ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA

Regular Session, 1997
First Extraordinary Session, 1997
Second Extraordinary Session, 1996

Volume I
Chapters 1 — 123
FOREWORD


First Regular Session, 1997

The First Regular Session of the 73rd Legislature convened on January 8, 1997, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 5th day of November, 1996, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 12, 1997, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 12, 1997. The Governor issued a proclamation on April 9, 1997, extending the session for a period not to exceed five days for the sole purpose of considering the Budget and supplementary appropriation bills. Subsequent proclamations were issued extending the session, and the Legislature adjourned sine die on April 20, 1997.

Bills totaling 1,483 were introduced in the two houses during the session (913 House and 570 Senate). The Legislature passed 241 bills, 121 House and 120 Senate.

The Governor vetoed 13 bills (H. B. 2189, Clarifying legislative intent as to qualification and certification of managed timberland; H. B. 2681, Terminating the oil and gas conservation commission and transferring duties; H. B. 2697, Prohibiting discrimination against students and graduates of private institutions of higher education participating in job training and employment opportunities; H. B. 2866, Procedures relating to faculty senate recommendations and duties of teachers and personnel on days of faculty senate meetings; H. B. 2886, Relating to the natural resources commission; S. B. 157, Authorizing various agencies within division of tax and revenue to promulgate legislative rules; S. B. 348, Removing mental
health centers from public employees retirement system; S. B. 350, Increasing salary of state tax commissioner; S. B. 368, Reducing total tax credits to all companies authorized by economic development authority; S. B. 544, Relating to public employees retirement system; S. B. 561, Establishing magistrate court rules as rules of procedure for municipal jury trial; S. B. 567, Making supplemental appropriation to schools for the deaf and blind; and S. B. 569, Making supplemental appropriation to department of agriculture). The Legislature amended and again passed S. B. 157, S. B. 350, S. B. 368, S. B. 544 and S. B. 561. The Governor again vetoed S. B. 561, leaving a net total of 232 bills, 116 House and 116 Senate, which became law.

There were 94 Concurrent Resolutions introduced during the session, 51 House and 43 Senate, of which 16 House and 24 Senate were adopted. Twenty-three House Joint Resolutions and seventeen Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One Senate Joint Resolution, S. J. R. 4, Proposing an amendment to the Constitution designated the Modern Investment Management Amendment, was adopted by the Legislature. The House introduced 25 House Resolutions and the Senate introduced 47 Senate Resolutions, of which 21 House and 47 Senate were adopted.

The Senate failed to pass 140 House bills passed by the House, and 60 Senate bills failed passage by the House. Two House bills and three Senate bills died in conference: H. B. 2575, Reallocation of resources for education development; H. B. 2722, Prohibiting emergency medical personnel who are convicted sex offenders from serving on an ambulance crew; S. B. 98, Relating to licensing requirements for carrying concealed handguns; S. B. 439, Relating to salary increase for conservation officers; and S. B. 541, Making supplemental appropriation to division of human services from surplus funds.

First Extraordinary Session, 1997

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment sine die of the Regular Session, contained six items for consideration.
The Legislature passed 19 bills, 11 House and 8 Senate. The House adopted two House Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on April 20, 1997.

**Second Extraordinary Session, 1996**

The Proclamation calling the Legislature into Extraordinary session at 12:00 P.M., Noon, October 15, 1996, contained five items for consideration.

The Legislature passed 10 bills, all of which were House bills. The House adopted two House Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on October 16, 1996.

* * * * * * * * * * * *

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 or from the Department of Administration, Purchasing Division Section, State Capitol, Charleston, West Virginia 25305.

**Gregory M. Gray**

*Clerk of the House and Keeper of the Rolls.*
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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1997

OFFICERS
Speaker—Robert S. Kiss, Beckley
Clerk—Gregory M. Gray, Charleston
Sergeant at Arms—Oce Smith, Fairmont
Doorkeeper—John A. Roberts, Hedgesville

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<th>Name</th>
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(D) Democrats .................................................. 74
(R) Republicans ................................................ 26

TOTAL ............................................................... 100
MEMBERS OF THE SENATE

REGULAR SESSION, 1997

OFFICERS

President—Earl Ray Tomblin, Chapmanville
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Tony DeRaimo, Leewood
Doorkeeper—Andrew J. Trail, Charleston

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<td>(House 70th); 71st-72nd</td>
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</tbody>
</table>

(D) Democrats 25
(R) Republicans 9
TOTAL 34

[ XXVIII ]
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 1997

STANDING

AGRICULTURE AND NATURAL RESOURCES

Beach (Chair of Agriculture), Kelley (Vice Chair of Agriculture), Proudfoot (Chair of Natural Resources), Fragale (Vice Chair of Natural Resources), Boggs, Buchanan, Caputo, Claypole, Damron, Davis, Dempsey, Ennis, Flanigan, Heck, Prunty, Stemple, Tomblin, Williams, Willis, Anderson, Border, Evans, Riggs, Leggett and Overington.

BANKING AND INSURANCE

Farris (Chair of Banking), Thompson (Vice Chair of Banking), Beane (Chair of Insurance), Johnson (Vice Chair of Insurance), Cann, Dempsey, Fantasia, Flanigan, Heck, Hunt, Hutchins, Jenkins, Laird, Pino, Seacrist, Shelton, Tillis, Tomblin, H. White, Azinger, Clements, Faircloth, Gillespie, Walters and G. White.

CONSTITUTIONAL REVISION

Fleischauer (Chair), Osborne (Vice Chair), Amores, Collins, Dalton, Frederick, Givens, Kominar, Laird, Leach, Linch, Martin, McGraw, Rowe, Underwood, Varner, H. White, Wright, Capito, Given, Harrison, Leggett, Overington, Smirl and Webb.

EDUCATION

Mezzatesta (Chair), Manuel (Vice Chair), Beach, Boggs, Caputo, Damron, Dempsey, Ennis, Fragale, Hubbard, Martin, Osborne, Rowe, Shelton, Sparks, Spencer, R. White, Williams, Yeager, Anderson, Gillespie, Hall, Harrison, Henderson and Webb.

FINANCE

Michael (Chair), Doyle (Vice Chair), Beane, Campbell, Cann, Compton, Farris, Frederick, Jenkins, Kelley, Laird, Leach, Mezzatesta, Pettit, Proudfoot, Pulliam, Seacrist, Warner, Border, Clements, Evans, Facemyer, Leggett, Miller and Walters.

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GOVERNMENT ORGANIZATION
Douglas (Chair), Collins (Vice Chair), Butcher, Claypole, Davis, Everson, Fantasia, Flanigan, Heck, Kuhn, Louisos, McGraw, Prunty, Thompson, Tucker, Varner, H. White, Willis, Azinger, Capito, Given, Harrison, Overington, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES
Compton (Chair), Hutchins (Vice Chair), Amores, Beach, Caputo, Doyle, Fleischauer, Hubbard, Kelley, Leach, Louisos, Mahan, Manuel, Osborne, Pino, Rowe, Stemple, Warner, Capito, Facemyer, Gillespie, Given, Henderson, Miller and Thomas.

INDUSTRY AND LABOR
Pettit (Chair), Kuhn (Vice Chair), Butcher, Cann, Caputo, Claypole, Coleman, Dalton, Doyle, Farris, Frederick, Linch, Louisos, Mahan, Prunty, Sparks, Tillis, Tucker, Williams, Border, Evans, Harrison, Overington, Walters and Webb.

JUDICIARY
Staton (Chair), Amores (Vice Chair), Buchanan, Coleman, Dalton, Fleischauer, Givens, Hunt, Hutchins, Johnson, Kominar, Linch, Mahan, Pino, Stemple, Tillis, Tomblin, Underwood, Wright, Faircloth, Riggs, Smirl, Thomas, Trump and G. White.

POLITICAL SUBDIVISIONS
Seacrist (Chair), Yeager (Vice Chair), Beane, Campbell, Damron, Everson, Fantasia, Flanigan, Givens, Johnson, Kuhn, Louisos, Pettit, Proudfoot, Pulliam, Underwood, C. White, Willis, Facemyer, Miller, Smirl, Stalnaker, Trump, G. White and Willison.

ROADS AND TRANSPORTATION
Warner (Chair), Everson (Vice Chair), Boggs, Butcher, Coleman, Damron, Davis, Ennis, Hubbard, Kominar, Manuel, McGraw, Pulliam, Shelton, Spencer, Thompson, Varner, C. White, Wright, Border, Clements, Evans, Hall, Miller and Stalnaker.
RULES
Kiss (Chair), Douglas, Manuel, Martin, Mezzatesta, Michael, Pino, Staton, Varner, Ashley, Faircloth and Miller.

VETERANS’ AFFAIRS
Givens (Chair), Frederick, (Vice Chair), Buchanan, Campbell, Coleman, Collins, Doyle, Everson, Hutchins, Kelley, Kuhn, Linch, Seacrist, Sparks, Spencer, Thompson, Tucker, Yeager, Anderson, Azinger, Facemyer, Henderson, Stalnaker, Thomas and Willison.

JOINT

ENROLLED BILLS
Fantasia (Chair), Dempsey (Vice Chair), Fragale and Overington.

GOVERNMENT AND FINANCE
Kiss (Chair), Martin, Mezzatesta, Michael, Staton, Ashley and Trump.

GOVERNMENT OPERATIONS
Douglas (Chair), Collins, Varner, Stalnaker and Willison.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Hunt (Chair), Linch (Vice Chair), Compton, Jenkins, Faircloth and Riggs.

PENSIONS AND RETIREMENT
Jenkins (Chair), Hubbard (Vice Chair), Beane, Campbell, Williams, Clements and Hall.
HOUSE OF DELEGATES COMMITTEES

RULES
Kiss (Chair), Martin and Ashley.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW
Williams (Chair), Heck (Vice Chair), Martin, Mezzatesta, Proudfoot and Willison.

INTERSTATE COOPERATION
Beane (Chair), Amores, Doyle, Farris, Jenkins, Ashley and Walters.

OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Mezzatesta (Chair), Beach, Doyle, Manuel, Williams and Anderson.

OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Compton (Chair), Douglas, Leach, Martin, Michael, Ashley and Facemyer.

OVERSIGHT COMMISSION ON REGIONAL JAIL AND CORRECTIONAL FACILITY
Manuel (Chair), Linch (Vice Chair), Compton, Jenkins, Faircloth and Riggs.

SPECIAL INVESTIGATIONS
Kiss (Chair), Martin, Staton, Faircloth and Trump.
COMMITTEES OF THE SENATE
Regular Session, 1997

STANDING

AGRICULTURE
Anderson (Chair), White (Vice Chair), Ball, Dittmar, Helmick, Love, Ross, Dugan, Minear and Sprouse.

BANKING AND INSURANCE
Helmick (Chair), Snyder (Vice Chair), Chafin, Craigo, Dittmar, Fanning, Prezioso, Sharpe, Wiedebusch, Wooton, Deem, Kimble and Scott.

CONFIRMATIONS
Bowman (Chair), Chafin (Vice Chair), Bailey, Jackson, Love, White, Wooton, McKenzie and Scott.

EDUCATION
Jackson (Chair), Plymale (Vice Chair), Bailey, Ball, Fanning, Helmick, Hunter, Oliverio, Schoonover, White, Boley, Dugan, McKenzie and Minear.

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), Fanning (Vice Chair), Anderson, Helmick, Hunter, Macnaughtan, Oliverio, Ross, Snyder, White, Deem, Dugan, McKenzie and Minear.

FINANCE
Craigo (Chair), Sharpe (Vice Chair), Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Walker, Boley, Dugan, McKenzie, Minear and Sprouse.

GOVERNMENT ORGANIZATION
Wiedebusch (Chair), Bailey (Vice Chair), Ball, Bowman, Jackson, Macnaughtan, Plymale, Schoonover, Walker, White, Wooton, Boley, Buckalew, Minear and Scott.

HEALTH AND HUMAN RESOURCES
Walker (Chair), Macnaughtan (Vice Chair), Craigo, Hunter, Plymale, Prezioso, Ross, Sharpe, Snyder, Wooton, Boley, McKenzie, Scott and Sprouse.
INTERSTATE COOPERATION

White (Chair), Anderson (Vice Chair), Bowman, Prezioso, Schoonover, Deem and Scott.

JUDICIARY

Wooton (Chair), Bowman (Vice Chair), Ball, Dittmar, Fanning, Hunter, Oliverio, Ross, Schoonover, Snyder, White, Wiedebusch, Buckalew, Deem, Kimble and Scott.

LABOR

Macnaughtan (Chair), Schoonover (Vice Chair), Bowman, Hunter, Love, Prezioso, Wiedebusch, Deem, Dugan and Minear.

MILITARY

Prezioso (Chair), Hunter (Vice Chair), Bailey, Dittmar, Helmick, Oliverio, Wooton, Buckalew and Kimble.

NATURAL RESOURCES

Dittmar (Chair), Love (Vice Chair), Anderson, Bowman, Craigo, Macnaughtan, Plymale, Ross, Snyder, Wiedebusch, Boley, Deem, Minear and Sprouse.

PENSIONS

Plymale (Chair), Prezioso (Vice Chair), Fanning, Jackson, Walker, Kimble and Sprouse.

RULES

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

SMALL BUSINESS

Oliverio (Chair), Fanning (Vice Chair), Anderson, Ball, Bowman, Craigo, Plymale, Ross, Sharpe, Buckalew, Kimble and Sprouse.

TRANSPORTATION

Ross (Chair), Ball (Vice Chair), Dittmar, Love, Oliverio, Schoonover, Wiedebusch, Buckalew and McKenzie.
JOINT

ENROLLED BILLS
Schoonover (Chair), Bailey, Snyder, Walker and Kimble.

GOVERNMENT AND FINANCE
Tomblin (Chair), Chafin, Craigo, Sharpe, Wooton, Buckalew and Deem.

GOVERNMENT OPERATIONS
Wiedebusch (Chair), Bailey, Bowman, Walker and Minear.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Ross (Chair), Anderson (Vice Chair), Bowman, Macnaughtan, Boley and Buckalew.

PENSIONS AND RETIREMENT
Plymale (Chair), Prezioso (Vice Chair), Fanning, Jackson, Walker, Boley and Sprouse.

RULES
Tomblin (Chair), Chafin and Buckalew.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW
Plymale (Chair), Bowman, Helmick, Love, Ross and Minear.
SENATE COMMITTEES

INTERSTATE COOPERATION
White (Chair), Anderson (Vice Chair), Bowman, Prezioso, Schoonover, Deem and Scott.

OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Jackson (Chair), Bailey, Craigo, Plymale, Prezioso and Dugan.

OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Walker (Chair), Craigo, Hunter, Prezioso, Sharpe, Snyder and Scott.

OVERSIGHT COMMISSION ON REGIONAL JAIL AND CORRECTIONAL FACILITY
Love (Chair), Craigo, Helmick, Hunter, Wiedebusch and Buckalew.

SPECIAL INVESTIGATIONS
Tomblin (Chair), Sharpe, Wooton, Buckalew and Sprouse.
AN ACT to amend and reenact section three, article two, chapter thirty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article eight, chapter thirty-six of said code; to further amend said chapter by adding thereto a new article, designated article eight-a; and to amend and reenact section three-c, article one, chapter forty-two of said code, all relating to the disposition of abandoned and unclaimed property; providing for the disposition of abandoned derelict property; adopting the uniform unclaimed property act; defining terms; establishing time periods for presumption of abandonment; providing for the abandonment of property held in safe deposit boxes; establishing rules for the taking of custody of abandoned property; permitting the imposition of dormancy charges in certain instances; establishing burden of proof on abandonment issues; providing for the reporting of abandoned property; providing for the payment or delivery of abandoned property; requiring notice and publication of
lists of abandoned property; providing for the custody of property paid or delivered to the state; providing for the recovery of property by holder and granting holder certain defenses; crediting of dividends, interest and increments to owner's account; providing for the public sale of abandoned property; requiring the deposit of funds into the general revenue fund; authorizing administrator to maintain a trust fund for the payment of claims; permitting the administrator to deduct expenses of public sale from deposits to general revenue fund; providing for the recovery of property by another state; establishing procedures for the filing and handling of claims; providing for a civil action to establish claim; authorizing the administrator to decline and accept certain property; authorizing holder to report and deliver property before presumption of abandonment; authorizing administrator to destroy or dispose of certain property; establishing periods of limitation; setting forth authority of administrator to request reports and examine records of holder; providing for confidentiality of holder's records; providing for the retention of records; authorizing administrator to enforce article and to enter into agreements with other states; providing for the imposition of interest and civil penalties for failure to report, pay or deliver property; exempting records held by the administrator from public disclosure; limiting scope of article; establishing transitional provisions; requiring administrator to promulgate legislative rules, including emergency legislative rules; establishing uniformity of application and construction, short title, severability and effective date; providing for disposition of unclaimed stolen property held by law-enforcement agencies; setting forth definitions; requiring law-enforcement agencies to file reports on unclaimed stolen property with state treasurer; requiring treasurer to evaluate reports and issue responses to law-enforcement agencies; providing for the sale or donation of such property to nonprofit organizations; authorizing law-enforcement agencies to retain the proceeds of a public sale of such property conducted by the law-enforcement agency; requiring the treasurer to deposit into the general revenue fund the proceeds of a public sale of such property conducted by the treasurer; authorizing law-enforcement agencies to trade in unclaimed stolen firearms and ammunition of sufficient quality on new
weapons and ammunition; requiring that unclaimed stolen firearms and ammunition of poor quality be delivered to the treasurer for destruction; providing immunity to law-enforcement agencies acting in compliance with this article; and providing for the disposition of property of certain intestate estates.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter thirty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article eight, chapter thirty-six of said code be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article eight-a; and that section three-c, article one, chapter forty-two of said code be amended and reenacted, all to read as follows:

Chapter
34. Estrays, Drift and Derelict Property.
36. Estates and Property.
42. Descent and Distribution.

CHAPTER 34. ESTRAYS, DRIFT AND DERELICT PROPERTY.

ARTICLE 2. DERELICT PROPERTY.

§34-2-3. Decree of title to state.

1 If, in such a suit as is mentioned in section one of this article, no person appears to show title in himself, the court shall decree the residuum or other property to the state, and enforce the collection thereof, or of the proceeds of the sale of such property. Any real property so decreed to the state shall be remitted to the state auditor. Any personal property shall be remitted to the state treasurer for disposition by public sale in accordance with the provisions of section twelve, article eight, chapter thirty-six of this code. The proceeds of the sale of any such real property shall be deposited to the credit of the general school fund. The proceeds of the sale of any such personal property shall be deposited to the credit of the general fund.
CHAPTER 36. ESTATES AND PROPERTY.


8A. Unclaimed Stolen Property Held By Law-Enforcement Agencies.

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-1. Definitions.
§36-8-2. Presumptions of abandonment.
§36-8-3. Contents of safe deposit box or other safekeeping depository.
§36-8-4. Rules for taking custody.
§36-8-5. Dormancy charge.
§36-8-6. Burden of proof as to property evidenced by record of check or draft.
§36-8-8. Payment or delivery of abandoned property.
§36-8-9. Notice and publication of lists of abandoned property.
§36-8-10. Custody by state; recovery by holder; defense of holder.
§36-8-11. Crediting of dividends, interest and increments to owner’s account.
§36-8-12. Public sale of abandoned property.
§36-8-13. Deposit of funds.
§36-8-14. Claim of another state to recover property.
§36-8-15. Filing claim with administrator; handling of claims by administrator.
§36-8-16. Action to establish claim.
§36-8-17. Election to take payment or delivery.
§36-8-18. Destruction or disposition of property having no substantial commercial value; immunity from liability.
§36-8-20. Requests for reports and examination of records.
§36-8-21. Retention of records.
§36-8-22. Enforcement.
§36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.
§36-8-24. Interest and penalties.
§36-8-25. Records of abandoned property.
§36-8-26. Foreign transactions.
§36-8-27. Transitional provisions.
§36-8-29. Uniformity of application and construction.
§36-8-30. Short title.
§36-8-31. Severability clause.
§36-8-32. Effective date.
§36-8-1. Definitions.

1 As used in this article:

2 (1) "Administrator" means the state treasurer.

3 (2) "Apparent owner" means a person whose name
4 appears on the records of a holder as the person entitled to
5 property held, issued or owing by the holder.

6 (3) "Business association" means a corporation, joint
7 stock company, investment company, partnership,
8 unincorporated association, joint venture, limited liability
9 company, business trust, trust company, safe deposit
10 company, financial organization, insurance company,
11 mutual fund, utility or other business entity consisting of
12 one or more persons, whether or not for profit.

13 (4) "Domicile" means the state of incorporation of a
14 corporation and the state of the principal place of business
15 of a holder other than a corporation.

16 (5) "Financial organization" means a savings and
17 loan association, bank, banking organization or credit
18 union.

19 (6) "Holder" means a person obligated to hold for
20 the account of, or deliver or pay to, the owner property
21 that is subject to this article.

22 (7) "Insurance company" means an association,
23 corporation, or fraternal or mutual benefit organization,
24 whether or not for profit, engaged in the business of
25 providing life endowments, annuities or insurance,
26 including accident, burial, casualty, credit life, contract
27 performance, dental, disability, fidelity, fire, health,
28 hospitalization, illness, life, malpractice, marine, mortgage,
29 surety, wage protection and workers' compensation
30 insurance.

31 (8) "Mineral" means gas; oil; coal; other gaseous,
32 liquid and solid hydrocarbons; oil shale; cement material;
33 sand and gravel; road material; building stone; chemical
34 raw material; gemstone; fissionable and nonfissionable
35 ores; colloidal and other clay; steam and other geothermal
resource; or any other substance defined as a mineral by the law of this state.

(9) "Mineral proceeds" means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(i) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

(ii) For the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments;

(iii) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement.

(10) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to this article or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(13) "Property" means tangible personal property described in section three of this article or a fixed and certain interest in intangible personal property that is held, issued or owed in the course of a holder's business, or by
a government, governmental subdivision, agency or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

(i) Money, a check, draft, warrant for payment issued by the state of West Virginia, deposit, interest or dividend;

(ii) Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

(iii) Stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) A bond, debenture, note or other evidence of indebtedness;

(v) Money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;

(vi) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise or license for the transmission of
§36-8-2. Presumptions of abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler’s check, fifteen years after issuance;

(2) Money order, seven years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, five years after the earlier of: (i) The date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A noninterest bearing demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; an interest bearing demand, savings or time deposit including a deposit that is automatically renewable, seven years after the earlier of maturity or the date of the last indication by the owner of interest in the property. A deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;
Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

Gift certificate, three years after the thirty-first day of December of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate’s face value;

Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

Property held by a court, government, governmental subdivision, agency or instrumentality, one year after the property becomes distributable;

Wages or other compensation for personal services, one year after the compensation becomes payable;

Deposit or refund owed to a subscriber by a utility, two years after the deposit or refund becomes payable;

Property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if
ABANDONED PROPERTY

(Ch. 1)

determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) Warrants for payment issued by the state of West Virginia which have not been presented for payment, within six months of the date of issuance;

(16) All funds held by a fiduciary, including the state municipal bond commission, for the payment of a note, bond, debenture or other evidence or indebtedness, five years after the principal maturity date, or if such note, bond, debenture or evidence of indebtedness is called for redemption on an earlier date, then the redemption date, such premium or redemption date to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture or other evidence of indebtedness; and

(17) All other property, five years after the owner’s right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner’s interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with
ABANDONED PROPERTY

109 respect to an account or underlying stock or other interest
to an account or underlying stock or other interest
in a business association or financial organization or, in
the case of a distribution made by electronic or similar
means, evidence that the distribution has been received;
(2) Owner-directed activity in the account in which the
property is held, including a direction by the owner to
increase, decrease or change the amount or type of
property held in the account;
(3) The making of a deposit to or withdrawal from a
bank account; and
(4) The payment of a premium with respect to a
property interest in an insurance policy; but the
application of an automatic premium loan provision or
other nonforfeiture provision contained in an insurance
policy does not prevent a policy from maturing or
terminating if the insured has died or the insured or the
beneficiary of the policy has otherwise become entitled to
the proceeds before the depletion of the cash surrender
value of a policy by the application of those provisions.
(e) Property is payable or distributable for purposes of
this article notwithstanding the owner's failure to make
demand or present an instrument or document otherwise
required to obtain payment.
§36-8-3. Contents of safe deposit box or other safekeeping
depository.
Tangible personal property held in a safe deposit box
or other safekeeping depository in this state in the
ordinary course of the holder's business and proceeds
resulting from the sale of the property permitted by other
law, are presumed abandoned if the property remains
unclaimed by the owner for more than five years after
expiration of the lease or rental period on the box or other
depository.
§36-8-4. Rules for taking custody.
Except as otherwise provided in this article or by other
statute of this state, property that is presumed abandoned,
whether located in this or another state, is subject to the custody of this state if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) The last known address of the person entitled to the property is in this state; or

(ii) The holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state;

(6) The transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or
(7) The property is a traveler’s check or money order purchased in this state, or the issuer of the traveler’s check or money order has its principal place of business in this state and the issuer’s records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or do not show the state in which the instrument was purchased.

§36-8-5. Dormancy charge.

A holder may deduct from property presumed abandoned a charge imposed by reason of the owner’s failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

§36-8-6. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator’s burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge and want of consideration are affirmative defenses that must be established by the holder.


(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler’s check or money order, the name, if known, and last known address, if any,
and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars or more;

(3) An aggregated amount of items valued under fifty dollars each;

(4) In the case of an amount of fifty dollars or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) In the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

(6) The date, if any, on which the property became payable, demandable or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(7) Other information that the administrator by rule prescribes as necessary for the administration of this article.

c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

d) The report must be filed before the first day of November of each year and cover the twelve months next preceding the first day of July of that year, but a report with respect to a life insurance company must be filed before the first day of May of each year for the calendar year next preceding.

e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty days or less than sixty days before
filing the report, stating that the holder is in possession of
property subject to this article, if:

(1) The holder has in its records an address for the
apparent owner which the holder’s records do not disclose
to be inaccurate;

(2) The claim of the apparent owner is not barred by a
statute of limitations; and

(3) The value of the property is fifty dollars or more.

(f) Before the date for filing the report, the holder of
property presumed abandoned may request the
administrator to extend the time for filing the report. The
administrator may grant the extension for good cause.
The holder, upon receipt of the extension, may make an
interim payment on the amount the holder estimates will
ultimately be due, which terminates the accrual of
additional interest on the amount paid.

(g) The holder of property presumed abandoned shall
file with the report an affidavit stating that the holder has
complied with subsection (e) of this section.

§36-8-8. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or
other safekeeping depository, upon filing the report
required by section seven of this article, the holder of
property presumed abandoned shall pay, deliver or cause
to be paid or delivered to the administrator the property
described in the report as unclaimed, but if the property is
an automatically renewable deposit, and a penalty or
forfeiture in the payment of interest would result, the time
for compliance is extended until a penalty or forfeiture
would no longer result. Property held in a safe deposit
box or other safekeeping depository may not be delivered
to the administrator until one hundred twenty days after
filing the report required by section seven of this article.

(b) If the property reported to the administrator is a
security or security entitlement under article eight of the
uniform commercial code, the administrator is an
appropriate person to make an indorsement, instruction or
entitlement order on behalf of the apparent owner to
invoke the duty of the issuer or its transfer agent or the
securities intermediary to transfer or dispose of the
security or the security entitlement in accordance with
article eight of the uniform commercial code.

(c) If the holder of property reported to the
administrator is the issuer of a certificated security, the
administrator has the right to obtain a replacement
certificate pursuant to article eight, section four hundred
eight of the uniform commercial code, but an indemnity
bond is not required.

(d) An issuer, the holder, and any transfer agent or
other person acting pursuant to the instructions of and on
behalf of the issuer or holder in accordance with this
section is not liable to the apparent owner and must be
indemnified against claims of any person in accordance
with section ten of this article.

§36-8-9. Notice and publication of lists of abandoned property.

(a) The administrator shall publish a notice not later
than the thirtieth day of November of the year next
following the year in which abandoned property has been
paid or delivered to the administrator. The notice must be
published in a newspaper of general circulation in the
county of this state in which is located the last known
address of any person named in the notice. If a holder
does not report an address for the apparent owner, or the
address is outside this state, the notice must be published
in the county in which the holder has its principal place of
business within this state or another county that the
administrator reasonably selects. The advertisement must
be in a form that, in the judgment of the administrator, is
likely to attract the attention of the apparent owner of the
unclaimed property. The form must contain:

(1) The name of each person appearing to be the
owner of the property, as set forth in the report filed by
the holder;
(2) The last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(4) A statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than fifty dollars or information concerning a traveler's check, money order or similar instrument.

§36-8-10. Custody by state; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in "good faith" if:

(1) Payment or delivery was made in a reasonable attempt to comply with this article;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned: Provided, That no fiduciary shall be deemed to be in breach of a fiduciary obligation for purposes of this section by virtue of paying or delivering property to the administrator prior to the expiration of the period for holding unclaimed or abandoned property contained in the instrument under which such fiduciary is acting; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays
or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this article may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler’s check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under subsection (a), section nineteen of this article.

(d) A holder who has delivered property other than money to the administrator pursuant to this article may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder’s affidavit as sufficient proof of the holder’s right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator
subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

§36-8-11. Crediting of dividends, interest and increments to owner's account.

(a) If property other than money is delivered to the administrator under this article, the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money only as provided in this subsection:

(1) If the property was an interest bearing demand, savings or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of four percent per year or any lesser rate the property earned at the time the property was delivered to the administrator.

(2) If the property is any property other than an interest bearing demand, savings or time deposit, the administrator shall pay the owner four percent per year on the market value of the property at the time it was delivered to the administrator or any lesser annualized rate of income or gain the property earned from the time the property was delivered to the administrator to the time the owner established a claim to the property.

(3) In no event shall the administrator be required to pay the owner any income or gain realized or accruing on the property after the third anniversary of the delivery of the property to the administrator.

(b) Nothing in this section shall be construed to entitle an owner to interest on property which did not realize or accrue income or gain at the time it was delivered to the administrator.

§36-8-12. Public sale of abandoned property.
(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under this article before the end of the three-year period is entitled to the proceeds of the sale of the securities less any deduction for expenses of sale. A person making a claim under this article after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this article takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

§36-8-13. Deposit of funds.
(a) Except as otherwise provided by this section, the administrator shall promptly deposit in the general revenue fund of this state all funds received under this article, including the proceeds from the sale of abandoned property under section twelve of this article. The administrator shall retain in a separate trust fund at least one hundred thousand dollars from which the administrator shall pay claims duly allowed. The administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) Before making a deposit to the credit of the general revenue fund, the administrator may deduct:

1. Expenses of sale of abandoned property;
2. Costs of mailing and publication in connection with abandoned property;
3. Reasonable service charges; and
4. Expenses incurred in examining records of holders of property and in collecting the property from those holders.

§36-8-14. Claim of another state to recover property.

(a) After property has been paid or delivered to the administrator under this article, another state may recover the property if:

1. The property was paid or delivered to the custody of this state because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;
(2) The property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this state under subdivision (6), section four of this article and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this state under subdivision (7), section four of this article, and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

§36-8-15. Filing claim with administrator; handling of claims by administrator.
(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within ninety days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under section sixteen of this article.

(c) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant.

§36-8-16. Action to establish claim.

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the circuit court of Kanawha County, naming the administrator as a defendant. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.

§36-8-17. Election to take payment or delivery.

(a) The administrator may decline to receive property reported under this article which the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under this article.
§36-8-18. Destruction or disposition of property having no substantial commercial value; immunity from liability.

If the administrator determines after investigation that property delivered under this article has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.


(a) The expiration, before or after the effective date of this article, of a period of limitation on the owner’s right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this article.

(b) An action or proceeding may not be maintained by the administrator to enforce this article in regard to the reporting, delivery or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

§36-8-20. Requests for reports and examination of records.

