conduct hearings on  
25 revocations or certificate denials and make recommendations  
26 for action by the state superintendent.

27 It shall be the duty of any county superintendent who  
28 knows of any acts on the part of any teacher for which a  
29 certificate may be revoked in accordance with this section to  
30 report the same, together with all the facts and evidence, to the  
31 state superintendent for such action as in the state superinten-  
32 dent's judgment may be proper.

33 If a certificate has been granted through an error, oversight,  
34 or misinformation, the state superintendent has authority to  
35 recall the certificate and make such corrections as will conform  
36 to the requirements of law and the state board.

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## CHAPTER 106

(H. B. 4040 — By Delegate Mezzatesta)

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[Passed March 10, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18A-4-7a of the code of West Virginia, 1931, as amended, relating to criteria for making decisions affecting the filling of vacancies if one or more permanently employed instructional personnel apply for a classroom teaching position.

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

That §18A-4-7a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

#### **§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.**

1       (a) A county board of education shall make decisions  
2 affecting the hiring of professional personnel other than  
3 classroom teachers on the basis of the applicant with the highest  
4 qualifications.

5       (b) The county board shall make decisions affecting the  
6 hiring of new classroom teachers on the basis of the applicant  
7 with the highest qualifications.

8       (c) In judging qualifications for hiring employees pursuant  
9 to subsections (a) and (b) of this section, consideration shall be  
10 given to each of the following:

- 11 (1) Appropriate certification, licensure or both;
  - 12 (2) Amount of experience relevant to the position; or, in the  
13 case of a classroom teaching position, the amount of teaching  
14 experience in the subject area;
  - 15 (3) The amount of course work, degree level or both in the  
16 relevant field and degree level generally;
  - 17 (4) Academic achievement;
  - 18 (5) Relevant specialized training;
  - 19 (6) Past performance evaluations conducted pursuant to  
20 section twelve, article two of this chapter; and
  - 21 (7) Other measures or indicators upon which the relative  
22 qualifications of the applicant may fairly be judged.
- 23 (d) If one or more permanently employed instructional  
24 personnel apply for a classroom teaching position and meet the  
25 standards set forth in the job posting, the county board of  
26 education shall make a decision affecting the filling of the  
27 position on the basis of the following criteria:
- 28 (1) Appropriate certification, licensure or both;
  - 29 (2) Total amount of teaching experience;
  - 30 (3) The existence of teaching experience in the required  
31 certification area;
  - 32 (4) Degree level in the required certification area;
  - 33 (5) Specialized training directly related to the performance  
34 of the job as stated in the job description;

35 (6) Receiving an overall rating of satisfactory in the  
36 previous two evaluations conducted pursuant to section twelve,  
37 article two of this chapter; and

38 (7) Seniority.

39 (e) In filling positions pursuant to subsection (d) of this  
40 section, consideration shall be given to each criterion with each  
41 criterion being given equal weight. If the applicant with the  
42 most seniority is not selected for the position, upon the request  
43 of the applicant a written statement of reasons shall be given to  
44 the applicant with suggestions for improving the applicant's  
45 qualifications.

46 (f) With the exception of guidance counselors, the seniority  
47 of classroom teachers, as defined in section one, article one of  
48 this chapter shall be determined on the basis of the length of  
49 time the employee has been employed as a regular full-time  
50 certified and/or licensed professional educator by the county  
51 board of education and shall be granted in all areas that the  
52 employee is certified, licensed or both.

53 (g) Upon completion of one hundred thirty-three days of  
54 employment in any one school year, substitute teachers, except  
55 retired teachers and other retired professional educators  
56 employed as substitutes, shall accrue seniority exclusively for  
57 the purpose of applying for employment as a permanent, full-  
58 time professional employee. One hundred thirty-three days or  
59 more of said employment shall be prorated and shall vest as a  
60 fraction of the school year worked by the permanent, full-time  
61 teacher.

62 (h) Guidance counselors and all other professional employ-  
63 ees, as defined in section one, article one of this chapter, except  
64 classroom teachers, shall gain seniority in their nonteaching  
65 area of professional employment on the basis of the length of  
66 time the employee has been employed by the county board of

67 education in that area: *Provided*, That if an employee is  
68 certified as a classroom teacher, the employee accrues class-  
69 room teaching seniority for the time that that employee is  
70 employed in another professional area. For the purposes of  
71 accruing seniority under this paragraph, employment as  
72 principal, supervisor or central office administrator, as defined  
73 in section one, article one of this chapter, shall be considered  
74 one area of employment.

75 (i) Employment for a full employment term shall equal one  
76 year of seniority, but no employee may accrue more than one  
77 year of seniority during any given fiscal year. Employment for  
78 less than the full employment term shall be prorated. A random  
79 selection system established by the employees and approved by  
80 the board shall be used to determine the priority if two or more  
81 employees accumulate identical seniority: *Provided*, That when  
82 two or more principals have accumulated identical seniority,  
83 decisions on reductions in force shall be based on qualifica-  
84 tions.

85 (j) Whenever a county board is required to reduce the  
86 number of professional personnel in its employment, the  
87 employee with the least amount of seniority shall be properly  
88 notified and released from employment pursuant to the provi-  
89 sions of section two, article two of this chapter. The provisions  
90 of this subsection are subject to the following:

91 (1) All persons employed in a certification area to be  
92 reduced who are employed under a temporary permit shall be  
93 properly notified and released before a fully certified employee  
94 in such a position is subject to release;

95 (2) An employee subject to release shall be employed in  
96 any other professional position where the employee is certified  
97 and was previously employed or to any lateral area for which  
98 the employee is certified, licensed or both, if the employee's

99 seniority is greater than the seniority of any other employee in  
100 that area of certification, licensure or both;

101 (3) If an employee subject to release holds certification,  
102 licensure or both in more than one lateral area and if the  
103 employee's seniority is greater than the seniority of any other  
104 employee in one or more of those areas of certification,  
105 licensure or both, the employee subject to release shall be  
106 employed in the professional position held by the employee  
107 with the least seniority in any of those areas of certification,  
108 licensure or both; and

109 (4) If, prior to the first day of August of the year a reduction  
110 in force is approved, the reason for any particular reduction in  
111 force no longer exists as determined by the county board in its  
112 sole and exclusive judgment, the board shall rescind the  
113 reduction in force or transfer and shall notify the released  
114 employee in writing of his or her right to be restored to his or  
115 her position of employment. Within five days of being so  
116 notified, the released employee shall notify the board, in  
117 writing, of his or her intent to resume his or her position of  
118 employment or the right to be restored shall terminate. Notwith-  
119 standing any other provision of this subdivision, if there is  
120 another employee on the preferred recall list with proper  
121 certification and higher seniority, that person shall be placed in  
122 the position restored as a result of the reduction in force being  
123 rescinded.

124 (k) For the purpose of this article, all positions which meet  
125 the definition of classroom teacher as defined in section one,  
126 article one of this chapter shall be lateral positions. For all other  
127 professional positions, the county board of education shall  
128 adopt a policy by the thirty-first day of October, one thousand  
129 nine hundred ninety-three, and may modify the policy thereafter  
130 as necessary, which defines which positions shall be lateral  
131 positions. The board shall submit a copy of its policy to the



132 state board within thirty days of adoption or any modification,  
133 and the state board shall compile a report and submit the report  
134 to the legislative oversight commission on education account-  
135 ability by the thirty-first day of December, one thousand nine  
136 hundred ninety-three, and by that date in any succeeding year  
137 in which any county board submits a modification of its policy  
138 relating to lateral positions. In adopting the policy, the board  
139 shall give consideration to the rank of each position in terms of  
140 title; nature of responsibilities; salary level; certification,  
141 licensure or both; and days in the period of employment.

142 (1) After the fifth day prior to the beginning of the instruc-  
143 tional term, no person employed and assigned to a professional  
144 position may transfer to another professional position in the  
145 county during that instructional term unless the person holding  
146 that position does not have valid certification. The provisions  
147 of this subsection are subject to the following:

148 (1) The person may apply for any posted, vacant positions  
149 with the successful applicant assuming the position at the  
150 beginning of the next instructional term;

151 (2) Professional personnel who have been on an approved  
152 leave of absence may fill these vacancies upon their return from  
153 the approved leave of absence; and

154 (3) The county board, upon recommendation of the  
155 superintendent may fill a position before the next instructional  
156 term when it is determined to be in the best interest of the  
157 students: *Provided*, That the county superintendent shall notify  
158 the state board of each transfer of a person employed in a  
159 professional position to another professional position after the  
160 fifth day prior to the beginning of the instructional term. The  
161 Legislature finds that it is not in the best interest of the students  
162 particularly in the elementary grades to have multiple teachers  
163 for any one grade level or course during the instructional term.  
164 It is the intent of the Legislature that the filling of positions

165 through transfers of personnel from one professional position  
166 to another after the fifth day prior to the beginning of the  
167 instructional term should be kept to a minimum.

168 (m) All professional personnel whose seniority with the  
169 county board is insufficient to allow their retention by the  
170 county board during a reduction in work force shall be placed  
171 upon a preferred recall list. As to any professional position  
172 opening within the area where they had previously been  
173 employed or to any lateral area for which they have certifica-  
174 tion, licensure or both, the employee shall be recalled on the  
175 basis of seniority if no regular, full-time professional personnel,  
176 or those returning from leaves of absence with greater seniority,  
177 are qualified, apply for and accept the position.

178 (n) Before position openings that are known or expected to  
179 extend for twenty consecutive employment days or longer for  
180 professional personnel may be filled by the board, the board  
181 shall be required to notify all qualified professional personnel  
182 on the preferred list and give them an opportunity to apply, but  
183 failure to apply shall not cause the employee to forfeit any right  
184 to recall. The notice shall be sent by certified mail to the last  
185 known address of the employee, and it shall be the duty of each  
186 professional personnel to notify the board of continued avail-  
187 ability annually, of any change in address or of any change in  
188 certification, licensure or both.

189 (o) Openings in established, existing or newly created  
190 positions shall be processed as follows:

191 (1) Boards shall be required to post and date notices which  
192 shall be subject to the following:

193 (A) The notices shall be posted in conspicuous working  
194 places for all professional personnel to observe for at least five  
195 working days;

196 (B) The notice shall be posted within twenty working days  
197 of the position openings and shall include the job description;

198 (C) Any special criteria or skills that are required by the  
199 position shall be specifically stated in the job description and  
200 directly related to the performance of the job;

201 (D) Postings for vacancies made pursuant to this section  
202 shall be written so as to ensure that the largest possible pool of  
203 qualified applicants may apply; and

204 (E) Job postings may not require criteria which are not  
205 necessary for the successful performance of the job and may not  
206 be written with the intent to favor a specific applicant;

207 (2) No vacancy shall be filled until after the five-day  
208 minimum posting period;

209 (3) If one or more applicants meets the qualifications listed  
210 in the job posting, the successful applicant to fill the vacancy  
211 shall be selected by the board within thirty working days of the  
212 end of the posting period;

213 (4) A position held by a teacher who is certified, licensed  
214 or both, who has been issued a permit for full-time employment  
215 and is working toward certification in the permit area shall not  
216 be subject to posting if the certificate is awarded within five  
217 years; and

218 (5) Nothing provided herein shall prevent the county board  
219 of education from eliminating a position due to lack of need.

220 (p) Notwithstanding any other provision of the code to the  
221 contrary, where the total number of classroom teaching  
222 positions in an elementary school does not increase from one  
223 school year to the next, but there exists in that school a need to  
224 realign the number of teachers in one or more grade levels,  
225 kindergarten through six, teachers at the school may be reas-

226 signed to grade levels for which they are certified without that  
227 position being posted: *Provided*, That the employee and the  
228 county board of education mutually agree to the reassignment.

229 (q) Reductions in classroom teaching positions in elemen-  
230 tary schools shall be processed as follows:

231 (1) When the total number of classroom teaching positions  
232 in an elementary school needs to be reduced, the reduction shall  
233 be made on the basis of seniority with the least senior class-  
234 room teacher being recommended for transfer; and

235 (2) When a specified grade level needs to be reduced and  
236 the least senior employee in the school is not in that grade level,  
237 the least senior classroom teacher in the grade level that needs  
238 to be reduced shall be reassigned to the position made vacant by  
239 the transfer of the least senior classroom teacher in the school  
240 without that position being posted: *Provided*, That the em-  
241 ployee is certified, licensed or both and agrees to the reassign-  
242 ment.

243 (r) Any board failing to comply with the provisions of this  
244 article may be compelled to do so by mandamus and shall be  
245 liable to any party prevailing against the board for court costs  
246 and reasonable attorney fees as determined and established by  
247 the court. Further, employees denied promotion or employment  
248 in violation of this section shall be awarded the job, pay and  
249 any applicable benefits retroactive to the date of the violation  
250 and payable entirely from local funds. Further, the board shall  
251 be liable to any party prevailing against the board for any court  
252 reporter costs including copies of transcripts.

253 (s) The county board shall compile, update annually on the  
254 first day of July and make available by electronic or other  
255 means to all employees a list of all professional personnel  
256 employed by the county, their areas of certification and their  
257 seniority.

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## CHAPTER 107

(Com. Sub. for H. B. 4297 — By Delegates Perry,  
Ennis, Cann, Tabb, Crosier and Williams)

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18A-4-8e of the code of West Virginia, 1931, as amended, relating to competency testing of service personnel; and clarifying that county board of education and superintendent may designate places for testing.

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

That §18A-4-8e of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

#### **§18A-4-8e. Competency testing for service personnel.**

1 (a) The state board of education shall develop and cause to  
2 be made available competency tests for all of the classification  
3 titles defined in section eight and listed in section eight-a of this  
4 article for service personnel. Each classification title defined  
5 and listed is considered a separate classification category of  
6 employment for service personnel and has a separate compe-  
7 tency test, except for those class titles having Roman numeral  
8 designations, which are considered a single classification of  
9 employment and have a single competency test. The cafeteria  
10 manager class title is included in the same classification  
11 category as cooks and has the same competency test. The  
12 executive secretary class title is included in the same classifica-  
13 tion category as secretaries and has the same competency test.

14 The classification titles of chief mechanic, mechanic and  
15 assistant mechanic are included in one classification title and  
16 have the same competency test.

17 (b) The purpose of these tests is to provide county boards  
18 of education a uniform means of determining whether school  
19 service personnel employees who do not hold a classification  
20 title in a particular category of employment meet the definition  
21 of the classification title in another category of employment as  
22 defined in section eight of this article. Competency tests may  
23 not be used to evaluate employees who hold the classification  
24 title in the category of their employment.

25 (c) The competency test consists of an objective written or  
26 performance test, or both: *Provided*, That applicants have the  
27 opportunity to take the written test orally if requested. Oral tests  
28 are recorded mechanically and kept on file. The oral test is  
29 administered by persons who do not know the applicant  
30 personally. The performance test for all classifications and  
31 categories other than bus operator is administered by an  
32 employee of the county board of education at a location  
33 designated by the superintendent and approved by the board.  
34 The location may be a vocational school that serves the county.  
35 A standard passing score is established by the state department  
36 of education for each test and is used by county boards of  
37 education. The subject matter of each competency test is  
38 commensurate with the requirements of the definitions of the  
39 classification titles as provided in section eight of this article.  
40 The subject matter of each competency is designed in such a  
41 manner that achieving a passing grade does not require knowl-  
42 edge and skill in excess of the requirements of the definitions  
43 of the classification titles. Achieving a passing score conclu-  
44 sively demonstrates the qualification of an applicant for a  
45 classification title. Once an employee passes the competency  
46 test of a classification title, the applicant is fully qualified to fill  
47 vacancies in that classification category of employment as

48 provided in section eight-b of this article and shall not be  
49 required to take the competency test again.

50 (d) An applicant who fails to achieve a passing score is  
51 given other opportunities to pass the competency test when  
52 making application for another vacancy within the classification  
53 category.

54 (e) Competency tests are administered to applicants in a  
55 uniform manner under uniform testing conditions. County  
56 boards of education are responsible for scheduling competency  
57 tests, notifying applicants of the date and time of the one day of  
58 training prior to taking the test and the date and time of the test.  
59 County boards of education may not use a competency test  
60 other than the test authorized by this section.

61 (f) When scheduling of the competency test conflicts with  
62 the work schedule of a school employee who has applied for a  
63 vacancy, the employee is excused from work to take the  
64 competency test without loss of pay.

65 (g) A minimum of one day of appropriate in-service  
66 training is provided to employees to assist them in preparing to  
67 take the competency tests.

68 (h) Competency tests are used to determine the qualifica-  
69 tion of new applicants seeking initial employment in a particu-  
70 lar classification title as either a regular or substitute employee.

71 (i) Notwithstanding any provisions in this code to the  
72 contrary, once an employee holds or has held a classification  
73 title in a category of employment, that employee is considered  
74 qualified for the classification title even though that employee  
75 no longer holds that classification.

76 (j) The requirements of this section do not alter the defini-  
77 tions of class titles as provided in section eight of this article or  
78 the procedure and requirements of section eight-b of this article.

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## CHAPTER 108

(H. B. 4554 — By Delegates Shaver, Beach, Howard,  
Paxton, Long, Canterbury and Mezzatesta)

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[Passed March 10, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18A-4-15 of the code of West Virginia, 1931, as amended, relating to the rights, privileges and benefits of substitute service personnel employed to fill vacancies created by leaves of absence, workers' compensation and suspensions for more than thirty working days; and considering certain bus operators to be employed in the same building or working station.

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

That §18A-4-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

**§18A-4-15. Employment of service personnel substitutes.**

1       (a) The county board shall employ and the county superin-  
2       tendent, subject to the approval of the county board, shall assign  
3       substitute service personnel on the basis of seniority to perform  
4       any of the following duties:

5       (1) To fill the temporary absence of another service  
6       employee;

7       (2) To fill the position of a regular service employee who  
8       requests a leave of absence from the county board in writing



9 and who is granted the leave in writing by the county board, and  
10 to fill the position of a regular service employee who is on  
11 workers' compensation and absent: *Provided*, That if the  
12 absence is to extend beyond thirty working days, the county  
13 board shall post the position of the absent employee under the  
14 procedures set forth in section eight-b of this article. If a  
15 substitute service employee is employed to fill the position of  
16 the absent employee and is employed in the position for twenty  
17 or more working days, the substitute service personnel shall  
18 have regular employment status and be accorded all rights,  
19 privileges and benefits pertaining to the position until the  
20 regular employee returns to the position or ceases to be em-  
21 ployed by the county board: *Provided, however*, That if a  
22 regular or substitute employee fills a vacancy that is related to  
23 a leave of absence or the absence of an employee on workers'  
24 compensation in any manner as provided in this section, upon  
25 termination of the absence the employee shall be returned to his  
26 or her original position: *Provided further*, That no service  
27 person may be required to request or to take a leave of absence:  
28 *And provided further*, That no service person shall be deprived  
29 of any right or privilege of regular employment status for  
30 refusal to request or failure to take a leave of absence;

31 (3) To perform the service of a service employee who is  
32 authorized to be absent from duties without loss of pay;

33 (4) To temporarily fill a vacancy in a permanent position  
34 caused by severance of employment by the resignation, transfer,  
35 retirement, permanent disability, dismissal pursuant to section  
36 eight, article two of this chapter, or death of the regular service  
37 employee who had been assigned to fill the position: *Provided*,  
38 That within twenty working days from the commencement of  
39 the vacancy, the board shall fill the vacancy under the proce-  
40 dures set out in section eight-b of this article and section five,  
41 article two of this chapter and the person hired to fill the

42 vacancy shall have and shall be accorded all rights, privileges  
43 and benefits pertaining to the position;

44 (5) To fill the vacancy created by a regular employee's  
45 suspension: *Provided*, That if the suspension is for more than  
46 thirty working days, the county board shall post the position of  
47 the suspended employee under the procedures set forth in  
48 section eight-b of this article. If a substitute service employee  
49 is employed to fill the suspended employee's position, the  
50 substitute service personnel shall have regular employment  
51 status and be accorded all rights, privileges and benefits  
52 pertaining to the position until the termination by the county  
53 board becomes final or the suspended employee is returned to  
54 employment. If the suspended employee is not returned to his  
55 or her job, the board shall fill the vacancy under the procedures  
56 set out in section eight-b of this article and section five, article  
57 two of this chapter; and

58 (6) To temporarily fill a vacancy in a newly created  
59 position prior to employment of a service personnel on a regular  
60 basis under the procedure set forth in section eight-b of this  
61 article.

62 (b) Substitutes shall be assigned in the following manner:  
63 A substitute with the greatest length of service time, that is,  
64 from the date he or she began his or her assigned duties as a  
65 substitute in that particular category of employment, shall be  
66 given priority in accepting the assignment throughout the period  
67 of the regular employee's absence or until the vacancy is filled  
68 on a regular basis under the procedures set out in section eight-  
69 b of this article. All substitutes shall be employed on a rotating  
70 basis according to the length of their service time until each  
71 substitute has had an opportunity to perform similar assign-  
72 ments: *Provided*, That if there are regular service employees  
73 employed in the same building or working station as the absent  
74 employee and who are employed in the same classification

75 category of employment, the regular employees shall be first  
76 offered the opportunity to fill the position of the absent em-  
77 ployee on a rotating and seniority basis with the substitute then  
78 filling the regular employee's position. A regular employee  
79 assigned to fill the position of an absent employee shall be  
80 given the opportunity to hold that position throughout the  
81 absence. For the purpose of this section only, all regularly  
82 employed school bus operators are considered to be employed  
83 within the same building or working station.

84 (c) Regular school service personnel shall be returned by  
85 the county board of education to the same position held prior to  
86 any approved leave of absence or period of recovery from  
87 injury or illness. The school service personnel shall retain all  
88 rights, privileges and benefits which had accrued at the time of  
89 the absence or accrued under any other provision of law during  
90 the absence and shall have all rights, privileges and benefits  
91 generally accorded school service employees at the time of  
92 return to work.

93 (d) The salary of a substitute service employee shall be  
94 based upon his or her years of employment as defined in section  
95 eight of this article and as provided in the state minimum pay  
96 scale set forth in section eight-a of this article and shall be in  
97 accordance with the salary schedule of persons regularly  
98 employed in the same position in the county in which he or she  
99 is employed.

100 (e) Before any substitute service employee enters upon his  
101 or her duties, he or she shall execute with the county board a  
102 written contract as provided in section five, article two of this  
103 chapter.

104 (f) To establish a uniform system of providing a fair and  
105 equitable opportunity for substitutes to enter upon their duties  
106 for the first time, the following method shall be used: The  
107 initial order of assigning newly employed substitutes shall be

108 determined by a random selection system established by the  
 109 affected substitute employees and approved by the county  
 110 board. This initial priority order shall be in effect only until the  
 111 substitute service personnel have entered upon their duties for  
 112 the first time.

113 (g) Substitute service employees who have worked thirty  
 114 days for a school system shall have all rights pertaining to  
 115 suspension, dismissal and contract renewal as is granted to  
 116 regular service personnel in sections six, seven, eight and eight-  
 117 a, article two of this chapter.

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## CHAPTER 109

**(S. B. 524 — By Senators Tomblin, Mr. President, and Dempsey)**

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[Passed February 24, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18B-2B-4 of the code of West Virginia, 1931, as amended; and to amend and reenact §18C-7-4 of said code, all relating to changing the appointment process for certain members of the council for community and technical college education and the PROMISE scholarship board of control.

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

That §18B-2B-4 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18C-7-4 of said code be amended and reenacted, all to read as follows:

**Chapter**

**18B. Higher Education.**

**18C. Student Loans; Scholarships and State Aid.**

**CHAPTER 18B. HIGHER EDUCATION.****ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.****\*§18B-2B-4. Appointment, composition and terms of council.**

1 (a) There is hereby continued the West Virginia council for  
2 community and technical college education. Any member  
3 appointed by the governor prior to the effective date of this  
4 section may continue to serve the term for which the member  
5 has been appointed.

6 (b) The council is comprised of eight members selected as  
7 follows:

8 (1) Seven members appointed by the governor, with the  
9 advice and consent of the Senate; and

10 (2) The assistant superintendent for technical and adult  
11 education of the state department of education who serves as an  
12 ex officio, nonvoting member of the council.

13 (c) The governor may, but is not required to, reappoint any  
14 person who was a member of the joint commission immediately  
15 prior to the effective date of this section: *Provided*, That the  
16 individual selected is otherwise eligible to serve.

17 (d) All appointed members shall be citizens of the state,  
18 shall represent the public interest and shall be persons who  
19 understand and are committed to achieving the goals and  
20 objectives set forth in section one-a, article one of this chapter,  
21 the essential conditions for community and technical college  
22 education programs and services set forth in article three-c of  
23 this chapter and the goals for secondary and post-secondary

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\* CLERK'S NOTE: This section was also amended by H. B. 4111 (Chapter 95), which passed prior to this act.

24 vocational-technical-occupational and adult basic education in  
25 the state. The appointed members shall represent the interests  
26 of the business, labor and employer communities and demon-  
27 strate knowledge of the education needs of the various regions,  
28 attainment levels and age groups within the state.

29 (e) The governor may not appoint any person to be a  
30 member of the council who is an officer, employee or member  
31 of an advisory board of any state college or university, the  
32 holder of any other public office or public employment under  
33 the government of this state or any of its political subdivisions,  
34 an appointee or employee of any governing board or an  
35 immediate family member of any employee under the jurisdic-  
36 tion of the commission or any governing board. No individual  
37 may serve on the council who is engaged in providing, or  
38 employed by a person or company whose primary function is to  
39 provide, workforce development services and activities. Of the  
40 members appointed by the governor, no more than four thereof  
41 may belong to the same political party and no more than three  
42 may be appointed from any congressional district.

43 (f) Members of the council shall serve for terms of four  
44 years, except that of the original appointments, one member  
45 shall be appointed for one year; two members shall be ap-  
46 pointed for two years; two members shall be appointed for three  
47 years; and two members shall be appointed for four years. No  
48 member may serve more than two consecutive full terms nor  
49 may any member be appointed to a term which results in the  
50 member serving more than eight consecutive years.

## **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

### **ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.**

**§18C-7-4. Appointment of the PROMISE scholarship board of control; compensation; proceedings generally.**

1 (a) On the effective date of this section, the board of the  
2 PROMISE scholarship program is abolished.

3 As soon as practical after the effective date of this section,  
4 the governor shall appoint the West Virginia PROMISE  
5 scholarship board of control comprised of fifteen members as  
6 follows:

7 (1) The chairperson of the higher education policy commis-  
8 sion or a designee who is a member of the commission;

9 (2) The chancellor of the higher education policy commis-  
10 sion or his or her designee;

11 (3) The state superintendent of schools or his or her  
12 designee;

13 (4) The secretary of education and the arts;

14 (5) The state treasurer or his or her designee;

15 (6) Ten at-large private sector members representative of  
16 the state's business and economic community who have  
17 knowledge, skill and experience in an academic, business or  
18 financial field. Any member appointed by the governor prior  
19 to the effective date of this section may continue to serve the  
20 term for which the member has been appointed.

21 The ten appointed members shall be residents of the state.  
22 The ten appointed members shall be appointed by the governor  
23 with the advice and consent of the Senate. No more than six of  
24 the ten appointed members may be from the same political  
25 party. No more than four of the ten appointed members may be  
26 from the same congressional district.

27 (b) Appointed members shall serve a term of four years and  
28 may be reappointed at the expiration of their terms. In the  
29 event of a vacancy among appointed members, the governor  
30 shall appoint a person representing the same interests to fill the  
31 unexpired term. A person appointed to fill a vacancy shall be  
32 appointed only for the remainder of that term and is eligible for  
33 reappointment. Unless a vacancy occurs due to death, resigna-  
34 tion or removal pursuant to subsection (e) of this section, an  
35 appointed member of the board shall continue to serve until a  
36 successor has been appointed and qualified as provided in  
37 subsection (a) of this section. Of the initial appointments, the  
38 governor shall appoint three members to a one-year term, two  
39 members to a two-year term, three members to a three-year  
40 term and two members to a four-year term. Thereafter, all  
41 terms shall be for four years.

42 (c) Members of the board shall serve without compensation,  
43 but shall be reimbursed by the office of the secretary of  
44 education and the arts for expenses, including travel expenses,  
45 actually incurred by a member in the official conduct of the  
46 business of the board at the same rate as is paid the employees  
47 of the state.

48 (d) The secretary of education and the arts is the chairper-  
49 son and presiding officer of the board. A majority of the  
50 members of the board constitute a quorum for the transaction of  
51 business.

52 (e) The members appointed by the governor may be  
53 removed by the governor for official misconduct, incompe-  
54 tence, neglect of duty or gross immorality and then only in the  
55 manner prescribed by law for the removal by the governor of  
56 the state elective officers in accordance with section five, article  
57 six, chapter six of this code.



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## CHAPTER 110

(H. B. 4287 — By Delegates Leach, Morgan, Craig,  
Beach, Long, Renner and Houston)

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[Passed February 24, 2004; in effect July 1, 2004. Approved by the Governor.]

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AN ACT to amend and reenact §18B-9-5 of the code of West Virginia, 1931, as amended, relating to higher education; classified employee salary; and eliminating certain provisions relating to funding the salary increment.

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

That §18B-9-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.**

**§18B-9-5. Classified employee salary.**

1       (a) Any classified employee may receive merit increases  
2 and salary adjustments in accordance with policies established  
3 by the board of governors. Merit raises may be granted only  
4 pursuant to a rule adopted by the board of governors, and  
5 approved by the chancellor. The rule shall provide a fair and  
6 equitable basis for granting merit raises pursuant to regular  
7 evaluations based upon reasonable performance standards.

8       (b) The current annual salary of any classified employee  
9 may not be reduced by the provisions of this article nor by any  
10 other action inconsistent with the provisions of this article.

11 Nothing in this article prohibits promotion of any classified  
12 employee to a job title carrying a higher pay grade if the  
13 promotion is in accordance with the provisions of this article  
14 and the personnel classification system established by the  
15 appropriate governing board.

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## CHAPTER 111

(S. B. 512 — By Senators Edgell, Bowman, Caldwell, Dempsey,  
Harrison, Hunter, Guills and Oliverio)

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §18B-17-6 of the code of West Virginia, 1931, as amended, relating to authorizing rules; higher education policy commission; higher education adult part-time student grant program HEAPS; and purchasing efficiencies.

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

That §18B-17-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 17. LEGISLATIVE RULES.

#### **§18B-17-6. Authorizing rules of higher education policy commission.**

1 (a) The legislative rule filed in the state register on the  
2 twenty-fifth day of August, two thousand three, relating to the  
3 higher education policy commission (higher education adult  
4 part-time student grant program -- HEAPS -- rule), is autho-  
5 rized.

6 (b) The legislative rule filed in the state register on the  
7 twenty-second day of October, two thousand three, relating to  
8 the higher education policy commission (purchasing efficien-  
9 cies rule), is authorized.

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## CHAPTER 112

**(S. B. 449 — By Senators Kessler, Caldwell, Fanning, Hunter,  
Jenkins, Minard, Oliverio, Ross, Rowe, Snyder, White,  
Deem, Harrison, McKenzie, Smith and Weeks)**

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[Passed February 23, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §3-2-10 of the code of West Virginia, 1931, as amended; to amend and reenact §3-4-3 of said code; to amend and reenact §3-4A-3 of said code; to amend and reenact §3-5-8, §3-5-13 and §3-5-13a of said code; and to amend and reenact §3-8-7 of said code, all relating to elections generally; correcting United States code reference; authorizing county commissions to discontinue use of voting machines and replace them with other systems meeting certain federal requirements under certain circumstances; reducing the filing fee for presidential and vice presidential candidates; clarifying that the filing fee for certain county offices is based only on the annual salary of the position; adding family court judge to list of offices on county ballot; and removing the requirement that ballots be printed with space for ballot commissioners' signatures.

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

That §3-2-10 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4-3 of said code be amended and reenacted; that §3-4A-3 of said code be amended and reenacted; that

§3-5-8, §3-5-13 and §3-5-13a of said code be amended and reenacted; and that §3-8-7 of said code be amended and reenacted, all to read as follows:

**Article**

2. **Registration of Voters.**
4. **Voting Machines.**
- 4A. **Electronic Voting Systems.**
5. **Primary Elections and Nominating Procedures.**
8. **Regulation and Control of Elections.**

**ARTICLE 2. REGISTRATION OF VOTERS**

**§3-2-10. Application for registration by mail.**

1 (a) Any qualified person may apply to register, change,  
2 transfer or correct his or her voter registration by mail.  
3 Application shall be made on a prescribed form as provided by  
4 section five of this article.

5 (b) To the extent possible, with funds allocated annually for  
6 such purpose, the secretary of state shall make state mail  
7 registration forms available for distribution through govern-  
8 mental and private entities and organized voter registration  
9 programs. The secretary of state shall make a record of all  
10 requests by entities or organizations for ten or more forms with  
11 a description of the dates and locations in which the proposed  
12 registration drive is to be conducted. The secretary of state may  
13 limit the distribution to a reasonable amount per group.

14 (c) The clerk of the county commission shall provide up to  
15 four mail registration forms to any resident of the county upon  
16 request. To the extent possible with funds allocated annually  
17 for the purpose, the clerk of the county commission shall make  
18 state mail registration forms available for distribution through  
19 organized voter registration programs within the county. The  
20 clerk of the county commission shall make a record of all

21 requests by entities or organizations for ten or more forms with  
22 a description of the dates and locations in which the proposed  
23 registration drive is to be conducted. The clerk may limit the  
24 distribution to a reasonable amount per group.

25 (d) The applicant shall provide all required information and,  
26 only after completing the information, sign the prescribed  
27 applicant's oath under penalty of perjury as provided in section  
28 thirty-six of this article. No person may alter or add any entry  
29 or make any mark which would alter any material information  
30 on the voter registration application after the applicant has  
31 signed the oath: *Provided*, That the clerk of the county commis-  
32 sion may correct any entry upon the request of the applicant  
33 provided the request is properly documented and the correction  
34 is dated and initialed by the clerk.

35 (e) Completed applications shall be mailed or delivered to  
36 the clerk of the county commission of the county in which the  
37 voter resides. If a clerk receives a completed mail application  
38 form from a voter whose residence address is located in another  
39 county, the clerk shall forward that application within three  
40 days to the clerk of the county commission of the county of the  
41 applicant's residence.

42 (f) Upon receipt of the application for registration by the  
43 appropriate clerk of the county commission, the clerk shall:

44 (1) Attempt to establish whether the residence address  
45 given is within the boundaries of an incorporated municipality  
46 and, if so, make the proper entry required for municipal  
47 residents to be properly identified for municipal voter registra-  
48 tion purposes; and

49 (2) Immediately begin the verification process required by  
50 the provisions of section sixteen of this article.

51 (g) Any person who registers by mail pursuant to this  
52 section and who has not previously voted in an election in the  
53 state, or if the statewide voter registration has not yet been  
54 implemented, the voter has not previously voted in the county,  
55 shall be required to present the following forms of identification  
56 to the secretary of state or clerk of the county commission:

57 (1) In the case of an individual who votes in person, a  
58 current and valid photo identification; or a copy of a current  
59 utility bill, bank statement, government check, paycheck or  
60 other government document that shows the name and address  
61 of the voter;

62 (2) In the case of an individual who votes by mail, submits  
63 with the ballot a copy of a current and valid photo identification  
64 or a copy of a current utility bill, bank statement, government  
65 check, paycheck or other government document that shows the  
66 name and address of the voter.

67 (h) An individual who desires to vote in person or by mail,  
68 but who does not meet the requirements of subsection (g) of  
69 this section, may cast a provisional ballot.

70 (i) Subsection (g) of this section shall not apply in the case  
71 of a person:

72 (1) Who registers to vote by mail under 42 U. S. C.  
73 §1973gg-4, *et seq.*, and submits as part of his or her registration  
74 either a copy of a current and valid photo identification or a  
75 copy of a current utility bill, bank statement, government check,  
76 paycheck or government document that shows the name and  
77 address of the voter;

78 (2) (A) Who registers to vote by mail under 42 U. S. C.  
79 §1973gg-4, *et seq.*, and submits with his or her registration  
80 either a driver's license number or at least the last four digits of

81 the individual's social security number; and (B) with respect to  
82 whom the secretary of state or clerk of the county commission  
83 matches the information submitted under paragraph (A) of this  
84 subdivision with an existing state identification record bearing  
85 the same number, name and date of birth as provided in the  
86 registration; or

87 (3) Who is: (A) Entitled to vote by absentee ballot under 42  
88 U. S. C. §1973ff-1, *et seq.*, the Uniformed and Overseas  
89 Citizens Absentee Voting Act; (B) provided the right to vote  
90 otherwise than in person under 42 U. S. C.  
91 §1973ee-1(b)(2)(B)(ii); or 25 (iii), section 3(b)(2)(B)(ii) of the  
92 Voting Accessibility for the Elderly and Handicapped Act; (C)  
93 entitled to vote otherwise than in person under any other federal  
94 law: *Provided*, That any person who has applied for an absentee  
95 ballot pursuant to the provisions of subdivision (1), subsection  
96 (b), section one, article three of this chapter; paragraph (B),  
97 subdivision (2) of said subsection; subdivision (3) of said  
98 subsection; or subsection (c) of said section shall not have his  
99 or her ballot in that election challenged for failure to appear in  
100 person or for failure to present identification.

101 (j) Any person who submits a state mail voter registration  
102 application to the clerk of the county commission in the county  
103 in which he or she is currently registered for the purpose of  
104 entering a change of address within the county, making a  
105 change of party affiliation or recording a change of legal name  
106 shall not be required to make his or her first vote in person or  
107 to present identification or proof of age.

#### ARTICLE 4. VOTING MACHINES.

##### §3-4-3. Procedures for terminating use of voting machines.

1 The county commission may discontinue the use of voting  
2 machines and replace them with a different voting system

3 meeting the requirements of “The Help America Vote Act of  
 4 2002”, 42 U. S. C. 15302, *et seq.*, six months prior to a primary  
 5 or general election by majority vote of the commission.

**ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

**§3-4A-3. Procedure for adopting electronic voting systems.**

1 An electronic voting system that has been approved in  
 2 accordance with section eight of this article may be adopted for  
 3 use in general, primary and special elections in any county by  
 4 the following procedure and not otherwise:

5 By a majority of the members of the county commission  
 6 voting to adopt the same at a public meeting called for that  
 7 purpose, with notice thereof published as a Class II-0 legal  
 8 advertisement in compliance with the provisions of article  
 9 three, chapter fifty-nine of this code. The publication area for  
 10 such publication shall be the county involved.

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

§3-5-8. Filing fees and their disposition.

§3-5-13. Form and contents of ballots and ballot labels.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

**\*§3-5-8. Filing fees and their disposition.**

1 Every person who becomes a candidate for nomination for  
 2 or election to office in any primary election shall, at the time of  
 3 filing the certificate of announcement as required in this article,  
 4 pay a filing fee as follows:

5 (a) A candidate for president of the United States, for vice  
 6 president of the United States, for United States senator, for  
 7 member of the United States House of Representatives, for

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\* **CLERK'S NOTE:** This section was also amended by S. B. 190 (Chapter 113), which passed prior to this act.



8 governor and for all other state elective offices shall pay a fee  
9 equivalent to one percent of the annual salary of the office for  
10 which the candidate announces: *Provided*, That the filing fee  
11 for any candidate for president or vice president of the United  
12 States shall not exceed two thousand five hundred dollars  
13 commencing with the two thousand four filing period;

14 (b) A candidate for the office of judge of a circuit court and  
15 judge of a family court shall pay a fee equivalent to one percent  
16 of the total annual salary of the office for which the candidate  
17 announces;

18 (c) A candidate for member of the House of Delegates shall  
19 pay a fee of one-half percent of the total annual salary of the  
20 office and a candidate for state senator shall pay a fee of one  
21 percent of the total annual salary of the office;

22 (d) A candidate for sheriff, prosecuting attorney, circuit  
23 clerk, county clerk, assessor, member of the county commission  
24 and magistrate shall pay a fee equivalent to one percent of the  
25 annual salary, excluding any additional compensation or  
26 commission of the office for which the candidate announces.  
27 A candidate for county board of education shall pay a fee of  
28 twenty-five dollars. A candidate for any other county office  
29 shall pay a fee of ten dollars;

30 (e) Delegates to the national convention of any political  
31 party shall pay the following filing fees:

32 A candidate for delegate-at-large shall pay a fee of twenty  
33 dollars; and a candidate for delegate from a congressional  
34 district shall pay a fee of ten dollars;

35 (f) Candidates for members of political executive commit-  
36 tees and other political committees shall pay the following  
37 filing fees:

38 A candidate for member of a state executive committee of  
39 any political party shall pay a fee of twenty dollars; a candidate  
40 for member of a county executive committee of any political  
41 party shall pay a fee of ten dollars; and a candidate for member  
42 of a congressional, senatorial or delegate district committee of  
43 any political party shall pay a fee of five dollars.

44 Candidates filing for an office to be filled by the voters of  
45 one county shall pay the filing fee to the clerk of the circuit  
46 court and candidates filing for an office to be filled by the  
47 voters of more than one county shall pay the filing fee to the  
48 secretary of state at the time of filing their certificates of  
49 announcement and no certificate of announcement shall be  
50 received until the filing fee is paid.

51 All moneys received by such clerk from such fees shall be  
52 credited to the general county fund. Moneys received by the  
53 secretary of state from fees paid by candidates for offices to be  
54 filled by all the voters of the state shall be deposited in a special  
55 fund for that purpose and shall be apportioned and paid by him  
56 to the several counties on the basis of population and that  
57 received from candidates from a district or judicial circuit of  
58 more than one county shall be apportioned to the counties  
59 comprising the district or judicial circuit in like manner. When  
60 such moneys are received by sheriffs, it shall be credited to the  
61 general county fund.

**§3-5-13. Form and contents of ballots and ballot labels.**

1 The face of every primary election ballot shall conform as  
2 nearly as practicable to that used at the general election.

3 (a) The heading of every ballot is to be printed in display  
4 type. The heading is to contain a ballot title, the name of the  
5 county, the state, the words "Primary Election" and the month,  
6 day and year of the election. The ballot title of the political

7 party ballots is to contain the words “Official Ballot of the  
8 (Name) Party” and the official symbol of the political party  
9 may be included in the heading. The ballot title of any separate  
10 paper ballot or portion of any electronic or voting machine  
11 ballot for the board of education is to contain the words  
12 “Nonpartisan Ballot of Election of Members of the  
13 \_\_\_\_\_ County Board of Education”. The districts  
14 for which less than two candidates may be elected and the  
15 number of available seats are to be specified and the names of  
16 the candidates are to be printed without reference to political  
17 party affiliation and without designation as to a particular term  
18 of office. Any other ballot or portion of a ballot on a question  
19 is to have a heading which clearly states the purpose of the  
20 election according to the statutory requirements for that  
21 question.

22 (b) (1) For paper ballots, the heading of the ballot is to be  
23 separated from the rest of the ballot by heavy lines and the  
24 offices shall be arranged in columns with the following  
25 headings, from left to right across the ballot: “National Ticket”,  
26 “State Ticket”, “County Ticket” and, in a presidential election  
27 year, “National Convention” or, in a nonpresidential election  
28 year, “District Ticket”. The columns are to be separated by  
29 heavy lines. Within the columns, the offices are to be arranged  
30 in the order prescribed in section thirteen-a of this article.

31 (2) For voting machines, electronic voting devices and any  
32 ballot tabulated by electronic means, the offices are to appear  
33 in the same sequence as prescribed in section thirteen-a of this  
34 article and under the same headings as prescribed in subsection  
35 (a) of this section. The number of pages, columns or rows,  
36 where applicable, may be modified to meet the limitations of  
37 ballot size and composition requirements subject to approval by  
38 the secretary of state.

39 (3) The title of each office is to be separated from preceding  
40 offices or candidates by a line and is to be printed in bold type  
41 no smaller than eight point. Below the office is to be printed  
42 the number of the district, if any, the number of the division, if  
43 any, and the words "Vote for \_\_\_\_\_" with the number to be  
44 nominated or elected or "Vote For Not More Than \_\_\_\_\_"  
45 in multicandidate elections. For offices in which there are  
46 limitations relating to the number of candidates which may be  
47 nominated, elected or appointed to or hold office at one time  
48 from a political subdivision within the district or county in  
49 which they are elected, there is to be a clear explanation of the  
50 limitation, as prescribed by the secretary of state, printed in  
51 bold type immediately preceding the names of the candidates  
52 for those offices on the ballot in every voting system. For  
53 counties in which the number of county commissioners exceeds  
54 three and the total number of members of the county commis-  
55 sion is equal to the number of magisterial districts within the  
56 county, the office of county commission is to be listed sepa-  
57 rately for each district to be filled with the name of the magiste-  
58 rial district and the words "Vote for One" printed below the  
59 name of the office.

60 (c) The location for indicating the voter's choices on the  
61 ballot is to be clearly shown. For paper ballots, other than those  
62 tabulated electronically, the official primary ballot is to contain  
63 a square formed in dark lines at the left of each name on the  
64 ballot, arranged in a perpendicular column of squares before  
65 each column of names.

66 (d) (1) The name of every candidate certified by the  
67 secretary of state or the board of ballot commissioners is to be  
68 printed in capital letters in no smaller than eight-point type on  
69 the ballot for the appropriate precincts. Subject to the rules  
70 promulgated by the secretary of state, the name of each  
71 candidate is to appear in the form set out by the candidate on

72 the certificate of announcement, but in no case may the name  
73 misrepresent the identity of the candidate nor may the name  
74 include any title, position, rank, degree or nickname implying  
75 or inferring any status as a member of a class or group or  
76 affiliation with any system of belief.

77 (2) The city of residence of every candidate, the state of  
78 residence of every candidate residing outside the state, the  
79 county of residence of every candidate for an office on the  
80 ballot in more than one county and the magisterial district of  
81 residence of every candidate for an office subject to magisterial  
82 district limitations are to be printed in lower case letters beneath  
83 the names of the candidates.

84 (3) The arrangement of names within each office must be  
85 determined as prescribed in section thirteen-a of this article.

86 (4) If the number of candidates for an office exceeds the  
87 space available on a column or ballot label page and requires  
88 that candidates for a single office be separated, to the extent  
89 possible, the number of candidates for the office on separate  
90 columns or pages are to be nearly equal and clear instructions  
91 given the voter that the candidates for the office are continued  
92 on the following column or page.

93 (e) When an insufficient number of candidates has filed for  
94 a party to make the number of nominations allowed for the  
95 office or for the voters to elect sufficient members to the board  
96 of education or to executive committees, the vacant positions on  
97 the ballot shall be filled with the words "No Candidate Filed":  
98 *Provided*, That in paper ballot systems which allow for  
99 write-ins to be made directly on the ballot, a blank line shall be  
100 placed in any vacant position in the office of board of education  
101 or for election to any party executive committee. A line shall  
102 separate each candidate from every other candidate for the same  
103 office. Notwithstanding any other provision of this code, if

104 there are multiple vacant positions on a ballot for one office, the  
105 multiple vacant positions which would otherwise be filled with  
106 the words “No Candidate Filed” may be replaced with a brief  
107 detailed description, approved by the secretary of state, indicat-  
108 ing that there are no candidates listed for the vacant positions.

109 (f) In presidential election years, the words “For election in  
110 accordance with the plan adopted by the party and filed with the  
111 secretary of state” is to be printed following the names of all  
112 candidates for delegate to national convention.

113 (g) All paper ballots are to be printed in black ink on paper  
114 sufficiently thick so that the printing or marking cannot be  
115 discernible from the back. Ballot cards and paper for printing  
116 ballots using electronically sensible ink are to meet minimum  
117 requirements of the tabulating systems.

118 (h) Ballots and ballot cards are to contain perforated tabs at  
119 the top of the ballots and are to be printed with unique sequen-  
120 tial numbers from one to the highest number representing the  
121 total number of ballots or ballot cards printed. On paper  
122 ballots, the ballot is to be bordered by a solid line at least one  
123 sixteenth of an inch wide and the ballot is to be trimmed to  
124 within one-half inch of that border.

125 (i) On the back of every official ballot or ballot card the  
126 words “Official Ballot” with the name of the county and the  
127 date of the election are to be printed. Beneath the date of the  
128 election there are to be two blank lines followed by the words  
129 “Poll Clerks”.

130 (j) The face of sample paper ballots and sample ballot  
131 labels are to be like other official ballots or ballot labels except  
132 that the word “sample” is to be prominently printed across the  
133 front of the ballot in a manner that ensures the names of  
134 candidates are not obscured and the word “sample” may be

135 printed in red ink. No printing may be placed on the back of the  
136 sample.

**§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.**

1 (a) The order of offices for state and county elections on all  
2 ballots within the state shall be as prescribed herein. When the  
3 office does not appear on the ballot in an election, then it shall  
4 be omitted from the sequence. When an unexpired term for an  
5 office appears on the ballot along with a full term, the unex-  
6 pired term shall appear immediately below the full term.

7 NATIONAL TICKET: President (and vice president in the  
8 general election), United States senator, member of the United  
9 States house of representatives

10 STATE TICKET: Governor, secretary of state, auditor, trea-  
11 surer, commissioner of agriculture, attorney general, justice of  
12 the supreme court of appeals, state senator, member of the  
13 House of Delegates, circuit judge in multicounty districts,  
14 family court judge in multicounty districts, any other  
15 multicounty office, state executive committee

16 COUNTY TICKET: Circuit judge in single-county districts,  
17 family court judge in single-county districts, clerk of the circuit  
18 court, county commissioner, clerk of the county commission,  
19 prosecuting attorney, sheriff, assessor, magistrate, surveyor,  
20 congressional district executive committee, senatorial district  
21 executive committee in multicounty districts, delegate district  
22 executive committee in multicounty districts

23 NATIONAL CONVENTION: Delegate to the national conven-  
24 tion -- at-large, delegate to the national convention -- congres-  
25 sional district

26 DISTRICT TICKET: County executive committee.

27 (b) Except for office divisions in which no more than one  
28 person has filed a certificate of announcement, the arrangement  
29 of names for all offices shall be determined by lot according to  
30 the following provisions:

31 (1) On the fourth Tuesday following the close of the  
32 candidate filing, beginning at nine o'clock a. m., a drawing by  
33 lot shall be conducted in the office of the clerk of the circuit  
34 court in each county. Notice of the drawing shall be given on  
35 the form for the certificate of announcement and no further  
36 notice shall be required. The clerk of the circuit court shall  
37 superintend and conduct the drawing and the method of  
38 conducting the drawing shall be prescribed by the secretary of  
39 state.

40 (2) Except as provided herein, the position of each candi-  
41 date within each office division shall be determined by the  
42 position drawn for that candidate individually: *Provided*, That  
43 if fewer candidates file for an office division than the total  
44 number to be nominated or elected, the vacant positions shall  
45 appear following the names of all candidates for the office.

46 (3) Candidates for delegate to national convention who  
47 have filed a commitment to a candidate for president shall be  
48 listed alphabetically within the group of candidates committed  
49 to the same candidate for president and uncommitted candidates  
50 shall be listed alphabetically in an uncommitted category. The  
51 position of each group of committed candidates and uncommi-  
52 tted candidates shall be determined by lot by drawing the names  
53 of the presidential candidates and for an uncommitted category.

54 (4) A candidate or the candidate's representative may attend  
55 the drawings.



**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.****§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 political  
2 party committee who fails to file a sworn, itemized statement  
3 within the time limitations specified in this article or who  
4 willfully files a grossly incomplete or grossly inaccurate  
5 statement shall be guilty of a misdemeanor and, upon conviction  
6 thereof, shall be fined not less than five hundred dollars or  
7 imprisoned in the county jail for not more than one year, or  
8 both, in the discretion of the court. Forty days after any such  
9 primary or other election, the secretary of state, or county clerk,  
10 or municipal recorder, as the case may be, shall give notice of  
11 any failure to file such sworn statement or the filing of any  
12 grossly incomplete or grossly inaccurate statement by any  
13 candidate, financial agent or treasurer of a political party  
14 committee and forward copies of any grossly incomplete or  
15 grossly inaccurate statement to the prosecuting attorney of the  
16 county where such candidate, agent or treasurer resides.

17       (b) (1) Any candidate, financial agent or treasurer of a  
18 political party committee who fails to file a sworn, itemized  
19 statement as provided in this article or who files a grossly  
20 incomplete or grossly inaccurate statement may be assessed a  
21 civil penalty by the secretary of state of twenty-five dollars a  
22 day for each day after the due date the statement is delinquent,  
23 grossly incomplete or grossly inaccurate. Forty days after any  
24 such primary or other election the county clerk shall give notice  
25 to the secretary of state of any failure to file such sworn  
26 statement or the filing of any grossly incomplete or grossly  
27 inaccurate statement by any candidate, financial agent or  
28 treasurer of a political party committee and forward copies of

29 such delinquent, incomplete or inaccurate statements to the  
30 secretary of state.

31 (2) A civil penalty assessed pursuant to the provisions of  
32 this section shall be payable to the state of West Virginia and is  
33 collectable in any manner authorized by law for the collection  
34 of debts.

35 (3) The secretary of state may negotiate and enter into  
36 settlement agreements for the payment of civil penalties  
37 assessed as a result of the filing of a delinquent, grossly  
38 incomplete or inaccurate statement.

39 (4) The secretary of state and county clerk may review and  
40 audit any sworn statement required to be filed pursuant to the  
41 provisions of this article. The state election commission shall  
42 propose legislative rule for promulgation, in accordance with  
43 the provisions of chapter twenty-nine-a of this code, to establish  
44 procedures for the assessment of civil penalties as provided in  
45 this section.

46 (c) No candidate nominated at a primary election who has  
47 failed to file a sworn statement, as required by the provisions of  
48 this article, shall have his name placed on the official ballot for  
49 the ensuing election, unless there has been filed by or on behalf  
50 of such candidate, or by his financial agent, if any, the financial  
51 statement relating to nominations required by this article. It is  
52 unlawful to issue a commission or certificate of election, or to  
53 administer the oath of office, to any person elected to any  
54 public office who has failed to file a sworn statement as  
55 required by the provisions of this article and no such person  
56 may enter upon the duties of his office until he has filed such  
57 statement, nor may he receive any salary or emolument for any  
58 period prior to the filing of such statement.

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## CHAPTER 113

**(S. B. 190 — By Senators Kessler, Helmick, Unger, Edgell, Prezioso, Oliverio, Snyder, Bailey, Sharpe, Plymale, McCabe, Ross, Bowman, Chafin, Caldwell, Dempsey, Hunter, Minard, Rowe and Fanning)**

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[Passed January 23, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §3-5-8 of the code of West Virginia, 1931, as amended, relating to altering the amount of presidential and vice presidential certificate of announcement filing fees.

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

That §3-5-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

#### **\*§3-5-8. Filing fees and their disposition.**

1 Every person who becomes a candidate for nomination for  
2 or election to office in any primary election shall, at the time of  
3 filing the certificate of announcement as required in this article,  
4 pay a filing fee as follows:

5 (a) A candidate for president of the United States, for vice  
6 president of the United States, for United States senator, for  
7 member of the United States House of Representatives, for  
8 governor and for all other state elective offices shall pay a fee  
9 equivalent to one percent of the annual salary of the office for

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\* **CLERK'S NOTE:** This section was also amended by S. B. 449 (Chapter 112), which passed prior to this act.

10 which the candidate announces: *Provided*, That the filing fee  
11 for any candidate for president or vice president of the United  
12 States shall not exceed two thousand five hundred dollars  
13 commencing with the two thousand four filing period;

14 (b) A candidate for the office of judge of a circuit court and  
15 judge of a family court shall pay a fee equivalent to one percent  
16 of the total annual salary of the office for which the candidate  
17 announces;

18 (c) A candidate for member of the House of Delegates shall  
19 pay a fee of one-half percent of the total annual salary of the  
20 office and a candidate for state senator shall pay a fee of one  
21 percent of the total annual salary of the office;

22 (d) A candidate for sheriff, prosecuting attorney, circuit  
23 clerk, county clerk, assessor, member of the county commission  
24 and magistrate shall pay a fee equivalent to one percent of the  
25 annual salary of the office for which the candidate announces.  
26 A candidate for county board of education shall pay a fee of  
27 twenty-five dollars. A candidate for any other county office  
28 shall pay a fee of ten dollars;

29 (e) Delegates to the national convention of any political  
30 party shall pay the following filing fees:

31 A candidate for delegate-at-large shall pay a fee of twenty  
32 dollars; and a candidate for delegate from a congressional  
33 district shall pay a fee of ten dollars;

34 (f) Candidates for members of political executive commit-  
35 tees and other political committees shall pay the following  
36 filing fees:

37 A candidate for member of a state executive committee of  
38 any political party shall pay a fee of twenty dollars; a candidate

39 for member of a county executive committee of any political  
40 party shall pay a fee of ten dollars; and a candidate for member  
41 of a congressional, senatorial or delegate district committee of  
42 any political party shall pay a fee of five dollars.

43 Candidates filing for an office to be filled by the voters of  
44 one county shall pay the filing fee to the clerk of the circuit  
45 court and candidates filing for an office to be filled by the  
46 voters of more than one county shall pay the filing fee to the  
47 secretary of state at the time of filing their certificates of  
48 announcement and no certificate of announcement shall be  
49 received until the filing fee is paid.

50 All moneys received by such clerk from such fees shall be  
51 credited to the general county fund. Moneys received by the  
52 secretary of state from fees paid by candidates for offices to be  
53 filled by all the voters of the state shall be deposited in a special  
54 fund for that purpose and shall be apportioned and paid by him  
55 to the several counties on the basis of population and that  
56 received from candidates from a district or judicial circuit of  
57 more than one county shall be apportioned to the counties  
58 comprising the district or judicial circuit in like manner. When  
59 such moneys are received by sheriffs, it shall be credited to the  
60 general county fund.

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## CHAPTER 114

(Com. Sub. for S. B. 125 — By Senators Kessler,  
Plymale, Edgell and Bowman)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §3-8-12 of the code of West Virginia, 1931, as amended, relating to permitting solicitation of certain state employees for contributions to campaigns for or against ballot issues in county or local elections.

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

That §3-8-12 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

**§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.**

1 (a) No person may publish, issue or circulate, or cause to be  
2 published, issued or circulated, any anonymous letter, circular,  
3 placard, radio or television advertisement or other publication  
4 expressly advocating the election or defeat of a clearly identi-  
5 fied candidate.

6 (b) No owner, publisher, editor or employee of a newspaper  
7 or other periodical may insert, either in its advertising or  
8 reading columns, any matter, paid for or to be paid for, which  
9 tends to influence the voting at any election, unless directly  
10 designating it as a paid advertisement and stating the name of  
11 the person authorizing its publication and the candidate in  
12 whose behalf it is published.

13 (c) No person may, in any room or building occupied for  
14 the discharge of official duties by any officer or employee of  
15 the state or a political subdivision of the state, solicit orally or  
16 by written communication delivered within the room or  
17 building, or in any other manner, any contribution of money or

18 other 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 political  
21 subdivision of the state. No officer, agent, clerk or employee  
22 of the federal government, or of this state, or any political  
23 subdivision of the state, who may have charge or control of any  
24 building, office or room, occupied for any official purpose, may  
25 knowingly permit any person to enter any building, office or  
26 room, occupied for any official purpose, for the purpose of  
27 soliciting or receiving any political assessments from, or  
28 delivering or giving written solicitations for, or any notice of,  
29 any political assessments to, any officer or employee of the  
30 state or a political subdivision of the state.

31 (d) Except as provided in section eight of this article, no  
32 person entering into any contract with the state or its subdivi-  
33 sions, or any department or agency of the state, either for  
34 rendition of personal services or furnishing any material,  
35 supplies or equipment or selling any land or building to the  
36 state, or its subdivisions, or any department or agency of the  
37 state, if payment for the performance of the contract or payment  
38 for the material, supplies, equipment, land or building is to be  
39 made, in whole or in part, from public funds may, during the  
40 period of negotiation for or performance under the contract or  
41 furnishing of materials, supplies, equipment, land or buildings,  
42 directly or indirectly, make any contribution to any political  
43 party, committee or candidate for public office or to any person  
44 for political purposes or use; nor may any person or firm solicit  
45 any contributions for any purpose during any period.

46 (e) No person may, directly or indirectly, promise any  
47 employment, position, work, compensation or other benefit  
48 provided for, or made possible, in whole or in part, by act of the  
49 Legislature, to any person as consideration, favor or reward for

50 any political activity for the support of or opposition to any  
51 candidate or any political party in any election.

52 (f) No person may, directly or indirectly, make any contri-  
53 bution in excess of the value of one thousand dollars in connec-  
54 tion with any campaign for nomination or election to or on  
55 behalf of any statewide office, or in excess of the value of one  
56 thousand dollars, in connection with any other campaign for  
57 nomination or election to or on behalf of any other elective  
58 office in the state or any of its subdivisions, or in connection  
59 with or on behalf of any committee or other organization or  
60 person engaged in furthering, advancing or advocating the  
61 nomination or election of any candidate for any of the offices.

62 (g) (1) Notwithstanding the provisions of subsection (f) of  
63 this section to the contrary, the aggregate contributions made to  
64 a state party executive committee or state party legislative  
65 caucus committee are to be permitted only pursuant to the  
66 limitations imposed by the provisions of this subsection.

67 (2) No person may, directly or indirectly, make contribu-  
68 tions to a state party executive committee or state party  
69 legislative caucus committee which, in the aggregate, exceed  
70 the value of one thousand dollars in any calendar year.

71 (h) The limitations on contributions contained in this  
72 section do not apply to transfers between and among a state  
73 party executive committee or a state party's legislative caucus  
74 political committee from national committees of the same  
75 political party: *Provided*, That transfers permitted by this  
76 subsection may not exceed fifty thousand dollars in the aggre-  
77 gate in any calendar year to any state party executive committee  
78 or state party legislative caucus political committee: *Provided*,  
79 *however*, That the moneys transferred may only be used for  
80 voter registration and get-out-the-vote activities of the state  
81 committees.



82 (i) No person may solicit any contribution, other than  
83 contributions to a campaign for or against a county or local  
84 government ballot issue, from any nonelective salaried em-  
85 ployee of the state government or of any of its subdivisions:  
86 *Provided*, That in no event shall any person acting in a supervi-  
87 sory role solicit a person who is a subordinate employee for any  
88 contribution. No person may coerce or intimidate any  
89 nonelective salaried employee into making a contribution. No  
90 person may coerce or intimidate any nonsalaried employee of  
91 the state government or any of its subdivisions into engaging in  
92 any form of political activity. The provisions of this subsection  
93 may not be construed to prevent any employee from making a  
94 contribution or from engaging in political activity voluntarily  
95 without coercion, intimidation or solicitation.

96 (j) No person may solicit a contribution from any other  
97 person without informing the other person at the time of the  
98 solicitation of the amount of any commission, remuneration or  
99 other compensation that the solicitor or any other person will  
100 receive or expect to receive as a direct result of the contribution  
101 being successfully collected. Nothing in this subsection may be  
102 construed to apply to solicitations of contributions made by any  
103 person serving as an unpaid volunteer.

104 (k) No person may place any letter, circular, flyer, adver-  
105 tisement, election paraphernalia, solicitation material or other  
106 printed or published item tending to influence voting at any  
107 election in a roadside receptacle unless it is: (1) Approved for  
108 placement into a roadside receptacle by the business or entity  
109 owning the receptacle; and (2) contains a written acknowledg-  
110 ment of the approval. This subdivision does not apply to any  
111 printed material contained in a newspaper or periodical pub-  
112 lished or distributed by the owner of the receptacle. The term  
113 "roadside receptacle" means any container placed by a newspa-  
114 per or periodical business or entity to facilitate home or

115 personal delivery of a designated newspaper or periodical to its  
116 customers.

117 (l) Any person violating any provision of this section is  
118 guilty of a misdemeanor and, upon conviction thereof, shall be  
119 fined not more than one thousand dollars, or confined in a  
120 regional or county jail for not more than one year or, in the  
121 discretion of the court, be subject to both fine and confinement.

122 (m) The provisions of subsection (i) of this section,  
123 permitting contributions to a campaign for or against a county  
124 or local government ballot issue, shall become operable on and  
125 after the first day of January, two thousand five.

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## CHAPTER 115

**(H. B. 4582 — By Mr. Speaker, Mr. Kiss, and Delegate Kuhn)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §21-3C-1, §21-3C-2, §21-3C-3, §21-3C-4, §21-3C-5 and §21-3C-6 of the code of West Virginia, 1931, as amended, all relating to elevator safety; adding and modifying definitions; adding grounds for revocation or suspension of certificate of competency; limiting division inspectors to inspections of state owned elevators; and making technical and stylistic changes.

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

That §21-3C-1, §21-3C-2, §21-3C-3, §21-3C-4, §21-3C-5 and §21-3C-6 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3C. ELEVATOR SAFETY.**

§21-3C-1. Definitions.