(a) The administrator, or the administrator’s designated agent, may require a person who has not filed a report, or a person who the administrator believes has filed an inaccurate, incomplete or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this article, describe property not previously reported or as to which the administrator has
made inquiry and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, or the administrator’s designated agent, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this article. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under this article. The administrator may contract with any other person to conduct the examination on behalf of the administrator. However, this subsection shall not be construed to grant the administrator the right to examine the records of a national banking association to an extent greater than permitted by applicable federal law, nor shall this subsection permit the records of any bank chartered or incorporated under the laws of any state to be subject to examination to an extent greater than the examination permitted of the records of a national banking association under applicable federal law.

(c) The administrator, or the administrator’s agent, at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator, or the administrator’s agent, has given the notice required by subsection (b) of this section to both the association or organization and the agent at least ninety days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator’s agents, employees or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) Used by the administrator or the administrator’s attorney in the course of an action to collect unclaimed property or otherwise enforce this article;
(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government or any other governmental subdivision, agency or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subdivision, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under this article, the administrator may assess the cost of the examination against the holder at the rate of two hundred dollars a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association or financial organization.

(f) If, after the effective date of this article, a holder does not maintain the records required by section twenty-one of this article and the records of the holder available for the periods subject to this article are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

§36-8-21. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under section seven of this article shall maintain the records containing the information required to be included in the report for ten years after the holder files the report, unless a shorter period is provided by rule of the administrator.
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(b) A business association or financial organization that sells, issues or provides to others for sale or issue in this state, traveler’s checks, money orders or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

§36-8-22. Enforcement.

The administrator may maintain an action in this or another state to enforce this article. The court may award reasonable attorney’s fees to the prevailing party.

§36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in section twenty of this article. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another state to seek enforcement of this article against any person who is or may be holding property reportable under this article.

(c) At the request of another state, the administrator’s attorney may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator.
The administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney’s fees, in maintaining an action under this subsection. With the administrator’s approval, the expenses and attorney’s fees may be paid from money received under this article. The administrator may agree to pay expenses and attorney’s fees based, in whole or in part, on a percentage of the value of any property recovered in the action. Any expenses or attorney’s fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this article.

§36-8-24. Interest and penalties.

(a) A holder who fails to report, pay or deliver property within the time prescribed by this article shall pay to the administrator interest at the annual rate of twelve percent on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in subsection (c) of this section, a holder who fails to report, pay or deliver property within the time prescribed by this article, or fails to perform other duties imposed by this article, shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of two hundred dollars for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of five thousand dollars.

(c) A holder who willfully fails to report, pay or deliver property within the time prescribed by this article, or willfully fails to perform other duties imposed by this article, shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars, plus twenty-five percent of the value of any property that should have been but was not reported.
(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars for each day from the date a report under this article was due, up to a maximum of twenty-five thousand dollars, plus twenty-five percent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsections (b) and (c) of this section, and shall waive penalties if the holder acted in good faith and without negligence.

§36-8-25. Records of abandoned property.
1 Records of abandoned property kept by the administrator are available for inspection and copying only by an owner of such property as to the particular property he or she owns, or by his or her personal representative, next of kin, attorney at law or such person entitled to inherit from the owner conducting a legal audit thereof. These records are exempt from the provisions of chapter twenty-nine-b of this code.

§36-8-26. Foreign transactions.
1 This article does not apply to property held, due and owing in a foreign country and arising out of a foreign transaction.

§36-8-27. Transitional provisions.
1 (a) An initial report filed under this article for property that was not required to be reported before the effective date of this article but which is subject to this article must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of this article as if this article had been in effect during that period.

(b) This article does not relieve a holder of a duty that arose before the effective date of this article to report, pay or deliver property. Except as otherwise provided in subsection (b), section nineteen of this article, a holder
who did not comply with the law in effect before the effective date of this article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.


On or before the first day of July, one thousand nine hundred ninety-seven, the administrator shall promulgate emergency legislative rules in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The administrator shall propose legislative rules for promulgation in accordance with the requirements of the secretary of state and the provisions of chapter twenty-nine-a of this code to otherwise effectuate the purposes of this article.

§36-8-29. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

§36-8-30. Short title.

This article may be cited as the "Uniform Unclaimed Property Act".

§36-8-31. Severability clause.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§36-8-32. Effective date.

This article shall take effect on the first day of July, one thousand nine hundred ninety-seven.

ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD BY LAW-ENFORCEMENT AGENCIES.
§36-8A-1. Definitions.

§36-8A-2. Unclaimed stolen property reports.

§36-8A-3. Treasurer's response to unclaimed stolen property report.

§36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition.

§36-8A-5. Trade-in or appropriation of unclaimed stolen firearms and ammunition.

§36-8A-6. Deposit of funds.


§36-8A-1. Definitions.

For purposes of this article, unless a different meaning clearly appears in the context:

(a) "Chief executive" means the superintendent of the state police; the chief conservation officer of the division of natural resources; the sheriff of any West Virginia county; or the chief of any West Virginia municipal law-enforcement agency.

(b) "Item" means any item of unclaimed stolen property or any group of similar items considered together for purposes of reporting, donation, sale or destruction under this article.

(c) "Law-enforcement agency" means any duly authorized state, county or municipal organization of the state of West Virginia employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Hatfield-McCoy regional recreation authority nor any state institution of higher education may be deemed a law-enforcement agency.

(d) "Nonprofit organization" means: (i) Any nonprofit charitable organization; or (ii) any agency of the state of West Virginia the purpose of which is to provide health, recreational or educational services to citizens of the state of West Virginia.

(e) "Stolen property" means any tangible personal property, including cash and coins, which is confiscated by or otherwise comes into the custody of a law-enforcement agency during the course of a criminal
investigation or the performance of any other authorized
law-enforcement activity, whether or not the property was
or can be proven to have been stolen.

(f) “Treasurer” means the state treasurer or his or her
authorized designee for purposes of the administration of
this article.

(g) “Unclaimed stolen property” is stolen property:

1. Which has been held by a law-enforcement agency
   for at least six months, during which time the rightful
   owner has not claimed it;

2. For which the chief executive determines that there
   is no reasonable likelihood of its being returned to its
   rightful owner; and

3. Which the chief executive determines to have no
   evidentiary value.

§36-SA-2. Unclaimed stolen property reports.

(a) Prior to the first day of September, one thousand
nine hundred ninety-seven, and on or before the first day
of September of each succeeding year, each law-
forcement agency which has unclaimed stolen property
in its possession shall file an unclaimed stolen property
report with the treasurer which identifies all unclaimed
stolen property in its possession at the time the report is
filed.

(b) An unclaimed stolen property report shall include
the following information with respect to all unclaimed
stolen property in the possession of the law-enforcement
agency filing it:

1. A description of each item;

2. An estimated value for each item;

3. Whether any nonprofit organization has requested
   that any item be donated to it and whether any nonprofit
   organization might be considered to receive the item as a
donation;
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(4) Whether the law-enforcement agency could use the item for any legitimate and authorized law-enforcement or educational purpose;

(5) The chief executive's recommendation for the disposition of each item; and

(6) If any unclaimed stolen property in the law-enforcement agency's possession consists of firearms or ammunition, the chief executive's determination of whether the firearms or ammunition are of a sufficient quality to be traded in on new weapons or ammunition for the law-enforcement agency or appropriated for the law-enforcement agency's use.

§36-8A-3. Treasurer's response to unclaimed stolen property report.

Within thirty days of the receipt of an unclaimed stolen property report, the treasurer shall send a response to the law-enforcement agency submitting it. For each item identified in the unclaimed stolen property report except firearms and ammunition which the chief executive determined to be of sufficient quality to trade in on new weapons or ammunition or to appropriate for the law-enforcement agency's use, the treasurer shall either require that it be delivered to the treasurer, authorize the law-enforcement agency to sell it at a public sale, authorize the law-enforcement agency to donate it to a nonprofit organization, authorize the law-enforcement agency to use it for any legitimate and authorized law-enforcement or educational purpose, or authorize the law-enforcement agency either to sell it at a public sale, to donate it to a nonprofit organization, or to use it for any legitimate and authorized law-enforcement or educational purpose. However, the treasurer may not authorize the law-enforcement agency to sell or donate any firearms or ammunition. If the treasurer determines that any item identified in an unclaimed stolen property report is of such value that it should be processed by the treasurer's office, the treasurer shall have the authority to require that the item be delivered to the treasurer.
§36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition.

(a) Within ninety days of receipt of the treasurer’s response required by section three of this article, the law-enforcement agency shall dispose of all items identified in the treasurer’s response in the manner set forth in this section.

(b) If the treasurer’s report requires the law-enforcement agency to deliver any item to the treasurer, the chief executive shall cause the item to be so delivered. Within three years after receiving the item from the law-enforcement agency, the treasurer shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the treasurer affords the most favorable market for the property. The treasurer may decline the highest bid and reoffer the property for sale if the treasurer considers the bid to be insufficient. The treasurer need not offer the property for sale if the treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this subsection must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(c) If the treasurer’s response authorizes the law-enforcement agency to sell any item at a public sale, the chief executive shall retain an auctioneer licensed by the state of West Virginia to conduct the sale. The costs or fees incurred will be paid from a fund generated from revenues gained by the sale of such property. The licensed auctioneer shall sell the item to the highest bidder at a location which in the judgment of the chief executive affords the most favorable market for the items. A sale under this subsection must be preceded by a single publication of notice, at least three weeks before the sale, in a newspaper of general circulation in the county in which the property is to be sold. The chief executive shall retain the proceeds of any public sale under this subsection for the use of the law-enforcement agency.
38 (d) If the treasurer's response authorizes the law-
39 enforcement agency to donate any item to a nonprofit
40 organization, the chief executive shall cause the item to be
41 so donated.

42 (e) If the treasurer's report authorizes the law-
43 enforcement agency to use any item for any legitimate
44 and authorized law-enforcement or educational purpose,
45 the chief executive shall cause the item to be used for that
46 purpose. However, if the law-enforcement agency ever
47 discontinues its use of the item, it must again report the
48 item to the treasurer as provided in section two of this
49 article.

50 (f) If the treasurer's response authorizes the law-
51 enforcement agency either to sell any item at a public sale,
52 to donate it to a nonprofit organization or to use it for any
53 legitimate and authorized law-enforcement or educational
54 purpose, the chief executive may cause the item either to
55 be sold, donated or used as provided in this section.
56 However, the chief executive shall first attempt to donate
57 the item as provided in subsection (d) of this section or to
58 use it as provided in subsection (e) of this section before
59 selling it at a public sale as provided in subsection (c) of
60 this section.

§36-8A-5. Trade-in or appropriation of unclaimed stolen
firearms and ammunition.

1 (a) If the chief executive determined in the law-
2 enforcement agency's unclaimed stolen property report
3 that any firearms or ammunition in the law-enforcement
4 agency's possession are not of a sufficient quality to be
5 traded in on new weapons or ammunition for the agency
6 or appropriated for the agency's use, the chief executive
7 shall cause the firearms or ammunition to be delivered to
8 the treasurer for destruction.

9 (b) If the chief executive determined in the law-
10 enforcement agency's unclaimed stolen property report
11 that any firearms or ammunition in the law-enforcement
12 agency's possession are of a sufficient quality to be traded
13 in on new weapons or ammunition for the agency or
14 appropriated for the agency's use, the chief executive
15 shall cause the firearms or ammunition to be traded in on
16 new weapons or ammunition or appropriated for the
agency's use. After any trade-in or appropriation under this subsection, the law-enforcement agency shall file a report with the treasurer and the state tax department on the trade-in or appropriation.

§36-8A-6. Deposit of funds.
(a) The treasurer shall promptly deposit in the general revenue fund of this state all proceeds of any public sale of unclaimed stolen property conducted by the treasurer under subsection (b), section four of this article.

(b) Before making a deposit to the credit of the general revenue fund, the treasurer may deduct the expenses of the related public sale conducted by the treasurer.

(c) The treasurer may deduct the accumulated expenses incurred in the destruction of unclaimed stolen firearms and ammunition under this article from any deposit made under subsection (a) of this section.

If a law-enforcement agency delivers, sells or donates any item of unclaimed stolen property in good faith and in accordance with the provisions of this article, the law-enforcement agency and its chief executive, officers and employees involved in the delivery, sale or donation shall be immune from any subsequent claim of a person who purports to be the true owner of the item and who did not claim the item prior to the delivery, sale or donation.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.
§42-1-3c. No taker.
If there is no taker under the provisions of this article, the intestate estate passes to the state. Any real property shall pass to the state auditor. Any personal property shall pass to the state treasurer for disposition by public sale in accordance with the provisions of section twelve, article eight, chapter thirty-six of this code. The proceeds of the sale of any such real property shall be deposited to the credit of the general school fund. The proceeds of the sale of any such personal property shall be deposited to the credit of the general revenue fund.
AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; to amend and reenact sections one, three, four, five, six, seven, eight, nine, twelve and sixteen, article four, chapter forty-eight of said code; to further amend said article by adding thereto five new sections, designated sections three-a, three-b, three-c, eight-a and eight-b; and to amend and reenact section one, article three, chapter forty-nine of said code, all relating generally to adoption proceedings; creating a tax credit for nonfamily adoptions; defining and redefining terms; establishing persons whose consent or relinquishment is required; setting forth requirements for the execution of consents or relinquishments; establishing required contents of consents or relinquishments; establishing conduct constituting abandonment by birth parent; providing for consent by parents under eighteen years of age; providing for the revocation of consent or relinquishment for adoption; requiring disclosure of certain information upon delivery of child for adoption; establishing when adoption petition may be filed; expanding required contents of adoption petition; expanding and revising notice provisions; setting forth persons entitled to notice; changing the information required for notice; providing for notice to unknown fathers; establishing hearing procedures; setting forth evaluation requirements when discreet inquiries are conducted; setting forth procedures and limitations on challenges to adoption decrees; authorizing the payment of certain fees and expenses of the birth mother subject to approval by the circuit court; establishing criminal penalties; providing for agency adoptions and relinquishment requirements; requiring department to consider grandparents
as adoptive parents; and requiring the department to offer
certain counseling services.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.
48. Domestic Relations.

CHAPTER 11. TAXATION.

PART I. GENERAL.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-10a. Credit for nonfamily adoption.

1 A one time credit against the tax imposed by the
2 provisions of this article shall be allowed as follows:

3 Nonfamily adoptions. — For nonfamily adoptions, the
4 credit is equal to two thousand dollars which may be taken
5 in the year of the adoption of each nonfamily child, whose
6 age at adoption is under eighteen years. This credit may,
7 at the option of the taxpayer, be taken over a period of
8 three years.

9 For the purpose of this section and credit “nonfamily
10 adoptions” means adoptions of a child or children by a
11 taxpayer or taxpayers which child or children are not
12 related to the taxpayer or taxpayers by blood or marriage.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.
§48-4-1. Definitions.
§48-4-3. Persons whose consent or relinquishment is required; exceptions.
§48-4-3a. Timing and execution of consent or relinquishment.
§48-4-3b. Content of consent or relinquishment.
§48-4-3c. Conduct presumptively constituting abandonment.
§48-4-4. Consent or relinquishment by infants.
§48-4-5. Revocation of consent or relinquishment for adoption.
§48-4-6. Delivery of child for adoption; filing of petition.
§48-4-7. Petition and appendix.
§48-4-8. Who shall receive notice.
§48-4-8a. How notice is to be served.
§48-4-8b. Notice to an unknown father.
§48-4-12. Finality of order; challenges to order of adoption.
§48-4-16. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

§48-4-1. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Abandonment" means any conduct by the birth mother, legal father, determined father, outsider father, unknown father or putative father that demonstrates a settled purpose to forego all duties and relinquish all parental claims to the child;

(b) "Adoptive parents" or "adoptive mother" or "adoptive father" means those persons who, after adoption, are the mother and father of the child;

(c) "Agency" means a public or private entity, including the department of health and human resources, that is authorized by law to place children for adoption;

(d) "Birth father" means the biological father of the child;

(e) "Birth mother" means the biological mother of the child;

(f) "Birth parents" mean both the biological father and the biological mother of the child;
(g) "Consent" means the voluntary surrender to an individual, not an agency, by a minor child's parent or guardian, for purposes of the child's adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child;

(h) "Determined father" means, before adoption, a person: (1) In whom paternity has been established pursuant to the provisions of article six, chapter forty-eight-a of this code, whether by adjudication or acknowledgment as set forth therein; or (2) who has been otherwise judicially determined to be the biological father of the child entitled to parental rights; or (3) who has asserted his paternity of the child in an action commenced pursuant to the provisions of article six, chapter forty-eight-a of this code, that is pending at the time of the filing of the adoption petition;

(i) "Legal father" means, before adoption, the male person having the legal relationship of parent to a child: (1) Who is married to its mother at the time of conception; or (2) who is married to its mother at the time of birth of the child; or (3) who is the biological father of the child and who marries the mother before an adoption of the child;

(j) "Marital child" means a child born or conceived during marriage;

(k) "Nonmarital child" means a child not born or conceived during marriage;

(l) "Outsider father" means the biological father of a child born to or conceived by the mother while she is married to another man who is not the biological father of the child;

(m) "Putative father" means, before adoption, any man named by the mother as a possible biological father of the child pursuant to the provisions of section seven of this article, who is not a legal or determined father;

(n) "Relinquishment" means the voluntary surrender to an agency by a minor child's parent or guardian, for purposes of the child's adoption, of the rights of the
parent or guardian with respect to the child, including the legal and physical custody of the child;

(o) "Stepparent adoption" means an adoption in which the petitioner for adoption is married to one of the birth parents of the child or to an adoptive parent of the child; and

(p) "Unknown father" means a biological father whose identity the biological mother swears is unknown to her before adoption, pursuant to the provisions of section seven of this article.

§48-4-3. Persons whose consent or relinquishment is required; exceptions.

(a) Subject to the limitations hereinafter set forth, consent to or relinquishment for adoption of a minor child is required of:

(1) The parents or surviving parent, whether adult or infant, of a marital child;

(2) The outsider father of a marital child who has been adjudicated to be the father of the child or who has filed a paternity action which is pending at the time of the filing of the petition for adoption;

(3) The birth mother, whether adult or infant, of a nonmarital child; and

(4) The determined father.

(b) Consent or relinquishment shall not be required of a parent or of any other person having custody of the adoptive child:

(1) Whose parental rights have been terminated pursuant to the provisions of article three, chapter forty-nine of this code;

(2) Whom the court finds has abandoned the child as set forth in section three-c of this article; or

(3) Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is married to the petitioning adoptive parent. In such stepparent adoption,
the parent must assent to the adoption by joining as a party to the petition for adoption.

(c) If the mother, legal father or determined father is under disability, the court may order the adoption if it finds:

(1) The parental rights of the person are terminated, abandoned or permanently relinquished;

(2) The person is incurably insane; or

(3) The disability arises solely because of age and an otherwise valid consent or relinquishment has been given.

(d) If all persons entitled to parental rights of the child sought to be adopted are deceased or have been deprived of the custody of the child by law, then consent or relinquishment is required of the legal guardian or of any other person having legal custody of the child at the time. If there is no legal guardian nor any person who has legal custody of the child, then consent or relinquishment is required from some discreet and suitable person appointed by the court to act as the next friend of the child in the adoption proceedings.

(e) If one of the persons entitled to parental rights of the child sought to be adopted is deceased, only the consent or relinquishment of the surviving person entitled to parental rights is required.

(f) If the child to be adopted is twelve years of age or over, the consent of the child is required to be given in the presence of a judge of a court of competent jurisdiction, unless for extraordinary cause, the requirement of such consent is waived by the court.

(g) Any consent to adoption or relinquishment of parental rights shall have the effect of authorizing the prospective adoptive parents or the agency to consent to medical treatment for the child, whether or not such authorization is expressly stated in the consent or relinquishment.

§48-4-3a. Timing and execution of consent or relinquishment.
(a) No consent or relinquishment may be executed before the expiration of seventy-two hours after the birth of the child to be adopted.

(b) A consent or relinquishment executed by a parent or guardian as required by the provisions of section three of this article must be signed and acknowledged in the presence of one of the following:

(1) A judge of a court of record;

(2) A person whom a judge of a court of record designates to take consents or relinquishments;

(3) A notary public;

(4) A commissioned officer on active duty in the military service of the United States, if the person executing the consent or relinquishment is in military service; or

(5) An officer of the foreign service or a consular officer of the United States in another country, if the person executing the consent or relinquishment is in that country.

§48-4-3b. Content of consent or relinquishment.

(a) A consent or relinquishment as required by the provisions of section three of this article must be written in plain English or, if the person executing the consent or relinquishment does not understand English, in the person’s primary language. The form of the consent or relinquishment shall include the following, as appropriate:

(1) The date, place and time of the execution of the consent or relinquishment;

(2) The name, date of birth and current mailing address of the person executing the consent or relinquishment;

(3) The date, place of birth and the name or pseudonym (“Baby Boy _____ or Baby Girl _____”) of the minor child;
(4) The fact that the document is being executed more than seventy-two hours after the birth of the child;

(5) If a consent, that the person executing the document is voluntarily and unequivocally consenting to the transfer of legal and physical custody to, and the adoption of the child by, an adoptive parent or parents whose name or names may, but need not be, specified;

(6) If a relinquishment, that the person executing the relinquishment voluntarily consents to the permanent transfer of legal and physical custody of the child to the agency for the purposes of adoption;

(7) If a consent, that it authorizes the prospective adoptive parents, or if a relinquishment, that it authorizes the agency, to consent to medical treatment of the child pending any adoption proceeding;

(8) That after the consent or relinquishment is signed and acknowledged, it is final and, unless revoked in accordance with the provisions of section five of this article, it may not be revoked or set aside for any other reason;

(9) That the adoption will forever terminate all parental rights, including any right to visit or communicate with the child and any right of inheritance;

(10) That the adoption will forever terminate all parental obligations of the person executing the consent or relinquishment;

(11) That the termination of parental rights and obligations is permanent whether or not any agreement for visitation or communication with the child is subsequently performed;

(12) That the person executing the consent or relinquishment does so of his or her own free will and the consent or relinquishment has not been obtained by fraud or duress;

(13) That the person executing the consent or relinquishment has:
(i) Received a copy of the consent or relinquishment;
(ii) Been provided the information and afforded the opportunity to participate in the voluntary adoption registry, pursuant to the provisions of article four-a of this chapter;
(iii) Been advised of the availability of counseling;
(iv) Been advised of the consequences of misidentifying the other birth parent; and
(v) If a birth mother, been advised of the obligation to provide the information required by the provisions of section seven of this article in the case of an unknown father;

(14) That the person executing the consent or relinquishment has not received or been promised any money or anything of value for the consent or relinquishment, other than payments authorized by the provisions of section sixteen of this article;

(15) Whether the child is an “Indian child” as defined in the Indian Child Welfare Act, 25 U.S.C. §1903;

(16) That the person believes the adoption of the child is in the child’s best interest; and

(17) That the person who is consenting or relinquishing expressly waives notice of any proceeding for adoption unless the adoption is contested, appealed or denied.

(b) A consent or relinquishment may provide explicitly for its conditional revocation if:

(1) Another person whose consent or relinquishment is required does not execute the same within a specified period;

(2) A court determines not to terminate another person’s parental relationship to the child; or

(3) In a direct placement for adoption, a petition for adoption by a prospective adoptive parent, named or described in the consent, is denied or withdrawn.
(c) A consent or relinquishment shall also include:

(1) If a consent, the name, address, telephone and facsimile numbers of the lawyer representing the prospective adoptive parents; or

(2) If a relinquishment, the name, address, telephone and facsimile numbers of the agency to which the child is being relinquished; and

(3) Specific instructions on how to revoke the consent or relinquishment.

§48-4-3c. Conduct presumptively constituting abandonment.

(a) Abandonment of a child over the age of six months shall be presumed when the birth parent:

(1) Fails to financially support the child within the means of the birth parent; and

(2) Fails to visit or otherwise communicate with the child when he or she knows where the child resides, is physically and financially able to do so and is not prevented from doing so by the person or authorized agency having the care or custody of the child: Provided, That such failure to act continues uninterrupted for a period of six months immediately preceding the filing of the adoption petition.

(b) Abandonment of a child under the age of six months shall be presumed when the birth father:

(1) Denounces the child's paternity any time after conception;

(2) Fails to contribute within his means toward the expense of the prenatal and postnatal care of the mother and the postnatal care of the child;

(3) Fails to financially support the child within father's means; and

(4) Fails to visit the child when he or she knows where the child resides: Provided, That such denunciations and failure to act continue uninterrupted from the time that the
birth father was told of the conception of the child until the time the petition for adoption was filed.

(c) Abandonment of a child shall be presumed when the unknown father fails, prior to the entry of the final adoption order, to make reasonable efforts to discover that a pregnancy and birth have occurred as a result of his sexual intercourse with the birth mother.

(d) Notwithstanding any provision in this section to the contrary, any birth parent shall have the opportunity to demonstrate to the court the existence of compelling circumstances preventing said parent from supporting, visiting or otherwise communicating with the child: Provided, That in no event may incarceration provide such a compelling circumstance if the crime resulting in the incarceration involved a rape in which the child was conceived.

§48-4-4. Consent or relinquishment by infants.

If a person who has executed a consent to or relinquishment for adoption is under eighteen years of age at the time of the filing of the petition, and such infant parent is a resident of the state, the consent or relinquishment shall be specifically reviewed and approved by the court and a guardian ad litem may be appointed to represent the interests of the infant parent. The guardian ad litem shall conduct a discreet inquiry regarding the consent or relinquishment given, and may inquire of any person having knowledge of the consent or relinquishment. If the guardian ad litem finds reasonable cause to believe that the consent or relinquishment was obtained by fraud or duress, the court may request the infant parent to appear before the court or at a deposition, so that inquiry may be made regarding the circumstances surrounding the execution of the consent or relinquishment. The failure of the court to appoint a guardian ad litem is not grounds for setting aside a decree of adoption.

§48-4-5. Revocation of consent or relinquishment for adoption.
(a) Parental consent or relinquishment, whether given by an adult or minor, may be revoked only if:

(1) The person who executed the consent or relinquishment and the prospective adoptive parent named or described in the consent or the lawyer for said adoptive parent, or the agency in case of relinquishment, agree to its revocation prior to the entry of an adoption order; or

(2) The person who executed the consent or relinquishment proves by clear and convincing evidence, in an action filed either within six months of the date of the execution of the consent or relinquishment or prior to the date an adoption order is final, whichever date is later, that the consent or relinquishment was obtained by fraud or duress; or

(3) The person who executed the consent or relinquishment proves by a preponderance of the evidence, prior to the entry of an adoption order, that a condition allowing revocation as expressly set forth in the consent or relinquishment has occurred; or

(4) The person who executed the consent or relinquishment proves by clear and convincing evidence, prior to the entry of an adoption order, that the consent or relinquishment does not comply with the requirements set forth in this article.

(b) If the custody of a child during the pendency of a petition to revoke a consent or relinquishment is in issue, the court shall conduct a hearing, within thirty days of service of notice upon the respondent, to determine the issue of temporary custody. The court shall award such custody based upon the best interests of the child.

§48-4-6. Delivery of child for adoption; filing of petition.

(a) Whenever a person delivers a child for adoption the person first receiving such child and the prospective adopting parent or parents shall be entitled to receive from such person a written recital of all known circumstances surrounding the birth, medical and family medical history of the child, and an itemization of any facts or circumstances unknown concerning the child’s parentage.
or that may require further development in the form of an affidavit from the birth mother consistent with the provisions of section seven of this article.

(b) The petition for adoption may be filed at any time after the child who is the subject of the adoption is born, the adoptive placement determined and all consents or relinquishments that can be obtained have been executed. The hearing on the petition may be held no sooner than forty-five days after the filing of the petition and only after the child has lived with the adoptive parent or parents for a period of six months, proper notice of the petition has been given and all necessary consents or relinquishments have been executed and submitted or the rights of all nonconsenting birth parents have otherwise been terminated.

§48-4-7. Petition and appendix.

(a) The petition shall be verified and set forth:

(1) The name, age and place of residence of the petitioner or petitioners, and of the child, and the name by which the child shall be known;

(2) Whether such child is possessed of any property and a full description of the same, if any;

(3) Whether the petitioner or petitioners know the identity of the persons entitled to parental rights or, that the same are unknown to the petitioner or petitioners; and

(4) Whether and on what basis the parental rights of any birth parents should be terminated during the pendency of the adoption petition.

(b) In the case of an unknown father, an affidavit signed by the birth mother setting forth the following information must be attached to the petition:

(1) Whether the birth mother was married at the probable time of conception of the child, or at a later time, and if so, the identity and last known address of such man;

(2) Whether the birth mother was cohabiting with a man at the probable time of conception of the child, and if
so, the identity of such man, his last known address and
why the woman contends that such man is not the
biological father of the child;

(3) Whether the birth mother has received payments or
promise of support from any man with respect to the child
or her pregnancy, and if so, the identity of such man, his
last known address and why the birth mother contends that
such man is not the biological father of the child;

(4) Whether the birth mother has named any man as
the father on the birth certificate of the child or in
connection with applying for or receiving public
assistance, and if so, the identity of such man, his last
known address and why the birth mother contends such
man is not the biological father of the child;

(5) Whether the birth mother identified any man as the
father to any hospital personnel, and if so, the identity of
such man, his last known address, the name and address of
the hospital and why the birth mother now contends such
man is not the biological father of the child;

(6) Whether the birth mother has informed any man
that he may be the biological father of the child, and if so,
the identity of such man, his last known address and why
the birth mother now contends such man is not the
biological father of the child;

(7) Whether any man has formally or informally
acknowledged or claimed paternity of the child in any
jurisdiction at the time of the inquiry, and if so, the
identity of such man, his last known address and why the
birth mother contends such man is not the biological
father of the child;

(8) That the birth mother has been advised that the
failure to identify or the misidentification of the birth
father can result in delays and disruptions in the
processing of the adoption petition;

(9) That the birth mother has been informed that her
statement concerning the identity of the father will be used
only for the limited purposes of adoption and that once
the adoption is complete, such identity will be sealed; and
(10) That the birth mother has been advised of the remedies available to her for protection against domestic violence pursuant to the provisions of article two-a of this chapter.

(c) In the event the birth mother is deceased or her identity or whereabouts are unknown, no such affidavit shall be required.

(d) The affidavit of the birth mother in the case of an unknown father shall be executed before any person authorized to witness a consent or relinquishment pursuant to the provisions of section three-a of this article. Any affidavit filed with the petition pursuant to the provisions of this section shall be sealed in the court file and may not be opened except by court order upon a showing of good cause.

(e) If the person petitioning for adoption is less than fifteen years older than the child sought to be adopted, such fact shall be set forth specifically in the petition. In such case, the court shall grant the adoption only upon a specific finding that notwithstanding the differences in age of the petitioner and the child, such adoption is in the best interest of the child: Provided, That in the case of a stepparent adoption, such specific finding shall not be required and an adoption shall not be denied on the sole basis of proximity in age.

(f) The petition shall set forth any facts concerning the circumstances of the birth of the child known to the petitioner or petitioners. An effort shall be made to obtain medical and social information, which information, along with all nonidentifying information about the birth, shall accompany the petition and be made a part of the nonidentifying information to be sealed in the court file.

(g) Either the petition, the various consents or relinquishments attached thereto or filed in the cause, the affidavit of the birth mother as set forth herein and/or an appendix signed by counsel or other credible persons shall fully disclose all that is known about the parentage of the child.
§48-4-8. Who shall receive notice.

(a) Unless notice has been waived, notice of a proceeding for adoption of a child must be served, within twenty days after a petition for adoption is filed, upon:

(1) Any person whose consent to the adoption is required pursuant to the provisions of section three of this article, but notice need not be served upon a person whose parental relationship to the child or whose status as a guardian has been terminated;

(2) Any person whom the petitioner knows is claiming to be the father of the child and whose paternity of the child has been established pursuant to the provisions of article six, chapter forty-eight-a of this code;

(3) Any person other than the petitioner who has legal or physical custody of the child or who has visitation rights with the child under an existing court order issued by a court in this or another state;

(4) The spouse of the petitioner if the spouse has not joined in the petition; and

(5) A grandparent of the child if the grandparent's child is a deceased parent of the child and, before death, the deceased parent had not executed a consent or relinquishment or the deceased parent's parental relationship to the child had not been otherwise terminated.

(b) The court shall require notice of a proceeding for adoption to be served upon any person the court finds, at any time during the proceeding, is:

(1) A person described in subsection (a) of this section who has not been given notice;

(2) A person who has revoked consent or relinquishment pursuant to the provisions of section five of this article; or

(3) A person who, on the basis of a previous relationship with the child, a parent, an alleged parent or
the petitioner, can provide relevant information that the court, in its discretion, wants to hear.

§48-4-8a. How notice is to be served.

(a) Notice shall be served on each person as required under the provisions of section eight of this article, in accordance with rule 4 of the West Virginia rules of civil procedure for trial courts of record, except as otherwise provided in this article.

(b) The notice shall inform the person, in plain language, that his or her parental rights, if any, may be terminated in the proceeding and that such person may appear and defend any such rights within the required time after such service. The notice shall also provide that if the person upon whom notice is properly served fails to respond within the required time after its service, said person may not appear in or receive further notice of the adoption proceedings.

(c) In the case of any person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt requested, postage prepaid, to the person's last known address, with instructions to forward; or (3) by publication. If personal service is not achieved and the person giving notice has any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as provided herein. Any service achieved by mail shall be complete upon mailing and shall be sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person is unknown, then the person required to give notice shall cause service of notice by publication as a Class II publication in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county where the proceedings are had, and in the county where the person to be served was last known to reside, except in cases of foreign adoptions.
ADOPTION PROCEEDINGS

where the child is admitted to this country for purposes of adoptive placement and the United States immigration and naturalization service has issued the foreign-born child a visa or unless good cause is shown for not publishing in the county where the person was last known to reside. The notice shall state the court and its address but not the names of the adopting parents or birth mother, unless the court so orders.

(d) In the case of a person under disability, service shall be made on the person and his or her personal representative, or if there be none, on a guardian ad litem.

(e) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person shall be allowed thirty days from the date of the first publication or mailing or of such service on a personal representative or guardian ad litem in which to appear and defend his or her parental rights.

§48-4-8b. Notice to an unknown father.

(a) In the case of an unknown father, the court shall inspect the affidavit submitted pursuant to the provisions of section seven of this article, consider any additional evidence that the court, in its discretion, determines should be produced, and determine whether said father can be identified. The inspection and consideration of any additional evidence by the court shall be accomplished as soon as practicable after the filing of the petition, but no later than sixty days before the final hearing on the adoption petition.

(b) If the court identifies a father pursuant to the provisions of subsection (a) of this section, then notice of the proceeding for adoption shall be served on the father so identified in accordance with the provisions of section eight-a of this article.

(c) If after consideration of the affidavit and/or the consideration of further evidence, the court finds that proper service cannot be made upon the father because his identity is unknown, the court shall order publication of the notice only if, on the basis of all information available,
the court determines that publication is likely to lead to
receipt of notice by the father. If the court determines
that publication or posting is not likely to lead to receipt
of notice, the court may dispense with the publication or
posting of a notice.


(a) When the cause has matured for hearing but not
sooner than six months after the child has resided
continuously in the home of the petitioner or petitioners,
the court shall decree the adoption if:

(1) It determines that no person retains parental rights
in such child except the petitioner and the petitioner's
spouse, or the joint petitioners;

(2) That all applicable provisions of this article have
been complied with;

(3) That the petitioner is, or the petitioners are, fit
persons to adopt the child; and

(4) That it is in the best interests of the child to order
such adoption.

(b) The court or judge thereof may adjourn the
hearing of such petition or the examination of the parties
in interest from time to time, as the nature of the case may
require. Between the time of the filing of the petition for
adoption and the hearing thereon, the court or judge
thereof shall, unless the court or judge otherwise directs,
cause a discreet inquiry to be made to determine whether
such child is a proper subject for adoption and whether
the home of the petitioner or petitioners is a suitable home
for such child. Any such inquiry, if directed, shall be
made by any suitable and discreet person not related to
either the persons previously entitled to parental rights or
the adoptive parents, or by an agency designated by the
court, or judge thereof, and the results thereof shall be
submitted to the court or judge thereof prior to or upon
the hearing on the petition and shall be filed with the
records of the proceeding and become a part thereof.
The report shall include, but not be limited to, the
following:
(1) A description of the family members, including medical and employment histories;

(2) A physical description of the home and surroundings;

(3) A description of the adjustment of the child and family;

(4) Personal references; and

(5) Other information deemed necessary by the court, which may include a criminal background investigation.

(c) If it shall be necessary, under the provisions of this article, that a discreet and suitable person shall be appointed to act as the next friend of the child sought to be adopted, then and in that case the court or judge thereof shall order a notice of the petition and of the time and place when and where the appointment of next friend will be made, to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such court is located. At the time and place so named and upon due proof of the publication of such notice, the court or judge thereof shall make such appointment, and shall thereupon assign a day for the hearing of such petition and the examination of the parties interested.

(d) Upon the day so assigned, the court or judge thereof shall proceed to a final hearing of the petition and examination of the parties in interest, under oath, and of such other witnesses as the court or judge thereof may deem necessary to develop fully the standing of the petitioners and their responsibility, and the status of the child sought to be adopted; and if the court or judge thereof shall be of the opinion from the testimony that the facts stated in the petition are true, and if upon examination the court or judge thereof is satisfied that the petitioner is, or the petitioners are, of good moral character, and of respectable standing in the community, and are able properly to maintain and educate the child sought to be adopted, and that the best interests of the
child would be promoted by such adoption, then and in such case the court or judge thereof shall make an order reciting the facts proved and the name by which the child shall thereafter be known, and declaring and adjudging that from the date of such order, the rights, duties, privileges and relations, theretofore existing between the child and those persons previously entitled to parental rights, shall be in all respects at an end, and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption shall thenceforth in all respects be the same, including the rights of inheritance, as if the child had been born to such adopting parent or parents in lawful wedlock, except only as otherwise provided in this article: Provided, That no such order shall disclose the names or addresses of those persons previously entitled to parental rights.

§48-4-12. Finality of order; challenges to order of adoption.

(a) An order or decree of adoption is a final order for purposes of appeal to the supreme court of appeals on the date when the order is entered. An order or decree of adoption for any other purpose is final upon the expiration of the time for filing an appeal when no appeal is filed or when an appeal is not timely filed, or upon the date of the denial or dismissal of any appeal which has been timely filed.

(b) An order or decree of adoption may not be vacated, on any ground, if a petition to vacate the judgment is filed more than six months after the date the order is final.

(c) If a challenge is brought within the six-month period by an individual who did not receive proper notice of the proceedings pursuant to the provisions of this chapter, the court shall deny the challenge, unless the individual proves by clear and convincing evidence that the decree or order is not in the best interest of the child.

(d) A decree or order entered under this chapter may not be vacated or set aside upon application of a person who waived notice, or who was properly served with notice pursuant to this chapter and failed to respond or appear,
file an answer or file a claim of paternity within the time
allowed.

(e) A decree or order entered under this chapter may
not be vacated or set aside upon application of a person
alleging there is a failure to comply with an agreement for
visitation or communication with the adopted child:
Provided, That the court may hear a petition to enforce
the agreement, in which case the court shall determine
whether enforcement of the agreement would serve the
best interests of the child. The court may, in its sole
discretion, consider the position of a child of the age and
maturity to express such position to the court.

(f) The supreme court of appeals shall consider and
issue rulings on any petition for appeal from an order or
decree of adoption and petitions for appeal from any
other order entered pursuant to the provisions of this
article as expeditiously as possible. The circuit court shall
consider and issue rulings on any petition filed to vacate
an order or decree of adoption and any other pleadings or
petitions filed in connection with any adoption proceeding
as expeditiously as possible.

(g) When any minor has been adopted, he or she may,
within one year after becoming of age, sign, seal and
acknowledge before proper authority, in the county in
which the order of adoption was made, a dissent from such
adoption, and file such instrument of dissent in the office
of the clerk of the circuit court which granted said
adoption. The clerk of the county commission of such
county and the circuit clerk shall record and index the
same. The adoption shall be vacated upon the filing of
such instrument of dissent.

§48-4-16. Prohibition of purchase or sale of child; penalty;
definitions; exceptions.

(a) Any person or agency who knowingly offers, gives
or agrees to give to another person money, property,
service or other thing of value in consideration for the
recipient's locating, providing or procuring a minor child
for any purpose which entails a transfer of the legal or
physical custody of said child, including, but not limited
to, adoption or placement, is guilty of a felony and subject
to fine and imprisonment as provided herein.

(b) Any person who knowingly receives, accepts or
offers to accept money, property, service or other thing of
value to locate, provide or procure a minor child for any
purpose which entails a transfer of the legal or physical
custody of said child, including, but not limited to,
adoption or placement, is guilty of a felony and subject to
fine and imprisonment as provided herein.

(c) Any person who violates the provisions of this
section is guilty of a felony and, upon conviction thereof,
may be imprisoned in the penitentiary for not less than
one year nor more than five years or, in the discretion of
the court, be confined in jail not more than one year and
fined not less than one hundred dollars nor more than two
thousand dollars.

(d) A child whose parent, guardian or custodian has
sold or attempted to sell said child in violation of the
provisions of this article may be deemed an abused child
as defined by section three, article one, chapter forty-nine
of this code. The court may place such a child in the
custody of the department of health and human resources
or with such other responsible person as the best interests
of the child dictate.

(e) This section does not prohibit the payment or
receipt of the following:

(1) Fees paid for reasonable and customary services
provided by the department of health and human
resources or any licensed or duly authorized adoption or
child-placing agency.

(2) Reasonable and customary legal, medical, hospital
or other expenses incurred in connection with the
pregnancy, birth and adoption proceedings.

(3) Fees and expenses included in any agreement in
which a woman agrees to become a surrogate mother.

(4) Any fees or charges authorized by law or
approved by a court in a proceeding relating to the
placement plan, prospective placement or placement of a minor child for adoption.

(f) At the final hearing on the adoption, an affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted to the court.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Consent by agency or department to adoption of child; statement of relinquishment by parent; petition to terminate parental rights.

(a) (1) Whenever a child welfare agency licensed to place children for adoption or the department of health and human resources has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child pursuant to the provisions of article four, chapter forty-eight of this code.

(2) Relinquishment for an adoption to an agency or to the department is required of the same persons whose consent or relinquishment is required under the provisions of section three, article four, chapter forty-eight of this code. The form of any relinquishment so required shall conform as nearly as practicable to the requirements established in section three-b of said article and all other provisions of said article providing for relinquishment for adoption shall govern the proceedings herein.

(3) For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once any such grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department
determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents.

(4) The department shall make available, upon request, for purposes of any private or agency adoption proceeding, preplacement and post-placement counseling services by persons experienced in adoption counseling, at no cost, to any person whose consent or relinquishment is required pursuant to the provision of article four, chapter forty-eight of this code.

(b) (1) Whenever the mother has executed a relinquishment pursuant to this section, and the legal, determined, putative, outsider or unknown father, as those terms are defined pursuant to the provisions of section one, article four, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or the department may, by verified petition, seek to have the father's rights terminated based upon the grounds of abandonment or neglect of said child. Abandonment may be established in accordance with the provisions of section three-a, article four, chapter forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of the child.

(3) In addition, notice shall be given to any putative, outsider or unknown father who has asserted or exercised parental rights and duties to and with the child and who has not relinquished any parental rights and such rights have not otherwise been terminated, or who has not had reasonable opportunity before or after the birth of the child to assert or exercise such rights: Provided, That if such child is more than six months old at the time such notice would be required and such father has not asserted or exercised his parental rights and he knew the whereabouts of the child, then such father shall be
presumed to have had reasonable opportunity to assert or
eexercise such rights.

(c) (1) Upon the filing of the verified petition seeking
to have the parental rights terminated, the court shall set a
hearing on the petition. A copy of the petition and notice
of the date, time and place of the hearing on said petition
shall be personally served on any respondent at least
twenty days prior to the date set for the hearing.

(2) Such notice shall inform the person that his
parental rights, if any, may be terminated in the
proceeding and that such person may appear and defend
any such rights within twenty days of such service. In the
case of any such person who is a nonresident or whose
whereabouts are unknown, service shall be achieved: (1)
By personal service; (2) by registered or certified mail,
return receipt requested, postage prepaid, to the person's
last known address, with instructions to forward; or (3) by
publication. If personal service is not acquired, then if the
person giving notice shall have any knowledge of the
whereabouts of the person to be served, including a last
known address, service by mail shall be first attempted as
herein provided. Any such service achieved by mail shall
be complete upon mailing and shall be sufficient service
without the need for notice by publication. In the event
that no return receipt is received giving adequate evidence
of receipt of the notice by the addressee or of receipt of
the notice at the address to which the notice was mailed or
forwarded, or if the whereabouts of the person are
unknown, then the person required to give notice shall file
with the court an affidavit setting forth the circumstances
of any attempt to serve the notice by mail, and the diligent
efforts to ascertain the whereabouts of the person to be
served. If the court determines that the whereabouts of the
person to be served cannot be ascertained and that due
diligence has been exercised to ascertain such person's
whereabouts, then the court shall order service of such
notice by publication as a Class II publication in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area shall be
the county where such proceedings are had, and in the
county where the person to be served was last known to
reside. In the case of a person under disability, service
shall be made on the person and his personal
representative, or if there be none, on a guardian ad litem.

(3) In the case of service by publication or mail or
service on a personal representative or a guardian ad litem,
the person shall be allowed thirty days from the date of
the first publication or mailing of such service on a
personal representative or guardian ad litem in which to
appear and defend such parental rights.

d) A petition under this section may be instituted in
the county where the child resides or where the child is
living.

e) If the court finds that the person certified to
parental rights is guilty of the allegations set forth in the
petition, the court shall enter an order terminating his
parental rights and shall award the legal and physical
custody and control of said child to the petitioner.

CHAPTER 3

(H. B. 2441—By Delegates Williams, Beach, Facemyer,
Seacrist, Everson, Henderson and Stalnaker)

(Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section ten, article two-b, chapter
nineteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorizing the
commissioner of agriculture to inspect any meat product,
poultry product or any other agricultural commodity sold to
a state institution; and prohibitions.

Be it enacted by the Legislature of West Virginia:

That section ten, article two-b, chapter nineteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:
ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-10. Additional prohibitions.

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

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

(b) To slaughter any adulterated animal or poultry intended to be sold or offered for sale through a commercial outlet or distributor;

(c) To sell or offer for sale through a commercial outlet or distributor any carcass, meat product or poultry product for human consumption which is adulterated;

(d) To slaughter for human consumption any animal or poultry tagged or permanently identified as “W. Va. condemned,” or abbreviation thereof;

(e) To process, sell or offer for sale for human consumption any carcass, meat product or poultry product which is mislabeled with intent to deceive or which is marked “W. Va. inspected and condemned,” or abbreviation thereof;

(f) To process in an establishment under state inspection for sale through any commercial outlet or distributor any carcass, meat product or poultry product intended for human consumption and derived in whole or in part from any calf, pig, kid, lamb, chicken or turkey which is so immature as to be lacking in nutritional value;

(g) To knowingly or intentionally expose any carcass, meat product and poultry product in any establishment under state inspection to insects, live animals or any contamination;

(h) To add kangaroo meat, horse meat, mule meat or other equine meat to any animal meat, meat product or poultry product to be sold or offered for sale through commercial outlets or distributors for human consumption;
(i) To remove any hide, skin or any other part of an unborn or stillborn animal in the confines of a room in an establishment where any animals or poultry, carcasses, meat products or poultry products are slaughtered or processed, as the case may be, or to be sold or offered for sale through a commercial outlet or distributor;

(j) To process for human consumption in any establishment subject to state inspection any carcass, meat product and poultry product derived from any animal or poultry which died other than by slaughter;

(k) To transport to any commercial outlet or distributor for the purpose of being sold or offered for sale therein, any carcass, meat product or poultry product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States department of agriculture;

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

(m) To slaughter any horse, mule or other equine in any establishment under state inspection in which animals or poultry are slaughtered for human consumption for the purpose of being sold or offered for sale through commercial outlets;

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

(o) To transport, process, sell or offer for sale any kangaroo meat, horse meat, mule meat or other equine meat within this state for human consumption unless it is conspicuously and plainly identified or stamped as such;
(p) For any person to use an establishment number not assigned to him or her or to use an establishment number in connection with operations concerning which a different establishment number was assigned by the commissioner;

(q) To remove from any article any retained tag affixed by the commissioner, unless such removal is authorized by him or her;

(r) To remove from any room, compartment, equipment or utensil any rejection tag or rejection notice affixed by the commissioner, unless such removal is authorized by him or her;

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

(t) For any person, other than the commissioner, to possess, keep or use, except as authorized by the commissioner, any label or device for the affixing of a mark, brand or stamp prescribed for inspection purposes hereunder;

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

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

(w) For any person to refuse to permit the commissioner to enter and inspect at any time, upon
presentation of appropriate credentials, an establishment
under state inspection, or to interfere with any such lawful
entry or inspection;

(x) For any person to refuse to permit the
commissioner, upon presentation of appropriate
credentials, to examine and copy the records described in
section five of this article;

(y) For a person to prevent or fail to decharacterize or
denature carcasses, meat products or poultry products as
prescribed by reasonable rules promulgated by the
commissioner;

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

(aa) For a person to store offal, blood, or inedible and
condemned parts of animal and poultry carcasses from
slaughterhouses, processing plants or other related
industries during interim transit movement in refrigerated
warehouses, food lockers or other related industries:
Provided, That such products may be otherwise stored if
properly marked “NOT FOR HUMAN FOOD” “FOR
ANIMAL FOOD ONLY” and identified as approved
products to be used for animal food;

(bb) For a person knowingly to deliver a dead or
dying animal or poultry to an establishment in this state;

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

(dd) For any person to forcibly assault, resist, oppose,
impede, intimidate or interfere with the commis-
sioner or his or her representative while engaged
in or on account of the performances of his or her official duties;

(ee) For any person to deliver, with intent to deceive, any graded meat product, poultry product or any other agricultural commodity to a state institution that does not meet the grade specifications for that grade when a specified grade is required in a contract. In addition to any other powers conveyed in this article, the commissioner may inspect any meat product, poultry product or any other agricultural commodity sold to a state institution to enforce the provisions of this subdivision.

CHAPTER 4
(S. B. 464—By Senator Tomblin, Mr. President)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale and service of alcoholic beverages in state parks; and removing language requiring sleeping accommodations for issuance of a license to a private club in a state park.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.
(a) Upon receipt of the application referred to in section four of this article, together with the accompanying fee and bond, the commissioner shall conduct an investigation to determine the accuracy of the matters contained in such application and whether applicant is a bona fide private club of good reputation in the community in which it shall operate. For the purpose of conducting such investigation, the commissioner may withhold the granting or refusal to grant such license for a period not to exceed thirty days. If it shall appear that such applicant is a bona fide private club, of good reputation in the community in which it shall operate and that there is no false statement contained in such application, the commissioner shall issue a license authorizing the applicant to sell alcoholic liquors as provided in section three of this article, and otherwise shall refuse to issue such license, except that in the case of an application by a corporation or association to operate a private club in connection with:

(1) A state park, the director of the department of natural resources must grant his or her approval before the license can be issued; or

(2) A county or municipal park, or an airport, the authority governing the park or airport must grant its approval before the license can be issued.

A license may not be issued for a private club in any state park unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public. A license may not be issued for a private club in any county or municipal park, or an airport, unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public.

(b) Upon refusal to issue such license the commissioner shall make and enter an order denying such application, which denial and refusal shall be final unless a hearing is requested in accordance with the provisions of section thirteen of this article. When such refusal or denial becomes final the commissioner shall forthwith refund to
the applicant his or her fees and bond accompanying the application.

(c) Such license shall be of such form and design as the commissioner may prescribe by reasonable rule or regulation, and shall authorize the licensee to sell alcoholic liquors at only one location.

(d) Such license shall expire on the thirtieth day of June next following the date of issue and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fees and filing of the bond as required by this article.

(e) A license issued under the provisions of this article may not be transferable.

CHAPTER 5

(H. B. 2050—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

TITLE I—GENERAL PROVISIONS.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.
TITLE I—GENERAL PROVISIONS.

Sec. 1. General policy.—The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred ninety-eight.

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

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

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

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

The "fiscal year one thousand nine hundred ninety-eight" shall mean the period from the first day of July, one thousand nine hundred ninety-seven, through the thirtieth day of June, one thousand nine hundred ninety-eight.

"General revenue fund" shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in section two, article two, chapter twelve of the code or as otherwise provided.

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

"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated "from collections", the excess shall be set aside in a special surplus fund and may be expended for
the purpose of the spending unit as provided by article two, chapter five-a of the code.

Sec. 3. Classification of appropriations.—An appropriation for:

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

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

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

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

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

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

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

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

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

"Repairs and alterations" shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

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

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

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

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to
the various agencies of the department: Provided, however, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer funds appropriated to "personal services" and "employee benefits" to other lines within the same account and no funds from other lines shall be transferred to the "personal services" line: And provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the state road fund transferred to the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

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

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

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

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§12. State improvement fund appropriations.

§13. Specific funds and collection accounts.


§15. Sinking fund deficiencies.

§16. Appropriations for local governments.

§17. Total appropriations.

§18. General school fund.
TITLE II—APPROPRIATIONS.

ORDER OF SECTIONS

SECTION 1. Appropriations from general revenue.
SECTION 2. Appropriations from state road fund.
SECTION 3. Appropriations from other funds.
SECTION 4. Appropriations from lottery net profits.
SECTION 5. Appropriations of federal funds.
SECTION 6. Appropriations from federal block grants.
SECTION 7. Awards for claims against the state.
SECTION 8. Appropriations from surplus accrued.
SECTION 9. Appropriations from lottery net profits surplus.
SECTION 10. Appropriations from lottery net profits surplus for the fiscal year one thousand nine hundred ninety-eight.
SECTION 11. Special revenue appropriations.
SECTION 12. State improvement fund appropriations.
SECTION 13. Specific funds and collection accounts.
SECTION 15. Sinking fund deficiencies.
SECTION 16. Appropriations for local governments.
SECTION 17. Total appropriations.
SECTION 18. General school fund.
Section 1. Appropriations from general revenue.—From the state fund, general revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-eight.

LEGISLATIVE

1—Senate

Account No.

Fund 0165 FY 1998 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members (R)</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R)</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits (R)</td>
</tr>
<tr>
<td>5</td>
<td>Current Expenses and Contingent Fund (R)</td>
</tr>
<tr>
<td>7</td>
<td>Repairs and Alterations (R)</td>
</tr>
<tr>
<td>8</td>
<td>Computer Supplies (R)</td>
</tr>
<tr>
<td>9</td>
<td>Computer Systems (R)</td>
</tr>
<tr>
<td>10</td>
<td>Printing Blue Book (R)</td>
</tr>
<tr>
<td>11</td>
<td>Expenses of Members (R)</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 1996-97 are to remain in full force and effect and are hereby reappropriated to June 30, 1998. Any balances so reappropriated may be transferred and credited to the 1997-98 accounts.

Upon the written request of the clerk of the senate, the
The clerk of the senate, with the approval of the president, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the senate, for any bills for supplies and services that may have been incurred by the senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the senate offices, the requisitions for which are to be accompanied by bills to be filed with the auditor.

The clerk of the senate, with the written approval of the president, or the president of the senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the senate resolution adopted during any such session. The clerk of the senate, with the written approval of the president, or the president of the senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such senate resolution, to be fixed by the president of the senate. The clerk is hereby authorized to draw his or her requisitions upon the auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the senate.

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

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

2—House of Delegates

Account No.

Fund 0170 FY 1998 Org 2200

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members (R)</td>
<td>003</td>
<td>$2,200,000</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R)</td>
<td>005</td>
<td>521,162</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses and Contingent Fund (R)</td>
<td>021</td>
<td>3,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Expenses of Members (R)</td>
<td>399</td>
<td>1,120,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$6,841,162</td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 1996-97 are to remain in full force and effect and are hereby reappropriated to June 30, 1998. Any balances so reappropriated may be transferred and credited to the 1997-98 accounts.

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

The clerk of the house of delegates, with the approval of the speaker, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the house of delegates, for any bills for supplies and services that may have been incurred by the house of delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the house of delegates' offices, the requisitions for which are to be accompanied by bills to be filed with the auditor.
The speaker of the house of delegates, upon approval of the house committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the house resolution, and the compensation of all personnel shall be as fixed in such house resolution for the session, or fixed by the speaker, with the approval of the house committee on rules, during and between sessions of the Legislature, notwithstanding such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the house of delegates.

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

3—Joint Expenses
(WV Code Chapter 4)

Account No.

Fund 0175 FY 1998 Org 2300

1 Joint Committee on Government and Finance (R) ............... 104 $ 4,590,155
2 Legislative Printing (R) .................. 105 940,000
3 Legislative Rule-Making Review Committee (R) .................. 106 232,600
4 Legislative Computer System (R) .. 107 950,000
The appropriations for the joint expenses for the fiscal year 1996-97 are to remain in full force and effect and are hereby reappropriated to June 30, 1998. Any balances so reappropriated may be transferred and credited to the 1997-98 accounts.

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

The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0 175, activity 642) is intended for possible general state tax reductions or the offsetting of any reductions in federal funding for state programs. It is not intended as a general appropriation for expenditure by the Legislature.

JUDICIAL

4—Supreme Court—
General Judicial

Account No.
The appropriations to the supreme court of appeals for the fiscal years 1994-95, 1995-96 and 1996-97 are to remain in full force and effect and are hereby reappropriated to June 30, 1998. Any balances so reappropriated may be transferred and credited to the 1997-98 accounts.

This appropriation shall be administered by the administrative director of the supreme court of appeals, who shall draw his or her requisitions for warrants in payment in the form of payrolls, making deductions therefrom as required by law for taxes and other items.

The appropriation for the Judges’ Retirement System is to be transferred to the consolidated public retirement board, in accordance with the law relating thereto, upon requisition of the administrative director of the supreme court of appeals.
5—Governor’s Office

(WV Code Chapter 5)

Account No.

<table>
<thead>
<tr>
<th>Fund 0101 FY 1998 Org 0100</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Salary of Governor .......... 002</td>
</tr>
<tr>
<td>3 Annual Increment ............ 004</td>
</tr>
<tr>
<td>4 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>5 Unclassified ............... 099</td>
</tr>
<tr>
<td>6 National Governors’ Association .. 123</td>
</tr>
<tr>
<td>7 Southern States Energy Board ..... 124</td>
</tr>
<tr>
<td>8 Office of Technology ......... 736</td>
</tr>
</tbody>
</table>

9 Total ........................ $ 3,414,714

6—Governor’s Office—Custodial Fund

(WV Code Chapter 5)

Account No.

<table>
<thead>
<tr>
<th>Fund 0102 FY 1998 Org 0100</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total .......... 096</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified-Surplus-Total (fund 0102, activity 098) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.
7—Governor’s Office—
Governor’s Cabinet on Children and Families
(WV Code Chapter 5)

Account No.

Fund 0104 FY 1998 Org 0100

1 Governor’s Cabinet on Children and Families—Total (R) ... 116 $ 300,000

Any unexpended balance remaining in the appropriation (fund 0104, activity 116) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

8—Governor’s Office—
Civil Contingent Fund

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1998 Org 0100

1 Civil Contingent Fund—Total (R) .. 114 $ 150,000

Any unexpended balances remaining in the appropriations for Civil Contingent Fund-Total (fund 0105, activity 114) and Civil Contingent Fund-Surplus (fund 0105, activity 263) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

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

The above appropriation is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the governor’s office.
9—Governor’s Office

(WV Code Chapter 5)

Account No.

Fund 0558 FY 1998 Org 0100

<table>
<thead>
<tr>
<th>1</th>
<th>Restore Positions—Total 569</th>
<th>$ -0-</th>
</tr>
</thead>
</table>

Any or all of the appropriation for Restore Positions—Total may be transferred to any other fund within the general revenue fund in order to restore funding to re-establish deleted positions.

Any agency receiving funds must file a report within thirty days of receipt of transfer with the joint committee on government and finance detailing the restored positions by title and salary with a justification for each.

10—Auditor’s Office—

General Administration

(WV Code Chapter 12)

Account No.

Fund 0116 FY 1998 Org 1200

| 1 | Personal Services 001 | $ 1,703,463 |
| 2 | Salary of Auditor 002 | 70,000 |
| 3 | Annual Increment 004 | 50,523 |
| 4 | Employee Benefits 010 | 573,318 |
| 5 | Unclassified (R) 099 | 605,733 |
| 6 | Office Automation (R) 117 | 790,000 |
| 7 | Encoding System and Printer |
| 8 | Replacement 594 | $ 0 |
| 9 | Total | $ 3,793,037 |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0116, activity 099), Office Automation (fund 0116, activity 117) and Image
13 Processing and Printer Replacement (fund 0116, activity 240) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

11—Auditor’s Office—
Family Law Masters Administration Fund

(WV Code Chapter 48A)

Account No.

<table>
<thead>
<tr>
<th>Fund 0117 FY 1998 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified—Total .......... 096 $ 450,000</td>
</tr>
<tr>
<td>2  The above appropriation shall be expended for the administrative expenses of the family law masters program, excluding personal services and employee benefits.</td>
</tr>
</tbody>
</table>
Debt Payment on Morris Street—Workers Compensation
Building 290 2,000,000

Debt Payment—Regional Jails and Correctional Facilities 736 10,000,000

Total $25,864,758

Any unexpended balances remaining in the appropriation for Unclassified (fund 0126, activity 099) and Imaging System (fund 0126, activity 006) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

13—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 0131 FY 1998 Org 1400

1 Personal Services 001 $ 3,082,859
2 Salary of Commissioner 002 70,000
3 Annual Increment 004 69,950
4 Employee Benefits 010 1,089,141
5 Unclassified (R) 099 1,027,526
6 Gypsy Moth Program (R). 119 784,383
7 Mingo County Surface Mine Project (R) 296 150,000
8 Predator Control 470 90,000
9 Charleston Farmers Market 476 150,000
10 Moorefield Field Office
Factors 637 -0-
13 Total $ 6,513,859

Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099); Gypsy Moth Program (fund 0131, activity 119); Mingo
County Surface Mine Development Project—Total - Surplus (fund 0131, activity 657) and Mingo County Surface Mine Project (fund 0131, activity 296) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

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

14—Department of Agriculture—State Soil Conservation Committee

(WV Code Chapter 19)

Account No.

<table>
<thead>
<tr>
<th>Fund 0132</th>
<th>FY 1998</th>
<th>Org 1400</th>
</tr>
</thead>
<tbody>
<tr>
<td>0132 FY 1998 Org 1400</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Account No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$404,236</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>10,550</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>129,454</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>280,855</td>
</tr>
<tr>
<td>5</td>
<td>Soil Conservation Projects (R)</td>
<td>120</td>
<td>2,500,000</td>
</tr>
<tr>
<td>6</td>
<td>Maintenance of Flood Control Projects (R)</td>
<td>522</td>
<td>1,686,548</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Infrastructure Projects—Total (fund 0538, activity 516), Maintenance of Flood Control Projects (fund 0132, activity 522), Soil Conservation Projects (fund 0132, activity 120), and Soil Conservation Projects - Surplus (fund 0132, activity 269) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.
15—Department of Agriculture—
Meat Inspection

(WV Code Chapter 19)

Account No.

Fund 0135 FY 1998 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1998</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td></td>
<td>$338,629</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td></td>
<td>$8,696</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td></td>
<td>$118,500</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td></td>
<td>$76,317</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$542,142</strong></td>
</tr>
</tbody>
</table>

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

16—Department of Agriculture—
Agricultural Awards

(WV Code Chapter 19)

Account No.

Fund 0136 FY 1998 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1998</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Agricultural Awards</td>
<td>121</td>
<td></td>
<td>$66,066</td>
</tr>
<tr>
<td>2 Fairs and Festivals</td>
<td>122</td>
<td></td>
<td>$381,598</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$447,664</strong></td>
</tr>
</tbody>
</table>

17—Attorney General

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

Account No.