§21-3C-2. Inspectors; application; examination; certificates of competency; reexamination.

§21-3C-3. Suspension or revocation of certificates.

§21-3C-4. Registration of elevators; notification to counties and municipalities.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

§21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.

**§21-3C-1. Definitions.**

1           (1) “Certificate of acceptance” means a certificate issued by  
2 the division of labor certifying that a newly installed elevator  
3 has been inspected and was found to be installed in compliance  
4 with the safety standards set forth in the American Society of  
5 Mechanical Engineers Safety Code for Elevators and Escalators  
6 (ASME) A17.1-3, “Safety Code for Elevators” and ASME  
7 A18.1, “Safety Code for Platform Lifts and Stairway Chair-  
8 lifts”.

9           (2) “Certificate of competency” means a certificate issued  
10 by the division of labor certifying that an individual is qualified  
11 to inspect elevators.

12           (3) “Certificate of operation” means a certificate issued by  
13 the division of labor certifying that an elevator has been  
14 inspected and is safe for operation.

15           (4) “Division” means the division of labor.

16           (5) “Division inspector” means an employee or contractor  
17 of the division who has been examined and issued a certificate  
18 of competency and who only inspects elevators in state owned  
19 buildings.

20 (6) "Elevator" means all the machinery, construction,  
21 apparatus and equipment used in raising and lowering a car,  
22 cage or platform vertically between permanent rails or guides  
23 and includes all elevators, power dumbwaiters, escalators,  
24 gravity elevators and other lifting or lowering apparatus  
25 permanently installed between rails or guides, but does not  
26 include hand operated dumbwaiters, manlifts of the platform  
27 type with a platform area not exceeding nine hundred square  
28 inches, construction hoists or other similar temporary lifting or  
29 lowering apparatus.

30 (7) "Freight elevator" means an elevator used for carrying  
31 freight and on which only the operator, by the permission of the  
32 employer, is allowed to ride.

33 (8) "Inspector" means both a division inspector and a  
34 private inspector.

35 (9) "Passenger elevator" means an elevator that is designed  
36 to carry persons to its contract capacity.

37 (10) "Private inspector" means a person who has been  
38 examined and issued a certificate of competency to inspect  
39 elevators within this state.

**§21-3C-2. Inspectors; application; examination; certificates of  
competency; reexamination.**

1 (a) No person may serve as an inspector unless he or she  
2 successfully completes the examination required by this section  
3 and holds a certificate of competency for elevator inspections  
4 issued by the division.

5 (b) The application for examination for elevator inspector  
6 shall be in writing, accompanied by a fee of ten dollars, upon a  
7 form furnished by the division. The applicant shall state his or

8 her social security number, level of education, previous  
9 employers, the period of employment, the position held with  
10 each employer, and other information required by the division.  
11 The applicant shall also submit a letter from one of his or her  
12 previous employers concerning his or her character and  
13 experience.

14 (c) Applications which contain any willfully submitted false  
15 or untrue information shall be rejected.

16 (d) The division shall administer an examination to a  
17 qualified applicant testing the applicant's knowledge of the  
18 construction, installation, operation, maintenance and repair of  
19 elevators and accessories.

20 (e) The division shall issue a certificate of competency for  
21 elevator inspections to an applicant who successfully completes  
22 the examination and who complies with the requirements of this  
23 article and legislative rules promulgated by the division.

24 (f) An applicant who fails to successfully complete an  
25 initial examination may submit an application for a second  
26 examination ninety days or more after the initial examination.  
27 The second application must be accompanied by the ten dollar  
28 examination fee. Should an applicant fail to successfully  
29 complete the prescribed examination on the second trial, he or  
30 she is not permitted to submit an application for another  
31 examination for a period of one year after the second failure.

32 (g) Any person hired as a private inspector by a county or  
33 municipality shall possess a certificate of competency issued by  
34 the division.

35 (h) The division may hire division inspectors or enter into  
36 a contract for the services of a division inspector so long as the  
37 inspector has been certified competent by the division. The

38 division may hire an inspector supervisor who shall supervise  
39 the inspection activities under this article.

**§21-3C-3. Suspension or revocation of certificates.**

1 A certificate of competency for elevator inspectors may be  
2 suspended or revoked by the division if the inspector is found  
3 to be incompetent or untrustworthy or for the falsification of  
4 any matter or statement contained on the application or in a  
5 report of any inspection. Any willfully submitted false state-  
6 ment contained in an inspection report shall constitute grounds  
7 for suspension of the certificate of competency.

**§21-3C-4. Registration of elevators; notification to counties and municipalities.**

1 The owner or operator of an elevator shall register each  
2 elevator with the division, giving the type, capacity and  
3 description, name of manufacturer, and purpose for which each  
4 is used. The registration shall be made on a form designed and  
5 furnished by the division. The division shall forward a list of  
6 registered elevators to the county or municipality wherein the  
7 elevators are located.

**§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.**

1 (a) A county or municipality may hire a private inspector or  
2 contract with any person who possesses a West Virginia  
3 elevator inspector's certificate of competency issued by the  
4 division.

5 (b) The county or municipality shall ensure that every  
6 elevator which has been in use for five years or more is  
7 inspected annually. A private inspector shall inspect all

8 elevators except elevators in state owned buildings. A division  
9 inspector shall inspect elevators in state owned buildings.

10 (c)(1) The county or municipality shall ensure that each  
11 newly installed elevator within its jurisdiction is inspected and  
12 issued a certificate of acceptance by the division prior to being  
13 placed in service.

14 (2) A certificate of acceptance shall only be issued if the  
15 elevator was installed in compliance with the safety standards  
16 set forth in the American Society of Mechanical Engineers  
17 Safety Code for Elevators and Escalators (ASME) A17.1-3,  
18 "Safety Code for Elevators" and ASME A18.1, "Safety Code  
19 for Platform Lifts and Stairway Chairlifts".

20 (3) The acceptance inspection shall be subject to the same  
21 procedures and requirements as any other elevator inspection.

**§21-3C-6. Report of inspection; hearing on construction plans  
and specifications; findings and orders of division.**

1 (a) The division shall propose rules for legislative approval  
2 in accordance with article three, chapter twenty-nine-a of this  
3 code, prescribing inspection procedures and reporting require-  
4 ments.

5 (b) Each inspector shall submit a complete report of each  
6 inspection made of an elevator to the division and to the county  
7 or municipality in which the elevator is located.

8 (c)(1) The inspection report shall list all changes or repairs  
9 required to be made for the safe operation of the elevator. A  
10 copy of the report as approved by the division shall be submit-  
11 ted to the owner or operator of the elevator. Unless the findings  
12 in the report are appealed, the owner or operator of the elevator

13 shall make the required changes or repairs before a certificate  
14 of operation is issued.

15 (2) The owner or operator, within twenty days from receipt  
16 of the copy of an inspection report, may make written applica-  
17 tion to the division, upon forms to be furnished by the division,  
18 for a hearing on the inspection report including the issue of  
19 whether the elevator in question is reasonably safe. The division  
20 shall promptly consider the submitted application.

21 (3) If it appears from the evidence that the elevator will be  
22 reasonably safe to operate without the recommended changes  
23 or repairs set forth in the report or by making only a part of the  
24 recommended changes or repairs, the division shall make its  
25 finding and order accordingly. If the finding and order require  
26 changes or repairs to be made to the elevator, the division may  
27 not issue a certificate of operation until the elevator owner has  
28 complied with the order or the division issues its approval of  
29 the change or repair plans or specifications. If the finding and  
30 order of the division has been affirmed or modified by appeal,  
31 on the grounds of reasonable safety considered by the division,  
32 the division shall, upon the owner or operator's compliance  
33 with the order, issue the certificate of operation, but if the  
34 finding and order of the division has been vacated, the certifi-  
35 cate of operation shall be issued immediately.

36 (4) An elevator owner adversely affected by a finding and  
37 order of the division, is entitled to judicial review of the finding  
38 and order in accordance with the provisions of section four,  
39 article five, chapter twenty-nine-a of this code.

40 (d) No elevator may be operated after being inspected  
41 without having the certificate of operation conspicuously posted  
42 except during the period a hearing on the issuance of the  
43 certificate of operation is pending.



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## CHAPTER 116

**(Com. Sub. for H. B. 4027 — By Mr. Speaker, Mr. Kiss,  
and Delegate Trump)  
[By Request of the Executive]**

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[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-25-1, §22-25-2, §22-25-3, §22-25-4, §22-25-5, §22-25-6, §22-25-7, §22-25-8, §22-25-9, §22-25-10, §22-25-11, §22-25-12 and §22-25-13, all relating to establishing a voluntary environmental excellence program; creating certain incentives for businesses that exceed the requirements of certain state and federal environmental laws and regulations and increase the quantity and quality of public participation; establishing legislative findings and purpose; defining certain terms; directing the secretary of the department of environmental protection to develop and implement the environmental excellence program; authorizing the secretary of the department of environmental protection to propose certain legislative rules regarding the environmental excellence program; establishing eligibility and application requirements for participation; authorizing the department of environmental protection to enter into environmental performance agreements with qualified entities and timely review applications; providing for certain program elements; providing for appeal of certain adverse application decisions; providing for the withdrawal, enforcement and termination of participation under certain circumstances; providing for certain incentives to be established for participating in the program; providing certain guidelines for the content of environmental performance agreements; establishing the environ-

mental excellence administrative fund; allowing for gifts and donations to be received by the fund; providing for public participation in the environmental excellence program; providing for a performance review of the program; and providing for expiration of the program in two thousand nine.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §22-25-1, §22-25-2, §22-25-3, §22-25-4, §22-25-5, §22-25-6, §22-25-7, §22-25-8, §22-25-9, §22-25-10, §22-25-11, §22-25-12 and §22-25-13, all to read as follows:

**ARTICLE 25. ENVIRONMENTAL EXCELLENCE PROGRAM.**

- §22-25-1. Legislative findings.
- §22-25-2. Purpose.
- §22-25-3. Definitions.
- §22-25-4. Powers and duties of the department.
- §22-25-5. Eligibility and application requirements.
- §22-25-6. Application review and authority to enter into environmental performance agreement.
- §22-25-7. Judicial review of department decision on acceptance of application to participate in the environmental excellence program.
- §22-25-8. Withdrawal, enforcement and termination from the program.
- §22-25-9. Incentives.
- §22-25-10. Environmental performance agreements; contents, and specifications.
- §22-25-11. Recovery of costs to department in developing, negotiating and publicizing environmental performance agreement; deposition of moneys collected; creation of environmental excellence program administrative fund.
- §22-25-12. Public participation.
- §22-25-13. Review and repeal of the environmental excellence program.

**§22-25-1. Legislative findings.**

- 1 The Legislature finds that:
  - 2 (1) Regulated and nonregulated entities that demonstrate a
  - 3 commitment to the environment by going beyond compliance
  - 4 with environmental laws and rules positively impact the quality

5 of life for all citizens of the state by improving the economy  
6 and the environment by increasing consumer and public  
7 confidence, boosting management and employee morale, and  
8 operating in a safe and sensible manner that lessens impacts on  
9 the environment.

10 (2) While West Virginia's existing environmental laws play  
11 an important role in protecting the environment, environmental  
12 protection could be further enhanced by authorizing innovative  
13 advances in environmental regulatory methods and approaches.

14 (3) Enhanced public involvement allows the public and  
15 community to meaningfully participate in finding solutions for  
16 environmental issues in their community while maintaining the  
17 vitality of the local and state economy and strengthening ties  
18 between businesses, nonbusiness entities and community.

19 (4) Increased use of pollution prevention strategies, more  
20 cost-effective options for compliance with environmental  
21 standards, improvement of environmental performance, and  
22 reduction in occurrences of noncompliance with environmental  
23 standards can be achieved through the establishment and  
24 implementation of a voluntary environmental excellence  
25 program pursuant to this article. This voluntary program will  
26 provide entities with the opportunity to enter into an agreement  
27 with the department of environmental protection through which  
28 the department shall grant recognition and other benefits to  
29 participating entities that comply with a prescribed number of  
30 program elements established by the secretary of the depart-  
31 ment of environmental protection designed to reduce environ-  
32 mental impacts beyond those achieved by compliance with  
33 environmental laws and permits alone.

#### **§22-25-2. Purpose.**

1 The purpose of this article is to authorize the department of  
2 environmental protection to establish and administer an

3 environmental excellence program to promote, reward, and  
4 encourage superior environmental performance in this state.  
5 The environmental excellence program will establish a system  
6 to encourage voluntary environmental performance that will  
7 exceed existing regulatory standards for health and the environ-  
8 ment and result in continual improvement in the state's environ-  
9 ment, economy, and quality of life. The program should, if  
10 practical, be compatible with other federal programs which  
11 create incentives for achieving environmental performance  
12 beyond the regulatory requirements, such as the United States  
13 environmental protection agency's national performance track  
14 program. The environmental excellence program will be  
15 established and implemented to accomplish the following:

16 (1) Encourage facility owners and operators to assess the  
17 environmental impact of their operations;

18 (2) Encourage innovation by and measure success through  
19 facility owners and operators setting measurable and verifiable  
20 goals;

21 (3) Increase public participation and encourage stakeholder  
22 consensus in the development of innovative environmental  
23 regulatory approaches and methods and in monitoring the  
24 environmental performance of projects under this article;

25 (4) Focus resources toward achieving positive environmen-  
26 tal goals that are important to the community and the state;

27 (5) Report environmental performance information and  
28 ambient environmental data to the public in a manner that is  
29 accurate, timely, credible, relevant and usable to interested  
30 parties;

31 (6) Provide for the measurement of environmental perfor-  
32 mance in terms of accomplishing goals and objectives, and  
33 require the reporting of those results;

34 (7) Provide facility owners and operators with flexibility to  
35 implement the most effective pollution prevention, source  
36 reduction, or other pollution reduction strategies for their  
37 particular facilities, while complying with verifiable and  
38 enforceable pollution limits;

39 (8) Encourage superior environmental performance and  
40 continuous improvement toward sustainable levels of resource  
41 usage and minimization of pollution discharges, emissions and  
42 releases;

43 (9) Promote the transfer of technological and practical  
44 environmental innovations that improve environmental perfor-  
45 mance in a more efficient, effective, and safe manner; and

46 (10) Strive to lower transaction costs associated with  
47 environmental performance.

### §22-25-3. Definitions.

1 As used in this article, unless the context otherwise  
2 requires:

3 (a) "Cross-media transfer" means a pollutant transfer from  
4 one environmental media to another, such as air to water.

5 (b) "Department" means the department of environmental  
6 protection.

7 (c) "Environmental goals" means the environmental  
8 performance objectives proposed by a qualified applicant that  
9 demonstrates superior environmental performance and which  
10 may support variances from environmental laws.

11 (d) "Environmental laws" means the following articles of  
12 chapter twenty-two of the code of West Virginia, two thousand  
13 two, as amended: Four, five, eleven, twelve, fifteen, sixteen,  
14 seventeen, and eighteen and legislative rules adopted under one

15 of those articles, or a policy, rule, permit, license, other  
16 approval or order issued by the department under one of those  
17 articles. “Environmental laws” do not include any provision of  
18 the code of West Virginia or of any municipal ordinance or  
19 enactment that regulates the selection of a location for a new  
20 facility.

21 (e) “Environmental management system” means a formal  
22 set of voluntary procedures and policies used to evaluate  
23 environmental performance and to achieve measurable or  
24 noticeable improvements in that environmental performance  
25 through planning and changes in operations, based on a  
26 commitment to superior environmental performance. An  
27 environmental management system is the part of the overall  
28 management system that includes organizational structure,  
29 planning activities, responsibilities, practices, procedures,  
30 processes, and resources for developing, implementing,  
31 achieving, reviewing, and maintaining an environmental policy.  
32 An environmental management system includes the following  
33 elements:

34 (1) Adoption of an environmental policy that includes a  
35 commitment to maintain or exceed compliance with environ-  
36 mental and other requirements, pollution prevention, and  
37 continual improvement;

38 (2) An analysis of the environmental aspects and impacts  
39 of the organization’s activities;

40 (3) Significance ranking of environmental aspects and  
41 procedures;

42 (4) Plans and procedures to achieve, maintain and exceed  
43 requirements set forth by environmental laws;

44 (5) Identification of all legal requirements applicable to the  
45 organization’s environmental performance;

46 (6) Setting environmental objectives and developing  
47 appropriate environmental management programs to meet the  
48 objectives;

49 (7) Establishment of a structure for operational control and  
50 responsibility for environmental performance;

51 (8) An employee training program to develop awareness of  
52 and competence to manage environmental issues;

53 (9) A plan for taking preventive, corrective and emergency  
54 action to address environmental problems;

55 (10) A communication plan to collaborate with employees,  
56 the public and department on the design of the projects and  
57 activities to achieve superior environmental performance;

58 (11) Document control and record keeping of environmen-  
59 tal performance;

60 (12) Third party audits of the environmental management  
61 system;

62 (13) Third party audits of environmental compliance;

63 (14) Senior management review;

64 (15) Monitoring and measurement of environmental  
65 performance; and

66 (16) Other criteria as established by the secretary.

67 (f) "Environmental management system audit" means a  
68 systematic and documented third party verification process of  
69 evaluating whether an organization's environmental manage-  
70 ment system conforms to the criteria set forth by the depart-  
71 ment.

72 (g) “Environmental performance agreement” means an  
73 agreement entered into between the department and a partici-  
74 pant of the program that specifies the participant’s commitment  
75 to superior environmental performance, enhanced public  
76 involvement, and the incentives to be provided to the partici-  
77 pant.

78 (h) “Environmental performance baseline” means the actual  
79 emissions, discharges, and impact to the environment by a  
80 facility at the time the application to participate in the environ-  
81 mental excellence program is filed with the department.

82 (i) “Hazardous substance” or “toxic substance” means those  
83 chemicals defined as hazardous substances under section 313 of  
84 the federal Superfund Amendments and Reauthorization Act of  
85 1986 (SARA Title III), including any subsequent amendments,  
86 and sections 101(14) and 102 of the federal Comprehensive  
87 Environmental Response, Compensation and Liability Act  
88 (CERCLA), as amended.

89 (j) “Participant” means a qualified applicant that has been  
90 admitted into the environmental excellence program through  
91 the execution of an environmental performance agreement with  
92 the department. Participant is limited to the site or facility  
93 where the environmental goals will be achieved and does not  
94 include the entire company where the company operates  
95 multiple sites or facilities.

96 (k) “Pollution prevention” means any practice that reduces  
97 the use of any hazardous substance or amount of a pollutant or  
98 contaminant prior to reuse, recycling, treatment, or disposal,  
99 and reduces the hazards to public health and the environment  
100 associated with the use and release of hazardous substances,  
101 pollutants or contaminants. Pollution prevention does not  
102 include cross-media pollution transfers that do not result in a  
103 net decrease of discharge, emission or impact to the environ-  
104 ment.



105 (l) "Program" means the environmental excellence program  
106 created pursuant to this article.

107 (m) "Qualified applicant" means any regulated or  
108 nonregulated facility of a government entity, corporation,  
109 partnership, sole proprietorship, municipality, county, city and  
110 county, or special district located and doing business in this  
111 state that meets the requirements for participation in the  
112 program set forth by this article.

113 (n) "Regulated entity" means an entity that requires a  
114 permit issued under one of the environmental laws to legally  
115 operate in this state or is otherwise subject to enforcement of  
116 environmental laws.

117 (o) "Nonregulated entity" means an entity that does not  
118 require a permit issued pursuant to environmental laws to  
119 legally operate in this state.

120 (p) "Secretary" means the secretary of the department of  
121 environmental protection.

122 (q) "Significant impact to the environment" means a release  
123 of a substance into the environment which has caused or may  
124 cause an adverse affect to natural resources, organisms, flora,  
125 fauna or the ecosystem.

126 (r) "Significant impact to human health" means a release of  
127 a substance into the environment which has caused or may  
128 cause an acute or chronic affect to human health.

129 (s) "Source reduction" means any practice which reduces  
130 the amount of any pollutant, contaminant, or hazardous  
131 substance entering any waste stream or otherwise being  
132 released into the environment, including fugitive emissions,  
133 prior to recycling, treatment, or disposal and reduces the  
134 hazards to public health and the environment associated with

135 the release of these pollutants, contaminants, or hazardous  
136 substances. "Source reduction" includes equipment or technol-  
137 ogy modifications, process or procedure modifications, refor-  
138 mulation or redesign of products, substitution of raw materials,  
139 and improvements in housekeeping, maintenance, training or  
140 inventory control. "Source reduction" does not include any  
141 practice which alters the physical, chemical, or biological  
142 characteristics or the volume of a hazardous substance, pollut-  
143 ant or contaminant through a process or activity which itself is  
144 not integral to and necessary for the production of a product or  
145 the providing of a service.

146 (t) "Superior environmental performance" means environ-  
147 mental performance that results in measurable or discernable  
148 improvement in the quality of the air, water, land or natural  
149 resources or in the protection of the ecosystem beyond that  
150 which is actually being achieved by the qualified applicant  
151 under compliance with current environmental laws. "Superior  
152 environmental performance" does not include pollutant  
153 reductions resulting from cross-media pollutant transfers unless  
154 it can be demonstrated that such transfer results in an overall  
155 improvement to the quality of the air, water, land and natural  
156 resources. "Superior environmental performance" may include,  
157 but is not limited to, any of the following:

158 (1) An entity limits the discharges or emissions of pollut-  
159 ants from, or in some other way minimizes the negative effects  
160 on air, water, land, natural resources, or human health of, a  
161 facility that is owned or operated by the entity or an activity  
162 that is performed by the entity to an extent that is greater than  
163 is required by applicable environmental laws.

164 (2) An entity minimizes the negative impact on air, water,  
165 land, natural resources, or human health of the raw materials  
166 used by the entity or the products or services produced or

167 provided by the entity to an extent that is greater than is  
168 required by applicable environmental laws.

169 (3) An entity voluntarily engages in restoring, reclaiming,  
170 enhancing, or preserving natural resources.

171 (4) An entity organizes segmented or uncoordinated entities  
172 that are producing environmental harm into a program that  
173 achieves positive environmental results.

174 (5) An entity reduces waste, hazardous substances, or toxic  
175 substances in the design, production, delivery, use or reuse of  
176 goods and services.

177 (6) An entity reduces or conserves energy, nonrenewable or  
178 renewable natural resources through more efficient and  
179 sustainable methods.

180 (u) "Toxic use reduction" means changes in production  
181 processes, products, or raw materials that reduce, avoid or  
182 eliminate the use of toxic or hazardous substances and the  
183 generation of hazardous byproducts per unit of production, so  
184 as to reduce the overall risks to the health of workers, consum-  
185 ers or the environment without creating new risks of concern.

#### **§22-25-4. Powers and duties of the department.**

1 (a) Within one year after the effective date of this section,  
2 the secretary, after consultation with representatives from the  
3 regulated community, local governments, environmental  
4 advocacy groups and other interested citizens, shall develop and  
5 implement a voluntary environmental excellence program in  
6 accordance with this article. The secretary shall propose  
7 legislative rules for promulgation in accordance with article  
8 three, chapter twenty-nine-a of this code necessary to establish  
9 and implement all necessary program elements for the environ-  
10 mental excellence program as established in this article. Such

11 program elements shall include, but are not limited to, the  
12 following criteria:

- 13 (1) Participation and entry into the program;
- 14 (2) Public involvement;
- 15 (3) Environmental management system;
- 16 (4) Commitment to superior environmental performance;
- 17 (5) Communication of program results to the public; and
- 18 (6) Incentives.

19 (b) In establishing the environmental excellence business  
20 program, the secretary may establish classes, categories, or tiers  
21 of environmental performance agreements as the secretary  
22 considers appropriate, taking into consideration the diversity of  
23 businesses and industries in the state, the impact these entities  
24 may have on the environment, and the incentives sought by the  
25 qualified applicant.

26 (c) The secretary may negotiate with federal regulatory  
27 agencies to obtain authority to grant incentives under federal  
28 regulatory programs.

29 (d) Participation in the program by any participant is  
30 voluntary and is subject to review every three years.

**§22-25-5. Eligibility and application requirements.**

- 1 (a) The secretary shall establish by rule the minimum  
2 criteria for participation in the environmental excellence  
3 program. The minimum criteria shall include, but not be limited  
4 to, the following:

5 (1) An identified number of years with no serious civil  
6 noncompliance;

7 (2) An identified number of years without any criminal  
8 noncompliance;

9 (3) An identified number of years with no activities that  
10 resulted in a significant negative impact to human health or the  
11 environment;

12 (4) The existence and maintenance of an environmental  
13 management system;

14 (5) The existence and maintenance of an environmental  
15 management system audit program;

16 (6) The establishment of quantifiable environmental goals  
17 which are designed to achieve superior environmental perfor-  
18 mance;

19 (7) The existence and maintenance of verifiable, quantita-  
20 tive and qualitative measures or methods to document attain-  
21 ment of environmental goals; and

22 (8) The existence or establishment of a public participation  
23 plan as approved by the secretary that demonstrates that the  
24 proposal has broad support, its environmental implications are  
25 fully understood by all interested parties, and assures ongoing  
26 engagement of the public.

27 (b) The secretary shall establish alternative elective  
28 program elements in addition to the mandatory program  
29 elements set forth in subsection (a) of this section. Qualified  
30 applicants shall select from among the alternative elective  
31 program elements and complete those selected within a  
32 specified time period. The number of elective program elements  
33 shall be determined by the secretary and based on the activity

34 of the participant and the nature of the proposal. All elective  
35 program elements shall be designed to result in measurable  
36 improvement and enhancement of the environmental quality of  
37 the state or shall be activities that are beneficial to the environ-  
38 ment. Elective program elements may include, but are not  
39 limited to:

40 (1) Development and maintenance of programs that provide  
41 technical assistance or mentoring to one or more specified  
42 organizations to encourage technology transfers;

43 (2) Active participation in industry or business environmen-  
44 tal improvement programs;

45 (3) Publication and public distribution of annual environ-  
46 mental performance summary reports;

47 (4) Promotion, sponsorship and participation in community  
48 environmental and advisory programs;

49 (5) Development and maintenance of management pro-  
50 grams that encourage and reward employees for meeting or  
51 exceeding requirements of environmental laws or permits and  
52 for participation in voluntary environmental activities; and

53 (6) Development and implementation of programs that  
54 reduce adverse environmental impact of development, manu-  
55 facturing, distribution and marketing of the participant's  
56 products or services.

57 The secretary may establish additional alternative elective  
58 program elements so long as the elements are designed to result  
59 in the measurable improvement and enhancement of the  
60 environmental quality of this state. Any additional alternative  
61 elective program elements established by the secretary shall  
62 have a reasonable nexus to the industry or business to which it  
63 applies.

64 (c) The secretary shall establish application requirements  
65 and application forms for entities to submit proposals to  
66 participate in the program. The department shall review all  
67 applications submitted for the program and shall notify the  
68 eligible applicant that the application is complete or that the  
69 application is incomplete. If the application is incomplete, the  
70 department shall describe what additional information is  
71 required to complete the application. The applicant may correct  
72 the application and resubmit it at any time.

73 (d) Applicants accepted into an equivalent federal program  
74 at the time of submitting an application to the department may  
75 satisfy some or all of the eligibility and application require-  
76 ments pursuant to this article at the secretary's discretion.

**§22-25-6. Application review and authority to enter into environ-  
mental performance agreement.**

1 (a) The secretary shall review all completed applications  
2 within a reasonable period of time. If the secretary determines  
3 that the application meets the requirements for the program, the  
4 secretary shall notify the applicant in writing, and the applica-  
5 tion shall be incorporated into a written agreement. If the  
6 secretary determines the application does not meet the require-  
7 ments of the program, the secretary shall notify the applicant in  
8 writing and shall provide an adequate opportunity for the  
9 applicant to address the outstanding items.

10 (b) The secretary may enter into one or more agreements  
11 with a participant as necessary to implement the provisions of  
12 this article. The agreement shall describe the requirements for  
13 continued participation and incentives to be provided to the  
14 participant.

15 (c) The secretary shall not enter into any environmental  
16 performance agreement that would:

- 17 (1) Violate or waive any specific statutory provision;
- 18 (2) Waive any federal regulation, unless specifically  
19 authorized by the federal government;
- 20 (3) Result in an increase in emissions, discharges, or other  
21 releases above those allowable under the otherwise applicable  
22 regulatory requirements; or
- 23 (4) Address past or ongoing violations or noncompliance by  
24 a qualified applicant.
- 25 (d) The following documents shall be made available for  
26 public review:
- 27 (1) The application, including documentation of compliance  
28 with environmental laws and permits applicable to the facility  
29 over the last three years, information regarding an appropriate  
30 environmental management system, a description of the current  
31 status of proposed performance indicators, and an outline of the  
32 measures by which the program will be evaluated;
- 33 (2) The executive's determination regarding their applica-  
34 tion; and
- 35 (3) The agreement described in subsections (a) and (b) of  
36 this section.

**§22-25-7. Judicial review of department decision on acceptance of application to participate in the environmental excellence program.**

1 The decision of the department to refuse to accept an  
2 application for participation in the environmental excellence  
3 program is not subject to judicial review. The decision of the  
4 department to enter into an environmental performance  
5 agreement may be appealed to the environmental quality board  
6 by any person aggrieved or adversely affected by the action



7 being appealed, pursuant to the provisions of article one,  
8 chapter twenty-two-b of this code.

**§22-25-8. Withdrawal, enforcement and termination from the  
program.**

1 (a) Any participant may elect to withdraw from participa-  
2 tion in the program at any time upon written notice to the  
3 secretary.

4 (b) The secretary shall terminate the participation of any  
5 participant in the program if a serious violation is discovered or  
6 occurs and the violation is not properly disclosed in accordance  
7 with the law or is not corrected or remedied in a timely manner  
8 to the satisfaction of the secretary.

9 (c) The secretary may continue the participation of a  
10 participant in the program if a serious violation is discovered or  
11 occurs and the violation is properly disclosed in accordance  
12 with law and is corrected or remedied in a timely manner to the  
13 satisfaction of the secretary.

14 (d) A participant's participation in the program shall be  
15 suspended from the time the serious violation is discovered or  
16 occurs until the time it is corrected or remedied to the satisfac-  
17 tion of the secretary.

18 (e) If the secretary determines at any time a participant is  
19 failing to perform in accordance with the environmental  
20 performance agreement, and if, after written notice to the  
21 participant, the participant does not come into conformance  
22 within a reasonable period of time, as established by the  
23 secretary, the secretary may terminate the participant's partici-  
24 pation in the program.

25 (f) All incentives provided by the state pursuant to section  
26 nine of this article shall be withdrawn, effective upon termina-

27 tion or withdrawal of the participant’s participation in the  
 28 program. If a participant withdraws or is terminated from the  
 29 program, any unused incentives will be forfeited.

30 (g) The secretary shall establish, by rule, procedures and  
 31 criteria that set forth circumstances under which a participant’s  
 32 participation shall be suspended or terminated and criteria for  
 33 a transition plan for returning to otherwise applicable environ-  
 34 mental laws if the environmental performance agreement is  
 35 terminated by the participant for any reason or by the secretary  
 36 for failure to meet the agreement’s stated environmental goals,  
 37 despite good faith efforts.

**§22-25-9. Incentives.**

1 The secretary shall propose rules for legislative approval,  
 2 pursuant to the provisions of chapter twenty-nine-a of this code,  
 3 establishing incentives to be granted to any participant that  
 4 complies with all of the mandatory program elements and the  
 5 prescribed number of elective program elements, as determined  
 6 by the secretary. Participants may seek some or all of the  
 7 incentives established pursuant to this subsection.

**§22-25-10. Environmental performance agreements; contents,  
 and specifications.**

1 (a) The environmental performance agreement shall clearly  
 2 establish the environmental goals of the participant; public  
 3 involvement requirements; incentives; reporting requirements;  
 4 and all other terms to ensure that the proposal is properly  
 5 implemented and enforceable.

6 (b) In entering into environmental performance agreements,  
 7 the secretary shall require stricter monitoring, or take other  
 8 appropriate steps to ensure accountability, for proposals with  
 9 greater uncertainty of meeting their stated environmental goals.

10 (c) A final environmental performance agreement shall  
11 specify:

12 (1) Any otherwise applicable rules, requirements, policies,  
13 or practices, modified, waived or replaced;

14 (2) The specific environmental goals of the agreement and  
15 the criteria for determining whether the agreement is meeting  
16 those goals;

17 (3) A description of how compliance with the agreement  
18 will be monitored and enforced, including any penalties that  
19 may be imposed for failure to carry out the terms of the  
20 agreement;

21 (4) The duration of the agreement and terms for renewal or  
22 extension;

23 (5) A transition plan for returning to otherwise applicable  
24 environmental laws in the event the agreement is terminated by  
25 either the participant or the department;

26 (6) A plan for integrating into the agreement any relevant  
27 regulations that are promulgated during the duration of the  
28 agreement; and

29 (7) Criteria for determining whether agreement may be  
30 transferred in the event of a transfer of ownership of the facility  
31 subject to the terms and conditions of the agreement and when  
32 applicable, the procedures for transferring the agreement.

**§22-25-11. Recovery of costs to department in developing, negoti-  
ating and publicizing environmental performance  
agreement; deposition of moneys collected; cre-  
ation of environmental excellence program ad-  
ministrative fund.**

1 To recover the costs to the department in developing,  
2 negotiating and publicizing an environmental performance

3 agreement, the secretary may establish by legislative rule  
4 reasonable application, renewal, and administration fees. An  
5 “Environmental Excellence Program Administrative Fund” is  
6 hereby created in the state treasury. The funds shall be dedi-  
7 cated and appropriated to the department to administer the  
8 program. Expenditures are not authorized from collections but  
9 are to be made only in accordance with appropriation by the  
10 Legislature and in accordance with the provisions of article  
11 three, chapter twelve of this code and upon the fulfillment of  
12 the provisions of article two, chapter five-a of this code:  
13 *Provided, That for the fiscal year ending the thirtieth day of*  
14 *June, two thousand five, expenditures are authorized from*  
15 *collections rather than pursuant to appropriation by the Legisla-*  
16 *ture. Any moneys not utilized by the department for the*  
17 *purposes set forth herein by the thirtieth day of June, two*  
18 *thousand nine, shall revert to the state general revenue fund and*  
19 *the environmental excellence program administration fund shall*  
20 *be dissolved.*

**§22-25-12. Public participation.**

1 To promote a participatory process that will conform to the  
2 legislative rules adopted pursuant to section four of this article,  
3 to the extent that resources are available in the environmental  
4 excellence program administration fund and appropriated by the  
5 Legislature, the secretary is authorized to provide logistical and  
6 technical support to assure balanced and timely participation in  
7 any public process associated with this program.

**§22-25-13. Review and repeal of the environmental excellence program.**

1 (a) The joint committee on government operations shall,  
2 pursuant to authority granted in article ten, chapter four of this  
3 code, conduct a preliminary performance review of the depart-  
4 ment of environmental protection’s compliance with the  
5 provisions of this article, and whether it is appropriate to

6 continue this program. In conducting a preliminary performance  
7 review, the committee shall follow the guidelines established in  
8 section ten, article ten, chapter four of this code. The committee  
9 may direct that the focus of the preliminary performance review  
10 be on a specific area of operation and may direct further  
11 inquiry, when necessary and desirable.

12 (b) This article and any rules promulgated thereunder shall  
13 remain in effect until the thirtieth day of June, two thousand  
14 nine, at which time this article and any rules promulgated  
15 thereunder shall be repealed.

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## CHAPTER 117

(H. B. 2991 — By Delegates Cann, Kominar, Amores,  
Stemple, Palumbo and Hrutkay)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §44-2-1 of the code of West Virginia,  
1931, as amended, relating to the fee charged by fiduciary  
commissioners in settling an estate.

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

That §44-2-1 of the code of West Virginia, 1931, as amended, be  
amended and reenacted to read as follows:

### ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

**§44-2-1. Reference of decedents' estates; proceedings thereon.**

1 (a) Upon the return of the appraisement by the personal  
2 representative to the county clerk, the estate of his or her  
3 decedent, by order of the county commission, must be referred  
4 to a fiduciary commissioner for proof and determination of  
5 debts and claims, establishment of their priority, determination  
6 of the amount of the respective shares of the legatees and  
7 distributees, and any other matter necessary for the settlement  
8 of the estate: *Provided*, That in counties where there are two or  
9 more commissioners, the estates of decedents must be referred  
10 to the commissioners in rotation, so there may be an equal  
11 division of the work. Notwithstanding any other provision of  
12 this code to the contrary, a fiduciary commissioner may not  
13 charge to the estate a fee greater than three hundred dollars and  
14 expenses for the settlement of an estate, except upon: (i)  
15 Approval of the personal representative; or (ii) a determination  
16 by the county commission that the fee is based upon the actual  
17 time spent and actual services rendered pursuant to a schedule  
18 of fees or rate of compensation for fiduciary commissioners  
19 promulgated by the commission in accordance with the  
20 provisions of section nine, article one, chapter fifty-nine of this  
21 code.

22 (b) If the personal representative delivers to the clerk an  
23 appraisement of the assets of the estate showing their value to  
24 be one hundred thousand dollars or less, exclusive of real estate  
25 specifically devised and nonprobate assets, or if it appears to  
26 the clerk that there is only one beneficiary of the probate estate  
27 and that the beneficiary is competent at law, the clerk shall  
28 record the appraisement. If an unpaid creditor files a claim  
29 against the estate, the personal representative has twenty days  
30 after the date of the filing of a claim against the estate of the  
31 decedent to approve or reject the claim before the estate is  
32 referred to a fiduciary commissioner. If the personal representa-

33 tive approves all claims as filed, then no reference may be  
34 made.

35 The personal representative shall, within a reasonable time  
36 after the date of recordation of the appraisalment: (i) File a  
37 waiver of final settlement in accordance with the provisions of  
38 section twenty-nine of this article; or (ii) make a report to the  
39 clerk of his or her receipts, disbursements and distribution and  
40 submit an affidavit stating that all claims against the estate for  
41 expenses of administration, taxes and debts of the decedent  
42 have been paid in full. Upon receipt of the waiver of final  
43 settlement or report, the clerk shall record the waiver or report  
44 and mail copies to each beneficiary and creditor by first-class  
45 mail, postage prepaid. The clerk shall retain the report for ten  
46 days to allow any beneficiary or creditor to appear before the  
47 county commission to request reference to a fiduciary commis-  
48 sioner. The clerk shall collect a fee of ten dollars for recording  
49 and mailing the waiver of final settlement or report.

50 If no request or objection is made to the clerk or to the  
51 county commission, the county commission may confirm the  
52 report of the personal representative, the personal representative  
53 and his or her surety shall be discharged; but if an objection or  
54 request is made, the county commission may confirm and  
55 record the accounting or may refer the estate to its fiduciary  
56 commissioners: *Provided*, That the personal representative has  
57 twenty days after the date of the filing of a claim against the  
58 estate of the decedent to approve or reject the claim before the  
59 estate is referred to a fiduciary commissioner and if all claims  
60 are approved as filed, then no reference may be made.

61 (c) For purposes of this section, the term beneficiary means  
62 a person designated in a will to receive real or personal prop-  
63 erty.

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## CHAPTER 118

(S. B. 569 — By Senator McCabe)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §44-5-15 of the code of West Virginia, 1931, as amended, relating to clarifying and preserving the irrevocability of trusts that have been drafted to be irrevocable.

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

That §44-5-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.**

**§44-5-15. Nonmerger of trusts.**

1       (a) No trust is invalid or terminated, and title to trust assets  
2 is not merged, because the trustee or trustees are the same  
3 person or persons as the beneficiaries of the trust.

4       (b) No trust, which is otherwise irrevocable because the  
5 grantor or settlor of the trust has not expressly reserved the right  
6 to alter, amend, modify or revoke the trust or because the  
7 creating instrument expressly provides or states that the trust is  
8 irrevocable, is or becomes revocable by the grantor or settlor  
9 because the grantor or settlor is the sole beneficiary of the trust.

10       (c) This section applies to all trusts whenever executed or  
11 created.



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## CHAPTER 119

(Com. Sub. for H. B. 2801 — By Delegates Hrutkay,  
Amores, Pethtel, Pino and Stemple)

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §6B-2-3 and §6B-2-5 of the code of West Virginia, 1931, as amended, clarifying the law relating to the solicitation of donations by a member of the Legislature, and requiring the ethics commission to furnish copies of advisory opinions to the Legislature and the Supreme Court of Appeals.

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

That §6B-2-3 and §6B-2-5 of the code of West Virginia, 1931, as amended, 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.**

§6B-2-3. Advisory opinions; enforcement; applicability; legislative review; rule making.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

**§6B-2-3. Advisory opinions; enforcement; applicability; legislative review; rule making.**

- 1 (a) A person subject to the provisions of this chapter may
- 2 make application in writing to the ethics commission for an
- 3 advisory opinion on whether an action or proposed action
- 4 violates the provisions of this chapter or the provisions of
- 5 section fifteen, article ten, chapter sixty-one of this code and

6 would thereby expose the person to sanctions by the commis-  
7 sion or criminal prosecution. The commission shall respond  
8 within thirty days from the receipt of the request by issuing an  
9 advisory opinion on the matter raised in the request. All  
10 advisory opinions shall be published and indexed in the code of  
11 state rules by the secretary of state: *Provided*, That before an  
12 advisory opinion is made public, any material which may  
13 identify the person who is the subject of the opinion shall, to the  
14 fullest extent possible, be deleted and the identity of the person  
15 shall not be revealed. A person subject to the provisions of this  
16 chapter may rely upon the published guidelines or an advisory  
17 opinion of the commission, and any person acting in good faith  
18 reliance on any such guideline or opinion shall be immune from  
19 the sanctions of this chapter and the sanctions of section fifteen,  
20 article ten, chapter sixty-one of this code, and shall have an  
21 absolute defense to any criminal prosecution for actions taken  
22 in good faith reliance upon any such opinion or guideline in  
23 regard to the sanctions of this chapter and the sanctions of  
24 section fifteen, article ten, chapter sixty-one of this code.

25 (b) By the first day of the third month of the calendar year,  
26 the ethics commission shall annually furnish copies of all  
27 advisory opinions issued during the preceding calendar year to  
28 the archives and history section of the division of culture and  
29 history, the office of the Clerk of the West Virginia House of  
30 Delegates, the office of the Clerk of the West Virginia Senate  
31 and the West Virginia Supreme Court of Appeals Law Library.  
32 Accompanying the initial delivery of the previous calendar  
33 year's advisory opinions after the enactment of this subsection,  
34 the commission shall supply each of these offices with copies  
35 of all advisory opinions issued subsequent to the creation of the  
36 commission.

**§6B-2-5. Ethical standards for elected and appointed officials and  
public employees.**

1       (a) Persons subject to section.—The provisions of this  
2 section apply to all elected and appointed public officials and  
3 public employees, whether full or part time, in state, county,  
4 municipal governments and their respective boards, agencies,  
5 departments and commissions and in any other regional or local  
6 governmental agency, including county school boards.

7       (b) Use of public office for private gain.— (1) A public  
8 official or public employee may not knowingly and intention-  
9 ally use his or her office or the prestige of his or her office for  
10 his or her own private gain or that of another person. The  
11 performance of usual and customary duties associated with the  
12 office or position or the advancement of public policy goals or  
13 constituent services, without compensation, does not constitute  
14 the use of prestige of office for private gain.

15       (2) The Legislature, in enacting this subsection (b), relating  
16 to the use of public office or public employment for private  
17 gain, recognizes that there may be certain public officials or  
18 public employees who bring to their respective offices or  
19 employment their own unique personal prestige which is based  
20 upon their intelligence, education, experience, skills and  
21 abilities, or other personal gifts or traits. In many cases, these  
22 persons bring a personal prestige to their office or employment  
23 which inures to the benefit of the state and its citizens. Such  
24 persons may, in fact, be sought by the state to serve in their  
25 office or employment because, through their unusual gifts or  
26 traits, they bring stature and recognition to their office or  
27 employment and to the state itself. While the office or employ-  
28 ment held or to be held by such persons may have its own  
29 inherent prestige, it would be unfair to such individuals and  
30 against the best interests of the citizens of this state to deny  
31 such persons the right to hold public office or be publicly  
32 employed on the grounds that they would, in addition to the  
33 emoluments of their office or employment, be in a position to  
34 benefit financially from the personal prestige which otherwise

35 inheres to them. Accordingly, the commission is directed, by  
36 legislative rule, to establish categories of such public officials  
37 and public employees, identifying them generally by the office  
38 or employment held, and offering persons who fit within such  
39 categories the opportunity to apply for an exemption from the  
40 application of the provisions of this subsection. Such exemp-  
41 tions may be granted by the commission, on a case-by-case  
42 basis, when it is shown that: (A) The public office held or the  
43 public employment engaged in is not such that it would  
44 ordinarily be available or offered to a substantial number of the  
45 citizens of this state; (B) the office held or the employment  
46 engaged in is such that it normally or specifically requires a  
47 person who possesses personal prestige; and (C) the person's  
48 employment contract or letter of appointment provides or  
49 anticipates that the person will gain financially from activities  
50 which are not a part of his or her office or employment.

51 (c) Gifts.—(1) A public official or public employee may  
52 not solicit any gift unless the solicitation is for a charitable  
53 purpose with no resulting direct pecuniary benefit conferred  
54 upon the official or employee or his or her immediate family:  
55 *Provided*, That no public official or public employee may  
56 solicit for a charitable purpose any gift from any person who is  
57 also an official or employee of the state and whose position as  
58 such is subordinate to the soliciting official or employee:  
59 *Provided, however*, That nothing herein shall prohibit a  
60 candidate for public office from soliciting a lawful political  
61 contribution. No official or employee may knowingly accept  
62 any gift, directly or indirectly, from a lobbyist or from any  
63 person whom the official or employee knows or has reason to  
64 know:

65 (A) Is doing or seeking to do business of any kind with his  
66 or her agency;

67 (B) Is engaged in activities which are regulated or con-  
68 trolled by his or her agency; or

69 (C) Has financial interests which may be substantially and  
70 materially affected, in a manner distinguishable from the public  
71 generally, by the performance or nonperformance of his official  
72 duties.

73 (2) Notwithstanding the provisions of subdivision (1) of  
74 this subsection, a person who is a public official or public  
75 employee may accept a gift described in this subdivision, and  
76 there shall be a presumption that the receipt of such gift does  
77 not impair the impartiality and independent judgment of the  
78 person. This presumption may be rebutted only by direct  
79 objective evidence that the gift did impair the impartiality and  
80 independent judgment of the person or that the person knew or  
81 had reason to know that the gift was offered with the intent to  
82 impair his or her impartiality and independent judgment. The  
83 provisions of subdivision (1) of this subsection do not apply to:

84 (A) Meals and beverages;

85 (B) Ceremonial gifts or awards which have insignificant  
86 monetary value;

87 (C) Unsolicited gifts of nominal value or trivial items of  
88 informational value;

89 (D) Reasonable expenses for food, travel and lodging of the  
90 official or employee for a meeting at which the official or  
91 employee participates in a panel or speaking engagement at the  
92 meeting;

93 (E) Gifts of tickets or free admission extended to a public  
94 official or public employee to attend charitable, cultural or  
95 political events, if the purpose of such gift or admission is a  
96 courtesy or ceremony customarily extended to the office;

97 (F) Gifts that are purely private and personal in nature; or

98 (G) Gifts from relatives by blood or marriage, or a member  
99 of the same household.

100 (3) The commission shall, through legislative rule promul-  
101 gated pursuant to chapter twenty-nine-a of this code, establish  
102 guidelines for the acceptance of a reasonable honorarium by  
103 public officials and elected officials. The rule promulgated shall  
104 be consistent with this section. Any elected public official may  
105 accept an honorarium only when: (1) That official is a part-time  
106 elected public official; (2) the fee is not related to the official's  
107 public position or duties; (3) the fee is for services provided by  
108 the public official that are related to the public official's  
109 regular, nonpublic trade, profession, occupation, hobby or  
110 avocation; and (4) the honorarium is not provided in exchange  
111 for any promise or action on the part of the public official.

112 (4) Nothing in this section shall be construed so as to  
113 prohibit the giving of a lawful political contribution as defined  
114 by law.

115 (5) The governor or his designee may, in the name of the  
116 state of West Virginia, accept and receive gifts from any public  
117 or private source. Any such gift so obtained shall become the  
118 property of the state and shall, within thirty days of the receipt  
119 thereof, be registered with the commission and the division of  
120 culture and history.

121 (6) Upon prior approval of the joint committee on govern-  
122 ment and finance, any member of the Legislature may solicit  
123 donations for a regional or national legislative organization  
124 conference or other legislative organization function to be held  
125 in the state for the purpose of deferring costs to the state for  
126 hosting of the conference or function. Legislative organizations  
127 are bipartisan regional or national organizations in which the  
128 joint committee on government and finance authorizes payment

129 of dues or other membership fees for the Legislature's partici-  
130 pation, and which assist this and other state legislatures and  
131 their staff through any of the following:

132 (i) Advancing the effectiveness, independence, and integ-  
133 rity of legislatures in the states of the United States;

134 (ii) Fostering interstate cooperation and facilitating infor-  
135 mation exchange among state legislatures;

136 (iii) Representing the states and their legislatures in the  
137 American federal system of government;

138 (iv) Improving the operations and management of state  
139 legislatures and the effectiveness of legislators and legislative  
140 staff, and to encourage the practice of high standards of conduct  
141 by legislators and legislative staff;

142 (v) Promoting cooperation between state legislatures in the  
143 United States and legislatures in other countries.

144 The solicitations may only be made in writing. The legisla-  
145 tive organization may act as fiscal agent for the conference and  
146 receive all donations. In the alternative, a bona fide banking  
147 institution may act as the fiscal agent. The official letterhead of  
148 the Legislature may not be used by the legislative member in  
149 conjunction with the fund raising or solicitation effort. The  
150 legislative organization for which solicitations are being made  
151 shall file with the joint committee on government and finance  
152 and with the secretary of state for publication in the state  
153 register as provided in article two of chapter twenty-nine-a of  
154 the code, copies of letters, brochures and other solicitation  
155 documents, along with a complete list of the names and last  
156 known addresses of all donors and the amount of donations  
157 received. Any solicitation by a legislative member shall contain  
158 the following disclaimer:

159        “This solicitation is endorsed by [name of member]. This  
160 endorsement does not imply support of the soliciting organiza-  
161 tion, nor of the sponsors who may respond to the solicitation. A  
162 copy of all solicitations are on file with the West Virginia  
163 Legislature’s Joint Committee on Government and Finance, and  
164 with the Secretary of State, and are available for public review.”

165        (d) Interests in public contracts.—(1) In addition to the  
166 provisions of section fifteen, article ten, chapter sixty-one of  
167 this code, no elected or appointed public official or public  
168 employee or member of his or her immediate family or business  
169 with which he or she is associated may be a party to or have an  
170 interest in the profits or benefits of a contract which such  
171 official or employee may have direct authority to enter into, or  
172 over which he or she may have control: *Provided*, That nothing  
173 herein shall be construed to prevent or make unlawful the  
174 employment of any person with any governmental body:  
175 *Provided, however*, That nothing herein shall be construed to  
176 prohibit a member of the Legislature from entering into a  
177 contract with any governmental body, or prohibit a part-time  
178 appointed public official from entering into a contract which  
179 such part-time appointed public official may have direct  
180 authority to enter into or over which he or she may have control  
181 when such official has been recused from deciding or evaluat-  
182 ing and excused from voting on such contract and has fully  
183 disclosed the extent of such interest in the contract.

184        (2) In the absence of bribery or a purpose to defraud, an  
185 elected or appointed public official or public employee or a  
186 member of his or her immediate family or a business with  
187 which he or she is associated shall not be considered as having  
188 an interest in a public contract when such a person has a limited  
189 interest as an owner, shareholder or creditor of the business  
190 which is the contractor on the public contract involved. A  
191 limited interest for the purposes of this subsection is:



192 (A) An interest:

193 (i) Not exceeding ten percent of the partnership or the  
194 outstanding shares of a corporation; or

195 (ii) Not exceeding thirty thousand dollars interest in the  
196 profits or benefits of the contract; or

197 (B) An interest as a creditor:

198 (i) Not exceeding ten percent of the total indebtedness of a  
199 business; or

200 (ii) Not exceeding thirty thousand dollars interest in the  
201 profits or benefits of the contract.

202 (3) Where the provisions of subdivisions (1) and (2) of this  
203 subsection would result in the loss of a quorum in a public body  
204 or agency, in excessive cost, undue hardship, or other substan-  
205 tial interference with the operation of a state, county, municipi-  
206 tality, county school board or other governmental agency, the  
207 affected governmental body or agency may make written  
208 application to the ethics commission for an exemption from  
209 subdivisions (1) and (2) of this subsection.

210 (e) Confidential information.—No present or former public  
211 official or employee may knowingly and improperly disclose  
212 any confidential information acquired by him or her in the  
213 course of his or her official duties nor use such information to  
214 further his or her personal interests or the interests of another  
215 person.

216 (f) Prohibited representation.—No present or former elected  
217 or appointed public official or public employee shall, during or  
218 after his or her public employment or service, represent a client  
219 or act in a representative capacity with or without compensation  
220 on behalf of any person in a contested case, rate-making

221 proceeding, license or permit application, regulation filing or  
222 other particular matter involving a specific party or parties  
223 which arose during his or her period of public service or  
224 employment and in which he or she personally and substantially  
225 participated in a decision-making, advisory or staff support  
226 capacity, unless the appropriate government agency, after  
227 consultation, consents to such representation. A staff attorney,  
228 accountant or other professional employee who has represented  
229 a government agency in a particular matter shall not thereafter  
230 represent another client in the same or substantially related  
231 matter in which that client's interests are materially adverse to  
232 the interests of the government agency, without the consent of  
233 the government agency: *Provided*, That this prohibition on  
234 representation shall not apply when the client was not directly  
235 involved in the particular matter in which such professional  
236 employee represented the government agency, but was involved  
237 only as a member of a class. The provisions of this subsection  
238 shall not apply to legislators who were in office and legislative  
239 staff who were employed at the time it originally became  
240 effective on the first day of July, one thousand nine hundred  
241 eighty-nine, and those who have since become legislators or  
242 legislative staff and those who shall serve hereafter as legisla-  
243 tors or legislative staff.

244 (g) Limitation on practice before a board, agency, commis-  
245 sion or department.—(1) No elected or appointed public official  
246 and no full-time staff attorney or accountant shall, during his or  
247 her public service or public employment or for a period of six  
248 months after the termination of his or her public service or  
249 public employment with a governmental entity authorized to  
250 hear contested cases or promulgate regulations, appear in a  
251 representative capacity before the governmental entity in which  
252 he or she serves or served or is or was employed in the follow-  
253 ing matters:

254 (A) A contested case involving an administrative sanction,  
255 action or refusal to act;

256 (B) To support or oppose a proposed regulation;

257 (C) To support or contest the issuance or denial of a license  
258 or permit;

259 (D) A rate-making proceeding; and

260 (E) To influence the expenditure of public funds.

261 (2) As used in this subsection, "represent" includes any  
262 formal or informal appearance before, or any written or oral  
263 communication with, any public agency on behalf of any  
264 person: *Provided*, That nothing contained in this subsection  
265 shall prohibit, during any period, a former public official or  
266 employee from being retained by or employed to represent,  
267 assist, or act in a representative capacity on behalf of the public  
268 agency by which he or she was employed or in which he or she  
269 served. Nothing in this subsection shall be construed to prevent  
270 a former public official or employee from representing another  
271 state, county, municipal or other governmental entity before the  
272 governmental entity in which he or she served or was employed  
273 within six months after the termination of his or her employ-  
274 ment or service in the entity.

275 (3) A present or former public official or employee may  
276 appear at any time in a representative capacity before the  
277 Legislature, a county commission, city or town council or  
278 county school board in relation to the consideration of a statute,  
279 budget, ordinance, rule, resolution or enactment.

280 (4) Members and former members of the Legislature and  
281 professional employees and former professional employees of  
282 the Legislature shall be permitted to appear in a representative  
283 capacity on behalf of clients before any governmental agency

284 of the state, or of county or municipal governments including  
285 county school boards.

286 (5) An elected or appointed public official, full-time staff  
287 attorney or accountant who would be adversely affected by the  
288 provisions of this subsection may apply to the ethics commis-  
289 sion for an exemption from the six months prohibition against  
290 appearing in a representative capacity, when the person's  
291 education and experience is such that the prohibition would, for  
292 all practical purposes, deprive the person of the ability to earn  
293 a livelihood in this state outside of the governmental agency.  
294 The ethics commission shall by legislative rule establish  
295 general guidelines or standards for granting an exemption or  
296 reducing the time period, but shall decide each application on  
297 a case-by-case basis.

298 (h) Employment by regulated persons.—(1) No full-time  
299 official or full-time public employee may seek employment  
300 with, be employed by, or seek to sell or lease real or personal  
301 property to any person who:

302 (A) Had a matter on which he or she took, or a subordinate  
303 is known to have taken, regulatory action within the preceding  
304 twelve months; or

305 (B) Has a matter before the agency to which he or she is  
306 working or a subordinate is known by him or her to be working.

307 (2) Within the meaning of this section, the term “employ-  
308 ment” includes professional services and other services  
309 rendered by the public official or public employee, whether  
310 rendered as employee or as an independent contractor; “seek  
311 employment” includes responding to unsolicited offers of  
312 employment as well as any direct or indirect contact with a  
313 potential employer relating to the availability or conditions of  
314 employment in furtherance of obtaining employment; and

315 “subordinate” includes only those agency personnel over whom  
316 the public servant has supervisory responsibility.

317 (3) A full-time public official or full-time public employee  
318 who would be adversely affected by the provisions of this  
319 subsection may apply to the ethics commission for an exemp-  
320 tion from the prohibition contained in subsection (1). The ethics  
321 commission shall by legislative rule establish general guidelines  
322 or standards for granting an exemption, but shall decide each  
323 application on a case-by-case basis.

324 (4) A full-time public official or full-time public employee  
325 may not take personal regulatory action on a matter affecting a  
326 person by whom he or she is employed or with whom he or she  
327 is seeking employment or has an agreement concerning future  
328 employment.

329 (5) A full-time public official or full-time public employee  
330 may not receive private compensation for providing informa-  
331 tion or services that he or she is required to provide in carrying  
332 out his or her public job responsibilities.

333 (i) Members of the Legislature required to vote.—Members  
334 of the Legislature who have asked to be excused from voting or  
335 who have made inquiry as to whether they should be excused  
336 from voting on a particular matter and who are required by the  
337 presiding officer of the House of Delegates or Senate of West  
338 Virginia to vote under the rules of the particular house shall not  
339 be guilty of any violation of ethics under the provisions of this  
340 section for a vote so cast.

341 (j) Limitations on participation in licensing and rate-making  
342 proceedings.—No public official or employee may participate  
343 within the scope of his or her duties as a public official or  
344 employee, except through ministerial functions as defined in  
345 section three, article one of this chapter, in any license or  
346 rate-making proceeding that directly affects the license or rates

347 of any person, partnership, trust, business trust, corporation or  
348 association in which the public official or employee or his or  
349 her immediate family owns or controls more than ten percent.  
350 No public official or public employee may participate within  
351 the scope of his or her duties as a public official or public  
352 employee, except through ministerial functions as defined in  
353 section three, article one of this chapter, in any license or  
354 rate-making proceeding that directly affects the license or rates  
355 of any person to whom the public official or public employee  
356 or his or her immediate family, or a partnership, trust, business  
357 trust, corporation or association of which the public official or  
358 employee, or his or her immediate family, owns or controls  
359 more than ten percent, has sold goods or services totaling more  
360 than one thousand dollars during the preceding year, unless the  
361 public official or public employee has filed a written statement  
362 acknowledging such sale with the public agency and the  
363 statement is entered in any public record of the agency's  
364 proceedings. This subsection shall not be construed to require  
365 the disclosure of clients of attorneys or of patients or clients of  
366 persons licensed pursuant to articles three, eight, fourteen,  
367 fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one,  
368 chapter thirty of this code.

369 (k) Certain expenses prohibited.—No public official or  
370 public employee shall knowingly request or accept from any  
371 governmental entity compensation or reimbursement for any  
372 expenses actually paid by a lobbyist and required by the  
373 provisions of this chapter to be reported, or actually paid by any  
374 other person.

375 (l) Any person who is employed as a member of the faculty  
376 or staff of a public institution of higher education and who is  
377 engaged in teaching, research, consulting or publication  
378 activities in his or her field of expertise with public or private  
379 entities and thereby derives private benefits from such activities  
380 shall be exempt from the prohibitions contained in subsections

381 (b), (c) and (d) of this section when the activity is approved as  
382 a part of an employment contract with the governing board of  
383 such institution or has been approved by the employees'  
384 department supervisor or the president of the institution by  
385 which the faculty or staff member is employed.

386 (m) Except as provided in this section, a person who is a  
387 public official or public employee may not solicit private  
388 business from a subordinate public official or public employee  
389 whom he or she has the authority to direct, supervise or control.  
390 A person who is a public official or public employee may  
391 solicit private business from a subordinate public official or  
392 public employee whom he or she has the authority to direct,  
393 supervise or control when:

394 (A) The solicitation is a general solicitation directed to the  
395 public at large through the mailing or other means of distribu-  
396 tion of a letter, pamphlet, handbill, circular or other written or  
397 printed media; or

398 (B) The solicitation is limited to the posting of a notice in  
399 a communal work area; or

400 (C) The solicitation is for the sale of property of a kind that  
401 the person is not regularly engaged in selling; or

402 (D) The solicitation is made at the location of a private  
403 business owned or operated by the person to which the subordi-  
404 nate public official or public employee has come on his or her  
405 own initiative.

406 (n) The commission by legislative rule promulgated in  
407 accordance with chapter twenty-nine-a of this code may define  
408 further exemptions from this section as necessary or appropri-  
409 ate.

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## CHAPTER 120

**(H. B. 4140 — By Delegates Amores, Kominar,  
Palumbo, Webster and Armstead)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §6B-2-5a, relating to requiring the ethics commission to establish a code of conduct for state administrative law judges, including civil penalties and sanctions for violations.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §6B-2-5a, 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; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

**§6B-2-5a. Code of conduct for state administrative law judges.**

1       (a) As used in this section, “state administrative law judge”  
2 means any public employee, public officer or contractor  
3 functioning as a hearing officer, referee, trial examiner or other  
4 position in state government to whom the authority to conduct  
5 an administrative adjudication has been delegated by an agency  
6 or by statute and who exercises independent and impartial



7 judgment in conducting hearings and in issuing recommended  
8 decisions or reports containing findings of fact and conclusions  
9 of law in accordance with applicable statutes or rules, but does  
10 not include any person whose conduct is subject to the code of  
11 judicial conduct promulgated by the West Virginia Supreme  
12 Court of Appeals.

13 (b) In accordance with the provisions of chapter  
14 twenty-nine-a of this code, the commission, in consultation with  
15 the West Virginia state bar, shall propose rules for legislative  
16 approval establishing a code of conduct for state administrative  
17 law judges, which shall incorporate the following major  
18 provisions:

19 (1) A state administrative law judge shall uphold the  
20 integrity and independence of the administrative judiciary;

21 (2) A state administrative law judge shall avoid impropriety  
22 and the appearance of impropriety in all activities;

23 (3) A state administrative law judge shall perform the  
24 duties of the office impartially and diligently;

25 (4) A state administrative law judge shall regulate the  
26 judge's extra-judicial activities to minimize the risk of conflict  
27 with judicial duties;

28 (5) A state administrative law judge shall refrain from  
29 political activity inappropriate to the office; and

30 (6) Appropriate civil penalties and sanctions for violations.

31 In proposing the rules, the commission shall consider the  
32 model codes of judicial conduct for state administrative law  
33 judges as drafted by the National Association of Administrative  
34 Law Judges and the American Bar Association.

35 (c) The legislative rules shall provide that an individual  
36 agency may develop a code of conduct for its own administra-  
37 tive law judges, which shall supersede the general code of  
38 conduct established under this section, if the commission  
39 determines that it is in substantial compliance with the objec-  
40 tives of the code proposed by the commission. Upon granting  
41 a waiver to an agency, the commission shall retain a copy of the  
42 agency's code to be made available to the public.

43 (d) The commission shall propose the legislative rules by  
44 the first day of October, two thousand four, so that it may be  
45 considered by the Legislature at the regular session in the year  
46 two thousand five, and the commission may not promulgate an  
47 emergency rule on this matter in the interim.

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## CHAPTER 121

**(H. B. 3150 — By Delegates Calvert and Amores)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §5-22-1 of the code of West Virginia, 1931, as amended; to amend and reenact §5-22A-10 of said code; to amend and reenact §7-11B-14 of said code; and to amend and reenact §38-2-39 of said code, all relating to establishing the West Virginia fairness in competitive bidding act; definitions; establishing procedures and requirements for awarding contracts for government construction projects; requirements for performance, payment, bid and surety bonds; and criminal penalties.