Fund 0150 FY 1998 Org 1500

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1998</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services (R)</td>
<td>001</td>
<td></td>
<td>$1,995,790</td>
</tr>
<tr>
<td>2 Salary of Attorney General</td>
<td>002</td>
<td></td>
<td>75,000</td>
</tr>
<tr>
<td>3 Annual Increment (R)</td>
<td>004</td>
<td></td>
<td>34,900</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such spending unit's specifically appropriated account or from accounts appropriated by general language contained within this bill: Provided, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the attorney general: Provided, however, That if the spending unit and the attorney general are unable to agree on the amount and terms of the reimbursement, the spending unit and the attorney general shall submit their proposed reimbursement rates and terms to the joint committee on government and finance for final determination.

18—Secretary of State
(WV Code Chapters 3, 5 and 59)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Account Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0155</td>
<td>1998</td>
<td>1600</td>
<td>Personal Services</td>
<td>001</td>
<td>$547,001</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Salary of Secretary of State</td>
<td>002</td>
<td>65,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>11,670</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>199,679</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified (R)</td>
<td>099</td>
<td>298,109</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Technology Improvements</td>
<td>599</td>
<td>137,200</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td></td>
<td>$1,258,659</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, activity 099) Administrative Law Improvements (fund 0155, activity 617) and Imaging and Computerization Upgrade - Surplus (fund 0155, activity 244) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

19—State Election Commission  
(WV Code Chapter 3)  

Account No.  

Fund 0160 FY 1998 Org 1601  

1 Unclassified ......................... 099 $ 12,000  
2 Electronic Filing and Information  
3 for Elections ...................... 616 15,000  
4 Total .............................. $ 27,000  

DEPARTMENT OF ADMINISTRATION  

20—Department of Administration—Office of the Secretary  
(WV Code Chapter 5F)  

Account No.  

Fund 0186 FY 1998 Org 0201  

1 Unclassified—Total .................. 096 $ 238,261  

21—Consolidated Public Retirement Board  
(WV Code Chapter 5)  

Account No.  

Fund 0195 FY 1998 Org 0205  

The division of highways, division of motor vehicles, bureau of employment programs, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their
When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

22—Division of Finance
(WV Code Chapter 5A)

Account No.

<table>
<thead>
<tr>
<th>Fund 0203 FY 1998</th>
<th>Org 0209</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5 GAAP Project (R)</td>
<td>125</td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

23—Division of General Services
(WV Code Chapter 5A)

Account No.

<table>
<thead>
<tr>
<th>Fund 0230 FY 1998</th>
<th>Org 0211</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5 Fire Service Fee</td>
<td>126</td>
</tr>
<tr>
<td>6 Chilled Water Plant - Phase III</td>
<td>291</td>
</tr>
<tr>
<td>7 Capitol Complex Capital Outlay (R)</td>
<td>417</td>
</tr>
<tr>
<td>9 Total</td>
<td></td>
</tr>
</tbody>
</table>
10 Any unexpended balances remaining in the appropriations for Capitol Building Preservation (fund 0230, activity 503), Capitol Building Preservation - Surplus (fund 0230, activity 675), Capital Improvements-Capitol Complex - Surplus (fund 0230, activity 676), Capitol Complex - Capital Outlay (fund 0230, activity 417), Capitol Complex - Capital Outlay - Surplus (fund 0230, activity 526) and Capitol Complex Master Plan-Total - Surplus (fund 0230, activity 606) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

24—Division of Purchasing

(WV Code Chapter 5A)

Account No.

Fund 0210 FY 1998 Org 0213

1 Personal Services ...................... 001 $ 555,184
2 Annual Increment .................... 004 14,329
3 Employee Benefits .................. 010 162,158
4 Unclassified .......................... 099 51,557
5 Purchasing Card Program .......... 711 120,000
6 Total ................................. $ 903,228

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

25—Commission on Uniform State Laws

(WV Code Chapter 29)

Account No.

Fund 0214 FY 1998 Org 0217

1 Unclassified—Total .............. 096 $ 22,000
2 To pay expenses of members of the commission on uniform state laws.

26—Board of Risk and Insurance Management
(WV Code Chapter 29)

Account No.

Fund 0217 FY 1998 Org 0218

<table>
<thead>
<tr>
<th>Item</th>
<th>Account No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$10,454,116</td>
</tr>
<tr>
<td>Retro Payments</td>
<td>523</td>
<td>$4,850,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$15,304,116</td>
</tr>
</tbody>
</table>

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

These funds may be transferred to a special account for the payment of premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees and may be transferred to a special account for disbursement for payment of premiums and insurance losses.

27—Education and State Employees’ Grievance Board
(WV Code Chapter 18)

Account No.

Fund 0220 FY 1998 Org 0219

<table>
<thead>
<tr>
<th>Item</th>
<th>Account No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$647,970</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>7,683</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>180,505</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>169,678</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,005,836</td>
</tr>
</tbody>
</table>
28—Ethics Commission
(WV Code Chapter 6B)

Account No.

<table>
<thead>
<tr>
<th>Fund 0223 FY 1998 Org 0220</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
<td>$ 187,238</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004</td>
<td>1,450</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
<td>51,139</td>
</tr>
<tr>
<td>4 Unclassified .............. 099</td>
<td>122,284</td>
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<tr>
<td>5 Total ....................</td>
<td>$ 362,111</td>
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</tbody>
</table>

29—Public Defender Services
(WV Code Chapter 29)

Account No.

<table>
<thead>
<tr>
<th>Fund 0226 FY 1998 Org 0221</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
<td>$ 246,747</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004</td>
<td>4,050</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
<td>78,552</td>
</tr>
<tr>
<td>4 Unclassified (R) .......... 099</td>
<td>95,540</td>
</tr>
<tr>
<td>5 Appointed Counsel Fees and Public Defender Corporations (R) .... 127</td>
<td><strong>18,210,905</strong></td>
</tr>
<tr>
<td>6 Total ....................</td>
<td><strong>$18,635,794</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0226, activity 099) and Appointed Counsel Fees and Public Defender Corporations (fund 0226, activity 127) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

30—Committee for the Purchase of Commodities and Services from the Handicapped
(WV Code Chapter 5A)
Account No.

Fund 0233 FY 1998 Org 0224

1 Unclassified—Total ............. 096 $ 4,656

31—Public Employees Insurance Agency

(WV Code Chapter 5)

Account No.

Fund 0200 FY 1998 Org 0225

1 The division of highways, division of motor vehicles, bureau of employment programs, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

32—West Virginia Prosecuting Attorneys' Institute

Account No.

Fund 0557 FY 1998 Org 0228

1 Forensic Medical Examinations—
2 Total ......................... 681 $ 250,000

DEPARTMENT OF EDUCATION

33—State Department of Education—
     School Lunch Program

(WV Code Chapters 18 and 18A)

Account No.

Fund 0303 FY 1998 Org 0402

1 Personal Services ................. 001 $ 159,500
2 Annual Increment ................. 004 3,127
3 Employee Benefits ............... 010 50,222
### 34—State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1 Personal Services</th>
<th>001</th>
<th>$134,096</th>
</tr>
</thead>
<tbody>
<tr>
<td>0306</td>
<td>1998</td>
<td>0402</td>
<td>2 Annual Increment</td>
<td>004</td>
<td>4,150</td>
</tr>
<tr>
<td>0306</td>
<td>1998</td>
<td>0402</td>
<td>3 Employee Benefits</td>
<td>010</td>
<td>55,270</td>
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<tr>
<td>0306</td>
<td>1998</td>
<td>0402</td>
<td>4 Unclassified</td>
<td>099</td>
<td>161,460</td>
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<tr>
<td>0306</td>
<td>1998</td>
<td>0402</td>
<td>Total</td>
<td></td>
<td>$354,976</td>
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</table>

Any unexpended balance remaining in the surplus appropriation for Cedar Lakes-Total - Surplus (fund 0306, activity 638) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

### 35—State Department of Education
(WV Code Chapters 18 and 18A)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1 Personal Services</th>
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<th>$2,285,816</th>
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<tr>
<td>0313</td>
<td>1998</td>
<td>0402</td>
<td>2 Annual Increment</td>
<td>004</td>
<td>41,659</td>
</tr>
<tr>
<td>0313</td>
<td>1998</td>
<td>0402</td>
<td>3 Employee Benefits</td>
<td>010</td>
<td>739,140</td>
</tr>
<tr>
<td>0313</td>
<td>1998</td>
<td>0402</td>
<td>Unclassified</td>
<td>099</td>
<td>3,328,000</td>
</tr>
<tr>
<td>0313</td>
<td>1998</td>
<td>0402</td>
<td>WV Education Information System (WVEIS)</td>
<td>138</td>
<td>2,915,000</td>
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<tr>
<td>0313</td>
<td>1998</td>
<td>0402</td>
<td>34/1000 Waiver</td>
<td>139</td>
<td>500,000</td>
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<tr>
<td>0313</td>
<td>1998</td>
<td>0402</td>
<td>Increased Enrollment</td>
<td>140</td>
<td>2,000,000</td>
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<tr>
<td></td>
<td>Description</td>
<td>Code</td>
<td>Amount</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
<td>------</td>
<td>--------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Coordinator—Educational Medical Services</td>
<td>141</td>
<td>139,500</td>
<td></td>
<td></td>
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<tr>
<td>10</td>
<td>National Science Foundation Match</td>
<td>142</td>
<td>2,000,000</td>
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<td>11</td>
<td>Safe Schools</td>
<td>143</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>12</td>
<td>Implementation of Norm Referenced Testing Program</td>
<td>297</td>
<td>1,455,762</td>
<td></td>
<td></td>
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<tr>
<td>13</td>
<td>Technology Repair and Modernization</td>
<td>298</td>
<td>650,000</td>
<td></td>
<td></td>
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<tr>
<td>14</td>
<td>Curriculum Technology Resource Center</td>
<td>300</td>
<td>250,400</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>County Boards of Education—Tax Assessment Error</td>
<td>430</td>
<td>211,000</td>
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</tr>
<tr>
<td>16</td>
<td>Upshur County Board of Education—Tax Assessment Error</td>
<td>694</td>
<td>100,000</td>
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<td></td>
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<tr>
<td>17</td>
<td>Webster County Board of Education—Tax Assessment Error</td>
<td>741</td>
<td>17,000</td>
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<td>18</td>
<td>Clay County Board of Education—Tax Assessment Error</td>
<td>742</td>
<td>27,000</td>
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<td>19</td>
<td>Lincoln County Board of Education—Tax Assessment Error</td>
<td>743</td>
<td>190,000</td>
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<tr>
<td>20</td>
<td>WVGC Writing Project</td>
<td>482</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>21</td>
<td>Micro Computer Network</td>
<td>506</td>
<td>150,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Technology and Telecommunications Initiative (R)</td>
<td>596</td>
<td>-0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Professional Certification</td>
<td>615</td>
<td>25,000</td>
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<td></td>
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<tr>
<td>24</td>
<td>Adult Advisory Council</td>
<td>621</td>
<td>265,550</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Pickens School Support and Hacker Valley School</td>
<td>622</td>
<td>-0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appropriation</td>
<td>Amount</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pickens School Support</td>
<td>758 150,000</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Foreign Student Education</td>
<td>636 100,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technology Demonstration Project</td>
<td>639 150,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Teacher of the Year</td>
<td>640 33,266</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Principals Mentorship</td>
<td>649 60,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Educational Enhancements</td>
<td>695 1,776,700</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Allowance for Work</td>
<td>744 50,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Computer Basic Skills</td>
<td>145 6,300,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>50 $25,935,793</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in the appropriations for Computer Basic Skills (fund 0313, activity 145), Computer Basic Skills-Surplus (fund 0313, activity 674), Technology and Telecommunications Initiative (fund 0313, activity 596) and Foreign Student Education (fund 0313, activity 636) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

36—State Department of Education—
Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Account No.

Fund 0314 FY 1998 Org 0402

<table>
<thead>
<tr>
<th>Line Number</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Education—Counties</td>
<td>159</td>
<td>$7,336,561</td>
</tr>
<tr>
<td>2</td>
<td>Special Education—Institutions</td>
<td>160</td>
<td>2,760,150</td>
</tr>
<tr>
<td>3</td>
<td>Education of Juveniles Held in</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Predispositional Juvenile</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Detention Centers</td>
<td>302</td>
<td>150,000</td>
</tr>
</tbody>
</table>
### 37—State Department of Education—State Aid to Schools

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 0317 FY 1998 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Other Current Expenses ........ 022 $ 102,918,696</td>
</tr>
<tr>
<td>2</td>
<td>Professional Educators ....... 151 682,769,541</td>
</tr>
<tr>
<td>3</td>
<td>Service Personnel ............. 152 209,629,055</td>
</tr>
<tr>
<td>4</td>
<td>Fixed Charges ................ 153 78,977,275</td>
</tr>
<tr>
<td>5</td>
<td>Transportation ................. 154 31,555,264</td>
</tr>
<tr>
<td>6</td>
<td>Administration ................. 155 7,586,213</td>
</tr>
<tr>
<td>7</td>
<td>Improve Instructional Programs .. 156 32,520,994</td>
</tr>
<tr>
<td>8</td>
<td>Basic Foundation Allowances .... 1,145,957,038</td>
</tr>
<tr>
<td>9</td>
<td>Less Local Share ............... 332 (243,695,199)</td>
</tr>
<tr>
<td>10</td>
<td>Total Basic State Aid ........... 902,261,839</td>
</tr>
<tr>
<td>11</td>
<td>Public Employees ............... 012 125,604,529</td>
</tr>
<tr>
<td>12</td>
<td>Insurance Match ............... 019 218,573,984</td>
</tr>
<tr>
<td>13</td>
<td>Teachers' Retirement System .... 019 17,664,420</td>
</tr>
<tr>
<td>14</td>
<td>School Building Authority ...... 453 $1,264,104,772</td>
</tr>
<tr>
<td>15</td>
<td>Total ........................ 472 4,325,258</td>
</tr>
</tbody>
</table>

### 38—State Board of Education—Vocational Division

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 0390 FY 1998 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Total ........................ 472 4,325,258</td>
</tr>
</tbody>
</table>
10 APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$701,500</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>14,951</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>239,313</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>548,021</td>
</tr>
<tr>
<td>5</td>
<td>Wood Products—Forestry Vocational Program (R)</td>
<td>146</td>
<td>63,024</td>
</tr>
<tr>
<td>6</td>
<td>Albert Yanni Vocational Program</td>
<td>147</td>
<td>139,300</td>
</tr>
<tr>
<td>7</td>
<td>Vocational Aid</td>
<td>148</td>
<td>11,749,324</td>
</tr>
<tr>
<td>8</td>
<td>Adult Basic Education</td>
<td>149</td>
<td>2,425,358</td>
</tr>
<tr>
<td>9</td>
<td>Equipment Replacement</td>
<td>150</td>
<td>1,019,750</td>
</tr>
<tr>
<td>10</td>
<td>Program Modernization</td>
<td>305</td>
<td>600,000</td>
</tr>
<tr>
<td>11</td>
<td>Aquaculture Support</td>
<td>307</td>
<td>100,000</td>
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<tr>
<td>12</td>
<td>Total</td>
<td>307</td>
<td>$17,600,541</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Wood Products—Forestry Vocational Program (fund 0390, activity 146), Program Modernization (fund 0390, activity 305) and Program Modernization—Total-Surplus (fund 0390, activity 598) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

39—West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)

Account No.

Fund 0320 FY 1998 Org 0403

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$5,552,966</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,050</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,043,132</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,390,216</td>
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</table>
### DEPARTMENT OF EDUCATION AND THE ARTS

#### 40—Department of Education and the Arts—
#### Office of the Secretary

(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>0294</td>
<td>1998</td>
<td>0431</td>
<td>Unclassified (R)</td>
<td>$1,397,151</td>
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<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>Center for Professional Development (R)</td>
<td>$0</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td>Center for Professional Development</td>
<td>$600,000</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td>WV Humanities Council</td>
<td>$250,000</td>
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<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td>Center for Professional Development- Principals Academy</td>
<td>$500,000</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td>Technical Preparation Program (R)</td>
<td>$932,397</td>
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<tr>
<td>7</td>
<td></td>
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<td></td>
<td>Arts Programs</td>
<td>$40,000</td>
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<td>8</td>
<td></td>
<td></td>
<td></td>
<td>Community Schools/Mini Grants (R)</td>
<td>$800,000</td>
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<tr>
<td>9</td>
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<td></td>
<td></td>
<td>Marshall and West Virginia University Faculty and Course Development International Study Project</td>
<td>$0</td>
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<tr>
<td>10</td>
<td></td>
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<td></td>
<td>Hospitality Training</td>
<td>$550,000</td>
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<td></td>
<td></td>
<td></td>
<td>Hospitality Training— Southern WV Community College</td>
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<td>Total</td>
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</table>

#### 5 Fire and Smoke Alarm System

<table>
<thead>
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<th>Description</th>
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<tbody>
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</table>

(continued)
Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), Technical Preparation Program (fund 0294, activity 440), Community Schools/Mini Grants (fund 0294, activity 530), Community Schools/Mini Grants - Surplus (fund 0294, activity 531) and Rural Health Initiative Site Support (fund 0294, activity 295) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

41—Office of the Secretary
Higher Education Efficiency Fund
Control Account
(WV Code Chapter 18B)

Fund 0556 FY 1998 Org 0431

<table>
<thead>
<tr>
<th>1</th>
<th>Strategic Planning and Compliance</th>
<th>447</th>
<th>$10,194,879</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Institutions—Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

42—Division of Culture and History
(WV Code Chapter 29)

Account No.

Fund 0293 FY 1998 Org 0432

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$1,564,132</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>38,825</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>528,476</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>540,251</td>
</tr>
<tr>
<td>5</td>
<td>Fairs and Festivals</td>
<td>122</td>
<td>1,053,000</td>
</tr>
<tr>
<td>6</td>
<td>Historical Preservation Grants</td>
<td>311</td>
<td>101,889</td>
</tr>
<tr>
<td>7</td>
<td>West Virginia Public Theater</td>
<td>312</td>
<td>100,000</td>
</tr>
<tr>
<td>8</td>
<td>Theater Arts of West Virginia</td>
<td>464</td>
<td>330,000</td>
</tr>
<tr>
<td>9</td>
<td>Capitol Tourism Programs</td>
<td>601</td>
<td>-0-</td>
</tr>
<tr>
<td>10</td>
<td>Grants for Competitive Arts</td>
<td>624</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 0293, activity 589) and Capital Outlay, Repairs and Equipment - Surplus (fund 0293, activity 677) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

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

All federal moneys received as reimbursement to the division of culture and history for moneys expended from the general revenue fund for the arts fund and historical preservation are hereby reappropriated for the purposes as originally made, including personal services, current expenses and equipment.

43—Library Commission

(WV Code Chapter 10)

Account No.

Fund 0296 FY 1998 Org 0433

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,026,382</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>34,150</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>350,107</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>238,358</td>
</tr>
<tr>
<td>5</td>
<td>Books and Films</td>
<td>179</td>
<td>150,000</td>
</tr>
<tr>
<td>6</td>
<td>Services to State Institutions</td>
<td>180</td>
<td>156,310</td>
</tr>
<tr>
<td>7</td>
<td>Services to Blind and Handicapped</td>
<td>181</td>
<td>42,729</td>
</tr>
</tbody>
</table>
9 Grants to Public Libraries .......... 182  6,838,884
10 Libraries—Special Projects .......... 625  500,000
11 Total ................................ $ 9,336,920

44—Educational Broadcasting Authority
(WV Code Chapter 10)

Account No.

<table>
<thead>
<tr>
<th>Fund 0300 FY 1998Org 0439</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ............... 001 $ 3,027,630</td>
</tr>
<tr>
<td>2 Annual Increment ................. 004  71,250</td>
</tr>
<tr>
<td>3 Employee Benefits ............... 010  913,150</td>
</tr>
<tr>
<td>4 Unclassified .................... 099 1,230,402</td>
</tr>
<tr>
<td>5 Capital Improvements—</td>
</tr>
<tr>
<td>6 600 Capitol Street ............... 313 0-0-</td>
</tr>
<tr>
<td>7 Total ................................ $ 5,242,432</td>
</tr>
</tbody>
</table>

8 Any unexpended balances remaining in the appropriations for Capital Improvements—Total - Surplus (fund 0300, activity 672) and Capital Improvements - 600 Capitol Street (fund 0300, activity 313) are hereby reappropriated for expenditure during the fiscal year 1997-98.

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

45—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System Central Office Control Account

(WV Code Chapters 18B and 18C)

Account No.

<p>| Fund 0333 FY 1998 Org 0452 |</p>
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>2</td>
<td>Higher Education Grant Program (R)</td>
<td>164</td>
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<tr>
<td>3</td>
<td>Tuition Contract Program (R)</td>
<td>165</td>
</tr>
<tr>
<td>4</td>
<td>Minority Doctoral Fellowship</td>
<td>166</td>
</tr>
<tr>
<td>5</td>
<td>Underwood-Smith Scholarship Program—</td>
<td>167</td>
</tr>
<tr>
<td>6</td>
<td>Student Awards</td>
<td>167</td>
</tr>
<tr>
<td>7</td>
<td>WVNET</td>
<td>169</td>
</tr>
<tr>
<td>8</td>
<td>Strategic Planning and Compliance</td>
<td>659</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Higher Education Grant Program (fund 0333, activity 164), Tuition Contract Program (fund 0333, activity 165), Higher Education Technology Initiative - Surplus (fund 0333, activity 508) and Higher Education Grant Program (fund 4055, activity 164) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

46—Board of Trustees of the University System of West Virginia
Control Account

(WV Code Chapter 18B)

Account No.

Fund 0327 FY 1998 Org 0461

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
</tr>
<tr>
<td>2</td>
<td>Marshall University—Southern</td>
</tr>
<tr>
<td>3</td>
<td>WV Community and Technical College 2+2 Program (R)</td>
</tr>
<tr>
<td>4</td>
<td>Marshall University—Autism Training Center</td>
</tr>
<tr>
<td>No.</td>
<td>Institution and Program</td>
</tr>
<tr>
<td>-----</td>
<td>----------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>8</td>
<td>Marshall University—Forensic Lab</td>
</tr>
<tr>
<td>9</td>
<td>WVU College of Engineering and Mineral Resources—Diesel Study</td>
</tr>
<tr>
<td>10</td>
<td>Marshall and West Virginia University Faculty and Course</td>
</tr>
<tr>
<td>11</td>
<td>Development International Study Project</td>
</tr>
<tr>
<td>12</td>
<td>Strategic Planning Compliance</td>
</tr>
<tr>
<td>13</td>
<td>WVU Law School—Skills Program</td>
</tr>
<tr>
<td>14</td>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Marshall University-Southern WV Community and Technical College 2+2 Program (fund 0327, activity 170), Colin Anderson Children's Center - Surplus (fund 0327, activity 435), Jackson's Mill (fund 0327, activity 461), and Marshall University—Forensic Lab (fund 0327, activity 572) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

47—Board of Trustees of the University System of West Virginia—University of West Virginia Health Sciences Account Control Account

(WV Code Chapter 18B)

Account No.

Fund 0323 FY 1998 Org 0478

<table>
<thead>
<tr>
<th>No.</th>
<th>Institution and Program</th>
<th>Fund</th>
<th>1998</th>
<th>Org 0478</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>School of Osteopathic Medicine</td>
<td>172</td>
<td>5,987,759</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Marshall School of Medicine</td>
<td>173</td>
<td>10,779,519</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>WVU—Health Sciences</td>
<td>174</td>
<td>38,481,761</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>WVU—School of Health Sciences—Charleston Division</td>
<td>175</td>
<td>3,787,416</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>WVU Charleston Division</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Poison Control .......................... 510       350,000
Hot Line ..................................  
Health Sciences Scholarship .......... 176       148,500
Fund (R) .................................
Primary Health Education Program Support (R) ................. 177 4,460,000
Medical Education ......................... 178 -0-
Rural Health Initiative Site Support (R) ................. 295 2,980,000
Vice Chancellor for Health Sciences ............... 473 254,389
WVU—Health Career Opportunities (R) ............... 474 75,000
MA Public Health Program and Health Science Technology ........ 623 75,000
Total .................................. $ 67,379,344

Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (fund 0323, activity 177), Rural Health Initiative Site Support (fund 0323, activity 295), Health Sciences Scholarship Fund (fund 0323, activity 176), and WVU Health Career Opportunities (fund 0323, activity 474) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

48—Board of Directors of the State College System Control Account
(WV Code Chapter 18B)

Account No.

Fund 0330 FY 1998 Org 0481

1 Unclassified ............................ 099 $ 76,805,396
2  West Virginia University
3  Institute of Technology
4  Transfer to Board of Trustees -
5  West Virginia University Institute
6  of Technology Resource
7  Allocation Policy
8  Adjustment .................... 454 284,526
9  Total ......................... $ 77,089,922

49—State Board of Rehabilitation—
Division of Rehabilitation Services

(WV Code Chapter 18)
Account No.

Fund 0310 FY 1998 Org 0932

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 98</th>
<th>Org</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td></td>
<td></td>
<td>Personal Services</td>
<td>001</td>
<td>4,087,653</td>
</tr>
<tr>
<td>004</td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>124,961</td>
</tr>
<tr>
<td>010</td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,392,449</td>
</tr>
<tr>
<td>162</td>
<td></td>
<td></td>
<td>Case Services</td>
<td>162</td>
<td>2,826,365</td>
</tr>
<tr>
<td>163</td>
<td></td>
<td></td>
<td>Workshop Development</td>
<td>163</td>
<td>1,449,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td></td>
<td>9,880,428</td>
</tr>
</tbody>
</table>

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Department of Health and Human Resources—
Office of the Secretary

(WV Code Chapter 5F)
Account No.

Fund 0400 FY 1998 Org 0501

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 98</th>
<th>Org</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td></td>
<td></td>
<td>Unclassified—Total</td>
<td>096</td>
<td>116,674</td>
</tr>
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</table>

51—Division of Health—
Central Office

(WV Code Chapter 16)
Account No.
<table>
<thead>
<tr>
<th>Fund 0407 FY 1998</th>
<th>Org 0506</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>001</td>
<td>Personal Services</td>
<td>$5,770,475</td>
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<tr>
<td>2</td>
<td>004</td>
<td>Annual Increment</td>
<td>131,907</td>
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<td>3</td>
<td>010</td>
<td>Employee Benefits</td>
<td>2,350,519</td>
</tr>
<tr>
<td>4</td>
<td>099</td>
<td>Unclassified</td>
<td>4,109,035</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>Corporate Nonprofit</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Community Health Centers</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>F.M.H.A. Mortgage Finance</td>
<td>167,968</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>Appalachian State Low Level Radioactive Waste Commission</td>
<td>48,000</td>
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<tr>
<td>9</td>
<td></td>
<td>Safe Drinking Water Program</td>
<td>451,710</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>State Aid to Local Agencies</td>
<td>-0-</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>State Aid to Local Health Departments</td>
<td>7,880,684</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>Women, Infants and Children</td>
<td>45,000</td>
</tr>
<tr>
<td>13</td>
<td></td>
<td>Early Intervention</td>
<td>2,018,357</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>Cancer Registry</td>
<td>192,487</td>
</tr>
<tr>
<td>15</td>
<td></td>
<td>Black Lung Clinics</td>
<td>200,000</td>
</tr>
<tr>
<td>16</td>
<td></td>
<td>Pediatric Dental Services</td>
<td>150,000</td>
</tr>
<tr>
<td>17</td>
<td></td>
<td>Vaccine for Children</td>
<td>431,480</td>
</tr>
<tr>
<td>18</td>
<td></td>
<td>Adult Influenza Vaccine</td>
<td>65,000</td>
</tr>
<tr>
<td>19</td>
<td></td>
<td>Tuberculosis Control</td>
<td>248,534</td>
</tr>
<tr>
<td>20</td>
<td></td>
<td>EMS Area Entity</td>
<td>-0-</td>
</tr>
<tr>
<td>21</td>
<td></td>
<td>State EMS Coordinator</td>
<td>756,320</td>
</tr>
<tr>
<td>22</td>
<td></td>
<td>Regional EMS Entities</td>
<td>630,000</td>
</tr>
<tr>
<td>23</td>
<td></td>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees</td>
<td>4,673,043</td>
</tr>
</tbody>
</table>
29 Epidemiology Support ............... 626 408,914
30 Rural EMS Equipment
   and Training ................. 627 560,000
32 EMS Training for Children .... 739 50,000
33 Primary Care Support .......... 628 7,242,084
34 Computer Equipment .......... 680 -0-
35 Radon and Carbon
36 Dioxide Testing .............. 746 100,000
37 Total ........................ $ 38,681,517

Any unexpended balance remaining in the appro­
propriation for Maternal and Child Health Clinics, Clinicians
and Medical Contracts and Fees (fund 0407, activity 575)
at the close of the fiscal year 1996-97 is hereby
reappropriated for expenditure during the fiscal year
1997-98.

52—Consolidated Medical Service Fund
(WV Code Chapter 16)

Account No.

Fund 0525 FY 1998 Org 0506

1 Personal Services .............. 001 $ 564,666
2 Annual Increment ............. 004 10,300
3 Employee Benefits .......... 010 13,674,025
4 Special Olympics ............ 208 26,074
5 Behavioral Health Program -
   Unclassified ................. 219 15,449,313
6 Family Support Act ........... 221 1,088,605
8 Institutional Facilities Operations .. 335 28,729,045
9 Total ........................ $ 59,542,028

The secretary of the department of health and human
resources, prior to the beginning of the fiscal year, shall
file with the legislative auditor and the department of administration an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation for Institutional Facilities Operations. The secretary shall also, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of administration an itemized report of expenditures made during the preceding six-month period.

Additional funds have been appropriated in fund 5156, fiscal year 1998, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health—hospital services revenue account (fund 5156, activity 335), on July 1, 1997, the sum of one hundred fifty thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

53—Division of Health—
West Virginia Drinking Water Treatment
(WV Code Chapter 16)

Account No.
Fund 0561 FY 1998 Org 0506

1 West Virginia Drinking Water Treatment
2 Revolving Fund—Transfer . . . . 689 $ 700,000
3 The above appropriation for Drinking Water Treatment Revolving Fund—Transfer shall be transferred to the
West Virginia Drinking Water Treatment Revolving Fund as provided by chapter sixteen of the code.

54—Commission on Aging
(WV Code Chapter 29)

Account No.
Fund 0420 FY 1998 Org 0508

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$-0-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$-0-</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$-0-</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$-0-</td>
</tr>
<tr>
<td>Local Programs Service</td>
<td>200</td>
<td>$-0-</td>
</tr>
<tr>
<td>Delivery Costs</td>
<td>202</td>
<td>$-0-</td>
</tr>
<tr>
<td>Silver Haired Legislature</td>
<td>203</td>
<td>$-0-</td>
</tr>
<tr>
<td>Area Agencies Administration</td>
<td>205</td>
<td>$-0-</td>
</tr>
<tr>
<td>Foster Grandparents Stipends and Travel</td>
<td>224</td>
<td>$-0-</td>
</tr>
<tr>
<td>In-Home Services for Senior Citizens</td>
<td></td>
<td>$-0-</td>
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</tbody>
</table>

Total: $-0-

Any unexpended balance remaining in the appropriation for Senior Citizens Centers—Land Acquisition, Construction and Repairs and Alterations (fund 0420, activity 201) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98 except fiscal year 1991-92 which shall expire on June 30, 1997.