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

That §5-22-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §5-22A-10 of said code be amended and reenacted; that §7-11B-14 of said code be amended and reenacted; and that §38-2-39 of said code be amended and reenacted, all to read as follows:

**Chapter**

- 5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 7. **County Commissions and Officers.**
- 38. **Liens.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**Article**

- 22. **Government Construction Contracts.**
- 22A. **Design-Build Procurement Act.**

**ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

**§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.**

1 (a) This section and the requirements set forth in this  
2 section may be referred to as the “West Virginia Fairness In  
3 Competitive Bidding Act”.

4 (b) As used in this section:

5 (1) “Lowest qualified responsible bidder” means the bidder  
6 that bids the lowest price and that meets, as a minimum, all the

7 following requirements in connection with the bidder's re-  
8 sponse to the bid solicitation. The bidder must certify that it:

9 (A) Is ready, able and willing to timely furnish the labor  
10 and materials required to complete the contract;

11 (B) Is in compliance with all applicable laws of the state of  
12 West Virginia; and

13 (C) Has supplied a valid bid bond or other surety authorized  
14 or approved by the contracting public entity.

15 (2) "The state and its subdivisions" means the state of West  
16 Virginia, every political subdivision thereof, every administra-  
17 tive entity that includes such a subdivision, all municipalities  
18 and all county boards of education.

19 (c) The state and its subdivisions shall, except as provided  
20 in this section, solicit competitive bids for every construction  
21 project exceeding twenty-five thousand dollars in total cost:  
22 *Provided*, That a vendor who has been debarred pursuant to the  
23 provisions of sections thirty-three-a through thirty-three-f,  
24 inclusive, article three, chapter five-a of this code may not bid  
25 on or be awarded a contract under this section. All bids submit-  
26 ted pursuant to this chapter shall include a valid bid bond or  
27 other surety as approved by the state of West Virginia or its  
28 subdivisions.

29 (d) Following the solicitation of bids, the construction  
30 contract shall be awarded to the lowest qualified responsible  
31 bidder who shall furnish a sufficient performance and payment  
32 bond: *Provided*, That the state and its subdivisions may reject  
33 all bids and solicit new bids on the project.

34 (e) The contracting public entity may not award the contract  
35 to a bidder which fails to meet the minimum requirements set

36 out in this section. As to any prospective low bidder which the  
37 contracting public entity determines not to have met any one or  
38 more of the requirements of this section or other requirements  
39 as determined by the public entity in the written bid solicitation,  
40 prior to the time a contract award is made, the contracting  
41 public entity shall document in writing and in reasonable detail  
42 the basis for the determination and shall place the writing in the  
43 bid file. After the award of a bid under this section, the bid file  
44 of the contracting public agency and all bids submitted in  
45 response to the bid solicitation shall be open and available for  
46 public inspection.

47 (f) Any public official or other person who individually or  
48 together with others knowingly makes an award of a contract  
49 under this section in violation of the procedures and require-  
50 ments of this section is subject to the penalties set forth in  
51 section twenty-nine, article three, chapter five-a of the code of  
52 West Virginia.

53 (g) No officer or employee of this state or of any public  
54 agency, public authority, public corporation or other public  
55 entity and no person acting or purporting to act on behalf of  
56 such officer or employee or public entity shall require that any  
57 performance bond, payment bond or surety bond required or  
58 permitted by this section be obtained from any particular surety  
59 company, agent, broker or producer.

60 (h) All bids shall be open in accordance with the provisions  
61 of section two of this article, except design-build projects which  
62 are governed by article twenty-two-a of this chapter and are  
63 exempt from these provisions.

64 (i) Nothing in this section shall apply to:

65 (1) Work performed on construction or repair projects by  
66 regular full-time employees of the state or its subdivisions;

67 (2) Prevent students enrolled in vocational educational  
68 schools from being utilized in construction or repair projects  
69 when the use is a part of the student's training program;

70 (3) Emergency repairs to building components and systems.  
71 For the purpose of this subdivision, the term emergency repairs  
72 means repairs that if not made immediately will seriously  
73 impair the use of building components and systems or cause  
74 danger to those persons using the building components and  
75 systems; and

76 (4) Any situation where the state or a subdivision thereof  
77 reaches an agreement with volunteers, or a volunteer group,  
78 whereby the governmental body will provide construction or  
79 repair materials, architectural, engineering, technical or any  
80 other professional services and the volunteers will provide the  
81 necessary labor without charge to, or liability upon, the  
82 governmental body.

#### **ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.**

##### **§5-22A-10. Solicitation of proposals.**

1 Proposals must be solicited from not less than three  
2 design-builders. A request for proposal must be prepared for  
3 each design-build contract and shall consist of, but not be  
4 limited to:

5 (1) The identity of the agency which will award the  
6 design-build contract;

7 (2) The procedures to be followed for submitting proposals,  
8 the criteria for evaluation of proposals and their relative weight,  
9 and the procedures for making awards, including a reference to  
10 the requirements of this article, the rules promulgated herein  
11 and any regulations pertaining to the agency;

12       (3) The proposed terms and conditions for the design-build  
13 contract;

14       (4) The performance criteria;

15       (5) The description of the drawings, specifications or other  
16 submittals to be submitted with the proposal, with guidance as  
17 to the form and level of completeness of the drawings, specifi-  
18 cations or submittals that will be acceptable;

19       (6) A schedule for planned commencement and completion  
20 of the design-build contract;

21       (7) Budget limits for the design-build contract, if any;

22       (8) Design-builder qualifications; and

23       (9) Requirements for performance bonds, payment bonds  
24 and insurance: *Provided*, That no officer or employee of this  
25 state or of any public agency, public authority, public corpora-  
26 tion, or other public entity, and no person acting or purporting  
27 to act on behalf of such officer or employee or public entity  
28 shall require that any performance bond, payment bond, or bid  
29 bond required or permitted by this section be obtained from any  
30 particular surety company, agent, broker or producer.

31       The request for proposals may include any other informa-  
32 tion that the agency, at its discretion, chooses to supply,  
33 including, but not limited to, surveys, soils reports, drawings or  
34 models of existing structures, environmental studies, photo-  
35 graphs or references to public records.

36       Notice of requests for proposals must be advertised as  
37 prescribed by the procedures utilized by the purchasing division  
38 pursuant to article three, chapter five-a of this code.

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.****ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.****§7-11B-14. Projects financed by tax increment financing considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.**

1 (a) Any project acquired, constructed, or financed, in whole  
2 or in part, by a county commission or municipality under this  
3 article shall be considered to be a “public improvement” within  
4 the meaning of the provisions of articles one-c and five-a,  
5 chapter twenty-one of this code.

6 (b) The county commission or municipality shall, except as  
7 provided in subsection (c) of this section, solicit or require  
8 solicitation of competitive bids and require the payment of  
9 prevailing wage rates as provided in article five-a, chapter  
10 twenty-one of this code and compliance with article one-c of  
11 said chapter for every project or infrastructure project funded  
12 pursuant to this article exceeding twenty-five thousand dollars  
13 in total cost.

14 (c) Following the solicitation of the bids, the construction  
15 contract shall be awarded to the lowest qualified responsible  
16 bidder, who shall furnish a sufficient performance and payment  
17 bond: *Provided*, That the county commission, municipality or  
18 other person soliciting the bids may reject all bids and solicit  
19 new bids on the project.

20 (d) No officer or employee of this state or of any public  
21 agency, public authority, public corporation, or other public  
22 entity, and no person acting or purporting to act on behalf of  
23 such officer or employee or public entity shall require that any  
24 performance bond, payment bond, or bid bond required or



25 permitted by this section be obtained from any particular surety  
26 company, agent, broker or producer.

27 (e) This section does not:

28 (1) Apply to work performed on construction projects not  
29 exceeding a total cost of fifty thousand dollars by regular  
30 full-time employees of the county commission or the munici-  
31 pality: *Provided*, That no more than fifty thousand dollars shall  
32 be expended on an individual project in a single location in a  
33 twelve-month period;

34 (2) Prevent students enrolled in vocational educational  
35 schools from being used in construction or repair projects when  
36 such use is a part of the students' training program;

37 (3) Apply to emergency repairs to building components and  
38 systems: *Provided*, That the term "emergency repairs" means  
39 repairs that, if not made immediately, will seriously impair the  
40 use of the building components and systems or cause danger to  
41 those persons using the building components and systems; or

42 (4) Apply to any situation where the county commission or  
43 municipality comes to an agreement with volunteers, or a  
44 volunteer group, by which the governmental body will provide  
45 construction or repair materials, architectural, engineering,  
46 technical or any other professional services and the volunteers  
47 will provide the necessary labor without charge to, or liability  
48 upon, the governmental body: *Provided*, That the total cost of  
49 the construction or repair projects does not exceed fifty  
50 thousand dollars.

51 (f) The provisions of subsection (b) of this section apply to  
52 privately owned projects or infrastructure projects constructed  
53 on lands not owned by the county commission, a municipality  
54 or a government agency or instrumentality when the owner or

55 the owner's agent or person financing the owner's project  
56 receives money from the tax increment financing fund for the  
57 owner's project.

## CHAPTER 38. LIENS.

### ARTICLE 2. MECHANICS' LIENS.

#### **§38-2-39. Public building; bond of contractor; recordation of bond; no lien in such case.**

1 It shall be the duty of the state commissioner of public  
2 institutions, and of all county courts, boards of education,  
3 boards of trustees, and other legal bodies having authority to  
4 contract for the erection, construction, improvement, alteration  
5 or repair of any public building or other structure, or any  
6 building or other structure used or to be used for public  
7 purposes, to require of every person to whom it shall award, and  
8 with whom it shall enter into, any contract for the erection,  
9 construction, improvement, alteration or repair of any such  
10 public building or other structure used or to be used for public  
11 purposes, that such contractor shall cause to be executed and  
12 delivered to the secretary of such commissioner or other legal  
13 body, or other proper and designated custodian of the papers  
14 and records thereof, a good, valid, solvent and sufficient bond,  
15 in a penal sum equal at the least to the reasonable cost of the  
16 materials, machinery, equipment and labor required for the  
17 completion of such contract, and conditioned that in the event  
18 such contractor shall fail to pay in full for all such materials,  
19 machinery, equipment and labor delivered to him for use in the  
20 erection, construction, improvement, alteration or repair of such  
21 public building or other structure, or building or other structure  
22 used or to be used for public purposes, then such bond and the  
23 sureties thereon shall be responsible to such materialman,  
24 furnisher of machinery or equipment, and furnisher or per-

25 former of such labor, or their assigns, for the full payment of  
26 the full value thereof.

27 No officer or employee of this state or of any public  
28 agency, public authority, public corporation, or other public  
29 entity, and no person acting or purporting to act on behalf of  
30 such officer or employee or public entity shall require that any  
31 surety bond required or permitted by this section be obtained  
32 from any particular surety company, agent, broker or producer.

33 All such bonds shall have as surety thereon either some  
34 incorporated bonding and/or surety company authorized to  
35 carry on business in this state, or in lieu of such corporate  
36 surety the contractor may deposit as security for such bond with  
37 the said state commissioner of public institutions, county court,  
38 board of education, board of trustees or other legal body having  
39 authority so to contract, a sum in cash or bonds and securities  
40 of the United States of America or of the state of West Virginia  
41 of sufficient amount and value equal at least to the reasonable  
42 cost of materials, machinery, equipment and labor required for  
43 the completion of such contract. Immediately upon the accep-  
44 tance of either of said bonds by the state commissioner of  
45 public institutions, county court, board of education and board  
46 of trustees, or other legal body, the bond shall be recorded by  
47 the secretary of such commissioner or other legal body, or by  
48 the proper designated custodian of the papers or records thereof,  
49 in the office of the clerk of the county court of the county or  
50 counties wherein such work is to be done and where such  
51 materials, machinery or equipment are to be delivered, and no  
52 such contract shall be binding and effective upon either party or  
53 parties thereto until such bond has been executed, delivered and  
54 recorded as aforesaid.

55 Nothing in this article shall be construed to give a lien upon  
56 such a public building or improvement as is mentioned in this

57 section, or upon the land upon which such public building or  
58 improvement is situated.

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## CHAPTER 122

(H. B. 4020 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]

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[Passed February 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §5A-8-21 and §5A-8-22, all relating to limiting disclosure of personal information maintained by the legislative, judicial or executive agencies of the state of West Virginia relating to state employees due to their state employment and creating lesser restrictions on information maintained by executive branch agencies on citizens generally.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §5A-8-21 and §5A-8-22, all to read as follows:

### **ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.**

§5A-8-21. Limitation on release of certain personal information maintained by state agencies and entities regarding state employees.

§5A-8-22. Personal information maintained by state entities.

**§5A-8-21. Limitation on release of certain personal information maintained by state agencies and entities regarding state employees.**

1 (a) The following personal information maintained by  
2 executive, legislative or judicial branch agencies of the state of  
3 West Virginia regarding persons in their capacity as state  
4 officers, employees, retirees or the legal dependents thereof is  
5 hereby deemed to be confidential and exempt from disclosure  
6 to non-governmental entities in documents otherwise subject to  
7 disclosure under the provisions of chapter twenty-nine-b of this  
8 code:

9 (1) An individual's home address;

10 (2) An individual's social security number;

11 (3) An individual's credit or debit card numbers;

12 (4) An individual's driver's license identification number;  
13 and

14 (5) An individual's marital status or maiden name.

15 (b) It is the policy of the state of West Virginia that the  
16 information enumerated in subsection (a) of this section is  
17 personal and confidential and should only be released to non-  
18 governmental entities for such purposes as are authorized by  
19 federal law or regulation, a provision of this code or a legisla-  
20 tive rule promulgated pursuant to the provisions of chapter  
21 twenty-nine-a of this code.

**§5A-8-22. Personal information maintained by state entities.**

1 (a) The following information maintained by state execu-  
2 tive branch agencies with respect to individuals and their  
3 dependents, is personal information, exempted from disclosure  
4 under the provisions of article one, chapter twenty nine-b of this  
5 code, and may not be released to non-governmental entities:

6 (1) An individual's social security number; or

7 (2) An individual's credit or debit card number.

8 (b) Notwithstanding the provisions of subsection (a) of this  
9 section, the information enumerated in said subsection may be  
10 released for such purposes as are authorized by federal law or  
11 regulation, a provision of this code or a legislative rule promul-  
12 gated pursuant to the provisions of chapter twenty-nine-a of this  
13 code.

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## CHAPTER 123

**(Com. Sub. for S. B. 197 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]**

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[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §5A-4-5a and §5A-4-6; to amend said code by adding thereto a new section, designated §5B-2-3b; to amend and reenact §5B-2-12 of said code; to amend said code by adding thereto a new section, designated §18B-1B-12; and to amend and reenact §29-22A-10 and §29-22A-10b of said code, all relating generally to distribution of net terminal income of racetrack video lottery terminals and the proceeds thereof for funding purposes; creating a 2004 capitol complex parking garage fund, a capitol renovation and improvement fund, a development office promotion fund and a research challenge fund for specified purposes; transferring funds from the tourism promotion fund; prohibiting members of the tourism commission from participating in the discussion of, or action upon, an application for or an award of any grant from the tourism

promotion fund in which the member has a direct financial interest; and reallocating certain percentages of net terminal income.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §5A-4-5a and §5A-4-6; that said code be amended by adding thereto a new section, designated §5B-2-3b; that §5B-2-12 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-12; and that §29-22A-10 and §29-22A-10b of said code be amended and reenacted, all to read as follows:

**Chapter**

- 5A. Department of Administration.**
- 5B. Economic Development Act of 1985.**
- 18B. Higher Education.**
- 29. Miscellaneous Boards and Officers.**

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

**ARTICLE 4. GENERAL SERVICES DIVISION.**

§5A-4-5a. Construction of parking garage for general public; creation of fund.

§5A-4-6. Renovation and improvement of capitol building and capitol complex.

**§5A-4-5a. Construction of parking garage for general public;  
creation of fund.**

1 (a) It is the intent of the Legislature to provide a parking  
2 facility for the general public and to direct the secretary of the  
3 department of administration to plan and construct a parking  
4 garage at the state capitol complex that will provide sufficient  
5 and additional parking exclusively for the general public.

6 (b) There is created in the state treasury to be administered  
7 by the department of administration a special fund to be named  
8 the "2004 capitol complex parking garage fund" into which

9 shall be deposited funds that are appropriated and funds from  
10 other sources to be used for the construction and maintenance  
11 of a parking garage on or adjacent to the state capitol complex.

**§5A-4-6. Renovation and improvement of capitol building and capitol complex.**

1 (a) It is the intent of the Legislature to provide renovation  
2 and improvement of the existing state capitol building and the  
3 capitol complex and to direct the secretary of the department of  
4 administration to plan and make renovations and improvements  
5 of the existing state capitol building and the capitol complex for  
6 the purpose of reversing deterioration to existing facilities,  
7 securing the safety of the general public and state employees,  
8 promoting efficiency of governmental operations and enhancing  
9 tourism in the state.

10 (b) There is created in the state treasury to be administered  
11 by the department of administration a special fund to be named  
12 the “capitol renovation and improvement fund” into which shall  
13 be deposited funds that are appropriated and funds from other  
14 sources to be used for renovations and improvements of the  
15 existing state capitol building and the capitol complex.

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

**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

§5B-2-3b. Development office promotion fund.

§5B-2-12. Tourism promotion fund continued; use of funds.

**§5B-2-3b. Development office promotion fund.**

1 There is hereby established in the state treasury a special  
2 revenue fund known as the “development office promotion  
3 fund”. Moneys deposited in this fund shall be administered by  
4 the development office and used solely to promote business  
5 formation, expansion, recruitment and retention through



6 aggressive marketing and international development and export  
7 assistance, which together lead to more and better jobs with  
8 higher wages for all geographic regions and communities of the  
9 state, including rural areas and urban core areas, and for all  
10 residents, including minorities.

**§5B-2-12. Tourism promotion fund continued; use of funds.**

1 There is hereby continued in the state treasury the special  
2 revenue fund known as the “tourism promotion fund” created  
3 under prior enactment of section nine, article one of this  
4 chapter.

5 (a) A minimum of five percent of the moneys deposited in  
6 the fund each year shall be used solely for direct advertising for  
7 West Virginia travel and tourism: *Provided*, That no less than  
8 twenty percent of these funds be expended with the approval of  
9 the director of the division of natural resources to effectively  
10 promote and market the state’s parks, state forests, state  
11 recreation areas and wildlife recreational resources. Direct  
12 advertising means advertising which is limited to television,  
13 radio, mailings, newspaper, magazines and outdoor billboards,  
14 or any combination thereof.

15 (b) The balance of the moneys deposited in the fund shall  
16 be used for direct advertising within the state’s travel regions as  
17 defined by the commission. The funds shall be made available  
18 to these districts beginning the first day of July, one thousand  
19 nine hundred ninety-five, according to legislative rules autho-  
20 rized for promulgation by the tourism commission.

21 (c) All advertising expenditures over twenty-five thousand  
22 dollars from the tourism promotion fund require prior approval  
23 by recorded vote of the commission. No member of the  
24 commission or of any committee created by the commission to  
25 evaluate applications for advertising or other grants may

26 participate in the discussion of, or action upon, an application  
27 for or an award of any grant in which the member has a direct  
28 financial interest.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

#### **§18B-1B-12. Research challenge.**

1 (a) There is established in the state treasury a special  
2 revenue fund known as the “research challenge fund”. Moneys  
3 deposited in this fund shall be administered by the higher  
4 education policy commission.

5 The moneys deposited in this fund shall be used to fund  
6 coal research and development projects at institutions of higher  
7 education located in this state. Research includes, but is not  
8 limited to, carbon sequestration and carbon technology research  
9 and development projects. The moneys deposited in this fund  
10 shall also be used to fund other research and development  
11 projects at institutions of higher education in this state.

12 (b) The policy commission shall use the recommendations  
13 of the EPSCoR state advisory council in its allocation of  
14 appropriations made to the research challenge fund and in its  
15 development of procedures for competitive application and  
16 review of proposals for funding. The research challenge is a  
17 critical component in the state’s strategic plan for economic  
18 development and the contribution of higher education in the  
19 economic health of the state and the EPSCoR state advisory  
20 council is well qualified, by virtue of its research-oriented  
21 mission and membership, to advise the policy commission in  
22 the allocation of research challenge funding.

23 The objectives of the research challenge are to:

24       (1) Increase the research capacity of institutions of higher  
25 education and the competitiveness of these institutions to apply  
26 for external funding;

27       (2) Stimulate the development of research and research  
28 products that are directly applicable in improving the economic  
29 competitiveness of existing West Virginia industries and the  
30 development of new business and jobs in the state;

31       (3) Leverage limited state resources with private and  
32 federal funds to support projects and activities directly related  
33 to economic development by requiring matching funds and  
34 cooperative agreements with external partners;

35       (4) Increase the production of undergraduate and graduate  
36 students of programs in the sciences, technology, engineering  
37 and mathematics, with special attention to emerging disciplines  
38 such as biometrics; and

39       (5) Hold institutions more accountable for the success of  
40 research projects funded under this program with the expecta-  
41 tion that state support will be phased out and the project or  
42 activity will be terminated if it is unable to generate ongoing  
43 external support.

44       (c) The priorities for the research challenge shall be:

45       (1) Research on energy generation, distribution and  
46 utilization that builds on the state's existing energy research  
47 strengths, related research products and technology transfer  
48 programs;

49       (2) Research, education and outreach conducted by the  
50 EPSCOR program. This federal program is recognized by the  
51 national science foundation as the state's primary entity for  
52 developing the research capacity that is so important to the  
53 state's economic and educational development;

54 (3) Research projects that are related to the economic  
55 development of the state and that have significant potential to  
56 attract participation and funding from industrial, federal or  
57 foundation partners;

58 (4) Collaborative projects between higher education and  
59 public education to improve science and mathematics educa-  
60 tion;

61 (5) Graduate education in science (including medical  
62 education), technology, engineering and mathematics. The  
63 allocation shall be used for the increase in doctoral students and  
64 programs at West Virginia university and Marshall university  
65 in these fields; and

66 (6) Recruitment of eminent scholars to strengthen research  
67 capacity and competitiveness for external funding.

68 (d) The policy commission shall report to the legislative  
69 oversight committee on educational accountability annually on  
70 the results of the projects and activities funded by the research  
71 challenge appropriation.

72 (e) The priorities established in subsection (c) of this  
73 section shall be reviewed biannually by the policy commission  
74 and the EPSCoR state advisory council beginning in two  
75 thousand six. The policy commission shall include any  
76 recommended adjustments in its budget request for the two  
77 thousand seven budget.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts

and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

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

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

1       (a) The commission shall provide to manufacturers, or  
2 applicants applying for a manufacturer's permit, the protocol  
3 documentation data necessary to enable the respective manufac-  
4 turer's video lottery terminals to communicate with the com-  
5 mission's central computer for transmitting auditing program  
6 information and for activation and disabling of video lottery  
7 terminals.

8       (b) The gross terminal income of a licensed racetrack shall  
9 be remitted to the commission through the electronic transfer of  
10 funds. Licensed racetracks shall furnish to the commission all  
11 information and bank authorizations required to facilitate the  
12 timely transfer of moneys to the commission. Licensed  
13 racetracks must provide the commission thirty days' advance  
14 notice of any proposed account changes in order to assure the  
15 uninterrupted electronic transfer of funds. From the gross  
16 terminal income remitted by the licensee to the commission, the  
17 commission shall deduct an amount sufficient to reimburse the  
18 commission for its actual costs and expenses incurred in  
19 administering racetrack video lottery at the licensed racetrack  
20 and the resulting amount after the deduction is the net terminal

21 income. The amount deducted for administrative costs and  
22 expenses of the commission may not exceed four percent of  
23 gross terminal income: *Provided*, That any amounts deducted  
24 by the commission for its actual costs and expenses that  
25 exceeds its actual costs and expenses shall be deposited into the  
26 state lottery fund. For all fiscal years beginning on or after the  
27 first day of July, two thousand one, the commission shall not  
28 receive an amount of gross terminal income in excess of the  
29 amount of gross terminal income received during the fiscal year  
30 ending on the thirtieth day of June, two thousand one, but four  
31 percent of any amount of gross terminal income received in  
32 excess of the amount of gross terminal income received during  
33 the fiscal year ending on the thirtieth day of June, two thousand  
34 one, shall be deposited into the fund established in section  
35 eighteen-a, article twenty-two of this chapter.

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

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

50 (2) Fourteen percent of net terminal income at a licensed  
51 racetrack shall be deposited in the special fund established by  
52 the licensee and used for payment of regular purses in addition

53 to other amounts provided in article twenty-three, chapter  
54 nineteen of this code;

55 (3) The county where the video lottery terminals are located  
56 shall receive two percent of the net terminal income: *Provided*,  
57 That:

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

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

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

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

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

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

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

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

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

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

109 (7) A licensee shall receive forty-seven percent of net  
110 terminal income;

111 (8)(A) The tourism promotion fund established in section  
112 twelve, article two, chapter five-b of this code shall receive  
113 three percent of the net terminal income: *Provided*, That for the



114 fiscal year beginning the first day of July, two thousand three,  
115 the tourism commission shall transfer from the tourism promo-  
116 tion fund five million dollars of the three percent of the net  
117 terminal income described in this section and section ten-b of  
118 this article into the fund administered by the West Virginia  
119 economic development authority pursuant to section seven,  
120 article fifteen, chapter thirty-one of this code five million  
121 dollars into the capitol renovation and improvement fund  
122 administered by the department of administration pursuant to  
123 section six, article four, chapter five-a of this code and five  
124 million dollars into the tax reduction and federal funding  
125 increased compliance fund; and

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

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

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

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

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

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

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

160 (A) For the fiscal year beginning the first day of July, two  
161 thousand three, the veterans memorial program shall receive  
162 one percent of the net terminal income until sufficient moneys  
163 have been received to complete the veterans memorial on the  
164 grounds of the state capitol complex in Charleston, West  
165 Virginia. The moneys shall be deposited in the state treasury in  
166 the division of culture and history special fund created under  
167 section three, article one-i, chapter twenty-nine of this code:  
168 *Provided*, That only after sufficient moneys have been depos-  
169 ited in the fund to complete the veterans memorial and to pay  
170 in full the annual bonded indebtedness on the veterans memo-  
171 rial, not more than twenty thousand dollars of the one percent  
172 of net terminal income provided for in this subdivision shall be  
173 deposited into a special revenue fund in the state treasury, to be  
174 known as the “John F. ‘Jack’ Bennett Fund”. The moneys in  
175 this fund shall be expended by the division of veterans affairs  
176 to provide for the placement of markers for the graves of  
177 veterans in perpetual cemeteries in this state. The division of  
178 veterans affairs shall promulgate legislative rules pursuant to

179 the provisions of article three, chapter twenty-nine-a of this  
180 code specifying the manner in which the funds are spent,  
181 determine the ability of the surviving spouse to pay for the  
182 placement of the marker and setting forth the standards to be  
183 used to determine the priority in which the veterans grave  
184 markers will be placed in the event that there are not sufficient  
185 funds to complete the placement of veterans grave markers in  
186 any one year, or at all. Upon payment in full of the bonded  
187 indebtedness on the veterans memorial, one hundred thousand  
188 dollars of the one percent of net terminal income provided for  
189 in this subdivision shall be deposited in the special fund in the  
190 division of culture and history created under section three,  
191 article one-i, chapter twenty-nine of this code and be expended  
192 by the division of culture and history to establish a West  
193 Virginia veterans memorial archives within the cultural center  
194 to serve as a repository for the documents and records pertain-  
195 ing to the veterans memorial, to restore and maintain the  
196 monuments and memorial on the capitol grounds: *Provided,*  
197 *however,* That five hundred thousand dollars of the one percent  
198 of net terminal income shall be deposited in the state treasury  
199 in a special fund of the department of administration, created  
200 under section five, article four, chapter five-a of this code, to be  
201 used for construction and maintenance of a parking garage on  
202 the state capitol complex; and the remainder of the one percent  
203 of net terminal income shall be deposited in equal amounts in  
204 the capitol dome and improvements fund created under section  
205 two, article four, chapter five-a of this code and cultural  
206 facilities and capitol resources matching grant program fund  
207 created under section three, article one of this chapter.

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

210 (i) Five hundred thousand dollars of the one percent of net  
211 terminal income shall be deposited in the state treasury in a  
212 special fund of the department of administration, created under

213 section five, article four, chapter five-a of this code, to be used  
214 for construction and maintenance of a parking garage on the  
215 state capitol complex; and

216 (ii) The remainder of the one percent of net terminal  
217 income and all of the one percent of net terminal income  
218 described in paragraph (B), subdivision (9), subsection (a),  
219 section ten-b of this article shall be distributed as follows: The  
220 net terminal income shall be deposited in equal amounts into  
221 the capitol dome and capitol improvements fund created under  
222 section two, article four, chapter five-a of this code and the  
223 cultural facilities and capitol resources matching grant program  
224 fund created under section three, article one, chapter twenty-  
225 nine of this code until a total of one million five hundred  
226 thousand dollars is deposited into the cultural facilities and  
227 capitol resources matching grant program fund; thereafter, the  
228 remainder shall be deposited into the capitol dome and capitol  
229 improvements fund.

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

242 (e) The commission's central control computer shall keep  
243 accurate records of all income generated by each video lottery  
244 terminal. The commission shall prepare and mail to the  
245 licensed racetrack a statement reflecting the gross terminal

246 income generated by the licensee's video lottery terminals.  
247 Each licensed racetrack shall report to the commission any  
248 discrepancies between the commission's statement and each  
249 terminal's mechanical and electronic meter readings. The  
250 licensed racetrack is solely responsible for resolving income  
251 discrepancies between actual money collected and the amount  
252 shown on the accounting meters or on the commission's billing  
253 statement.

254 (f) Until an accounting discrepancy is resolved in favor of  
255 the licensed racetrack, the commission may make no credit  
256 adjustments. For any video lottery terminal reflecting a  
257 discrepancy, the licensed racetrack shall submit to the commis-  
258 sion the maintenance log which includes current mechanical  
259 meter readings and the audit ticket which contains electronic  
260 meter readings generated by the terminal's software. If the  
261 meter readings and the commission's records cannot be  
262 reconciled, final disposition of the matter shall be determined  
263 by the commission. Any accounting discrepancies which  
264 cannot be otherwise resolved shall be resolved in favor of the  
265 commission.

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

279 (h) Licensed racetracks may, upon request, receive addi-  
280 tional reports of play transactions for their respective video  
281 lottery terminals and other marketing information not consid-  
282 ered confidential by the commission. The commission may  
283 charge a reasonable fee for the cost of producing and mailing  
284 any report other than the billing statements.

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

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

1 (a) Any amount of net terminal income generated annually  
2 by a licensed racetrack in excess of the amount of net terminal  
3 income generated by that licensed racetrack during the fiscal  
4 year ending on the thirtieth day of June, two thousand one, shall  
5 be divided as follows:

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

10 (2) Eight percent of net terminal income at a licensed  
11 racetrack shall be deposited in the special fund established by  
12 the licensee and used for payment of regular purses in addition  
13 to other amounts provided for in article twenty-three, chapter  
14 nineteen of this code;

15 (3) The county where the video lottery terminals are located  
16 shall receive two percent of the net terminal income: *Provided,*  
17 That:

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

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

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

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

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

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

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

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

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

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

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

75       (8) The tourism promotion fund established in section  
76 twelve, article two, chapter five-b of this code shall receive  
77 three percent of the net terminal income: *Provided*, That for  
78 each fiscal year beginning after the thirtieth day of June, two  
79 thousand four, this three percent of net terminal income shall be



80 distributed pursuant to the provisions of paragraph (B), subdivi-  
81 sion (8), subsection (c), section ten of this article; and

82 (9)(A) One percent of the net terminal income shall be  
83 deposited in equal amounts in the capitol dome and improve-  
84 ments fund created under section two, article four, chapter five-  
85 a of this code and cultural facilities and capitol resources  
86 matching grant program fund created under section three,  
87 article one of this chapter; and

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

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

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## CHAPTER 124

**(H. B. 4107 — By Delegates Long, Perry, Caruth,  
R. M. Thompson and Frederick)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §47-20-11, §47-20-12a and §47-20-16 of the code of West Virginia, 1931, as amended; and to amend and reenact §47-21-12 and §47-21-16 of said code, all relating to charitable bingo and charitable raffles; allowing certain employ-

ees to operate bingo and raffle games; allowing game proceeds to be transferred, by check, between raffle and bingo accounts to offset losses; and allowing certain residents of other states to be employed by charitable bingo and charitable raffle operations.

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

That §47-20-11, §47-20-12a and §47-20-16 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §47-21-12 and §47-21-16 of said code be amended and reenacted, all to read as follows:

**Article**

**20. Charitable Bingo.**

**21. Charitable Raffles.**

**ARTICLE 20. CHARITABLE BINGO.**

§47-20-11. Operator of bingo games and related concessions.

§47-20-12a. Compensation of bingo operator; number of employees.

§47-20-16. Records; commissioner audit.

**§47-20-11. Operator of bingo games and related concessions.**

1 (a) Except as provided in sections thirteen and twenty-two  
2 of this article, the only persons, as defined in section two of this  
3 article, that may participate in any manner in the conduct of any  
4 bingo game or operate any concession in conjunction with a  
5 bingo occasion are either:

6 (1) Residents of this state and who are active members of  
7 the licensee organization or its authorized auxiliary organiza-  
8 tion and who have been active members in good standing of the  
9 licensee organization or its authorized auxiliary for at least two  
10 years prior to the date of filing of the application for a charita-  
11 ble bingo license or the most recent filing of an application for  
12 renewal of the license; or

13 (2) Employees of the licensee organization or its authorized  
14 auxiliary organization who are:

15 (A) Residents of this state;

16 (B) Residents of a state bordering this state if the county of  
17 his or her residence is contiguous to the county in this state in  
18 which the bingo operation is conducted; or

19 (C) Residents of a bordering state who reside within thirty-  
20 five miles of the county in which the bingo operation is  
21 conducted.

22 (b) Notwithstanding anything contained in this article to the  
23 contrary, no individual under the age of eighteen years may  
24 directly or indirectly participate in the conduct of a bingo game,  
25 except for junior firefighters, in accordance with the provisions  
26 of this article.

**§47-20-12a. Compensation of bingo operator; number of employees.**

1 (a) Within the guidelines set forth in subsections (b), (c)  
2 and (d) of this section, a licensee may pay a salary, the mini-  
3 mum of which is the federal minimum wage and the maximum  
4 of which is six dollars and fifty cents per hour, to operators of  
5 bingo games who are either:

6 (1) Active members of the licensee organization and who  
7 have been active members in good standing for at least two  
8 years prior to the date of filing of the application for a charita-  
9 ble bingo license or the most recent filing of an application for  
10 renewal of the license; or

11 (2) Employees of the licensee organization or its authorized  
12 auxiliary organization who are:

13 (A) Residents of this state;

14 (B) Residents of a state bordering this state if the county of  
15 his or her residence is contiguous to the county in this state in  
16 which the bingo operation is conducted; or

17 (C) Residents of a bordering state who reside within thirty-  
18 five miles of the county in which the bingo operation is  
19 conducted.

20 (b) If the licensee's gross receipts from bingo occasions  
21 equal or exceed one hundred thousand dollars for the licensee's  
22 most recently filed annual financial report, a salary may be paid  
23 to not more than eight operators.

24 (c) If the licensee's gross receipts from bingo occasions are  
25 less than one hundred thousand dollars, but equal or exceed  
26 fifty thousand dollars for the licensee's most recently filed  
27 annual financial report, a salary may be paid to not more than  
28 five operators.

29 (d) If the licensee's gross receipts from bingo occasions are  
30 less than fifty thousand dollars for the licensee's most recently  
31 filed annual financial report, a salary may be paid to not more  
32 than three operators.

33 (e) If the licensee also possesses a super bingo license, it  
34 may pay a salary to not more than fifteen operators during the  
35 super bingo occasion.

36 (f) In the case of a licensee lawfully holding a charitable  
37 bingo occasion simultaneously with a charitable raffle occasion,  
38 the number of paid charitable bingo operator employees  
39 allowed under this limitation for bingo licensees is in addition  
40 to the number of charitable raffle operator employees allowed  
41 under section fifteen, article twenty-one of this chapter.  
42 Licensees holding simultaneous occasions shall pay bingo  
43 operators from the proceeds of bingo operations and shall pay  
44 raffle operators from the proceeds of raffle operations and the

45 charitable bingo fund and the charitable raffle fund and  
46 payments from the funds may not be commingled.

47 (g) For purposes of the limitations set forth in this section,  
48 the term “operator” or “bingo operator” or “raffle operator”  
49 does not include concession stand workers. Wages paid to  
50 concession workers may not exceed six dollars and fifty cents  
51 per hour.

**§47-20-16. Records; commissioner audit.**

1 Any licensee which holds a bingo occasion as provided by  
2 this article shall maintain a separate checking account and  
3 separate book-keeping procedure for its bingo operations:  
4 *Provided*, That nothing in this article restricts a licensee from  
5 transferring moneys in the account from a bingo occasion to an  
6 account created under section sixteen, article twenty-one of this  
7 chapter in an amount not to exceed the actual loss of the raffle  
8 occasion receiving the transfer: *Provided, however*, That money  
9 transferred shall be withdrawn only by checks having  
10 preprinted consecutive numbers and made payable to the  
11 account created under section sixteen, article twenty-one of this  
12 code. Money for expenses shall be withdrawn only by checks  
13 having preprinted consecutive numbers and made payable to a  
14 specific person, firm or corporation and at no time shall a check  
15 be made payable to cash. A licensee shall maintain all records  
16 required by this article for at least three years and the records  
17 shall be open to the commissioner for reasonable inspection.  
18 Whenever the tax commissioner has reasonable cause to believe  
19 a licensee has violated any of the provisions of this article, he  
20 or she may perform or cause to be performed an audit of the  
21 licensee’s books and records: *Provided further*, That the tax  
22 commissioner shall perform or cause to be performed an audit  
23 of the books and records of any licensee that has awarded total  
24 prizes in excess of one hundred seventy-five thousand dollars.  
25 The tax commissioner shall file a copy of the completed audit

26 with the county commission of the county wherein the licensee  
27 holds bingo occasions.

**ARTICLE 21. CHARITABLE RAFFLES.**

§47-21-12. Compensation.

§47-21-16. Records; commissioner audit.

**§47-21-12. Compensation.**

1 (a) A licensee may pay a salary, the minimum of which is  
2 the federal minimum wage and the maximum of which is six  
3 dollars and fifty cents per hour, to operators of charitable raffle  
4 games who are either:

5 (1) Active members of the licensee organization and who  
6 have been active members in good standing for at least two  
7 years prior to the date of filing of the application for a charita-  
8 ble raffle license or the most recent filing of an application for  
9 renewal of the license; or

10 (2) Employees of the licensee organization or its authorized  
11 auxiliary organization who are:

12 (A) Residents of this state;

13 (B) Residents of a state bordering this state if the county of  
14 his or her residence is contiguous to the county in this state in  
15 which the raffle operation is conducted; or

16 (C) Residents of a bordering state who reside within thirty-  
17 five miles of the county in which the raffle operation is con-  
18 ducted.

19 (b) If the licensee's gross receipts from raffle occasions  
20 equal or exceed one hundred thousand dollars for the licensee's  
21 most recently filed annual financial report, a salary may be paid  
22 to not more than eight operators.

23 (c) If the licensee's gross receipts from charitable raffle  
24 occasions are less than one hundred thousand dollars, but equal  
25 or exceed fifty thousand dollars for the licensee's most recently  
26 filed annual financial report, a salary may be paid to not more  
27 than five operators.

28 (d) If the licensee's gross receipts from charitable raffle  
29 occasions are less than fifty thousand dollars for the licensee's  
30 most recently filed annual financial report, a salary may be paid  
31 to no more than three operators.

32 (e) In the case of a licensee lawfully holding a charitable  
33 bingo occasion simultaneously with a charitable raffle occasion,  
34 the number of paid charitable raffle operator employees allowed  
35 under this limitation for charitable raffle licensees is in addition  
36 to the number of charitable bingo operator employees allowed  
37 under section twelve-a, article twenty of this chapter. Licensees  
38 holding simultaneous occasions shall pay bingo operators from  
39 the proceeds of bingo operations and shall pay raffle operators  
40 from the proceeds of raffle operations and the charitable bingo  
41 fund and the charitable raffle fund and payments from the funds  
42 may not be commingled.

43 (f) For purposes of the limitations set forth in this section,  
44 the term "operator" or "bingo operator" or "raffle operator" do  
45 not include concession stand workers. Wages paid to conces-  
46 sion workers may not exceed six dollars and fifty cents per  
47 hour.

**§47-21-16. Records; commissioner audit.**

1 Any licensee which holds a raffle occasion as provided by  
2 this article shall maintain a separate account and separate book-  
3 keeping procedure for its raffle operations: *Provided*, That  
4 nothing in this article restricts a licensee from transferring  
5 moneys in the account from a raffle occasion to an account  
6 created under section sixteen, article twenty of this chapter in

7 an amount not to exceed the actual loss of the bingo occasion  
8 receiving the transfer: *Provided, however,* That money trans-  
9 ferred shall be withdrawn only by checks having preprinted  
10 consecutive numbers and made payable to the account created  
11 under section sixteen, article twenty of this code. All records  
12 required by this article shall be maintained for at least three  
13 years and shall be open to the commissioner for reasonable  
14 inspection. Whenever the commissioner has reasonable cause  
15 to believe a licensee has violated any of the provisions of this  
16 article, he may perform or cause to be performed an audit of the  
17 licensee's books and records.

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## CHAPTER 125

(Com. Sub. for H. B. 4257 — By Delegates Warner and Mezzatesta)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §47-21-3 of the code of West Virginia, 1931, as amended, relating to increasing the amount of prizes that may be given and the total annual gross proceeds that may be generated in the conduct of raffles by charitable and public service organizations without a license.

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

That §47-21-3 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 21. CHARITABLE RAFFLES.

**§47-21-3. Authorizing the conduct of certain raffles without a license.**



1 Notwithstanding any other provisions of this article to the  
2 contrary, any charitable or public service organization which  
3 has been in existence in this state for at least one year is hereby  
4 authorized to conduct raffles without compliance with the  
5 licensing provisions of this article: *Provided*, That any prize  
6 awarded in any single raffle at a raffle occasion may not exceed  
7 in value the sum of four thousand dollars: *Provided, however*,  
8 That the cumulative gross proceeds derived from the conduct of  
9 raffle occasions by any such charitable or public service  
10 organization shall not exceed fifteen thousand dollars during  
11 any calendar year: *Provided further*, That any such organization  
12 shall not be subject to the record keeping provisions of section  
13 sixteen of this article but shall maintain a separate accounting  
14 for the operation of raffles. All records required by this section  
15 shall be maintained for at least three calendar years and shall be  
16 available for reasonable inspection by the commissioner.

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## CHAPTER 126

**(Com. Sub. for H. B. 4259 — By Delegates Ennis, Hatfield,  
Iaquinta, Perdue, Talbott, Yost and Leggett)**

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[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to repeal §5-26-7 and §5-26-9 of the code of West Virginia, 1931, as amended; to amend and reenact §5-26-1, §5-26-2, §5-26-3, §5-26-4 and §5-26-8 of said code; and to amend said code by adding thereto two new sections, designated §5-26-2a and §5-26-2b, all relating generally to the governor's cabinet on children and families; clarifying statement of purpose; revising membership of cabinet; establishing citizen advisory council; defining family resource networks; revising duties and powers of cabinet;

requiring state plan; requiring annual reports; and providing for continuation of cabinet and council.

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

That §5-26-7 and §5-26-9 of the code of West Virginia, 1931, as amended, be repealed; that §5-26-1, §5-26-2, §5-26-3, §5-26-4 and §5-26-8 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §5-26-2a and §5-26-2b, all to read as follows:

**ARTICLE 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.**

- §5-26-1. Legislative findings; statement of purpose.
- §5-26-2. Cabinet established.
- §5-26-2a. Citizen's advisory council.
- §5-26-2b. Family resource networks.
- §5-26-3. Duties of cabinet generally.
- §5-26-4. Powers of cabinet generally.
- §5-26-8. Continuation of cabinet and council.

**§5-26-1. Legislative findings; statement of purpose.**

1           (a) The Legislature finds that in order to avoid the human  
2 and financial costs to the state of individual and family instabil-  
3 ity, and to benefit the state and society as a whole, it is in the  
4 best interests of the state to provide programs and services to  
5 support children and families. The Legislature further finds that  
6 children and families are best supported by programs and  
7 services in or as close to the local community as possible.

8           The Legislature intends to accomplish its goals relating to  
9 children and families through a family-centered, comprehen-  
10 sive, community-based system for the provision of social  
11 services, programs and facilities for children and families  
12 overseen by the highest levels of state government.

13           (b) The Legislature hereby declares that one purpose of this  
14 article and the policy of the state is to achieve the coordination

15 of programs and services to children and families through a  
16 cabinet in the governor's office which is independent from any  
17 state agency and which shall act as an interagency cabinet  
18 created to nurture a flexible system for the comprehensive,  
19 unified, effective and efficient administration of programs and  
20 services to children and families which avoids fragmentation  
21 and duplication of programs and services. For maximum  
22 effectiveness, the Legislature intends to provide services in a  
23 long-term manner with such intensity as the needs of the  
24 particular situation require.

25 (c) The service delivery system shall be driven by the needs  
26 and preferences of the child and family, shall reflect local  
27 community characteristics and resources, shall allow for local  
28 input, and shall focus on prevention, education and early  
29 intervention.

30 The Legislature intends, by this article, to allow diversity  
31 and regional, cultural and ethnic sensitivity in the development  
32 of programs and services for children and families. To the  
33 greatest extent possible, families and communities are to be  
34 involved in all aspects of planning, delivery and evaluation of  
35 services. This is intended to foster strong family and commu-  
36 nity program ownership while maintaining clear parameters for  
37 program goals and purposes through the governor's cabinet on  
38 children and families.

**§5-26-2. Cabinet established.**

1 (a) There is hereby created the governor's cabinet on  
2 children and families, hereinafter referred to as the "cabinet".  
3 The cabinet shall include the secretary of health and human  
4 resources or a designee; the secretary of military affairs and  
5 public safety or a designee; the secretary of administration or a  
6 designee; the state superintendent of schools or a designee; and  
7 the attorney general or a designee; one member of the Senate,  
8 to be appointed by the governor, and one member of the House

9 of Delegates, to be appointed by the governor, both of whom  
10 shall serve in an advisory capacity only; and three members  
11 selected by the governor from the citizens' advisory council as  
12 set forth in section two-a of this article. The governor may  
13 appoint other administrative heads of government who shall  
14 serve in an advisory capacity only.

15 (b) In order to promote consistency and continuity in the  
16 work of the cabinet, each cabinet member appointed by virtue  
17 of his or her governmental office is encouraged to select a  
18 primary designee and an alternate designee to serve in his or her  
19 place when necessary.

20 (c) The cabinet shall be chaired by the governor and shall  
21 convene at least monthly during the first year and thereafter  
22 shall meet at least six times annually. The cabinet shall estab-  
23 lish bylaws which govern its decision making.

24 (d) The governor shall appoint an executive director to  
25 carry out its work and to oversee staff adequate to fulfill its  
26 functions.

**§5-26-2a. Citizen's advisory council.**

1 (a) The governor shall appoint a citizens' advisory council  
2 to assist the cabinet with the implementation of its mission and  
3 policy objectives.

4 (b) The council shall be comprised of not fewer than twelve  
5 nor more than thirty citizens who will serve terms of one, two  
6 or three years as assigned at the time of appointment. The  
7 council members will have knowledge and experience in  
8 serving children and families in such areas as housing; Health  
9 promotion and disease prevention; education; transportation;  
10 reading and literacy; food and nutrition; clothing; utilities; job  
11 training and employment; child care; child protection; early  
12 intervention and crisis intervention; assessment and diagnosis;

13 home-based family development; preservation and reunifica-  
14 tion; financial planning; mental health and counseling; sub-  
15 stance abuse prevention counseling and treatment; addiction  
16 awareness training; pregnancy prevention; and information,  
17 referral and placement.

18 (c) The purpose of the council is to:

19 (1) Provide a forum for discussion of issues that affect the  
20 state's children and families;

21 (2) Identify and promote best practices in the provision of  
22 services to children and families;

23 (3) Review information and research that can inform state  
24 policy;

25 (4) Make recommendations to the cabinet in areas of policy  
26 and allocation of resources;

27 (5) Focus attention on accountability and results;

28 (6) Assist the cabinet in developing a cross-agency multi-  
29 year state plan for improving the well being of children and  
30 families;

31 (7) Connect government officials who make decisions with  
32 the families affected by their decisions;

33 (8) Engage local communities through family resource  
34 networks to work on local issues and statewide priorities;

35 (9) Assure that community and family voices are heard by  
36 the cabinet; and

37 (10) Promote family support practices by all publicly  
38 funded agencies.

39 (d) The governor shall select three members of the council  
40 to serve on the cabinet, two of whom are family representatives  
41 from families who have received or are receiving services  
42 funded, in whole or in part, by federal, state or local govern-  
43 ments, and one of whom is a community representative who is  
44 not employed in a managerial or decision-making position of a  
45 provider of services funded in whole or in part by federal, state  
46 or local governments.

47 (e) The community representative initially appointed shall  
48 serve for a term of one year and the family representatives  
49 initially appointed shall serve for terms of two years and three  
50 years respectively. If a member's term on the cabinet exceeds  
51 his or her term on the council, his or her term on the council  
52 will be extended automatically to coincide with his or her term  
53 on the cabinet. Members appointed subsequent to the initial  
54 appointments shall serve for terms of three years, and may  
55 serve up to three consecutive full terms: *Provided*, That  
56 members appointed under this section shall continue to serve  
57 until their successors are appointed. An appointment to fill a  
58 vacancy will be for the unexpired term.

59 (f) Citizen members may be reimbursed for actual and  
60 necessary expenses incurred in the discharge of their official  
61 duties in a manner consistent with guidelines of the travel  
62 management office of the department of administration.

63 (g) The governor may remove any citizen member from the  
64 council or the cabinet for neglect of duty, incompetency or  
65 official misconduct.

**§5-26-2b. Family resource networks.**

1 (a) "Family resource network" means a local community  
2 organization charged with service coordination, needs and  
3 resource assessment, planning, community mobilization and

4 evaluation, and which has been recognized by the cabinet as  
5 having met the following criteria:

6 (1) Agreeing to a single governing entity;

7 (2) Agreeing to engage in activities to improve service  
8 systems for children and families within the community;

9 (3) Addressing a geographic area of a county or two or  
10 more contiguous counties;

11 (4) Having nonproviders, which include family representa-  
12 tives and other members who are not employees of publicly  
13 funded agencies, as the majority of the members of the govern-  
14 ing body, and having family representatives as the majority of  
15 the nonproviders;

16 (5) Having representatives of local service agencies,  
17 including, but not limited to, the public health department, the  
18 behavioral health center, the local health and human resources  
19 agency and the county school district, on the governing body;

20 (6) Accepting principles consistent with the cabinet's  
21 mission as part of its philosophy.

22 (b) A family resource network may not provide direct  
23 services, which means to provide programs or services directly  
24 to children and families.

**§5-26-3. Duties of cabinet generally.**

1 In addition to all other duties and responsibilities assigned  
2 to the cabinet in this article and elsewhere by law, the cabinet  
3 shall:

4 (1) Establish, oversee, evaluate and provide technical  
5 assistance, and such moneys as may be made available by

6 legislative appropriation to family resource networks, starting  
7 points centers, early parent education programs and other  
8 community based initiatives;

9 (2) Develop a cross-agency multi-year state plan consistent  
10 with priorities established by local plans developed by family  
11 resource networks, which includes provisions for regular  
12 updates of the plan and which requires the cabinet to:

13 (A) Articulate core results desired by the state for its  
14 children and families;

15 (B) Choose indicators to measure progress in reaching core  
16 results;

17 (C) Establish baseline data for measuring progress by  
18 examining current conditions and trends;

19 (D) Set targets and explore strategies for improving the  
20 lives of children and families;

21 (E) Put selected strategies into action to achieve core  
22 results;

23 (F) Monitor progress and make course corrections as  
24 necessary; and

25 (G) Identify tools to achieve articulated goals, including:

26 (i) Shifting focus from process to core results;

27 (ii) Increasing flexibility to remove barriers, encourage  
28 innovation and provide incentives for achieving results;

29 (iii) Providing flexible financing to reinvest savings and  
30 decategorize, pool, redeploy or reinstate funding;

31 (iv) Employing results-based budgeting; and



32 (v) Improving accountability through results-based decision  
33 making.

34 (3) Prepare a proposed budget for the operation of the  
35 cabinet and recommend it to the governor for inclusion in the  
36 executive budget to be submitted to the Legislature;

37 (4) Promote the work of the governor's cabinet on children  
38 and families in order to engender strong support from the  
39 community, the Legislature and business leaders;

40 (5) Report annually to the joint committee on government  
41 and finance on its progress in implementing the comprehensive  
42 multi-year state plan required under subdivision (2) of this  
43 section; and

44 (6) Submit an annual electronic report before the first day  
45 of January to the Legislature and a written copy of the report to  
46 the legislative librarian on its financial transactions for the  
47 preceding year, minutes of its meetings, narrative descriptions  
48 of any training sessions, conferences or other events, and a  
49 progress report on its implementation of the comprehensive  
50 multi-year state plan required under subdivision (2) of this  
51 section.

**§5-26-4. Powers of cabinet generally.**

1 In addition to all other powers granted to the cabinet in this  
2 article and elsewhere by law, the cabinet may:

3 (1) Negotiate written agreements and procedures between  
4 and among departments of state government which assure that  
5 children and families are provided with health care, social  
6 services, appropriate education and vocational training, and any  
7 other services to which they may be entitled under state and  
8 federal law;

9 (2) Provide or contract with any agencies or persons in this  
10 state and other states for any facilities, equipment or service  
11 necessary to achieve the purposes of this article, and hire staff  
12 sufficient to carry out the duties and responsibilities of the  
13 cabinet;

14 (3) In addition to the citizens' advisory council established  
15 pursuant to section two-a of this article, form subcommittees,  
16 convene task teams or consult experts to advise the cabinet  
17 generally or on selected topics as necessary to accomplish its  
18 goals or to otherwise carry out its duties under this article;

19 (4) Develop and implement rules, standards and policies  
20 governing the internal operation and administration of the  
21 cabinet;

22 (5) Delegate any of the cabinet's powers, duties or func-  
23 tions as the cabinet may deem appropriate, expedient and  
24 effective;

25 (6) Solicit and accept proposals in furtherance of any  
26 program or service required by this article, especially for the  
27 establishment of family resource networks at the regional or  
28 local level and for the implementation of pilot programs;

29 (7) Waive rules that impede coordinated service delivery;

30 (8) Solicit, accept and expend grants, gifts, bequests,  
31 donations and other funds made available to the cabinet:  
32 *Provided*, That all unrestricted grants, gifts, bequests and  
33 donations shall be deposited in the children's fund created  
34 pursuant to section six of this article; and,

35 (9) Exercise any and all other powers, including the  
36 adoption of an official seal and the chartering of public or  
37 quasi-public corporations, necessary for the discharge of the

38 cabinet's duties and the implementation of the purposes of this  
39 article.

**§5-26-8. Continuation of cabinet and council.**

1 The cabinet and the council shall continue to exist, pursuant  
2 to the provisions of article ten, chapter four of this code, until  
3 the first day of July, two thousand seven, unless sooner termi-  
4 nated, continued or reestablished pursuant to the provisions of  
5 that article.

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## CHAPTER 127

(H. B. 4132 — By Delegates Mezzatesta, Cann,  
Frederick, Stalnaker, Sumner and Walters)

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[Passed February 26, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §5B-2D-2, §5B-2D-3, §5B-2D-4, §5B-2D-5, §5B-2D-6 and §5B-2D-7 of the code of West Virginia, 1931, as amended, all relating to the West Virginia Guaranteed Work Force Program; updating terms; establishing that funds may be provided by the Legislature; requiring certain reporting and increasing the maximum amount that may be spent on certain training.

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

That §5B-2D-2, §5B-2D-3, §5B-2D-4, §5B-2D-5, §5B-2D-6 and §5B-2D-7 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.**

§5B-2D-2. Definitions.

§5B-2D-3. Training program.

§5B-2D-4. Funds.

§5B-2D-5. Program activities.

§5B-2D-6. Reporting.

§5B-2D-7. Marketing.

**§5B-2D-2. Definitions.**

1 As used in this article, the following words and terms have  
2 the following meanings unless the context indicates another or  
3 different meaning or intent:

4 (1) “*WVDO*” means the West Virginia development office;

5 (2) “Employer” means an individual, partnership, corpora-  
6 tion, or other legal entity that employs or plans to employ  
7 skilled workers;

8 (3) “Retraining and job upgrade” means the specialized  
9 training that is given to an identified level of employees to  
10 enable them to advance to a higher level of employment;

11 (4) “Program” means the West Virginia Guaranteed Work  
12 Force Program established pursuant to section three of this  
13 article;

14 (5) “Training” means custom-designed training given to  
15 employees or prospective employees of new or expanding  
16 businesses and industries within the state;

17 (6) “Training provider” means any persons, public or  
18 private educational institutions, agencies, companies or other  
19 entities that may be utilized for training or consultative services  
20 for an employer.

**§5B-2D-3. Training program.**

1       The West Virginia development office shall develop a  
2 business and industrial training program, the purpose of which  
3 is to provide assistance for new or expanding businesses for the  
4 training, retraining or upgrading of the skills of potential  
5 employees. The program shall emphasize employee training  
6 specifically designed to accommodate the needs of individual  
7 employers. The program shall encourage the expansion of  
8 existing businesses and industries within the state, promote  
9 retention of businesses and industries within the state, promote  
10 retention of existing jobs within the state, prevent economic and  
11 industrial out-migration, and assist in the relocation of  
12 out-of-state businesses and industries in the state. Under this  
13 program, the West Virginia development office may pay up to  
14 one hundred percent or two thousand dollars per employee,  
15 whichever is less, of training costs of new employees in firms  
16 creating at least ten jobs in a one-year period. Training assis-  
17 tance may also be provided to existing businesses in cases in  
18 which training, retraining or upgrading services will result in  
19 the retention of existing jobs or the creation of additional jobs,  
20 or both: *Provided*, That the West Virginia development office  
21 may pay up to one hundred percent or two thousand dollars per  
22 employee, whichever is less, for the training, retraining or  
23 upgrading. Training costs associated with this program will be  
24 paid directly by the training provider.

25       Provision of training services will depend upon the em-  
26 ployer meeting program requirements as set forth by the West  
27 Virginia development office and this article. The state of West  
28 Virginia guarantees if employer satisfaction is not achieved, the  
29 West Virginia development office will carefully review the  
30 effectiveness of the recently completed training plan and  
31 program with the employer and the training provider. After  
32 such review, if the West Virginia development office deter-  
33 mines that the training program was inadequate to meet the

34 employer's specifications and satisfaction as originally agreed  
35 to, then those employees so trained shall be eligible for retrain-  
36 ing under the guarantee provision except when the training  
37 program curriculum or provider were selected solely at the  
38 discretion of the employer, then no such additional training  
39 shall be considered or approved: *Provided*, That in no instance  
40 may the cost of training and retraining an employee exceed four  
41 thousand dollars.

#### **§5B-2D-4. Funds.**

1 The funds made available by this section shall supplement  
2 but not displace funds available through existing programs  
3 conducted by employers themselves and public programs such  
4 as the Workforce Investment Act (WIA), the Carl D. Perkins  
5 Vocational Education Act, the Stewart B. McKinney Homeless  
6 Assistance Act, and the JOBS Act, or apportionment fund  
7 allocated to the community colleges, regional occupational  
8 centers and programs, or other local educational agencies. In  
9 addition, it is further the intention of the Legislature that the  
10 program established pursuant to this section shall not replace,  
11 parallel, supplant, compete with, or duplicate in any way  
12 existing, approved apprenticeship programs.

13 The fund shall consist of all moneys provided by the  
14 Legislature and also any contributions, grants or bequests  
15 received from federal, private or other sources. Appropriations  
16 made from the funds shall be for the purpose of providing  
17 contractual services through the West Virginia development  
18 office for vocational related training or retraining provided by  
19 public or private training institutions within West Virginia and  
20 for contracted services through the West Virginia development  
21 office for vocational related training, retraining or upgrading  
22 provided by public or private training institutions located  
23 outside of West Virginia and for vocational related training or

24 retraining provided on site, within West Virginia by any  
25 training provider as defined in this article.

**§5B-2D-5. Program activities.**

1 The primary concern in the provision of training services  
2 shall be the needs and types of services identified by the  
3 employer. A college or university, community college or area  
4 vocational education center shall be given initial consideration  
5 to provide any training, retraining, or job upgrade training. The  
6 employer will have the opportunity to participate in the  
7 selection of a training provider and training program curricu-  
8 lum. Training services may begin upon execution of a written  
9 agreement between the West Virginia development office and  
10 the employer.

11 Program activities may include, but not be limited to, the  
12 following:

13 (a) The performance of a job skills analysis and the  
14 designing of a training curriculum for an employer.

15 (b) The recruitment and referral of trainee applicants to an  
16 employer.

17 (c) The provision of off site pre-employment training to  
18 prospective employees of a new or expanding business or  
19 industry or to existing employees for purposes of retraining or  
20 upgrading: *Provided*, That on site pre-employment training may  
21 be provided if off site pre-employment training is not practical.

22 (d) Retraining of employees in response to a technological  
23 change.

24 (e) The provision of job upgrade training, if the training  
25 will retain or increase the employer's total work force.

26 (f) Contracting with persons, public or private educational  
27 institutions, agencies or other bodies for training or consultative  
28 services for an employer.

29 (g) The provision of materials and supplies used in the  
30 training process, instructors with specialized skills, instructional  
31 training aids and equipment, consultative services relative to  
32 highly specific or technical data and other services.

33 (h) Assisting a foreign employer locating or expanding in  
34 this state by familiarizing the employer's foreign personnel  
35 with the work attitudes, work methods, expectations, customs  
36 and life style of employees who work within this state.

37 (i) Taking any other action that is considered to be neces-  
38 sary or desirable for the furtherance of the provisions of this  
39 article.

40 Funds may not be awarded or reimbursed to any business  
41 or industry for the training, retraining or upgrading of skills of  
42 potential employees with the purpose of replacing or supplant-  
43 ing employees engaged in an authorized work stoppage.

#### **§5B-2D-6. Reporting.**

1 (a) The office shall file a report with the Legislature, the  
2 legislative oversight commission on workforce investment for  
3 economic development and the governor at the end of each  
4 fiscal year, commencing June thirtieth, one thousand nine  
5 hundred ninety. This report shall include the following:

6 (1) The number of persons trained and their demographics;

7 (2) The number of persons placed in employment;

8 (3) The number of employers for which persons have been  
9 trained and placed;



10            (4) The number of persons trained and placed for each  
11 employer;

12            (5) The types of work for which persons have been trained;

13            (6) The source of training fund; and

14            (7) The overall effectiveness of this article in contributing  
15 to economic stabilization and business and industrial growth  
16 within this state.

17            (b) In addition, the West Virginia development office shall  
18 report on a quarterly basis to the West Virginia workforce  
19 investment council and the legislative oversight commission on  
20 workforce investment for economic development the following  
21 as they relate to the training program established by this article:

22            (1) The names of all companies approved for training  
23 during the reporting quarter;

24            (2) The names of all companies receiving funding for  
25 training during the reporting quarter;

26            (3) The amount and source of funds utilized for each  
27 training program;

28            (4) The type of training being delivered;

29            (5) The number of employees trained; and

30            (6) Those agencies providing the training.

**§5B-2D-7. Marketing.**

1            The West Virginia development office shall market and  
2 promote the program.

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## CHAPTER 128

(Com. Sub. for H. B. 4273 — By Delegates Foster,  
Palumbo, Brown and Faircloth)

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[Passed March 8, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §44-10-3, §44-10-4, §44-10-5 and §44-10-6 of the code of West Virginia, 1931, as amended; to amend and reenact §51-2A-2 of said code, all relating to the modification of procedures for the appointment of guardians for minor children.

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

That §44-10-3, §44-10-4, §44-10-5 and §44-10-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; and §51-2A-2 of said code be amended and reenacted, all to read as follows:

**Chapter**

**44. Administration of Estates and Trusts.**

**51. Courts and Their Officers.**

### **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

#### **ARTICLE 10. GUARDIANS AND WARDS GENERALLY.**

§44-10-3. Appointment and revocation of guardian by county commission.

§44-10-4. Right of minor to nominate guardian.