55—Human Rights Commission
(WV Code Chapter 5)

Account No.
Fund 0416 FY 1998 Org 0510
<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Account No.</th>
<th>2000</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$17,515,367</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>469,711</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>6,190,886</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>15,100,000</td>
</tr>
<tr>
<td>5</td>
<td>Child Care Development</td>
<td>144</td>
<td>1,381,976</td>
</tr>
<tr>
<td>6</td>
<td>Medical Services Contracts</td>
<td>183</td>
<td>1,491,717</td>
</tr>
<tr>
<td></td>
<td>and Office of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Managed Care</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Medicaid Management Information Technology</td>
<td>186</td>
<td>1,200,000</td>
</tr>
<tr>
<td>9</td>
<td>Medical Services</td>
<td>189</td>
<td>162,045,670</td>
</tr>
<tr>
<td>10</td>
<td>Women’s Commission</td>
<td>191</td>
<td>80,351</td>
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<tr>
<td>11</td>
<td>Commission on</td>
<td></td>
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</tr>
<tr>
<td>12</td>
<td>Hearing Impaired</td>
<td>192</td>
<td>-0-</td>
</tr>
<tr>
<td>13</td>
<td>Commission for the Deaf</td>
<td>704</td>
<td>150,702</td>
</tr>
<tr>
<td>14</td>
<td>and Hard of Hearing</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td></td>
<td>[Ch. 5]</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------</td>
<td>---</td>
<td>---------</td>
</tr>
<tr>
<td>17</td>
<td>Social Services</td>
<td>195</td>
<td>31,700,348</td>
</tr>
<tr>
<td>18</td>
<td>Family Preservation Program</td>
<td>196</td>
<td>1,565,000</td>
</tr>
<tr>
<td>19</td>
<td>OSCAR and RAPIDS</td>
<td>515</td>
<td>3,123,501</td>
</tr>
<tr>
<td>20</td>
<td>Child Protective Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Case Workers</td>
<td>468</td>
<td>6,083,307</td>
</tr>
<tr>
<td>22</td>
<td>Child Advocate</td>
<td>602</td>
<td>-0-</td>
</tr>
<tr>
<td>23</td>
<td>Child Support Enforcement</td>
<td>705</td>
<td>657,867</td>
</tr>
<tr>
<td>24</td>
<td>Child Welfare System</td>
<td>603</td>
<td>2,506,923</td>
</tr>
<tr>
<td>25</td>
<td>Child Protective Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Medicaid Auditing</td>
<td>604</td>
<td>-0-</td>
</tr>
<tr>
<td>27</td>
<td>Medicaid Auditing</td>
<td>706</td>
<td>538,499</td>
</tr>
<tr>
<td>28</td>
<td>Grants for Domestic Violence Shelters</td>
<td>629</td>
<td>280,000</td>
</tr>
<tr>
<td>29</td>
<td>Welfare Reform</td>
<td>643</td>
<td>-0-</td>
</tr>
<tr>
<td>30</td>
<td>Temporary Assistance for Needy Families’ Maintenance of Effort</td>
<td>707</td>
<td>29,689,373</td>
</tr>
<tr>
<td>31</td>
<td>Child Care—Maintenance of Effort and Match</td>
<td>708</td>
<td>4,409,643</td>
</tr>
<tr>
<td>36</td>
<td>Total</td>
<td></td>
<td>$286,180,841</td>
</tr>
</tbody>
</table>

Notwithstanding the provisions of Title I, section two of this bill, the secretary of the department of health and human resources shall have the authority to transfer funds within the above account: Provided, That no more than ten percent of the funds appropriated to one line item may be transferred to other line items: Provided, however, that no funds from other line items shall be transferred to the personal services line item.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY
57—Department of Military Affairs and Public Safety—
Office of the Secretary

(WV Code Chapter 5F)

Account No.  
Fund 0430  FY 1998  Org 0601

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>FY 1998</th>
<th>Org 0601</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>001</td>
<td>$324,477</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>9,150</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>108,360</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>3,756,724</td>
<td></td>
</tr>
<tr>
<td>College Education Fund</td>
<td>232</td>
<td>1,798,400</td>
<td></td>
</tr>
<tr>
<td>Mountaineer Challenge Academy</td>
<td>709</td>
<td>357,600</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$6,354,711</strong></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriations for Armory Construction-Capital Outlay-Total Surplus (fund 0433, activity 669) and Armory Capital Improvements (fund 0433, activity 325) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

The College Education Fund line item above shall be the total annual appropriation for awarding scholarships. The secretary of the department of military affairs and public safety shall devise a method to equitably reimburse all eligible participants on a pro rata basis should the appropriation be insufficient to cover total annual eligible expenses.
### 59—West Virginia Parole Board
(WV Code Chapter 62)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0440</td>
<td></td>
<td>0605</td>
<td>Personal Services</td>
<td>001 $ 48,348</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004 1,100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010 72,122</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099 56,675</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Salaries of Members of West Virginia Parole Board</td>
<td>227 200,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$ 378,245</td>
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</table>

### 60—Office of Emergency Services
(WV Code Chapter 15)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0443</td>
<td></td>
<td>0606</td>
<td>Personal Services</td>
<td>001 $ 170,482</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004 5,300</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010 67,482</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099 31,751</td>
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<td>Federal Emergency Management Agency Match</td>
<td>188 237,610</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$ 512,625</td>
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</table>

### 61—Division of Corrections—Central Office
(WV Code Chapters 25, 28, 49 and 62)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0446</td>
<td></td>
<td>0608</td>
<td>Personal Services</td>
<td>001 $ 327,878</td>
</tr>
</tbody>
</table>
Ch 5] APPROPRIATIONS

2 Annual Increment 004 8,260
3 Employee Benefits 010 107,458
4 Unclassified 099 111,004
5 Total $ 554,600

62—Division of Corrections—Correctional Units

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

Account No.

Fund 0450 FY 1998 Org 0608

1 Personal Services 001 $ 12,130,887
2 Annual Increment 004 229,088
3 Employee Benefits 010 4,618,727
4 Unclassified 099 6,320,228
5 Payment to Counties and/or Regional Jails 229 3,916,250
6 Denmar Facility 448 2,402,991
7 Mt. Olive Correctional Complex 533 15,442,911
8 Northern Correctional Facility 534 5,154,519
9 Inmate Medical Expense 535 4,779,100
10 Total $ 54,994,701

12 Any unexpended balances remaining in the appropriations for Capital Improvements (fund 0450, activity 338) and Capital Improvements - Surplus (fund 0450, activity 661) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

18 The commissioner of corrections, prior to the beginning of the fiscal year, shall file with the legislative auditor and the department of administration an expenditure schedule for each formerly separate spending
unit which has been consolidated into the above account
and which receives a portion of the above appropriation.
The Commissioner shall also, within fifteen days after the
close of each six-month period of said fiscal year, file with
the legislative auditor and the department of adminis-
tration an itemized report of expenditures made during
the preceding six-month period. Such report shall include
the total of expenditures made for personal services,
annual increment, current expenses (inmate medical
expenses and other), repairs and alterations and
equipment.

From the above appropriation to Unclassified, on July
1, 1997, the sum of two hundred thousand dollars shall be
transferred to the department of agriculture — land
division as advance payment for the purchase of food
products; actual payments for such purchases shall not be
required until such credits have been completely
expended.

63—West Virginia State Police
(WV Code Chapter 15)

Account No.

Fund 0453 FY 1998 Org 0612

1 Personal Services .................. 001 $ 21,900,498
2 Annual Increment .................. 004 148,550
3 Employee Benefits .................. 010 3,697,692
4 Unclassified ......................... 099 5,582,653
5 COPS Program-Federal Match .... 327 258,924
6 Vehicle Purchase ................... 451 1,000,000
7 Barracks Maintenance and
   Construction (R) ................. 494 713,947
8 Communications and Other
   Equipment ......................... 558 2,415,000
9 Overtime and Wage Court Awards .. 568 2,000,000
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td></td>
<td>671,639</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>21,250</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>296,821</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>15,919</td>
</tr>
<tr>
<td>5</td>
<td>Veterans' Field Offices</td>
<td>228</td>
<td></td>
<td>129,692</td>
</tr>
<tr>
<td>6</td>
<td>Veterans' Toll Free Assistance</td>
<td>328</td>
<td></td>
<td>25,000</td>
</tr>
<tr>
<td>7</td>
<td>Line (R)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Veterans' Reeducation Assistance</td>
<td>329</td>
<td></td>
<td>270,000</td>
</tr>
<tr>
<td>9</td>
<td>Veterans' Field Office</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Improvements (R)</td>
<td>331</td>
<td></td>
<td>44,064</td>
</tr>
<tr>
<td>11</td>
<td>Veterans' Grant Program (R)</td>
<td>342</td>
<td></td>
<td>150,000</td>
</tr>
<tr>
<td>12</td>
<td>Barboursville Veterans' Home</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Improvements (R)</td>
<td>466</td>
<td></td>
<td>-0-</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td></td>
<td></td>
<td>1,624,385</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Veterans' Toll Free Assistance Line (fund 0456, activity 328), Veterans' Reeducation Assistance (fund 0456, activity 329), Veterans' Field Office Improvements (fund 0456, activity 331), Barboursville Veterans' Home Improvements (fund 0456, activity 466) and Veterans' Grant Program (fund 0456, activity 342) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

65—Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)

Account No.

Fund 0536 FY 1998 Org 0615

Any unexpended balance remaining in the appropriation for Regional Jail-Capital Outlay—Total (fund 0536, activity 577) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

66—Division of Veterans' Affairs—Veterans' Home
(WV Code Chapter 9A)

Account No.

Fund 0460 FY 1998 Org 0618

1 Personal Services .................. 001 $ 610,043
2 Annual Increment .................. 004 15,250
3 Employee Benefits ................. 010 294,791
4 Unclassified ....................... 099 160,234
5 Barboursville Veterans' Home Improvements (R) ........... 466 450,000
6 Total ................................. $ 1,530,318
## APPROPRIATIONS

### 67—Fire Commission
(WV Code Chapter 29)

Account No.

<table>
<thead>
<tr>
<th>Fund 0436 FY 1998 Org 0619</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001 $ 533,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004 11,800</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010 160,799</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099 140,601</td>
</tr>
<tr>
<td>5 Total</td>
<td>$ 846,200</td>
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</tbody>
</table>

### 68—Division of Criminal Justice and Highway Safety
(Executive Order)

Account No.

<table>
<thead>
<tr>
<th>Fund 0546 FY 1998 Org 0620</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001 $ 111,367</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004 2,425</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010 39,170</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099 107,227</td>
</tr>
<tr>
<td>5 Statistical Analysis Program</td>
<td>597 50,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 310,189</td>
</tr>
</tbody>
</table>

### DEPARTMENT OF TAX AND REVENUE

69—Department of Tax and Revenue—
Office of the Secretary
(WV Code Chapter 5F)

Account No.

<table>
<thead>
<tr>
<th>Fund 0465 FY 1998 Org 0701</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096 $ 163,017</td>
</tr>
</tbody>
</table>
### 70—Tax Division

(WV Code Chapter 11)

Account No.

**Fund 0470 FY 1998 Org 0702**

<table>
<thead>
<tr>
<th>Category</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$9,467,057</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$229,150</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$3,091,197</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$6,360,538</td>
</tr>
<tr>
<td>Remittance Processor</td>
<td>570</td>
<td>$325,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$19,472,942</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Automation Project (fund 0470, activity 442) and Automation Project-Total-Surplus (fund 0470, activity 673) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

### 71—Division of Professional and Occupational Licenses—State Athletic Commission

(WV Code Chapter 29)

Account No.

**Fund 0523 FY 1998 Org 0933**

<table>
<thead>
<tr>
<th>Category</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$4,719</td>
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</table>

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DEPARTMENT OF TRANSPORTATION

72—Department of Transportation—Office of the Secretary

(WV Code Chapter 5F)

Account No.

**Fund 0500 FY 1998 Org 0801**

<table>
<thead>
<tr>
<th>Category</th>
<th>Account</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$505,272</td>
</tr>
</tbody>
</table>
Ch 5] APPROPRIATIONS

2 Civil Air Patrol .................. 234 106,952
3 Port Authority (R) .............. 443 491,925
4 Potomac Highlands
   Airport Authority .............. 444 90,000
5 Total ................................ $ 1,194,149

7 Any unexpended balances remaining in the appropriations for Port Authority (fund 0500, activity 443) and Aeronautics Commission - Surplus (fund 0500, activity 450) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

73—State Rail Authority
(WV Code Chapter 29)

Account No.

Fund 0506 FY 1998 Org 0804

1 Unclassified—Total .............. 096 $ 704,346

2 Any unexpended balances remaining in the appropriations for Capital Improvement and Equipment (fund 0506, activity 632), Capital Outlay-Railroad Maintenance Authority (fund 0506, activity 309), Hampshire County Railroad Siding (fund 0506, activity 497) and Duffield Station (fund 0506, activity 559) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

74—Division of Public Transit
(WV Code Chapter 17)

Account No.

Fund 0510 FY 1998 Org 0805

1 Unclassified—Total .............. 096 $ 872,680
### BUREAU OF COMMERCE

#### 75—Division of Forestry

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund 0250</td>
<td>FY 1998</td>
<td>Org 0305</td>
<td></td>
<td>Personal Services</td>
<td>001 $1,308,956</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0305</td>
<td></td>
<td>Annual Increment</td>
<td>004 32,550</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0305</td>
<td></td>
<td>Employee Benefits</td>
<td>010 467,783</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0305</td>
<td></td>
<td>Unclassified</td>
<td>099 397,123</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0305</td>
<td></td>
<td>Total</td>
<td>$2,206,412</td>
</tr>
</tbody>
</table>

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

### 76—Geological and Economic Survey

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund 0253</td>
<td>FY 1998</td>
<td>Org 0306</td>
<td></td>
<td>Personal Services</td>
<td>001 $1,158,066</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0306</td>
<td></td>
<td>Annual Increment</td>
<td>004 28,258</td>
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<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0306</td>
<td></td>
<td>Employee Benefits</td>
<td>010 352,934</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0306</td>
<td></td>
<td>Unclassified</td>
<td>099 151,859</td>
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<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0306</td>
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<td>Mineral Mapping System (R)</td>
<td>207 1,167,500</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0306</td>
<td></td>
<td>Geographic Information</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0306</td>
<td></td>
<td>System (R)</td>
<td>214 312,500</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0306</td>
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<td>Computer Upgrade</td>
<td>349 6,125</td>
</tr>
<tr>
<td></td>
<td>FY 1998</td>
<td>Org 0306</td>
<td></td>
<td>Total</td>
<td>$3,177,242</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Mineral Mapping System - Surplus (fund
0253, activity 610), Capital Outlay and Equipment - Surplus (fund 0253, activity 679), Mineral Mapping System (fund 0253, activity 207) and Geographic Information System (fund 0253, activity 214) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

The above Unclassified appropriation includes funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105, activity 099) for the purpose of providing advance funding for such contracts.

77—West Virginia Development Office

(WV Code Chapter 5B)

Account No.

<table>
<thead>
<tr>
<th>Fund 0256 FY 1998 Org 0307</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
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<tr>
<td>4</td>
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<td>12</td>
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<tr>
<td>13</td>
</tr>
<tr>
<td>14</td>
</tr>
</tbody>
</table>
18 Robert C. Byrd Institute for
19 Advanced / Flexible
20 Manufacturing—Manufacturing
21 Technology Outreach
22 and Programs for
23 Environmental and Advanced
24 Technologies .................. 367  500,000
25 Industrial Park Assistance (R) .... 480  1,000,000
26 WV Film Development Office ...... 498  100,351
27 Leverage Technology
28 and Small Business
29 Development Program (R) ....... 525  800,000
30 WV Partnership for Industrial
31 Modernization .................. 592  200,000
32 International Offices ............. 593  526,004
33 Total .......................... $ 17,209,156
34
35 Any unexpended balances remaining in the appro-
36 priations for Partnership Grants (fund 0256, activity 131),
37 Guaranteed Work Force Grant (fund 0256, activity 242),
38 Local Economic Development Partnerships (fund 0256,
39 activity 133), Empowerment Zone/Enterprise Community
40 (fund 0256, activity 218), Guaranteed Work Force Grant -
41 Surplus (fund 0256, activity 496), Guaranteed Work Force
42 Grant/Small Business Programs (fund 0256, activity 354),
43 Small Business Financial Assistance (fund 0256, activity
44 360), Industrial Park Assistance (fund 0256, activity 480)
45 and Leverage Technology and Small Business Develop-
46 ment Program (fund 0256, activity 525) at the close of the
47 fiscal year 1996-97 are hereby reappropriated for
48 expenditure during the fiscal year 1997-98.
49
50 The above appropriation to Local Economic
51 Development Partnerships shall be used by the West
52 Virginia development office for the award of funding
53 assistance to county and regional economic development
54 corporations or authorities participating in the certified
55 development community program developed under the
56 provisions of section three, article two, chapter five-b of
the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed thirty thousand dollars per county served by an economic development corporation or authority.

78—Division of Labor
(WV Code Chapters 21 and 47)

Account No.
Fund 0260 FY 1998 Org 0308

1 Personal Services .......................... 001 $ 1,310,479
2 Annual Increment .......................... 004 20,369
3 Imaging System .............................. 006 50,000
4 Employee Benefits .......................... 010 445,256
5 Unclassified ................................. 099 682,821
6 Weights and Measures Program ... 483 363,000
7 Total ...................................... $ 2,871,925

79—Division of Natural Resources
(WV Code Chapter 20)

Account No.
Fund 0265 FY 1998 Org 0310

1 Personal Services .......................... 001 $ 7,462,197
2 Annual Increment .......................... 004 250,844
3 Employee Benefits .......................... 010 3,198,704
4 Unclassified ................................. 099 107,883
5 Nongame Wildlife ........................... 527 550,000
6 West Virginia Stream Partners Fund 637 100,000
7 Upper Mud River Flood Control ... 654 200,000
8 Total ...................................... $ 11,869,628
9 Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the division of natural resources, first for bond debt
payment purposes and with any remainder to be for park
operation and improvement purposes.

80—Division of Miners’ Health, Safety and Training
(WV Code Chapter 22)

Account No.

Fund 0277 FY 1998 Org 0314

<table>
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<tr>
<th>Item</th>
<th>Account</th>
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<tr>
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<td>$3,062,607</td>
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<td>Annual Increment</td>
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<td>$316,810</td>
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<tr>
<td>West Virginia Diesel Equipment Commission</td>
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<td>$4,528,384</td>
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81—Board of Coal Mine Health and Safety
(WV Code Chapter 22)

Account No.

Fund 0280 FY 1998 Org 0319

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<th>Item</th>
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<td>$94,600</td>
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<td>Annual Increment</td>
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<td>$138,382</td>
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82—Coal Mine Safety and Technical Review Committee
(WV Code Chapter 22)

Account No.

Fund 0285 FY 1998 Org 0320

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<th>Item</th>
<th>Account</th>
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<tbody>
<tr>
<td>Unclassified—Total</td>
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<td>$71,303</td>
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BUREAU OF ENVIRONMENT

83—Environmental Quality Board
(WV Code Chapter 20)

Account No.
Fund 0270  FY 1998  Org 0311
1 Personal Services  .................. 001  $  62,324
2 Annual Increment  ................. 004  207
3 Employee Benefits  ............... 010  19,062
4 Unclassified  ..................... 099  32,786
5 Total  ..........................  $ 114,379

84—Interstate Commission on Potomac River Basin
(WV Code Chapter 29)
Account No.
Fund 0263  FY 1998  Org 0313
1 West Virginia’s Contribution to the
2 Interstate Commission
3 on Potomac River Basin—
4 Total  .......................... 134  $ 41,064

85—Ohio River Valley Water Sanitation Commission
(WV Code Chapter 29)
Account No.
Fund 0264  FY 1998  Org 0313
1 West Virginia’s Contribution to the
2 Ohio River Valley Water
3 Sanitation Commission—
4 Total  .......................... 135  $ 117,100

86—Division of Environmental Protection
(WV Code Chapter 22)
Account No.
Fund 0273  FY 1998  Org 0313
1 Personal Services  .................. 001  $ 4,065,513
2 Annual Increment  ................. 004  78,983
### Employee Benefits

<table>
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<tr>
<th>Item</th>
<th>Appropriation</th>
<th>Amount</th>
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<td>3</td>
<td>010</td>
<td>1,266,424</td>
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<td>607</td>
<td>123,351</td>
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**Total**

$6,449,791

### 87—Air Quality Board

(WV Code Chapter 16)

Account No.

**Fund 0550 FY 1998 Org 0325**

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<tr>
<th>Item</th>
<th>Appropriation</th>
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<td>$75,786</td>
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### BUREAU OF SENIOR SERVICES

(WV Code Chapter 29)

Account No.

**Fund 0420 FY 1998 Org 0508**

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<th>Item</th>
<th>Appropriation</th>
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<td>Unclassified</td>
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<td>437,767</td>
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<td>Local Programs Service</td>
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<td>Delivery Costs</td>
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<td>Silver Haired Legislature</td>
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<td>14,400</td>
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<tr>
<td>Area Agencies Administration</td>
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<td>87,428</td>
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<tr>
<td>Foster Grandparents Stipends and Travel</td>
<td>205</td>
<td>57,734</td>
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<tr>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
<td>$700,000</td>
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<td>Total</td>
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<td>$3,941,449</td>
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</table>

Any unexpended balance remaining in the appropriation for Senior Citizens Centers—Land Acquisition, Construction and Repairs and Alterations (fund 0420,
activity 201) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98 except fiscal year 1991-92 which shall expire on June 30, 1997.

MISCELLANEOUS BOARDS AND COMMISSIONS

89—Board of Investments
(WV Code Chapter 12)

Account No.

Fund 0513 FY 1998 Org 0920

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Number</th>
<th>Budget</th>
<th>Description</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
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<tr>
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</table>

90—Board of Investments—
School Building Sinking Fund
(WV Code Chapter 12)

Account No.

Fund 0526 FY 1998 Org 0920

<table>
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<tr>
<th>Item</th>
<th>Account Number</th>
<th>Budget</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service—Total (R)</td>
<td>310</td>
<td>$0</td>
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</table>

Any unexpended balance remaining in the above appropriation for Board of Investments—School Building Sinking Fund—Debt Service—Total (fund 0526, activity 310) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

91—Board of Investments
(WV Code Chapter 12)

Account No.

Fund 0559 FY 1998 Org 0920

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Number</th>
<th>Budget</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service—Total</td>
<td>310</td>
<td>$0</td>
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</table>
The above appropriation is intended to repay the loan
obligation to the Consolidated Loan Fund in the amount
of $2,000,000 for the Morris Street Workers' Compensation
Building and $10,000,000 for the construction of
Regional Jails and Correctional Facilities.

Upon repayment of any loan obligations made
pursuant to section nineteen, article six, chapter twelve of
the code, the balance of the $10,000,000 appropriation
shall be transferred to the Regional Jail and Correctional
Authority for expenditure on the projects
specified in the list certified to the State Building
Commission and the Joint Committee on Government and
Finance.

Total TITLE II, Section 1—

Revenue $2,449,862,218

propositions from state road fund.—From
the fund there are hereby appropriated
on the fulfillment of the provisions set
the two, chapter five-a of the code the
ants, as itemized, for expenditure during the
ne thousand nine hundred ninety-eight.

MENT OF TRANSPORTATION

92—Division of Motor Vehicles

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

Account No.

Fund 9007 FY 1998 Org 0802

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<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
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<tbody>
<tr>
<td>Personal Services</td>
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<tr>
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<td>85,800</td>
</tr>
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<td>Employee Benefits</td>
<td>1,752,675</td>
</tr>
<tr>
<td>Unclassified</td>
<td>14,760,400</td>
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<tr>
<td>Capital Outlay-Building</td>
<td>2,840,000</td>
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<tr>
<td>International Fuel Tax Agreement</td>
<td>620,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ 24,855,651</td>
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</tbody>
</table>
### Appropriations

93—Division of Highways  
(WV Code Chapters 17 and 17C)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Debt Service</th>
<th>ARC Assessment</th>
<th>Maintenance, Expressway, Trunkline and Feeder</th>
<th>Maintenance, State Local Services</th>
<th>Maintenance, Contract Paving and Secondary Road Maintenance</th>
<th>Bridge Repair and Replacement</th>
<th>Inventory Revolving</th>
<th>Equipment Revolving</th>
<th>General Operations</th>
<th>Interstate Construction</th>
<th>Other Federal Aid Programs</th>
<th>Appalachian Programs</th>
<th>Nonfederal Aid Construction</th>
<th>Highway Litter Control</th>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The above appropriations are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the code.

The commissioner of highways shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.
There is hereby appropriated within the above items sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with sections seventeen and eighteen, article two, chapter fourteen of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the governor. Further, for the purpose of Appalachian programs, funds appropriated to line items may be transferred to other line items upon recommendation of the commissioner and approval of the governor.

94—Division of Highways—Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org 0803</th>
<th>Line Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interstate Construction</td>
<td>278</td>
<td>$ 35,000,000</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>170,000,000</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Appalachian Programs</td>
<td>280</td>
<td>80,000,000</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>280</td>
<td>$285,000,000</td>
<td></td>
</tr>
</tbody>
</table>

1 Total TITLE II, Section 2—

2 State Road Fund | $ 813,850,298

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

95—*Crime Victims Compensation Fund*

(WV Code Chapter 14)

Account No.

Fund 1731 FY 1998 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 145,096</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>1,625</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>49,282</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>32,000</td>
</tr>
<tr>
<td>5 Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>Payment Fund (R)</td>
<td>$ 2,000,000</td>
</tr>
<tr>
<td>7 Total</td>
<td>$ 2,228,003</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

**EXECUTIVE**

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

(WV Code Chapters 11A, 12 and 36)

Account No.

Fund 1206 FY 1998 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 92,753</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>4,400</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>28,276</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>98,994</td>
</tr>
<tr>
<td>5 Total</td>
<td>$ 224,423</td>
</tr>
</tbody>
</table>
There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter eleven-a of the West Virginia Code.

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

97—Auditor’s Office—Securities Regulation Fund

(WV Code Chapter 32)

Account No.

Fund 1225 FY 1998 Org 1200

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>FY 1998</th>
<th>FY 1998</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$298,700</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$4,722</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$86,116</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$404,862</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$794,400</td>
<td></td>
</tr>
</tbody>
</table>

98—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 1401 FY 1998 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>FY 1998</th>
<th>FY 1998</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$378,491</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$4,300</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$121,812</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$831,241</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,335,844</td>
<td></td>
</tr>
</tbody>
</table>
99—Department of Agriculture—
West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Account No.

Fund 1408 FY 1998 Org 1400

1 Student and Farm Loans—Total . 235 $ 536,076

100—Department of Agriculture—
General John McCausland Memorial Farm

(WV Code Chapter 19)

Account No.

Fund 1409 FY 1998 Org 1400

1 Personal Services ............... 001 $ 20,684
2 Employee Benefits ............... 010 13,736
3 Unclassified ..................... 099 51,493
4 Total .......................... $ 85,913

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

101—Department of Agriculture—
Farm Operating Fund

(WV Code Chapter 19)

Account No.

Fund 1412 FY 1998 Org 1400

1 Unclassified—Total ............. 096 $ 960,611

102—Attorney General—
Anti-Trust Enforcement

(WV Code Chapter 47)

Account No.

Fund 1507 FY 1998 Org 1500
148

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>[Ch. 5]</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

103—Attorney General—
Preneed Funeral Regulation Fund
(WV Code Chapter 47)

Account No.

Fund 1513 FY 1998 Org 1500

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$138,197</td>
</tr>
</tbody>
</table>

104—Attorney General—
Preneed Funeral Guarantee Fund
(WV Code Chapter 47)

Account No.

Fund 1514 FY 1998 Org 1500

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$275,000</td>
</tr>
</tbody>
</table>

105—Secretary of State—
Trademark Registration
(WV Code Chapters 3, 5, and 59)

Account No.

Fund 1610 FY 1998 Org 1600

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$7,000</td>
</tr>
</tbody>
</table>

DEPARTMENT OF ADMINISTRATION

106—Office of the Secretary—
Natural Gas Contract Refund Fund
(WV Code Chapter 5A)

Account No.
Ch 5]  

**APPROPRIATIONS**

Fund 2040 FY 1998 Org 0201

1 Unclassified—Total .................. 096 $ 200,000

107—Division of Information Services and Communications

(WV Code Chapter 5A)

Account No.

Fund 2220 FY 1998 Org 0210

1 Personal Services .................. 001 $ 4,554,430

2 Annual Increment .................. 004 87,675

3 Employee Benefits .................. 010 1,368,455

4 Unclassified ...................... 099 1,868,879

5 Total ............................. $ 7,879,439

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

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to provide information processing services to user agencies. These services include, but are not limited to, data processing equipment, office automation and telecommunications.

Each spending unit operating from the general revenue fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

108—Chief Technology Officer Administration Fund—

(WV Code Chapter 5)

Account No.
### 109—Division of Purchasing—Revolving Fund

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 2222 FY 1998 Org 0200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total 096</td>
</tr>
</tbody>
</table>

#### Division of Purchasing—Revolving Fund

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 2320 FY 1998 Org 0216</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services 001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment 004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits 010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified 099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

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

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to provide printing, publishing and document services and for the purchase of supplies for resale to user agencies. These services include, but are not limited to, offset printing, electronic duplication/copying, microfilming, records storage and the sale of general office supplies.

### 110—Division of Personnel

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 2440 FY 1998 Org 0222</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services 001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment 004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits 010</td>
</tr>
</tbody>
</table>
4. Unclassified .................. 099  762,121
5. Total ....................... $  3,481,818

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

111—WV Prosecuting Attorneys' Institute
(WV Code Chapter 7)
Account No.
Fund 2521 FY 1998 Org 0228

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$155,568</td>
</tr>
</tbody>
</table>

DEPARTMENT OF EDUCATION

112—State Department of Education—School Building Authority
(WV Code Chapter 18)
Account No.
Fund 3959 FY 1998 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$420,813</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>5,450</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>128,759</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>237,819</td>
</tr>
</tbody>
</table>
5. Total ....................... $  792,841

The above appropriation for the administrative expenses of the school building authority shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.

113—State Department of Education—FFA-FHA Camp and Conference Center
(WV Code Chapter 18)
Account No.
### DEPARTMENT OF EDUCATION AND THE ARTS

114—*State College and University Systems—

*State Systems Registration Fee—

*Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Account No.

Fund 3960 FY 1998 Org 0402

<table>
<thead>
<tr>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$694,039</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$13,800</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$327,684</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>$903,918</td>
</tr>
</tbody>
</table>

5 Total $1,939,441

Any unexpended balances remaining in the prior years’ and the 1996-97 appropriations are hereby reappropriated for expenditure during the fiscal year 1997-98.

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

115—*State College and University Systems—

*State Systems Tuition Fee—

*Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Account No.

Fund 4033 FY 1998 Org 0453

<table>
<thead>
<tr>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>644</td>
<td>Marshall University - New Library</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>756</td>
<td>Marshall University—Campus Facilities</td>
<td>$12,000,000</td>
</tr>
</tbody>
</table>
5 WVU—Campus Projects ........ 757 55,000,000
6 Fairmont State College—
7 Clarksburg Center ............. 715 3,500,000
8 Fairmont State College—
9 Campus Fiber Optics Network 716 1,000,000
10 Glenville State College—Ramp and
11 Personnel Lift, Health Building 717 75,000
12 Glenville State College—Elevator,
13 Science Hall .................. 718 323,000
14 Glenville State College—Elevator,
15 Louis Bennett Hall ............ 719 340,000
16 Glenville State College—
17 Roof Replacement,
18 Administration Building .... 720 700,000
19 West Liberty State College—
20 Academic, Sports and
21 Recreation Center ............ 721 3,500,000
22 Total ......................... $ 77,438,000
23 Any unexpended balances remaining in the prior
24 years’ and the 1996-97 appropriations are hereby
25 reappropriated for expenditure during the fiscal year
26 1997-98.

27 The total amount of this appropriation shall be paid
28 from the proceeds of revenue bonds issued pursuant to
29 section eight, article twelve-b, chapter eighteen of the
30 code.

116—State University System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account

(WV Code Chapters 18 and 18B)
<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 4007 FY 1998</th>
<th>Org 0461</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>$4,231,079</td>
</tr>
<tr>
<td>2</td>
<td>Capital Repairs and Alterations (R)</td>
<td>251</td>
<td>2,690,400</td>
</tr>
<tr>
<td>3</td>
<td>Miscellaneous Projects (R)</td>
<td>252</td>
<td>400,000</td>
</tr>
<tr>
<td>4</td>
<td>Computer and Telecommunications Technology (R)</td>
<td>438</td>
<td>690,748</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$8,012,227</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior years’ and the 1996-97 appropriations are hereby reappropriated for expenditure during the fiscal year 1997-98.

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

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at university system institutions.

### 117—State University System—
**State System Tuition Fee—**
**Special Capital Improvement Fund**
(*Capital Improvement and Bond Retirement Fund*)
**Control Account**
(WV Code Chapters 18 and 18B)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 4008 FY 1998</th>
<th>Org 0461</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>$7,032,936</td>
</tr>
<tr>
<td>2</td>
<td>Building and Campus Renewal (R)</td>
<td>258</td>
<td>9,263,300</td>
</tr>
<tr>
<td>3</td>
<td>Facilities Planning and Administration (R)</td>
<td>386</td>
<td>190,000</td>
</tr>
</tbody>
</table>
Computer and Telecommunications Technology (R) .... 438 690,752

Total ...................... $ 17,176,988

Any unexpended balances remaining in the prior years' and the 1996-97 appropriations are hereby reappropriated for expenditure during the fiscal year 1997-98.

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

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at university system institutions.

118—State University System—
West Virginia University Health Sciences Center
Spending Authority

(WV Code Chapters 18 and 18B)

Account No.

Fund 4179 FY 1998 Org 0463

Unclassified—Total (R) ....... 096 $ 14,974,000

Any unexpended balance remaining in the fiscal year 1996-97 appropriation for the West Virginia University Health Sciences Center is hereby reappropriated for expenditure during the fiscal year 1997-98.

119—State College System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account

(WV Code Chapters 18 and 18B)
### Appropriations

**Account No.**

<table>
<thead>
<tr>
<th>Fund 4289 FY 1998</th>
<th>Org 0481</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Debt Service (R)</td>
<td>040</td>
</tr>
<tr>
<td>2. Capital Repairs and Alterations (R)</td>
<td>251</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior years’ and 1996-97 appropriations are hereby reappropriated for expenditure during the fiscal year 1997-98.

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

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at college system institutions.

---

**120—State College System—**

**State System Tuition Fee—**

**Special Capital Improvement Fund**

*(Capital Improvement and Bond Retirement Fund)*

**Control Account**

*(WV Code Chapters 18 and 18B)*

<table>
<thead>
<tr>
<th>Fund 4290 FY 1998</th>
<th>Org 0481</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Debt Service (R)</td>
<td>040</td>
</tr>
<tr>
<td>2. Capital Improvements (New) (R)</td>
<td>259</td>
</tr>
<tr>
<td>3. Capital Contingencies and Emergencies (R)</td>
<td>537</td>
</tr>
<tr>
<td>5. Building and Campus</td>
<td></td>
</tr>
<tr>
<td>6. Renewal and Facilities</td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the prior years' and 1996-97 appropriations are hereby reappropriated for expenditure during the fiscal year 1997-98. The total amount of this appropriation shall be paid from the special capital improvement fund created in article twelve-b, chapter eighteen of the code. Projects are to be paid on a cash basis and made available from the date of passage.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at college system institutions.

121—State Board of Rehabilitation—
Division of Rehabilitation Services—
West Virginia Rehabilitation Center
Special Account
(WV Code Chapter 18)

Account No.
Fund 8664 FY 1998 Org 0932

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Workshop Development</td>
<td>163</td>
</tr>
<tr>
<td>3</td>
<td>Workshop-Supported Employment</td>
<td>484</td>
</tr>
<tr>
<td>4</td>
<td>Medical Services Trust</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Fund-Transfer</td>
<td>512</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>$ 2,850,000</td>
</tr>
</tbody>
</table>

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

122—Board of Barbers and Cosmetologists
### 123—Division of Health—
#### Vital Statistics
(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Personal Services</td>
<td>001</td>
<td>$181,520</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$4,661</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$58,734</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$103,550</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$348,465</td>
</tr>
</tbody>
</table>

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

### 124—Division of Health—
#### Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Personal Services</td>
<td>001</td>
<td>$205,300</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$8,203</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$101,950</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$82,650</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$398,103</td>
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</table>

### Appropriations
(WV Code Chapters 16 and 30)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Personal Services</td>
<td>001</td>
<td>$181,520</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$4,661</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$58,734</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$103,550</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$348,465</td>
</tr>
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</table>

(WV Code Chapters 16 and 30)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
</tr>
</thead>
</table>
| 5425 | FY 1998 | 0505

1  Personal Services          001   $181,520
2  Annual Increment           004   4,661
3  Employee Benefits          010   58,734
4  Unclassified               099   103,550
5  Total                      $348,465

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

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>$2,740,000</td>
</tr>
<tr>
<td>2</td>
<td>Institutional Facilities</td>
<td></td>
<td>$37,216,400</td>
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<tr>
<td>3</td>
<td>Operations (R)</td>
<td>335</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Medical Services Trust Fund—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Transfer (R)</td>
<td>512</td>
<td>$23,300,000</td>
</tr>
<tr>
<td>6</td>
<td>Broad Based Provider Tax (R)</td>
<td>566</td>
<td>$2,750,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$66,006,400</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98, except for fund 5156, activity 335 (fiscal year 1994-95), fund 5156, activity 040, activity 512 and activity 566 (fiscal year 1995-96), and fund 5156, activity 512 (fiscal year 1996-97), which shall expire on June 30, 1997.

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by section fifteen-a, article one, chapter sixteen of the code, and shall be used for operating expenses and for improvements in connection with existing facilities and bond payments.

The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the above appropriation for Institutional Facilities Operations line to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 1998, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335), on July 1, 1997, the sum of one hundred fifty thousand dollars shall be transferred to the department of
agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

125—Division of Health—
Laboratory Services

(WV Code Chapter 16)

Account No.

<table>
<thead>
<tr>
<th>Fund 5163 FY 1998</th>
<th>Org 0506</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$424,568</td>
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<td>2 Annual Increment</td>
<td>004</td>
<td>9,450</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>143,195</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>450,000</td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td>$1,027,213</td>
</tr>
</tbody>
</table>

126—Division of Health—
Health Facility Licensing

(WV Code Chapter 16)

Account No.

<table>
<thead>
<tr>
<th>Fund 5172 FY 1998</th>
<th>Org 0506</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$162,952</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>2,250</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>58,664</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>102,904</td>
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<tr>
<td>5 Total</td>
<td></td>
<td>$326,770</td>
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</table>

127—Division of Health—
Hepatitis B Vaccine

(WV Code Chapter 16)

Account No.

<table>
<thead>
<tr>
<th>Fund 5183 FY 1998</th>
<th>Org 0506</th>
<th></th>
</tr>
</thead>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$49,300</td>
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<tr>
<td>Annual Increment</td>
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<td>$900</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$15,900</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$2,050,000</td>
</tr>
<tr>
<td>Vaccine for Volunteer Squads</td>
<td>565</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,116,100</strong></td>
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</table>

**128—West Virginia Health Care Authority—**

(WV Code Chapter 16)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>5375</td>
<td>1998</td>
<td>0507</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,441,755</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$12,578</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$487,379</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,605,231</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,546,943</strong></td>
</tr>
</tbody>
</table>

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

**129—Division of Human Services—Health Care Provider Tax**

(WV Code Chapter 11)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>5090</td>
<td>1998</td>
<td>0511</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$128,001,177</td>
</tr>
<tr>
<td>Office Code Enhancements</td>
<td>389</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$128,001,177</strong></td>
</tr>
</tbody>
</table>
From the above appropriation, an amount not to exceed two hundred thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of health and human resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia medical services fund.

130—Division of Human Services—  
Child Support Enforcement  
(WV Code Chapter 48A)  
Account No.

Fund 5094 FY 1998 Org 0511

1 Unclassified — Total ............. 096 $22,307,572

131—Division of Human Services—  
Medical Services Trust Fund  
(WV Code Chapter 9)  
Account No.

Fund 5185 FY 1998 Org 0511

1 Eligibility Expansion ............. 582 $5,420,911
2 State Institutions DPSH Payments 583 6,566,355
3 Hospice Services ................. 584 340,115
4 Match Drop ..................... 585 10,472,000

5 Total ................. $22,799,381

The Match Drop line item above shall be used in conjunction with funds appropriated to the division of human services in the Medical Services line item (fund 0403, activity 189). The remainder of all moneys deposited in the fund shall be transferred to the division of human services accounts.

DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY  

132—State Armory Board—
General Armory Fund  
(WV Code Chapter 15)  

Account No.  
Fund 6102 FY 1998 Org 0604  

1 Unclassified—Total ............ 096 $ 330,000  

133—West Virginia Division of Corrections—Parolee Supervision Fees  
(WV Code Chapter 62)  

Account No.  
Fund 6362 FY 1998 Org 0608  

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

134—West Virginia State Police—Motor Vehicle Inspection Fund  
(WV Code Chapter 17C)  

Account No.  
Fund 6501 FY 1998 Org 0612  

1 Personal Services ............. 001 $ 628,879  
2 Annual Increment ............. 004 2,900  
3 Employee Benefits ............ 010 186,467  
4 Unclassified .................. 099 635,131  
5 Total ........................ $ 1,453,377  

6 The total amount of this appropriation shall be paid  
7 from the special revenue fund out of fees collected for  
8 inspection stickers as provided by law.
Any unexpended balance remaining in the appropriation for Unclassified (fund 6501, activity 099) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

135—West Virginia State Police—Drunk Driving Prevention Fund

(WV Code Chapter 15)

Account No.

Fund 6513 FY 1998 Org 0612

1 Unclassified—Total .............. 096 $ 810,000

The total amount of this appropriation shall be paid from the special revenue fund out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code and paid into a revolving fund account in the state treasury.

136—West Virginia State Police—Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Account No.

Fund 6516 FY 1998 Org 0612

1 Unclassified—Total .............. 096 $ 500,000

137—West Virginia State Police—Surplus Transfer Account

(WV Code Chapter 15)

Account No.

Fund 6519 FY 1998 Org 0612

1 Unclassified—Total .............. 096 $ 214,500

138—Division of Public Safety—Central Abuse Registry Fund

(WV Code Chapter 15)
<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>1 Unclassified—Total 096</th>
<th>60,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>139—Regional Jail and Correctional Facility Authority</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(WV Code Chapter 31)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td>Fund</td>
<td>FY 1998</td>
<td>Org</td>
<td>1 Personal Services 001</td>
<td>454,213</td>
</tr>
<tr>
<td>2 Annual Increment 004</td>
<td>6,750</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits 010</td>
<td>153,250</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Debt Service 040</td>
<td>10,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Unclassified 099</td>
<td>253,289</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 10,867,502</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

140—Division of Veterans' Affairs—Veterans' Home
(WV Code Chapter 19A)

Account No.

| Fund | FY 1998 | Org | 1 Unclassified—Total 096 | 240,000 |
| 141—Criminal Justice & Highway Safety—Court Security Fund |
| (Executive Order)  |
| Account No. | Fund | FY 1998 | Org | 1 Unclassified—Total 096 | 1,000,000 |
| 142—Fire Commission—Fire Marshal Fees |
| (WV Code Chapter 29)  |
### DEPARTMENT OF TAX AND REVENUE

#### 143—Division of Banking—
**Lending and Credit Rate Board**

(WV Code Chapter 47A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3040</td>
<td></td>
<td>0303</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

#### 144—Division of Banking

(WV Code Chapter 31A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3041</td>
<td></td>
<td>0303</td>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
</tbody>
</table>

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 1996-97 is hereby available for expenditure as part of the fiscal year 1997-98 appropriation.
<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org 0702</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>145-Tax Division—Office of Chief Inspector</td>
<td>7067</td>
<td>FY 1998</td>
<td>0702</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,331,014</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
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<td>Annual Increment</td>
<td>004</td>
<td>24,050</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>398,785</td>
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<tr>
<td>3</td>
<td></td>
<td></td>
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<td>Unclassified</td>
<td>099</td>
<td>478,576</td>
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<tr>
<td>4</td>
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</table>

146—Tax Division—Cemetery Company Account

(WV Code Chapter 35)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org 0702</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>146—Tax Division—Cemetery Company Account</td>
<td>7071</td>
<td>FY 1998</td>
<td>0702</td>
<td>Personal Services</td>
<td>001</td>
<td>$16,116</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>5,047</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
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<td>10,918</td>
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<td></td>
<td>Total</td>
<td></td>
<td>$32,081</td>
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</tbody>
</table>

147—Tax Division—Special Audit and Investigative Unit

(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1998</th>
<th>Org 0702</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>147—Tax Division—Special Audit and Investigative Unit</td>
<td>7073</td>
<td>FY 1998</td>
<td>0702</td>
<td>Personal Services</td>
<td>001</td>
<td>$645,846</td>
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</tbody>
</table>
### 148—Insurance Commissioner—Examination Revolving Fund

(WV Code Chapter 33)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$</th>
<th>409,390</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7150</td>
<td>1998</td>
<td>0704</td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>350</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>99,549</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>313,500</td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td>Total</td>
<td></td>
<td>$</td>
<td>822,789</td>
</tr>
</tbody>
</table>

### 149—Insurance Commissioner—Consumer Advocate

(WV Code Chapter 33)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$</th>
<th>197,180</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>7151</td>
<td>1998</td>
<td>0704</td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>67,301</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>199,537</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>Total</td>
<td></td>
<td>$</td>
<td>464,468</td>
</tr>
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</table>

### 150—Insurance Commissioner

(WV Code Chapter 33)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$</th>
<th>197,180</th>
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</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>450</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>67,301</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>199,537</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td>Total</td>
<td></td>
<td>$</td>
<td>464,468</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7152</td>
<td></td>
<td>0704</td>
<td>Personal Services</td>
<td>$1,581,988</td>
</tr>
<tr>
<td>7152</td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>$29,950</td>
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<tr>
<td>7152</td>
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<td></td>
<td>Employee Benefits</td>
<td>$498,765</td>
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<tr>
<td>7152</td>
<td></td>
<td></td>
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<td>$228,300</td>
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<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$3,039,003</td>
</tr>
</tbody>
</table>

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

#### 151—Racing Commission—Relief Fund

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7300</td>
<td></td>
<td>0707</td>
<td>Medical Expenses—Total</td>
<td>$57,000</td>
</tr>
</tbody>
</table>

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

No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

#### 152—Racing Commission—Administration and Promotion

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7304</td>
<td></td>
<td>0707</td>
<td>Personal Services</td>
<td>$53,700</td>
</tr>
<tr>
<td>7304</td>
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<td></td>
<td>Annual Increment</td>
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</tr>
<tr>
<td>7304</td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>$23,083</td>
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<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>47,408</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>125,041</td>
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</tbody>
</table>

**153—Racing Commission—General Administration**

(WV Code Chapter 19)

Account No.

Fund 7305 FY 1998 Org 0707

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>1,016,300</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>16,150</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>296,713</td>
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<td>4</td>
<td>Unclassified</td>
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<td>290,817</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>1,619,980</td>
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</table>

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

(WV Code Chapter 19)

Account No.

Fund 7307 FY 1998 Org 0707

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>35,000</td>
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</tbody>
</table>

**155—Alcohol Beverage Control Administration—Wine License Special Fund**

(WV Code Chapter 60)

Account No.

Fund 7351 FY 1998 Org 0708

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>200,408</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,750</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>79,861</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>150,337</td>
</tr>
</tbody>
</table>
Ch 5]  

**APPROPRIATIONS**

5  

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>5</td>
<td>Total</td>
<td>$</td>
<td>434,356</td>
<td></td>
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156—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Account No.

Fund 7352  FY 1998  Org 0708

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,455,256</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>73,251</td>
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<tr>
<td>3</td>
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<td>099</td>
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<td>5</td>
<td>Total</td>
<td>$5,939,523</td>
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<td></td>
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</tbody>
</table>

6 The total amount of this appropriation shall be paid from a special revenue fund out of liquor revenues.

7 The above appropriation includes the salary of the commissioner and the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

8 There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

157—Division of Motor Vehicles

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Account No.

Fund 8213  FY 1998  Org 0802

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$445,940</td>
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</table>

158—Division of Motor Vehicles

Driver Rehabilitation

(WV Code Chapter 17C)

Account No.
APPROPRIATIONS

Fund 8214 FY 1998 Org 0802

1 Unclassified—Total .............. 096 $ 890,619

159—Division of Motor Vehicles
Insurance Certificate Fees
(WV Code Chapter 20)

Account No.

Fund 8215 FY 1998 Org 0802

1 Personal Services .............. 001 $ -0-
2 Annual Increment .............. 004 $ -0-
3 Employee Benefits .............. 010 $ -0-
4 Unclassified .............. 099 $ -0-
5 Unclassified—Total .............. 096 $ 854,788

160—Division of Motor Vehicles
Motorboat Licenses
(WV Code Chapter 20)

Account No.

Fund 8216 FY 1998 Org 0802

1 Unclassified—Total .............. 096 $ 146,573

161—Division of Motor Vehicles
Returned Check Fees
(WV Code Chapter 17)

Account No.

Fund 8217 FY 1998 Org 0802

1 Unclassified—Total .............. 096 $ 21,559

BUREAU OF COMMERCE

162—Division of Forestry
(WV Code Chapter 19)
### Appropriations

**Account No.**

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>1 Personal Services</th>
<th>001</th>
<th>$300,141</th>
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<td>0305</td>
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<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,200</td>
<td></td>
<td></td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>79,176</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>363,252</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$745,769</td>
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163—Division of Forestry

Timberland Enforcement Operations

(WV Code Chapter 19)

**Account No.**

<table>
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<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>1 Unclassified—Total</th>
<th>096</th>
<th>$250,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>3082</td>
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<td>0305</td>
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<tr>
<td>1</td>
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<td></td>
<td></td>
</tr>
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</table>
| 164—Division of Forestry

Severance Tax Operations

(WV Code Chapter 11)

**Account No.**

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>1 Unclassified—Total</th>
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<th>$2,825,334</th>
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<td>0305</td>
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<td>1</td>
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<td></td>
</tr>
</tbody>
</table>

165—Geological and Economic Survey

(WV Code Chapter 29)

**Account No.**

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
<th>1 Personal Services</th>
<th>001</th>
<th>$40,432</th>
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<tbody>
<tr>
<td>3100</td>
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<td>0306</td>
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<td>1</td>
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</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>508</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>7,112</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>177,983</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
174

**APPROPRIATIONS**

5 Total .................. $ 226,035

6 The above appropriation shall be used in accordance
7 with section four, article two, chapter twenty-nine of the
8 code.

166—*West Virginia Development Office—*

*Energy Assistance*

(WV Code Chapter 5B)

Account No.

Fund 3144 FY 1998 Org 0307

1 Any unexpended balances remaining in the
2 appropriations for Unclassified (fund 3144, activity 099),
3 and Energy Assistance-Total (fund 3144, activity 647) at
4 the close of the fiscal year 1996-97 are hereby
5 reappropriated for expenditure during the fiscal year
6 1997-98.

167—*Division of Labor*

*Contractor Licensing Board Fund*

(WV Code Chapter 21)

Account No.

Fund 3187 FY 1998 Org 0308

1 Personal Services ............... 001 $ 723,969
2 Annual Increment ............... 004 10,590
3 Employee Benefits ............. 010 272,205
4 Unclassified ................. 099 794,792
5 Total .................. 1,801,556

168—*Division of Labor*

*Elevator Safety Act*

(WV Code Chapter 21)

Account No.

Fund 3188 FY 1998 Org 0308
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$185,205</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>833</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>66,612</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>290,570</td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td>$543,220</td>
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**169—Division of Natural Resources**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>3200</td>
<td>1998</td>
<td>0310</td>
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<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$6,344,160</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>146,978</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>2,350,447</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>1,374,451</td>
</tr>
<tr>
<td>5 Capital Improvements and Land Purchase (R)</td>
<td>248</td>
<td>1,106,000</td>
</tr>
<tr>
<td>7 Total</td>
<td></td>
<td>$11,322,036</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of natural resources.

Any unexpended balances remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

**170—Division of Natural Resources**

*Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>3202</td>
<td>1998</td>
<td>0310</td>
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176

**APPROPRIATIONS**

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$</th>
<th>6,000</th>
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**171—Division of Natural Resources**
**Nongame Fund**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund 3203 FY 1998</th>
<th>Org 0310</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
</tr>
</tbody>
</table>

**Total** | $144,199 |

**172—Division of Natural Resources**
**Planning and Development Division**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund 3205 FY 1998</th>
<th>Org 0310</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
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</tbody>
</table>

**Total** | $646,009 |

**173—Division of Natural Resources—**
**Whitewater Study and Improvement Fund**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund 3253 FY 1998</th>
<th>Org 0310</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>
174—Division of Natural Resources
Recycling Assistance Fund
(WV Code Chapter 20)

Account No.

Fund 3254 FY 1998 Org 0310

1  Personal Services................. 001  $ 121,186
2  Annual Increment............... 004  4,450
3  Employee Benefits.............. 010  49,109
4  Unclassified (R).............. 099  2,629,770
5  Total.......................... $ 2,804,515

Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

175—Division of Natural Resources
Whitewater Advertising and Promotion Fund
(WV Code Chapter 20)

Account No.

Fund 3256 FY 1998 Org 0310

1  Unclassified—Total.............. 096  $ 20,000

BUREAU OF EMPLOYMENT PROGRAMS

176—Bureau of Employment Programs
Workers' Compensation Fund
(WV Code Chapter 23)

Account No.

Fund 3440 FY 1998 Org 0322

1  Personal Services.............. 001  $ 17,419,956
2  Annual Increment............. 004  357,553
Any unexpended balance remaining in the appropriation for Unclassified (fund 3440, activity 099) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

There is hereby authorized to be paid out of the above appropriation the amount necessary for the premiums on bonds given by the treasurer as bond custodian for the protection of the workers' compensation fund. This sum shall be transferred to the board of risk and insurance management.

BUREAU OF ENVIRONMENT

177—Solid Waste Management Board
(WV Code Chapter 20)

Account No.

Fund 3288 FY 1998 Org 0312

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>FY 1998</th>
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</tr>
</thead>
<tbody>
<tr>
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<td>001</td>
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<tr>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td>Landfill Assistance</td>
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### Appropriations

<table>
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<tr>
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<th>Org 0313</th>
<th>Item Description</th>
<th>Code</th>
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<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>$6,900</td>
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<tr>
<td>3321</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$68,540</td>
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<tr>
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179—Division of Environmental Protection  
Oil and Gas Reclamation Trust  
(WV Code Chapter 22B)

Account No.

<table>
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<th>Fund</th>
<th>FY 1998</th>
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180—Division of Environmental Protection  
Oil and Gas Operating Permits  
(WV Code Chapter 22B)

Account No.

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<tr>
<td>3323</td>
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181—Division of Environmental Protection  
Mines and Minerals Operations Fund  
(WV Code Chapter 22)

Account No.

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<th>Fund</th>
<th>FY 1998</th>
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<th>Item Description</th>
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<td>[Ch. 5]</td>
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<tr>
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<td></td>
<td>31,150</td>
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</tr>
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<td></td>
<td>$ 3,718,692</td>
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</table>

**182—Division of Environmental Protection**

**Underground Storage Tanks**

**Administrative Fund**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org 0313</th>
</tr>
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<tbody>
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<td></td>
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<tr>
<td></td>
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**183—Division of Environmental Protection**

**Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

Account No.

<table>
<thead>
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<th>Fund</th>
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<th>Org 0313</th>
</tr>
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<tbody>
<tr>
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<td></td>
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<td>Annual Increment</td>
<td>004</td>
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<tr>
<td></td>
<td>7,350</td>
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</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td></td>
<td>118,099</td>
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<tr>
<td></td>
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**184—Division of Environmental Protection**

**Solid Waste Reclamation and**
### Environmental Response Fund

(WV Code Chapter 20)

#### Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>3332</td>
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<td>0313</td>
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<table>
<thead>
<tr>
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<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>001</td>
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<td>004</td>
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<td>Employee Benefits</td>
<td>010</td>
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#### 185—Division of Environmental Protection

**Solid Waste Enforcement Fund**

(WV Code Chapter 20)

#### Account No.

<table>
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</tr>
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<tbody>
<tr>
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<table>
<thead>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
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<td>Litter Control—Conservation Officers</td>
<td>564</td>
<td>200,000</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$3,454,609</strong></td>
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#### 186—Division of Environmental Protection

**Fees and Operating Expenses**

(WV Code Chapter 16)

#### Account No.

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<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
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<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Conservation Officers</td>
<td>564</td>
<td>200,000</td>
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<tr>
<td><strong>Total</strong></td>
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## Appropriations

<table>
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**187—Division of Environmental Protection—Environmental Laboratory Certification Fund**

(WV Code Chapter 22)

Account No.

<table>
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<th>Org</th>
<th>Description</th>
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<td>Annual Increment</td>
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<td>1,400</td>
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<td></td>
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<td>Employee Benefits</td>
<td>010</td>
<td>33,534</td>
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**188—Oil and Gas Conservation Commission**

(WV Code Chapter 22)

Account No.

<table>
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<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>3371</td>
<td>1998</td>
<td>0315</td>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
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<td></td>
<td></td>
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<td>Employee Benefits</td>
<td>010</td>
<td>27,337</td>
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**MISCELLANEOUS BOARDS AND COMMISSIONS**

**189—Hospital Finance Authority**
### Ch 5) Appropriations

(WV Code Chapter 16)

**Account No.**

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
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<th>Amount</th>
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<tr>
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<td>350</td>
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The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by article twenty-nine-a, chapter sixteen of the code.

**190—Municipal Bond Commission**

(WV Code Chapter 13)

**Account No.**

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org 0706</th>
</tr>
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</table>

<table>
<thead>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td>58,185</td>
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<td><strong>Total</strong></td>
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**191—WV State Board of Examiners for Licensed Practical Nurses**

(WV Code Chapter 30)

**Account No.**

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1998</th>
<th>Org 0906</th>
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<table>
<thead>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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**192—WV Board of Examiners for**
### Appropriations

#### Registered Professional Nurses

(WV Code Chapter 30)

Account No.

Fund 8520 FY 1998 Org 0907

<table>
<thead>
<tr>
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<tr>
<td>1</td>
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#### West Virginia Cable Television Advisory Board

(WV Code Chapter 5)

Account No.

Fund 8609 FY 1998 Org 0924

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<td>Annual Increment</td>
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#### Public Service Commission

(WV Code Chapter 24)

Account No.

Fund 8623 FY 1998 Org 0926

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>FY 1998</th>
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<td>Unclassified</td>
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<td>Sewage Plant Assistance</td>
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<td>6</td>
<td>Total</td>
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<td>$10,686,251</td>
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</tbody>
</table>

7. The total amount of this appropriation shall be paid from a special revenue fund out of collections for special
license fees from public service corporations as provided by law.

The Public Service Commission is authorized to spend up to $250,000 from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to passage of H. B. 2715.

195—Public Service Commission—
Gas Pipeline Division
(WV Code Chapter 24B)

Account No.

<table>
<thead>
<tr>
<th>Fund 8624 FY 1998</th>
<th>Org 0926</th>
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<tbody>
<tr>
<td>1 Personal Services . . . . . . . . . . . . 001 $ 133,750</td>
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<td>2 Annual Increment . . . . . . . . . . . . 004 5,556</td>
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<td>3 Employee Benefits . . . . . . . . . . . 010 40,780</td>
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<td>4 Unclassified . . . . . . . . . . . . . . . 099 98,500</td>
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<td>5 Total . . . . . . . . . . . . . . . . . . . . . . . . . . $ 278,586</td>
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</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

196—Public Service Commission—
Motor Carrier Division
(WV Code Chapter 24A)

Account No.

<table>
<thead>
<tr>
<th>Fund 8625 FY 1998</th>
<th>Org 0926</th>
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</thead>
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<tr>
<td>1 Personal Services . . . . . . . . . . . . 001 $ 1,337,796</td>
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<td>2 Annual Increment . . . . . . . . . . . . 004 34,723</td>
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<td>3 Employee Benefits . . . . . . . . . . . 010 412,499</td>
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<td>4 Unclassified . . . . . . . . . . . . . . . 099 670,500</td>
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</table>
The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

**197—Public Service Commission—Consumer Advocate**

(WV Code Chapter 24)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
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<tbody>
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<td>Employee Benefits</td>
<td>010</td>
<td>116,346</td>
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<tr>
<td>Unclassified</td>
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<td>327,985</td>
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<td></td>
<td>$817,276</td>
<td></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the public service commission.

**198—Real Estate Commission**

(WV Code Chapter 47)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>8635</td>
<td>1998</td>
<td>0927</td>
</tr>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$289,132</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>3,900</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>93,670</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>269,400</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$656,102</td>
<td></td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid out of collections of license fees as provided by law.

199—WV Board of Examiners for Speech-Language Pathology and Audiology
(WV Code Chapter 30)
Account No.
Fund 8646 FY 1998 Org 0930
1 Unclassified—Total ............... 096 $ 50,000

200—WV Board of Respiratory Care
(WV Code Chapter 30)
Account No.
Fund 8676 FY 1998 Org 0935
1 Unclassified—Total ............... 096 $ 96,350

201—Board of Licensed Dietitians
Account No.
Fund 8680 FY 1998 Org 0936
1 Unclassified—Total ............... 096 $ 105,000

202—Massage Therapists Board
(WV Code Chapter 37)
Fund 8671 FY 1998 Org 0938
1 Unclassified—Total ............... 096 $ 8,000
1 Total TITLE II, Section 3—
2 Other Funds ...................... $ 561,008,784

Sec. 4. Appropriations from lottery net profits.—Net profits of the lottery, not to exceed sixty-one million five hundred thousand dollars, are to be deposited by the lottery director to the following accounts in the amounts indicated. The auditor shall prorate each deposit of net profits by the lottery director among fund numbers 2252,
7 3067, 3267, 3951, 3963, 4030, 4800 and 5405 in the proportion the appropriation for each account bears to the total of the appropriations for the eight accounts.

203—West Virginia Development Office—
Tourism Commission

(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1998 Org 0304

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism—Telemarketing Center</td>
<td>$100,000</td>
</tr>
<tr>
<td>Tourism—Advertising (R)</td>
<td>2,240,000</td>
</tr>
<tr>
<td>State Parks and Recreation</td>
<td></td>
</tr>
<tr>
<td>Advertising (R)</td>
<td>560,000</td>
</tr>
<tr>
<td>Tourism—Unclassified (R)</td>
<td>2,906,092</td>
</tr>
<tr>
<td>Total</td>
<td>$5,806,092</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Tourism-Advertising (fund 3067, activity 618), State Parks and Recreation Advertising (fund 3067, activity 619), Tourism-Unclassified (fund 3067, activity 662) and Advertising-Total (fund 3073, activity 541) are hereby reappropriated for expenditure during the fiscal year 1997-98.

204—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 3267 FY 1998 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coopers Rock—Land Acquisition</td>
<td>$-0-</td>
</tr>
<tr>
<td>Parks Operations—</td>
<td></td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>1,473,908</td>
</tr>
</tbody>
</table>
Canaan Valley—Land Acquisition 710  200,000

Total ........................  $ 1,673,908

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, activity 099), Parks Operations — Unclassified (fund 3267, activity 645) and Capital Outlay — Parks (fund 3267, activity 288) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

205—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 3951 FY 1998 Org 0402

Computer Basic Skills—Total (R)  567  $ 10,000,000

Any unexpended balances remaining in the appropriation for Elementary Computer Education—Total (fund 3951, activity 285), Computer Basic Skills—Total (fund 3951, activity 567) and Computer Basic Skills—Total (fund 3964, activity 567) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

206—State Department of Education—School Building Authority — Debt Service Fund

(WV Code Chapter 18)

Account No.

Fund 3963 FY 1998 Org 0402

Debt Service—Total ................  310  $ 18,000,000

207—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System Control Account

(WV Code Chapter 18B)
Account No.
Fund 4030 FY 1998 Org 0453

1 Unclassified—Total 096 $-0-

208—Department of Education and the Arts—
Central Office—State College and University Systems
Control Account

(WV Code Chapter 5F)

Account No.
Fund 4800 FY 1998 Org 0478

1 Strategic Planning and Compliance-489
2 Health Sciences 489 $-0-
3 Unclassified 099
4 Unclassified—Total 096 $3,520,000

5 Any unexpended balance remaining in the
6 appropriation for Unclassified (fund 4800, activity 099) at
7 the close of fiscal year 1996-97 is hereby reappropriated
8 for expenditure during the fiscal year 1997-98.

209—Bureau of Senior Services

(WV Code Chapter 29)

Account No.
Fund 5405 FY 1998 Org 0508

1 Senior Citizen Centers
2 and Programs 462 $1,200,000
3 Direct Services 481 2,800,000
4 Transfer to Division of
5 Human Services for
6 Health Care and Title XIX
7 Waiver for Senior Citizens 539 $8,500,000
8 Total $12,500,000
The above appropriation for Health Care and Title XIX Waiver for Senior Citizens shall be used to expand the Title XIX waiver program statewide but not to increase the rate of reimbursement for services provided by Title XIX providers.