§44-10-5. Bond of guardian.

§44-10-6. Curator; bond; powers and duties.

**§44-10-3. Appointment and revocation of guardian by county commission.**

1 (a) The circuit court or family court of the county in which  
2 the minor resides, or if the minor is a nonresident of the state,  
3 the county in which the minor has an estate, may appoint as the  
4 minor's guardian a suitable person. The father or mother shall  
5 receive priority. However, in every case, the competency and  
6 fitness of the proposed guardian and the welfare and best  
7 interests of the minor shall be given precedence by the court  
8 when appointing the guardian.

9 (b) Within five days of the filing of a petition for the  
10 appointment of a guardian, the circuit clerk shall notify the  
11 court. The court shall hear the petition for the appointment of  
12 a guardian within ten days after the petition is filed.

13 (c) The court, the guardian or the minor may revoke or  
14 terminate the guardianship appointment when:

15 (1) The minor reaches the age of eighteen and executes a  
16 release stating that the guardian estate was properly adminis-  
17 tered and that the minor has received the assets of the estate  
18 from the guardian;

19 (2) The guardian or the minor dies;

20 (3) The guardian petitions the court to resign and the court  
21 enters an order approving the resignation; or

22 (4) A petition is filed by the guardian, the minor, an  
23 interested person or upon the motion of the court stating that the  
24 minor is no longer in need of the assistance or protection of a  
25 guardian.

26 (d) A guardianship may not be terminated by the court if  
27 there are any assets in the estate due and payable to the minor:

28 *Provided*, That another guardian may be appointed upon the  
29 resignation of a guardian whenever there are assets in the estate  
30 due and payable to the minor.

**§44-10-4. Right of minor to nominate guardian.**

1 (a) If the minor is above the age of fourteen years, he or she  
2 may in the presence of the circuit or family court, or in writing  
3 acknowledged before any officer authorized to take the ac-  
4 knowledgment of a deed, nominate his or her own guardian,  
5 who, if approved by the court, shall be appointed accordingly.

6 (b) If the guardian nominated by the minor is not appointed  
7 by the court, or if the minor resides outside the state, or if, after  
8 being summoned, the minor neglects to nominate a suitable  
9 person, the court may appoint the guardian in the same manner  
10 as if the minor were under the age of fourteen years.

**§44-10-5. Bond of guardian.**

1 (a) Every guardian, except in the case of a testamentary  
2 guardian where the will otherwise directs and the court in which  
3 the will is recorded deems it unnecessary for the safety of the  
4 ward, shall give bond with security to be approved by the court  
5 by whom he or she is appointed, or before whom he or she  
6 accepts the trust, in such penalty as shall be prescribed by the  
7 court.

8 (b) The bond shall be given before the clerk of the court in  
9 which the petition is filed.

**§44-10-6. Curator; bond; powers and duties.**

1 Until a guardian gives bond, or while there is no guardian,  
2 the circuit or family court, may, from time to time, appoint a  
3 curator, who shall give bond, and during the continuance of his

4 or her trust, have all the powers and perform all the duties of a  
5 guardian, and be responsible in the same way.

## CHAPTER 51. COURTS AND THEIR OFFICERS.

### ARTICLE 2A. FAMILY COURTS.

#### §51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the  
2 following matters:

3 (1) All actions for divorce, annulment or separate mainte-  
4 nance brought under the provisions of article three, four or five,  
5 chapter forty-eight of this code except as provided in subsec-  
6 tions (b) and (c) of this section;

7 (2) All actions to obtain orders of child support brought  
8 under the provisions of articles eleven, twelve and fourteen,  
9 chapter forty-eight of this code;

10 (3) All actions to establish paternity brought under the  
11 provisions of article twenty-four, chapter forty-eight of this  
12 code and any dependent claims related to such actions regard-  
13 ing child support, parenting plans or other allocation of custo-  
14 dial responsibility or decision-making responsibility for a child;

15 (4) All actions for grandparent visitation brought under the  
16 provisions of article ten, chapter forty-eight of this code;

17 (5) All actions for the interstate enforcement of family  
18 support brought under article sixteen, chapter forty-eight of this  
19 code and for the interstate enforcement of child custody brought  
20 under the provisions of article twenty, chapter forty-eight of  
21 this code;

22 (6) All actions for the establishment of a parenting plan or  
23 other allocation of custodial responsibility or decision-making

24 responsibility for a child, including actions brought under the  
25 uniform child custody jurisdiction and enforcement act, as  
26 provided in article twenty, chapter forty-eight of this code;

27 (7) All petitions for writs of habeas corpus wherein the  
28 issue contested is custodial responsibility for a child;

29 (8) All motions for temporary relief affecting parenting  
30 plans or other allocation of custodial responsibility or decision-  
31 making responsibility for a child, child support, spousal support  
32 or domestic violence;

33 (9) All motions for modification of an order providing for  
34 a parenting plan or other allocation of custodial responsibility  
35 or decision-making responsibility for a child or for child  
36 support or spousal support;

37 (10) All actions brought, including civil contempt proceed-  
38 ings, to enforce an order of spousal or child support or to  
39 enforce an order for a parenting plan or other allocation of  
40 custodial responsibility or decision-making responsibility for a  
41 child;

42 (11) All actions brought by an obligor to contest the  
43 enforcement of an order of support through the withholding  
44 from income of amounts payable as support or to contest an  
45 affidavit of accrued support, filed with the circuit clerk, which  
46 seeks to collect an arrearage;

47 (12) All final hearings in domestic violence proceedings;

48 (13) Petitions for a change of name, exercising concurrent  
49 jurisdiction with the circuit court;

50 (14) All proceedings for payment of attorney fees if the  
51 family court judge has jurisdiction of the underlying action;

52 (15) All proceedings for property distribution brought under  
53 article seven, chapter forty-eight of this code;

54 (16) All proceedings to obtain spousal support brought  
55 under article eight, chapter forty-eight of this code; and

56 (17) All proceedings relating to the appointment of guard-  
57 ians or curators of minor children brought pursuant to sections  
58 three, four and six, article ten, chapter forty-four of this code,  
59 exercising concurrent jurisdiction with the circuit court.

60 (b) If an action for divorce, annulment or separate mainte-  
61 nance does not require the establishment of a parenting plan or  
62 other allocation of custodial responsibility or decision-making  
63 responsibility for a child and does not require an award or any  
64 payment of child support, the circuit court has concurrent  
65 jurisdiction with the family court over the action if, at the time  
66 of the filing of the action, the parties also file a written property  
67 settlement agreement executed by both parties.

68 (c) If an action for divorce, annulment or separate mainte-  
69 nance is pending and a petition is filed pursuant to the provi-  
70 sions of article six, chapter forty-nine of this code alleging  
71 abuse or neglect of a child by either of the parties to the  
72 divorce, annulment or separate maintenance action, the orders  
73 of the circuit court in which the abuse or neglect petition is filed  
74 shall supercede and take precedence over an order of the family  
75 court respecting the allocation of custodial and decision-making  
76 responsibility for the child between the parents. If no order for  
77 the allocation of custodial and decision-making responsibility  
78 for the child between the parents has been entered by the family  
79 court in the pending action for divorce, annulment or separate  
80 maintenance, the family court shall stay any further proceedings  
81 concerning the allocation of custodial and decision-making  
82 responsibility for the child between the parents and defer to the  
83 orders of the circuit court in the abuse or neglect proceedings.

84 (d) A family court is a court of limited jurisdiction. A  
85 family court is a court of record only for the purpose of  
86 exercising jurisdiction in the matters for which the jurisdiction  
87 of the family court is specifically authorized in this section and  
88 in chapter forty-eight of this code. A family court may not  
89 exercise the powers given courts of record in section one,  
90 article five, chapter fifty-one of this code or exercise any other  
91 powers provided for courts of record in this code unless  
92 specifically authorized by the Legislature. A family court judge  
93 is not a “judge of any court of record” or a “judge of a court of  
94 record” as the terms are defined and used in article nine of this  
95 chapter.

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## CHAPTER 129

(Com. Sub. for S. B. 554 — By Senator Fanning)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §44A-4-5 of the code of West Virginia, 1931, as amended, relating to continuing the guardianship or conservatorship of protected persons; and continuing the authority of a guardian or conservator for limited decisionmaking regarding the body of a deceased protected person.

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

That §44A-4-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. TERMINATION, REVOCATION AND MODIFICATION OF APPOINTMENTS.**



**§44A-4-5. Termination of guardianship or conservatorship of protected person - When authorized.**

1 A guardianship or conservatorship of a protected person  
2 shall terminate upon the death of the protected person: *Pro-*  
3 *vided*, That in the absence of an advanced directive or preneed  
4 burial or cremation contract, after the death of the protected  
5 person, a guardian or a conservator, if there is no guardian, shall  
6 continue to have authority to make decisions regarding the body  
7 of the deceased protected person for the purposes of authorizing  
8 an autopsy and making funeral arrangements. The guardian's  
9 or conservator's authority shall continue until an executor or  
10 executrix or an administrator or administratrix has been  
11 appointed. A guardianship or conservatorship shall terminate  
12 whenever jurisdiction is transferred to another state or if  
13 ordered by the court following a hearing on the petition of any  
14 interested person. In the case of a missing person, a conserva-  
15 torship shall terminate when the person's death is established by  
16 the production of a certified death certificate, the person is  
17 presumed dead pursuant to the provisions of article nine,  
18 chapter forty-four of this code or the missing person is located.

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## CHAPTER 130

**(Com. Sub. for H. B. 2755 — By Delegates Stemple,  
Kominar, Pethtel, Crosier, Williams and Amores)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §16-1-4 of the code of West Virginia, 1931, as amended, relating to authorizing the secretary of the department of health and human resources to promulgate emer-

agency rules to regulate opioid treatment centers; establishing a moratorium on licensure of new opioid treatment facilities without certificates of need until emergency rule filed; and establishing time period for compliance.

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

That §16-1-4 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

**§16-1-4. Proposal of rules by the secretary.**

1       The secretary may propose rules, in accordance with the  
2 provisions of article three, chapter twenty-nine-a of the code,  
3 that are necessary and proper to effectuate the purposes of this  
4 chapter. The secretary may appoint or designate advisory  
5 councils of professionals in the areas of hospitals, nursing  
6 homes, barbers and beauticians, postmortem examinations,  
7 mental health and mental retardation centers and any other  
8 areas necessary to advise the secretary on rules.

9       The rules may include, but are not limited to, the regulation  
10 of:

11       (a) Land usage endangering the public health: *Provided,*  
12 That no rules may be promulgated or enforced restricting the  
13 subdivision or development of any parcel of land within which  
14 the individual tracts, lots or parcels exceed two acres each in  
15 total surface area and which individual tracts, lots or parcels  
16 have an average frontage of not less than one hundred fifty feet  
17 even though the total surface area of the tract, lot or parcel  
18 equals or exceeds two acres in total surface area, and which  
19 tracts are sold, leased or utilized only as single family dwelling  
20 units. Notwithstanding the provisions of this subsection,  
21 nothing in this section may be construed to abate the authority

22 of the department to: (1) Restrict the subdivision or develop-  
23 ment of a tract for any more intense or higher density occu-  
24 pancy than a single family dwelling unit; (2) propose or enforce  
25 rules applicable to single family dwelling units for single family  
26 dwelling unit sanitary sewerage disposal systems; or (3) restrict  
27 any subdivision or development which might endanger the  
28 public health, the sanitary condition of streams, or sources of  
29 water supply;

30 (b) The sanitary condition of all institutions and schools,  
31 whether public or private, public conveyances, dairies, slaugh-  
32 terhouses, workshops, factories, labor camps, all other places  
33 open to the general public and inviting public patronage or  
34 public assembly, or tendering to the public any item for human  
35 consumption, and places where trades or industries are con-  
36 ducted;

37 (c) Occupational and industrial health hazards, the sanitary  
38 conditions of streams, sources of water supply, sewerage  
39 facilities and plumbing systems and the qualifications of  
40 personnel connected with any of those facilities, without regard  
41 to whether the supplies or systems are publicly or privately  
42 owned; and the design of all water systems, plumbing systems,  
43 sewerage systems, sewage treatment plants, excreta disposal  
44 methods and swimming pools in this state, whether publicly or  
45 privately owned;

46 (d) Safe drinking water, including:

47 (1) The maximum contaminant levels to which all public  
48 water systems must conform in order to prevent adverse effects  
49 on the health of individuals, and, if appropriate, treatment  
50 techniques that reduce the contaminant or contaminants to a  
51 level which will not adversely affect the health of the consumer.  
52 The rule shall contain provisions to protect and prevent  
53 contamination of wellheads and well fields used by public

54 water supplies so that contaminants do not reach a level that  
55 would adversely affect the health of the consumer;

56 (2) The minimum requirements for: Sampling and testing;  
57 system operation; public notification by a public water system  
58 on being granted a variance or exemption or upon failure to  
59 comply with specific requirements of this section and rules  
60 promulgated under this section; record keeping; laboratory  
61 certification; as well as procedures and conditions for granting  
62 variances and exemptions to public water systems from state  
63 public water systems rules; and

64 (3) The requirements covering the production and distribu-  
65 tion of bottled drinking water and may establish requirements  
66 governing the taste, odor, appearance and other consumer  
67 acceptability parameters of drinking water;

68 (e) Food and drug standards, including cleanliness, pro-  
69 scription of additives, proscription of sale and other require-  
70 ments in accordance with article seven of this chapter, as are  
71 necessary to protect the health of the citizens of this state;

72 (f) The training and examination requirements for emer-  
73 gency medical service attendants and emergency medical care  
74 technician-paramedics; the designation of the health care  
75 facilities, health care services, and the industries and occupa-  
76 tions in the state that must have emergency medical service  
77 attendants and emergency medical care technician-paramedics  
78 employed, and the availability, communications, and equipment  
79 requirements with respect to emergency medical service  
80 attendants and to emergency medical care technician-paramed-  
81 ics: *Provided*, That any regulation of emergency medical  
82 service attendants and emergency medical care technician-  
83 paramedics shall not exceed the provisions of article four-c of  
84 this chapter;

85 (g) The health and sanitary conditions of establishments  
86 commonly referred to as bed and breakfast inns. For purposes  
87 of this article, “bed and breakfast inn” means an establishment  
88 providing sleeping accommodations and, at a minimum, a  
89 breakfast for a fee: *Provided*, That the secretary may not require  
90 an owner of a bed and breakfast providing sleeping accommo-  
91 dations of six or fewer rooms to install a restaurant style or  
92 commercial food service facility: *Provided, however*, That the  
93 secretary may not require an owner of a bed and breakfast  
94 providing sleeping accommodations of more than six rooms to  
95 install a restaurant-type or commercial food service facility if  
96 the entire bed and breakfast inn or those rooms numbering  
97 above six are used on an aggregate of two weeks or less per  
98 year;

99 (h) Fees for services provided by the bureau for public  
100 health including, but not limited to, laboratory service fees,  
101 environmental health service fees, health facility fees and  
102 permit fees;

103 (i) The collection of data on health status, the health system  
104 and the costs of health care;

105 (j) Opioid treatment programs duly licensed and operating  
106 under the requirements of chapter twenty-seven of this code.  
107 The secretary shall promulgate emergency rules to govern such  
108 programs: *Provided*, That there shall be a moratorium on the  
109 licensure of new opioid treatment programs that do not have a  
110 certificate of need as of the effective date of this subsection  
111 until such time as the secretary files emergency rules with the  
112 secretary of state to regulate such programs. All existing opioid  
113 treatment programs shall be in compliance within one hundred  
114 eighty days of the effective date of this rule; and

115 (k) Other health-related matters which the department is  
116 authorized to supervise and for which the rule-making authority  
117 has not been otherwise assigned.

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## CHAPTER 131

(H. B. 4371 — By Delegates Michael, Craig,  
Leach, Morgan and Perdue)

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[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact §16-29F-1 of the code of West Virginia, 1931, as amended, relating to extending the pilot program for the uninsured and underinsured from two thousand four to two thousand six.

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

That §16-29F-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 29F. UNINSURED AND UNDERINSURED PILOT PROGRAMS.**

#### **§16-29F-1. Uninsured and underinsured health coverage assistance; pilot program.**

1 (a) The United States department of health and human  
2 services has established a federal grant program to encourage  
3 innovative integrated health care delivery systems to serve  
4 uninsured and underinsured persons with greater efficiency and  
5 improved quality of care and to further maximize reimburse-  
6 ments to health care providers which provide these services.  
7 The “Community Access Program” grants as authorized in the

8 federal register: February 4, 2000 (volume 65, number 24),  
9 allow for the establishment of local programs to reorganize and  
10 reintegrate local health care delivery systems. This section  
11 authorizes, on a trial basis, the establishment of pilot programs  
12 in the state which receive a grant under the community access  
13 program to coordinate health care provider reimbursements, to  
14 allow an opportunity for innovations in payment for health care  
15 services to be tested and, if successful, to be permanently  
16 implemented.

17 (b) An entity receiving a community access program grant  
18 may initiate a program that comports to the federal grant  
19 requirements and meets the requirements of this section. The  
20 pilot program may enroll persons to participate in this pilot  
21 program who currently do not have insurance and whose  
22 income does not exceed two hundred fifty percent of the federal  
23 poverty level. The pilot program may coordinate payments  
24 from enrollees and businesses employing enrollees to be  
25 utilized to capture available federal moneys to assist in provid-  
26 ing reimbursements to enrollee's health care providers. The  
27 pilot program shall coordinate reimbursements limited to areas  
28 not covered by other federal reimbursement programs such as  
29 the children's health insurance agency within the department of  
30 administration and the federal medicaid program. In no instance  
31 may the pilot program allow health care reimbursements to  
32 enrollees and to health care providers that limit or otherwise  
33 impede the eligibility of the enrollee or the health care provider  
34 to be eligible for these or other federal health care cost reim-  
35 bursement programs.

36 (c) Notwithstanding the provisions of chapter thirty-three  
37 of this code to the contrary, any grant program created and  
38 authorized pursuant to this section is not to be considered as  
39 providing insurance or as offering insurance services. Commu-  
40 nity access pilot programs are specifically excluded from the  
41 definitions of "insurance" and "insurer" as defined in article

42 one, chapter thirty-three of this code, and these programs are  
43 not subject to regulation by the insurance commissioner, nor are  
44 they unauthorized insurers pursuant to section four, article  
45 forty-four of chapter thirty-three of this code.

46 (d) The community access pilot program is authorized to  
47 enter into agreements with health care providers to coordinate  
48 and otherwise provide services to enrollees. These agreements  
49 must be contingent on the health care provider agreeing to  
50 accept payment from the community access pilot program  
51 based on available funding to the program for the health care  
52 services being provided. If the health care provider decides to  
53 no longer accept the community access pilot program's  
54 enrollee's reimbursement, the health care provider must  
55 provide, at a minimum, thirty days' notice of discontinuance of  
56 providing services and further acceptance of enrollee's pay-  
57 ments.

58 (e) The community access pilot program must provide  
59 enrollees and the participating employer with a minimum of  
60 thirty days' notice of discontinuance or reduction of enrollee  
61 benefits.

62 (f) The community access pilot program must submit  
63 quarterly reports to the legislative oversight commission of  
64 health and human resources accountability as established in  
65 article twenty-nine-e of this chapter. The report shall include at  
66 a minimum, analysis of the financial status, the number of  
67 health care provider reimbursements, enrollee services utilized  
68 and other information as requested by the commission.

69 (g) The authorization for the creation and existence of a  
70 pilot program as established pursuant to this section expires on  
71 the thirtieth day of June, two thousand six.



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## CHAPTER 132

**(S. B. 719 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Guills and Sprouse)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §11-27-11 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-27-37, relating to increasing the health care provider tax imposed on gross receipts of providers of nursing facility services and establishing a contingent provider tax increase if certain conditions occur; specifying condition precedent to tax increase; study panel; and setting forth effective date.

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

That §11-27-11 of the code of West Virginia, 1931, as amended, be amended and reenacted; and to further amend said code by adding thereto a new section, designated §11-27-37, all to read as follows:

### **ARTICLE 27. HEALTH CARE PROVIDER TAXES.**

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.

§11-27-37. Contingent increase in rates of certain health care provider taxes.

**§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.**

- 1 (a) *Imposition of tax.* -- For the privilege of engaging or
- 2 continuing within this state in the business of providing nursing

3 facility services, other than those services of intermediate care  
4 facilities for the mentally retarded, there is hereby levied and  
5 shall be collected from every person rendering such service an  
6 annual broad-based health care-related tax: *Provided*, That  
7 hospitals which provide nursing facility services may adjust  
8 nursing facility rates to the extent necessary to compensate for  
9 the tax without first obtaining approval from the health care  
10 authority: *Provided, however*, That the rate adjustment is  
11 limited to a single adjustment during the initial year of the  
12 imposition of the tax which adjustment shall be exempt from  
13 prospective review by the health care authority and further  
14 which is limited to an amount not to exceed the amount of the  
15 tax which is levied against the hospital for the provision of  
16 nursing facility services pursuant to this section. The health  
17 care authority shall retroactively review the rate increases  
18 implemented by the hospitals under this section during the  
19 regular rate review process. A hospital which fails to meet the  
20 criteria established by this section for a rate increase exempt  
21 from prospective review shall be subject to the penalties  
22 imposed under article twenty-nine-b, chapter sixteen of the  
23 code.

24 (b) *Rate and measure of tax.* -- The tax imposed in subsec-  
25 tion (a) of this section shall be five and one-half percent of the  
26 gross receipts derived by the taxpayer from furnishing nursing  
27 facility services in this state, other than services of intermediate  
28 care facilities for the mentally retarded. This rate shall be  
29 increased to five and ninety-five one hundredths percent of the  
30 gross receipts received or receivable by providers of nursing  
31 facility services after the thirtieth day of June, two thousand  
32 four.

33 (c) *Definitions.* --

34 (1) "Gross receipts" means the amount received or receiv-  
35 able, whether in cash or in kind, from patients, third-party  
36 payors and others for nursing facility services furnished by the

37 provider, including retroactive adjustments under reimburse-  
38 ment agreements with third-party payors, without any deduction  
39 for any expenses of any kind: *Provided*, That accrual basis  
40 providers shall be allowed to reduce gross receipts by their bad  
41 debts, to the extent the amount of such bad debts was previ-  
42 ously included in gross receipts upon which the tax imposed by  
43 this section was paid.

44 (2) "Nursing facility services" means those services that are  
45 nursing facility services for purposes of Section 1903(w) of the  
46 Social Security Act.

47 (d) *Effective date.* -- The tax imposed by this section shall  
48 apply to gross receipts received or receivable by providers after  
49 the thirty-first day of May, one thousand nine hundred  
50 ninety-three.

**§11-27-37. Contingent increase in rates of certain health care  
provider taxes.**

1 (a) *Increase in rates of certain provider taxes.* -- Notwith-  
2 standing any provision of this code to the contrary:

3 (1) The rate of the tax imposed by section four of this  
4 article on providers of ambulatory surgical centers shall be two  
5 and thirty-six hundredths percent of the gross receipts received  
6 or receivable by providers on and after the first day of the  
7 calendar month as provided in subsection (b) of this section;

8 (2) The rate of the tax imposed by section nine of this  
9 article on providers of inpatient hospital services shall be three  
10 and thirty-eight hundredths percent of the gross receipts  
11 received or receivable by providers on and after the first day of  
12 the calendar month as provided in subsection (b) of this section;

13 (3) The rate of tax imposed by section ten of this article on  
14 providers of intermediate care facility services shall be five and  
15 ninety-five hundredths percent of the gross receipts received or

16 receivable by providers on and after the first day of the calendar  
17 month as provided in subsection (b) of this section; and

18 (4) The rate of the tax imposed by section fifteen of this  
19 article on providers of outpatient hospital services shall be three  
20 and thirty-eight hundredths percent of the gross receipts  
21 received or receivable by providers on and after the first day of  
22 the calendar month as provided in subsection (b) of this section.

23 (b) *Effective date.* -- This section shall take effect as  
24 provided in article six, section thirty of the constitution of this  
25 state: *Provided,* That this section does not apply to any  
26 taxpayer unless and until all of the following have occurred:  
27 (1) The governor makes a determination that both estimated  
28 general revenue fund collections and the funds available to fund  
29 this state's medicaid program as set forth in the annual budget  
30 bill enacted by the Legislature will both be less in the next  
31 fiscal year than those funds are estimated to be in the current  
32 fiscal year, with this decrease being a result of changes, or  
33 anticipated changes, in the medicaid program at the federal  
34 level or a result of federal administrative actions with respect to  
35 this state's medicaid program; (2) the governor notifies the  
36 president of the Senate and the speaker of the House of Dele-  
37 gates of this determination; (3) the governor issues an executive  
38 order convening a panel to study and examine possible alterna-  
39 tive means of addressing and resolving the anticipated medicaid  
40 program budget shortfall, which panel shall include, but may  
41 not be limited to, one or more representatives of each group of  
42 providers upon which the provider tax increases contemplated  
43 by this section may be imposed; (4) this panel is afforded not  
44 less than seventy-five days in which to conduct its study and  
45 provide a report and recommendations to the governor, the  
46 president of the Senate and the speaker of the House of Dele-  
47 gates; and (5) the Legislature adopts a resolution authorizing  
48 imposition of the rate increases described in this section. If,  
49 and only if, no other solution than the tax increase set forth

50 herein is implemented by either administrative or legislative  
51 action in response to the report and recommendations of the  
52 study panel to the anticipated medicaid budget shortfall, and  
53 upon adoption of a resolution of the Legislature, the provisions  
54 of this section shall become effective on the date specified by  
55 the Legislature in the resolution.

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## CHAPTER 133

**(H. B. 4523 — By Delegates Michael,  
Doyle, G. White and Foster)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §19-23-3, §19-23-9, §19-23-10, §19-23-13 and §19-23-13b of the code of West Virginia, 1931, as amended, all relating to horse and dog racing generally; defining certain terms; allowing a yearling horse to be shipped from the state to obtain veterinary services without losing its status as an accredited thoroughbred horse; authorizing thoroughbred racetrack licensees to enter into agreements with local Horsemen's Benevolent and Protective Association for payment of up to two percent of purses actually paid for medical trusts for backstretch personnel and administrative fees; allowing certain racing associations or licensees qualifying for an alternate tax, when conducting more than one racing performance a day, to increase the number of races each performance may have to thirteen, before it must pay both the daily license tax and the alternative tax; requiring owners of accredited West Virginia whelped greyhounds to be both bona fide residents of West Virginia and registered for purposes of receiving funds from the greyhound breeding development fund; establishing qualifications

to be considered a bona fide resident; establishing qualifications for considerations as an accredited West Virginia whelped greyhound; providing breeding requirements for mares participating in the West Virginia futurity; and increasing the amount of restricted thoroughbred horse races in certain circumstances.

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

That §19-23-3, §19-23-9, §19-23-10, §19-23-13 and §19-23-13b of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 23. HORSE AND DOG RACING.**

- §19-23-3. Definitions.
- §19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.
- §19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.
- §19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.
- §19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

**PART VII. TAXATION OF HORSE AND DOG RACING AND  
PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.**

**§19-23-3. Definitions.**

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

3 (1) "Horse racing" means any type of horse racing, includ-  
4 ing, but not limited to, thoroughbred racing and harness racing;

5       (2) "Thoroughbred racing" means flat or running type horse  
6 racing in which each horse participating therein is a thorough-  
7 bred and is mounted by a jockey;

8       (3) "Harness racing" means horse racing in which the  
9 horses participating therein are harnessed to a sulky, carriage or  
10 other vehicle and shall not include any form of horse racing in  
11 which the horses are mounted by jockeys;

12       (4) "Horse race meeting" means the whole period of time  
13 for which a license is required by the provisions of section one  
14 of this article;

15       (5) "Dog racing" means any type of dog racing, including,  
16 but not limited to, greyhound racing;

17       (6) "Purse" means any purse, stake or award for which a  
18 horse or dog race is run;

19       (7) "Racing association" or "person" means any individual,  
20 partnership, firm, association, corporation or other entity or  
21 organization of whatever character or description;

22       (8) "Applicant" means any racing association making  
23 application for a license under the provisions of this article or  
24 any person making application for a permit under the provisions  
25 of this article, or any person making application for a construc-  
26 tion permit under the provisions of this article, as the case may  
27 be;

28       (9) "License" means the license required by the provisions  
29 of section one of this article;

30       (10) "Permit" means the permit required by the provisions  
31 of section two of this article;

32       (11) “Construction permit” means the construction permit  
33 required by the provisions of section eighteen of this article;

34       (12) “Licensee” means any racing association holding a  
35 license required by the provisions of section one of this article  
36 and issued under the provisions of this article;

37       (13) “Permit holder” means any person holding a permit  
38 required by the provisions of section two of this article and  
39 issued under the provisions of this article;

40       (14) “Construction permit holder” means any person  
41 holding a construction permit required by the provisions of  
42 section eighteen of this article and issued under the provisions  
43 of this article;

44       (15) “Hold or conduct” includes “assist, aid or abet in  
45 holding or conducting”;

46       (16) “Racing commission” means the West Virginia racing  
47 commission;

48       (17) “Stewards” means the steward or stewards represent-  
49 ing the racing commission, the steward or stewards representing  
50 a licensee and any other steward or stewards, whose duty it is  
51 to supervise any horse or dog race meeting, all as may be  
52 provided by reasonable rules and regulations of the racing  
53 commission, and the reasonable rules and regulations shall  
54 specify the number of stewards to be appointed, the method and  
55 manner of their appointment and their powers, authority and  
56 duties;

57       (18) “Pari-mutuel” means a mutuel or collective pool that  
58 can be divided among those who have contributed their wagers  
59 to one central agency, the odds to be reckoned in accordance to  
60 the collective amounts wagered upon each contestant running  
61 in a horse or dog race upon which the pool is made, but the total



62 to be divided among the first three contestants on the basis of  
63 the number of wagers on these;

64 (19) "Pari-mutuel clerk" means any employee of a licensed  
65 racing association who is responsible for the collection of  
66 wagers, the distribution of moneys for winning pari-mutuel  
67 tickets, verification of the validity of pari-mutuel tickets and  
68 accounting for pari-mutuel funds;

69 (20) "Pool" means a combination of interests in a joint  
70 wagering enterprise or a stake in such enterprise;

71 (21) "Legitimate breakage" is the percentage left over in the  
72 division of a pool;

73 (22) "To the dime" means that wagers shall be figured and  
74 paid to the dime;

75 (23) "Code" means the code of West Virginia, one thousand  
76 nine hundred thirty-one, as heretofore and hereinafter amended;

77 (24) "Accredited thoroughbred horse" means a thorough-  
78 bred horse that is: (a) Foaled in West Virginia; (b) sired by an  
79 accredited West Virginia sire; or (c) as a yearling, finished  
80 twelve consecutive months of verifiable residence in the state,  
81 except for thirty days grace: (A) for the horse to be shipped to  
82 and from horse sales where the horse is officially entered in the  
83 sales catalogue of a recognized thoroughbred sales company, or  
84 (B) for obtaining veterinary services, documented by veterinary  
85 reports;

86 (25) "Accredited West Virginia sire" is a sire that is  
87 permanently domiciled in West Virginia, stands a full season in  
88 West Virginia and is registered with West Virginia thorough-  
89 bred breeders association;

90 (26) "Breeder of an accredited West Virginia horse" is the  
91 owner of the foal at the time it was born in West Virginia;

92 (27) "Raiser of an accredited West Virginia horse" is the  
93 owner of the yearling at the time it finished twelve consecutive  
94 months of verifiable residence in the state. During the period,  
95 the raiser will be granted one month of grace for his or her  
96 horse to be shipped to and from thoroughbred sales where the  
97 horse is officially entered in the sales catalogue of a recognized  
98 thoroughbred sales company. Prior to the horse being shipped  
99 out of the state for sales, the raiser must notify the racing  
100 commission of his or her intentions;

101 (28) The "owner of an accredited West Virginia sire" is the  
102 owner of record at the time the offspring is conceived;

103 (29) The "owner of an accredited West Virginia horse"  
104 means the owner at the time the horse earned designated purses  
105 to qualify for restricted purse supplements provided for in  
106 section thirteen-b of this article; and

107 (30) "Registered Greyhound Owner" means an owner of a  
108 greyhound that is registered with the National Greyhound  
109 Association.

110 (31) "Fund" means the West Virginia thoroughbred  
111 development fund established in section thirteen-b of this  
112 article.

113 (32) "Regular Purse" means both regular purses and stakes  
114 purses.

**§19-23-9. Pari-mutuel system of wagering authorized; licensee  
authorized to deduct commissions from pari-  
mutuel pools; retention of breakage; auditing;  
minors.**

1 (a) The pari-mutuel system of wagering upon the results of  
2 any horse or dog race at any horse or dog race meeting con-  
3 ducted or held by any licensee is hereby authorized, if and only  
4 if such pari-mutuel wagering is conducted by the licensee  
5 within the confines of the licensee's horse racetrack or dog  
6 racetrack, and the provisions of section one, article ten, chapter  
7 sixty-one of this code, relating to gaming shall not apply to the  
8 pari-mutuel system of wagering in manner and form as pro-  
9 vided for in this article at any horse or dog race meeting within  
10 this state where horse or dog racing shall be permitted for any  
11 purse by any licensee. A licensee shall permit or conduct only  
12 the pari-mutuel system of wagering within the confines of the  
13 licensee's racetrack at which any horse or dog race meeting is  
14 conducted or held.

15 (b) A licensee is hereby expressly authorized to deduct a  
16 commission from the pari-mutuel pools, as follows:

17 (1) The commission deducted by any licensee from the  
18 pari-mutuel pools on thoroughbred horse racing, except from  
19 thoroughbred horse racing pari-mutuel pools involving what is  
20 known as multiple betting in which the winning pari-mutuel  
21 ticket or tickets are determined by a combination of two or  
22 more winning horses, shall not exceed seventeen and one-fourth  
23 percent of the total of the pari-mutuel pools for the day. Out of  
24 the commission, as is mentioned in this subdivision, the  
25 licensee: (i) Shall pay the pari-mutuel pools tax provided for in  
26 subsection (b), section ten of this article; (ii) shall make a  
27 deposit into a special fund to be established by the licensee and  
28 to be used for the payment of regular purses offered for  
29 thoroughbred racing by the licensee, which deposits out of pari-  
30 mutuel pools for each day during the months of January,  
31 February, March, October, November and December shall be  
32 seven and three hundred seventy-five one-thousandths percent  
33 of the pari-mutuel pools and which, out of pari-mutuel pools for  
34 each day during all other months, shall be six and eight hundred

35 seventy-five one-thousandths percent of the pari-mutuel pools,  
36 which shall take effect beginning fiscal year one thousand nine  
37 hundred ninety; (iii) shall, after allowance for the exclusion  
38 given by subsection (b), section ten of this article, make a  
39 deposit into a special fund to be established by the racing  
40 commission and to be used for the payment of breeders, awards  
41 and capital improvements as authorized by section thirteen-b of  
42 this article, which deposits out of pari-mutuel pools shall from  
43 the effective date of this section and for fiscal year one thou-  
44 sand nine hundred eighty-five, be four-tenths percent; for fiscal  
45 year one thousand nine hundred eighty-six, be seven-tenths  
46 percent; for fiscal year one thousand nine hundred eighty-seven,  
47 be one percent; for fiscal year one thousand nine hundred  
48 eighty-eight, be one and one-half percent; and for fiscal year  
49 one thousand nine hundred eighty-nine, and each year thereaf-  
50 ter, be two percent of the pools; and (iv) shall pay one tenth of  
51 one percent of the pari-mutuel pools into the general fund of the  
52 county commission of the county in which the racetrack is  
53 located, except if within a municipality, then to the municipal  
54 general fund. The remainder of the commission shall be  
55 retained by the licensee.

56 Each licensee that permits or conducts pari-mutuel wager-  
57 ing at the licensee's thoroughbred horse racetrack shall annually  
58 pay five hundred thousand dollars from the special fund  
59 required by this section to be established by the licensee for the  
60 payment of regular purses offered for thoroughbred racing by  
61 the licensee into a special fund established by the racing  
62 commission for transfer to a pension plan established by the  
63 racing commission for all back-stretch personnel, including, but  
64 not limited to, exercise riders, trainers, grooms and stable  
65 forepersons licensed by the racing commission to participate in  
66 horse racing in this state and their dependents.

67 Each thoroughbred racetrack licensee is authorized to enter  
68 into an agreement with its local Horsemen's Benevolent and

69 Protective Association under which an agreed upon percentage  
70 of up to two percent of purses actually paid during the preced-  
71 ing month may be paid to the local Horsemen's Benevolent and  
72 Protective Association from the special fund required by this  
73 section for their respective medical trusts for backstretch  
74 personnel and administrative fees.

75 The commission deducted by any licensee from the pari-  
76 mutuel pools on thoroughbred horse racing involving what is  
77 known as multiple betting in which the winning pari-mutuel  
78 ticket or tickets are determined by a combination of two  
79 winning horses shall not exceed nineteen percent and by a  
80 combination of three or more winning horses shall not exceed  
81 twenty-five percent of the total of such pari-mutuel pools for  
82 the day. Out of the commission, as is mentioned in this para-  
83 graph, the licensee: (i) Shall pay the pari-mutuel pools tax  
84 provided for in subsection (b), section ten of this article; (ii)  
85 shall make a deposit into a special fund to be established by the  
86 licensee and to be used for the payment of regular purses  
87 offered for thoroughbred racing by the licensee, which deposits  
88 out of pari-mutuel pools for each day during the months of  
89 January, February, March, October, November and December  
90 for pools involving a combination of two winning horses shall  
91 be eight and twenty-five one-hundredths percent and out of  
92 pari-mutuel pools for each day during all other months shall be  
93 seven and seventy-five one-hundredths percent of the pari-  
94 mutuel pools; and involving a combination of three or more  
95 winning horses for the months of January, February, March,  
96 October, November and December the deposits out of the fund  
97 shall be eleven and twenty-five one-hundredths percent of the  
98 pari-mutuel pools; and which, out of pari-mutuel pools for each  
99 day during all other months, shall be ten and seventy-five one-  
100 hundredths percent of the pari-mutuel pools; (iii) shall, after  
101 allowance for the exclusion given by subsection (b), section ten  
102 of this article, make a deposit into a special fund to be estab-  
103 lished by the racing commission and to be used for the payment

104 of breeders' awards and capital improvements as authorized by  
105 section thirteen-b of this article, which deposits out of pari-  
106 mutuel pools shall from the effective date of this section and for  
107 fiscal year one thousand nine hundred eighty-five, be four-  
108 tenths percent; for fiscal year one thousand nine hundred  
109 eighty-six, be seven-tenths percent; for fiscal year one thousand  
110 nine hundred eighty-seven, be one percent; for fiscal year one  
111 thousand nine hundred eighty-eight, be one and one-half  
112 percent; and for fiscal year one thousand nine hundred eighty-  
113 nine, and each year thereafter, be two percent of the pools; and  
114 (iv) shall pay one tenth of one percent of the pari-mutuel pools  
115 into the general fund of the county commission of the county in  
116 which the racetrack is located, except if within a municipality,  
117 then to the municipal general fund. The remainder of the  
118 commission shall be retained by the licensee.

119 The commission deducted by the licensee under this  
120 subdivision may be reduced only by mutual agreement between  
121 the licensee and a majority of the trainers and horse owners  
122 licensed by subsection (a), section two of this article or their  
123 designated representative. The reduction in licensee commis-  
124 sions may be for a particular race, racing day or days or for a  
125 horse race meeting. Fifty percent of the reduction shall be  
126 retained by the licensee from the amounts required to be paid  
127 into the special fund established by the licensee under the  
128 provisions of this subdivision. The racing commission shall  
129 promulgate any reasonable rules that are necessary to imple-  
130 ment the foregoing provisions.

131 (2) The commission deducted by any licensee from the  
132 pari-mutuel pools on harness racing shall not exceed seventeen  
133 and one-half percent of the total of the pari-mutuel pools for the  
134 day. Out of the commission the licensee shall pay the pari-  
135 mutuel pools tax provided for in subsection (c), section ten of  
136 this article and shall pay one tenth of one percent into the  
137 general fund of the county commission of the county in which

138 the racetrack is located, except if within a municipality, then to  
139 the municipal general fund. The remainder of the commission  
140 shall be retained by the licensee.

141 (3) The commission deducted by any licensee from the  
142 pari-mutuel pools on dog racing, except from dog racing pari-  
143 mutuel pools involving what is known as multiple betting in  
144 which the winning pari-mutuel ticket or tickets are determined  
145 by a combination of two or more winning dogs, shall not  
146 exceed sixteen and thirty one-hundredths percent of the total of  
147 all pari-mutuel pools for the day. The commission deducted by  
148 any licensee from the pari-mutuel pools on dog racing involv-  
149 ing what is known as multiple betting in which the winning  
150 pari-mutuel ticket or tickets are determined by a combination  
151 of two winning dogs shall not exceed nineteen percent, by a  
152 combination of three winning dogs shall not exceed twenty  
153 percent, and by a combination of four or more winning dogs  
154 shall not exceed twenty-one percent of the total of such pari-  
155 mutuel pools for the day. The foregoing commissions are in  
156 effect for the fiscal years one thousand nine hundred ninety and  
157 one thousand nine hundred ninety-one. Thereafter, the commis-  
158 sion shall be at the percentages in effect prior to the effective  
159 date of this article unless the Legislature, after review, deter-  
160 mines otherwise. Out of the commissions, the licensee shall pay  
161 the pari-mutuel pools tax provided for in subsection (d), section  
162 ten of this article and one tenth of one percent of such pari-  
163 mutuel pools into the general fund of the county commission of  
164 the county in which the racetrack is located. In addition, out of  
165 the commissions, if the racetrack is located within a municipal-  
166 ity, then the licensee shall also pay three tenths of one percent  
167 of the pari-mutuel pools into the general fund of the municipal-  
168 ity; or, if the racetrack is located outside of a municipality, then  
169 the licensee shall also pay three tenths of one percent of the  
170 pari-mutuel pools into the state road fund for use by the  
171 division of highways in accordance with the provisions of this

172 subdivision. The remainder of the commission shall be retained  
173 by the licensee.

174 For the purposes of this section, "municipality" means and  
175 includes any Class I, Class II and Class III city and any Class  
176 IV town or village incorporated as a municipal corporation  
177 under the laws of this state prior to the first day of January, one  
178 thousand nine hundred eighty-seven.

179 Each dog racing licensee, when required by the provisions  
180 of this subdivision to pay a percentage of its commissions to the  
181 state road fund for use by the division of highways, shall  
182 transmit the required funds, in such manner and at such times  
183 as the racing commission shall by procedural rule direct, to the  
184 state treasurer for deposit in the state treasury to the credit of  
185 the division of highways state road fund. All funds collected  
186 and received in the state road fund pursuant to the provisions of  
187 this subdivision shall be used by the division of highways in  
188 accordance with the provisions of article seventeen-a, chapter  
189 seventeen of this code for the acquisition of right-of-way for,  
190 the construction of, the reconstruction of and the improvement  
191 or repair of any interstate or other highway, secondary road,  
192 bridge and toll road in the state. If on the first day of July, one  
193 thousand nine hundred eighty-nine, any area encompassing a  
194 dog racetrack has incorporated as a Class I, Class II or Class III  
195 city or as a Class IV town or village, whereas such city, town or  
196 village was not incorporated as such on the first day of January,  
197 one thousand nine hundred eighty-seven, then on and after the  
198 first day of July, one thousand nine hundred eighty-nine, any  
199 balances in the state road fund existing as a result of payments  
200 made under the provisions of this subdivision may be used by  
201 the state road fund for any purpose for which other moneys in  
202 the fund may lawfully be used, and in lieu of further payments  
203 to the state road fund, the licensee of a racetrack which is  
204 located in the municipality shall thereafter pay three tenths of  
205 one percent of the pari-mutuel pools into the general fund of the



206 municipality. If no incorporation occurs before the first day of  
207 July, one thousand nine hundred eighty-nine, then payments to  
208 the state road fund shall thereafter continue as provided for  
209 under the provisions of this subdivision.

210 A dog racing licensee, before deducting the commissions  
211 authorized by this subdivision, shall give written notification to  
212 the racing commission not less than thirty days prior to any  
213 change in the percentage rates for the commissions. The racing  
214 commission shall prescribe blank forms for filing the notifica-  
215 tion. The notification shall disclose the following: (A) The  
216 revised commissions to be deducted from the pari-mutuel pools  
217 each day on win, place and show betting and on different forms  
218 of multiple bettings; (B) the dates to be included in the revised  
219 betting; (C) such other information as may be required by the  
220 racing commission.

221 The licensee shall establish a special fund to be used only  
222 for capital improvements or long-term debt amortization or  
223 both: *Provided*, That any licensee, heretofore licensed for a  
224 period of eight years prior to the effective date of the amend-  
225 ment made to this section during the regular session of the  
226 Legislature held in the year one thousand nine hundred eighty-  
227 seven, shall establish the special fund to be used only for capital  
228 improvements or physical plant maintenance, or both, at the  
229 licensee's licensed facility or at the licensee's commonly  
230 owned racing facility located within this state. Deposits made  
231 into the funds shall be in an amount equal to twenty-five  
232 percent of the increased rate total over and above the applicable  
233 rate in effect as of the first day of January, one thousand nine  
234 hundred eighty-seven, of the pari-mutuel pools for the day. Any  
235 amount deposited into the funds must be expended or liability  
236 therefor incurred within a period of two years from the date of  
237 deposit. Any funds not expended shall be transferred immedi-  
238 ately into the state general fund after expiration of the two-year  
239 period.

240       The licensee shall make a deposit into a special fund  
241 established by the licensee and used for payment of regular  
242 purses offered for dog racing, which deposits out of the  
243 licensee's commissions for each day shall be three and seventy-  
244 five one-hundredths percent of the pari-mutuel pools.

245       The licensee shall further establish a special fund to be used  
246 exclusively for marketing and promotion programs; the funds  
247 shall be in an amount equal to five percent over and above the  
248 applicable rates in effect as of the first day of January, one  
249 thousand nine hundred eighty-seven of the total pari-mutuel  
250 pools for the day.

251       The racing commission shall prepare and transmit annually  
252 to the governor and the Legislature a report of the activities of  
253 the racing commission under this subdivision. The report shall  
254 include a statement of: The amount of commissions retained by  
255 licensees; the amount of taxes paid to the state; the amounts  
256 paid to municipalities, counties and the division of highways  
257 dog racing fund; the amounts deposited by licensees into  
258 special funds for capital improvements or long-term debt  
259 amortization and a certified statement of the financial condition  
260 of any licensee depositing into the fund; the amounts paid by  
261 licensees into special funds and used for regular purses offered  
262 for dog racing; the amounts paid by licensees into special funds  
263 and used for marketing and promotion programs; and such  
264 other information as the racing commission may consider  
265 appropriate for review.

266       (c) In addition to any commission, a licensee of horse race  
267 or dog race meetings shall also be entitled to retain the legiti-  
268 mate breakage, which shall be made and calculated to the dime,  
269 and from the breakage, the licensee of a horse race meeting  
270 (excluding dog race meetings), shall deposit daily fifty percent  
271 of the total of the breakage retained by the licensee into the  
272 special fund created pursuant to the provisions of subdivision

273 (1), subsection (b) of this section for the payment of regular  
274 purses.

275 (d) The director of audit, and any other auditors employed  
276 by the racing commission who are also certified public account-  
277 tants or experienced public accountants, shall have free access  
278 to the space or enclosure where the pari-mutuel system of  
279 wagering is conducted or calculated at any horse or dog race  
280 meeting for the purpose of ascertaining whether or not the  
281 licensee is deducting and retaining only a commission as  
282 provided in this section and is otherwise complying with the  
283 provisions of this section. They shall also, for the same pur-  
284 poses only, have full and free access to all records and papers  
285 pertaining to the pari-mutuel system of wagering and shall  
286 report to the racing commission in writing, under oath, whether  
287 or not the licensee has deducted and retained any commission  
288 in excess of that permitted under the provisions of this section  
289 or has otherwise failed to comply with the provisions of this  
290 section.

291 (e) No licensee shall permit or allow any individual under  
292 the age of eighteen years to wager at any horse or dog racetrack,  
293 knowing or having reason to believe that the individual is under  
294 the age of eighteen years.

295 (f) Notwithstanding the foregoing provisions of subdivision  
296 (1), subsection (b) of this section, to the contrary, a thorough-  
297 bred licensee qualifying for and paying the alternate reduced  
298 tax on pari-mutuel pools provided in section ten of this article  
299 shall distribute the commission authorized to be deducted by  
300 subdivision (1), subsection (b) of this section as follows: (i) The  
301 licensee shall pay the alternate reduced tax provided in section  
302 ten of this article; (ii) the licensee shall pay one tenth of one  
303 percent of the pari-mutuel pools into the general fund of the  
304 county commission of the county in which the racetrack is  
305 located, except if within a municipality, then to the municipal

306 general fund; (iii) the licensee shall pay one half of the remain-  
307 der of the commission into the special fund established by the  
308 licensee and to be used for the payment of regular purses  
309 offered for thoroughbred racing by the licensee; and (iv) the  
310 licensee shall retain the amount remaining after making the  
311 payments required in this subsection.

312 (g) Each kennel which provides or races dogs owned or  
313 leased by others shall furnish to the commission a surety bond  
314 in an amount to be determined by the commission to secure the  
315 payment to the owners or lessees of the dogs the portion of any  
316 purse owed to the owner or lessee.

**§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes  
paid; alternate tax; credits.**

1 (a) Any racing association conducting thoroughbred racing  
2 at any horse racetrack in this state shall pay each day upon  
3 which horse races are run a daily license tax of two hundred  
4 fifty dollars. Any racing association conducting harness racing  
5 at any horse racetrack in this state shall pay each day upon  
6 which horse races are run a daily license tax of one hundred  
7 fifty dollars. Any racing association conducting dog races shall  
8 pay each day upon which dog races are run a daily license tax  
9 of one hundred fifty dollars. In the event thoroughbred racing,  
10 harness racing, dog racing, or any combination of the foregoing  
11 are conducted on the same day at the same racetrack by the  
12 same racing association, only one daily license tax in the  
13 amount of two hundred fifty dollars shall be paid for that day.  
14 Any daily license tax shall not apply to any local, county or  
15 state fair, horse show or agricultural or livestock exposition at  
16 which horse racing is conducted for not more than six days.

17 (b) Any racing association licensed by the racing commis-  
18 sion to conduct thoroughbred racing and permitting and  
19 conducting pari-mutuel wagering under the provisions of this  
20 article shall, in addition to the daily license tax set forth in

21 subsection (a) of this section, pay to the racing commission,  
22 from the commission deducted each day by the licensee from  
23 the pari-mutuel pools on thoroughbred racing a tax calculated  
24 on the total daily contribution of all pari-mutuel pools con-  
25 ducted or made at any and every thoroughbred race meeting of  
26 the licensee licensed under the provisions of this article. The  
27 tax, on the pari-mutuel pools conducted or made each day  
28 during the months of January, February, March, October,  
29 November and December, shall from the effective date of this  
30 section and for fiscal year one thousand nine hundred eighty-  
31 five be calculated at two and six-tenths percent; for fiscal year  
32 one thousand nine hundred eighty-six, be calculated at two and  
33 three-tenths percent; for fiscal year one thousand nine hundred  
34 eighty-seven, be calculated at two percent of the pool; for fiscal  
35 year one thousand nine hundred eighty-eight, be calculated at  
36 one and one-half percent; for fiscal year one thousand nine  
37 hundred eighty-nine, be calculated at one percent of the pool;  
38 for fiscal year one thousand nine hundred ninety, seven tenths  
39 of one percent, and for fiscal year one thousand nine hundred  
40 ninety-one and each fiscal year thereafter be calculated at four  
41 tenths of one percent of the pool; and, on the pari-mutuel pools  
42 conducted or made each day during all other months, shall from  
43 the effective date of this section and for fiscal year one thou-  
44 sand nine hundred eighty-five, be calculated at three and six-  
45 tenths percent; for fiscal year one thousand nine hundred  
46 eighty-six, be calculated at three and three-tenths percent; for  
47 fiscal year one thousand nine hundred eighty-seven, be calcu-  
48 lated at three percent of the pool; for fiscal year one thousand  
49 nine hundred eighty-eight, be calculated at two and one-half  
50 percent; for fiscal year one thousand nine hundred eighty-nine,  
51 be calculated at two percent of the pool; for fiscal year one  
52 thousand nine hundred ninety, be calculated at one and seven-  
53 tenths percent of the pool; and for fiscal year one thousand nine  
54 hundred ninety-one and each fiscal year thereafter, be calcu-  
55 lated at one and four-tenths percent of the pool: *Provided*, That  
56 out of the amount realized from the three tenths of one percent

57 decrease in the tax effective for fiscal year one thousand nine  
58 hundred ninety-one and thereafter, which decrease correspond-  
59 ingly increases the amount of commission retained by the  
60 licensee, the licensee shall annually expend or dedicate: (i) One  
61 half of the realized amount for capital improvements in its barn  
62 area at the track, subject to the racing commission's prior  
63 approval of the plans for the improvements; and (ii) the  
64 remaining one half of the realized amount for capital improve-  
65 ments as the licensee may determine appropriate at the track.  
66 The term "capital improvement" shall be as defined by the  
67 Internal Revenue Code: *Provided, however,* That any racing  
68 association operating a horse racetrack in this state having an  
69 average daily pari-mutuel pool on horse racing of two hundred  
70 eighty thousand dollars or less per day for the race meetings of  
71 the preceding calendar year shall, in lieu of payment of the pari-  
72 mutuel pool tax, calculated as in this subsection, be permitted  
73 to conduct pari-mutuel wagering at the horse racetrack on the  
74 basis of a daily pari-mutuel pool tax fixed as follows: On the  
75 daily pari-mutuel pool not exceeding three hundred thousand  
76 dollars the daily pari-mutuel pool tax shall be one thousand  
77 dollars plus the otherwise applicable percentage rate imposed  
78 by this subsection of the daily pari-mutuel pool, if any, in  
79 excess of three hundred thousand dollars: *Provided further,*  
80 That upon the effective date of the reduction of the daily pari-  
81 mutuel pool tax to one thousand dollars from the former two  
82 thousand dollars, the association or licensee shall daily deposit  
83 five hundred dollars into the special fund for regular purses  
84 established by subdivision (1), subsection (b), section nine of  
85 this article: *And provided further,* That if an association or  
86 licensee qualifying for the foregoing alternate tax conducts  
87 more than one racing performance, each consisting of up to  
88 thirteen races in a calendar day, the association or licensee shall  
89 pay both the daily license tax imposed in subsection (a) of this  
90 section and the alternate tax in this subsection for each perfor-  
91 mance: *And provided further,* That a licensee qualifying for the

92 foregoing alternate tax is excluded from participation in the  
93 fund established by section thirteen-b of this article: *And*  
94 *provided further*, That this exclusion shall not apply to any  
95 thoroughbred racetrack at which the licensee has participated in  
96 the West Virginia thoroughbred development fund for more  
97 than four consecutive years prior to the thirty-first day of  
98 December, one thousand nine hundred ninety-two.

99 (c) Any racing association licensed by the racing commis-  
100 sion to conduct harness racing and permitting and conducting  
101 pari-mutuel wagering under the provisions of this article shall,  
102 in addition to the daily license tax required under subsection (a)  
103 of this section, pay to the racing commission, from the commis-  
104 sion deducted each day by the licensee from the pari-mutuel  
105 pools on harness racing, as a tax, three percent of the first one  
106 hundred thousand dollars wagered, or any part thereof; four  
107 percent of the next one hundred fifty thousand dollars; and five  
108 and three-fourths percent of all over that amount wagered each  
109 day in all pari-mutuel pools conducted or made at any and  
110 every harness race meeting of the licensee licensed under the  
111 provisions of this article.

112 (d) Any racing association licensed by the racing commis-  
113 sion to conduct dog racing and permitting and conducting pari-  
114 mutuel wagering under the provisions of this article shall, in  
115 addition to the daily license tax required under subsection (a) of  
116 this section, pay to the racing commission, from the commis-  
117 sion deducted each day by the licensee from the pari-mutuel  
118 pools on dog racing, as a tax, four percent of the first fifty  
119 thousand dollars or any part thereof of the pari-mutuel pools,  
120 five percent of the next fifty thousand dollars of the pari-mutuel  
121 pools, six percent of the next one hundred thousand dollars of  
122 the pari-mutuel pools, seven percent of the next one hundred  
123 fifty thousand dollars of the pari-mutuel pools, and eight  
124 percent of all over three hundred fifty thousand dollars wagered  
125 each day: *Provided*, That the licensee shall deduct daily from

126 the pari-mutuel tax an amount equal to one tenth of one percent  
127 of the daily pari-mutuel pools in dog racing in fiscal year one  
128 thousand nine hundred ninety; fifteen hundredths of one percent  
129 in fiscal year one thousand nine hundred ninety-one; two tenths  
130 of one percent in fiscal year one thousand nine hundred ninety-  
131 two; one quarter of one percent in fiscal year one thousand nine  
132 hundred ninety-three; and three tenths of one percent in fiscal  
133 year one thousand nine hundred ninety-four and every fiscal  
134 year thereafter. The amounts deducted shall be paid to the  
135 racing commission to be deposited by the racing commission in  
136 a banking institution of its choice in a special account to be  
137 known as "West Virginia Racing Commission-Special Ac-  
138 count-West Virginia Greyhound Breeding Development Fund".  
139 The purpose of the fund is to promote better breeding and  
140 racing of greyhounds in the state through awards and purses to  
141 bona fide resident registered greyhound owners of accredited  
142 West Virginia whelped greyhounds. In order to be eligible to  
143 receive an award or purse through the fund, the registered  
144 greyhound owner of the accredited West Virginia whelped  
145 greyhound must be a bonafide resident of this state. To qualify  
146 as a bona fide resident of West Virginia, a registered greyhound  
147 owner may not claim residency in any other state. A registered  
148 greyhound owner must prove bona fide residency by providing  
149 to the commission personal income tax returns filed in the state  
150 of West Virginia for the most recent tax year and the three  
151 previous tax years, has real or personal property in this state on  
152 which the owner has paid real or personal property taxes during  
153 the most recent tax year and the previous three tax years and an  
154 affidavit stating that the owner claims no other state of resi-  
155 dency. The racing commission and the West Virginia registered  
156 greyhound owners and breeders association shall maintain a  
157 registry for West Virginia bred greyhounds. The moneys shall  
158 be expended by the racing commission for purses for stake  
159 races, supplemental purse awards, administration, promotion  
160 and educational programs involving West Virginia whelped



161 dogs, owned by residents of this state under rules promulgated  
162 by the racing commission. The racing commission shall pay out  
163 of the greyhound breeding development fund to each of the  
164 licensed dog racing tracks the sum of seventy-five thousand  
165 dollars for the fiscal year ending the thirtieth day of June, one  
166 thousand nine hundred ninety-four. The licensee shall deposit  
167 the sum into the special fund for regular purses established  
168 under the provisions of section nine of this article. The funds  
169 shall be expended solely for the purpose of supplementing  
170 regular purses under rules promulgated by the racing commis-  
171 sion.

172 Supplemental purse awards will be distributed as follows:  
173 Supplemental purses shall be paid directly to the registered  
174 greyhound owner of an accredited greyhound.

175 The registered greyhound owner of accredited West  
176 Virginia whelped greyhounds that earn a purse at any West  
177 Virginia meet will receive a bonus award calculated at the end  
178 of each month as a percentage of the fund dedicated to the  
179 owners as purse supplements, which shall be a minimum of  
180 fifty percent of the total moneys deposited into the West  
181 Virginia greyhound breeding development fund monthly.

182 The total amount of the fund available for the owners'  
183 awards shall be distributed according to the ratio of purses  
184 earned by an accredited greyhound to the total amount earned  
185 in races by all accredited West Virginia whelped greyhounds  
186 for that month as a percentage of the funds dedicated to the  
187 owners' purse supplements.

188 The registered greyhound owner of an accredited West  
189 Virginia whelped greyhound shall file a purse distribution form  
190 with the racing commission for a percentage of his or her dog's  
191 earnings to be paid directly to the registered greyhound owner  
192 or owners of the greyhound. Distribution shall be made on the

193 fifteenth day of each month for the preceding month's achieve-  
194 ments.

195 In no event shall purses earned at a meet held at a track  
196 which did not make contributions to the West Virginia grey-  
197 hound breeder's development fund out of the daily pool on the  
198 day the meet was held qualify or count toward eligibility for  
199 supplemental purse awards.

200 Any balance in the purse supplement funds after all  
201 distributions have been made for the year revert to the general  
202 account of the fund for distribution in the following year.

203 In an effort to further promote the breeding of quality West  
204 Virginia whelped greyhounds, a bonus purse supplement shall  
205 be established in the amount of fifty thousand dollars per  
206 annum, to be paid in equal quarterly installments of twelve  
207 thousand five hundred dollars per quarter using the same  
208 method to calculate and distribute these funds as the regular  
209 supplemental purse awards. This bonus purse supplement is for  
210 three years only, commencing on the first day of July, one  
211 thousand nine hundred ninety-three, and ending the thirtieth day  
212 of June, one thousand nine hundred ninety-six. This money  
213 would come from the current existing balance in the greyhound  
214 development fund.

215 Each pari-mutuel greyhound track shall provide stakes  
216 races for accredited West Virginia whelped greyhounds:  
217 *Provided*, That each pari-mutuel track shall have one juvenile  
218 and one open stake race annually. The racing commission shall  
219 oversee and approve racing schedules and purse amounts.

220 Ten percent of the deposits into the greyhound breeding  
221 development fund beginning the first day of July, one thousand  
222 nine hundred ninety-three and continuing each year thereafter,  
223 shall be withheld by the racing commission and placed in a  
224 special revenue account hereby created in the state treasury

225 called the “administration, promotion and educational account”.  
226 The racing commission is authorized to expend the moneys  
227 deposited in the administration, promotion and educational  
228 account at such times and in such amounts as the commission  
229 determines to be necessary for purposes of administering and  
230 promoting the greyhound development program: *Provided*, That  
231 beginning with fiscal year one thousand nine hundred  
232 ninety-five and in each fiscal year thereafter in which the  
233 commission anticipates spending any money from the account,  
234 the commission shall submit to the executive department during  
235 the budget preparation period prior to the Legislature convening  
236 before that fiscal year for inclusion in the executive budget  
237 document and budget bill, the recommended expenditures, as  
238 well as requests of appropriations for the purpose of administra-  
239 tion, promotion and education. The commission shall make an  
240 annual report to the Legislature on the status of the administra-  
241 tion, promotion and education account, including the previous  
242 year’s expenditures and projected expenditures for the next  
243 year.

244 The racing commission, for the fiscal year one thousand  
245 nine hundred ninety-four only, may expend up to thirty-five  
246 thousand dollars from the West Virginia greyhound breeding  
247 development fund to accomplish the purposes of this section  
248 without strictly following the requirements in the previous  
249 paragraph.

250 (e) All daily license and pari-mutuel pools tax payments  
251 required under the provisions of this section shall be made to  
252 the racing commission or its agent after the last race of each  
253 day of each horse or dog race meeting, and the pari-mutuel  
254 pools tax payments shall be made from all contributions to all  
255 pari-mutuel pools to each and every race of the day.

256 (f) Every association or licensee subject to the provisions  
257 of this article, including the changed provisions of sections nine

258 and ten of this article, shall annually submit to the racing  
259 commission and the Legislature financial statements, including  
260 a balance sheet, income statement, statement of change in  
261 financial position and an audit of any electronic data system  
262 used for pari-mutuel tickets and betting, prepared in accordance  
263 with generally accepted auditing standards, as certified by an  
264 experienced public accountant or a certified public accountant.

**§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.**

1 (a) All moneys held by any licensee for the payment of  
2 outstanding and unredeemed pari-mutuel tickets, if not claimed  
3 within ninety days after the close of a horse or dog race meeting  
4 or the televised racing day, as the case may be, in connection  
5 with which the tickets were issued, shall be turned over by the  
6 licensee to the racing commission within fifteen days after the  
7 expiration of the ninety-day period, and the licensee shall give  
8 any information required by the racing commission concerning  
9 the outstanding and unredeemed tickets. The moneys shall be  
10 deposited by the racing commission in a banking institution of  
11 its choice in a special account to be known as "West Virginia  
12 Racing Commission Special Account - Unredeemed Pari-  
13 Mutuel Tickets." Notice of the amount, date and place of each  
14 deposit shall be given by the racing commission, in writing, to  
15 the state treasurer. The racing commission shall then cause to  
16 be published a notice to the holders of the outstanding and  
17 unredeemed pari-mutuel tickets, notifying them to present their  
18 unredeemed tickets for payment at the principal office of the  
19 racing commission within ninety days from the date of the  
20 publication of the notice. The notice shall be published within  
21 fifteen days following the receipt of the outstanding and  
22 unredeemed pari-mutuel ticket moneys by the commission from  
23 the licensee as a Class I legal advertisement in compliance with

24 the provisions of article three, chapter fifty-nine of this code,  
25 and the publication area for the publication shall be the county  
26 in which the horse or dog race meeting was held and the county  
27 in which the televised racing day wagering was conducted in  
28 this state.

29 (b) Any outstanding and unredeemed pari-mutuel tickets  
30 that are not presented for payment within ninety days from the  
31 date of the publication of the notice are thereafter irredeemable,  
32 and the moneys theretofore held for the redemption of the pari-  
33 mutuel tickets shall become the property of the racing commis-  
34 sion and shall be expended as provided in this subsection. The  
35 racing commission shall maintain separate accounts for each  
36 licensee and shall record in each separate account the moneys  
37 turned over by the licensee and the amount expended at the  
38 licensee's track for the purposes set forth in this subsection. The  
39 moneys in the West Virginia racing commission special account  
40 - unredeemed pari-mutuel tickets shall be expended as follows:

41 (1) To the owner of the winning horse in any horse race at  
42 a horse race meeting held or conducted by any licensee:  
43 *Provided*, That the owner of the horse is at the time of the horse  
44 race a bona fide resident of this state, a sum equal to ten percent  
45 of the purse won by the horse at that race: *Provided, however*,  
46 That in the event there are more than ten races in any perfor-  
47 mance, the award to the resident owner of the winning horse  
48 will be that fractional share of the purse with a numerator of  
49 one and a denominator representing the number of races on the  
50 day of the performance. The commission may require proof that  
51 the owner was, at the time of the race, a bona fide resident of  
52 this state. Upon proof by the owner that he or she filed a  
53 personal income tax return in this state for the previous two  
54 years and that he or she owned real or personal property in this  
55 state and paid taxes in this state on real or personal property for  
56 the previous two years, he or she shall be presumed to be a bona  
57 fide resident of this state; and

58       (2) To the breeder (that is, the owner of the mare) of the  
59 winning horse in any horse race at a horse race meeting held or  
60 conducted by any licensee: *Provided*, That the mare foaled in  
61 this state, a sum equal to ten percent of the purse won by the  
62 horse: *Provided, however*, That in the event there are more than  
63 ten races in any performance, the award to the breeder will be  
64 that fractional share of the purse with a numerator of one and a  
65 denominator representing the number of races on the day of the  
66 performance; and

67       (3) To the owner of the stallion which sired the winning  
68 horse in any horse race at a horse race meeting held or con-  
69 ducted by any licensee: *Provided*, That the mare which foaled  
70 the winning horse was served by a stallion standing and  
71 registered in this state, a sum equal to ten percent of the purse  
72 won by the horse: *Provided, however*, That in the event there  
73 are more than ten races in any performance, the award to the  
74 owner of the stallion will be percentage of the purse based upon  
75 the fractional share represented by the number of races on the  
76 day of the performance; and

77       (4) To those horse racing licensees not participating in the  
78 thoroughbred development fund authorized in section thirteen-b  
79 of this article, the unexpended balance of the licensee's account  
80 not expended as provided in subdivisions (1), (2) and (3) of this  
81 subsection: *Provided*, That all moneys distributed under this  
82 subdivision shall be expended solely for capital improvements  
83 at the licensee's track: *Provided, however*, That the capital  
84 improvements must be approved, in writing, by the West  
85 Virginia racing commission before funds are expended by the  
86 licensee for that capital improvement; and

87       (5) When the moneys in the special account, known as the  
88 West Virginia racing commission special account - unredeemed  
89 pari-mutuel tickets will more than satisfy the requirements of  
90 subdivisions (1), (2), (3) and (4) of this subsection, the West

91 Virginia racing commission shall have the authority to expend  
92 the excess moneys from unredeemed horse racing pari-mutuel  
93 tickets as purse money in any race conditioned exclusively for  
94 West Virginia bred or sired horses, and to expend the excess  
95 moneys from unredeemed dog racing pari-mutuel tickets in  
96 supplementing purses and establishing stake races and dog  
97 racing handicaps at the dog tracks: *Provided*, That subject to the  
98 availability of funds, the commission shall, after the require-  
99 ments of subdivisions (1), (2), (3) and (4) of this subsection  
100 have been satisfied:

101 (A) Transfer annually two hundred thousand dollars to the  
102 West Virginia racing commission special account - West  
103 Virginia greyhound breeding development fund;

104 (B) Transfer annually two hundred thousand dollars into a  
105 separate account to be used for stakes races for West Virginia  
106 bred greyhounds at dog racetracks; and

107 (C) Transfer annually two hundred thousand dollars to a  
108 trust maintained and administered by the organization which is  
109 recognized by the West Virginia racing commission, pursuant  
110 to a legislative rule proposed for promulgation by the commis-  
111 sion and authorized by the Legislature, as the representative of  
112 the majority of the active jockeys in West Virginia, for the  
113 purpose of providing health and disability benefits to eligible  
114 active or disabled West Virginia jockeys and their dependents  
115 in accordance with eligibility criteria established by said  
116 organization. For purposes of this section in determining health  
117 benefits, an eligible active jockey is one who rides at least one  
118 hundred mounts per calendar year of which fifty-one must be in  
119 the state of West Virginia: *Provided*, That a jockey is not  
120 eligible for health benefits if he or she receives health benefits  
121 from any other state; and

122 (D) After all payments to satisfy the requirements of (A),  
123 (B) and (C) of this proviso have been satisfied, the commission  
124 shall have authority to transfer one hundred fifty thousand  
125 dollars left from all uncashed pari-mutuel tickets to the trust  
126 maintained and administered by the organization which is  
127 recognized by the West Virginia racing commission, pursuant  
128 to legislative rule proposed for promulgation by the commis-  
129 sion and authorized by the Legislature as the representative of  
130 the majority of the active jockeys in West Virginia.

131 (c) The commission shall submit to the legislative auditor  
132 a quarterly report and accounting of the income, expenditures  
133 and unobligated balance in the special account created by this  
134 section known as the West Virginia racing commission special  
135 account - unredeemed pari-mutuel tickets.

136 (d) Nothing contained in this article shall prohibit one  
137 person from qualifying for all or more than one of the aforesaid  
138 awards or for awards under section thirteen-b of this article.

139 (e) The cost of publication of the notice provided for in this  
140 section shall be paid from the funds in the hands of the state  
141 treasurer collected from the pari-mutuel pools' tax provided for  
142 in section ten of this article, when not otherwise provided in the  
143 budget; but no such costs shall be paid unless an itemized  
144 account thereof, under oath, be first filed with the state auditor.

145 (f) The racing commission is authorized to promulgate  
146 emergency rules, prior to the first day of July, two thousand  
147 four, to incorporate the revisions to this article enacted during  
148 the two thousand four regular legislative session.

**§19-23-13b. West Virginia thoroughbred development fund;  
distribution; restricted races; nonrestricted  
purse supplements; preference for West Vir-  
ginia accredited thoroughbreds.**



1 (a) The racing commission shall deposit moneys required  
2 to be withheld by an association or licensee in subsection (b),  
3 section nine of this article in a banking institution of its choice  
4 in a special account to be known as “West Virginia racing  
5 commission special account — West Virginia thoroughbred  
6 development fund.” Notice of the amount, date and place of the  
7 deposit shall be given by the racing commission, in writing, to  
8 the state treasurer. The purpose of the fund is to promote better  
9 breeding and racing of thoroughbred horses in the state through  
10 awards and purses for accredited breeders/raisers, sire owners  
11 and thoroughbred race horse owners. A further objective of the  
12 fund is to aid in the rejuvenation and development of the  
13 present horse tracks now operating in West Virginia for capital  
14 improvements, operations or increased purses: *Provided*, That  
15 five percent of the deposits required to be withheld by an  
16 association or licensee in subsection (b), section nine of this  
17 article shall be placed in a special revenue account hereby  
18 created in the state treasury called the “administration and  
19 promotion account.”

20 (b) The racing commission is authorized to expend the  
21 moneys deposited in the administration and promotion account  
22 at times and in amounts as the commission determines to be  
23 necessary for purposes of administering and promoting the  
24 thoroughbred development program: *Provided*, That during any  
25 fiscal year in which the commission anticipates spending any  
26 money from the account, the commission shall submit to the  
27 executive department during the budget preparation period prior  
28 to the Legislature convening before that fiscal year for inclusion  
29 in the executive budget document and budget bill the recom-  
30 mended expenditures, as well as requests of appropriations for  
31 the purpose of administration and promotion of the program.  
32 The commission shall make an annual report to the Legislature  
33 on the status of the administration and promotion account,  
34 including the previous year’s expenditures and projected  
35 expenditures for the next year.

36 (c) The fund and the account established in subsection (a)  
37 of this section shall operate on an annual basis.

38 (d) Funds in the thoroughbred development fund shall be  
39 expended for awards and purses except as otherwise provided  
40 in this section. Annually, the first three hundred thousand  
41 dollars of the fund shall be available for distribution for stakes  
42 races. One of the stakes races shall be the West Virginia futurity  
43 and the second shall be the Frank Gall memorial stakes. For the  
44 purpose of participating in the West Virginia futurity only, all  
45 mares, starting with the breeding season beginning the first day  
46 of February through the thirty-first day of July, two thousand  
47 four, and each successive breeding season thereafter shall be  
48 bred back that year to an accredited West Virginia stallion only  
49 which is registered with the West Virginia thoroughbred  
50 breeders association. The remaining races may be chosen by the  
51 committee set forth in subsection (g) of this section.

52 (e) Awards and purses shall be distributed as follows:

53 (1) The breeders/raisers of accredited thoroughbred horses  
54 that earn a purse at any West Virginia meet shall receive a  
55 bonus award calculated at the end of the year as a percentage of  
56 the fund dedicated to the breeders/raisers, which shall be sixty  
57 percent of the fund available for distribution in any one year.  
58 The total amount available for the breeders'/raisers' awards  
59 shall be distributed according to the ratio of purses earned by an  
60 accredited race horse to the total amount earned in the races by  
61 all accredited race horses for that year as a percentage of the  
62 fund dedicated to the breeders/raisers. However, no  
63 breeder/raiser may receive from the fund dedicated to breed-  
64 ers'/raisers' awards an amount in excess of the earnings of the  
65 accredited horse at West Virginia meets. In addition, should a  
66 horse's breeder and raiser qualify for the same award on the  
67 same horse, they will each be awarded one half of the proceeds.  
68 The bonus referred to in this subdivision (1) may only be paid

69 on the first one hundred thousand dollars of any purse, and not  
70 on any amounts in excess of the first one hundred thousand  
71 dollars.

72 (2) The owner of a West Virginia sire of an accredited  
73 thoroughbred horse that earns a purse in any race at a West  
74 Virginia meet shall receive a bonus award calculated at the end  
75 of the year as a percentage of the fund dedicated to sire owners,  
76 which shall be fifteen percent of the fund available for distribu-  
77 tion in any one year. The total amount available for the sire  
78 owners' awards shall be distributed according to the ratio of  
79 purses earned by the progeny of accredited West Virginia  
80 stallions in the races for a particular stallion to the total purses  
81 earned by the progeny of all accredited West Virginia stallions  
82 in the races. However, no sire owner may receive from the fund  
83 dedicated to sire owners an amount in excess of thirty-five  
84 percent of the accredited earnings for each sire. The bonus  
85 referred to in this subdivision (2) shall only be paid on the first  
86 one hundred thousand dollars of any purse, and not on any  
87 amounts in excess of the first one hundred thousand dollars.

88 (3) The owner of an accredited thoroughbred horse that  
89 earns a purse in any race at a West Virginia meet shall receive  
90 a restricted purse supplement award calculated at the end of the  
91 year, which shall be twenty-five percent of the fund available  
92 for distribution in any one year, based on the ratio of the  
93 earnings in the races of a particular race horse to the total  
94 amount earned by all accredited race horses in the races during  
95 that year as a percentage of the fund dedicated to purse supple-  
96 ments. However, the owners may not receive from the fund  
97 dedicated to purse supplements an amount in excess of thirty-  
98 five percent of the total accredited earnings for each accredited  
99 race horse. The bonus referred to in this subdivision shall only  
100 be paid on the first one hundred thousand dollars of any purse,  
101 and not on any amounts in excess of the first one hundred  
102 thousand dollars.

103       (4) In no event may purses earned at a meet held at a track  
104 which did not make a contribution to the thoroughbred develop-  
105 ment fund out of the daily pool on the day the meet was held  
106 qualify or count toward eligibility for an award under this  
107 subsection.

108       (5) Any balance in the breeders/raisers, sire owners and  
109 purse supplement funds after yearly distributions shall first be  
110 used to fund the races established in subsection (g) of this  
111 section. Any amount not so used shall revert back into the  
112 general account of the thoroughbred development fund for  
113 distribution in the next year.

114       Distribution shall be made on the fifteenth day of each  
115 February for the preceding year's achievements.

116       (f) The remainder, if any, of the thoroughbred development  
117 fund that is not available for distribution in the program  
118 provided for in subsection (e) of this section in any one year is  
119 reserved for regular purses, marketing expenses and for capital  
120 improvements in the amounts and under the conditions pro-  
121 vided in this subsection (f).

122       (1) Fifty percent of the remainder shall be reserved for  
123 payments into the regular purse fund established in subsection  
124 (b), section nine of this article.

125       (2) Up to five hundred thousand dollars per year shall be  
126 available for:

127       (A) Capital improvements at the eligible licensed horse  
128 racing tracks in the state; and

129       (B) Marketing and advertising programs above and beyond  
130 two hundred fifty thousand dollars for the eligible licensed  
131 horse racing tracks in the state: *Provided*, That moneys shall be  
132 expended for capital improvements or marketing and advertis-

133 ing purposes as described in this subsection only in accordance  
134 with a plan filed with and receiving the prior approval of the  
135 racing commission, and on a basis of fifty percent participation  
136 by the licensee and fifty percent participation by moneys from  
137 the fund, in the total cost of approved projects: *Provided,*  
138 *however,* That funds approved for one track may not be used at  
139 another track unless the first track ceases to operate or is  
140 viewed by the commission as unworthy of additional invest-  
141 ment due to financial or ethical reasons.

142 (g)(1) Each pari-mutuel thoroughbred horse track shall  
143 provide at least one restricted race per racing day: *Provided,*  
144 That sufficient horses and funds are available.

145 (2) The restricted races established in this subsection shall  
146 be administered by a three-member committee consisting of:

147 (A) The racing secretary;

148 (B) A member appointed by the authorized representative  
149 of a majority of the owners and trainers at the thoroughbred  
150 track; and

151 (C) A member appointed by a majority of the thoroughbred  
152 breeders.

153 (3) The purses for the restricted races established in this  
154 subsection shall be twenty percent larger than the purses for  
155 similar type races at each track.

156 (4) Restricted races shall be funded by each racing associa-  
157 tion from:

158 (A) Moneys placed in the general purse fund up to a  
159 maximum of three hundred fifty thousand dollars per year.

160 (B) Moneys as provided in subdivision (5), subsection (e)  
161 of this section, which shall be placed in a special fund called the  
162 “West Virginia accredited race fund.”

163 (5) The racing schedules, purse amounts and types of races  
164 are subject to the approval of the West Virginia racing commis-  
165 sion.

166 (h) As used in this section, “West Virginia bred-foal”  
167 means a horse that was born in the state of West Virginia.

168 (i) To qualify for the West Virginia accredited race fund,  
169 the breeder must qualify under one of the following:

170 (1) The breeder of the West Virginia bred-foal is a West  
171 Virginia resident;

172 (2) The breeder of the West Virginia bred-foal is not a West  
173 Virginia resident, but keeps his or her breeding stock in West  
174 Virginia year round; or

175 (3) The breeder of the West Virginia bred-foal is not a West  
176 Virginia resident and does not qualify under subdivision (2) of  
177 this subsection, but either the sire of the West Virginia bred-  
178 foal is a West Virginia stallion, or the mare is covered by a  
179 West Virginia stallion following the birth of that West Virginia  
180 bred-foal.

181 (j) No association or licensee qualifying for the alternate  
182 tax provision of subsection (b), section ten of this article is  
183 eligible for participation in any of the provisions of this section:  
184 *Provided*, That the provisions of this subsection do not apply to  
185 a thoroughbred race track at which the licensee has participated  
186 in the West Virginia thoroughbred development fund for a  
187 period of more than four consecutive calendar years prior to the  
188 thirty-first day of December, one thousand nine hundred  
189 ninety-two.

190 (k) From the first day of July, two thousand one, West  
191 Virginia accredited thoroughbred horses have preference for  
192 entry in all accredited races at a thoroughbred race track at  
193 which the licensee has participated in the West Virginia  
194 thoroughbred development fund for a period of more than four  
195 consecutive calendar years prior to the thirty-first day of  
196 December, one thousand nine hundred ninety-two.

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## CHAPTER 134

(H. B. 4468 — By Delegates Manuel, Doyle and Tabb)

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[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §16-15-7 and §16-15-18 of the code of West Virginia, 1931, as amended, all relating to allowing housing development authorities to pay for persons of eligible income the costs of preparation of any title instrument, deed of trust, note or security instrument, the costs of recording any title instrument, deed of trust, note or security instrument and the amount of impact fees imposed.

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

That §16-15-7 and §16-15-18 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 15. STATE HOUSING LAW.

§16-15-7. Authority a body corporate and politic; powers; investigations or examinations.

§16-15-18. Duties of authority and limitation of powers.

**§16-15-7. Authority a body corporate and politic; powers; investigations or examinations.**

1 (a) An authority is a body both corporate and politic,  
2 exercising public powers, and having all the powers necessary  
3 or convenient to carry out and effectuate the purposes and  
4 provisions of this article, including the following powers in  
5 addition to others granted:

6 (1) To investigate living and housing conditions in the  
7 authority's area of operation and the means and methods of  
8 improving the conditions;

9 (2) To determine whether unsanitary or substandard  
10 housing conditions exist;

11 (3) To study and make recommendations concerning the  
12 city or county plan in relation to the problems of clearing,  
13 replanning, redevelopment and reconstruction of areas in which  
14 unsanitary or substandard conditions exist, and the providing of  
15 housing accommodations for persons of low and moderate  
16 income, and to cooperate with any city, county or regional  
17 planning agency, to prepare, carry out and operate develop-  
18 ments;

19 (4) To provide for the construction, reconstruction, redevel-  
20 opment, improvement, alteration or repair of any development  
21 or any part of a development;

22 (5) To take over by purchase, lease or otherwise any  
23 development undertaken by any government;

24 (6) To act as agent for the federal government in connection  
25 with the acquisition, construction, operation or management of  
26 a development or any part of a development;



27           (7) To arrange with the city or with a government for the  
28 furnishing, planning, replanning, opening or closing of streets,  
29 roads, roadways, alleys or other places or facilities, or for the  
30 acquisition by the city, county, state or federal government or  
31 any agency, instrumentality or subdivision thereof, of property,  
32 options or property rights or for the furnishing of property or  
33 services in connection with a development;

34           (8) To sell, lease or rent any of the housing or other  
35 accommodations of any of the lands, buildings, structures or  
36 facilities embraced in any development, and to establish and  
37 revise the rents or charges therefor;

38           (9) To enter upon any building or property in order to  
39 conduct investigations or to make surveys or soundings; to  
40 purchase, lease, obtain options upon, acquire by eminent  
41 domain or otherwise, sell, exchange, transfer, assign or mort-  
42 gage any property real or personal or any interest therein;

43           (10) To acquire any property real or personal or any interest  
44 therein from any person, firm, corporation, or the city, county,  
45 state or federal government or any agency, instrumentality or  
46 subdivision thereof, by gift, grant, bequest or devise; to own,  
47 hold, clear and improve property; in its discretion, to insure or  
48 provide for the insurance of the property or operations of the  
49 authority against risks as the authority considers advisable;

50           (11) To borrow money upon its bonds, notes, debentures or  
51 other evidences of indebtedness, and to secure them by mort-  
52 gages upon property held or to be held by it or by pledge of its  
53 revenues, or in any other manner;

54           (12) To invest any funds held in reserves or sinking funds,  
55 or any funds not required for immediate disbursement in  
56 property or securities in which savings banks may legally invest  
57 funds subject to their control;

- 58       (13) To sue and be sued;
- 59       (14) To have a seal, and to alter it;
- 60       (15) To have perpetual succession;
- 61       (16) To make and execute contracts and other instruments  
62 necessary or convenient to the exercise of the powers of the  
63 authority;
- 64       (17) To form and operate nonprofit corporations and other  
65 affiliates of every kind and description, which may be wholly  
66 or partially owned or controlled, for carrying out the purposes  
67 of this article and in connection with the exercise of any of the  
68 powers of a housing authority;
- 69       (18) To participate in cooperative arrangements with  
70 persons and for-profit entities whose purpose is solely that of  
71 pecuniary gain, as well as with nonprofit entities and persons  
72 who seek no pecuniary gain. The participation of a housing  
73 authority in any arrangement with other persons or entities,  
74 including for-profit persons and entities, may not cause any  
75 activity engaged in by the authority to be characterized as  
76 proprietary nor deprive the authority of any privilege or  
77 immunity otherwise existing under law;
- 78       (19) To participate as a general or limited partner,  
79 coventurer, shareholder, or otherwise as a principal, an investor,  
80 a lender, a guarantor, a contracting party, or in any other  
81 manner, all upon terms and conditions, and with rights and  
82 obligations, as the governing board of the housing authority  
83 shall, from time to time, in its discretion determine to be  
84 appropriate;
- 85       (20) To make and, from time to time, amend and repeal  
86 bylaws and rules not inconsistent with this article to carry into  
87 effect the powers and purposes of the authority;

88           (21) To conduct examinations and investigations and to  
89 hear testimony and take proof under oath at public or private  
90 hearings on any matter material for its information;

91           (22) To issue subpoenas requiring the attendance of  
92 witnesses or the production of documents and things, for the  
93 examination of witnesses who are out of the state or unable to  
94 attend before the authority, or excused from attendance;

95           (23) To pay, in whole or in part, for any person of eligible  
96 income the costs of preparation of any title instrument, deed of  
97 trust, note or security instrument, the costs of recording any title  
98 instrument, deed of trust, note or security instrument, and any  
99 impact fee levied pursuant to article twenty, chapter seven of  
100 this code, with the condition that in the event the person  
101 receiving a payment under this subdivision sells the property  
102 attributable to the payment within five years from receiving the  
103 payment, the person will repay the full amount of the payment  
104 to the authority; and

105           (24) To do all things necessary or convenient to carry out  
106 the powers given in this article.

107           (b) Any of the investigations or examinations provided for  
108 in this article may be conducted by the authority or by a  
109 committee appointed by it, consisting of one or more members  
110 thereof, or by counsel, or by an officer or employee specifically  
111 authorized by the authority to conduct it. Any member of the  
112 authority, its counsel, or any person designated by it to conduct  
113 an investigation or examination, shall have power to administer  
114 oaths, take affidavits and issue subpoenas.

**§16-15-18. Duties of authority and limitation of powers.**

1           (a) In the operation or management of housing develop-  
2 ments an authority shall at all times observe the following

3 duties with respect to rentals, tenant selection and home  
4 ownership:

5 (1) It may rent or lease dwellings in the developments only  
6 to persons of eligible income and at rentals within the financial  
7 reach of the persons;

8 (2) It may rent or lease to a tenant housing consisting of the  
9 number of rooms, but no greater number, which it considers  
10 necessary to provide safe and sanitary accommodations to the  
11 proposed occupants, without overcrowding;

12 (3) Subject only to the limitations contained in this article  
13 or imposed by the federal government, an authority may lease  
14 or rent any dwellings, facilities or other real or personal  
15 property owned, controlled, or possessed by the authority, or  
16 with respect to which the authority has contractual rights  
17 permitting the lease or rental, for terms, upon conditions and  
18 lease terms and in exchange for rentals as the authority may  
19 from time to time in its discretion determine; further, and  
20 without limiting the foregoing, to establish rents in a manner  
21 and in amounts as the authority considers appropriate, includ-  
22 ing, but not limited to, rents based upon family income,  
23 (determined with adjustments and exclusions as the authority  
24 considers appropriate,) minimum rents, flat rents, graduated  
25 rents, rent ranges, and maximum rents, (any of which may vary  
26 among the authority's developments,) and to establish any other  
27 standards and conditions relating to rentals that the authority  
28 considers appropriate to carry out the purposes of this article;

29 (4) At and subsequent to an acquisition of occupied  
30 property, a housing authority may permit existing tenants in the  
31 property to remain in occupancy upon terms and conditions and  
32 for periods as the authority considers appropriate, notwithstand-  
33 ing that the tenants do not qualify as persons of eligible income;

34       (5) A housing authority may operate programs to increase  
35 home ownership by residents of its developments and by other  
36 persons of eligible income; and may acquire, rehabilitate,  
37 construct, reconstruct, sell, convey, lease, option, and take all  
38 other actions considered appropriate to achieve home owner-  
39 ship of dwellings and associated property by persons of eligible  
40 income. In connection with any program to encourage owner-  
41 ship, a housing authority may dispose of dwellings and other  
42 associated property in exchange or for fair market purchase  
43 prices, and upon terms and conditions, as the authority consid-  
44 ers appropriate;

45       (6) To develop, acquire, own, lease and operate properties  
46 and facilities that are nonresidential in character, which are  
47 used for office, administrative, management, maintenance,  
48 commercial, or educational purposes, or providing services, or  
49 carrying out any other purpose authorized under this article; to  
50 acquire, own, lease, and operate properties and facilities that are  
51 both residential and nonresidential in character;

52       (7) To develop, acquire, own, or lease community facilities,  
53 and to provide such facilities to any public agency or to any  
54 person, agency, institution, or organization, public or private,  
55 for recreational, educational, health or welfare purposes for the  
56 benefit and use of the housing authority or occupants of its  
57 developments, or persons of eligible income, elderly or handi-  
58 capped persons, or any combination of the foregoing; to operate  
59 or manage community facilities, itself, or as agent or any public  
60 agency, or any person, institution, or organization, public or  
61 private; and to receive compensation therefor, if any, as the  
62 parties may agree; community facilities may be utilized by  
63 private persons or organizations with or without charge, upon  
64 a determination by the authority that the utilization would be  
65 advisable to promote the public purposes of this article;

66 (8) To carry out plans, programs, contracts and agreements  
67 of every kind and description and to provide grants, loans,  
68 guarantees and other financial assistance to public or private  
69 persons or entities, whether nonprofit or for-profit, in order to  
70 rehabilitate, maintain, procure, and preserve existing affordable  
71 housing stocks in safe, decent and sanitary condition and to  
72 ensure that they remain affordable to persons of eligible  
73 income; and

74 (9) To pay, in whole or in part, for any person of eligible  
75 income the costs of preparation of any title instrument, deed of  
76 trust, note or security instrument, the costs of recording any title  
77 instrument, deed of trust, note or security instrument, and any  
78 impact fee levied pursuant to article twenty, chapter seven of  
79 this code, with the condition that in the event the person  
80 receiving a payment under this subdivision sells the property  
81 attributable to the payment within five years from receiving the  
82 payment, the person will repay the full amount of the payment  
83 to the housing authority.

84 (b) A housing authority shall conduct its affairs in accor-  
85 dance with sound financial and business practices, taking into  
86 account the nature of its activities and intended purpose.  
87 Therefore, a housing authority shall establish and charge rents  
88 no higher than it determines to be necessary to produce revenue  
89 which, together with all other available money, revenue,  
90 income and receipts of the authority from whatever source  
91 derived, will be sufficient:

92 (1) To pay when due all indebtedness of the authority;

93 (2) To pay all administrative and other costs of operating  
94 the authority's developments and programs of assistance;

95 (3) To pay the administrative and other costs of the  
96 maintenance, rehabilitation, renovation, repair, and replacement  
97 of the authority's developments and other property;

98       (4) To otherwise carry out its purposes under this article,  
99 including acquiring or creating additional housing develop-  
100 ments and acquiring or improving property for other purposes  
101 authorized under this article, including community facilities,  
102 commercial facilities, and all other facilities and developments  
103 authorized under this article;

104       (5) To pay the costs of insurance, including the costs of  
105 claims, liabilities, losses and other expenses incurred in  
106 connection with any self-insurance program;

107       (6) To provide funds for all required payments in lieu of  
108 taxes;

109       (7) To make all payments required under and otherwise  
110 fully perform the authority's obligations under any contract,  
111 agreement, or arrangement entered into by the authority,  
112 including without limitation, those required in connection with  
113 any partnership or joint venture entered into by the authority;

114       (8) To perform the terms of any commitment or guarantee  
115 issued or given by the authority;

116       (9) To provide a reasonable return on the value of the  
117 property so as to enable the housing authority to continue to  
118 fulfill its duties, including, but not limited to, the acquisition of  
119 additional housing developments, land acquisition, acquisition  
120 or construction of buildings, equipment, facilities or other real  
121 or personal property for public purposes, including parks or  
122 other recreational, educational, welfare or community facilities  
123 within its area of operation;

124       (10) To accommodate economic factors which affect the  
125 financial stability and solvency of the authority's developments  
126 and programs;

127 (11) To pay the cost of actions occasioned by natural  
128 disasters and other emergencies; and

129 (12) To create and maintain operating and capital reserves  
130 that are reasonable and adequate to ensure the authority's  
131 ability to make all payments referred to herein and any other  
132 matter with respect to which the authority, in its discretion  
133 reasonably exercised, determines that the creation and mainte-  
134 nance of a reserve is appropriate.

135 Nothing in this section limits the amount which a housing  
136 authority may charge for nondwelling facilities or for dwelling  
137 facilities that are not rented to persons of eligible income:  
138 *Provided*, That the authority's actions do not conflict with the  
139 purposes of this article: *Provided, however*, That a housing  
140 authority may allow police officers and maintenance and  
141 management employees, not otherwise eligible for residence, to  
142 reside in its developments.

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## CHAPTER 135

**(H. B.4068 — By Delegates Stemple, Beach, Coleman,  
Swartzmiller, Williams, Yeager and Anderson)**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §20-2-5 of the code of West Virginia,  
1931, as amended, relating to allowing hunting of coyotes by use  
of amber colored artificial light with certain restrictions.

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



That §20-2-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

1 Except as authorized by the director, it is unlawful at any  
2 time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it is  
4 plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take or  
6 attempt to take, any live wild animal or wild bird out of its den  
7 or place of refuge except as may be authorized by rules  
8 promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light in  
10 hunting, locating, attracting, taking, trapping or killing any wild  
11 bird or wild animal, or to attempt to do so, while having in his  
12 or her possession or subject to his or her control, or for any  
13 person accompanying him or her to have in his or her posses-  
14 sion or subject to his or her control, any firearm, whether cased  
15 or uncased, bow, arrow, or both, or other implement or device  
16 suitable for taking, killing or trapping a wild bird or animal:  
17 *Provided*, That it is lawful to hunt or take raccoon, opossum or  
18 skunk by the use of artificial light subject to the restrictions set  
19 forth in this subdivision: *Provided, however*, That it is lawful to  
20 hunt or take coyotes by the use of amber colored artificial light  
21 subject to the restrictions set forth in this subdivision. No  
22 person is guilty of a violation of this subdivision merely  
23 because he or she looks for, looks at, attracts or makes motion-  
24 less a wild bird or wild animal with or by the use of an artificial  
25 light, unless at the time he or she has in his or her possession a

26 firearm, whether cased or uncased, bow, arrow, or both, or other  
27 implement or device suitable for taking, killing or trapping a  
28 wild bird or wild animal, or unless the artificial light (other than  
29 the head lamps of an automobile or other land conveyance) is  
30 attached to, a part of, or used from within or upon an automo-  
31 bile or other land conveyance.

32 Any person violating the provisions of this subdivision is  
33 guilty of a misdemeanor and, upon conviction thereof, shall for  
34 each offense be fined not less than one hundred dollars nor  
35 more than five hundred dollars and shall be imprisoned in the  
36 county or regional jail for not less than ten days nor more than  
37 one hundred days;

38 (4) Hunt for, take, kill, wound or shoot at wild animals or  
39 wild birds from an airplane, or other airborne conveyance, an  
40 automobile, or other land conveyance, or from a motor-driven  
41 water conveyance, except as authorized by rules promulgated  
42 by the director;

43 (5) Take any beaver or muskrat by any means other than by  
44 trap;

45 (6) Catch, capture, take or kill by seine, net, bait, trap or  
46 snare or like device of any kind, any wild turkey, ruffed grouse,  
47 pheasant or quail;

48 (7) Destroy or attempt to destroy needlessly or willfully the  
49 nest or eggs of any wild bird or have in his or her possession the  
50 nest or eggs unless authorized to do so under rules promulgated  
51 by or under a permit issued by the director;

52 (8) Except as provided in section six of this article, carry an  
53 uncased or loaded gun in any of the woods of this state except  
54 during the open firearms hunting season for wild animals and  
55 nonmigratory wild birds within any county of the state, unless

56 he or she has in his or her possession a permit in writing issued  
57 to him or her by the director: *Provided*, That this section shall  
58 not prohibit hunting or taking of unprotected species of wild  
59 animals and wild birds and migratory wild birds, during the  
60 open season, in the open fields, open water and open marshes  
61 of the state;

62 (9) Have in his or her possession a loaded firearm or a  
63 firearm from the magazine of which all shells and cartridges  
64 have not been removed, in or on any vehicle or conveyance, or  
65 its attachments, within the state, except as may otherwise be  
66 provided by law or regulation. Except as hereinafter provided,  
67 between five o'clock postmeridian of one day and seven  
68 o'clock antemeridian, eastern standard time of the day follow-  
69 ing, any unloaded firearm, being lawfully carried in accordance  
70 with the foregoing provisions, shall be so carried only when in  
71 a case or taken apart and securely wrapped. During the period  
72 from the first day of July to the thirtieth day of September,  
73 inclusive, of each year, the foregoing requirements relative to  
74 carrying certain unloaded firearms are permissible only from  
75 eight-thirty o'clock postmeridian to five o'clock antemeridian,  
76 eastern standard time: *Provided*, That the time periods for  
77 carrying unloaded and uncased firearms are extended for one  
78 hour after the postmeridian times and one hour before the  
79 antemeridian times established above if a hunter is preparing to  
80 or in the process of transporting or transferring the firearms to  
81 or from a hunting site, campsite, home or other place of abode;

82 (10) Hunt, catch, take, kill, trap, injure or pursue with  
83 firearms or other implement by which wildlife may be taken  
84 after the hour of five o'clock antemeridian on Sunday on  
85 private land without the written consent of the landowner any  
86 wild animals or wild birds except when a big game season  
87 opens on a Monday, the Sunday prior to that opening day will  
88 be closed for any taking of wild animals or birds after five

89 o'clock antemeridian on that Sunday: *Provided*, That traps  
90 previously and legally set may be tended after the hour of five  
91 o'clock antemeridian on Sunday and the person so doing may  
92 carry only a twenty-two caliber firearm for the purpose of  
93 humanely dispatching trapped animals. Any person violating  
94 the provisions of this subdivision is guilty of a misdemeanor  
95 and, upon conviction thereof, in addition to any fines that may  
96 be imposed by this or other sections of this code, shall be  
97 subject to a one hundred dollar fine;

98 (11) Hunt with firearms or long bow while under the  
99 influence of intoxicating liquor;

100 (12) Hunt, catch, take, kill, injure or pursue a wild animal  
101 or bird with the use of a ferret;

102 (13) Buy raw furs, pelts or skins of fur-bearing animals  
103 unless licensed to do so;

104 (14) Catch, take, kill or attempt to catch, take or kill any  
105 fish at any time by any means other than by rod, line and hooks  
106 with natural or artificial lures unless otherwise authorized by  
107 law or rules issued by the director: *Provided*, That snaring of  
108 any species of suckers, carp, fallfish and creek chubs shall at all  
109 times be lawful;

110 (15) Employ or hire, or induce or persuade, by the use of  
111 money or other things of value, or by any means, any person to  
112 hunt, take, catch or kill any wild animal or wild bird except  
113 those species on which there is no closed season, or to fish for,  
114 catch, take or kill any fish, amphibian or aquatic life which is  
115 protected by the provisions of this chapter or rules of the  
116 director or the sale of which is prohibited;

117 (16) Hunt, catch, take, kill, capture, pursue, transport,  
118 possess or use any migratory game or nongame birds included  
119 in the terms of conventions between the United States and Great

120 Britain and between the United States and United Mexican  
121 States for the protection of migratory birds and wild mammals  
122 concluded, respectively, the sixteenth day of August, one  
123 thousand nine hundred sixteen, and the seventh day of Febru-  
124 ary, one thousand nine hundred thirty-six, except during the  
125 time and in the manner and numbers prescribed by the Federal  
126 Migratory Bird Treaty Act, 16 U.S.C. §703, *et seq.*, and  
127 regulations made thereunder;

128 (17) Kill, take, catch or have in his or her possession, living  
129 or dead, any wild bird, other than a game bird; or expose for  
130 sale or transport within or without the state any bird except as  
131 aforesaid. No part of the plumage, skin or body of any protected  
132 bird shall be sold or had in possession for sale except mounted  
133 or stuffed plumage, skin, bodies or heads of the birds legally  
134 taken and stuffed or mounted, irrespective of whether the bird  
135 was captured within or without this state, except the English or  
136 European sparrow (*passer domesticus*), starling (*sturnus*  
137 *vulgaris*), and cowbird (*molothrus ater*), which may not be  
138 protected and the killing thereof at any time is lawful;

139 (18) Use dynamite or any like explosive or poisonous  
140 mixture placed in any waters of the state for the purpose of  
141 killing or taking fish. Any person violating the provisions of  
142 this subdivision is guilty of a felony and, upon conviction  
143 thereof, shall be fined not more than five hundred dollars or  
144 imprisoned for not less than six months nor more than three  
145 years, or both fined and imprisoned;

146 (19) Have a bow and gun, or have a gun and any arrow or  
147 arrows, in the fields or woods at the same time;

148 (20) Have a crossbow in the woods or fields or use a  
149 crossbow to hunt for, take or attempt to take any wildlife;

150 (21) Take or attempt to take turkey, bear, elk or deer with  
151 any arrow unless the arrow is equipped with a point having at

152 least two sharp cutting edges measuring in excess of three  
153 fourths of an inch wide;

154 (22) Take or attempt to take any wildlife with an arrow  
155 having an explosive head or shaft, a poisoned arrow or an arrow  
156 which would affect wildlife by any chemical action;

157 (23) Shoot an arrow across any public highway or from  
158 aircraft, motor-driven watercraft, motor vehicle or other land  
159 conveyance;

160 (24) Permit any dog owned by him or her or under his or  
161 her control to chase, pursue or follow upon the track of any wild  
162 animal or wild bird, either day or night, between the first day of  
163 May and the fifteenth day of August next following: *Provided*,  
164 That dogs may be trained on wild animals and wild birds,  
165 except deer and wild turkeys, and field trials may be held or  
166 conducted on the grounds or lands of the owner or by his or her  
167 bona fide tenant or tenants or upon the grounds or lands of  
168 another person with his or her written permission or on public  
169 lands at any time: *Provided, however*, That nonresidents may  
170 not train dogs in this state at any time except during the legal  
171 small game hunting season: *Provided further*, That the person  
172 training said dogs does not have firearms or other implements  
173 in his or her possession during the closed season on wild  
174 animals and wild birds, whereby wild animals or wild birds  
175 could be taken or killed;

176 (25) Conduct or participate in a field trial, shoot-to-retrieve  
177 field trial, water race or wild hunt hereafter referred to as trial:  
178 *Provided*, That any person, group of persons, club or organiza-  
179 tion may hold the trial at any time of the year upon obtaining a  
180 permit as is provided for in section fifty-six of this article. The  
181 person responsible for obtaining the permit shall prepare and  
182 keep an accurate record of the names and addresses of all  
183 persons participating in said trial and make same readily

184 available for inspection by any conservation officer upon  
185 request;

186 (26) Except as provided in section four of this article, hunt,  
187 catch, take, kill or attempt to hunt, catch, take or kill any wild  
188 animal, wild bird or wild fowl except during the open season  
189 established by rule of the director as authorized by subdivision  
190 (6), section seven, article one of this chapter;

191 (27) Hunting on public lands on Sunday after five o'clock  
192 antemeridian is prohibited; and

193 (28) Hunt, catch, take, kill, trap, injure or pursue with  
194 firearms or other implement which wildlife can be taken, on  
195 private lands on Sunday after the hour of five o'clock  
196 antemeridian: *Provided*, That the provisions of this subdivision  
197 do not apply in any county until the county commission of the  
198 county holds an election on the question of whether the  
199 provisions of this subdivision prohibiting hunting on Sunday  
200 shall apply within the county and the voters approve the  
201 allowance of hunting on Sunday in the county. The election is  
202 determined by a vote of the resident voters of the county in  
203 which the hunting on Sunday is proposed to be authorized. The  
204 county commission of the county in which Sunday hunting is  
205 proposed shall give notice to the public of the election by  
206 publication of the notice as a Class II-0 legal advertisement in  
207 compliance with the provisions of article three, chapter  
208 fifty-nine of this code and the publication area for the publica-  
209 tion shall be the county in which the election is to be held. The  
210 date of the last publication of the notice shall fall on a date  
211 within the period of the fourteen consecutive days next preced-  
212 ing the election.

213 On the local option election ballot shall be printed the  
214 following:

215 Shall hunting on Sunday be authorized in \_\_\_\_\_  
216 County?

217 [ ] Yes [ ] No

218 (Place a cross mark in the square opposite your choice.)

219 Any local option election to approve or disapprove of the  
220 proposed authorization of Sunday hunting within a county shall  
221 be in accordance with procedures adopted by the commission.  
222 The local option election may be held in conjunction with a  
223 primary or general election, or at a special election. Approval  
224 shall be by a majority of the voters casting votes on the question  
225 of approval or disapproval of Sunday hunting at the election.

226 If a majority votes against allowing Sunday hunting, no  
227 election on the issue may be held for a period of one hundred  
228 four weeks. If a majority votes "yes", no election reconsidering  
229 the action may be held for a period of five years. A local option  
230 election may thereafter be held if a written petition of qualified  
231 voters residing within the county equal to at least five percent  
232 of the number of persons who were registered to vote in the  
233 next preceding general election is received by the county  
234 commission of the county in which Sunday hunting is autho-  
235 rized. The petition may be in any number of counterparts. The  
236 election shall take place at the next primary or general election  
237 scheduled more than ninety days following receipt by the  
238 county commission of the petition required by this subsection:  
239 *Provided*, That the issue may not be placed on the ballot until  
240 all statutory notice requirements have been met. No local law  
241 or regulation providing any penalty, disability, restriction,  
242 regulation or prohibition of Sunday hunting may be enacted and  
243 the provisions of this article preempt all regulations, rules,  
244 ordinances and laws of any county or municipality in conflict  
245 with this subdivision.



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## CHAPTER 136

(Com. Sub. for H. B. 4561 — By Delegates Butcher,  
Ferrell, Hrutkay, Stemple, Wright and Boggs)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5f, relating to authorizing the director of the division of natural resources to allow a nonresident to seasonally train dogs for coon hunting, if the nonresident's state reciprocates for West Virginia residents; and establishing the dog training season.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §20-2-5f, to read as follows:

### ARTICLE 2. WILDLIFE RESOURCES.

#### **§20-2-5f. Nonresident dog training for coon hunting; training season.**

1 Notwithstanding subdivision (24), section five of this  
2 article or any other provision to the contrary, the director is  
3 authorized to allow a nonresident to train dogs for coon hunting  
4 in West Virginia, if the state in which the nonresident resides  
5 allows residents from West Virginia to train dogs for coon  
6 hunting. The dog training season for a nonresident to train dogs  
7 for coon hunting is from the fifteenth day of August of each  
8 year through the legal small game hunting season.

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## CHAPTER 137

(Com. Sub. for S. B. 230 — By Senators Plymale, McCabe,  
Jenkins, Caldwell, Fanning, Snyder and Rowe)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §33-1-10 of the code of West Virginia, 1931, as amended; and to amend and reenact §33-3-14 of said code, all relating to definitions of casualty insurance and federal flood insurance; establishing special funds; and transferring collections on certain insurance premium taxes to benefit office of emergency services for flood plain enhancement activities.

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

That §33-1-10 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-3-14 of said code be amended and reenacted, all to read as follows:

**Article**

- 1. Definitions.**
- 3. Licensing, Fees and Taxation of Insurers.**

**ARTICLE 1. DEFINITIONS.**

**§33-1-10. Kinds of insurance defined.**

- 1 The following definitions of kinds of insurance are not
- 2 mutually exclusive and, if reasonably adaptable thereto, a
- 3 particular coverage may be included under one or more of such
- 4 definitions:

5 (a) Life insurance -- Life insurance is insurance on human  
6 lives including endowment benefits, additional benefits in the  
7 event of death or dismemberment by accident or accidental  
8 means, additional benefits for disability and annuities.

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

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

31 (d) Marine insurance is insurance:

32 (1) Against any and all kinds of loss or damage to vessels,  
33 craft, aircraft, cars, automobiles and vehicles of every kind, as  
34 well as all goods, freight, cargoes, merchandise, effects,  
35 disbursements, profits, moneys, bullion, precious stones,  
36 securities, choses in action, evidences of debt, valuable papers,

37 bottomry and respondentia interests and all other kinds of  
38 property and interests therein, in respect to, appertaining to or  
39 in connection with any and all risks or perils of navigation,  
40 transit or transportation, including war risks, on or under any  
41 seas or other waters, on land (above or below ground), or in the  
42 air, or while being assembled, packed, crated, baled, com-  
43 pressed or similarly prepared for shipment or while awaiting the  
44 same or during any delays, storage, transshipment, or  
45 reshipment incident thereto, including marine builders' risks  
46 and all personal property floater risks;

47 (2) Against any and all kinds of loss or damage to person or  
48 to property in connection with or appertaining to a marine,  
49 inland marine, transit or transportation insurance, including  
50 liability for loss of or damage to either, arising out of or in  
51 connection with the construction, repair, operation, mainte-  
52 nance or use of the subject matter of such insurance (but not  
53 including life insurance or surety bonds nor insurance against  
54 loss by reason of bodily injury to the person arising out of the  
55 ownership, maintenance or use of automobiles);

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

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

67 (5) Against any and all kinds of loss or damage to piers,  
68 wharves, docks and ships, excluding the risks of fire, wind-

69 storm, sprinkler leakage, hail, explosion, earthquake, riot and  
70 civil commotion and each of them;

71 (6) Against any and all kinds of loss or damage to other aids  
72 to navigation and transportation, including dry docks and  
73 marine railways, dams and appurtenant facilities for control of  
74 waterways; and

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

83 (e) Casualty -- Casualty insurance includes:

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

96 (2) Liability insurance, which is insurance against legal  
97 liability for the death, injury or disability of any human being,  
98 or for damage to property; and provisions for medical, hospital,  
99 surgical, disability benefits to injured persons and funeral and  
100 death benefits to dependents, beneficiaries or personal represen-

101 tatives of persons killed, irrespective of legal liability of the  
102 insured, when issued as an incidental coverage with or supple-  
103 mental to liability insurance;

104 (3) Burglary and theft insurance, which is insurance against  
105 loss or damage by burglary, theft, larceny, robbery, forgery,  
106 fraud, vandalism, malicious mischief, confiscation, or wrongful  
107 conversion, disposal or concealment, or from any attempt at any  
108 of the foregoing, including supplemental coverages for medical,  
109 hospital, surgical and funeral benefits sustained by the named  
110 insured or other person as a result of bodily injury during the  
111 commission of a burglary, robbery or theft by another; also  
112 insurance against loss of or damage to moneys, coins, bullion,  
113 securities, notes, drafts, acceptances or any other valuable  
114 papers and documents resulting from any cause;

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

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

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

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

132 damage to such sprinklers, hoses, pumps and other fire extin-  
133 guishing equipment or apparatus;

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

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

156 (10) Entertainment insurance, which is insurance indemni-  
157 fying the producer of any motion picture, television, radio,  
158 theatrical, sport, spectacle, entertainment or similar production,  
159 event or exhibition against loss from interruption, postpone-  
160 ment or cancellation thereof due to death, accidental injury or  
161 sickness of performers, participants, directors or other princi-  
162 pals;

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

165 (12) Miscellaneous insurance, which is insurance against  
166 any other kind of loss, damage or liability properly a subject of  
167 insurance and not within any other kind of insurance as defined  
168 in this chapter, if such insurance is not disapproved by the  
169 commissioner as being contrary to law or public policy; and

170 (13) Federal flood insurance, which is insurance provided  
171 by the federal insurance administration or by private insurers  
172 through the write your own program within the national flood  
173 insurance program, instituted by the federal insurance adminis-  
174 tration pursuant to the provision of 42 U. S. C. §4071, on real  
175 or personal property of every kind and interest therein, against  
176 loss or damage from flood or mudslide and against loss  
177 consequential to such loss or damage, other than noncontractual  
178 liability for any loss or damage.

179 (f) Surety -- Surety insurance includes:

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

182 (2) Insurance guaranteeing the performance of contracts,  
183 other than insurance policies, and guaranteeing and executing  
184 bonds, undertakings and contracts of suretyship: Provided, That  
185 surety insurance does not include the guaranteeing and execut-  
186 ing of bonds by professional bondsmen in criminal cases or by  
187 individuals not in the business of becoming a surety for  
188 compensation upon bonds;

189 (3) Insurance indemnifying banks, bankers, brokers,  
190 financial or moneyed corporations or associations against loss,  
191 resulting from any cause, of bills of exchange, notes, bonds,  
192 securities, evidences of debt, deeds, mortgages, warehouse  
193 receipts or other valuable papers, documents, money, precious



194 metals and articles made therefrom, jewelry, watches, neck-  
195 laces, bracelets, gems, precious and semiprecious stones,  
196 including any loss while they are being transported in armored  
197 motor vehicles or by messenger, but not including any other  
198 risks of transportation or navigation, and also insurance against  
199 loss or damage to such an insured's premises or to his furnish-  
200 ings, fixtures, equipment, safes and vaults therein, caused by  
201 burglary, robbery, theft, vandalism or malicious mischief, or  
202 any attempt to commit such crimes; and

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

### ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

#### **§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.**

1 (a) Every insurer transacting insurance in West Virginia  
2 shall file with the commissioner, on or before the first day of  
3 March, each year, a financial statement made under oath of its  
4 president or secretary and on a form prescribed by the commis-  
5 sioner. The insurer shall also, on or before the first day of  
6 March of each year subject to the provisions of section four-  
7 teen-c of this article, under the oath of its president or secretary,  
8 make a premium tax return for the previous calendar year on a  
9 form prescribed by the commissioner showing the gross amount  
10 of direct premiums, whether designated as a premium or by  
11 some other name, collected and received by it during the  
12 previous calendar year on policies covering risks resident,  
13 located or to be performed in this state and compute the amount  
14 of premium tax chargeable to it in accordance with the provi-  
15 sions of this article, deducting the amount of quarterly pay-  
16 ments as required to be made pursuant to the provisions of

17 section fourteen-c of this article, if any, less any adjustments to  
18 the gross amount of the direct premiums made during the  
19 calendar year, if any, and transmit with the return to the  
20 commissioner a remittance in full for the tax due. The tax is the  
21 sum equal to two percent of the taxable premium and also  
22 includes any additional tax due under section fourteen-a of this  
23 article. All taxes, except those received on write your own  
24 federal flood insurance premium taxes, received by the com-  
25 missioner shall be paid into the insurance tax fund created in  
26 subsection (b) of this section: Provided, That no later than the  
27 thirtieth day of June of each year, one million six hundred  
28 sixty-seven thousand dollars of the portion of taxes received by  
29 the commissioner from insurance policies for medical liability  
30 insurance as defined in section three, article twenty-f of this  
31 chapter and from any insurer on its medical malpractice line  
32 shall be temporarily dedicated to replenishing moneys appropri-  
33 ated from the tobacco settlement account pursuant to subsection  
34 (c), section two, article eleven-a, chapter four of this code.  
35 Upon determination by the commissioner that these moneys  
36 have been fully replenished to the tobacco settlement account,  
37 the commissioner shall resume depositing taxes received from  
38 medical malpractice premiums as provided in subsection (b) of  
39 this section.

40 (b) There is created in the state treasury a special revenue  
41 fund, administered by the treasurer, designated the "insurance  
42 tax fund". This fund is not part of the general revenue fund of  
43 the state. It consists of all amounts deposited in the fund  
44 pursuant to subsection (a) of this section, sections fifteen and  
45 seventeen of this article, except those received on write your  
46 own federal flood insurance premium taxes, any appropriations  
47 to the fund, all interest earned from investment of the fund and  
48 any gifts, grants or contributions received by the fund.

49 (c) After the transfers authorized in this section, the  
50 treasurer shall, no later than the last business day of each

51 month, transfer amounts the treasurer determines are not  
52 necessary for making refunds under this article to the credit of  
53 the general revenue fund.

54 (d) There is created in the state treasury a special revenue  
55 fund, administered by the treasurer, designated the "flood  
56 insurance tax fund". This fund is not part of the general  
57 revenue fund of the state. All taxes collected pursuant to  
58 subsection (a) of this section from federal flood insurance  
59 policy premium taxes shall be deposited into the flood insur-  
60 ance tax fund. The flood insurance tax fund shall contain  
61 collections, any appropriations to the fund and any gifts, grants  
62 and contributions received.

63 (e) The treasurer is restricted to, and shall distribute from,  
64 the flood insurance tax fund for activities which promote and  
65 enhance flood plain management issues and for subgrants to  
66 local units of government and other eligible entities after full  
67 consideration of the recommendations of the office of emer-  
68 gency services.

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## CHAPTER 138

**(Com. Sub. for H. B. 4004 — By Mr. Speaker,  
Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §33-2-15b and §33-2-15c; to amend said code by adding thereto a new section, designated §33-2-20; to amend and reenact §33-6A-4 of said

code; to amend said code by adding thereto three new sections, designated §33-6A-4a, §33-6A-4b and §33-6A-4c; to amend said code by adding thereto a new section, designated §33-22-2a; to amend said code by adding thereto a new section, designated §33-23-2a; to amend said code by adding thereto a new section, designated §33-24-4b; to amend said code by adding thereto a new section, designated §33-25-6a; to amend said code by adding thereto a new section, designated §33-25A-24b; to amend and reenact §33-41-1, §33-41-2 and §33-41-3 of said code; and to amend said code by adding thereto nine new sections, designated §33-41-4, §33-41-5, §33-41-6, §33-41-7, §33-41-8, §33-41-9, §33-41-10, §33-41-11 and §33-41-12, all relating to insurance generally; requiring the insurance commissioner to submit a report to the Legislature on the impact of third party causes of actions on rates and availability and to make recommendations; authorizing the commissioner to request information from insurers; providing that certain information provided by insurers is not subject to disclosure; requiring the insurance commissioner to submit a report to the Legislature on the office of the consumer advocate; requiring the commissioner to make recommendations regarding the office of the consumer advocate; permitting additional reasons for nonrenewal of automobile liability or physical damage policies; requiring the submission of withdrawal plans in certain instances; providing that a certain percentage of existing policies or any policies issued or renewed after the effective date of the bill may be nonrenewed by an insurer for any reason with proper notice to the insured; providing that a certain percentage of policies may be nonrenewed for underwriting reasons; allowing insurers to elect a method of nonrenewal; requiring renewal in certain instances when there are restrictive endorsements; authorizing the commissioner of insurance to act regarding withdrawal of insurers from the state; authorizing the commissioner to allow certain insurers to withdraw from the state; requiring insurers and the insurance commissioner to submit information regarding the impact of legislation on rates

and availability; prevention and investigation of insurance fraud generally; subjecting farmers' mutual insurance companies, fraternal benefit societies, certain hospital, medical, dental and health services corporations, health care corporations, and health maintenance organizations to insurance fraud provisions; creating the West Virginia insurance fraud prevention act; legislative intent; defining terms; requiring fraud warning on forms; use of special assistant prosecutor; establishing an insurance fraud unit within agency of insurance commissioner; authorizing promulgation of rules; establishing powers and duties of the unit; establishing investigative powers and procedures; providing confidentiality of fraud unit records; immunity for providing information provided to law enforcement regarding fraud; exceptions; creating offense of insurance fraud; establishing penalties and fines; authorizing prosecution for insurance fraud; authorizing fraud unit attorneys to act as special prosecutors at request of county prosecutors; specifying duties of insurers; creating misdemeanor and felony offenses for the commission of fraudulent acts; creating civil penalties; granting authority to commissioner to administratively sanction regulated persons and insureds for violations of the article; and exceptions and immunities.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated § 33-2-15b and § 33-2-15c; that said code be amended by adding thereto a new section, designated §33-2-20; that §33-6A-4 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §33-6A-4a, §33-6A-4b and §33-6A-4c; that said code be amended by adding thereto a new section, designated §33-22-2a; that said code be amended by adding thereto a new section, designated §33-23-2a; that said code be amended by adding thereto a new section, designated §33-24-4b; that said code be amended by adding thereto a new section, designated §33-25-6a; that said code be amended by adding thereto a new section, designated §33-25A-24b;

that §33-41-1, §33-41-2 and §33-41-3 of said code be amended and reenacted; and that said code be amended by adding thereto nine new sections, designated §33-41-4, §33-41-5, §33-41-6, §33-41-7, §33-41-8, §33-41-9, §33-41-10, §33-41-11 and §33-41-12, all to read as follows:

## **CHAPTER 33. INSURANCE.**

### **Article**

- 2. Insurance Commissioner.**
- 6A. Cancellation or Nonrenewal of Automobile Liability Policies.**
- 22. Farmers' Mutual Fire Insurance Companies.**
- 23. Fraternal Benefit Societies.**
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**
- 25. Health Care Corporations.**
- 25A. Health Maintenance Organization Act.**
- 41. Insurance Fraud Prevention Act.**

### **ARTICLE 2. INSURANCE COMMISSIONER.**

§33-2-15b. Reports to the Legislature.

§33-2-15c. Reports to the Legislature.

§33-2-20. Authority of commission to allow withdrawal of insurance carriers from doing business in the state.

#### **§33-2-15b. Reports to the Legislature.**

1           (a) By the first of February, two thousand five, the commis-  
2 sioner shall submit to the Legislature a report on third party  
3 causes of action;

4           (b) The report shall contain the following information:

5           (1) The legal history of the creation of a third party causes  
6 of action brought pursuant to Unfair Trade Practices Act as  
7 codified in article eleven of this chapter;

8           (2) An analysis of the impact of third party causes of action  
9 upon insurance rates and the availability of insurance in this  
10 state;

11 (3) A summary of the types of data which the commissioner  
12 utilized in preparing the analysis: *Provided*, That the commis-  
13 sioner will not disclose information which is otherwise confi-  
14 dential: *Provided, however*, That if the commissioner is unable  
15 to obtain data which he or she considers necessary to preparing  
16 a full analysis, the commissioner shall state in the report:

17 (A) The reasons that he or she was not able to obtain the  
18 data;

19 (B) Recommendations or proposed legislation for facilitat-  
20 ing the collection of necessary data and protecting proprietary  
21 information;

22 (4) Information on what other states have this cause of  
23 action;

24 (5) Based upon the findings of the commissioner, and if the  
25 findings so suggest, proposed legislation to address any reforms  
26 needed for third party claims under the Unfair Trade Practices  
27 Act;

28 (c) For purpose of preparing the report, the commissioner  
29 may request from companies authorized to conduct business in  
30 this state any information that he or she believes is necessary to  
31 determine the economic effect of third-party lawsuits on  
32 insurance premiums. The companies shall not be required to  
33 provide the information. Any information which the company  
34 agrees to provide, shall be considered confidential by law and  
35 privileged, is exempt from disclosure pursuant to chapter  
36 twenty-nine-b of this code, is not open to public inspection, is  
37 not subject to subpoena, and is not subject to discovery or  
38 admissible in evidence in any criminal, private civil or adminis-  
39 trative action and is not subject to production pursuant to court  
40 order. Notwithstanding any other provisions in this section,  
41 while the commissioner is to provide his or her general conclu-  
42 sions based upon the review of the data, the commissioner is

43 not to disclose the information in a manner so as to violate the  
44 confidentiality provisions of this section.

**§33-2-15c. Reports to the Legislature.**

1 (a) By the first of February, two thousand five, the commis-  
2 sioner shall submit to the Legislature a report relating to the  
3 office of the consumer advocate.

4 (b) The report shall contain the following information:

5 (1) An overview of the function of the office of the con-  
6 sumer advocacy and how the office addresses consumer  
7 complaints;

8 (2) The number of staff in the office of the consumer  
9 advocate and the structure of the existing office;

10 (3) Statistics reflecting the number of consumer complaints  
11 and types handled by the office from the first of January two  
12 thousand one until the first of January two thousand four;

13 (4) The number of states which have consumer advocates  
14 and the lines of insurance for which the advocates are autho-  
15 rized to act on behalf of consumers;

16 (5) The recommendation of the commissioner in regard to  
17 whether this state would benefit by having the role of the  
18 consumer advocate expanded to other lines of insurance;

19 (6) Based upon the findings and recommendations, of the  
20 commissioner, and if the findings so suggest, proposed legisla-  
21 tion for expanding the office of the consumer advocate to other  
22 lines of insurance.

**§33-2-20. Authority of commission to allow withdrawal of insur-  
ance carriers from doing business in the state.**



1 (a) Notwithstanding any provision of the code to the  
2 contrary, the commissioner may, consistent with the provisions  
3 of this section, authorize an insurer to withdraw from the line  
4 of automobile liability insurance for personal, private passenger  
5 automobiles covered by article six-a of this chapter or from  
6 doing business entirely in this state if:

7 (1) The insurer has submitted and received approval from  
8 the commissioner of a withdrawal plan; and

9 (2) The insurer demonstrates to the satisfaction of the  
10 commissioner that allowing the insurer to withdraw would be  
11 in the best interest of the insurer, its policyholders and the  
12 citizens of this state.

13 (b) Any insurer that elects to nonrenew or cancel the  
14 particular type or line of insurance coverage provided for by  
15 section five, article seventeen-a of this chapter shall submit to  
16 the insurance commissioner a withdrawal plan for informational  
17 purposes only prior to cancellation or nonrenewal of all its  
18 business in this state.

19 (c) The commissioner shall promulgate rules pursuant to  
20 chapter twenty-nine-a of this code setting forth the criteria for  
21 withdrawal plans.

#### **ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.**

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons  
for nonrenewal; hearing and review after nonrenewal.

§33-6A-4a. Alternative method for nonrenewal for automobile liability and physical  
damage insurance.

§33-6A-4b. Manner of making election relating to nonrenewals.

§33-6A-4c. Report to the Legislature.

**§33-6A-4. Advance notice of nonrenewal required; assigned risk  
policies; reasons for nonrenewal; hearing and  
review after nonrenewal.**

1 (a) No insurer shall fail to renew an outstanding automobile  
2 liability or physical damage insurance policy unless the  
3 nonrenewal is preceded by at least forty-five days advance  
4 notice to the named insured of the insurer's election not to  
5 renew the policy: *Provided*, That subject to this section, nothing  
6 contained in this article shall be construed to prevent an insurer  
7 from refusing to issue an automobile liability or physical  
8 damage insurance policy upon application to the insurer, nor  
9 shall any provision of this article be construed to prevent an  
10 insurer from refusing to renew a policy upon expiration, except  
11 as to the notice requirements of this section, and except further  
12 as to those applicants lawfully submitted pursuant to the West  
13 Virginia assigned risk plan.