**210—Education, Arts, Sciences and Tourism Debt Service Fund**

(WV Code Chapter 5)

Account No.

Fund 2252 FY 1998 Org 0211

<table>
<thead>
<tr>
<th>Debt Service—Total</th>
<th>310</th>
<th>$10,000,000</th>
</tr>
</thead>
</table>

Any unexpended balance remaining in the appropriation for Debt Service - Total (fund 2252, activity 310) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

Total TITLE II, Section 4—

<table>
<thead>
<tr>
<th>Lottery Funds</th>
<th>$61,500,000</th>
</tr>
</thead>
</table>

Sec. 5. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-eight.

**LEGISLATIVE**

**211—Crime Victims Compensation Fund**

(WV Code Chapter 14)

Account No.

Fund 8738 FY 1998 Org 2300

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>096</th>
<th>$920,000</th>
</tr>
</thead>
</table>
JUDICIAL

212—Supreme Court—
General Judicial

Account No.

Fund 8805 FY 1998 Org 2400

1 Unclassified—Total ............. 096 $ 125,019

EXECUTIVE

213—Governor’s Office—
Governor’s Cabinet on Children and Families
(WV Code Chapter 5)

Account No.

Fund 8792 FY 1998 Org 0100

1 Unclassified—Total ............. 096 $ 610,202

214—Governor’s Office—
Governor’s Cabinet on Children and Families—
Office of Economic Opportunity
(WV Code Chapter 5)

Account No.

Fund 8797 FY 1998 Org 0100

1 Unclassified—Total ............. 096 $ 11,459,262

215—Governor’s Office—
Commission for National and Community Service
(WV Code Chapter 5)

Account No.

Fund 8800 FY 1998 Org 0100

1 Unclassified—Total ............. 096 $ 892,501
### Appropriations

#### 216—Auditor's Office
(WV Code Chapter 12)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8807</td>
<td>1998</td>
<td>1200</td>
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</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$10,000,000</th>
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</thead>
</table>

#### 217—Department of Agriculture
(WV Code Chapter 19)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8735</td>
<td>1998</td>
<td>1400</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$20,000</th>
</tr>
</thead>
</table>

#### 218—Department of Agriculture—Meat Inspection
(WV Code Chapter 19)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8736</td>
<td>1998</td>
<td>1400</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
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<th>$2,818,142</th>
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</thead>
</table>

#### 219—Department of Agriculture—Meat Inspection
(WV Code Chapter 19)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8737</td>
<td>1998</td>
<td>1400</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
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<th>$642,235</th>
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</table>

#### DEPARTMENT OF EDUCATION

#### 220—State Department of Education
(WV Code Chapters 18 and 18A)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8712</td>
<td>1998</td>
<td>0402</td>
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<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
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<th>$14,403,503</th>
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</table>
### 221—State Department of Education—
*School Lunch Program*

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 8713 FY 1998 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total ................ 096 $ 58,518,851</td>
<td></td>
</tr>
</tbody>
</table>

### 222—State Board of Education—
*Vocational Division*

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 8714 FY 1998 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total ................ 096 $ 16,882,900</td>
<td></td>
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</tbody>
</table>

### 223—State Department of Education—
*Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 8715 FY 1998 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total ................ 096 $ 35,003,859</td>
<td></td>
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</tbody>
</table>

### DEPARTMENT OF EDUCATION AND THE ARTS

#### 224—Division of Culture and History

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 8718 FY 1998 Org 0432</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total ................ 096 $ 1,234,030</td>
<td></td>
</tr>
</tbody>
</table>

#### 225—Library Commission

(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 8719 FY 1998 Org 0432</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total ................ 096 $ 1,234,030</td>
<td></td>
</tr>
</tbody>
</table>
Fund 8720 FY 1998 Org 0433

1 Unclassified—Total ............... 096 $ 1,513,422

226—Educational Broadcasting Authority

(WV Code Chapter 10)

Account No.

Fund 8721 FY 1998 Org 0439

1 Unclassified—Total ............... 096 $ 157,500

227—State Board of Rehabilitation—
    Division of Rehabilitation Services

(WV Code Chapter 18)

Account No.

Fund 8734 FY 1998 Org 0932

1 Unclassified—Total ............... 096 $ 41,153,015

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

228—Consolidated Medical Service Fund

(WV Code Chapter 16)

Account No.

Fund 8723 FY 1998 Org 0506

1 Unclassified—Total ............... 096 $ 3,301,367

229—Division of Health—
    Central Office

(WV Code Chapter 16)

Account No.

Fund 8802 FY 1998 Org 0506

1 Unclassified—Total ............... 096 $ 51,319,185
230—Bureau of Senior Services
(WV Code Chapter 29)
Account No.
Fund 8724 FY 1998 Org 0508
1 Unclassified—Total .............. 096 $ 11,283,866

231—Human Rights Commission
(WV Code Chapter 5)
Account No.
Fund 8725 FY 1998 Org 0510
1 Unclassified—Total .............. 096 $ 151,686

232—Division of Human Services
(WV Code Chapters 9, 48 and 49)
Account No.
Fund 8722 FY 1998 Org 0511
1 Unclassified—Total .............. 096 $ 1,162,461,254

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

233—Adjutant General—State Militia
(WV Code Chapter 15)
Account No.
Fund 8726 FY 1998 Org 0603
1 Unclassified—Total .............. 096 $ 26,042,886

234—Office of Emergency Services
(WV Code Chapter 15)
Account No.
Fund 8727 FY 1998 Org 0606
1 Unclassified—Total .............. 096 $ 1,445,587
235—West Virginia State Police
(WV Code Chapter 15)
Account No.
Fund 8741 FY 1998 Org 0612

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account Code</th>
<th>Fiscal Year</th>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$1,107,241</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

236—Division of Veterans’ Affairs—Veterans’ Home
(WV Code Chapter 9A)
Account No.
Fund 8728 FY 1998 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account Code</th>
<th>Fiscal Year</th>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$496,367</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

237—Division of Criminal Justice and Highway Safety
(Executive Order)
Account No.
Fund 8803 FY 1998 Org 0620

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account Code</th>
<th>Fiscal Year</th>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$19,426,474</td>
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<td></td>
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</tbody>
</table>

238—Fire Commission
(WV Code Chapter 29)
Account No.
Fund 8804 FY 1998 Org 0619

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account Code</th>
<th>Fiscal Year</th>
<th>Organization</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$27,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DEPARTMENT OF TAX AND REVENUE
239—Tax Division
(WV Code Chapter 11)
Account No.
Fund 7069 FY 1998 Org 0702
<table>
<thead>
<tr>
<th>Account</th>
<th>Department/Division</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Total</th>
<th>Description</th>
<th>Code Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>Unclassified—Total</td>
<td>8782</td>
<td>1998</td>
<td>0801</td>
<td>75,000</td>
<td>DEPARTMENT OF TRANSPORTATION</td>
<td>5F</td>
</tr>
<tr>
<td>096</td>
<td>State Rail Authority</td>
<td>8733</td>
<td>1998</td>
<td>0804</td>
<td>897,435</td>
<td>241</td>
<td>29</td>
</tr>
<tr>
<td>096</td>
<td>Division of Public Transit</td>
<td>8745</td>
<td>1998</td>
<td>0805</td>
<td>300,000</td>
<td>242</td>
<td>17</td>
</tr>
<tr>
<td>096</td>
<td>Division of Motor Vehicles</td>
<td>8787</td>
<td>1998</td>
<td>0802</td>
<td>6,171,739</td>
<td>243</td>
<td>17B</td>
</tr>
<tr>
<td></td>
<td>BUREAU OF COMMERCE</td>
<td></td>
<td></td>
<td></td>
<td>116,794</td>
<td>244—Division of Forestry</td>
<td>19</td>
</tr>
</tbody>
</table>
245—Geological and Economic Survey
(WV Code Chapter 29)
Account No.

246—West Virginia Development Office
(WV Code Chapter 5B)
Account No.

247—Division of Labor
(WV Code Chapters 21 and 47)
Account No.

248—Division of Natural Resources
(WV Code Chapter 20)
Account No.

249—Division of Miners' Health, Safety and Training
(WV Code Chapter 22)
Account No.
<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$532,075</th>
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</thead>
<tbody>
<tr>
<td><strong>BUREAU OF ENVIRONMENT</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>250—Solid Waste Management Board</td>
<td>(WV Code Chapter 20)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund 8820 FY 1998 Org 0312</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$100,330</td>
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<tr>
<td><strong>251—Division of Environmental Protection</strong></td>
<td>(WV Code Chapter 22)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund 8708 FY 1998 Org 0313</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$102,025,802</td>
</tr>
<tr>
<td><strong>MISCELLANEOUS BOARDS AND COMMISSIONS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>252—Public Service Commission—Motor Carrier Division</td>
<td>(WV Code Chapter 24A)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund 8743 FY 1998 Org 0926</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$891,438</td>
</tr>
<tr>
<td>253—Public Service Commission—Gas Pipeline Division</td>
<td>(WV Code Chapter 24B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund 8744 FY 1998 Org 0926</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$256,310</td>
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<tr>
<td>1</td>
<td>Total TITLE II, Section 5—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Federal Funds</td>
<td></td>
<td>$1,605,417,106</td>
</tr>
</tbody>
</table>
Sec. 6. Appropriations from federal block grants.

The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1997-98.

254—Governor's Office—
  Governor's Cabinet on Children and Families

Account No.
Fund 8799 FY 1998 Org 0100
1 Unclassified—Total ............. 096 $ 7,137,268

255—West Virginia Development Office—
  Community Development

Account No.
Fund 8746 FY 1998 Org 0307
1 Unclassified—Total ............. 096 $ 21,326,300

256—Bureau of Employment Programs—
  Job Training Partnership Act

Account No.
Fund 8749 FY 1998 Org 0323
1 Unclassified—Total ............. 096 $ 55,009,965

257—State Department of Education—
  Education Grant

Account No.
Fund 8748 FY 1998 Org 0402
1 Unclassified—Total ............. 096 $ 95,001,963

258—Division of Health—
  Maternal and Child Health

Account No.
Fund 8750 FY 1998 Org 0506
1 Unclassified—Total ............. 096 $ 7,505,544
259—Division of Health—
Preventive Health

Account No.

Fund 8753 FY 1998 Org 0506

1 Unclassified—Total .......... 096 $ 2,151,512

260—Division of Health—
Substance Abuse Prevention and Treatment

Account No.

Fund 8793 FY 1998 Org 0506

1 Unclassified—Total .......... 096 $ 9,501,411

261—Division of Health—
Community Mental Health Services

Account No.

Fund 8794 FY 1998 Org 0506

1 Unclassified—Total .......... 096 $ 2,801,512

262—Division of Human Services—
Energy Assistance

Account No.

Fund 8755 FY 1998 Org 0511

1 Unclassified—Total .......... 096 $ 11,400,192

263—Division of Human Services—
Child Care and Development

Account No.

Fund 8756 FY 1998 Org 0511

1 Unclassified—Total .......... 096 $ 6,900,000

264—Division of Human Services—
Social Services

Account No.
Fund 8757 FY 1998 Org 0511
1 Unclassified—Total ............... 096 $ 17,036,712

265—Division of Human Services—
Empowerment Zone and Enterprise Community Program

Account No.

Fund 8806 FY 1998 Org 0511
1 Unclassified—Total ............... 096 $ 2,000,000

266—Division of Human Services—
Temporary Assistance Needy Families

Account No.

Fund 8816 FY 1998 Org 0511
1 Unclassified—Total ............... 096 $ 111,078,781

267—Division of Human Services—
Child Care and Development

Account No.

Fund 8817 FY 1998 Org 0511
1 Unclassified — Total ............... 096 $ 12,500,000

1 Total TITLE II, Section 6—
2 Federal Block Grants ............... $ 361,351,160

Sec. 7. Awards for claims against the state.—There
are hereby appropriated, for the remainder of the fiscal
year 1996-1997 and to remain in effect until June 30
1998, from the fund as designated, in the amounts as
specified and for the claimants named in enrolled senate
bill 284, regular session 1997—crime victims
compensation funds of $73,000.00 for payment of claims
against the state.

There are hereby appropriated for the remainder of the
fiscal year 1996-1997 and to remain in effect until June
30, 1998, from the fund as designated, in the amounts as
specified and for the claimants named in enrolled senate
bill no. 311, regular session 1997, and enrolled house bill
The total of general revenue funds above do not include payment for claims in the amount of $2,003.83 from the supreme court—general judicial, fund 0180, specifically made payable from the appropriation for the current fiscal year 1996-1997.

There are hereby appropriated for the remainder of fiscal year 1996-1997 and to remain in effect until June 30, 1998, from the funds as designated, in the amounts as specified and for the claimants as named in enrolled house bill no. 2535, regular session 1997—special revenue funds of $171,957.36, state road funds of $127,690.06, workers’ compensation funds of $51,502.59 and federal funds of $15,631.25 for payment of claims against the state.

Sec. 8. Appropriation from surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 1997-98 out of surplus funds only, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, one thousand nine hundred ninety-seven.

In the event that surplus revenues available on the thirty-first day of July, one thousand nine hundred ninety-seven, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated, and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.
268—*State Department of Education*  
(WV Code Chapters 18 and 18A)  

Account No.  
Fund 0313 FY 1998 Org 0402  

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
</table>
| 1 | Technology and Telecommunications Initiative      | 596    | $2,000,000  
| 2 | Three Tier Funding                               | 749    | 1,000,000  
| 3 | Employment Programs                              |        |  
| 4 | Rate Relief                                      | 471    | 1,100,000  
| 5 | Total                                            |        | 4,100,000  

269—-*Division of General Services*  
(WV Code Chapter 5A)  

Account No.  
Fund 0230 FY 1998 Org 0211  

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capitol Complex—</td>
<td></td>
</tr>
</tbody>
</table>
| 2 | Capital Outlay—Total                             | 750    | $500,000  

270—*State Department of Education*  
(WV Code Chapters 18 and 18A)  

Account No.  
Fund 0313 FY 1998 Org 0402  

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mingo County Board of Education—Tax</td>
<td></td>
</tr>
</tbody>
</table>
| 2 | Assessment Error—Total                           | 693    | $400,000  

271—*State Department of Education*  
*Vocational Division*  
(WV Code Chapters 18 and 18A)  

Account No.  
Fund 0390 FY 1998 Org 0402
1 Aquaculture Support—Total . . . . 751  $ 100,000

272—Board of Trustees of the University System—Control Account

(WV Code Chapters 18B and 18C)

Account No.

Fund 0327 FY 1998 Org 0461

1 Chestnut Blight Project—Total . . 752  $ 50,000

273—Governor’s Office—Civil Contingent Fund

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1998 Org 0100

1 Unclassified—Total ........... 096  $ 3,000,000

1 Total TITLE II, Section 8—

2 Surplus Accrued .............. $ 8,150,000

**Section 9. Appropriations from lottery net profit surplus.**—The following items are hereby appropriated from lottery net profits, and are to be made available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, only out of surplus lottery net profits accrued as of the thirty-first day of July, one thousand nine hundred ninety-seven. In the event that surplus revenue available on the thirty-first day of July, one thousand nine hundred ninety-seven, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.
274—Board of Directors of the State College System Control Account

(WV Code Chapter 18B)

Account No.

Fund 4291 FY 1997 Org 0481

1 Shepherd College—
2 Capital Improvements ....... 759 $ 1,200,000

3 West Virginia Northern Community College—
4 Capital Improvements ....... 760 $ 400,000

6 Total ....................... $ 1,600,000

275—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 3971 FY 1997 Org 0402

1 Pendleton County Schools—
2 Capital Improvements—Total 761 $ 400,000

276—Department of Education and the Arts—
Office of the Secretary

(WV Code Chapter 5F)

Account No.

Fund 3505 FY 1997 Org 0431

1 Capital Outlay and Improvements 762 $ 1,500,000

2 Educational Broadcasting

3 Authority—600 Capitol Street 313 $ 600,000

4 Total ....................... $ 2,100,000
277—Bureau of Senior Services—
(WV Code Chapter 29)
Account No.
Fund 5405 FY 1997 Org 0508

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Acct.</th>
<th>FY 1997 Org 0508</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Senior Citizens Centers and Programs</td>
<td>462</td>
<td>$500,000</td>
</tr>
<tr>
<td>3</td>
<td>Holly Grove Mansion Restoration</td>
<td>765</td>
<td>50,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$550,000</td>
</tr>
</tbody>
</table>

1 Total TITLE II, Section 9—
2 Lottery Net Profit Surplus ... $4,650,000

Section 10. Appropriations from lottery net profit surplus for the fiscal year one thousand nine hundred ninety-eight.—The following items are hereby appropriated from lottery net profits, and are to be made available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, only out of surplus lottery net profits after meeting the appropriation set forth in section four of this bill and accrued as of the fifteenth day of June through the thirtieth day of June, one thousand nine hundred ninety-eight. In the event that surplus revenue available on the thirty-first day of July, one thousand nine hundred ninety-eight, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

278—Board of Directors of the State College System Control Account
(WV Code Chapter 18B)
Account No.

Fund 4291 FY 1998 Org 0481

1  Shepherd College—Capital
2  Improvements—Total ....... 764  $ 1,100,000

279—West Virginia Development Office—
Tourism Commission
(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1998 Org 0304

1  Raleigh County Meeting and
2  Convention Center—Total . . . 763  $ 900,000

280—Department of Education and the Arts—
Office of the Secretary
(WV Code Chapter 5F)

Account No.

Fund 3505 FY 1998 Org 0431

1  Capital Outlay and Improvements 762  $ 1,000,000

281—Bureau of Senior Services—
(WV Code Chapter 29)

Account No.

Fund 5405 FY 1998 Org 0508

1  Senior Citizens Centers
2  and Programs ............... 462  $ 500,000

282—WV Development Office—
Tourism Commission
(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1998 Org 0304
<table>
<thead>
<tr>
<th>Appropriations</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism—Unclassified (R)</td>
<td>$662</td>
</tr>
<tr>
<td>Total, TITLE II, Section 10—</td>
<td>$500,000</td>
</tr>
<tr>
<td>Appropriations from Lottery</td>
<td></td>
</tr>
<tr>
<td>Net Profit Surplus for the fiscal year one thousand nine hundred ninety-eight</td>
<td>$4,000,000</td>
</tr>
</tbody>
</table>

Sec. 11. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-eight, appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter five-a of the code, with due consideration to the digest of legislative intent of the budget bill prepared pursuant to article one, chapter four, unless the spending unit has filed with the director of the budget, the auditor and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 12. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred ninety-eight, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year one thousand nine hundred ninety-eight.
ninety-eight, to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 13. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 14. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 15. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.
The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 16. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 17. Total appropriations.—Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I—GENERAL PROVISIONS, Sec. 3.

Sec. 18. General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.
§2. Constitutionality.

Section 1. Appropriations conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon
the compliance by the spending unit with the requirements
of article two, chapter five-a of the code.

Where spending units or parts of spending units have
been absorbed by or combined with other spending units,
it is the intent of this act that reappropriations shall be to
the succeeding or later spending unit created, unless
otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is
declared unconstitutional by a court of competent
jurisdiction, its decision shall not affect any portion of this
act which remains, but the remaining portion shall be in
full force and effect as if the portion declared
unconstitutional had never been a part of the act.

CHAPTER 6

(S. B. 245—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson,
Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie,
Minear and Sprouse)

[Passed March 21, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public
moneys out of the treasury from the balance of moneys
remaining as an unappropriated balance in the state fund,
general revenue, to the governor's office, account no. fund
0101, fiscal year 1997, organization 0100, all supplementing
and amending the appropriation for the fiscal year ending
the thirtieth day of June, one thousand nine hundred ninety-
seven.

WHEREAS, The governor submitted to the Legislature the
executive budget document, dated February 12, 1997, which
included the statement of the state fund, general revenue, setting
forth therein the cash balances and investments as of July 1,
1996, and further included the estimate of revenues for the fiscal
year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97.

Whereas, it thus appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0101, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by two hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

EXECUTIVE
5—Governor's Office
(WV Code Chapter 5)
Account No.
Fund 0101 FY 1997 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 Unclassified</td>
<td>$ 200,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding two hundred thousand dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.
CHAPTER 7

(S. B. 231—By Senators Craigo, Anderson, Bailey, Chafln, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 3, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of two million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, By the provisions of this legislation 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, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:
That the balance of funds in the revenue shortfall reserve fund, account no. fund 2038, organization 0201, be decreased by expiring the amount of two million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

8—Governor's Office—
Civil Contingent Fund

(WV Code Chapter 5A)

Account No.

Fund 0105 FY 1997 Org 0100

General Revenue Fund

1 Civil Contingent Fund-Surplus (R) . 263 $2,000,000

The purpose of this bill is to expire the sum of two million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, and to supplement the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding two million dollars to the existing appropriation.
AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of one hundred thousand dollars from the joint expenses, account no. fund 0175, fiscal year 1997, organization 2300, activity 529, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor’s office - civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that the account balance in the joint expenses, account no. fund 0175, fiscal year 1997, organization 2300, activity 529, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the joint expenses, account no. fund 0175, fiscal year 1997, organization 2300, activity 529, be
amended and decreased by expiring the amount of one hundred thousand dollars to the unappropriated balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

8—Governor’s Office—
Civil Contingent Fund

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1997 Org 0100

General Activity Revenue Fund

Civil Contingent Fund—Total (R) .. 114 $100,000

The purpose of this bill is to expire the sum of one hundred thousand dollars from the joint expenses, account no. fund 0175, fiscal year 1997, organization 2300, activity 529, and supplement account no. fund 0105, fiscal year 1997, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one hundred thousand dollars to the existing appropriation for the governor’s office - civil contingent fund.
CHAPTER 9


[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the treasurer's office, account no. fund 0126, fiscal year 1997, organization 1300, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included the statement of the state fund, general revenue, setting forth therein the cash balances and investments as of July 1, 1996, and further included the estimate of revenues for the fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97; and

WHEREAS, It thus appears from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0126, fiscal year 1997, organization 1300, be supplemented and amended by increasing the total appropriation by three hundred eighty-five thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

12—Treasurer’s Office

(WV Code Chapter 12)

Account No.

Fund 0126 FY 1997 Org 1300

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td></td>
<td>$385,000</td>
</tr>
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</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding three hundred eighty-five thousand dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.

CHAPTER 10

(S. B. 556—By Senators Anderson, White, Ball, Dittmar, Dugan, Minear and Ross)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of agriculture, account no. fund 0131, fiscal year 1997, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the
executive budget document, dated February 12, 1997, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1996, and further included the estimate of revenues for the fiscal year 1996-97 less net appropriation balances forwarded and regular appropriations for the fiscal year 1996-97.

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0131, fiscal year 1997, organization 1400, be supplemented and amended by increasing the total appropriation by forty thousand dollars as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

13—Department of Agriculture

(WV Code Chapter 9)

Account No.

Fund 0131 FY 1997 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>691</td>
<td>$40,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for bee research (fund 0131, activity 691) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding forty thousand dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.
CHAPTER 11

(H. B. 2603—By Delegates Michael, Doyle and Seacrist)

[Passed April 1, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the secretary of state, account no. fund 0155, fiscal year 1997, organization 1600, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1996, and further included the estimate of revenues for fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0155, fiscal year 1997, organization 1600, be supplemented and amended by increasing the total appropriation by fifty thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

EXECUTIVE

18—Secretary of State

(WV Code Chapters 3, 5 and 59)

Account No.

Fund 0155 FY 1997 Org 1600

<table>
<thead>
<tr>
<th>Activity</th>
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<tbody>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
</tr>
<tr>
<td>$50,000</td>
<td></td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding fifty thousand dollars to the existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-seven.

CHAPTER 12

(H. B. 2564—By Delegates Michael, Doyle, Campbell, Pettit, Warner and Farris)

[Passed March 31, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration, public defender services, account no. fund 0226, fiscal year 1997, organization 0221, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February,
one thousand nine hundred ninety-seven, which included a
statement of the state fund, general revenue, setting forth therein
the cash balance and investments as of the first day of July, one
thousand nine hundred ninety-six, and further included the
estimate of revenues for the fiscal year ending the thirtieth day
of June, one thousand nine hundred ninety-seven, less net
appropriation balances forwarded and regular appropriations for
the fiscal year ending the thirtieth day of June, one thousand
nine hundred ninety-seven; and

WHEREAS, It thus appearing from the governor’s executive
budget document there now remains an unappropriated balance
in the state treasury which is available for appropriation during
the fiscal year ending the thirtieth day of June, one thousand
nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety-seven, to
account no. fund 0226, fiscal year 1997, organization 0221, be
supplemented and amended by increasing the total appropriation
by three million four hundred thousand dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Accounts</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Appointed Counsel Fees and Public Defender Corporations (R)</td>
<td>127</td>
</tr>
</tbody>
</table>

The purpose of this bill is to increase the appropriation for appointed counsel fees and public defender corporations by adding three million four hundred thousand dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.
CHAPTER 13
(H. B. 2907—By Delegates Compton, Leggett, Clements,
Campbell, Michael, Doyle and Farris)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public mon­
ey out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration, division of general services, account no. fund 0230, fiscal year 1997, organization 0211, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for the fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0230, fiscal year 1997, organization 0211, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

23—Division of General Services

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 0230 FY 1997 Org 0211</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General Revenue Fund</td>
</tr>
<tr>
<td></td>
<td>Act- Revenue</td>
</tr>
<tr>
<td></td>
<td>ivity</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6 Capitol Complex</th>
<th>Capital Outlay</th>
<th>417</th>
<th>$ 500,000</th>
</tr>
</thead>
</table>

Any unexpended balance remaining in the appropriation for capitol complex capital outlay (fund 0230, activity 417) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding five hundred thousand dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.

CHAPTER 14

(H. B. 2868—By Delegates Michael, Doyle, Kelley, Jenkins, Farris, Walters and Facemyer)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys
remaining as an unappropriated balance in the state fund, general revenue, to the department of education and the arts, division of culture and history, account no. fund 0293, fiscal year 1997, organization 0432, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1996, and further included the estimate of revenues for fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97; and

WHEREAS. It thus appearing from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0293, fiscal year 1997, organization 0432, be supplemented and amended by increasing the total appropriation by forty-two thousand nine hundred seventy-eight dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 1. Appropriations from general revenue.
3 DEPARTMENT OF EDUCATION AND THE ARTS
4 42—Division of Culture and History
5 (WV Code Chapter 29)
6 Account No.
7 Fund 0293 FY 1997 Org 0432
8
9 Activity
10 Fairs and Festivals ............... 122
11 $42,978
The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding forty-two thousand nine hundred seventy-eight dollars to the existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-seven.

CHAPTER 15

(H. B. 2910—By Delegates Kelley, Michael, Warner, Compton, Walters, Clements and Legget)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring an item of the existing appropriation to the department of health and human resources, division of health, central office, account no. 0407, fiscal year 1997, organization 0506, to the department of education and the arts, state board of rehabilitation—division of rehabilitation services, account no. fund 0310, fiscal year 1997, organization 0932, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the “Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of appropriation from the department of health and human resources, division of health, central office, account no. 0407, fiscal year 1997, organization 0506, be amended and reduced in the line item as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES
51—Division of Health
Central Office
(WV Code Chapter 16)

Account No.

Fund 0407 FY 1997 Org 0506

General
Activity
Revenue
Fund

20 Revolving Loan and Funds
21 Assistance Technology ...... 323 $ 100,000

And, that the items of appropriation to the
department of education and the arts, state board of
rehabilitation—division of rehabilitation services, account
no. fund 0310, fiscal year 1997, organization 0932, be
amended and increased by adding a new line item as
follows:

TITLE II—APPROPRIATIONS.

Sec. 2. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

49—State Board of Rehabilitation
Division of Rehabilitation Services
(WV Code Chapter 18)

Account No.

Fund 0310 FY 1997 Org 0932

General
Activity
Revenue
Fund

4a Technology-Related Assistance
Revolving Loan Fund for
Individuals with Disabilities ... 323 $ 100,000

Any unexpended balance remaining in the
appropriations for technology-related assistance revolving
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between appropriations in the aforesaid accounts for the designated spending units. The item for revolving loan fund assistance technology, department of health and human resources, division of health, central office, is reduced in its entirety by one hundred thousand dollars and transferred to the new item for technology-related assistance revolving loan fund for individuals with disabilities, department of education and the arts, state board of rehabilitation, division of rehabilitation services. The total appropriations to the aforesaid accounts are respectively reduced and increased accordingly. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 16

(H. B. 2563—By Delegates Michael, Doyle, Farris, Leach, Mezzatesta, Pettit and Facemyer)

[Passed March 28, 1997; in effect from passage. Approved by the Governor.]
included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, less net appropriation balances forwarded and regular appropriations for the fiscal year 1996-1997; and

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0403, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by seven million two hundred fifty thousand dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 Social Services</td>
<td>$7,250,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding seven million two hundred fifty thousand dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.
AN ACT making a supplementary appropriation of public mon­eys out of the treasury from the balance of moneys remain­ing as an unappropriated balance in the state fund, general revenue, to the division of health, central office, account no. fund 0407, fiscal year 1997, organization 0506, all supple­menting and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which included the statement of the state fund, general revenue, setting forth therein the cash balances and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the esti­mate of revenues for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, less net appropri­ation balances forwarded and regular appropriations for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, It thus appears from the governor's executive bud­get document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:
That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0407, fiscal year 1997, organization 0506, be supplemented and amended by increasing the total appropriation by one hundred ninety thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

51—Division of Health
   Central Office

(WV Code Chapter 6)

Account No.

Fund 0407 FY 1997 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>30a</td>
<td>Computer Equipment</td>
</tr>
<tr>
<td></td>
<td>680</td>
</tr>
<tr>
<td></td>
<td>$190,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for computer equipment (fund 0407, activity 680) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one hundred ninety thousand dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.
AN ACT making a supplementary appropriation of public mon­eys out of the treasury from the balance of moneys remain­ning as an unappropriated balance in the state fund, general revenue, to the human rights commission, account no. fund 0416, fiscal year 1997, organization 0510, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which included the statement of the state fund, general revenue, setting forth therein the cash balances and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the esti­mate of revenues for the fiscal year ending the thirtieth day of July, one thousand nine hundred ninety-six, less net appropria­tion balances forwarded and regular appropriations for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, It thus appears from the governor's executive bud­get document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0416, fiscal year 1997, organization 0510, be supplemented and amended by increasing the total appropriation by one hundred thirty-nine thousand five hundred dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

54—Human Rights Commission

(WV Code Chapter 5)

Account No.

Fund 0416 FY 1997 Org 0510

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5a</td>
<td>5b Automated Management Information System $139,500</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Automated Management Information System (fund 0416, activity 528) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one hundred thirty-nine thousand five hundred dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.

CHAPTER 19

(H. B. 2900—By Delegates Warner, Kelley, Cann, Compton, Seacrist, Miller and Clements)

(Passed April 12, 1997; in effect from passage. Approved by the Governor.)

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue, to the department of military affairs
and public safety, adjutant general, state militia, account no. fund 0433, fiscal year 1997, organization 0603, as originally appropriated by chapter eight, acts of the Legislature, first regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety, adjutant general, state militia, account no. fund 0433, fiscal year 1997, organization 0603, be amended and reduced in the line items as follows:

1 TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

57—Adjutant General—State Militia

(WV Code Chapter 15)

Fund 0433 FY 1997 Org 0603

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>$198,000</td>
</tr>
<tr>
<td>5 College Education Fund</td>
<td>232</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety, adjutant general, state militia, account no. fund 0433, fiscal year 1997, organization 0603, be amended and increased in a new line item as follows:

18 TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

57—Adjutant General—State Militia

(WV Code Chapter 15)

Fund 0433 FY 1997 Org 0603
Any unexpended balance remaining in the appropriation for the mountaineer challenge academy (fund 0433, activity 709) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for college education fund is reduced by one hundred ninety-eight thousand dollars. A new item for mountaineer challenge academy is added with an appropriation of one hundred ninety-eight thousand dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 20

(S. B. 536—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 9, 1997; in effect from passage. Approved by the Governor.]
WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 12, 1997, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1996, and further included the estimate of revenues for the fiscal year 1996-97, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-97.