14 (b) An insurer may not fail to renew an outstanding  
15 automobile liability or physical damage insurance policy which  
16 has been in existence for two consecutive years or longer except  
17 for the following reasons:

18 (1) The named insured fails to make payments of premium  
19 for the policy or any installment of the premium when due;

20 (2) The policy is obtained through material misrepresenta-  
21 tion;

22 (3) The insured violates any of the material terms and  
23 conditions of the policy;

24 (4) The named insured or any other operator, either residing  
25 in the same household or who customarily operates an automo-  
26 bile insured under the policy:

27 (A) Has had his or her operator's license suspended or  
28 revoked during the policy period; or

29 (B) Is or becomes subject to a physical or mental condition  
30 that prevents the insured from operating a motor vehicle, and

31 the individual cannot produce a certificate from a physician  
32 testifying to his or her ability to operate a motor vehicle;

33 (5) The named insured or any other operator, either residing  
34 in the same household or who customarily operates an automo-  
35 bile insured under the policy, is convicted of or forfeits bail  
36 during the policy period for any of the following reasons:

37 (A) Any felony or assault involving the use of a motor  
38 vehicle;

39 (B) Negligent homicide arising out of the operation of a  
40 motor vehicle;

41 (C) Operating a motor vehicle while under the influence of  
42 intoxicating liquor or of any narcotic drug;

43 (D) Leaving the scene of a motor vehicle accident in which  
44 the insured is involved without reporting it as required by law;

45 (E) Theft of a motor vehicle or the unlawful taking of a  
46 motor vehicle; or

47 (F) Making false statements in an application for a motor  
48 vehicle operator's license;

49 (6) The named insured or any other operator, either residing  
50 in the same household or who customarily operates an automo-  
51 bile insured under the policy, is convicted of or forfeits bail  
52 during the policy period for two or more moving traffic  
53 violations committed within a period of twelve months, each of  
54 which results in three or more points being assessed on the  
55 driver's record by the division of motor vehicles, whether or not  
56 the insurer renewed the policy without knowledge of all of the  
57 violations: *Provided*, That an insurer that makes an election  
58 pursuant to section four-b of this article to issue all nonrenewal  
59 notices pursuant to this section, may nonrenew an automobile

60 liability or physical damage insurance policy if the named  
61 insured, or any other operator, either residing in the same  
62 household or who customarily operates an automobile insured  
63 under the policy is convicted of or forfeits bail during the policy  
64 period for two or more moving traffic violations committed  
65 within a period of twenty-four months, each of which occurs on  
66 or after the first day of July, two thousand four and after the  
67 date that the insurer makes an election pursuant to section four-  
68 b of this article, and results in three or more points being  
69 assessed on the driver's record by the division of motor  
70 vehicles, whether or not the insurer renewed the policy without  
71 knowledge of all of the violations. Notice of any nonrenewal  
72 made pursuant to this subdivision shall be mailed to the named  
73 insured either during the current policy period or during the  
74 first full policy period following the date that the second  
75 moving traffic violation is recorded by the division of motor  
76 vehicles;

77 (7) The named insured or any other operator either residing  
78 in the same household or who customarily operates an automo-  
79 bile insured under the policy has had a second at-fault motor  
80 vehicle accident within a period of twelve months, whether or  
81 not the insurer renewed the policy without knowledge of all of  
82 the accidents: *Provided*, That an insurer that makes an election  
83 pursuant to section four-b of this article to issue all nonrenewal  
84 notices pursuant to this section, may non-renew an automobile  
85 liability or physical damage insurance policy under this  
86 subsection if the named insured or any other operator either  
87 residing in the same household or who customarily operates an  
88 automobile insured under such policy has had two at-fault  
89 motor vehicle accidents within a period of thirty-six months,  
90 each of which occurs after the first day of July, two thousand  
91 four and after the date that the insurer makes an election  
92 pursuant to section four-b of this article, and results in a claim  
93 paid by the insurer for each accident, whether or not the insurer  
94 renewed the policy without knowledge of all of the accidents.

95 Notice of any nonrenewal made pursuant to this subsection  
96 shall be mailed to the named insured either during the current  
97 policy period or during the first full policy period following the  
98 date of the second accident; or

99 (8) The insurer ceases writing automobile liability or  
100 physical damage insurance policies throughout the state after  
101 submission to and approval by the commissioner of a with-  
102 drawal plan or discontinues operations within the state pursuant  
103 to a withdrawal plan approved by the commissioner.

104 (c) An insurer that makes an election pursuant to section  
105 four-b of this article to issue all nonrenewal notices pursuant to  
106 this section shall not fail to renew an automobile liability or  
107 physical damage insurance policy when an operator other than  
108 the named insured has violated the provisions of subdivision (6)  
109 or (7), subsection (b) of this section, if the named insured, by  
110 restrictive endorsement, specifically excludes the operator who  
111 violated the provision. An insurer issuing a nonrenewal notice  
112 informing the named insured that the policy will be nonrenewed  
113 for the reason that an operator has violated the provisions of  
114 subdivision (6) or (7), subsection (b) of this section, shall at that  
115 time inform the named insured of his or her option to specifi-  
116 cally exclude the operator by restrictive endorsement and shall  
117 further inform the named insured that upon obtaining the  
118 restrictive endorsement, the insurer will renew the policy or  
119 rescind the nonrenewal absent the existence of any other basis  
120 for nonrenewal set forth in this section.

121 (d) A notice provided under this section shall state the  
122 specific reason or reasons for nonrenewal and shall advise the  
123 named insured that nonrenewal of the policy for any reason is  
124 subject to a hearing and review as provided for in section five  
125 of this article. Cost of the hearing shall be assessed against the  
126 losing party but shall not exceed seventy-five dollars. The

127 notice must also advise the insured of possible eligibility for  
128 insurance through the West Virginia assigned risk plan.

129 (e) Notwithstanding the provisions of subsection (a) of this  
130 section, the insurer shall reinstate any automobile liability or  
131 physical damage insurance policy that has not been renewed  
132 due to the insured's failure to pay the renewal premium when  
133 due if:

134 (1) None of the other grounds for nonrenewal as set forth in  
135 of this section exist; and

136 (2) The insured makes an application for reinstatement  
137 within forty-five days of the original expiration date of the  
138 policy. If a policy is reinstated as provided for in this paragraph,  
139 then the coverage afforded shall not be retroactive to the  
140 original expiration date of the policy: *Provided*, That such  
141 policy shall be effective on the reinstatement date at the current  
142 premium levels offered by the company and shall not be  
143 afforded the protections of this section relating to renewal of an  
144 outstanding automobile liability or physical damage insurance  
145 policy that has been in existence for at least two consecutive  
146 years.

**§33-6A-4a. Alternative method for nonrenewal for automobile liability and physical damage insurance.**

1 (a) On or after the first day of July, two thousand four, an  
2 insurer may nonrenew an automobile liability or physical  
3 damage insurance policy for any reason which is consistent  
4 with its underwriting standards.

5 (b) Notwithstanding any other provisions in this section,  
6 race, religion, nationality, ethnic group, age, sex, marital status,  
7 or other reason prohibited by the provisions of this chapter may  
8 not be considered as a reason for nonrenewal;

9 (c) Notwithstanding the provisions of section four of this  
10 article, a nonrenewal may only be issued pursuant to the  
11 provisions of this section upon forty-five days advance notice  
12 to the named insured of the insurer's election not to renew the  
13 policy.

14 (d) The total number of nonrenewal notices issued each  
15 year, commencing on the first day of July, two thousand four,  
16 by the insurer, resulting in nonrenewal, pursuant to this section  
17 may not exceed one percent per year of the total number of the  
18 policies of the insurer in force at the end of the previous  
19 calendar year in this state: *Provided*, That the total number of  
20 nonrenewal notices issued each year to insureds within any  
21 given county in this state resulting in nonrenewal may not  
22 exceed one percent per year of the total number of the policies  
23 of the insurer in force in that county at the end of the previous  
24 calendar year: *Provided, however*, That an insurer may  
25 nonrenew one policy per year in any county if the applicable  
26 percentage limitation results in less than one policy.

27 (e) A notice issued pursuant to this section shall state the  
28 specific reason or reasons for refusal to renew and shall advise  
29 the named insured that nonrenewal of the policy for any reason  
30 is subject to a hearing and review as provided for in section five  
31 of this article: *Provided*, That the hearing shall relate to whether  
32 the nonrenewal of the policy was issued for a discriminatory  
33 reason, was based upon inadequate notice, an underwriting  
34 standard by the commissioner found to be in violation of this  
35 chapter or causes the insurer to exceed the percentage limita-  
36 tions, or percentage limitations by county, of nonrenewal  
37 notices set forth in this section. Cost of the hearing shall be  
38 assessed against the losing party but shall not exceed seventy-  
39 five dollars. The notice shall also advise the insured of possible  
40 eligibility for insurance through the West Virginia assigned risk  
41 plan.

42 (f) Each insurer licensed to write automobile liability and  
43 physical damage insurance policies in this state shall file with  
44 the commissioner a copy of its underwriting standards, includ-  
45 ing any amendments or supplements. The commissioner shall  
46 review and examine the underwriting standards to ensure that  
47 they are consistent with generally accepted underwriting  
48 principles. The underwriting standards filed with the commis-  
49 sioner shall be considered confidential by law and privileged,  
50 are exempt from disclosure pursuant to chapter twenty-nine-b  
51 of this code, are not open to public inspection, are not subject  
52 to subpoena, and are not subject to discovery or admissible in  
53 evidence in any criminal, private civil or administrative action  
54 and are not subject to production pursuant to court order. The  
55 commissioner shall promulgate legislative rules pursuant to  
56 chapter twenty-nine-a of this code to implement the provisions  
57 of this section.

58 (g) Each insurer that has elected to issue nonrenewal  
59 notices pursuant to the percentage limitations provided in this  
60 section shall report to the commissioner, on a form prescribed  
61 by the commissioner, on or before the thirtieth day of Septem-  
62 ber of each year the total number of nonrenewal notices issued  
63 in this state and in each county of this state for the preceding  
64 year. The insurer shall also report to the commissioner the  
65 specific reason or reasons for the nonrenewals by county which  
66 have been issued pursuant to this section.

**§33-6A-4b. Manner of making election relating to nonrenewals.**

1 (a) Each insurer licensed to write automobile liability or  
2 physical damage insurance policies in this state, as of the first  
3 day of July, two thousand four, may elect to issue all  
4 nonrenewal notices either pursuant to section four or section  
5 four-a of this article. Each insurer may notify the commissioner  
6 of its election any time after the first day of July, two thousand  
7 four, and shall remain bound by the election for a period of five



8 years. For each subsequent five-year period each insurer shall  
9 notify the commissioner of its election to issue all nonrenewal  
10 notices either pursuant to section four or section four-a of this  
11 article.

12 (1) If no election is made by the first day of July, two  
13 thousand four, then, until the first day of July, two thousand  
14 five, the insurer shall continue to issue all nonrenewal notices  
15 pursuant to the existing nonrenewal provisions in section four  
16 prior to the amendments enacted therein by the acts of the  
17 Seventy-Sixth Legislature during the second session, two  
18 thousand four.

19 (2) As of the first day of July, two thousand five, each  
20 insurer licensed to write automobile liability or physical  
21 damage insurance policies in this state, and that has not  
22 previously made an election under this section, shall elect to  
23 issue all nonrenewal notices either pursuant to section four or  
24 section four-a of this article. Each insurer which has not  
25 previously made an election must notify the commissioner of its  
26 election no later than the first day of July, two thousand five,  
27 and shall remain bound by the election for a period of five  
28 years. For each subsequent five-year period each insurer shall  
29 notify the commissioner of its election to issue all nonrenewal  
30 notices either pursuant to section four or section four-a of this  
31 article.

32 (b) An insurer that is not licensed to write automobile  
33 liability or physical damage insurance policies in this state, as  
34 of the first day of July, two thousand four, but becomes licensed  
35 to write such policies after that date shall, no later than two  
36 years after the date the insurer becomes licensed to write such  
37 policies, make an election to issue all nonrenewal notices either  
38 pursuant to section four or section four-a of this article, and  
39 shall notify the commissioner of its election. If the insurer  
40 elects to issue all nonrenewal notices pursuant to section four-a

41 of this article, the total number of nonrenewals may not exceed  
42 the percentage limitations set forth in section four-a of this  
43 article. An insurer first becoming licensed to issue automobile  
44 liability and physical damage insurance policies in this state  
45 after the first day of July, two thousand four, shall be bound by  
46 its election for a period of five years, and for each subsequent  
47 five-year period shall notify the commissioner of its election to  
48 issue all nonrenewal notices either pursuant to section four or  
49 section four-a of this article.

50 (c) Notwithstanding any provision of this article to the  
51 contrary, a named insured by restrictive endorsement may  
52 specifically exclude from automobile liability or physical  
53 damage insurance policy an operator who has violated the  
54 provisions of subdivision (6) or (7), subsection (b), section four  
55 of this article.

#### **§33-6A-4c. Report to the Legislature.**

1 By the first day of January, two thousand nine, the commis-  
2 sioner shall submit a report to the Legislature. The report shall  
3 contain the following:

4 (1) An analysis of the impact of legislation enacted during  
5 the two thousand four legislative session upon rates and  
6 insurance availability in the state;

7 (2) Statistics reflecting the rate history of insurers conduct-  
8 ing business in West Virginia from the first day of July two  
9 thousand four until the first day of July, two thousand eight.

#### **ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.**

##### **§33-22-2a. Applicability of insurance fraud prevention act.**

1 Notwithstanding any provision of this code to the contrary,  
2 article forty-one of this chapter is applicable to farmers' mutual  
3 fire insurance companies.

**ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.****§33-23-2a. Applicability of insurance fraud prevention act.**

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to fraternal benefit
- 3 societies.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.****§33-24-4b. Applicability of insurance fraud prevention act.**

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to hospital service
- 3 corporations, medical service corporations, dental service
- 4 corporations and health service corporations.

**ARTICLE 25. HEALTH CARE CORPORATIONS.****§33-25-6a. Applicability of insurance fraud prevention act.**

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to health care
- 3 corporations.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.****§33-25A-24b. Applicability of insurance fraud prevention act.**

- 1 Notwithstanding any provision of this code to the contrary,
- 2 article forty-one of this chapter is applicable to health mainte-
- 3 nance organizations.

**ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.**

- §33-41-1. Short title; legislative findings and purpose.
- §33-41-2. Definitions.
- §33-41-3. Fraud warning authorized; statement required of nonadmitted insurers.
- §33-41-4. Authority of the commissioner; use of special assistant prosecutors.

- §33-41-5. Reporting of insurance fraud or criminal offenses otherwise related to the business of insurance.
- §33-41-6. Immunity from liability.
- §33-41-7. Confidentiality.
- §33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.
- §33-41-9. Other law-enforcement or regulatory authority.
- §33-41-10. Rules.
- §33-41-11. Fraudulent claims to insurance companies.
- §33-41-12. Civil penalties; injunctive relief; employment disqualification.

### **§33-41-1. Short title; legislative findings and purpose.**

1       (a) This article may be cited as the “West Virginia Insur-  
2       ance Fraud Prevention Act”.

3       (b) The Legislature finds that the business of insurance  
4       involves many transactions of numerous types that have  
5       potential for fraud and other illegal activities. This article is  
6       intended to permit use of the expertise of the commissioner to  
7       investigate and help prosecute insurance fraud and other crimes  
8       related to the business of insurance more effectively, and to  
9       assist and receive assistance from state, local and federal law-  
10      enforcement and regulatory agencies in enforcing laws prohibit-  
11      ing crimes relating to the business of insurance.

### **§33-41-2. Definitions.**

1       As used in this article:

2       (1) “Benefits” mean money payments, goods, services or  
3       other thing of value paid in response to a claim filed with an  
4       insurer based upon a policy of insurance;

5       (2) “Business of insurance” means the writing of insurance  
6       or the reinsuring of risks by an insurer, including acts necessary  
7       or incidental to writing insurance or reinsuring risks and the  
8       activities of persons who act as or are officers, directors, agents

9 or employees of insurers, or who are other persons authorized  
10 to act on their behalf;

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

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

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

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

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

26 (B) Pay or grant a specified amount or determinable benefit  
27 to another person in connection with ascertainable risk contin-  
28 gencies;

29 (C) Pay an annuity to another person; or

30 (D) Act as surety.

31 (7) "Insurer" means a person entering into arrangements or  
32 contracts of insurance or reinsurance. Insurer includes, but is  
33 not limited to, any domestic or foreign stock company, mutual  
34 company, mutual protective association, farmers' mutual fire  
35 companies, fraternal benefit society, reciprocal or  
36 interinsurance exchange, nonprofit medical care corporation,  
37 nonprofit health care corporation, nonprofit hospital service

38 association, nonprofit dental care corporation, health mainte-  
39 nance organization, captive insurance company, risk retention  
40 group or other insurer, regardless of the type of coverage  
41 written, benefits provided or guarantees made by each. A  
42 person is an insurer regardless of whether the person is acting  
43 in violation of laws requiring a certificate of authority or  
44 regardless of whether the person denies being an insurer;

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

55 (9) "Policy" means an individual or group policy, group  
56 certificate, contract or arrangement of insurance or reinsurance  
57 affecting the rights of a resident of this state or bearing a  
58 reasonable relation to this state, regardless of whether delivered  
59 or issued for delivery in this state;

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

64 (11) "Statement" means any written or oral representation  
65 made to any person, insurer or authorized agency. A statement  
66 includes, but is not limited to, any oral report or representation;  
67 any insurance application, policy, notice or statement; any proof  
68 of loss, bill of lading, receipt for payment, invoice, account,  
69 estimate of property damages, or other evidence of loss, injury  
70 or expense; any bill for services, diagnosis, prescription,

71 hospital or doctor record, X ray, test result or other evidence of  
72 treatment, services or expense; and any application, report,  
73 actuarial study, rate request or other document submitted or  
74 required to be submitted to any authorized agency. A statement  
75 also includes any written or oral representation recorded by  
76 electronic or other media; and

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

**§33-41-3. Fraud warning authorized; statement required of  
nonadmitted insurers.**

1 (a) Claims forms and applications for insurance, regardless  
2 of the form of transmission, may contain the following warning  
3 or a substantially similar caveat:

4 "Any person who knowingly presents a false or fraudulent  
5 claim for payment of a loss or benefit or knowingly presents  
6 false information in an application for insurance is guilty of a  
7 crime and may be subject to fines and confinement in prison."

8 (b) The lack of a warning as authorized by the provisions of  
9 subsection (a) of this section does not constitute a defense in  
10 any prosecution for a fraudulent or illegal act nor shall it  
11 constitute the basis for any type of civil cause of action.

12 (c) Policies issued by nonadmitted insurers pursuant to  
13 article twelve-c of this chapter shall contain a statement  
14 disclosing the status of the insurer to do business in the state  
15 where the policy is delivered or issued for delivery or the state  
16 where coverage is in force. The requirement of this subsection  
17 may be satisfied by a disclosure specifically required by section  
18 five, article twelve-c of this chapter; section nine, article thirty-  
19 two of this chapter; and section eighteen, article thirty-two of  
20 this chapter.

**§33-41-4. Authority of the commissioner; use of special assistant prosecutors.**

1 (a) The commissioner may investigate suspected criminal  
2 acts relating to the business of insurance as authorized by the  
3 provisions of this article.

4 (b) If the prosecuting attorney of the county in which a  
5 criminal violation relating to the business of insurance occurs  
6 determines that his or her office is unable to take appropriate  
7 action, he or she may petition the appropriate circuit court for  
8 the appointment of a special prosecutor or special assistant  
9 prosecutor from the West Virginia Prosecuting Attorney  
10 Institute pursuant to the provisions of section six, article four,  
11 chapter seven of this code. Notwithstanding the provisions of  
12 that section, attorneys employed by the commissioner and  
13 assigned to the insurance fraud unit created by the provisions of  
14 section eight of this article may prosecute or assist in the  
15 prosecution of violations of the criminal laws of this state  
16 related to the business of insurance and may act as special  
17 prosecutors or special assistant prosecutors in those cases if  
18 assistance is sought by the prosecuting attorney or special  
19 prosecutor assigned by the institute to prosecute those matters.

20 (c) Funds allocated for insurance fraud prevention may be  
21 dispersed by the commissioner, at his or her discretion, for the  
22 purpose of insurance fraud enforcement as authorized by the  
23 provisions of this code.

24 (d) The Insurance Fraud Unit authorized by the provisions  
25 of section eight of this article may assist federal law enforce-  
26 ment agencies, the West Virginia state police, the state fire  
27 marshal, municipal police departments and the sheriffs of the  
28 counties in West Virginia in investigating crimes related to the  
29 business of insurance.



30 (e) The commissioner may conduct public outreach,  
31 education, and awareness programs on the costs of insurance  
32 fraud to the public.

**§33-41-5. Reporting of insurance fraud or criminal offenses  
otherwise related to the business of insurance.**

1 (a) A person engaged in the business of insurance having  
2 knowledge or a reasonable belief that fraud or another crime  
3 related to the business of insurance is being, will be or has been  
4 committed shall provide to the commissioner the information  
5 required by, and in a manner prescribed by, the commissioner.

6 (b) The commissioner may prescribe a reporting form to  
7 facilitate reporting of possible fraud or other offenses related to  
8 the business of insurance for use by persons other than those  
9 persons referred to in subsection (a) of this section.

**§33-41-6. Immunity from liability.**

1 (a) There shall be no civil liability imposed on and no cause  
2 of action shall arise from a person's furnishing information  
3 concerning suspected or anticipated fraud relating to the  
4 business of insurance, if the information is provided to or  
5 received from:

6 (1) The commissioner or the commissioner's employees,  
7 agents or representatives;

8 (2) Federal, state, or local law-enforcement or regulatory  
9 officials or their employees, agents or representatives;

10 (3) A person involved in the prevention and detection of  
11 insurance fraud or that person's agents, employees or represen-  
12 tatives; or

13 (4) The national association of insurance commissioners or  
14 its employees, agents or representatives.

15 (b) The provisions of subsection (a) of this section are not  
16 applicable to materially incorrect statements made maliciously  
17 or fraudulently by a person designated a mandated reporter  
18 pursuant to the provisions of subsection (a), section five of this  
19 article or made in reckless disregard to the truth or falsity of the  
20 statement by those not mandated to report. In an action brought  
21 against a person for filing a report or furnishing other informa-  
22 tion concerning an alleged insurance fraud, the party bringing  
23 the action shall plead with specificity any facts supporting the  
24 allegation that subsection (a) of this section does not apply  
25 because the person filing the report or furnishing the incorrect  
26 information did so maliciously in the case of a mandated  
27 reporter or in the case of a person not designated a mandated  
28 reporter, in reckless disregard for the truth or falsity of the  
29 statement.

30 (c) Nothing in this article shall be construed to limit,  
31 abrogate or modify existing statutes or case law applicable to  
32 the duties or liabilities of insurers regarding bad faith or unfair  
33 trade practices.

34 (d) This section does not abrogate or modify common law  
35 or statutory privileges or immunities.

### **§33-41-7. Confidentiality.**

1 (a) Documents, materials or other information in the  
2 possession or control of the office of the insurance commis-  
3 sioner that are provided pursuant to section six of this article or  
4 obtained by the commissioner in an investigation of alleged  
5 fraudulent acts related to the business of insurance shall be  
6 confidential by law and privileged, shall not be subject to the  
7 provisions of chapter twenty-nine-b of this code, shall not be  
8 open to public inspection, shall not be subject to subpoena, and  
9 shall not be subject to discovery or admissible in evidence in  
10 any private civil action. The commissioner may use the

11 documents, materials or other information in the furtherance of  
12 any regulatory or legal action brought as a part of the commis-  
13 sioner's official duties. The commissioner may use the docu-  
14 ments, materials or other information if they are required for  
15 evidence in criminal proceedings or other action by the state or  
16 federal government and in such context may be discoverable as  
17 ordered by a court of competent jurisdiction exercising its  
18 discretion.

19 (b) Neither the commissioner nor any person who receives  
20 documents, materials or other information while acting under  
21 the authority of the commissioner may be permitted or required  
22 to testify in any private civil action concerning any confidential  
23 documents, materials or information subject to subsection (a)  
24 of this section except as ordered by a court of competent  
25 jurisdiction.

26 (c) In order to assist in the performance of the commis-  
27 sioner's duties, the commissioner:

28 (1) May share documents, materials or other information,  
29 including the confidential and privileged documents, materials  
30 or information subject to subsection (a) of this section with  
31 other state, federal and international regulatory agencies, with  
32 the national association of insurance commissioners and its  
33 affiliates and subsidiaries, and with local, state, federal and  
34 international law-enforcement authorities, provided that the  
35 recipient agrees to maintain the confidentiality and privileged  
36 status of the document, material or other information;

37 (2) May receive documents, materials or information,  
38 including otherwise confidential and privileged documents,  
39 materials or information, from the national association of  
40 insurance commissioners and its affiliates and subsidiaries, and  
41 from regulatory and law-enforcement officers of other foreign  
42 or domestic jurisdictions, and shall maintain as confidential or

43 privileged any document, material or information received with  
44 notice or the understanding that it is confidential or privileged  
45 under the laws of the jurisdiction that is the source of the  
46 document, material or information; and

47 (3) May enter into agreements governing sharing and use of  
48 information including the furtherance of any regulatory or legal  
49 action brought as part of the recipient's official duties.

50 (d) No waiver of any applicable privilege or claim of  
51 confidentiality in the documents, materials or information shall  
52 occur as a result of disclosure to the commissioner under this  
53 section or as a result of sharing as authorized in subsection (c)  
54 of this section.

55 (e) Nothing in this section shall prohibit the commissioner  
56 from providing information to or receiving information from  
57 any local, state, federal or international law-enforcement  
58 authorities, including any prosecuting authority; or from  
59 complying with subpoenas or other lawful process in criminal  
60 actions; or as may otherwise be provided in this article.

61 (f) Nothing in this article may be construed to abrogate or  
62 limit the attorney-client or work product privileges existing at  
63 common law or established by statute or court rule.

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

1 (a) There is established the West Virginia insurance fraud  
2 unit within the office of the insurance commissioner of West  
3 Virginia. The commissioner may employ full-time supervisory,  
4 legal and investigative personnel for the unit, who shall be  
5 qualified by training and experience in the areas of detection,  
6 investigation or prosecution of fraud within and against the  
7 insurance industry to perform the duties of their positions. The  
8 director of the fraud unit shall be a full-time position and shall

9 be appointed by the commissioner and serve at his or her will  
10 and pleasure. The commissioner shall provide office space,  
11 equipment, supplies, clerical and other staff that is necessary for  
12 the unit to carry out its duties and responsibilities under this  
13 article.

14 (b) The fraud unit may in its discretion:

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

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

25 (3) Conduct independent examinations of alleged fraudu-  
26 lent activity related to the business of insurance and undertake  
27 independent studies to determine the extent of fraudulent  
28 insurance acts.

29 (c) The insurance fraud unit may:

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

35 (2) Inspect, copy or collect records and evidence;

36 (3) Serve subpoenas issued by grand juries and trial courts  
37 in criminal matters;

38           (4) Share records and evidence with federal, state or local  
39 law-enforcement or regulatory agencies, and enter into inter-  
40 agency agreements;

41           (5) Make criminal referrals to the county prosecutors;

42           (6) Conduct investigations outside this state. If the informa-  
43 tion the insurance fraud unit seeks to obtain is located outside  
44 this state, the person from whom the information is sought may  
45 make the information available to the insurance fraud unit to  
46 examine at the place where the information is located. The  
47 insurance fraud unit may designate representatives, including  
48 officials of the state in which the matter is located, to inspect  
49 the information on behalf of the insurance fraud unit, and the  
50 insurance fraud unit may respond to similar requests from  
51 officials of other states;

52           (7) The fraud unit may initiate investigations and partici-  
53 pate in the development of, and if necessary, the prosecution of  
54 any health care provider, including a provider of rehabilitation  
55 services, suspected of fraudulent activity related to the business  
56 of insurance;

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

60           (9) Notwithstanding any provision of this code to the  
61 contrary, specific personnel designated by the commissioner  
62 may carry firearms in the course of their official duties after  
63 meeting specialized qualifications established by the governor's  
64 committee on crime, delinquency and correction, which shall  
65 include the successful completion of handgun training provided  
66 to law-enforcement officers by the West Virginia state police:  
67 *Provided*, That nothing in this subsection shall be construed to  
68 include any person designated by the commissioner as a

69 law-enforcement officer as that term is defined by the provi-  
70 sions of section one, article twenty-nine, chapter thirty of this  
71 code; and

72 (10) The insurance fraud unit shall not be subject to the  
73 provisions of article nine-a, chapter six of this code and the  
74 investigations conducted by the insurance fraud unit and the  
75 materials placed in the files of the unit as a result of any such  
76 investigation are exempt from public disclosure under the  
77 provisions of chapter twenty-nine-b of this code.

**§33-41-9. Other law-enforcement or regulatory authority.**

1 This article does not:

2 (1) Preempt the authority or relieve the duty of other  
3 law-enforcement or regulatory agencies to investigate, examine  
4 and prosecute suspected violations of law;

5 (2) Prevent or prohibit a person from disclosing voluntarily  
6 information concerning insurance fraud to a law-enforcement  
7 or regulatory agency other than the insurance fraud unit; or

8 (3) Limit the powers granted elsewhere by the laws of this  
9 state to the commissioner or his or her agents to investigate and  
10 examine possible violations of law and to take appropriate  
11 action against violators of law.

**§33-41-10. Rules.**

1 The insurance commissioner shall, pursuant to the provi-  
2 sions of article three, chapter twenty-nine-a of this code,  
3 promulgate such legislative rules as are necessary or proper to  
4 carry out the purposes of this article.

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

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

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

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

21 (d) Any person convicted of a violation of this section is  
22 subject to the restitution provisions of article eleven-a, chapter  
23 sixty-one of this code.

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

**§33-41-12. Civil penalties; injunctive relief; employment disqualification.**

1 A person or entity engaged in the business of insurance or  
2 a person or entity making a claim against an insurer who



3 violates any provision of this article may be subject to the  
4 following:

5 (1) Where applicable, suspension or revocation of license  
6 or certificate of authority or a civil penalty of up to ten thou-  
7 sand dollars per violation, or where applicable, both. Suspen-  
8 sion or revocation of license or certificate of authority or  
9 imposition of civil penalties may be pursuant to an order of the  
10 commissioner issued pursuant to the provisions of section  
11 thirteen, article two of this chapter. The commissioner's order  
12 may require a person found to be in violation of this article to  
13 make reasonable restitution to persons aggrieved by violations  
14 of this article. The commissioner may assess a person sanc-  
15 tioned pursuant to the provisions of this section the cost of  
16 investigation;

17 (2) Notwithstanding any other provision of law, a civil  
18 penalty imposed pursuant to the provisions of this section is  
19 mandatory and not subject to suspension;

20 (3) A person convicted of a felony violation law reasonably  
21 related to the business of insurance shall be disqualified from  
22 engaging in the business of insurance; and

23 (4) The commissioner may apply for a temporary or  
24 permanent injunction in any appropriate circuit court of this  
25 state seeking to enjoin and restrain a person from violating or  
26 continuing to violate the provisions of this article or rule  
27 promulgated under this article, notwithstanding the existence of  
28 other remedies at law. The circuit court shall have jurisdiction  
29 of the proceeding and have the power to make and enter an  
30 order or judgment awarding temporary or permanent injunctive  
31 relief restraining any person from violating or continuing to  
32 violate any provision of this article or rule promulgated under  
33 the article as in its judgment is proper.

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## CHAPTER 139

(Com. Sub. for S. B. 176 — By Senator Minard)

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[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact §33-3-6 of the code of West Virginia, 1931, as amended; to amend and reenact §33-8-1, §33-8-2, §33-8-3, §33-8-4, §33-8-5, §33-8-6, §33-8-7, §33-8-8, §33-8-9, §33-8-10, §33-8-11, §33-8-12, §33-8-13, §33-8-14, §33-8-15, §33-8-16, §33-8-17, §33-8-18, §33-8-19, §33-8-20, §33-8-21, §33-8-22, §33-8-23, §33-8-24 and §33-8-25 of said code; to amend said code by adding thereto seven new sections, designated §33-8-26, §33-8-27, §33-8-28, §33-8-29, §33-8-30, §33-8-31 and §33-8-32; to amend and reenact §33-9-3 of said code; to amend and reenact §33-22-11 of said code; to amend and reenact §33-23-31 of said code; to amend and reenact §33-24-10 of said code; to amend and reenact §33-25A-4 of said code; to amend and reenact §33-25D-5 of said code; and to amend and reenact §33-27-2a of said code, all relating to investments and investment practices of insurance companies; and correcting references to amended sections of article eight, chapter thirty-three of said code.

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

That §33-3-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §33-8-1, §33-8-2, §33-8-3, §33-8-4, §33-8-5, §33-8-6, §33-8-7, §33-8-8, §33-8-9, §33-8-10, §33-8-11, §33-8-12, §33-8-13, §33-8-14, §33-8-15, §33-8-16, §33-8-17, §33-8-18, §33-8-19, §33-8-20, §33-8-21, §33-8-22, §33-8-23, §33-8-24 and §33-8-25 of said code be amended and reenacted; that

said code be amended by adding thereto seven new sections, designated §33-8-26, §33-8-27, §33-8-28, §33-8-29, §33-8-30, §33-8-31 and §33-8-32; that §33-9-3 of said code be amended and reenacted; that §33-22-11 of said code be amended and reenacted; that §33-23-31 of said code be amended and reenacted; that §33-24-10 of said code be amended and reenacted; that §33-25A-4 of said code be amended and reenacted; that §33-25D-5 of said code be amended and reenacted; and that §33-27-2a of said code be amended and reenacted, all to read as follows:

**Article**

- 3. Licensing, Fees and Taxation of Insurers.**
- 8. Investments.**
- 9. Administration of Deposits.**
- 22. Farmers' Mutual Fire Insurance Companies.**
- 23. Fraternal Benefit Societies.**
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**
- 25A. Health Maintenance Organization Act.**
- 25D. Prepaid Limited Health Service Organization.**
- 27. Insurance Holding Company Systems.**

**ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.**

**§33-3-6. Property and casualty, financial guaranty and mortgage guaranty insurers - Deposit requirements.**

1       The commissioner shall not issue a license to any insurer  
2 unless it has deposited and maintained in trust with the state  
3 treasurer, for the protection of its policyholders or its policy-  
4 holders and creditors, cash or government securities eligible for  
5 the investment of capital funds of domestic insurers (of the type  
6 described in paragraph (A) or (B), subdivision (1), subsection  
7 (a), section eleven, article eight of this chapter or paragraph  
8 (A), (B) or (C), subdivision (3) of said subsection, under this  
9 chapter in the amount of one hundred thousand dollars; except:

10       (a) As to foreign insurers in lieu of the deposit or part of a  
11 deposit with the state treasurer, the commissioner may accept

12 the current certificate of the state insurance supervisory official  
13 of any other state that a like deposit by the insurer is being  
14 maintained in public custody or in a depository approved by the  
15 supervisory official in that state in trust for the purpose of  
16 protection of all policyholders or policyholders and creditors of  
17 the insurer in the United States.

18 (b) As to alien insurers in lieu of the deposit or part of a  
19 deposit with the state treasurer, the commissioner may accept  
20 evidence satisfactory to him or her that the insurer maintains  
21 within the United States in public depositories, or in trust  
22 institutions within the United States approved by the commis-  
23 sioner, assets available for discharge of its United States  
24 insurance obligations which are in an amount not less than the  
25 outstanding liabilities of the insurer arising out of its insurance  
26 transactions in the United States, together with an amount equal  
27 to the deposit required under this section for other insurers  
28 requesting license to transact like kinds of insurance.

#### **ARTICLE 8. INVESTMENTS.**

§33-8-1. Purpose and scope.

§33-8-2. Definitions.

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§33-8-15. Same - Mortgage loans and real estate.

- §33-8-16. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.
- §33-8-17. Same - Foreign investments and foreign currency exposure.
- §33-8-18. Same - Derivative transactions.
- §33-8-19. Same - Policy loans.
- §33-8-20. Same - Additional investment authority.
- §33-8-21. Property and casualty, financial guaranty and mortgage guaranty insurers - Applicability.
- §33-8-22. Same - Reserve requirements.
- §33-8-23. Same - General five percent diversification, medium and lower grade investments and Canadian investments.
- §33-8-24. Same - Rated credit instruments.
- §33-8-25. Same - Insurer investment pools.
- §33-8-26. Same - Equity interests.
- §33-8-27. Same - Tangible personal property under lease.
- §33-8-28. Same - Mortgage loans and real estate.
- §33-8-29. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.
- §33-8-30. Same - Foreign investments and foreign currency exposure.
- §33-8-31. Same - Derivative transactions.
- §33-8-32. Same - Additional investment authority.

### **§33-8-1. Purpose and scope.**

- 1           (a) The purpose of this article is to protect the interests of  
2 insureds by promoting insurer solvency and financial strength.  
3 This will be accomplished through the application of invest-  
4 ment standards that facilitate a reasonable balance of the  
5 following objectives:
- 6           (1) To preserve principal;
- 7           (2) To assure reasonable diversification as to type of  
8 investment, issuer and credit quality; and
- 9           (3) To allow insurers to allocate investments in a manner  
10 consistent with principles of prudent investment management  
11 to achieve an adequate return so that obligations to insureds are

12 adequately met and financial strength is sufficient to cover  
13 reasonably foreseeable contingencies.

14 (b) This article applies only to investments and investment  
15 practices of domestic insurers and United States branches of  
16 alien insurers entered through this state. This article does not  
17 apply to separate accounts of an insurer except as provided in  
18 article thirteen-a of this chapter.

19 (c) This recodification of former article eight preserves and  
20 continues prior limitations contained in section 106(a)(1) or (2)  
21 of the Secondary Mortgage Market Enhancement Act of 1984  
22 (“SMMEA”), an act of the Congress of the United States  
23 adopted by the acts of the Legislature in 1991 albeit under  
24 separate sections of the same article. Pursuant to section 106(b)  
25 of SMMEA, this section prohibits domestic insurers from  
26 exercising the investment authority granted any person, trust,  
27 corporation, partnership, association, business trust or business  
28 entity pursuant to section 106(a)(1) or (2) of that act.

### §33-8-2. Definitions.

1 The following terms are defined for purposes of this article:

2 (1) “Acceptable collateral” means:

3 (A) As to securities lending transactions and for the purpose  
4 of calculating counter party exposure amount, cash, cash  
5 equivalents, letters of credit, direct obligations of, or securities  
6 that are fully guaranteed as to principal and interest by, the  
7 government of the United States or any agency of the United  
8 States, or by the federal national mortgage association or the  
9 federal home loan mortgage corporation, and as to lending  
10 foreign securities, sovereign debt rated 1 by the securities  
11 valuation office (“SVO”) of the national association of insur-  
12 ance commissioners;

13       (B) As to repurchase transactions, cash, cash equivalents  
14 and direct obligations of, or securities that are fully guaranteed  
15 as to principal and interest by, the government of the United  
16 States or an agency of the United States, or by the federal  
17 national mortgage association or the federal home loan mort-  
18 gage corporation; and

19       (C) As to reverse repurchase transactions, cash and cash  
20 equivalents.

21       (2) “Acceptable private mortgage insurance” means  
22 insurance written by a private insurer protecting a mortgage  
23 lender against loss occasioned by a mortgage loan default and  
24 issued by a licensed mortgage insurance company, with an SVO  
25 1 designation or a rating issued by a nationally recognized  
26 statistical rating organization equivalent to an SVO 1 designa-  
27 tion, that covers losses to an eighty percent loan-to-value ratio.

28       (3) “Accident and sickness insurance” means protection  
29 which provides payment of benefits for covered sickness or  
30 accidental injury, excluding credit insurance, disability insur-  
31 ance, accidental death and dismemberment insurance and  
32 long-term care insurance.

33       (4) “Accident and sickness insurer” means a licensed life or  
34 sickness insurer or health service corporation whose insurance  
35 premiums and required statutory reserves for accident and  
36 sickness insurance constitute at least ninety-five percent of total  
37 premium considerations or total statutory required reserves,  
38 respectively.

39       (5) “Admitted assets” means assets permitted to be reported  
40 as admitted assets on the statutory financial statement of the  
41 insurer most recently required to be filed with the commis-  
42 sioner, but excluding assets of separate accounts, the invest-  
43 ments of which are not subject to the provisions of this article.

44       (6) “Affiliate” means, as to any person, another person that,  
45 directly or indirectly through one or more intermediaries,  
46 controls, is controlled by or is under common control with the  
47 person.

48       (7) “Asset-backed security” means a security or other  
49 instrument, excluding a mutual fund, evidencing an interest in,  
50 or the right to receive payments from, or payable from distribu-  
51 tions on, an asset, a pool of assets or specifically divisible cash  
52 flows which are legally transferred to a trust or another special  
53 purpose bankruptcy-remote business entity, on the following  
54 conditions:

55       (A) The trust or other business entity is established solely  
56 for the purpose of acquiring specific types of assets or rights to  
57 cash flows, issuing securities and other instruments represent-  
58 ing an interest in or right to receive cash flows from those  
59 assets or rights and engaging in activities required to service the  
60 assets or rights and any credit enhancement or support features  
61 held by the trust or other business entity; and

62       (B) The assets of the trust or other business entity consist  
63 solely of interest bearing obligations or other contractual  
64 obligations representing the right to receive payment from the  
65 cash flows from the assets or rights. However, the existence of  
66 credit enhancements, such as letters of credit or guarantees, or  
67 support features such as swap agreements, does not cause a  
68 security or other instrument to be ineligible as an asset-backed  
69 security.

70       (8) “Business entity” includes a sole proprietorship,  
71 corporation, limited liability company, association, partnership,  
72 joint stock company, joint venture, mutual fund, trust, joint  
73 tenancy or other similar form of business organization, whether  
74 organized for-profit or not-for-profit.



75           (9) “Cap” means an agreement obligating the seller to make  
76 payments to the buyer, with each payment based on the amount  
77 by which a reference price or level or the performance or value  
78 of one or more underlying interests exceeds a predetermined  
79 number, sometimes called the strike rate or strike price.

80           (10) “Capital and surplus” means the sum of the capital and  
81 surplus of the insurer required to be shown on the statutory  
82 financial statement of the insurer most recently required to be  
83 filed with the commissioner.

84           (11) “Cash equivalents” means short-term, highly rated and  
85 highly liquid investments or securities readily convertible to  
86 known amounts of cash without penalty and so near maturity  
87 that they present insignificant risk of change in value. Cash  
88 equivalents include government money market mutual funds  
89 and class one money market mutual funds. For purposes of this  
90 definition:

91           (A) “Short-term” means investments with a remaining term  
92 to maturity of ninety days or less; and

93           (B) “Highly rated” means an investment rated “P-1” by  
94 Moody’s Investors Service, Inc., or “A-1” by Standard and  
95 Poor’s division of the McGraw Hill Companies, Inc., or its  
96 equivalent rating by a nationally recognized statistical rating  
97 organization recognized by the SVO.

98           (12) “Class one bond mutual fund” means a mutual fund  
99 that at all times qualifies for investment using the bond class  
100 one reserve factor under the purposes and procedures of the  
101 securities valuation office of the national association of  
102 insurance commissioners, or any successor publication.

103           (13) “Class one money market mutual fund” means a  
104 money market mutual fund that at all times qualifies for  
105 investment using the bond class one reserve factor under the

106 purposes and procedures of the securities valuation office or  
107 any successor publication.

108 (14) “Collar” means an agreement to receive payments as  
109 the buyer of an option, cap or floor and to make payments as  
110 the seller of a different option, cap or floor.

111 (15) “Commercial mortgage loan” means a loan secured by  
112 a mortgage, other than a residential mortgage loan.

113 (16) “Construction loan” means a loan of less than three  
114 years in term, made for financing the cost of construction of a  
115 building or other improvement to real estate, that is secured by  
116 the real estate.

117 (17) “Control” means the possession, directly or indirectly,  
118 of the power to direct or cause the direction of the management  
119 and policies of a person, whether through the ownership of  
120 voting securities, by contract (other than a commercial contract  
121 for goods or nonmanagement services), or otherwise, unless the  
122 power is the result of an official position with or corporate  
123 office held by the person. Control will be presumed to exist if  
124 a person, directly or indirectly, owns, controls, holds with the  
125 power to vote or holds proxies representing ten percent or more  
126 of the voting securities of another person. This presumption  
127 may be rebutted by a showing that control does not exist in fact.  
128 The commissioner may determine, after furnishing all inter-  
129 ested persons notice and an opportunity to be heard and making  
130 specific findings of fact to support the determination, that  
131 control exists in fact, notwithstanding the absence of a pre-  
132 sumption to that effect.

133 (18) “Counterparty exposure amount” means:

134 (A) The net amount of credit risk attributable to a derivative  
135 instrument entered into with a business entity other than  
136 through a qualified exchange, qualified foreign exchange, or

137 cleared through a qualified clearinghouse (“over-the-counter  
138 derivative instrument”). The amount of credit risk equals:

139 (i) The market value of the over-the-counter derivative  
140 instrument if the liquidation of the derivative instrument would  
141 result in a final cash payment to the insurer; or

142 (ii) Zero if the liquidation of the derivative instrument  
143 would not result in a final cash payment to the insurer.

144 (B) If over-the-counter derivative instruments are entered  
145 into under a written master agreement which provides for  
146 netting of payments owed by the respective parties and the  
147 domiciliary jurisdiction of the counterparty is either within the  
148 United States or if not within the United States, within a foreign  
149 jurisdiction listed in the purposes and procedures of the  
150 securities valuation office as eligible for netting, the net amount  
151 of credit risk will be the greater of zero or the net sum of:

152 (i) The market value of the over-the-counter derivative  
153 instruments entered into under the agreement, the liquidation of  
154 which would result in a final cash payment to the insurer; and

155 (ii) The market value of the over-the-counter derivative  
156 instruments entered into under the agreement, the liquidation of  
157 which would result in a final cash payment by the insurer to the  
158 business entity.

159 (C) For open transactions, market value will be determined  
160 at the end of the most recent quarter of the insurer’s fiscal year  
161 and will be reduced by the market value of acceptable collateral  
162 held by the insurer or placed in escrow by one or both parties.

163 (19) “Covered” means that an insurer owns or can immedi-  
164 ately acquire, through the exercise of options, warrants or  
165 conversion rights already owned, the underlying interest in  
166 order to fulfill or secure its obligations under a call option, cap

167 or floor it has written, or has set aside under a custodial or  
168 escrow agreement cash or cash equivalents with a market value  
169 equal to the amount required to fulfill its obligations under a put  
170 option it has written, in an income generation transaction.

171 (20) "Credit tenant loan" means a mortgage loan which is  
172 made primarily in reliance on the credit standing of a major  
173 tenant, structured with an assignment of the rental payments to  
174 the lender with real estate pledged as collateral in the form of  
175 a first lien.

176 (21) "Derivative instrument" means an agreement, option,  
177 instrument or a series or combination of those instruments:

178 (A) To make or take delivery of, or assume or relinquish, a  
179 specified amount of one or more underlying interests, or to  
180 make a cash settlement in lieu thereof; or that has a price,  
181 performance, value or cash flow based primarily upon the  
182 actual or expected price, level, performance, value or cash flow  
183 of one or more underlying interests.

184 (B) Derivative instruments include options, warrants used  
185 in a hedging transaction and not attached to another financial  
186 instrument, caps, floors, collars, swaps, forwards, futures and  
187 any other agreements, options or instruments substantially  
188 similar to those instruments or any series or combination  
189 thereof and any agreements, options or instruments permitted  
190 under rules adopted under section eight of this article. Deriva-  
191 tive instruments does not include an investment authorized by  
192 sections eleven through seventeen, inclusive, nineteen and  
193 twenty-four through thirty, inclusive, of this article.

194 (22) "Derivative transaction" means a transaction involving  
195 the use of one or more derivative instruments.

196 (23) "Direct" or "directly," when used in connection with an  
197 obligation, means that the designated obligor is primarily liable  
198 on the instrument representing the obligation.

199 (24) "Dollar roll transaction" means two simultaneous  
200 transactions with different settlement dates no more than  
201 ninety-six days apart, so that in the transaction with the earlier  
202 settlement date, an insurer sells to a business entity, and in the  
203 other transaction the insurer is obligated to purchase from the  
204 same business entity substantially similar securities that are  
205 asset-backed securities issued, assumed or guaranteed by the  
206 government national mortgage association, the federal national  
207 mortgage association or the federal home loan mortgage  
208 corporation or their respective successors.

209 (25) "Domestic jurisdiction" means the United States,  
210 Canada, any state, any province of Canada or any political  
211 subdivision of any of those jurisdictions.

212 (26) "Equity interest" means any of the following that are  
213 not rated credit instruments:

214 (A) Common stock;

215 (B) Preferred stock;

216 (C) Trust certificates;

217 (D) Equity investment in an investment company other than  
218 a money market mutual fund or a class one bond mutual fund;

219 (E) Investment in a common trust fund of a bank regulated  
220 by a federal or state agency;

221 (F) An ownership interest in minerals, oil or gas, the rights  
222 to which have been separated from the underlying fee interest  
223 in the real estate where the minerals, oil or gas are located;

224 (G) Instruments which are mandatorily, or at the option of  
225 the issuer, convertible to equity;

226 (H) Limited partnership interests and those general partner-  
227 ship interests authorized under subdivision (4), section five of  
228 this article;

229 (I) Member interests in limited liability companies;

230 (J) Warrants or other rights to acquire equity interests that  
231 are created by the person that owns or would issue the equity to  
232 be acquired; or

233 (K) Instruments that would be rated credit instruments  
234 except for the provisions of paragraph (B), subdivision (70) of  
235 this section.

236 (27) "Equivalent securities" means:

237 (A) In a securities lending transaction, securities that are  
238 identical to the loaned securities in all features including the  
239 amount of the loaned securities, except as to certificate number  
240 if held in physical form, but if any different security will be  
241 exchanged for a loaned security by recapitalization, merger,  
242 consolidation or other corporate action, the different security  
243 shall be considered to be the loaned security;

244 (B) In a repurchase transaction, securities that are identical  
245 to the purchased securities in all features including the amount  
246 of the purchased securities, except as to the certificate number  
247 if held in physical form; or

248 (C) In a reverse repurchase transaction, securities that are  
249 identical to the sold securities in all features including the  
250 amount of the sold securities, except as to the certificate  
251 number if held in physical form.

252 (28) "Floor" means an agreement obligating the seller to  
253 make payments to the buyer in which each payment is based on  
254 the amount by which that a predetermined number, sometimes  
255 called the floor rate or price, exceeds a reference price, level,  
256 performance or value of one or more underlying interests.

257 (29) "Foreign currency" means a currency other than that  
258 of a domestic jurisdiction.

259 (30) "Foreign investment" means an investment in a foreign  
260 jurisdiction, or an investment in a person, real estate or asset  
261 domiciled in a foreign jurisdiction, that is substantially of the  
262 same type as those eligible for investment under this article,  
263 other than under sections seventeen and thirty of this article.  
264 An investment will not be considered to be foreign if the  
265 issuing person, qualified primary credit source or qualified  
266 guarantor is a domestic jurisdiction or a person domiciled in a  
267 domestic jurisdiction, unless:

268 (A) The issuing person is a shell business entity; and

269 (B) The investment is not assumed, accepted, guaranteed or  
270 insured or otherwise backed by a domestic jurisdiction or a  
271 person, that is not a shell business entity, domiciled in a  
272 domestic jurisdiction.

273 (C) For purposes of this definition:

274 (i) "Shell business entity" means a business entity having  
275 no economic substance, except as a vehicle for owning interests  
276 in assets issued, owned or previously owned by a person  
277 domiciled in a foreign jurisdiction;

278 (ii) "Qualified guarantor" means a guarantor against which  
279 an insurer has a direct claim for full and timely payment,  
280 evidenced by a contractual right for which an enforcement  
281 action can be brought in a domestic jurisdiction; and

282 (iii) “Qualified primary credit source” means the credit  
283 source to which an insurer looks for payment as to an invest-  
284 ment and against which an insurer has a direct claim for full and  
285 timely payment, evidenced by a contractual right for which an  
286 enforcement action can be brought in a domestic jurisdiction.

287 (31) “Foreign jurisdiction” means a jurisdiction other than  
288 a domestic jurisdiction.

289 (32) “Forward” means an agreement (other than a future) to  
290 make or take delivery of, or effect a cash settlement based on  
291 the actual or expected price, level, performance or value of, one  
292 or more underlying interests.

293 (33) “Future” means an agreement, traded on a qualified  
294 exchange or qualified foreign exchange, to make or take  
295 delivery of, or effect a cash settlement based on the actual or  
296 expected price, level, performance or value of, one or more  
297 underlying interests.

298 (34) “Government money market mutual fund” means a  
299 money market mutual fund that at all times:

300 (A) Invests only in obligations issued, guaranteed or  
301 insured by the federal government of the United States or  
302 collateralized repurchase agreements composed of these  
303 obligations; and

304 (B) Qualifies for investment without a reserve under the  
305 purposes and procedures of the securities valuation office or  
306 any successor publication.

307 (35) “Government-sponsored enterprise” means a:

308 (A) Governmental agency; or



309 (B) Corporation, limited liability company, association,  
310 partnership, joint stock company, joint venture, trust or other  
311 entity or instrumentality organized under the laws of any  
312 domestic jurisdiction to accomplish a public policy or other  
313 governmental purpose.

314 (36) “Guaranteed or insured”, when used in connection with  
315 an obligation acquired under this article, means that the  
316 guarantor or insurer has agreed to:

317 (A) Perform or insure the obligation of the obligor or  
318 purchase the obligation; or

319 (B) Be unconditionally obligated until the obligation is  
320 repaid to maintain in the obligor a minimum net worth, fixed  
321 charge coverage, stockholders’ equity or sufficient liquidity to  
322 enable the obligor to pay the obligation in full.

323 (37) “Hedging transaction” means a derivative transaction  
324 which is entered into and maintained to reduce:

325 (A) The risk of a change in the value, yield, price, cash flow  
326 or quantity of assets or liabilities which the insurer has acquired  
327 or incurred or anticipates acquiring or incurring; or

328 (B) The currency exchange rate risk or the degree of  
329 exposure as to assets or liabilities which an insurer has acquired  
330 or incurred or anticipates acquiring or incurring.

331 (38) “High grade investment” means a rated credit instru-  
332 ment rated 1 or 2 by the SVO.

333 (39) “Income” means, as to a security, interest, accrual of  
334 discount, dividends or other distributions, such as rights, tax or  
335 assessment credits, warrants and distributions in kind.

336 (40) "Income generation transaction" means a derivative  
337 transaction involving the writing of covered call options,  
338 covered put options, covered caps or covered floors that is  
339 intended to generate income or enhance return.

340 (41) "Initial margin" means the amount of cash, securities  
341 or other consideration initially required to be deposited to  
342 establish a futures position.

343 (42) "Insurance future" means a future relating to an index  
344 or pool that is based on insurance-related items.

345 (43) "Insurance futures option" means an option on an  
346 insurance future.

347 (44) "Investment company" means an investment company  
348 as defined in Section 3(a) of the Investment Company Act of  
349 1940, as amended, and a person described in Section 3(c) of  
350 that act.

351 (45) "Investment company series" means an investment  
352 portfolio of an investment company that is organized as a series  
353 company and to which assets of the investment company have  
354 been specifically allocated.

355 (46) "Investment practices" means transactions of the types  
356 described in sections sixteen, eighteen, twenty-nine or  
357 thirty-one of this article.

358 (47) "Investment subsidiary" means a subsidiary of an  
359 insurer engaged or organized to engage exclusively in the  
360 ownership and management of assets authorized as investments  
361 for the insurer if each subsidiary agrees to limit its investment  
362 in any asset so that its investments will not cause the amount of  
363 the total investment of the insurer to exceed any of the invest-  
364 ment limitations or avoid any other provisions of this article

365 applicable to the insurer. As used in this subdivision, the total  
366 investment of the insurer shall include:

367 (A) Direct investment by the insurer in an asset; and

368 (B) The insurer's proportionate share of an investment in an  
369 asset by an investment subsidiary of the insurer, which shall be  
370 calculated by multiplying the amount of the subsidiary's  
371 investment by the percentage of the insurer's ownership interest  
372 in the subsidiary.

373 (48) "Investment strategy" means the techniques and  
374 methods used by an insurer to meet its investment objectives,  
375 such as active bond portfolio management, passive bond  
376 portfolio management, interest rate anticipation, growth  
377 investing and value investing.

378 (49) "Letter of credit" means a clean, irrevocable and  
379 unconditional letter of credit issued or confirmed by, and  
380 payable and presentable at, a financial institution on the list of  
381 financial institutions meeting the standards for issuing letters of  
382 credit under the purposes and procedures of the securities  
383 valuation office or any successor publication. To constitute  
384 acceptable collateral for the purposes of sections sixteen and  
385 twenty-nine of this article, a letter of credit must have an  
386 expiration date beyond the term of the subject transaction.

387 (50) "Limited liability company" means a business organi-  
388 zation, excluding partnerships and ordinary business corpora-  
389 tions, organized or operating under the laws of the United  
390 States or any state thereof that limits the personal liability of  
391 investors to the equity investment of the investor in the business  
392 entity.

393 (51) "Lower grade investment" means a rated credit  
394 instrument rated 4, 5 or 6 by the SVO.

395 (52) “Market value” means:

396 (A) As to cash and letters of credit, the amounts of the cash  
397 and letters of credit; and

398 (B) As to a security as of any date, the price for the security  
399 on that date obtained from a generally recognized source or the  
400 most recent quotation from such a source or, to the extent no  
401 generally recognized source exists, the price for the security as  
402 determined in good faith by the parties to a transaction, plus  
403 accrued but unpaid income on the security to the extent not  
404 included in the price as of that date.

405 (53) “Medium grade investment” means a rated credit  
406 instrument rated 3 by the SVO.

407 (54) “Money market mutual fund” means a mutual fund  
408 that meets the conditions of 17 code of federal regulations par.  
409 270.2a-7, under the Investment Company Act of 1940, as  
410 amended or renumbered.

411 (55) “Mortgage loan” means an obligation secured by a  
412 mortgage, deed of trust, trust deed or other consensual lien on  
413 real estate.

414 (56) “Multilateral development bank” means an interna-  
415 tional development organization of which the United States is  
416 a member.

417 (57) “Mutual fund” means an investment company or, in  
418 the case of an investment company that is organized as a series  
419 company, an investment company series that, in either case, is  
420 registered with the United States securities and exchange  
421 commission under the Investment Company Act of 1940, as  
422 amended.

423 (58) "NAIC" means the national association of insurance  
424 commissioners.

425 (59) "Obligation" means a bond, note, debenture, trust  
426 certificate including an equipment certificate, production  
427 payment, negotiable bank certificate of deposit, bankers'  
428 acceptance, credit tenant loan, loan secured by financing net  
429 leases and other evidence of indebtedness for the payment of  
430 money (or participations, certificates or other evidences of an  
431 interest in any of the foregoing), whether constituting a general  
432 obligation of the issuer or payable only out of certain revenues  
433 or certain funds pledged or otherwise dedicated for payment.

434 (60) "Option" means an agreement giving the buyer the  
435 right to buy or receive (a"call option"), sell or deliver (a"put  
436 option"), enter into, extend or terminate or effect a cash  
437 settlement based on the actual or expected price, level, perfor-  
438 mance or value of one or more underlying interests.

439 (61) "Person" means an individual, a business entity, a  
440 multilateral development bank or a government or quasi-  
441 governmental body, such as a political subdivision or a govern-  
442 ment-sponsored enterprise.

443 (62) "Potential exposure" means the amount determined in  
444 accordance with the NAIC annual statement instructions.

445 (63) "Preferred stock" means preferred, preference or  
446 guaranteed stock of a business entity authorized to issue the  
447 stock, that has a preference in liquidation over the common  
448 stock of the business entity.

449 (64) "Qualified bank" means:

450 (A) A national bank, state bank or trust company that at all  
451 times is no less than adequately capitalized as determined by  
452 standards adopted by United States banking regulators and that

453 is either regulated by state banking laws or is a member of the  
454 federal reserve system; or

455 (B) A bank or trust company incorporated or organized  
456 under the laws of a country other than the United States that is  
457 regulated as a bank or trust company by that country's govern-  
458 ment or an agency of the government and that at all times is no  
459 less than adequately capitalized as determined by the standards  
460 adopted by international banking authorities.

461 (65) "Qualified business entity" means a business entity  
462 that is:

463 (A) An issuer of obligations or preferred stock that are rated  
464 1 or 2 by the SVO or an issuer of obligations, preferred stock or  
465 derivative instruments that are rated the equivalent of 1 or 2 by  
466 the SVO or by a nationally recognized statistical rating organi-  
467 zation recognized by the SVO; or

468 (B) A primary dealer in United States government securi-  
469 ties, recognized by the Federal Reserve Bank of New York.

470 (66) "Qualified clearinghouse" means a clearinghouse for,  
471 and subject to the rules of, a qualified exchange or a qualified  
472 foreign exchange, which provides clearing services, including  
473 acting as a counterparty to each of the parties to a transaction so  
474 that the parties no longer have credit risk as to each other.

475 (67) "Qualified exchange" means:

476 (A) A securities exchange registered as a national securities  
477 exchange, or a securities market regulated under the Securities  
478 Exchange Act of 1934, as amended;

479 (B) A board of trade or commodities exchange designated  
480 as a contract market by the commodity futures trading commis-  
481 sion or any successor thereof;

482 (C) Private offerings, resales and trading through automated  
483 linkages (PORTAL);

484 (D) A designated offshore securities market as defined in  
485 securities exchange commission regulation S, 17 C. F. R. part  
486 230, as amended; or

487 (E) A qualified foreign exchange.

488 (68) "Qualified foreign exchange" means a foreign ex-  
489 change, board of trade or contract market located outside the  
490 United States, its territories or possessions:

491 (A) That has received regulatory comparability relief under  
492 commodity futures trading commission (CFTC) rule 30.10 (as  
493 set forth in appendix C to part 30 of the CFTC's regulations, 17  
494 C. F. R. part 30);

495 (B) That is, or its members are, subject to the jurisdiction  
496 of a foreign futures authority that has received regulatory  
497 comparability relief under CFTC rule 30.10 (as set forth in  
498 appendix C to part 30 of the CFTC's regulations, 17 C. F. R.  
499 part 30) as to futures transactions in the jurisdiction where the  
500 exchange, board of trade or contract market is located; or

501 (C) Upon which foreign stock index futures contracts are  
502 listed that are the subject of no-action relief issued by the  
503 CFTC's office of general counsel, provided that an exchange,  
504 board of trade or contract market that qualifies as a "qualified  
505 foreign exchange" only under this subdivision shall only be a  
506 "qualified foreign exchange" as to foreign stock index futures  
507 contracts that are the subject of no-action relief.

508 (69) "Rated credit instrument" means:

509 (A) A contractual right to receive cash or another rated  
510 credit instrument from another entity which:

511 (i) Is rated or required to be rated by the SVO;

512 (ii) In the case of an instrument with a maturity of three  
513 hundred ninety-seven days or less, is issued, guaranteed or  
514 insured by an entity that is rated by, or another obligation of the  
515 entity is rated by, the SVO or by a nationally recognized  
516 statistical rating organization recognized by the SVO;

517 (iii) In the case of an instrument with a maturity of ninety  
518 days or less, is issued by a qualified bank;

519 (iv) Is a share of a class one bond mutual fund; or

520 (v) Is a share of a money market mutual fund.

521 (B) However, "rated credit instrument" does not mean:

522 (i) An instrument that is mandatorily, or at the option of the  
523 issuer, convertible to an equity interest; or

524 (ii) A security that has a par value and whose terms provide  
525 that the issuer's net obligation to repay all or part of the  
526 security's par value is determined by reference to the perfor-  
527 mance of an equity, a commodity, a foreign currency or an  
528 index of equities, commodities, foreign currencies or combina-  
529 tions thereof.

530 (70) "Real estate" means:

531 (A) Real property, including: Interests in real property, such  
532 as leaseholds, minerals and oil and gas that have not been  
533 separated from the underlying fee interest; improvements and  
534 fixtures located on or in real property; and the seller's equity in  
535 a contract providing for a deed of real estate.



536 (B) As to a mortgage on a leasehold estate, real estate shall  
537 include the leasehold estate only if it has an unexpired term  
538 (including renewal options exercisable at the option of the  
539 lessee) extending beyond the scheduled maturity date of the  
540 obligation that is secured by a mortgage on the leasehold estate  
541 by a period equal to at least twenty percent of the original term  
542 of the obligation or ten years, whichever is greater.

543 (71) “Replication transaction” means a derivative transac-  
544 tion that is intended to replicate the performance of one or more  
545 assets that an insurer is authorized to acquire under this article.  
546 A derivative transaction that is entered into as a hedging  
547 transaction will not be considered a replication transaction.

548 (72) “Repurchase transaction” means a transaction in which  
549 an insurer purchases securities from a business entity that is  
550 obligated to repurchase the purchased securities or equivalent  
551 securities from the insurer at a specified price, either within a  
552 specified period of time or upon demand.

553 (73) “Required liabilities” means total liabilities required to  
554 be reported on the statutory financial statement of the insurer  
555 most recently required to be filed with the commissioner.

556 (74) “Residential mortgage loan” means a loan primarily  
557 secured by a mortgage on real estate improved with a  
558 one-to-four family residence.

559 (75) “Reverse repurchase transaction” means a transaction  
560 in which an insurer sells securities to a business entity and is  
561 obligated to repurchase the sold securities or equivalent  
562 securities from the business entity at a specified price, either  
563 within a specified period of time or upon demand.

564 (76) “Secured location” means the contiguous real estate  
565 owned by one person.

566 (77) “Securities lending transaction” means a transaction in  
567 which securities are loaned by an insurer to a business entity  
568 that is obligated to return the loaned securities or equivalent  
569 securities to the insurer, either within a specified period of time  
570 or upon demand.

571 (78) “Series company” means an investment company that  
572 is organized as a series company, as defined in rule 18f-2(a)  
573 adopted under the Investment Company Act of 1940, as  
574 amended.

575 (79) “Sinking fund stock” means preferred stock that:

576 (A) Is subject to a mandatory sinking fund or similar  
577 arrangement that will provide for the redemption (or open  
578 market purchase) of the entire issue over a period not longer  
579 than forty years from the date of acquisition; and

580 (B) Provides for mandatory sinking fund installments (or  
581 open market purchases) commencing not more than ten and  
582 one-half years from the date of issue, with the sinking fund  
583 installments providing for the purchase or redemption, on a  
584 cumulative basis commencing ten years from the date of issue,  
585 of at least two and one-half percent per year of the original  
586 number of shares of that issue of preferred stock.

587 (80) “Special rated credit instrument” means a rated credit  
588 instrument that is:

589 (A) An instrument that is structured so that, if it is held  
590 until retired by or on behalf of the issuer, its rate of return,  
591 based on its purchase cost and any cash flow stream possible  
592 under the structure of the transaction, may become negative due  
593 to reasons other than the credit risk associated with the issuer of  
594 the instrument; however, a rated credit instrument will not be a  
595 special rated credit instrument under this subdivision if it is:

596 (i) A share in a class one bond mutual fund;

597 (ii) An instrument, other than an asset-backed security, with  
598 payments of par value fixed as to amount and timing, or  
599 callable but in any event payable only at par or greater, and  
600 interest or dividend cash flows that are based on either a fixed  
601 or variable rate determined by reference to a specified rate or  
602 index;

603 (iii) An instrument, other than an asset-backed security, that  
604 has a par value and is purchased at a price no greater than one  
605 hundred ten percent of par;

606 (iv) An instrument, including an asset-backed security,  
607 whose rate of return would become negative only as a result of  
608 a prepayment due to casualty, condemnation or economic  
609 obsolescence of collateral or change of law;

610 (v) An asset-backed security that relies on collateral that  
611 meets the requirements of subparagraph (ii) of this paragraph,  
612 the par value of which collateral:

613 (I) Is not permitted to be paid sooner than one half of the  
614 remaining term to maturity from the date of acquisition;

615 (II) Is permitted to be paid prior to maturity only at a  
616 premium sufficient to provide a yield to maturity for the  
617 investment, considering the amount prepaid and reinvestment  
618 rates at the time of early repayment, at least equal to the yield  
619 to maturity of the initial investment; or

620 (III) Is permitted to be paid prior to maturity at a premium  
621 at least equal to the yield of a treasury issue of comparable  
622 remaining life; or

623 (vi) An asset-backed security that relies on cash flows from  
624 assets that are not prepayable at any time at par, but is not

625 otherwise governed by subparagraph (v) of this paragraph, if  
626 the asset-backed security has a par value reflecting principal  
627 payments to be received if held until retired by or on behalf of  
628 the issuer and is purchased at a price no greater than one  
629 hundred five percent of such par amount.

630 (B) An asset-backed security that:

631 (i) Relies on cash flows from assets that are prepayable at  
632 par at any time;

633 (ii) Does not make payments of par that are fixed as to  
634 amount and timing; and

635 (iii) Has a negative rate of return at the time of acquisition  
636 if a prepayment threshold assumption is used with the prepay-  
637 ment threshold assumption defined as either:

638 (I) Two times the prepayment expectation reported by a  
639 recognized, publicly available source as being the median of  
640 expectations contributed by broker dealers or other entities,  
641 except insurers, engaged in the business of selling or evaluating  
642 the securities or assets. The prepayment expectation used in  
643 this calculation shall be, at the insurer's election, the prepay-  
644 ment expectation for pass-through securities of the federal  
645 national mortgage association, the federal home loan mortgage  
646 corporation, the government national mortgage association or  
647 for other assets of the same type as the assets that underlie the  
648 asset-backed security, in either case with a gross weighted  
649 average coupon comparable to the gross weighted average  
650 coupon of the assets that underlie the asset-backed security; or

651 (II) Another prepayment threshold assumption specified by  
652 the commissioner by rule promulgated under section eight of  
653 this article.

654 (C) For purposes of paragraph (B) of this subdivision, if the  
655 asset-backed security is purchased in combination with one or  
656 more other asset-backed securities that are supported by  
657 identical underlying collateral, the insurer shall calculate the  
658 rate of return for these specific combined asset-backed securi-  
659 ties in combination. The insurer must maintain documentation  
660 demonstrating that the securities were acquired and are continu-  
661 ing to be held in combination.

662 (81) "State" means a state, territory or possession of the  
663 United States of America, the District of Columbia or the  
664 Commonwealth of Puerto Rico.

665 (82) "Substantially similar securities" means securities that  
666 meet all criteria for substantially similar specified in the NAIC  
667 accounting practices and procedures manual, as amended, and  
668 in an amount that constitutes good delivery form as determined  
669 from time to time by the public securities administration.

670 (83) "SVO" means the securities valuation office of the  
671 NAIC or any successor office established by the NAIC.

672 (84) "Swap" means an agreement to exchange or to net  
673 payments at one or more times based on the actual or expected  
674 price, level, performance or value of one or more underlying  
675 interests.

676 (85) "Underlying interest" means the assets, liabilities,  
677 other interests or a combination thereof underlying a derivative  
678 instrument, such as any one or more securities, currencies,  
679 rates, indices, commodities or derivative instruments.

680 (86) "Unrestricted surplus" means the amount by which  
681 total admitted assets exceed one hundred twenty-five percent of  
682 the insurer's required liabilities.

683 (87) "Warrant" means an instrument that gives the holder  
684 the right to purchase an underlying financial instrument at a  
685 given price and time or at a series of prices and times outlined  
686 in the warrant agreement. Warrants may be issued alone or in  
687 connection with the sale of other securities, for example, as part  
688 of a merger or recapitalization agreement, or to facilitate  
689 divestiture of the securities of another business entity.

### §33-8-3. General investment qualifications.

1 (a) Insurers shall acquire, hold or invest in investments or  
2 engage in investment practices as set forth in this article.  
3 Investments not conforming to this article will not be admitted  
4 assets.

5 (b) Subject to subsection (c) of this section, an insurer may  
6 not acquire or hold an investment as an admitted asset unless at  
7 the time of acquisition it is:

8 (1) Eligible for the payment or accrual of interest or  
9 discount (whether in cash or other securities), eligible to receive  
10 dividends or other distributions or is otherwise income produc-  
11 ing; or

12 (2) Acquired under subsection (c), section fifteen of this  
13 article; sections sixteen, eighteen or twenty of this article;  
14 subsection (c), section twenty-eight of this article; sections  
15 twenty-nine, thirty-one or thirty-two of this article; or under the  
16 authority of sections of the code other than this article.

17 (c) An insurer may acquire or hold as admitted assets  
18 investments that do not otherwise qualify as provided in this  
19 article if the insurer has not acquired them for the purpose of  
20 circumventing any limitations contained in this article, if the  
21 insurer acquires the investments in the following circumstances  
22 and the insurer complies with the provisions of sections five  
23 and seven of this article as to the investments:

24 (1) As payment on account of existing indebtedness or in  
25 connection with the refinancing, restructuring or workout of  
26 existing indebtedness, if taken to protect the insurer's interest  
27 in that investment;

28 (2) As realization on collateral for an obligation;

29 (3) In connection with an otherwise qualified investment or  
30 investment practice, as interest on or a dividend or other  
31 distribution related to the investment or investment practice or  
32 in connection with the refinancing of the investment, in each  
33 case for no additional or only nominal consideration;

34 (4) Under a lawful and bona fide agreement of recapitaliza-  
35 tion or voluntary or involuntary reorganization in connection  
36 with an investment held by the insurer; or

37 (5) Under a bulk reinsurance, merger or consolidation  
38 transaction approved by the commissioner if the assets consti-  
39 tute admissible investments for the ceding, merged or consoli-  
40 dated companies.

41 (d) An investment or portion of an investment acquired by  
42 an insurer under subsection (c) of this section shall become a  
43 nonadmitted asset three years (or five years in the case of  
44 mortgage loans and real estate) from the date of its acquisition,  
45 unless within that period the investment has become a qualified  
46 investment under a section of this article other than subsection  
47 (c) of this section, but an investment acquired under an agree-  
48 ment of bulk reinsurance, merger or consolidation may be  
49 qualified for a longer period if so provided in the plan for  
50 reinsurance, merger or consolidation as approved by the  
51 commissioner. Upon application by the insurer and a showing  
52 that the nonadmission of an asset held under said subsection  
53 would materially injure the interests of the insurer, the commis-  
54 sioner may extend the period for admissibility for an additional  
55 reasonable period of time.

56 (e) Except as provided in subsections (f) and (h) of this  
57 section, an investment shall qualify under this article if, on the  
58 date the insurer committed to acquire the investment or on the  
59 date of its acquisition, it would have qualified under this article.  
60 For the purposes of determining limitations contained in this  
61 article, an insurer shall give appropriate recognition to any  
62 commitments to acquire investments.

63 (f) Investments held and investment transactions entered  
64 into before the effective date of this article are valid as follows:

65 (1) An investment held as an admitted asset by an insurer  
66 on the effective date of this article which qualified under  
67 applicable law in effect before the effective date remains  
68 qualified as an admitted asset under this article; and

69 (2) Each specific transaction constituting an investment  
70 practice of the type described in this article that was lawfully  
71 entered into by an insurer and was in effect on the effective date  
72 of this article continues to be permitted under this article until  
73 its expiration or termination under its terms;

74 (g) Unless otherwise specified, an investment limitation  
75 computed on the basis of an insurer's admitted assets or capital  
76 and surplus relates to the amount required to be shown on the  
77 statutory balance sheet of the insurer most recently required to  
78 be filed with the commissioner. For purposes of computing any  
79 limitation based upon admitted assets, the insurer shall deduct  
80 from the amount of its admitted assets the amount of the  
81 liability recorded on its statutory balance sheet for:

82 (1) The return of acceptable collateral received in a reverse  
83 repurchase transaction or a securities lending transaction;

84 (2) Cash received in a dollar roll transaction; and



85 (3) The amount reported as borrowed money in the most  
86 recently filed financial statement to the extent not included in  
87 subdivisions (1) and (2) of this subsection.

88 (h) An investment qualified, in whole or in part, for  
89 acquisition or holding as an admitted asset may be qualified or  
90 requalified at the time of acquisition or a later date, in whole or  
91 in part, under any other section, if the relevant conditions  
92 contained in the other section are satisfied at the time of  
93 qualification or requalification.

94 (i) An insurer shall maintain documentation demonstrating  
95 that investments were acquired in accordance with this article,  
96 and specifying the section of this article under which they were  
97 acquired.

98 (j) An insurer may not enter into an agreement to purchase  
99 securities in advance of their issuance for resale to the public as  
100 part of a distribution of the securities by the issuer or otherwise  
101 guarantee the distribution, except that an insurer may acquire  
102 privately placed securities with registration rights.

103 (k) Notwithstanding the provisions of this article, the  
104 commissioner, for good cause, may order under the state's  
105 administrative procedures or equivalent, an insurer to nonadmit,  
106 limit, dispose of, withdraw from or discontinue an investment  
107 or investment practice. The authority of the commissioner  
108 under this subsection is in addition to any other authority of the  
109 commissioner.

110 (l) Insurance futures and insurance futures options are not  
111 considered investments or investment practices for purposes of  
112 this article.

**§33-8-4. Authorization of investments by the board of directors.**

1 (a) An insurer's board of directors shall adopt a written plan  
2 for acquiring and holding investments and for engaging in  
3 investment practices that specifies guidelines as to the quality,  
4 maturity and diversification of investments and other specifica-  
5 tions including investment strategies intended to assure that the  
6 investments and investment practices are appropriate for the  
7 business conducted by the insurer, its liquidity needs and its  
8 capital and surplus. The board shall review and assess the  
9 insurer's technical investment and administrative capabilities  
10 and expertise before adopting a written plan concerning an  
11 investment strategy or investment practice.

12 (b) Investments acquired and held under this article shall be  
13 acquired and held under the supervision and direction of the  
14 board of directors of the insurer. The board of directors shall  
15 evidence by formal resolution, at least annually, that it has  
16 determined whether all investments have been made in accor-  
17 dance with delegations, standards, limitations and investment  
18 objectives prescribed by the board or a committee of the board  
19 charged with the responsibility to direct its investments.

20 (c) On no less than a quarterly basis, and more often if  
21 considered appropriate, an insurer's board of directors or  
22 committee of the board of directors shall:

23 (1) Receive and review a summary report on the insurer's  
24 investment portfolio, its investment activities and investment  
25 practices engaged in under delegated authority, in order to  
26 determine whether the investment activity of the insurer is  
27 consistent with its written plan; and

28 (2) Review and revise, as appropriate, the written plan.

29 (d) In discharging its duties under this section, the board of  
30 directors shall require that records of any authorizations or  
31 approvals, other documentation as the board may require and  
32 reports of any action taken under authority delegated under the

33 plan referred to in subsection (a) of this section shall be made  
34 available on a regular basis to the board of directors.

35 (e) In discharging their duties under this section, the  
36 directors of an insurer shall perform their duties in good faith  
37 and with that degree of care that ordinarily prudent individuals  
38 in like positions would use under similar circumstances.

39 (f) If an insurer does not have a board of directors, all  
40 references to the board of directors in this article shall be  
41 considered to be references to the governing body of the insurer  
42 having authority equivalent to that of a board of directors.

### **§33-8-5. Prohibited investments.**

1 An insurer may not, directly or indirectly:

2 (a) Invest in an obligation or security or make a guarantee  
3 for the benefit of or in favor of an officer or director of the  
4 insurer, except as provided in section six of this article;

5 (b) Invest in an obligation or security, make a guarantee for  
6 the benefit of or in favor of, or make other investments in a  
7 business entity of which ten percent or more of the voting  
8 securities or equity interests are owned directly or indirectly by  
9 or for the benefit of one or more officers or directors of the  
10 insurer, except as authorized in article twenty-seven of this  
11 chapter or provided in section six of this article;

12 (c) Engage on its own behalf or through one or more  
13 affiliates in a transaction or series of transactions designed to  
14 evade the prohibitions of this article;

15 (d) Invest in a partnership as a general partner, except that  
16 an insurer may make an investment as a general partner:

17 (1) If all other partners in the partnership are subsidiaries of  
18 the insurer;

19 (2) For the purpose of meeting cash calls committed to  
20 prior to the effective date of this article, completing those  
21 specific projects or activities of the partnership in which the  
22 insurer was a general partner as of the effective date of this  
23 article that had been undertaken as of that date, or making  
24 capital improvements to property owned by the partnership on  
25 the effective date of this article if the insurer was a general  
26 partner as of that date; or

27 (3) In accordance with subsection (c), section three of this  
28 article, this paragraph does not prohibit a subsidiary or other  
29 affiliate of the insurer from becoming a general partner; or

30 (e) Invest in or lend its funds upon the security of shares of  
31 its own stock, except that an insurer may acquire shares of its  
32 own stock for the following purposes, but the shares may not be  
33 admitted assets of the insurer:

34 (1) Conversion of a stock insurer into a mutual or reciprocal  
35 insurer or a mutual or reciprocal insurer into a stock insurer;

36 (2) Issuance to the insurer's officers, employees or agents  
37 in connection with a plan approved by the commissioner for  
38 converting a publicly held insurer into a privately held insurer  
39 or in connection with other stock option and employee benefit  
40 plans; or

41 (3) In accordance with any other plan approved by the  
42 commissioner.

**§33-8-6. Loans to officers and directors.**

1       (a) Except as provided in subsection (b) of this section, an  
2 insurer may not, without the prior written approval of the  
3 commissioner, directly or indirectly:

4       (1) Make a loan to or other investment in an officer or  
5 director of the insurer or a person in which the officer or  
6 director has any direct or indirect financial interest;

7       (2) Make a guarantee for the benefit of or in favor of an  
8 officer or director of the insurer or a person in which the officer  
9 or director has any direct or indirect financial interest; or

10       (3) Enter into an agreement for the purchase or sale of  
11 property from or to an officer or director of the insurer or a  
12 person in which the officer or director has any direct or indirect  
13 financial interest.

14       (b) For purposes of this section, an officer or director may  
15 not be determined to have a financial interest by reason of an  
16 interest that is held directly or indirectly through the ownership  
17 of equity interests representing less than two percent of all  
18 outstanding equity interests issued by a person that is a party to  
19 the transaction, or solely by reason of that individual's position  
20 as a director or officer of a person that is a party to the transac-  
21 tion.

22       (c) This subsection does not permit an investment that is  
23 prohibited by section five of this article.

24       (d) This subsection does not apply to a transaction between  
25 an insurer and any of its subsidiaries or affiliates that is entered  
26 into in compliance with article twenty-seven of this chapter,  
27 other than a transaction between an insurer and its officer or  
28 director.

29       (e) An insurer may make, without the prior written approval  
30 of the commissioner:

31 (1) Policy loans in accordance with the terms of the policy  
32 or contract and section nineteen of this article;

33 (2) Advances to officers or directors for expenses reason-  
34 ably expected to be incurred in the ordinary course of the  
35 insurer's business or guarantees associated with credit or charge  
36 cards issued or credit extended for the purpose of financing  
37 these expenses;

38 (3) Loans secured by the principal residence of an existing  
39 or new officer of the insurer made in connection with the  
40 officer's relocation at the insurer's request, if the loans comply  
41 with the requirements of section fifteen or twenty-eight of this  
42 article and the terms and conditions otherwise are the same as  
43 those generally available from unaffiliated third parties;

44 (4) Secured loans to an existing or new officer of the  
45 insurer made in connection with the officer's relocation at the  
46 insurer's request, if the loans:

47 (A) Do not have a term exceeding two years;

48 (B) Are required to finance mortgage loans outstanding at  
49 the same time on the prior and new residences of the officer;

50 (C) Do not exceed an amount equal to the equity of the  
51 officer in the prior residence; and

52 (D) Are required to be fully repaid upon the earlier of the  
53 end of the two-year period or the sale of the prior residence; and

54 (5) Loans and advances to officers or directors made in  
55 compliance with state or federal law specifically related to the  
56 loans and advances by a regulated noninsurance subsidiary or  
57 affiliate of the insurer in the ordinary course of business and on  
58 terms no more favorable than available to other customers of  
59 the entity.

**§33-8-7. Valuation of investments.**

1 For the purposes of this article, the value or amount of an  
2 investment acquired or held, or an investment practice engaged  
3 in, under this article, unless otherwise specified in this code, is  
4 the value at which assets of an insurer are required to be  
5 reported for statutory accounting purposes as determined in  
6 accordance with procedures prescribed in published accounting  
7 and valuation standards of the NAIC, including the purposes  
8 and procedures of the securities valuation office, the valuation  
9 of securities manual, the accounting practices and procedures  
10 manual, the annual statement instructions or any successor  
11 valuation procedures officially adopted by the NAIC.

**§33-8-8. Rules.**

1 The commissioner may, in accordance with article one,  
2 chapter twenty-nine-a of this code, promulgate rules imple-  
3 menting the provisions of this article.

**§33-8-9. Life and health insurers - Applicability.**

1 Sections ten through twenty, inclusive, of this article apply  
2 to the investments and investment practices of life and health  
3 insurers, subject to the provisions of subsection (b), section one  
4 of this article.

**§33-8-10. Same - General three percent diversification, medium and lower grade investments and Canadian investments.**

1 (a) Except as otherwise specified in this article, an insurer  
2 may not acquire, directly or indirectly through an investment  
3 subsidiary, an investment under this article if, as a result of and  
4 after giving effect to the investment, the insurer would hold  
5 more than three percent of its admitted assets in investments of  
6 all kinds issued, assumed, accepted, insured or guaranteed by a

7 single person, or five percent of its admitted assets in invest-  
8 ments in the voting securities of a depository institution or any  
9 company that controls the institution.

10 (b) This three-percent limitation does not apply to the  
11 aggregate amounts insured by a single financial guaranty  
12 insurer with the highest generic rating issued by a nationally  
13 recognized statistical rating organization.

14 (c) Asset-backed securities are not subject to the limitations  
15 of subsection (a) of this section, however, an insurer may not  
16 acquire an asset-backed security if, as a result of and after  
17 giving effect to the investment, the aggregate amount of  
18 asset-backed securities secured by or evidencing an interest in  
19 a single asset or single pool of assets held by a trust or other  
20 business entity, then held by the insurer would exceed three  
21 percent of its admitted assets.

22 (d) *Medium and lower grade investments.* --

23 An insurer may not acquire, directly or indirectly through  
24 an investment subsidiary, an investment under sections eleven,  
25 fourteen and seventeen of this article or counterparty exposure  
26 under subsection (d), section eighteen of this article if, as a  
27 result of and after giving effect to the investment:

28 (1) The aggregate amount of medium and lower grade  
29 investments then held by the insurer would exceed twenty  
30 percent of its admitted assets;

31 (2) The aggregate amount of lower grade investments then  
32 held by the insurer would exceed ten percent of its admitted  
33 assets;

34 (3) The aggregate amount of investments rated 5 or 6 by the  
35 SVO then held by the insurer would exceed three percent of its  
36 admitted assets;



37 (4) The aggregate amount of investments rated 6 by the  
38 SVO then held by the insurer would exceed one percent of its  
39 admitted assets; or

40 (5) The aggregate amount of medium and lower grade  
41 investments then held by the insurer that receive as cash income  
42 less than the equivalent yield for treasury issues with a compar-  
43 ative average life, would exceed one percent of its admitted  
44 assets.

45 (e) An insurer may not acquire, directly or indirectly  
46 through an investment subsidiary, an investment under sections  
47 eleven, fourteen and seventeen of this article or counterparty  
48 exposure under subsection (d), section eighteen of this article  
49 if, as a result of and after giving effect to the investment:

50 (1) The aggregate amount of medium and lower grade  
51 investments issued, assumed, guaranteed, accepted or insured  
52 by any one person or, as to asset-backed securities secured by  
53 or evidencing an interest in a single asset or pool of assets, then  
54 held by the insurer would exceed one percent of its admitted  
55 assets;

56 (2) The aggregate amount of lower grade investments  
57 issued, assumed, guaranteed, accepted or insured by any one  
58 person or, as to asset-backed securities secured by or evidenc-  
59 ing an interest in a single asset or pool of assets, then held by  
60 the insurer would exceed one half of one percent of its admitted  
61 assets; or

62 (3) If an insurer attains or exceeds the limit of any one  
63 rating category referred to in this subsection, the insurer will  
64 not be precluded from acquiring investments in other rating  
65 categories subject to the specific and multicategory limits  
66 applicable to those investments.

67 (f) *Canadian investments.* --

68 An insurer may not acquire, directly or indirectly through  
69 an investment subsidiary, a Canadian investment authorized by  
70 this article if, as a result of and after giving effect to the  
71 investment, the aggregate amount of these investments then  
72 held by the insurer would exceed forty percent of its admitted  
73 assets, or if the aggregate amount of Canadian investments not  
74 acquired under subdivision (2), section eleven of this article  
75 then held by the insurer would exceed twenty-five percent of its  
76 admitted assets.

77 (g) However, as to an insurer that is authorized to do  
78 business in Canada or that has outstanding insurance, annuity  
79 or reinsurance contracts on lives or risks resident or located in  
80 Canada and denominated in Canadian currency, the limitations  
81 of subsection (f) of this section shall be increased by the greater  
82 of:

83 (1) The amount the insurer is required by Canadian law to  
84 invest in Canada or to be denominated in Canadian currency; or

85 (2) One hundred fifteen percent of the amount of its  
86 reserves and other obligations under contracts on lives or risks  
87 resident or located in Canada.

**§33-8-11. Same - Rated credit instruments.**

1 (a) Subject to the limitations of subsection (b) of this  
2 section, an insurer may acquire rated credit instruments:

3 (1) Subject to the limitations of subsection (b), section ten  
4 of this article, but not to the limitations of subsection (a),  
5 section ten of this article, an insurer may acquire rated credit  
6 instruments issued, assumed, guaranteed or insured by:

7 (A) The United States; or

8 (B) A government-sponsored enterprise of the United  
9 States, if the instruments of the government-sponsored enter-  
10 prise are assumed, guaranteed or insured by the United States  
11 or are otherwise backed or supported by the full faith and credit  
12 of the United States.

13 (2) Subject to the limitations of subsection (b), section ten  
14 of this article, but not to the limitations of subsection (a) of said  
15 section, an insurer may acquire rated credit instruments issued,  
16 assumed, guaranteed or insured by:

17 (A) Canada; or

18 (B) A government-sponsored enterprise of Canada, if the  
19 instruments of the government-sponsored enterprise are  
20 assumed, guaranteed or insured by Canada or are otherwise  
21 backed or supported by the full faith and credit of Canada.  
22 However, an insurer may not acquire an instrument under this  
23 subdivision if, as a result of and after giving effect to the  
24 investment, the aggregate amount of investments then held by  
25 the insurer under this subdivision would exceed forty percent of  
26 its admitted assets.

27 (3) Subject to the limitations of subsection (b), section ten  
28 of this article, but not to the limitations of subsection (a) of said  
29 section, an insurer may acquire rated credit instruments,  
30 excluding asset-backed securities:

31 (A) Issued by a government money market mutual fund, a  
32 class one money market mutual fund or a class one bond mutual  
33 fund;

34 (B) Issued, assumed, guaranteed or insured by a govern-  
35 ment-sponsored enterprise of the United States other than those  
36 eligible under subsection (a) of this section;

37 (C) Issued, assumed, guaranteed or insured by a state, if the  
38 instruments are general obligations of the state; or

39 (D) Issued by a multilateral development bank. However,  
40 an insurer may not acquire an instrument of any one fund, any  
41 one enterprise or entity or any one state under this subdivision  
42 if, as a result of and after giving effect to the investment, the  
43 aggregate amount of investments then held in any one fund,  
44 enterprise or entity or state under this subdivision would exceed  
45 ten percent of its admitted assets.

46 (4) Subject to the limitations of section ten of this article,  
47 an insurer may acquire preferred stocks that are not foreign  
48 investments and that meet the requirements of rated credit  
49 instruments if, as a result of and after giving effect to the  
50 investment:

51 (A) The aggregate amount of preferred stocks then held by  
52 the insurer under this subdivision does not exceed twenty  
53 percent of its admitted assets; and

54 (B) The aggregate amount of preferred stocks then held by  
55 the insurer under this subdivision which are not sinking fund  
56 stocks or rated P1 or P2 by the SVO does not exceed ten  
57 percent of its admitted assets.

58 (5) Subject to the limitations of section ten of this article,  
59 in addition to those investments eligible under subdivisions (1),  
60 (2), (3) and (4) of this section, an insurer may acquire rated  
61 credit instruments that are not foreign investments.

62 (b) An insurer may not acquire special rated credit instru-  
63 ments under this section if, as a result of and after giving effect  
64 to the investment, the aggregate amount of special rated credit  
65 instruments then held by the insurer would exceed five percent  
66 of its admitted assets.

**§33-8-12. Same - Insurer investment pools.**

1 (a) An insurer may acquire investments in investment pools  
2 that:

3 (1) Invest only in:

4 (A) Obligations that are rated 1 or 2 by the SVO or have an  
5 equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or  
6 2 rating or equivalent rating, the issuer has outstanding obliga-  
7 tions with an SVO 1 or 2 or equivalent rating) by a nationally  
8 recognized statistical rating organization recognized by the  
9 SVO and have:

10 (i) A remaining maturity of three hundred ninety-seven  
11 days or less or a put that entitles the holder to receive the  
12 principal amount of the obligation which may be exercised  
13 through maturity at specified intervals not exceeding three  
14 hundred ninety-seven days; or

15 (ii) A remaining maturity of three years or less and a  
16 floating interest rate that resets no less frequently than quarterly  
17 on the basis of a current short-term index (federal funds, prime  
18 rate, treasury bills, London interbank offered rate (LIBOR) or  
19 commercial paper) and is subject to no maximum limit, if the  
20 obligations do not have an interest rate that varies inversely to  
21 market interest rate changes;

22 (B) Government money market mutual funds or class one  
23 money market mutual funds; or

24 (C) Securities lending, repurchase and reverse repurchase  
25 transactions that meet all the requirements of section sixteen of  
26 this article, except the quantitative limitations of subdivision  
27 (4), section sixteen of this article; or

28           (2) Invest only in investments which an insurer may acquire  
29 under this article, if the insurer's proportionate interest in the  
30 amount invested in these investments does not exceed the  
31 applicable limits of this article.

32           (b) For an investment in an investment pool to be qualified  
33 under this article, the investment pool may not:

34           (1) Acquire securities issued, assumed, guaranteed or  
35 insured by the insurer or an affiliate of the insurer;

36           (2) Borrow or incur any indebtedness for borrowed money,  
37 except for securities lending and reverse repurchase transac-  
38 tions that meet the requirements of section sixteen of this article  
39 except the quantitative limitations of subdivision (4), section  
40 sixteen of this article; or

41           (3) Permit the aggregate value of securities then loaned or  
42 sold to, purchased from or invested in any one business entity  
43 under this section to exceed ten percent of the total assets of the  
44 investment pool.

45           (c) The limitations of subsection (a), section ten of this  
46 article do not apply to an insurer's investment in an investment  
47 pool, however, an insurer may not acquire an investment in an  
48 investment pool under this section if, as a result of and after  
49 giving effect to the investment, the aggregate amount of  
50 investments then held by the insurer under this section:

51           (1) In any one investment pool would exceed ten percent of  
52 its admitted assets;

53           (2) In all investment pools investing in investments  
54 permitted under subdivision (2), subsection (a) of this section  
55 would exceed twenty-five percent of its admitted assets; or

56 (3) In all investment pools would exceed thirty-five percent  
57 of its admitted assets.

58 (d) For an investment in an investment pool to be qualified  
59 under this article, the manager of the investment pool shall:

60 (1) Be organized under the laws of the United States or a  
61 state and designated as the pool manager in a pooling agree-  
62 ment;

63 (2) Be the insurer, an affiliated insurer or a business entity  
64 affiliated with the insurer, a qualified bank, a business entity  
65 registered under the Investment Advisors Act of 1940, as  
66 amended, or, in the case of a reciprocal insurer or interinsurance  
67 exchange, its attorney-in-fact, or in the case of a United States  
68 branch of an alien insurer, its United States manager or affili-  
69 ates or subsidiaries of its United States manager;

70 (3) Compile and maintain detailed accounting records  
71 setting forth:

72 (A) The cash receipts and disbursements reflecting each  
73 participant's proportionate investment in the investment pool;

74 (B) A complete description of all underlying assets of the  
75 investment pool (including amount, interest rate, maturity date  
76 (if any) and other appropriate designations); and

77 (C) Other records which, on a daily basis, allow third  
78 parties to verify each participant's investment in the investment  
79 pool; and

80 (4) Maintain the assets of the investment pool in one or  
81 more accounts, in the name of or on behalf of the investment  
82 pool, under a custody agreement with a qualified bank. The  
83 custody agreement shall:

84 (A) State and recognize the claims and rights of each  
85 participant;

86 (B) Acknowledge that the underlying assets of the invest-  
87 ment pool are held solely for the benefit of each participant in  
88 proportion to the aggregate amount of its investments in the  
89 investment pool; and

90 (C) Contain an agreement that the underlying assets of the  
91 investment pool may not be commingled with the general assets  
92 of the custodian qualified bank or any other person.

93 (e) The pooling agreement for each investment pool shall  
94 be in writing and shall provide that:

95 (1) An insurer and its affiliated insurers or, in the case of an  
96 investment pool investing solely in investments permitted under  
97 subdivision (1), subsection (a) of this section, the insurer and its  
98 subsidiaries, affiliates or any pension or profit sharing plan of  
99 the insurer, its subsidiaries and affiliates or, in the case of a  
100 United States branch of an alien insurer, affiliates or subsidiar-  
101 ies of its United States manager, shall, at all times, hold one  
102 hundred percent of the interests in the investment pool;

103 (2) The underlying assets of the investment pool may not be  
104 commingled with the general assets of the pool manager or any  
105 other person;

106 (3) In proportion to the aggregate amount of each pool  
107 participant's interest in the investment pool:

108 (A) Each participant owns an undivided interest in the  
109 underlying assets of the investment pool; and

110 (B) The underlying assets of the investment pool are held  
111 solely for the benefit of each participant;



112 (4) A participant, or in the event of the participant's  
113 insolvency, bankruptcy or receivership, its trustee, receiver or  
114 other successor-in-interest, may withdraw all or any portion of  
115 its investment from the investment pool under the terms of the  
116 pooling agreement;

117 (5) Withdrawals may be made on demand without penalty  
118 or other assessment on any business day, but settlement of  
119 funds shall occur within a reasonable and customary period  
120 thereafter not to exceed five business days. Distributions under  
121 this subdivision shall be calculated in each case net of all then  
122 applicable fees and expenses of the investment pool. The  
123 pooling agreement shall provide that the pool manager shall  
124 distribute to a participant, at the discretion of the pool manager:

125 (A) In cash, the then fair market value of the participant's  
126 pro rata share of each underlying asset of the investment pool;

127 (B) In kind, a pro rata share of each underlying asset; or

128 (C) In a combination of cash and in kind distributions, a pro  
129 rata share in each underlying asset; and

130 (6) The pool manager shall make the records of the invest-  
131 ment pool available for inspection by the commissioner.

**§33-8-13. Same - Equity interests.**

1 (a) Subject to the limitations of section ten of this article, an  
2 insurer may acquire equity interests in business entities  
3 organized under the laws of any domestic jurisdiction.

4 (b) An insurer may not acquire an investment under this  
5 section if, as a result of and after giving effect to the invest-  
6 ment, the aggregate amount of investments then held by the  
7 insurer under this section would exceed twenty percent of its  
8 admitted assets, or the amount of equity interests then held by

9 the insurer that are not listed on a qualified exchange would  
10 exceed five percent of its admitted assets. An accident and  
11 sickness insurer, health maintenance organization, hospital  
12 service corporation, medical service corporation, dental service  
13 corporation, or health service corporation is not subject to this  
14 section but is subject to the same aggregate limitation on equity  
15 interests as a property and casualty insurer under section  
16 twenty-six of this article and also to the provisions of section  
17 twenty-two of this article.

18 (c) An insurer may not acquire under this section any  
19 investments that the insurer may acquire under section fifteen  
20 of this article.

21 (d) An insurer may not short sell equity investments unless  
22 the insurer covers the short sale by owning the equity invest-  
23 ment or an unrestricted right to the equity instrument exercis-  
24 able within six months of the short sale.

**§33-8-14. Same - Tangible personal property under lease.**

1 (a) Subject to the limitations of section ten of this article, an  
2 insurer may acquire tangible personal property or equity  
3 interests in tangible personal property located or used wholly,  
4 or in part, within a domestic jurisdiction either directly or  
5 indirectly through limited partnership interests and general  
6 partnership interests not otherwise prohibited by subdivision  
7 (4), section five of this article, joint ventures, stock of an  
8 investment subsidiary or membership interests in a limited  
9 liability company, trust certificates or other similar instruments.

10 (b) Investments acquired under subsection (a) of this  
11 section are eligible only if:

12 (1) The property is subject to a lease or other agreement  
13 with a person whose rated credit instruments in the amount of

14 the purchase price of the personal property the insurer could  
15 then acquire under section eleven of this article; and

16 (2) The lease or other agreement provides the insurer the  
17 right to receive rental, purchase or other fixed payments for the  
18 use or purchase of the property, and the aggregate value of the  
19 payments, together with the estimated residual value of the  
20 property at the end of its useful life and the estimated tax  
21 benefits to the insurer resulting from ownership of the property,  
22 shall be adequate to return the cost of the insurer's investment  
23 in the property, plus a return considered adequate by the  
24 insurer.

25 (c) The insurer shall compute the amount of each invest-  
26 ment under this section on the basis of the out-of-pocket  
27 purchase price and applicable related expenses paid by the  
28 insurer for the investment, net of each borrowing made to  
29 finance the purchase price and expenses, to the extent the  
30 borrowing is without recourse to the insurer.

31 (d) An insurer may not acquire an investment under this  
32 section if, as a result of and after giving effect to the invest-  
33 ment, the aggregate amount of all investments then held by the  
34 insurer under this section would exceed:

35 (1) Two percent of its admitted assets; or

36 (2) One half of one percent of its admitted assets as to any  
37 single item of tangible personal property.

38 (e) For purposes of determining compliance with the  
39 limitations of section ten of this article, investments acquired by  
40 an insurer under this section shall be aggregated with those  
41 acquired under section eleven of this article, and each lessee of  
42 the property under a lease referred to in this section shall be  
43 considered the issuer of an obligation in the amount of the

44 investment of the insurer in the property determined as pro-  
45 vided in subsection (c) of this section.

46 (f) Nothing in this section is applicable to tangible personal  
47 property lease arrangements between an insurer and its subsid-  
48 iaries and affiliates under a cost sharing arrangement or  
49 agreement permitted under article twenty-seven of this chapter.

**§33-8-15. Same - Mortgage loans and real estate.**

1 (a) Subject to the limitations of section ten of this article, an  
2 insurer may acquire, either directly, indirectly through limited  
3 partnership interests and general partnership interests not  
4 otherwise prohibited by subsection (d), section five of this  
5 article, joint ventures, stock of an investment subsidiary or  
6 membership interests in a limited liability company, trust  
7 certificates, or other similar instruments, obligations secured by  
8 mortgages on real estate situated within a domestic jurisdiction,  
9 but a mortgage loan which is secured by other than a first lien  
10 may not be acquired unless the insurer is the holder of the first  
11 lien. The obligations held by the insurer and any obligations  
12 with an equal lien priority may not, at the time of acquisition of  
13 the obligation, exceed:

14 (1) Ninety percent of the fair market value of the real estate,  
15 if the mortgage loan is secured by a purchase money mortgage  
16 or like security received by the insurer upon disposition of the  
17 real estate;

18 (2) Eighty percent of the fair market value of the real estate,  
19 if the mortgage loan requires immediate scheduled payment in  
20 periodic installments of principal and interest, has an amortiza-  
21 tion period of thirty years or less and periodic payments made  
22 no less frequently than annually. Each periodic payment shall  
23 be sufficient to assure that at all times the outstanding principal  
24 balance of the mortgage loan is not greater than the outstanding  
25 principal balance that would be outstanding under a mortgage

26 loan with the same original principal balance, with the same  
27 interest rate and requiring equal payments of principal and  
28 interest with the same frequency over the same amortization  
29 period. Mortgage loans permitted under this subsection are  
30 permitted notwithstanding the fact that they provide for a  
31 payment of the principal balance prior to the end of the period  
32 of amortization of the loan. For residential mortgage loans, the  
33 eighty percent limitation may be increased to ninety-seven  
34 percent if acceptable private mortgage insurance has been  
35 obtained; or

36 (3) Seventy-five percent of the fair market value of the real  
37 estate for mortgage loans that do not meet the requirements of  
38 subdivision (1) or (2) of this subsection.

39 (b) For purposes of subsection (a) of this section, the  
40 amount of an obligation required to be included in the calcula-  
41 tion of the loan-to-value ratio may be reduced to the extent the  
42 obligation is insured by the federal housing administration or  
43 guaranteed by the administrator of veterans affairs, or their  
44 successors.

45 (c) A mortgage loan that is held by an insurer under  
46 subsection (f), section three of this article or acquired under this  
47 section and is restructured in a manner that meets the require-  
48 ments of a restructured mortgage loan in accordance with the  
49 NAIC accounting practices and procedures manual or successor  
50 publication continues to qualify as a mortgage loan under this  
51 article.

52 (d) Subject to the limitations of section ten of this article,  
53 credit lease transactions that do not qualify for investment  
54 under section eleven of this article with the following character-  
55 istics are exempt from the provisions of subsection (a) of this  
56 section:

57 (1) The loan amortizes over the initial fixed lease term at  
58 least in an amount sufficient so that the loan balance at the end  
59 of the lease term does not exceed the original appraised value  
60 of the real estate;

61 (2) The lease payments cover or exceed the total debt  
62 service over the life of the loan;

63 (3) A tenant or its affiliated entity whose rated credit  
64 instruments have an SVO 1 or 2 designation or a comparable  
65 rating from a nationally recognized statistical rating organiza-  
66 tion recognized by the SVO has a full faith and credit obligation  
67 to make the lease payments;

68 (4) The insurer holds or is the beneficial holder of a first  
69 lien mortgage on the real estate;

70 (5) The expenses of the real estate are passed through to the  
71 tenant, excluding exterior, structural, parking and heating,  
72 ventilation and air conditioning replacement expenses, unless  
73 annual escrow contributions, from cash flows derived from the  
74 lease payments, cover the expense shortfall; and

75 (6) There is a perfected assignment of the rents due  
76 pursuant to the lease to, or for the benefit of, the insurer.

77 (e) An insurer may acquire, manage and dispose of real  
78 estate situated in a domestic jurisdiction either directly or  
79 indirectly through limited partnership interests and general  
80 partnership interests not otherwise prohibited by subsection (d),  
81 section five of this article, joint ventures, stock of an investment  
82 subsidiary or membership interests in a limited liability  
83 company, trust certificates or other similar instruments. The  
84 real estate shall be income producing or intended for improve-  
85 ment or development for investment purposes under an existing  
86 program (in which case the real estate shall be considered to be  
87 income producing).

88 (f) Income producing real estate that is acquired, managed  
89 or disposed of pursuant to subsection (e) of this section may be  
90 subject to mortgages, liens or other encumbrances, the amount  
91 of which may, to the extent that the obligations secured by the  
92 mortgages, liens or encumbrances are without recourse to the  
93 insurer, be deducted from the amount of the investment of the  
94 insurer in the real estate for purposes of determining compli-  
95 ance with subsections (i) and (j) of this section.

96 (g) An insurer may acquire, manage, and dispose of real  
97 estate for the convenient accommodation of the insurer's  
98 (which may include its affiliates) business operations, including  
99 home office, branch office and field office operations, as  
100 follows:

101 (1) Real estate acquired under this subsection may include  
102 excess space for rent to others, if the excess space, valued at its  
103 fair market value, would otherwise be a permitted investment  
104 under subsection (e) of this section and is qualified by the  
105 insurer;

106 (2) The real estate acquired under this subsection may be  
107 subject to one or more mortgages, liens or other encumbrances,  
108 the amount of which may, to the extent that the obligations  
109 secured by the mortgages, liens or encumbrances are without  
110 recourse to the insurer, be deducted from the amount of the  
111 investment of the insurer in the real estate for purposes of  
112 determining compliance with subsection (k) of this section; and

113 (3) For purposes of this subsection, business operations  
114 may not include that portion of real estate used for the direct  
115 provision of health care services by an accident and sickness  
116 insurer for its insureds. An insurer may acquire real estate used  
117 for these purposes under subsection (e) of this section.

118 (h) An insurer may not acquire an investment under  
119 subsection (a) of this section if, as a result of and after giving

120 effect to the investment, the aggregate amount of all invest-  
121 ments then held by the insurer under subsection (a) of this  
122 section would exceed:

123 (1) One percent of its admitted assets in mortgage loans  
124 covering any one secured location;

125 (2) One quarter of one percent of its admitted assets in  
126 construction loans covering any one secured location; or

127 (3) Two percent of its admitted assets in construction loans  
128 in the aggregate.

129 (i) An insurer may not acquire an investment under  
130 subsections (e) and (f) of this section if, as a result of and after  
131 giving effect to the investment and any outstanding guarantees  
132 made by the insurer in connection with the investment, the  
133 aggregate amount of investments then held by the insurer under  
134 subsections (e) and (f) of this section plus the guarantees then  
135 outstanding would exceed:

136 (1) One percent of its admitted assets in one parcel or group  
137 of contiguous parcels of real estate, except that this limitation  
138 may not apply to that portion of real estate used for the direct  
139 provision of health care services by an accident and sickness  
140 insurer for its insureds, such as hospitals, medical clinics,  
141 medical professional buildings or other health facilities used for  
142 the purpose of providing health services; or

143 (2) Fifteen percent of its admitted assets in the aggregate,  
144 but not more than five percent of its admitted assets as to  
145 properties that are to be improved or developed.

146 (j) An insurer may not acquire an investment under  
147 subsection (a) or (e) of this section if, as a result of and after  
148 giving effect to the investment and any guarantees made by the  
149 insurer in connection with the investment, the aggregate amount



150 of all investments then held by the insurer under subsections (a)  
151 and (e) of this section plus the guarantees then outstanding  
152 would exceed forty-five percent of its admitted assets. How-  
153 ever, an insurer may exceed this limitation by no more than  
154 thirty percent of its admitted assets if:

155 (1) This increased amount is invested only in residential  
156 mortgage loans;

157 (2) The insurer has no more than ten percent of its admitted  
158 assets invested in mortgage loans other than residential mort-  
159 gage loans;

160 (3) The loan-to-value ratio of each residential mortgage  
161 loan does not exceed sixty percent at the time the mortgage loan  
162 is qualified under this increased authority and the fair market  
163 value is supported by an appraisal no more than two years old,  
164 prepared by an independent appraiser;

165 (4) A single mortgage loan qualified under this increased  
166 authority may not exceed one half of one percent of its admitted  
167 assets;

168 (5) The insurer files with the commissioner, and receives  
169 approval from the commissioner for, a plan that is designed to  
170 result in a portfolio of residential mortgage loans that is  
171 sufficiently geographically diversified; and

172 (6) The insurer agrees to file annually with the commis-  
173 sioner records that demonstrate that its portfolio of residential  
174 mortgage loans is geographically diversified in accordance with  
175 the plan.

176 (k) The limitations of section ten of this article do not apply  
177 to an insurer's acquisition of real estate under subsection (g) of  
178 this section. An insurer may not acquire real estate under said  
179 subsection if, as a result of and after giving effect to the

180 acquisition, the aggregate amount of real estate then held by the  
181 insurer under said subsection would exceed ten percent of its  
182 admitted assets. With the permission of the commissioner,  
183 additional amounts of real estate may be acquired under said  
184 subsection.

**§33-8-16. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.**

1 (a) An insurer may enter into securities lending, repurchase,  
2 reverse repurchase and dollar roll transactions with business  
3 entities, subject to the following requirements:

4 (1) The insurer's board of directors shall adopt a written  
5 plan that is consistent with the requirements of the written plan  
6 in subsection (a), section four of this article that specifies  
7 guidelines and objectives to be followed, such as:

8 (A) A description of how cash received will be invested or  
9 used for general corporate purposes of the insurer;

10 (B) Operational procedures to manage interest rate risk,  
11 counterparty default risk, the conditions under which proceeds  
12 from reverse repurchase transactions may be used in the  
13 ordinary course of business and the use of acceptable collateral  
14 in a manner that reflects the liquidity needs of the transaction;  
15 and

16 (C) The extent to which the insurer may engage in these  
17 transactions.

18 (2) The insurer shall enter into a written agreement for all  
19 transactions authorized in this section other than dollar roll  
20 transactions. The written agreement shall require that each  
21 transaction terminate no more than one year from its inception  
22 or upon the earlier demand of the insurer. The agreement shall  
23 be with the business entity counterparty, but for securities

24 lending transactions, the agreement shall be with an agent  
25 acting on behalf of the insurer, if the agent is a qualified  
26 business entity, and if the agreement:

27 (A) Requires the agent to enter into separate agreements  
28 with each counterparty that are consistent with the requirements  
29 of this section; and

30 (B) Prohibits securities lending transactions under the  
31 agreement with the agent or its affiliates.

32 (3) Cash received in a transaction under this section shall be  
33 invested in accordance with this article and in a manner that  
34 recognizes the liquidity needs of the transaction or used by the  
35 insurer for its general corporate purposes. For so long as the  
36 transaction remains outstanding, the insurer, its agent or  
37 custodian shall maintain, as to acceptable collateral received in  
38 a transaction under this section, either physically or through the  
39 book entry systems of the federal reserve, depository trust  
40 company, participants trust company or other securities  
41 depositories approved by the commissioner:

42 (A) Possession of the acceptable collateral;

43 (B) A perfected security interest in the acceptable collat-  
44 eral; or

45 (C) In the case of a jurisdiction outside of the United States,  
46 title to, or rights of a secured creditor to, the acceptable  
47 collateral.

48 (4) In a securities lending transaction, the insurer shall  
49 receive acceptable collateral having a market value as of the  
50 transaction date at least equal to one hundred two percent of the  
51 market value of the securities loaned by the insurer in the  
52 transaction as of that date. If at any time the market value of  
53 the acceptable collateral is less than the market value of the

54 loaned securities, the business entity counterparty shall be  
55 obligated to deliver additional acceptable collateral, the market  
56 value of which, together with the market value of all acceptable  
57 collateral then held in connection with the transaction, at least  
58 equals one hundred two percent of the market value of the  
59 loaned securities.

60 (5) In a reverse repurchase transaction, other than a dollar  
61 roll transaction, the insurer shall receive acceptable collateral  
62 having a market value as of the transaction date at least equal  
63 to ninety-five percent of the market value of the securities  
64 transferred by the insurer in the transaction as of that date. If at  
65 any time the market value of the acceptable collateral is less  
66 than ninety-five percent of the market value of the securities so  
67 transferred, the business entity counterparty is obligated to  
68 deliver additional acceptable collateral, the market value of  
69 which, together with the market value of all acceptable collat-  
70 eral then held in connection with the transaction, at least equals  
71 ninety-five percent of the market value of the transferred  
72 securities.

73 (6) In a dollar roll transaction, the insurer shall receive cash  
74 in an amount at least equal to the market value of the securities  
75 transferred by the insurer in the transaction as of the transaction  
76 date.

77 (7) In a repurchase transaction, the insurer shall receive as  
78 acceptable collateral transferred securities having a market  
79 value at least equal to one hundred two percent of the purchase  
80 price paid by the insurer for the securities. If at any time the  
81 market value of the acceptable collateral is less than one  
82 hundred percent of the purchase price paid by the insurer, the  
83 business entity counterparty is obligated to provide additional  
84 acceptable collateral, the market value of which, together with  
85 the market value of all acceptable collateral then held in  
86 connection with the transaction, at least equals one hundred two

87 percent of the purchase price. Securities acquired by an insurer  
88 in a repurchase transaction may not be sold in a reverse  
89 repurchase transaction, loaned in a securities lending transac-  
90 tion or otherwise pledged.

91 (b) The limitations of sections ten and seventeen of this  
92 article do not apply to the business entity counterparty exposure  
93 created by transactions under this section. For purposes of  
94 calculations made to determine compliance with this subsec-  
95 tion, no effect will be given to the insurer's future obligation to  
96 resell securities, in the case of a repurchase transaction, or to  
97 repurchase securities, in the case of a reverse repurchase  
98 transaction. An insurer may not enter into a transaction under  
99 this section if, as a result of and after giving effect to the  
100 transaction:

101 (1) The aggregate amount of securities then loaned, sold to  
102 or purchased from any one business entity counterparty under  
103 this section would exceed five percent of its admitted assets. In  
104 calculating the amount sold to or purchased from a business  
105 entity counterparty under repurchase or reverse repurchase  
106 transactions, effect will be given to netting provisions under a  
107 master written agreement; or

108 (2) The aggregate amount of all securities then loaned, sold  
109 to or purchased from all business entities under this section  
110 would exceed forty percent of its admitted assets.

**§33-8-17. Same - Foreign investments and foreign currency  
exposure.**

1 (a) Subject to the limitations of section ten of this article, an  
2 insurer may acquire foreign investments, or engage in invest-  
3 ment practices with persons of or in foreign jurisdictions, of  
4 substantially the same types as those that an insurer is permitted  
5 to acquire under this article, other than of the type permitted

6 under section twelve of this article, if, as a result and after  
7 giving effect to the investment:

8 (1) The aggregate amount of foreign investments then held  
9 by the insurer under this subsection does not exceed twenty  
10 percent of its admitted assets; and

11 (2) The aggregate amount of foreign investments then held  
12 by the insurer under this subsection in a single foreign jurisdic-  
13 tion does not exceed ten percent of its admitted assets as to a  
14 foreign jurisdiction that has a sovereign debt rating of SVO 1 or  
15 three percent of its admitted assets as to any other foreign  
16 jurisdiction.

17 (b) Subject to the limitations of section ten of this article,  
18 an insurer may acquire investments, or engage in investment  
19 practices denominated in foreign currencies, whether or not  
20 they are foreign investments acquired under subsection (a) of  
21 this section, or additional foreign currency exposure as a result  
22 of the termination or expiration of a hedging transaction with  
23 respect to investments denominated in a foreign currency, if:

24 (1) The aggregate amount of investments then held by the  
25 insurer under this subsection denominated in foreign currencies  
26 does not exceed ten percent of its admitted assets; and

27 (2) The aggregate amount of investments then held by the  
28 insurer under this subsection denominated in the foreign  
29 currency of a single foreign jurisdiction does not exceed ten  
30 percent of its admitted assets as to a foreign jurisdiction that has  
31 a sovereign debt rating of SVO 1 or three percent of its admit-  
32 ted assets as to any other foreign jurisdiction; an investment  
33 will not be considered denominated in a foreign currency if the  
34 acquiring insurer enters into one or more contracts in transac-  
35 tions permitted under section eighteen of this article and the  
36 business entity counterparty agrees under the contract or  
37 contracts to exchange all payments made on the foreign

38 currency denominated investment for United States currency at  
39 a rate which effectively insulates the investment cash flows  
40 against future changes in currency exchange rates during the  
41 period the contract or contracts are in effect.

42 (c) In addition to investments permitted under subsections  
43 (a) and (b) of this section, an insurer that is authorized to do  
44 business in a foreign jurisdiction, and that has outstanding  
45 insurance, annuity or reinsurance contracts on lives or risks  
46 resident or located in that foreign jurisdiction and denominated  
47 in foreign currency of that jurisdiction, may acquire foreign  
48 investments respecting that foreign jurisdiction, and may  
49 acquire investments denominated in the currency of that  
50 jurisdiction, subject to the limitations of section ten of this  
51 article. However, investments made under this subsection in  
52 obligations of foreign governments, their political subdivisions  
53 and government-sponsored enterprises will not be subject to the  
54 limitations of section ten of this article if those investments  
55 carry an SVO rating of 1 or 2. The aggregate amount of  
56 investments acquired by the insurer under this subsection may  
57 not exceed the greater of:

58 (1) The amount the insurer is required by the law of the  
59 foreign jurisdiction to invest in the foreign jurisdiction; or

60 (2) One hundred fifteen percent of the amount of its  
61 reserves, net of reinsurance, and other obligations under the  
62 contracts on lives or risks resident or located in the foreign  
63 jurisdiction.

64 (d) In addition to investments permitted under subsections  
65 (a) and (b) of this section, an insurer that is not authorized to do  
66 business in a foreign jurisdiction, but which has outstanding  
67 insurance, annuity or reinsurance contracts on lives or risks  
68 resident or located in that foreign jurisdiction and denominated  
69 in foreign currency of that jurisdiction, may acquire foreign

70 investments respecting that foreign jurisdiction, and may  
71 acquire investments denominated in the currency of that  
72 jurisdiction subject to the limitations of section ten of this  
73 article. However, investments made under this subsection in  
74 obligations of foreign governments, their political subdivisions  
75 and government-sponsored enterprises are not subject to the  
76 limitations of section ten of this article if those investments  
77 carry an SVO rating of 1 or 2. The aggregate amount of  
78 investments acquired by the insurer under this subsection may  
79 not exceed one hundred five percent of the amount of its  
80 reserves, net of reinsurance, and other obligations under the  
81 contracts on lives or risks resident or located in the foreign  
82 jurisdiction.

83 (e) Investments acquired under this section shall be  
84 aggregated with investments of the same types made under all  
85 other sections of this article, and in a similar manner, for  
86 purposes of determining compliance with the limitations, if any,  
87 contained in the other sections. Investments in obligations of  
88 foreign governments, their political subdivisions and govern-  
89 ment-sponsored enterprises of these persons, except for those  
90 exempted under subsections (c) and (d) of this section, are  
91 subject to the limitations of section ten of this article.

**§33-8-18. Same - Derivative transactions.**

1 (a) An insurer may, directly or indirectly through an  
2 investment subsidiary, engage in derivative transactions under  
3 this section under the following conditions:

4 (1) An insurer may use derivative instruments under this  
5 section to engage in hedging transactions and certain income  
6 generation transactions, as these terms may be further defined  
7 in rules promulgated by the commissioner.

8 (2) An insurer shall be able to demonstrate to the commis-  
9 sioner the intended hedging characteristics and the ongoing



10 effectiveness of the derivative transaction or combination of the  
11 transactions through cash flow testing or other appropriate  
12 analyses.

13 (b) An insurer may enter into hedging transactions under  
14 this section if, as a result of and after giving effect to the  
15 transaction:

16 (1) The aggregate statement value of options, caps, floors  
17 and warrants not attached to another financial instrument  
18 purchased and used in hedging transactions does not exceed  
19 seven and one-half percent of its admitted assets;

20 (2) The aggregate statement value of options, caps and  
21 floors written in hedging transactions does not exceed three  
22 percent of its admitted assets; and

23 (3) The aggregate potential exposure of collars, swaps,  
24 forwards and futures used in hedging transactions does not  
25 exceed six and one-half percent of its admitted assets.

26 (c) An insurer may only enter into the following types of  
27 income generation transactions if as a result of and after giving  
28 effect to the transactions, the aggregate statement value of the  
29 fixed income assets that are subject to call or that generate the  
30 cash flows for payments under the caps or floors, plus the face  
31 value of fixed income securities underlying a derivative  
32 instrument subject to call, plus the amount of the purchase  
33 obligations under the puts, does not exceed ten percent of its  
34 admitted assets:

35 (1) Sales of covered call options on noncallable fixed  
36 income securities, callable fixed income securities if the option  
37 expires by its terms prior to the end of the noncallable period or  
38 derivative instruments based on fixed income securities;

39 (2) Sales of covered call options on equity securities, if the  
40 insurer holds in its portfolio, or can immediately acquire  
41 through the exercise of options, warrants or conversion rights  
42 already owned, the equity securities subject to call during the  
43 complete term of the call option sold;

44 (3) Sales of covered puts on investments that the insurer is  
45 permitted to acquire under this article, if the insurer has  
46 escrowed, or entered into a custodian agreement segregating,  
47 cash or cash equivalents with a market value equal to the  
48 amount of its purchase obligations under the put during the  
49 complete term of the put option sold; or

50 (4) Sales of covered caps or floors, if the insurer holds in its  
51 portfolio the investments generating the cash flow to make the  
52 required payments under the caps or floors during the complete  
53 term that the cap or floor is outstanding.

54 (d) An insurer shall include all counterparty exposure  
55 amounts in determining compliance with the limitations of  
56 section ten of this article.

57 (e) Pursuant to rules promulgated under section eight of this  
58 article, the commissioner may approve additional transactions  
59 involving the use of derivative instruments in excess of the  
60 limits of subsection (b) of this section or for other risk manage-  
61 ment purposes under rules promulgated by the commissioner,  
62 but replication transactions may not be permitted for other than  
63 risk management purposes.

### **§33-8-19. Same - Policy loans.**

1 A life insurer may lend to a policyholder on the security of  
2 the cash surrender value of the policyholder's policy a sum not  
3 exceeding the legal reserve that the insurer is required to  
4 maintain on the policy.

**§33-8-20. Same - Additional investment authority.**

1 (a) Solely for the purpose of acquiring investments that  
2 exceed the quantitative limitations of sections ten through  
3 seventeen, inclusive, of this article, an insurer may acquire  
4 under this subsection an investment, or engage in investment  
5 practices described in section sixteen of this article, but an  
6 insurer may not acquire an investment, or engage in investment  
7 practices described in said section, under this subsection if, as  
8 a result of and after giving effect to the transaction:

9 (1) The aggregate amount of investments then held by an  
10 insurer under this subsection would exceed three percent of its  
11 admitted assets; or

12 (2) The aggregate amount of investments as to one limita-  
13 tion in sections ten through seventeen, inclusive, of this article  
14 then held by the insurer under this subsection would exceed one  
15 percent of its admitted assets.

16 (b) In addition to the authority provided under subsection  
17 (a) of this section, an insurer may acquire under this subsection  
18 an investment of any kind, or engage in investment practices  
19 described in section sixteen of this article, that are not specifi-  
20 cally prohibited by this article, without regard to the categories,  
21 conditions, standards or other limitations of sections ten  
22 through seventeen, inclusive, of this article if, as a result of and  
23 after giving effect to the transaction, the aggregate amount of  
24 investments then held under this subsection would not exceed  
25 the lesser of:

26 (1) Ten percent of its admitted assets; or

27 (2) Seventy-five percent of its capital and surplus. How-  
28 ever, an insurer may not acquire any investment or engage in  
29 any investment practice under this subsection if, as a result of  
30 and after giving effect to the transaction, the aggregate amount

31 of all investments in any one person then held by the insurer  
32 under this subsection would exceed three percent of its admitted  
33 assets.

34 (c) In addition to the investments acquired under subsec-  
35 tions (a) and (b) of this section, an insurer may acquire under  
36 this subsection an investment of any kind, or engage in invest-  
37 ment practices described in section sixteen of this article, that  
38 are not specifically prohibited by this article without regard to  
39 any limitations of sections ten through seventeen, inclusive, of  
40 this article if:

41 (1) The commissioner grants prior approval;

42 (2) The insurer demonstrates that its investments are being  
43 made in a prudent manner and that the additional amounts will  
44 be invested in a prudent manner; and

45 (3) As a result of and after giving effect to the transaction  
46 the aggregate amount of investments then held by the insurer  
47 under this subsection does not exceed the greater of:

48 (A) Twenty-five percent of its capital and surplus; or

49 (B) One hundred percent of capital and surplus less ten  
50 percent of its admitted assets.

51 (d) An investment prohibited under section five of this  
52 article, not permitted under section eighteen of this article or  
53 additional derivative instruments acquired under said section  
54 may not be acquired under this section.

**§33-8-21. Property and casualty, financial guaranty and mort-  
gage guaranty insurers - Applicability.**

1 Sections twenty-two through thirty-two, inclusive, of this  
2 article apply to the investments and investment practices of

3 property and casualty, financial guaranty and mortgage guar-  
4 anty insurers, subject to the provisions of subsection (b), section  
5 one of this article.

**§33-8-22. Same - Reserve requirements.**

1 (a) Subject to all other limitations and requirements of this  
2 article, a property and casualty, financial guaranty, mortgage  
3 guaranty or accident and sickness insurer shall maintain an  
4 amount at least equal to one hundred percent of adjusted loss  
5 reserves and loss adjustment expense reserves, one hundred  
6 percent of adjusted unearned premium reserves and one  
7 hundred percent of statutorily required policy and contract  
8 reserves in:

9 (1) Cash and cash equivalents;

10 (2) High and medium grade investments that qualify under  
11 section twenty-four or twenty-five of this article;

12 (3) Equity interests that qualify under section twenty-six of  
13 this article and that are traded on a qualified exchange;

14 (4) Investments of the type set forth in section thirty of this  
15 article if the investments are rated in the highest generic rating  
16 category by a nationally recognized statistical rating organiza-  
17 tion recognized by the SVO for rating foreign jurisdictions and  
18 if any foreign currency exposure is effectively hedged through  
19 the maturity date of the investments;

20 (5) Qualifying investments of the type set forth in subdivi-  
21 sion (2), (3) or (4) of this subsection that are acquired under  
22 section thirty-two of this article;

23 (6) Interest and dividends receivable on qualifying invest-  
24 ments of the type set forth in subdivisions (1) through (5),  
25 inclusive, of this subsection; or

26 (7) Reinsurance recoverable on paid losses.

27 (b) For purposes of determining the amount of assets to be  
28 maintained under subsection (a) of this section, the calculation  
29 of adjusted loss reserves and loss adjustment expense reserves,  
30 adjusted unearned premium reserves and statutorily required  
31 policy and contract reserves shall be based on the amounts  
32 reported as of the most recent annual or quarterly statement  
33 date.

34 (1) Adjusted loss reserves and loss adjustment expense  
35 reserves shall be equal to the sum of the amounts derived from  
36 the following calculations:

37 (A) The result of each amount reported by the insurer as  
38 losses and loss adjustment expenses unpaid for each accident  
39 year for each individual line of business; multiplied by

40 (B) The discount factor that is applicable to the line of  
41 business and accident year published by the internal revenue  
42 service under Section 846 of the Internal Revenue Code, as  
43 amended, for the calendar year that corresponds to the most  
44 recent annual statement of the insurer; minus

45 (C) Accrued retrospective premiums discounted by an  
46 average discount factor. The discount factor shall be calculated  
47 by dividing the losses and loss adjustment expenses unpaid  
48 after discounting (the product of subparagraphs (i) and (ii) of  
49 this paragraph) by loss and loss adjustment expense reserves  
50 before discounting subparagraph (i) of this paragraph.

51 (D) For purposes of these calculations, the losses and loss  
52 adjustment expenses unpaid shall be determined net of antici-  
53 pated salvage and subrogation, and gross of any discount for the  
54 time value of money or tabular discount.

55 (2) Adjusted unearned premium reserves shall be equal to  
56 the result of the following calculation:

57 (A) The amount reported by the insurer as unearned  
58 premium reserves; minus

59 (B) The admitted asset amounts reported by the insurer as:

60 (i) Premiums in and agents' balances in the course of  
61 collection, accident and sickness premiums due and unpaid and  
62 uncollected premiums for accident and sickness premiums;

63 (ii) Premiums, agents' balances and installments booked  
64 but deferred and not yet due; and

65 (iii) Bills receivable, taken for premium.

66 (3) Statutorily required policy and contract reserves also  
67 include, in the case of a financial guaranty insurer, or a mort-  
68 gage guaranty insurer the contingency reserves, and with  
69 respect to accident and sickness insurers the additional or  
70 contingency reserves, prescribed by the NAIC in the accounting  
71 practices and procedures manual as amended.

72 (c) *Monitoring and reporting.* --

73 A property and casualty, financial guaranty, mortgage  
74 guaranty or accident and health sickness insurer shall supple-  
75 ment its annual statement with a reconciliation and summary of  
76 its assets and reserve requirements as required in subsection (a)  
77 of this section. A reconciliation and summary showing that an  
78 insurer's assets as required in said subsection are greater than  
79 or equal to its undiscounted reserves referred to in said subsec-  
80 tion are sufficient to satisfy this requirement. Upon prior  
81 notification, the commissioner may require an insurer to submit  
82 a reconciliation and summary with any quarterly statement filed  
83 during the calendar year.

84 (d) If a property and casualty, financial guaranty, mortgage  
85 guaranty or accident and sickness insurer's assets and reserves  
86 do not comply with subsections (a) and (b) of this section, the  
87 insurer shall notify the commissioner immediately of the  
88 amount by which the reserve requirements exceed the annual  
89 statement value of the qualifying assets, explain why the  
90 deficiency exists and within thirty days of the date of the notice  
91 propose a plan of action to remedy the deficiency.

92 (e) If the commissioner determines that an insurer is not in  
93 compliance with subsection (a) of this section, the commis-  
94 sioner shall require the insurer to eliminate the condition  
95 causing the noncompliance within a specified time from the  
96 date the notice of the commissioner's requirement is mailed or  
97 delivered to the insurer. If an insurer fails to comply with the  
98 commissioner's requirement the insurer is considered to be in  
99 hazardous financial condition, and the commissioner may take  
100 one or more of the actions authorized by law as to insurers in  
101 hazardous financial condition.

**§33-8-23. Same - General five percent diversification, medium  
and lower grade investments and Canadian  
investments.**

1 (a) Except as otherwise specified in this article, an insurer  
2 may not acquire directly or indirectly through an investment  
3 subsidiary an investment under this article if, as a result of and  
4 after giving effect to the investment, the insurer would hold  
5 more than five percent of its admitted assets in investments of  
6 all kinds issued, assumed, accepted, insured or guaranteed by a  
7 single person.

8 (b) The five percent limitation set forth in subsection (a) of  
9 this section does not apply to the aggregate amounts insured by  
10 a single financial guaranty insurer with the highest generic



11 rating issued by a nationally recognized statistical rating  
12 organization.

13 (c) Asset-backed securities are not subject to the limitations  
14 of subsection (a) of this section, however an insurer may not  
15 acquire an asset-backed security if, as a result of and after  
16 giving effect to the investment, the aggregate amount of  
17 asset-backed securities secured by or evidencing an interest in  
18 a single asset or single pool of assets held by a trust or other  
19 business entity, then held by the insurer would exceed five  
20 percent of its admitted assets.

21 (d) An insurer may not acquire, directly or indirectly  
22 through an investment subsidiary, an investment under sections  
23 twenty-four, twenty-seven and thirty of this article or  
24 counterparty exposure under subsection (d), section thirty-one  
25 of this article if, as a result of and after giving effect to the  
26 investment:

27 (1) The aggregate amount of all medium and lower grade  
28 investments then held by the insurer would exceed twenty  
29 percent of its admitted assets;

30 (2) The aggregate amount of lower grade investments then  
31 held by the insurer would exceed ten percent of its admitted  
32 assets;

33 (3) The aggregate amount of investments rated 5 or 6 by the  
34 SVO then held by the insurer would exceed five percent of its  
35 admitted assets;

36 (4) The aggregate amount of investments rated 6 by the  
37 SVO then held by the insurer would exceed one percent of its  
38 admitted assets; or

39 (5) The aggregate amount of medium and lower grade  
40 investments then held by the insurer that receive as cash income

41 less than the equivalent yield for treasury issues with a compar-  
42 ative average life, would exceed one percent of its admitted  
43 assets.

44 (e) An insurer may not acquire, directly or indirectly  
45 through an investment subsidiary, an investment under section  
46 twenty-four, twenty-seven or thirty of this article or  
47 counterparty exposure under subsection (d), section thirty-one  
48 of this article if, as a result of and after giving effect to the  
49 investment:

50 (1) The aggregate amount of medium and lower grade  
51 investments issued, assumed, guaranteed, accepted or insured  
52 by any one person or, as to asset-backed securities secured by  
53 or evidencing an interest in a single asset or pool of assets, then  
54 held by the insurer would exceed one percent of its admitted  
55 assets; or

56 (2) The aggregate amount of lower grade investments  
57 issued, assumed, guaranteed, accepted or insured by any one  
58 person or, as to asset-backed securities secured by or evidenc-  
59 ing an interest in a single asset or pool of assets, then held by  
60 the insurer would exceed one half of one percent of its admitted  
61 assets.

62 (f) If an insurer attains or exceeds the limit of any one  
63 rating category referred to in subsection (d) or (e) of this  
64 section, the insurer may not be precluded from acquiring  
65 investments in other rating categories subject to the specific and  
66 multicategory limits applicable to those investments.

67 (g) An insurer may not acquire, directly or indirectly  
68 through an investment subsidiary, any Canadian investments  
69 authorized by this article, if as a result of and after giving effect  
70 to the investment, the aggregate amount of these investments  
71 then held by the insurer would exceed forty percent of its  
72 admitted assets, or if the aggregate amount of Canadian

73 investments not acquired under subsection (b), section  
74 twenty-four of this article then held by the insurer would exceed  
75 twenty-five percent of its admitted assets. However, as to an  
76 insurer that is authorized to do business in Canada or that has  
77 outstanding insurance, annuity or reinsurance contracts on lives  
78 or risks resident or located in Canada and denominated in  
79 Canadian currency, the limitations of this subsection shall be  
80 increased by the greater of:

81 (1) The amount the insurer is required by Canadian law to  
82 invest in Canada or to be denominated in Canadian currency; or

83 (2) One hundred twenty-five percent of the amount of its  
84 reserves and other obligations under contracts on risks resident  
85 or located in Canada.

**§33-8-24. Same - Rated credit instruments.**

1 (a) Subject to the limitations of subsection (b), section  
2 twenty-three of this article, but not to the limitations of subsec-  
3 tion (a) of said section, an insurer may acquire rated credit  
4 instruments issued, assumed, guaranteed or insured by:

5 (1) The United States; or

6 (2) A government-sponsored enterprise of the United  
7 States, if the instruments of the government-sponsored enter-  
8 prise are assumed, guaranteed or insured by the United States  
9 or are otherwise backed or supported by the full faith and credit  
10 of the United States.

11 (b) Subject to the limitations of subsections (d), (e) and (f),  
12 section twenty-three of this article, but not to the limitations of  
13 subsections (a), (b) and (c) of said section, an insurer may  
14 acquire rated credit instruments issued, assumed, guaranteed or  
15 insured by:

16 (1) Canada; or

17 (2) A government-sponsored enterprise of Canada, if the  
18 instruments of the government-sponsored enterprise are  
19 assumed, guaranteed or insured by Canada or are otherwise  
20 backed or supported by the full faith and credit of Canada;  
21 however, an insurer may not acquire an instrument under this  
22 subdivision if, as a result of and after giving effect to the  
23 investment, the aggregate amount of investments then held by  
24 the insurer under this subsection would exceed forty percent of  
25 its admitted assets.

26 (c) Subject to the limitations of subsections (d), (e) and (f),  
27 section twenty-three of this article, but not to the limitations of  
28 subsections (a), (b) and (c) of said section, an insurer may  
29 acquire rated credit instruments, excluding asset-backed  
30 securities:

31 (1) Issued by a government money market mutual fund, a  
32 class one money market mutual fund or a class one bond mutual  
33 fund;

34 (2) Issued, assumed, guaranteed or insured by a govern-  
35 ment-sponsored enterprise of the United States other than those  
36 eligible under subsection (a) of this section;

37 (3) Issued, assumed, guaranteed or insured by a state, if the  
38 instruments are general obligations of the state; or

39 (4) Issued by a multilateral development bank. However,  
40 an insurer may not acquire an instrument of any one fund, any  
41 one enterprise or entity, or any one state under this subsection  
42 if, as a result of and after giving effect to the investment, the  
43 aggregate amount of investments then held in any one fund,  
44 enterprise or entity or state under this subsection would exceed  
45 ten percent of its admitted assets.

46 (d) Subject to the limitations of section twenty-three of this  
47 article, an insurer may acquire preferred stocks that are not  
48 foreign investments and that meet the requirements of rated  
49 credit instruments if, as a result of and after giving effect to the  
50 investment:

51 (1) The aggregate amount of preferred stocks then held by  
52 the insurer under this subsection does not exceed twenty  
53 percent of its admitted assets; and

54 (2) The aggregate amount of preferred stocks then held by  
55 the insurer under this subsection which are not sinking fund  
56 stocks or rated P1 or P2 by the SVO does not exceed ten  
57 percent of its admitted assets.

58 (e) Subject to the limitations of section twenty-three of this  
59 article in addition to those investments eligible under subsec-  
60 tions (a), (b), (c) and (d) of this section, an insurer may acquire  
61 rated credit instruments that are not foreign investments.

62 (f) An insurer may not acquire special rated credit instru-  
63 ments under this section if, as a result of and after giving effect  
64 to the investment, the aggregate amount of special rated credit  
65 instruments then held by the insurer would exceed five percent  
66 of its admitted assets.

**§33-8-25. Same - Insurer investment pools.**

1 (a) An insurer may acquire investments in investment pools  
2 that:

3 (1) Invest only in:

4 (A) Obligations that are rated 1 or 2 by the SVO or have an  
5 equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or  
6 2 rating or equivalent rating, the issuer has outstanding obliga-  
7 tions with an SVO 1 or 2 or equivalent rating) by a nationally

8 recognized statistical rating organization recognized by the  
9 SVO and have:

10 (i) A remaining maturity of three hundred ninety-seven  
11 days or less or a put that entitles the holder to receive the  
12 principal amount of the obligation which put may be exercised  
13 through maturity at specified intervals not exceeding three  
14 hundred ninety-seven days; or

15 (ii) A remaining maturity of three years or less and a  
16 floating interest rate that resets no less frequently than quarterly  
17 on the basis of a current short-term index (federal funds, prime  
18 rate, treasury bills, LIBOR or commercial paper) and is subject  
19 to no maximum limit, if the obligations do not have an interest  
20 rate that varies inversely to market interest rate changes;

21 (B) Government money market mutual funds or class one  
22 money market mutual funds; or

23 (C) Securities lending, repurchase and reverse repurchase  
24 transactions that meet all the requirements of section  
25 twenty-nine of this article, except the quantitative limitations of  
26 subsection (b), section twenty-nine of this article; or

27 (2) Invest only in investments which an insurer may acquire  
28 under this article, if the insurer's proportionate interest in the  
29 amount invested in these investments does not exceed the  
30 applicable limits of this article.

31 (b) For an investment in an investment pool to be qualified  
32 under this article, the investment pool may not:

33 (1) Acquire securities issued, assumed, guaranteed or  
34 insured by the insurer or an affiliate of the insurer;

35 (2) Borrow or incur any indebtedness for borrowed money,  
36 except for securities lending and reverse repurchase transac-

37 tions that meet the requirements of section twenty-nine of this  
38 article except the quantitative limitations of subsection (b),  
39 section twenty-nine of this article; or

40 (3) Permit the aggregate value of securities then loaned or  
41 sold to, purchased from or invested in any one business entity  
42 under this section to exceed ten percent of the total assets of the  
43 investment pool.

44 (c) The limitations of subsection (a), section twenty-three  
45 of this article do not apply to an insurer's investment in an  
46 investment pool, however an insurer may not acquire an  
47 investment in an investment pool under this section if, as a  
48 result of and after giving effect to the investment, the aggregate  
49 amount of investments then held by the insurer under this  
50 section:

51 (1) In any one investment pool would exceed ten percent of  
52 its admitted assets;

53 (2) In all investment pools investing in investments  
54 permitted under subdivision (2), subsection (a) of this section  
55 would exceed twenty-five percent of its admitted assets; or

56 (3) In all investment pools would exceed forty percent of its  
57 admitted assets.

58 (d) For an investment in an investment pool to be qualified  
59 under this article, the manager of the investment pool shall:

60 (1) Be organized under the laws of the United States or a  
61 state and designated as the pool manager in a pooling agree-  
62 ment;

63 (2) Be the insurer, an affiliated insurer or a business entity  
64 affiliated with the insurer, a qualified bank, a business entity  
65 registered under the Investment Advisors Act of 1940, as

66 amended, or, in the case of a reciprocal insurer or interinsurance  
67 exchange, its attorney-in-fact, or in the case of a United States  
68 branch of an alien insurer, its United States manager or affili-  
69 ates or subsidiaries of its United States manager;

70 (3) Compile and maintain detailed accounting records  
71 setting forth:

72 (A) The cash receipts and disbursements reflecting each  
73 participant's proportionate investment in the investment pool;

74 (B) A complete description of all underlying assets of the  
75 investment pool (including amount, interest rate, maturity date  
76 (if any) and other appropriate designations); and

77 (C) Other records which, on a daily basis, allow third  
78 parties to verify each participant's investment in the investment  
79 pool; and

80 (4) Maintain the assets of the investment pool in one or  
81 more accounts, in the name of or on behalf of the investment  
82 pool, under a custody agreement with a qualified bank. The  
83 custody agreement shall:

84 (A) State and recognize the claims and rights of each  
85 participant;

86 (B) Acknowledge that the underlying assets of the invest-  
87 ment pool are held solely for the benefit of each participant in  
88 proportion to the aggregate amount of its investments in the  
89 investment pool; and

90 (C) Contain an agreement that the underlying assets of the  
91 investment pool may not be commingled with the general assets  
92 of the custodian qualified bank or any other person.



93 (e) The pooling agreement for each investment pool shall  
94 be in writing and shall provide that:

95 (1) An insurer and its affiliated insurers or, in the case of an  
96 investment pool investing solely in investments permitted under  
97 subdivision (1), subsection (a) of this section, the insurer and its  
98 subsidiaries, affiliates or any pension or profit sharing plan of  
99 the insurer, its subsidiaries and affiliates or, in the case of a  
100 United States branch of an alien insurer, affiliates or subsidiar-  
101 ies of its United States manager, shall, at all times, hold one  
102 hundred percent of the interests in the investment pool;

103 (2) The underlying assets of the investment pool may not be  
104 commingled with the general assets of the pool manager or any  
105 other person;

106 (3) In proportion to the aggregate amount of each pool  
107 participant's interest in the investment pool:

108 (A) Each participant owns an undivided interest in the  
109 underlying assets of the investment pool; and

110 (B) The underlying assets of the investment pool are held  
111 solely for the benefit of each participant;

112 (4) A participant, or in the event of the participant's  
113 insolvency, bankruptcy or receivership, its trustee, receiver or  
114 other successor-in-interest, may withdraw all or any portion of  
115 its investment from the investment pool under the terms of the  
116 pooling agreement;

117 (5) Withdrawals may be made on demand without penalty  
118 or other assessment on any business day, but settlement of  
119 funds shall occur within a reasonable and customary period  
120 thereafter not to exceed five business days. Distributions under  
121 this subdivision shall be calculated in each case net of all then  
122 applicable fees and expenses of the investment pool. The

123 pooling agreement shall provide that the pool manager shall  
124 distribute to a participant, at the discretion of the pool manager:

125 (A) In cash, the then fair market value of the participant's  
126 pro rata share of each underlying asset of the investment pool;

127 (B) In kind, a pro rata share of each underlying asset; or

128 (C) In a combination of cash and in kind distributions, a pro  
129 rata share in each underlying asset; and

130 (6) The pool manager shall make the records of the invest-  
131 ment pool available for inspection by the commissioner.

**§33-8-26. Same - Equity interests.**

1 (a) Subject to the limitations of section twenty-three of this  
2 article, an insurer may acquire equity interests in business  
3 entities organized under the laws of any domestic jurisdiction.

4 (b) An insurer may not acquire an investment under this  
5 section if, as a result of and after giving effect to the invest-  
6 ment, the aggregate amount of investments then held by the  
7 insurer under this section would exceed the greater of  
8 twenty-five percent of its admitted assets or one hundred  
9 percent of its surplus as regards policyholders: *Provided*, That  
10 the aggregate investments of a health maintenance organization  
11 may not exceed the greater of thirty percent of its admitted  
12 assets or one hundred percent of its total capital and surplus.

13 (c) An insurer may not acquire under this section any  
14 investments that the insurer may acquire under section  
15 twenty-eight of this article.

16 (d) An insurer may not short sell equity investments unless  
17 the insurer covers the short sale by owning the equity invest-

18 ment or an unrestricted right to the equity instrument exercis-  
19 able within six months of the short sale.

**§33-8-27. Same - Tangible personal property under lease.**

1 (a) Subject to the limitations of section twenty-three of this  
2 article, an insurer may acquire tangible personal property or  
3 equity interests therein located or used, wholly or in part, within  
4 a domestic jurisdiction either directly or indirectly through  
5 limited partnership interests and general partnership interests  
6 not otherwise prohibited by subdivision (d), section five of this  
7 article, joint ventures, stock of an investment subsidiary or  
8 membership interests in a limited liability company, trust  
9 certificates or other similar instruments.

10 (b) Investments acquired under subsection (a) of this  
11 section are eligible only if:

12 (1) The property is subject to a lease or other agreement  
13 with a person whose rated credit instruments in the amount of  
14 the purchase price of the personal property the insurer could  
15 then acquire under section twenty-four of this article; and

16 (2) The lease or other agreement provides the insurer the  
17 right to receive rental, purchase or other fixed payments for the  
18 use or purchase of the property, and the aggregate value of the  
19 payments, together with the estimated residual value of the  
20 property at the end of its useful life and the estimated tax  
21 benefits to the insurer resulting from ownership of the property,  
22 is adequate to return the cost of the insurer's investment in the  
23 property, plus a return considered adequate by the insurer.

24 (c) The insurer shall compute the amount of each invest-  
25 ment under this section on the basis of the out-of-pocket  
26 purchase price and applicable related expenses paid by the  
27 insurer for the investment, net of each borrowing made to

28 finance the purchase price and expenses, to the extent the  
29 borrowing is without recourse to the insurer.

30 (d) An insurer may not acquire an investment under this  
31 section if, as a result of and after giving effect to the invest-  
32 ment, the aggregate amount of all investments then held by the  
33 insurer under this section would exceed:

34 (1) Two percent of its admitted assets; or

35 (2) One half of one percent of its admitted assets as to any  
36 single item of tangible personal property.

37 (e) For purposes of determining compliance with the  
38 limitations of section twenty-three of this article, investments  
39 acquired by an insurer under this section shall be aggregated  
40 with those acquired under section twenty-four of this article,  
41 and each lessee of the property under a lease referred to in this  
42 section shall be considered the issuer of an obligation in the  
43 amount of the investment of the insurer in the property deter-  
44 mined as provided in subsection (c) of this section.

45 (f) Nothing in this section is applicable to tangible personal  
46 property lease arrangements between an insurer and its subsid-  
47 iaries and affiliates under a cost sharing arrangement or  
48 agreement permitted under this article.

**§33-8-28. Same - Mortgage loans and real estate.**

1 (a) Subject to the limitations of section twenty-three of this  
2 article, an insurer may acquire, either directly, indirectly  
3 through limited partnership interests and general partnership  
4 interests not otherwise prohibited by subdivision (4), section  
5 five of this article, joint ventures, stock of an investment  
6 subsidiary or membership interests in a limited liability  
7 company, trust certificates, or other similar instruments,  
8 obligations secured by mortgages on real estate situated within

9 a domestic jurisdiction, but a mortgage loan which is secured  
10 by other than a first lien may not be acquired unless the insurer  
11 is the holder of the first lien. The obligations held by the  
12 insurer and any obligations with an equal lien priority, may not,  
13 at the time of acquisition of the obligation, exceed:

14 (1) Ninety percent of the fair market value of the real estate,  
15 if the mortgage loan is secured by a purchase money mortgage  
16 or like security received by the insurer upon disposition of the  
17 real estate;

18 (2) Eighty percent of the fair market value of the real estate,  
19 if the mortgage loan requires immediate scheduled payment in  
20 periodic installments of principal and interest, has an amortiza-  
21 tion period of thirty years or less and periodic payments made  
22 no less frequently than annually. Each periodic payment shall  
23 be sufficient to assure that at all times the outstanding principal  
24 balance of the mortgage loan is not greater than the outstanding  
25 principal balance which would be outstanding under a mortgage  
26 loan with the same original principal balance, with the same  
27 interest rate and requiring equal payments of principal and  
28 interest with the same frequency over the same amortization  
29 period. Mortgage loans permitted under this subsection are  
30 permitted notwithstanding the fact that they provide for a  
31 payment of the principal balance prior to the end of the period  
32 of amortization of the loan. For residential mortgage loans, the  
33 eighty percent limitation may be increased to ninety-seven  
34 percent if acceptable private mortgage insurance has been  
35 obtained; or

36 (3) Seventy-five percent of the fair market value of the real  
37 estate for mortgage loans that do not meet the requirements of  
38 subdivision (1) or (2) of this subsection.

39 (b) For purposes of subsection (a) of this section, the  
40 amount of an obligation required to be included in the calcula-

41 tion of the loan-to-value ratio may be reduced to the extent the  
42 obligation is insured by the federal housing administration or  
43 guaranteed by the administrator of veterans affairs, or their  
44 successors.

45 (c) A mortgage loan that is held by an insurer under  
46 subsection (f), section three of this article or acquired under this  
47 section and is restructured in a manner that meets the require-  
48 ments of a restructured mortgage loan in accordance with the  
49 NAIC accounting practices and procedures manual or successor  
50 publication continues to qualify as a mortgage loan under this  
51 article.

52 (d) Subject to the limitations of section twenty-three of this  
53 article, credit lease transactions that do not qualify for invest-  
54 ment under section twenty-four of this article with the follow-  
55 ing characteristics are exempt from the provisions of subsection  
56 (a) of this section:

57 (1) The loan amortizes over the initial fixed lease term at  
58 least in an amount sufficient so that the loan balance at the end  
59 of the lease term does not exceed the original appraised value  
60 of the real estate;

61 (2) The lease payments cover or exceed the total debt  
62 service over the life of the loan;

63 (3) A tenant or its affiliated entity whose rated credit  
64 instruments have a SVO 1 or 2 designation or a comparable  
65 rating from a nationally recognized statistical rating organiza-  
66 tion recognized by the SVO has a full faith and credit obligation  
67 to make the lease payments;

68 (4) The insurer holds or is the beneficial holder of a first  
69 lien mortgage on the real estate;

70 (5) The expenses of the real estate are passed through to the  
71 tenant, excluding exterior, structural, parking and heating,  
72 ventilation and air conditioning replacement expenses, unless  
73 annual escrow contributions, from cash flows derived from the  
74 lease payments, cover the expense shortfall; and

75 (6) There is a perfected assignment of the rents due  
76 pursuant to the lease to, or for the benefit of, the insurer.

77 (e) An insurer may acquire, manage and dispose of real  
78 estate situated in a domestic jurisdiction either directly or  
79 indirectly through limited partnership interests and general  
80 partnership interests not otherwise prohibited by subsection (d),  
81 section five of this article, joint ventures, stock of an investment  
82 subsidiary or membership interests in a limited liability  
83 company, trust certificates, or other similar instruments. The  
84 real estate shall be income producing or intended for improve-  
85 ment or development for investment purposes under an existing  
86 program (in which case the real estate shall be considered to be  
87 income producing).

88 (f) The income producing real estate that is acquired,  
89 managed or disposed of pursuant to subsection (e) of this  
90 section may be subject to mortgages, liens or other encum-  
91 brances, the amount of which may, to the extent that the  
92 obligations secured by the mortgages, liens or encumbrances  
93 are without recourse to the insurer, be deducted from the  
94 amount of the investment of the insurer in the real estate for  
95 purposes of determining compliance with subsections (i) and (j)  
96 of this section.

97 (g) *Real estate for the accommodation of business.* --

98 An insurer may acquire, manage, and dispose of real estate  
99 for the convenient accommodation of the insurer's (which may  
100 include its affiliates) business operations, including home  
101 office, branch office and field office operations, as follows:

102       (1) Real estate acquired under this subsection may include  
103 excess space for rent to others, if the excess space, valued at its  
104 fair market value, would otherwise be a permitted investment  
105 under subsection (e) of this section and is qualified by the  
106 insurer;

107       (2) The real estate acquired under this subsection may be  
108 subject to one or more mortgages, liens or other encumbrances,  
109 the amount of which may, to the extent that the obligations  
110 secured by the mortgages, liens or encumbrances are without  
111 recourse to the insurer, be deducted from the amount of the  
112 investment of the insurer in the real estate for purposes of  
113 determining compliance with subsection (k) of this section; and

114       (3) For purposes of this subsection, business operations  
115 may not include that portion of real estate used for the direct  
116 provision of health care services by an insurer whose insurance  
117 premiums and required statutory reserves for accident and  
118 sickness insurance constitute at least ninety-five percent of total  
119 premium considerations or total statutory required reserves,  
120 respectively. An insurer may acquire real estate used for these  
121 purposes under subsection (e) of this section.

122       (h) An insurer may not acquire an investment under  
123 subsection (a) of this section if, as a result of and after giving  
124 effect to the investment, the aggregate amount of all invest-  
125 ments then held by the insurer under subsection (a) of this  
126 section would exceed:

127       (1) One percent of its admitted assets in mortgage loans  
128 covering any one secured location;

129       (2) One quarter of one percent of its admitted assets in  
130 construction loans covering any one secured location; or

131       (3) One percent of its admitted assets in construction loans  
132 in the aggregate.



133 (i) An insurer may not acquire an investment under  
134 subsections (e) and (f) of this section if, as a result of and after  
135 giving effect to the investment and any outstanding guarantees  
136 made by the insurer in connection with the investment, the  
137 aggregate amount of investments then held by the insurer under  
138 subsections (e) and (f) of this section plus the guarantees then  
139 outstanding would exceed:

140 (1) One percent of its admitted assets in any one parcel or  
141 group of contiguous parcels of real estate, except that this  
142 limitation may not apply to that portion of real estate used for  
143 the direct provision of health care services by an insurer whose  
144 insurance premiums and required statutory reserves for accident  
145 and sickness constitute at least ninety-five percent of total  
146 premium considerations or total statutory required reserves,  
147 respectively, such as hospitals, medical clinics, medical  
148 professional buildings or other health facilities used for the  
149 purpose of providing health services; or

150 (2) The lesser of ten percent of its admitted assets or forty  
151 percent of its surplus as regards policyholders in the aggregate,  
152 except for an insurer whose insurance premiums and required  
153 statutory reserves for accident and sickness insurance constitute  
154 at least ninety-five percent of total premium considerations or  
155 total statutory required reserves, respectively, this limitation  
156 shall be increased to fifteen percent of its admitted assets in the  
157 aggregate.

158 (j) An insurer may not acquire an investment under  
159 subsection (a) or (b) of this section if, as a result of and after  
160 giving effect to the investment and any guarantees it has made  
161 in connection with the investment, the aggregate amount of all  
162 investments then held by the insurer under subsections (a) and  
163 (b) of this section plus the guarantees then outstanding would  
164 exceed twenty-five percent of its admitted assets.

165 (k) The limitations of section twenty-three of this article do  
166 not apply to an insurer's acquisition of real estate under  
167 subsection (g) of this section. An insurer may not acquire real  
168 estate under said subsection if, as a result of and after giving  
169 effect to the acquisition, the aggregate amount of all real estate  
170 then held by the insurer under said subsection would exceed ten  
171 percent of its admitted assets. With the permission of the  
172 commissioner, additional amounts of real estate may be  
173 acquired under said subsection.

**§33-8-29. Same - Securities lending, repurchase, reverse repurchase and dollar roll transactions.**

1 (a) An insurer may enter into securities lending, repurchase,  
2 reverse repurchase and dollar roll transactions with business  
3 entities, subject to the following requirements:

4 (1) The insurer's board of directors shall adopt a written  
5 plan that is consistent with the requirements of the written plan  
6 in subsection (a), section four of this article that specifies  
7 guidelines and objectives to be followed, such as:

8 (A) A description of how cash received will be invested or  
9 used for general corporate purposes of the insurer;

10 (B) Operational procedures to manage interest rate risk,  
11 counterparty default risk, the conditions under which proceeds  
12 from reverse repurchase transactions may be used in the  
13 ordinary course of business and the use of acceptable collateral  
14 in a manner that reflects the liquidity needs of the transaction;  
15 and

16 (C) The extent to which the insurer may engage in these  
17 transactions.

18 (2) The insurer shall enter into a written agreement for all  
19 transactions authorized in this section other than dollar roll

20 transactions. The written agreement shall require that each  
21 transaction terminate no more than one year from its inception  
22 or upon the earlier demand of the insurer. The agreement shall  
23 be with the business entity counterparty, but for securities  
24 lending transactions, the agreement shall be with an agent  
25 acting on behalf of the insurer, if the agent is a qualified  
26 business entity, and if the agreement:

27 (A) Requires the agent to enter into separate agreements  
28 with each counterparty that are consistent with the requirements  
29 of this section; and

30 (B) Prohibits securities lending transactions under the  
31 agreement with the agent or its affiliates.

32 (3) Cash received in a transaction under this section shall be  
33 invested in accordance with this article and in a manner that  
34 recognizes the liquidity needs of the transaction or used by the  
35 insurer for its general corporate purposes. For so long as the  
36 transaction remains outstanding, the insurer, its agent or  
37 custodian shall maintain, as to acceptable collateral received in  
38 a transaction under this section, either physically or through the  
39 book entry systems of the federal reserve, depository trust  
40 company, participants trust company or other securities  
41 depositories approved by the commissioner:

42 (A) Possession of the acceptable collateral;

43 (B) A perfected security interest in the acceptable collat-  
44 eral; or

45 (C) In the case of a jurisdiction outside of the United States,  
46 title to, or rights of a secured creditor to, the acceptable  
47 collateral.

48 (4) In a securities lending transaction, the insurer shall  
49 receive acceptable collateral having a market value as of the

50 transaction date at least equal to one hundred two percent of the  
51 market value of the securities loaned by the insurer in the  
52 transaction as of that date. If at any time the market value of  
53 the acceptable collateral is less than the market value of the  
54 loaned securities, the business entity counterparty shall be  
55 obligated to deliver additional acceptable collateral, the market  
56 value of which, together with the market value of all acceptable  
57 collateral then held in connection with the transaction, at least  
58 equals one hundred two percent of the market value of the  
59 loaned securities.

60 (5) In a reverse repurchase transaction, (other than a dollar  
61 roll transaction), the insurer shall receive acceptable collateral  
62 having a market value as of the transaction date at least equal  
63 to ninety-five percent of the market value of the securities  
64 transferred by the insurer in the transaction as of that date. If at  
65 any time the market value of the acceptable collateral is less  
66 than ninety-five percent of the market value of the securities  
67 transferred, the business entity counterparty is obligated to  
68 deliver additional acceptable collateral, the market value of  
69 which, together with the market value of all acceptable collat-  
70 eral then held in connection with the transaction, at least equals  
71 ninety-five percent of the market value of the transferred  
72 securities.

73 (6) In a dollar roll transaction, the insurer shall receive cash  
74 in an amount at least equal to the market value of the securities  
75 transferred by the insurer in the transaction as of the transaction  
76 date.

77 (7) In a repurchase transaction, the insurer shall receive as  
78 acceptable collateral transferred securities having a market  
79 value at least equal to one hundred two percent of the purchase  
80 price paid by the insurer for the securities. If at any time the  
81 market value of the acceptable collateral is less than one  
82 hundred percent of the purchase price paid by the insurer, the

83 business entity counterparty is obligated to provide additional  
84 acceptable collateral, the market value of which, together with  
85 the market value of all acceptable collateral then held in  
86 connection with the transaction, at least equals one hundred two  
87 percent of the purchase price. Securities acquired by an insurer  
88 in a repurchase transaction may not be sold in a reverse  
89 repurchase transaction, loaned in a securities lending transac-  
90 tion or otherwise pledged.

91 (b) The limitations of sections twenty-three and thirty of  
92 this article do not apply to the business entity counterparty  
93 exposure created by transactions under this section. For  
94 purposes of calculations made to determine compliance with  
95 this subdivision, no effect will be given to the insurer's future  
96 obligation to resell securities, in the case of a repurchase  
97 transaction, or to repurchase securities, in the case of a reverse  
98 repurchase transaction. An insurer may not enter into a  
99 transaction under this section if, as a result of and after giving  
100 effect to the transaction:

101 (1) The aggregate amount of securities then loaned, sold to  
102 or purchased from any one business entity counterparty under  
103 this section would exceed five percent of its admitted assets. In  
104 calculating the amount sold to or purchased from a business  
105 entity counterparty under repurchase or reverse repurchase  
106 transactions, effect will be given to netting provisions under a  
107 master written agreement; or

108 (2) The aggregate amount of all securities then loaned, sold  
109 to or purchased from all business entities under this section  
110 would exceed forty percent of its admitted assets but the  
111 limitation of this subdivision does not apply to reverse repur-  
112 chase transactions for so long as the borrowing is used to meet  
113 operational liquidity requirements resulting from an officially  
114 declared catastrophe and subject to a plan approved by the  
115 commissioner.

**§33-8-30. Same - Foreign investments and foreign currency exposure.**

1 (a) Subject to the limitations of section twenty-three of this  
2 article, an insurer may acquire foreign investments, or engage  
3 in investment practices with persons of or in foreign jurisdic-  
4 tions, of substantially the same types as those that an insurer is  
5 permitted to acquire under this article, other than of the type  
6 permitted under section twenty-five of this article, if, as a result  
7 and after giving effect to the investment:

8 (1) The aggregate amount of foreign investments then held  
9 by the insurer under this subsection does not exceed twenty  
10 percent of its admitted assets; and

11 (2) The aggregate amount of foreign investments then held  
12 by the insurer under this subsection in a single foreign jurisdic-  
13 tion does not exceed ten percent of its admitted assets as to a  
14 foreign jurisdiction that has a sovereign debt rating of SVO 1 or  
15 five percent of its admitted assets as to any other foreign  
16 jurisdiction.

17 (b) Subject to the limitations of section twenty-three of this  
18 article, an insurer may acquire investments, or engage in  
19 investment practices denominated in foreign currencies,  
20 whether or not they are foreign investments acquired under  
21 subsection (a) of this section, or additional foreign currency  
22 exposure as a result of the termination or expiration of a  
23 hedging transaction with respect to investments denominated in  
24 a foreign currency, if:

25 (1) The aggregate amount of investments then held by the  
26 insurer under this subsection denominated in foreign currencies  
27 does not exceed fifteen percent of its admitted assets; and

28 (2) The aggregate amount of investments then held by the  
29 insurer under this subsection denominated in the foreign

30 currency of a single foreign jurisdiction does not exceed ten  
31 percent of its admitted assets as to a foreign jurisdiction that has  
32 a sovereign debt rating of SVO 1 or five percent of its admitted  
33 assets as to any other foreign jurisdiction. However, an  
34 investment will not be considered denominated in a foreign  
35 currency if the acquiring insurer enters into one or more  
36 contracts in transactions permitted under section thirty-one of  
37 this article and the business entity counterparty agrees under the  
38 contract or contracts to exchange all payments made on the  
39 foreign currency denominated investment for United States  
40 currency at a rate which effectively insulates the investment  
41 cash flows against future changes in currency exchange rates  
42 during the period the contract or contracts are in effect.

43 (c) In addition to investments permitted under subsections  
44 (a) and (b) of this section, an insurer that is authorized to do  
45 business in a foreign jurisdiction, and that has outstanding  
46 insurance, annuity or reinsurance contracts on lives or risks  
47 resident or located in that foreign jurisdiction and denominated  
48 in foreign currency of that jurisdiction, may acquire foreign  
49 investments respecting that foreign jurisdiction, and may  
50 acquire investments denominated in the currency of that  
51 jurisdiction, subject to the limitations of section twenty-three of  
52 this article. However, investments made under this subsection  
53 in obligations of foreign governments, their political subdivi-  
54 sions and government-sponsored enterprises are not subject to  
55 the limitations of section twenty-three of this article if those  
56 investments carry an SVO rating of 1 or 2. The aggregate  
57 amount of investments acquired by the insurer under this  
58 subsection may not exceed the greater of:

59 (1) The amount the insurer is required by law to invest in  
60 the foreign jurisdiction; or

61       (2) One hundred twenty-five percent of the amount of its  
62 reserves, net of reinsurance, and other obligations under the  
63 contracts.

64       (d) In addition to investments permitted under subsections  
65 (a) and (b) of this section, an insurer that is not authorized to do  
66 business in a foreign jurisdiction but which has outstanding  
67 insurance, annuity or reinsurance contracts on lives or risks  
68 resident or located in a foreign jurisdiction and denominated in  
69 foreign currency of that jurisdiction, may acquire foreign  
70 investments respecting that foreign jurisdiction and may acquire  
71 investments denominated in the currency of that jurisdiction  
72 subject to the limitations set forth in section twenty-three of this  
73 article. However, investments made under this subsection in  
74 obligations of foreign governments, their political subdivisions  
75 and government-sponsored enterprises are not subject to the  
76 limitations of section twenty-three of this article if those  
77 investments carry an SVO rating of 1 or 2. The aggregate  
78 amount of investments acquired by the insurer under this  
79 subsection may not exceed one hundred five percent of the  
80 amount of its reserves, net of reinsurance, and other obligations  
81 under the contracts on risks resident or located in the foreign  
82 jurisdiction.

83       (e) Investments acquired under this section shall be  
84 aggregated with investments of the same types made under all  
85 other sections of this article, and in a similar manner, for  
86 purposes of determining compliance with the limitations, if any,  
87 contained in the other sections. Investments in obligations of  
88 foreign governments, their political subdivisions and govern-  
89 ment-sponsored enterprises of these persons, except for those  
90 exempted under subsections (c) and (d) of this section, are  
91 subject to the limitations of section twenty-three of this article.

**§33-8-31. Same - Derivative transactions.**



1 (a) An insurer may, directly or indirectly through an  
2 investment subsidiary, engage in derivative transactions under  
3 this section under the following conditions:

4 (1) An insurer may use derivative instruments under this  
5 section to engage in hedging transactions and certain income  
6 generation transactions, as these terms may be further defined  
7 in rules promulgated by the commissioner.

8 (2) An insurer must be able to demonstrate to the commis-  
9 sioner the intended hedging characteristics and the ongoing  
10 effectiveness of the derivative transaction or combination of  
11 transactions through cash flow testing or other appropriate  
12 analyses.

13 (b) An insurer may enter into hedging transactions under  
14 this section if, as a result of and after giving effect to the  
15 transaction:

16 (1) The aggregate statement value of options, caps, floors  
17 and warrants not attached to another financial instrument  
18 purchased and used in hedging transactions does not exceed  
19 seven and one-half percent of its admitted assets;

20 (2) The aggregate statement value of options, caps and  
21 floors written in hedging transactions does not exceed three  
22 percent of its admitted assets; and

23 (3) The aggregate potential exposure of collars, swaps,  
24 forwards and futures used in hedging transactions does not  
25 exceed six and one-half percent of its admitted assets.

26 (c) An insurer may only enter into the following types of  
27 income generation transactions if as a result of and after giving  
28 effect to the transactions, the aggregate statement value of the  
29 fixed income assets that are subject to call plus the face value  
30 of fixed income securities underlying a derivative instrument

31 subject to call, plus the amount of the purchase obligations  
32 under the puts, does not exceed ten percent of its admitted  
33 assets:

34 (1) Sales of covered call options on noncallable fixed  
35 income securities, callable fixed income securities if the option  
36 expires by its terms prior to the end of the noncallable period or  
37 derivative instruments based on fixed income securities;

38 (2) Sales of covered call options on equity securities, if the  
39 insurer holds in its portfolio, or can immediately acquire  
40 through the exercise of options, warrants or conversion rights  
41 already owned, the equity securities subject to call during the  
42 complete term of the call option sold; or

43 (3) Sales of covered puts on investments that the insurer is  
44 permitted to acquire under this article, if the insurer has  
45 escrowed, or entered into a custodian agreement segregating,  
46 cash or cash equivalents with a market value equal to the  
47 amount of its purchase obligations under the put during the  
48 complete term of the put option sold.

49 (d) An insurer shall include all counterparty exposure  
50 amounts in determining compliance with the limitations of  
51 section twenty-three of this article.

52 (e) Pursuant to rules promulgated under section eight of this  
53 article, the commissioner may approve additional transactions  
54 involving the use of derivative instruments in excess of the  
55 limits of subsection (b) of this section or for other risk manage-  
56 ment purposes under rules promulgated by the commissioner,  
57 but replication transactions may not be permitted for other than  
58 risk management purposes.

**§33-8-32. Same - Additional investment authority.**

1 (a) An insurer may acquire under this section investments,  
2 or engage in investment practices, of any kind that are not  
3 specifically prohibited by this article, or engage in investment  
4 practices, without regard to any limitation in sections  
5 twenty-three through thirty of this article, but an insurer may  
6 not acquire an investment or engage in an investment practice  
7 under this section if, as a result of and after giving effect to the  
8 transaction, the aggregate amount of the investments then held  
9 by the insurer under this section would exceed the greater of:

10 (1) Its unrestricted surplus; or

11 (2) The lesser of:

12 (A) Ten percent of its admitted assets; or

13 (B) Fifty percent of its surplus as regards policyholders.

14 (b) An insurer may not acquire any investment or engage in  
15 any investment practice under subdivision (2), subsection (a) of  
16 this section if, as a result of and after giving effect to the  
17 transaction the aggregate amount of all investments in any one  
18 person then held by the insurer under that subsection would  
19 exceed five percent of its admitted assets.

#### ARTICLE 9. ADMINISTRATION OF DEPOSITS.

##### §33-9-3. Assets eligible for deposit.

1 (a) All deposits required for a license to transact insurance  
2 in West Virginia shall consist of cash or any combination of the  
3 government obligations described in paragraph (A) or (B),  
4 subdivision (1), subsection (a), section eleven, article eight of  
5 this chapter or paragraph (A), (B) or (C), subdivision (3) of said  
6 subsection.

7 (b) All deposits required pursuant to the laws of another  
8 state, province or country, or pursuant to the retaliatory

9 provision, section sixteen, article three of this chapter, shall  
10 consist of those assets that are required or permitted by the  
11 laws, or as required pursuant to the retaliatory provision.

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.**

**§33-22-11. Surplus or emergency fund.**

1 (a) Each company may accumulate a surplus or emergency  
2 fund in an amount determined advisable by its board of  
3 directors.

4 (b) The first twenty-five thousand dollars of the accumu-  
5 lated surplus shall be in cash or invested in government  
6 securities described in subdivision (1) or (2), subsection (a),  
7 section twenty-four, article eight of this chapter or subdivision  
8 (1), (2) or (3), subsection (c) of said section, and the balance of  
9 the surplus may be invested in any of the other classes of  
10 investments described in article eight of this chapter subject to  
11 the limitations as to each class provided therein.

12 (c) All assets of the company other than the accumulated  
13 surplus shall be in cash or invested in the government securities  
14 described in subdivision (1) or (2), subsection (a), section  
15 twenty-four, article eight of this chapter or subdivision (1), (2)  
16 or (3), subsection (c) of said section: *Provided*, That any  
17 company having received an extension of its license to permit  
18 it to issue policies of insurance pursuant to subsection (c),  
19 section eight, article twenty-two of this chapter shall with the  
20 prior approval of the commissioner be permitted to invest all  
21 assets of the company other than the accumulated surplus in the  
22 investments that are authorized by sections twenty-three  
23 through thirty-two, inclusive, of said article.

**ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.**

**§33-23-31. Investments.**

1 (a) A domestic society shall invest its funds only in the  
2 investments that are authorized by sections ten through twenty,  
3 inclusive, article eight of this chapter for the investment of the  
4 assets of domestic insurers.

5 (b) Foreign and alien societies shall have investments of the  
6 same general quality as required of domestic societies, except  
7 that other investments authorized by the laws of the foreign or  
8 alien society's state or country of domicile may be recognized  
9 as assets in the discretion of the commissioner.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.**

**§33-24-10. Investments; bonds of corporate officers and employees, minimum statutory surplus.**

1 (a) The funds of any corporation shall be invested only as  
2 follows:

3 (1) The first two million dollars of the funds shall be in  
4 cash or government securities of the type described in para-  
5 graph (A) or (B), subdivision (1), subsection (a), section eleven,  
6 article eight of this chapter or paragraph (A), (B) or (C),  
7 subdivision (3) of said subsection.

8 (2) The balance of the funds may be in cash, invested in the  
9 classes of investments described in subdivision (1), subsection  
10 (a), section eleven, article eight of this chapter or invested in the  
11 classes of investments described in the following sections of  
12 article eight of this chapter: Subdivision (4), subsection (a) and  
13 section eleven (preferred stock), section twelve (investment  
14 pools), section thirteen (equity interests), section fourteen  
15 (tangible personal property under lease), section fifteen  
16 (mortgage loans and real estate), section sixteen (securities  
17 lending, repurchase, reverse repurchase and dollar roll transac-

18 tions), section seventeen (foreign investments) and section  
19 eighteen (derivative transactions). All investments are subject  
20 to all the restrictions and conditions contained in said article  
21 eight as applying to similar investments of insurers generally.

22 (b) Every officer or employee of any corporation, who is  
23 entrusted with the handling of its funds, shall furnish, in an  
24 amount fixed by the board of directors of the corporation, with  
25 the approval of the commissioner, a bond with corporate surety,  
26 conditioned upon the faithful performance of all his or her  
27 duties.

28 (c) A corporation shall have and maintain statutory surplus  
29 funds of at least two million dollars: *Provided*, That any  
30 corporation duly licensed under this article in West Virginia  
31 prior to the effective date of this section whose surplus require-  
32 ments are increased by virtue of this section shall maintain  
33 statutory surplus funds of at least five hundred thousand dollars  
34 after the effective date of this section, and any corporation is  
35 then subject to the full two million dollar statutory surplus  
36 requirement.

#### **ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

##### **§33-25A-4. Issuance of certificate of authority.**

1 (1) Upon receipt of an application for a certificate of  
2 authority, the commissioner shall determine whether the  
3 application for a certificate of authority, with respect to health  
4 care services to be furnished, has demonstrated:

5 (a) The willingness and potential ability of the organization  
6 to assure that basic health services will be provided in a manner  
7 to enhance and assure both the availability and accessibility of  
8 adequate personnel and facilities;

9 (b) Arrangements for an ongoing evaluation of the quality  
10 of health care provided by the organization and utilization  
11 review which meet those standards required by the commis-  
12 sioner by rule; and

13 (c) That the organization has a procedure to develop,  
14 compile, evaluate and report statistics relating to the cost of its  
15 operations, the pattern of utilization of its services, the quality,  
16 availability and accessibility of its services and any other  
17 matters reasonably required by rule.

18 (2) The commissioner shall issue or deny a certificate of  
19 authority to any person filing an application within one hundred  
20 twenty days after receipt of the application. Issuance of a  
21 certificate of authority shall be granted upon payment of the  
22 application fee prescribed, if the commissioner is satisfied that  
23 the following conditions are met:

24 (a) The health maintenance organization's proposed plan of  
25 operation meets the requirements of subsection (1) of this  
26 section;

27 (b) The health maintenance organization will effectively  
28 provide or arrange for the provision of at least basic health care  
29 services on a prepaid basis except for copayments: *Provided,*  
30 That nothing in this section shall be construed to relieve a  
31 health maintenance organization from the obligations to provide  
32 health care services because of the nonpayment of copayments  
33 unless the enrollee fails to make payment in at least three  
34 instances over any twelve-month period: *Provided, however,*  
35 That nothing in this section shall permit a health maintenance  
36 organization to charge copayments to medicare beneficiaries or  
37 medicaid recipients in excess of the copayments permitted  
38 under those programs, nor shall a health maintenance organiza-  
39 tion be required to provide services to the medicare beneficia-  
40 raries or medicaid recipients in excess of the benefits compen-  
41 sated under those programs;

42 (c) The health maintenance organization is financially  
43 responsible and may reasonably be expected to meet its  
44 obligations to enrollees and prospective enrollees. In making  
45 this determination, the commissioner may consider:

46 (i) The financial soundness of the health maintenance  
47 organization's arrangements for health care services and the  
48 proposed schedule of charges used in connection with the health  
49 care services;

50 (ii) That the health maintenance organization has and  
51 maintains the following:

52 (A) If a for-profit stock corporation, at least one million  
53 dollars of fully paid-in capital stock; or

54 (B) If a nonprofit corporation, at least one million dollars  
55 of statutory surplus funds; and

56 (C) Both for-profit and nonprofit health maintenance  
57 organization, additional surplus funds of at least one million  
58 dollars;

59 (iii) Any arrangements that will guarantee for the continua-  
60 tion of benefits and payments to providers for services rendered  
61 both prior to and after insolvency for the duration of the  
62 contract period for which payment has been made, except that  
63 benefits to members who are confined on the date of insolvency  
64 in an inpatient facility shall be continued until their discharge;  
65 and

66 (iv) Any agreement with providers for the provision of  
67 health care services;

68 (d) Reasonable provisions have been made for emergency  
69 and out-of-area health care services;



70 (e) The enrollees will be afforded an opportunity to  
71 participate in matters of policy and operation pursuant to  
72 section six of this article;

73 (f) The health maintenance organization has demonstrated  
74 that it will assume full financial risk on a prospective basis for  
75 the provision of health care services, including hospital care:  
76 *Provided*, That the requirement of this subdivision shall not  
77 prohibit a health maintenance organization from obtaining  
78 reinsurance acceptable to the commissioner from an accredited  
79 reinsurer or making other arrangements acceptable to the  
80 commissioner:

81 (i) For the cost of providing to any enrollee health care  
82 services, the aggregate value of which exceeds four thousand  
83 dollars in any year;

84 (ii) For the cost of providing health care services to its  
85 members on a nonelective emergency basis, or while they are  
86 outside the area served by the organization; or

87 (iii) For not more than ninety-five percent of the amount by  
88 which the health maintenance organization's costs for any of its  
89 fiscal years exceed one hundred five percent of its income for  
90 those fiscal years;

91 (g) The ownership, control and management of the organi-  
92 zation is competent and trustworthy and possesses managerial  
93 experience that would make the proposed health maintenance  
94 organization operation beneficial to the subscribers. The  
95 commissioner may, at his or her discretion, refuse to grant or  
96 continue authority to transact the business of a health mainte-  
97 nance organization in this state at any time during which the  
98 commissioner has probable cause to believe that the ownership,  
99 control or management of the organization includes any person  
100 whose business operations are or have been marked by business

101 practices or conduct that is to the detriment of the public,  
102 stockholders, investors or creditors;

103 (h) The health maintenance organization has deposited and  
104 maintained in trust with the state treasurer, for the protection of  
105 its subscribers or its subscribers and creditors, cash or govern-  
106 ment securities eligible for the investment of capital funds of  
107 domestic insurers as described in paragraph (A) or (B), subdivi-  
108 sion (1), subsection (a), section eleven, article eight of this  
109 chapter or paragraph (A), (B) or (C), subdivision (3) of said  
110 subsection, in the amount of one hundred thousand dollars; and

111 (i) The health maintenance organization has a quality  
112 assurance program which has been reviewed by the commis-  
113 sioner or by a nationally recognized accreditation and review  
114 organization approved by the commissioner; meets at least  
115 those standards set forth in section seventeen-a of this article;  
116 and is determined satisfactory by the commissioner. If the  
117 commissioner determines that the quality assurance program of  
118 a health maintenance organization is deficient in any significant  
119 area, the commissioner, in addition to other remedies provided  
120 in this chapter, may establish a corrective action plan that the  
121 health maintenance organization must follow as a condition to  
122 the issuance of a certificate of authority: *Provided*, That in  
123 those instances where a health maintenance organization has  
124 timely applied for and reasonably pursued a review of its  
125 quality assurance program, but the review has not been com-  
126 pleted, the health maintenance organization shall submit proof  
127 to the commissioner of its application for that review.

128 (3) A certificate of authority shall be denied only after  
129 compliance with the requirements of section twenty-one of this  
130 article.

131 (4) No person who has not been issued a certificate of  
132 authority shall use the words "health maintenance organization"

133 or the initials "HMO" in its name, contracts, logo or literature:  
134 *Provided*, That persons who are operating under a contract with,  
135 operating in association with, enrolling enrollees for, or  
136 otherwise authorized by a health maintenance organization  
137 licensed under this article to act on its behalf may use the terms  
138 "health maintenance organization", or "HMO" for the limited  
139 purpose of denoting or explaining their association or relation-  
140 ship with the authorized health maintenance organization. No  
141 health maintenance organization which has a minority of board  
142 members who are consumers shall use the words "consumer  
143 controlled" in its name or in any way represent to the public  
144 that it is controlled by consumers.

**ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION.**

**§33-25D-5. Issuance of certificate of authority.**

1 (a) Upon receipt of an application for a certificate of  
2 authority, the commissioner shall determine whether the  
3 application for a certificate of authority, with respect to limited  
4 health services to be furnished has demonstrated:

5 (1) The willingness and potential ability of the organization  
6 to assure that limited health services will be provided in such a  
7 manner as to enhance and assure both the availability and  
8 accessibility of adequate personnel and facilities;

9 (2) Arrangements for an ongoing evaluation of the quality  
10 of health care provided by the organization and utilization  
11 review which meet the minimum standards set forth in section  
12 nineteen of this article;

13 (3) That the organization has a procedure to develop,  
14 compile, evaluate and report statistics relating to the cost of its  
15 operations, the pattern of utilization of its services, the quality,  
16 availability and accessibility of its services and other matters as  
17 may be reasonably required by rule.

18 (b) The commissioner shall issue or deny a certificate of  
19 authority to any person filing an application within one hundred  
20 twenty days after receipt of the application. Issuance of a  
21 certificate of authority shall be granted upon payment of the  
22 application fee prescribed, if the commissioner is satisfied that  
23 the following conditions are met:

24 (1) The prepaid limited health service organization's  
25 proposed plan of operation meets the requirements of subsec-  
26 tion (a) of this section;

27 (2) The prepaid limited health service organization will  
28 effectively provide or arrange for the provision of no more than  
29 four limited health services on a prepaid basis except for  
30 copayments: *Provided*, That nothing in this section relieves a  
31 prepaid limited health service organization from the obligations  
32 to provide a limited health service because of the nonpayment  
33 of copayments unless the enrollee fails to make payment in at  
34 least three instances over any twelve-month period: *Provided*,  
35 *however*, That nothing in this section permits a prepaid limited  
36 health service organization to charge copayments to medicare  
37 beneficiaries or medicaid recipients in excess of the  
38 copayments permitted under those programs, nor is a prepaid  
39 limited health service organization required to provide a limited  
40 health service to medicare beneficiaries or medicaid recipients  
41 in excess of the benefits compensated under those programs;

42 (3) The prepaid limited health service organization is  
43 financially responsible and may reasonably be expected to meet  
44 its obligations to enrollees and prospective enrollees. In  
45 making this determination, the commissioner may consider:

46 (A) The financial soundness of the prepaid limited health  
47 service organization's arrangements for no more than four  
48 limited health services and the proposed schedule of charges  
49 used in connection with each limited health service offered;

50 (B) Arrangements for maintenance of the minimum capital  
51 and surplus required under section six of this article;

52 (C) Any arrangements which will guarantee the continua-  
53 tion of benefits and payments to providers for services rendered  
54 both prior to and after insolvency for the duration of the  
55 contract period for which payment has been made, except that  
56 benefits to members who are confined on the date of insolvency  
57 in an inpatient facility shall be continued until their discharge;  
58 and

59 (D) Any agreement with providers for the provision of  
60 limited health care services;

61 (4) The enrollees will be afforded an opportunity to  
62 participate in matters of policy and operation pursuant to  
63 section eight of this article;

64 (5) The prepaid limited health service organization has  
65 demonstrated that it will assume full financial risk on a pro-  
66 spective basis for the provision of no more than four limited  
67 health services: *Provided*, That notwithstanding the requirement  
68 of this subdivision, a prepaid limited health service organization  
69 may obtain reinsurance acceptable to the commissioner from an  
70 accredited reinsurer or make other arrangements:

71 (A) For the cost of providing to any enrollee limited health  
72 services, the aggregate value of which exceeds four thousand  
73 dollars in any year;

74 (B) For the cost of providing no more than four limited  
75 health services to its enrollees on a nonelective emergency  
76 basis; or

77 (C) For not more than ninety-five percent of the amount by  
78 which the prepaid limited health service organization's costs for

79 any of its fiscal years exceed one hundred five percent of its  
80 income for those fiscal years;

81 (6) The ownership, control and management of the prepaid  
82 limited health service organization is competent and trustwor-  
83 thy and possesses managerial experience that would make the  
84 proposed organization operation beneficial to the subscribers.  
85 The commissioner may, at his or her discretion, refuse to grant  
86 or continue authority to transact the business of a prepaid  
87 limited health service organization in this state at any time  
88 during which the commissioner has probable cause to believe  
89 that the ownership, control or management of the organization  
90 includes any person whose business operations are or have been  
91 marked by business practices or conduct that is to the detriment  
92 of the public, stockholders, investors or creditors; and

93 (7) The prepaid limited health service organization has  
94 deposited and maintained in trust with the state treasurer, for  
95 the protection of its subscribers or its subscribers and creditors,  
96 cash or government securities eligible for the investment of  
97 capital funds of domestic insurers as described in paragraph (A)  
98 or (B), subdivision (1), subsection (a), section eleven, article  
99 eight of this chapter or paragraph (A), (B) or (C), subdivision  
100 (3) of said subsection, in the amount of fifty thousand dollars.

101 (c) A certificate of authority may be denied only after  
102 compliance with the requirements of section twenty-three of  
103 this article.

104 (d) No person who has not been issued a certificate of  
105 authority may use the words "prepaid limited health service  
106 organization" or the initials "PLHSO" in its name, contracts,  
107 logo or literature: *Provided*, That persons who are operating  
108 under a contract with, operating in association with, enrolling  
109 enrollees for, or otherwise authorized by a prepaid limited  
110 health service organization licensed under this article to act on

111 its behalf may use the terms "prepaid limited health service  
112 organization" or "PLHSO" for the limited purpose of denoting  
113 or explaining their association or relationship with the autho-  
114 rized prepaid limited health service organization. No prepaid  
115 limited health service organization which has a minority of  
116 board members who are consumers may use the  
117 words "consumer controlled" in its name or in any way repre-  
118 sent to the public that it is controlled by consumers.

**ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.**

**§33-27-2a. Subsidiaries of insurers; authorization; investment  
authority; exemptions; qualifications; cessation  
of controls.**

1 (a) Any domestic insurer, either by itself or in cooperation  
2 with one or more persons, may organize or acquire one or more  
3 subsidiaries engaged in the following kinds of business with the  
4 commissioner's prior approval:

5 (1) Any kind of insurance business authorized by the  
6 jurisdiction in which it is incorporated;

7 (2) Acting as an insurance agent for its parent or for any of  
8 its parent's insurer subsidiaries;

9 (3) Investing, reinvesting or trading in securities for its own  
10 account, that of its parent, any subsidiary of its parent, or any  
11 affiliate or subsidiary;

12 (4) Management of any investment company subject to or  
13 registered pursuant to the Investment Company Act of 1940, as  
14 amended, including related sales and services;

15 (5) Acting as a broker-dealer subject to or registered  
16 pursuant to the Securities Exchange Act of 1934, as amended;

17           (6) Rendering investment advice to governments, govern-  
18   ment agencies, corporations or other organizations or groups;

19           (7) Rendering other services related to the operations of an  
20   insurance business, including, but not limited to, actuarial, loss  
21   prevention, safety engineering, data processing, accounting,  
22   claims, appraisal and collection services;

23           (8) Ownership and management of assets which the parent  
24   corporation could itself own or manage;

25           (9) Acting as administrative agent for a governmental  
26   instrumentality which is performing an insurance function;

27           (10) Financing of insurance premiums, agents and other  
28   forms of consumer financing;

29           (11) Any other business activity determined by the commis-  
30   sioner to be reasonably ancillary to an insurance business;

31           (12) Owning a corporation or corporations engaged or  
32   organized to engage exclusively in one or more of the busi-  
33   nesses specified in this section; and

34           (13) Organizing or acquiring one or more subsidiaries that  
35   are depository institutions.

36           (b) In addition to investments in common stock, preferred  
37   stock, debt obligations and other securities permitted under any  
38   other provision of this chapter, a domestic insurer may also  
39   with the commissioner's prior approval:

40           (1) Invest in common stock, preferred stock, debt obliga-  
41   tions and other securities of one or more subsidiaries, amounts  
42   which do not exceed the lesser of ten percent of the insurer's  
43   assets or fifty percent of the insurer's surplus as regards  
44   policyholders: *Provided*, That after the investments, the



45 insurer's surplus as regards policyholders will be reasonable in  
46 relation to the insurer's outstanding liabilities and adequate to  
47 its financial needs. In calculating the amount of the invest-  
48 ments, investments in domestic or foreign insurance subsidiar-  
49 ies shall be excluded and there shall be included:

50 (A) Total net moneys or other consideration expended and  
51 obligations assumed in the acquisition or formation of a  
52 subsidiary, including all organizational expenses and contribu-  
53 tions to capital and surplus of the subsidiary whether or not  
54 represented by the purchase of capital stock or issuance of other  
55 securities; and

56 (B) All amounts expended in acquiring additional common  
57 stock, preferred stock, debt obligations and other securities, and  
58 all contributions to the capital or surplus, of a subsidiary  
59 subsequent to its acquisition or formation;

60 (2) Invest any amount in common stock, preferred stock,  
61 debt obligations and other securities of one or more subsidiaries  
62 engaged or organized to engage exclusively in the ownership  
63 and management of assets authorized as investments for the  
64 insurer: *Provided*, That each subsidiary agrees to limit its  
65 investments in any asset so that the investments will not cause  
66 the amount of the total investment of the insurer to exceed any  
67 of the investment limitations specified in subdivision (1) of this  
68 subsection or in article eight of this chapter applicable to the  
69 insurer. For the purpose of this subdivision, "the total invest-  
70 ment of the insurer" includes:

71 (A) Any direct investment by the insurer in an asset; and

72 (B) The insurer's proportionate share of any investment in  
73 an asset by any subsidiary of the insurer, which shall be  
74 calculated by multiplying the amount of the subsidiary's

75 investment by the percentage of the ownership of the subsid-  
76 iary.

77 (3) With the approval of the commissioner, invest any  
78 greater amount in common stock, preferred stock, debt obliga-  
79 tions or other securities of one or more subsidiaries: *Provided,*  
80 That after investment the insurer's surplus as regards policy-  
81 holders will be reasonable in relation to the insurer's outstand-  
82 ing liabilities and adequate to its financial needs.

83 (c) Investments in common stock, preferred stock, debt  
84 obligations or other securities of subsidiaries made pursuant to  
85 subsection (b) of this section are not subject to any of the  
86 otherwise applicable restrictions or prohibitions contained in  
87 this chapter applicable to the investments of insurers.

88 (d) Whether any investment pursuant to subsection (a) or  
89 (b) of this section meets the applicable requirements of said  
90 subsections is to be determined before the investment is made,  
91 by calculating the applicable investment limitations as though  
92 the investment had already been made, taking into account the  
93 then outstanding principal balance on all previous investments  
94 in debt obligations, and the value of all previous investments in  
95 equity securities as of the day they were made, net of any return  
96 of capital invested, not including dividends.

97 (e) If an insurer ceases to control a subsidiary, it shall  
98 dispose of any investment in the subsidiary made pursuant to  
99 this section within three years from the time of the cessation of  
100 control or within any further time prescribed by the commis-  
101 sioner, unless at any time after the investment was made, the  
102 investment meets the requirements for investment under any  
103 other provision of this chapter and the insurer has notified the  
104 commissioner of compliance with the provisions of this chapter.