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0450, fiscal year 1997, organization 0608, be supplemented and amended by increasing the total appropriation by three million three hundred fifty thousand dollars as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Payment to Counties and/or Regional Jails</td>
<td>$2,250,000</td>
</tr>
<tr>
<td>10</td>
<td>Inmate Medical Expense</td>
<td>1,100,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding three million three hundred fifty thousand dollars to the existing appropriation for expenditure during the fiscal year one thousand nine hundred ninety-seven.
AN ACT making a supplementary appropriation of public mon­eys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1997, organization 0702, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the twelfth day of February, one thousand nine hundred ninety-seven, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-six, and further included the estimate of revenues for fiscal year 1996-1997, less net appropriation balances forwarded and regular appropriations for fiscal year 1996-1997.

WHEREAS, It thus appearing from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0470, fiscal year 1997, organization 0702, be supplemented and amended by increasing the total appropriation by two hundred fifty thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF TAX AND REVENUE

69—Tax Division—

(WV Code Chapter 11)

Account No.

Fund 0470 FY 1997 Org 0702

General

Activity

Revenue

Fund

5a Office of Chief Inspector . . . . . . 682 $250,000

The above appropriation for the Office of Chief Inspector may be transferred to special revenue fund 7067 for disbursement.

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding two hundred fifty thousand dollars to the existing appropriation for expenditure by the office of chief inspector during the fiscal year one thousand nine hundred ninety-seven.

CHAPTER 22

(S. B. 543—By Senators Craigo, Anderson, Bailey, Chaﬁn, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary transfer of public moneys out
of the treasury from the unappropriated surplus balance in other funds, by transferring an amount not to exceed three hundred thousand dollars which has accrued or will accrue from the treasurer's office, tobacco company settlement proceeds, account no. fund 1316, organization 1300, to the department of administration, public employees insurance agency, nonstate health claims fund, account no. fund 2183, organization 0225.

WHEREAS, The money has or may be recovered from a settlement with the Ligget group, one of the tobacco companies sued by the public employees insurance agency. The lawsuit seeks to recover moneys expended by the public employees insurance agency for treatment of members in its plan for illness related to tobacco use. This money will be used by the public employees insurance agency to pay for medical treatment of public employees insurance agency insureds and legal fees associated with the settlement with the Ligget group; and

WHEREAS, The governor has established that there now remains an unappropriated surplus balance in the treasurer's office, tobacco company settlement proceeds, account no. fund 1316, organization 1300, available for transfer; therefore

Be it enacted by the Legislature of West Virginia:

1 That an amount not to exceed three hundred thousand dollars which has accrued or will accrue in the unappropriated surplus balance of the treasurer's office, tobacco company settlement proceeds, account no. fund 1316, organization 1300, be decreased and expired by transferring an amount not to exceed three hundred thousand dollars to the department of administration, public employees insurance agency, nonstate health claims fund, account no. fund 2183, organization 0225.

10 The purpose of this bill is to decrease and expire a sum not to exceed three hundred thousand dollars which has accrued or will accrue in the unappropriated surplus balance in other funds, account no. fund 1316, organization 1300, by transferring an amount not to exceed three hundred thousand dollars to account no. fund 2183, organization 0225, to pay for medical treatment of public employees insurance agency insureds and legal fees associated with the settlement with the Ligget group.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the department of administration, West Virginia prosecuting attorneys institute, account no. fund 2521, fiscal year 1997, organization 0228, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia prosecuting attorneys institute, account no. fund 2521, fiscal year 1997, organization 0228, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 2521, fiscal year 1997, organization 0228, be supplemented and amended by increasing the total appropriation by four thousand five hundred eighty-six dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF ADMINISTRATION
4 106—WV Prosecuting Attorneys Institute
5 (WV Code Chapter 7)
6 Account No.
7 Fund 2521 FY 1997 Org 0228
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding four thousand five hundred eighty-six dollars to the existing appropriation.

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from other funds to the department of education, state department of education - school building authority, account no. fund 3959, fiscal year 1997, organization 0402, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from other funds to account no. fund 3959, fiscal year 1997, organization 0402, be amended and reduced in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF EDUCATION

4 107—State Department of Education—

   School Building Authority

6 (WV Code Chapter 18)
And, that the items of the total appropriations from other funds to account no. fund 3959, fiscal year 1997, organization 0402, be amended and increased in the line items as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF EDUCATION

107—State Department of Education—

School Building Authority

(WV Code Chapter 18)

Account No.

Fund 3959 FY 1997 Org 0402

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ............</td>
<td>001 $ 26,768</td>
</tr>
<tr>
<td>3 Employee Benefits ............</td>
<td>010 19,723</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for annual increment is reduced by one hundred dollars; the item for unclassified is reduced by forty-six thousand three hundred ninety-one dollars; the item for personal services is increased by twenty-six thousand seven hundred sixty-eight dollars and the item for employee benefits is increased by nineteen thousand seven hundred twenty-three dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, shall be available for expenditure immediately upon the effective date of this bill.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the department of health and human resources, division of human services - child support enforcement, account no. fund 5094, fiscal year 1997, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - child support enforcement, account no. fund 5094, fiscal year 1997, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 5094, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by one million seventy-one thousand three hundred fifty dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES
<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$1,071,350</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one million seventy-one thousand three hundred fifty dollars to the existing appropriation.

**CHAPTER 26**


[Passed April 8, 1997; 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, one thousand nine hundred ninety-seven, in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1997, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.
WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - medical services trust fund, account no. fund 5185, fiscal year 1997, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 5185, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by two million two hundred ninety-eight thousand three hundred nineteen dollars in the line items as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Institutions</th>
<th>DPSH Payments</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Act-</td>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>583</td>
<td>$2,298,319</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding two million two hundred ninety-eight thousand three hundred nineteen dollars to the existing appropriation for disproportionate share payments to eligible state institutions.
CHAPTER 27
(S. B. 152—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 21, 1997: 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, one thousand nine hundred ninety-seven, in the department of military affairs and public safety, West Virginia state police - surplus transfer account, account no. fund 6519, fiscal year 1997, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of military affairs and public safety, West Virginia state police - surplus transfer account, account no. fund 6519, fiscal year 1997, organization 0612, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 6519, fiscal year 1997, organization 0612, be supplemented and amended by increasing the total appropriation by two hundred eighty-six thousand eight hundred ninety-three dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

4 133—West Virginia State Police—

5 Surplus Transfer Account
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding two hundred eighty-six thousand eight hundred ninety-three dollars to the existing appropriation for aircraft related improvements.
TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

134—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 6675 FY 1997 Org 0615</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity</td>
<td>Other Funds</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from other funds to account no. fund 6675, fiscal year 1997, organization 0615, be amended and increased in the line items as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

134—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 6675 FY 1997 Org 0615</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity</td>
<td>Other Funds</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated
spending unit. The item for unclassified is reduced by twenty-three thousand eight hundred six dollars. The item for personal services is increased by twenty thousand dollars. The item for employee benefits is increased by three thousand eight hundred six dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 29

(S. B. 153—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 21, 1997; 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, one thousand nine hundred ninety-seven, in the West Virginia board of examiners for speech-language pathology and audiology, account no. fund 8646, fiscal year 1997, organization 0930, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia board of examiners for speech-language pathology and audiology, account no. fund 8646, fiscal year 1997, organization 0930, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the “Budget Bill”, be supplemented and amended by adding to title II, section three thereof, the following:
TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

192a—West Virginia Board of Examiners for Speech-Language Pathology and Audiology

(WV Code Chapter 30)

Account No.

Fund 8646 FY 1997 Org 0930

<table>
<thead>
<tr>
<th>Activity</th>
<th>Act-</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$ 70,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by providing for a new item of appropriation to be established therein to appropriate other funds in the amount of seventy thousand dollars for the operation of the West Virginia board of examiners for speech-language pathology and audiology.

CHAPTER 30

(H. B. 2294—By Delegates Cann, Frederick, Jenkins, Laird, Pettit, Warner and Facemyer)

[Passed March 26, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-
seven, to the department of military affairs and public safety, West Virginia state police, account no. fund 8741, fiscal year 1997, organization 0612, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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, one thousand nine hundred ninety-seven, 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, one thousand nine hundred ninety-seven, to account no. fund 8741, fiscal year 1997, organization 0612, be supplemented and amended by increasing the total appropriation by one hundred fifty-three thousand dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one hundred fifty-three thousand dollars to the existing appropriation for a DNA testing program.
CHAPTER 31
(H. B. 2297—By Delegates Campbell, Compton, Frederick, Jenkins, Kelley, Seacrist and Facemyer)

[Passed March 26, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the West Virginia development office - community development, account no. fund 8746, fiscal year 1997, organization 0307, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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, one thousand nine hundred ninety-seven, 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, one thousand nine hundred ninety-seven, to account no. fund 8746, fiscal year 1997, organization 0307, be supplemented and amended by increasing the total appropriation by six million dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 6. Appropriations from federal block grants.
3 247—West Virginia Development Office
4 Community Development
5 Account No.
6 Fund 8746 FY 1997 Org 0307
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding six million dollars to the existing appropriation for the Small Cities Block Grant Program.

CHAPTER 32

(H. B. 2869—By Delegates Jenkins, Kelley, Farris, Pettit, Miller, Facemyer and Walters)

[Passed April 9, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the division of health - preventive health, account no. fund 8753, fiscal year 1997, organization 0506, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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, one thousand nine hundred ninety-seven, 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, one thousand nine hundred ninety-seven, to account no. fund 8753, fiscal year 1997, organization 0506, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:
## TITLE II—APPROPRIATIONS.

### Sec. 5. Appropriations from federal block grants.

251—Division of Health—

Preventive Health

Account No.

- Fund 8753 FY 1997 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified—Total</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>096</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding the amount of five hundred thousand dollars to the existing appropriation for the preventive health block grant.

### CHAPTER 33

(H. B. 2290—By Delegates Seacrist, Kelley, Proudfoot, Clements, Facemyer, Leggett and Miller)

[Passed March 26, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of transportation, office of the secretary, account no. fund 8782, fiscal year 1997, organization 0801, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.
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, one thousand nine hundred ninety-seven, 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, one thousand nine hundred ninety-seven, to account no. fund 8782, fiscal year 1997, organization 0801, be supplemented and amended by increasing the total appropriation by five hundred twenty-five thousand dollars as follows:

<table>
<thead>
<tr>
<th>Act-</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>ivity</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding five hundred twenty-five thousand dollars to the existing appropriation for further development of the Western West Virginia Regional Airport/Transpark.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of transportation, division of motor vehicles, account no. fund 8787, fiscal year 1997, organization 0802, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the “Budget Bill”, be supplemented and amended by adding to Title II, section five thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF TRANSPORTATION

4 234a—Division of Motor Vehicles

5 (WV Code Chapter 20)

6 Account No.

7 Fund 8787  FY 1997  Org 0802
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of one hundred thirty-four thousand nine hundred ninety dollars for implementation of the International Fuel Tax Agreement.

Chapter 35

(H. B. 2293—By Delegates Leach, Beane, Compton, Frederick, Kelley, Laird and Proudfoot)

[Passed March 31, 1997; in effect from passage. Approved by the Governor.]  

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor’s office - governor’s cabinet on children and families, account no. fund 8792, fiscal year 1997, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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, one thousand nine hundred ninety-seven, 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, one thousand nine hundred ninety-seven, to account no. fund 8792, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by one hundred thirty-seven thousand dollars as follows:

1. **TITLE II—APPROPRIATIONS.**

2. **Sec. 5. Appropriations of federal funds.**

3. **EXECUTIVE**

4. **207—Governor’s Office—**

5. **Governor’s Cabinet on Children and Families**

6. **(WV Code Chapter 5)**

7. **Account No.**

8. **Fund 8792 FY 1997 Org 0100**

9. **Activity**

10. **Federal Funds**

11. 1 Unclassified—Total .................. 096 $137,000

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one hundred thirty-seven thousand dollars to the existing appropriation for the Governor’s Cabinet on Children and Families.

**CHAPTER 36**

(H. B. 2291—By Delegates Beane, Campbell, Compton, Farris, Frederick, Leach and Warner)

[Passed March 31, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys
remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office - governor's cabinet on children and families - office of economic opportunity, account no. fund 8797, fiscal year 1997, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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, one thousand nine hundred ninety-seven, 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, one thousand nine hundred ninety-seven, to account no. fund 8797, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 5. Appropriations of federal funds.</td>
</tr>
<tr>
<td>EXECUTIVE</td>
</tr>
<tr>
<td>208—Governor's Office—</td>
</tr>
<tr>
<td>Governor's Cabinet on Children and Families</td>
</tr>
<tr>
<td>Office of Economic Opportunity</td>
</tr>
<tr>
<td>(WV Code Chapter 5)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 8797 FY 1997 Org 0100</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>Unclassified—Total</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding two million dollars to the existing appropriation for the Supportive Housing Program.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 8803, fiscal year 1997, organization 0620, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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, one thousand nine hundred ninety-seven, 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, one thousand nine hundred ninety-seven, to account no. fund 8803, fiscal year 1997, organization 0620, be supplemented and amended by increasing the total appropriation by one hundred eight thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 5. Appropriations of federal funds.
3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY
4 232—Division of Criminal Justice and Highway Safety
5 (EXECUTIVE ORDER)
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one hundred eight thousand dollars to the existing appropriation for a new federal grant for Rural Domestic Violence and Child Abuse Enforcement Assistance.

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 8803, fiscal year 1997, organization 0620, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expen-
iture in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, 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, one thousand nine hundred ninety-seven, to account no. fund 8803, fiscal year 1997, organization 0620, be supplemented and amended by increasing the total appropriation by two million three hundred eighty-two thousand nine hundred eighty-five dollars as follows:

TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

232—Division of Criminal Justice and Highway Safety
(EXECUTIVE ORDER)

Account No.

Fund 8803 FY 1997 Org 0620

Activity

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>098</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding two million three hundred eighty-two thousand nine hundred eighty-five dollars to the existing appropriation for a new federal grant for Residential Substance Abuse Treatment, Violent Offender Incarceration and a Local Law Enforcement Block Grant.
CHAPTER 39

(H. B. 2901—By Delegates Doyle, Michael, Compton, Kelley and Leggett)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to a new item of appropriation designated to the department of military affairs and public safety, fire commission, account no. fund 8804, fiscal year 1997, organization 0619, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 231a—Fire Commission

6 (WV Code Chapter 29)

7 Account No.

8 Fund 8804 FY 1997 Org 0619
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of fifteen thousand dollars for "Energy Conservation Code" seminars.

CHAPTER 40

(H. B. 2500—By Delegates Campbell, Kelley, Pettit, Warner, Border, Miller and Walters)

[Passed March 26, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to a new item of appropriation designated to the department of military affairs and public safety, division of corrections - correctional units, account no. fund 8818, fiscal year 1997, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established the availability of federal funds for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:
That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, the following:

**TITLE II—APPROPRIATIONS.**

**Sec. 5. Appropriations of federal funds.**

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

229a—Division of Corrections—Correctional Units

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

Account No.

Fund 8818 FY 1997 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of thirty-three thousand six hundred sixty-five dollars for a boot camp at the Anthony Center, and seventeen thousand one hundred twenty-three dollars for the criminal alien assistance program.

**CHAPTER 41**

(H. B. 2296—By Delegates Michael, Doyle, Proudfoot, Seacrist, Evans, Leggett and Walters)

[Passed March 28, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys
remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the bureau of environment, solid waste management board, account no. fund 8820, fiscal year 1997, organization 0312, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, the following:

268 APPROPRIATIONS [Ch. 41

TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.

BUREAU OF ENVIRONMENT

242a—Solid Waste Management Board

(WV Code Chapter 20)

Account No.

Fund 8820 FY 1997 Org 0312

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of one hundred thousand dollars for implementation of an Environmental Protection Agency grant.
AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1997, organization 0802, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9007, fiscal year 1997, organization 0802, be amended and reduced in the line items as follows:

<table>
<thead>
<tr>
<th>Title II— Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 2. Appropriations from state road fund.</td>
</tr>
<tr>
<td>DEPARTMENT OF TRANSPORTATION</td>
</tr>
<tr>
<td>89—Division of Motor Vehicles</td>
</tr>
<tr>
<td>(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 9007 FY 1997 Org 0802</td>
</tr>
<tr>
<td>6 Capital Outlay — Building . . . . 222 $ 500,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state road fund to account no. fund 9007, fiscal year 1997, organization 0802, be amended and increased in the line items as follows:
TITLE II—APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

89—Division of Motor Vehicles

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

Account No.

Fund 9007 FY 1997 Org 0802

Activity State Road Fund

Unclassified 099 $500,000

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for capital outlay-building is reduced by five hundred thousand dollars. The item for unclassified is increased by five hundred thousand dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 43

(S. B. 399—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 8, 1997; 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, one thousand nine hundred
ninety-seven, in the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1997, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1997, organization 0802, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 9007, fiscal year 1997, organization 0802, be supplemented and amended by increasing the total appropriation by ninety-eight thousand dollars in the line items as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 75,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>23,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding ninety-eight thousand dollars to the existing appropriation to add three inspections investigators.
AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1997, organization 0803, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year 1997, organization 0803, be amended and reduced in the line items as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund 9017 FY 1997</th>
<th>Org 0803</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance, Expressway</td>
<td>$4,000,000</td>
<td></td>
</tr>
<tr>
<td>Truckline and Feeder</td>
<td>$30,000,000</td>
<td></td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>$53,000,000</td>
<td></td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year
1997, organization 0803, be amended and increased in the line items as follows:

**TITLE II—APPROPRIATIONS.**

**Sec. 2. Appropriations from state road fund.**

**DEPARTMENT OF TRANSPORTATION**

90—Division of Highways

(WV Code Chapters 17 and 17C)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 9017 FY 1997 Org 0803</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Maintenance, State $13,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Local Services 271</td>
</tr>
<tr>
<td>7</td>
<td>Maintenance, Contract Paving 3,000,000</td>
</tr>
<tr>
<td>8</td>
<td>and Secondary Road</td>
</tr>
<tr>
<td>9</td>
<td>Maintenance 272</td>
</tr>
<tr>
<td>10</td>
<td>Bridge Repair and Replacement 273</td>
</tr>
<tr>
<td>12</td>
<td>Equipment Revolving 276</td>
</tr>
<tr>
<td>17</td>
<td>Nonfederal Aid Construction 281</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for maintenance, expressway, truckline and feeder is reduced by four million dollars, other federal aid programs is reduced by thirty million dollars and Appalachian programs is reduced by fifty-three million dollars. The item for maintenance, state local services is increased by thirteen million dollars, maintenance, contract paving and secondary road maintenance is increased by three million dollars, bridge repair and replacement is increased by twelve million five hundred thousand dollars, equipment revolving is increased by two million seven hundred thousand dollars and nonfederal aid construction is increased by fourteen million dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, shall be available for expenditure immediately upon the effective date of this bill.
CHAPTER 45
(S. B. 151—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 27, 1997; in effect from passage. Approved by the Governor.]

AN ACT supplementing and amending items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9018, fiscal year 1997, organization 0803, as originally appropriat­ed by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to account no. fund 9018, fiscal year 1997, organization 0803, be amended and increased in the line items as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 2. Appropriations from state road fund.
3 DEPARTMENT OF TRANSPORTATION
4 91—Division of Highways
5 Federal Aid Highway Matching Fund
6 (WV Code Chapters 17 and 17C)
7 Account No.
8 Fund 9018 FY 1997 Org 0803
9
10 Activity
11
12 2 Appalachian Program . . . . . . . 280 $14,000,000
13 3 Other Federal Aid Programs . . . . 279 10,000,000
The purpose of this supplementary appropriation bill is to supplement and amend existing items in the aforesaid account for the designated spending unit. The item for Appalachian program is increased by fourteen million dollars and other federal aid programs is increased by ten million dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 46

(S. B. 71—By Senators Helmick, Snyder, Chafin, Craigo, Dittmar, Fanning, Prezioso, Sharpe, Wiedebusch, Wooton, Deem, Kimble and Scott)

[Passed March 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections ten and fifteen, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, four, five, nine and eleven, article seventeen, chapter thirty-one of said code; to amend and reenact sections four, six and eight, article two, chapter thirty-one-a of said code; to amend and reenact section three, article three of said chapter; to amend and reenact sections nine, fourteen, fourteen-a, fifteen, thirty and thirty-a, article four of said chapter; to amend and reenact sections nine, fourteen, fourteen-a, fifteen, thirty and thirty-a, article four of said chapter; to amend and reenact sections twelve, twelve-a and twelve-b, article eight of said chapter; to amend and reenact section five, article one, chapter thirty-one-c of said code; to amend and reenact section one hundred four, article three, chapter forty-six-a of said code; to amend and reenact sections one hundred four, one hundred seven and one hundred eleven, article four of said chapter; and to amend and reenact section eight, article twenty-four, chapter forty-seven of said code, all relating to second mortgage companies; banks and banking; credit unions; regulated consumer lenders; reverse mortgages; defining terms; correcting code cite references;
deleting conflicting reporting requirements; ending report on effect to credit availability of business franchise tax; clarifying the assignment and securitization of second mortgages; secondary mortgage broker bond requirements; permitting second mortgage lenders to be brokers; conforming provision of account statements and release of second mortgage liens with other code sections; provision of payoff statements upon request in second mortgage loans; sharing and acceptance of out-of-state bank agency reports; deleting obsolete provisions on interest rate restrictions; notification requirements for ATM placement and parity of out-of-state bank terminals; bank messenger services; financing certain loan processing fees; loan disclosure requirements; credit union exam schedule; and reverse mortgage exemptions.

Be it enacted by the Legislature of West Virginia:

That sections ten and fifteen, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, four, five, nine and eleven, article seventeen, chapter thirty-one of said code be amended and reenacted; that sections four, six and eight, article two, chapter thirty-one-a of said code be amended and reenacted; that section three, article three of said chapter be amended and reenacted; that sections nine, fourteen, fourteen-a, fifteen, thirty and thirty-a, article four of said chapter be amended and reenacted; that sections twelve, twelve-a and twelve-b, article eight of said chapter be amended and reenacted; that section five, article one, chapter thirty-one-c of said code be amended and reenacted; that section one hundred four, article three, chapter forty-six-a of said code be amended and reenacted; that sections one hundred four, one hundred seven and one hundred eleven, article four of said chapter be amended and reenacted; and that section eight, article twenty-four, chapter forty-seven of said code be amended and reenacted, all to read as follows:

Chapter
31A. Banks and Banking.
31C. Credit Unions.
46A. West Virginia Consumer Credit and Protection Act.
47. Regulation of Trade.
CHAPTER 31. CORPORATIONS.

ARTICLE 17. SECONDARY MORTGAGE LOANS.

§31-17-1. Definitions and general provisions.

§31-17-2. License required for lender or broker; exemptions.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.

§31-17-5. Refusal or issuance of license.

§31-17-9. Disclosure; closing statements; other records required.

§31-17-11. Records and reports; examination of records; analysis.

§31-17-1. Definitions and general provisions.

1 As used in this article:

1 (1) "Secondary mortgage loan" means a loan made
to an individual or partnership which is secured in whole
or in part by a mortgage or deed of trust upon any interest
in real property used as a dwelling with accommodations
for not more than four families, which property is subject
to the lien of one or more prior recorded mortgages or
deeds of trust.

9 (2) "Person" means an individual, partnership, associ-
ation, trust, corporation or any other legal entity, or any
combination thereof.

12 (3) "Lender" means any person who makes or offers
to make or accepts or offers to accept any secondary
mortgage loan in the regular course of business. A person
shall be deemed to be acting in the regular course of busi-
ness if he or she makes or accepts, or offers to make or
accept, more than five secondary mortgage loans in any
one calendar year.

19 (4) "Broker" means any person acting in the regular
course of business who, for a fee or commission or other
consideration, negotiates or arranges, or who offers to
negotiate or arrange, a secondary mortgage loan between
a lender and a borrower. A person shall be deemed to be
acting in the regular course of business if he or she nego-
tiates or arranges, or offers to negotiate or arrange, more
than five secondary mortgage loans in any one calendar
year; or if he or she seeks to charge a borrower or receive
from a borrower money or other valuable consideration in
any second mortgage transaction before completing performance of all broker services that he or she has agreed to perform for the borrower.

(5) "Brokerage fee" means the fee or commission or other consideration charged by a broker for the services described in subdivision (4) of this section.

(6) "Principal" or "principal sum" means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

(b) The amount of any discount excluded from the loan finance charge; and

(c) To the extent that payment is deferred:

(i) Amounts actually paid or to be paid by the lender for registration, certificate of title or license fees if not included in paragraph (a) of this subdivision; and

(ii) Additional charges permitted by this article.

(7) "Additional charges" means every type of charge arising out of the making or acceptance of a secondary mortgage loan, except finance charges, including, but not limited to, official fees and taxes, reasonable closing costs and certain documentary charges and insurance premiums and other charges which definition is to be read in conjunction with, and permitted by section one hundred nine, article three, chapter forty-six-a of this code.

(8) "Finance charge" means the sum of all interest and similar charges payable directly or indirectly by the debtor imposed or collected by the lender incident to the extension of credit, as coextensive with the definition of "loan finance charge" set forth in section one hundred two, article one, chapter forty-six-a of this code.

(9) "Commissioner" means the commissioner of banking of this state.

(10) "Applicant" means a person who has applied for a lender’s or broker’s license.
(11) "Licensee" means any person duly licensed by the commissioner under the provisions of this article as a lender or broker.

(12) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment, whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this article.

§31-17-2. License required for lender or broker; exemptions.

(a) No person shall engage in this state in the business of lender or broker unless and until he or she shall first obtain a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation shall, notwithstanding the provisions of section seventy-nine-a, article one of this chapter, engage in such business in this state unless it shall qualify to hold property and transact business in this state.

(b) The provisions of this article do not apply to loans made by federally insured depository institutions, regulated consumer lender licensees, insurance companies, or to loans made by any other lender licensed by and under the supervision of any agency of the federal government, or to loans made by, or on behalf of, any agency or instrumentality of this state or federal government or by a non-profit community development organization which loans are subject to federal or state government supervision and
oversight. Loans made subject to this exemption may be
assigned, transferred, sold or otherwise securitized to any
person and shall remain exempt from the provisions of
this article, except as to reporting requirements in the
discretion of the commissioner where the person is a li-
censee under this article.

(c) A person or entity designated in subsection (b) of
this section may take assignments of a secondary mort-
gage loan from a licensed lender, and the assignments of
said loans that they themselves could have lawfully made
as exempt from the provisions of this article under this
section do not make that person or entity subject to the
licensing, bonding, reporting or other provisions of this
article, except as such defense or claim would be preserved
pursuant to section one hundred two, article two, chapter
forty-six-a of this code.

(d) The placement or sale for securitization of a sec-
ond mortgage loan into a secondary market by a licensee
shall not subject the secondary market holder to the provi-
sions of this article: Provided, That either the trustee under
such an arrangement is a licensee, or person or entity
entitled to make exempt loans of that type under this sec-
tion, or the loan is held with right of recourse to a licensee,
or person or entity entitled to make exempt loans of that
type, who also either retains the servicing rights to the loan
or otherwise has the servicing done in its name by an
agent or third party.

§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals.

(a) Application for a lender’s or broker’s license shall
each year be submitted in writing under oath, in the form
prescribed by the commissioner, and shall contain the full
name and address of the applicant and, if the applicant is a
partnership or association, of every member thereof, and,
if a corporation, of each officer, director and owner of five
percent or more of the capital stock thereof, and such
further information as the commissioner may reasonably
require. Any application shall also disclose the location at
which the business of lender or broker is to be conducted.
(b) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that such applicant has qualified to hold property and transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net assets of at least two hundred fifty thousand dollars;

(3) File with the commissioner a bond in favor of the state in the amount of one hundred thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

(4) Pay to the commissioner a license fee of one thousand dollars and an investigation fee of two hundred fifty dollars. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the investigation. An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner, and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(c) At the time of making application for a broker's license, the applicant therefor shall:
(1) If a foreign corporation, submit a certificate from the secretary of state certifying that the applicant has qualified to hold property and transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net assets of at least ten thousand dollars;

(3) File with the commissioner a bond in favor of the state in the amount of twenty-five thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

(4) Pay to the commissioner a license fee of one hundred dollars and an investigation fee of fifty dollars; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(d) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of such bond.

(e) Nonresident lenders and brokers licensed under this article by their acceptance of such license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

§31-17-5. Refusal or issuance of license.

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to the applicant and his or her application for a lender's or broker's license, as the case may be. Upon the basis of the application and all other information before him or her, the com-
missioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:

(1) The applicant does not have available the net assets required by the provisions of section four of this article;

(2) The applicant, individually, if an individual, or the partners, if a partnership, or the officers and directors, if a corporation, is of such character and reputation as reasonably to warrant the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article;

(3) The applicant has habitually defaulted on financial obligations; or

(4) The applicant has done any act or has failed or refused to perform any duty or obligation for which the license sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant a lender's or broker's license which shall entitle the applicant to engage in the business of lender or broker, as the case may be, during the period, unless sooner suspended or revoked, for which the license is issued.

(b) Every application for a lender's or broker's license shall be passed upon and the license issued or refused within forty-five days after the applicant therefor has fully complied with the provisions of section four of this article. Under no circumstances whatever shall a person or licensee act as a broker and lender in the same transaction. Whenever an application for a lender's or broker's license is denied and the license sought is refused, which refusal has become final, the commissioner shall retain the investigation fee or fees but shall return the license fee to the applicant.

§31-17-9. Disclosure; closing statements; other records required.

(a) Any licensee or person making on his own behalf, or as agent, broker or in other representative capacity on
behalf of any other person, a secondary mortgage loan, whether lawfully or unlawfully, shall at the time of the closing furnish to the borrower a complete and itemized closing statement which shall show in detail:

(1) The amount and date of the note or secondary mortgage loan contract and the date of maturity;

(2) The nature of the security;

(3) The finance charge rate per annum and the itemized amount of finance charges and additional charges;

(4) The amount financed and total of payments;

(5) Disposition of the principal;

(6) A description of the payment schedule;

(7) The terms on which additional advances, if any, will be made;

(8) The charge to be imposed for past-due installments;

(9) A description and the cost of insurance required by the lender or purchased by the borrower in connection with the secondary mortgage loan;

(10) The name and address of the borrower and of the lender; and

(11) That the borrower may prepay the secondary mortgage loan in whole or in part on any installment date, and that the borrower will receive a rebate in full for any unearned finance charge.

Such detailed closing statement shall be signed by the lender or his representative, and a completed and signed copy thereof shall be retained by the lender and made available at all reasonable times to the borrower, the borrower's successor in interest to the residential property, or the authorized agent of the borrower or the borrower's successor, until the time as the indebtedness shall be satisfied in full.
The commissioner may, from time to time, by rules prescribe additional information to be included in a closing statement.

(b) Upon written request from the borrower, the holder of a secondary mortgage loan instrument shall deliver to the borrower, within ten days from and after receipt of the written request, a statement of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. Charges for providing an account statement may be assessed only where permitted as set forth by subsection two, section one hundred fourteen, article two, chapter forty-six-a of this code.

(c) Upon satisfaction of a secondary mortgage loan obligation in full, the holder of the instrument evidencing or securing the obligation shall comply with the requirements of section one, article twelve, chapter thirty-eight of this code in the prompt release of the lien which had secured the secondary mortgage loan obligation.

(d) Upon written request or authorization from the borrower, the holder of a secondary mortgage loan instrument shall send or otherwise provide to the borrower or his or her designee, within two business days after receipt of the written request or authorization, a payoff statement of the borrower's account. Except as provided by this subsection, no charge may be made for providing the payoff statement. Charges for the actual expenses associated with using a third-party courier delivery or expedited mail delivery service may be assessed when this type of delivery is requested and authorized by the borrower, following disclosure to the borrower of its cost. The payoff information shall be provided by mail, telephone, courier, facsimile, or other transmission as requested by the borrower or his or her designee.

§31-17-11. Records and reports; examination of records; analysis.
(a) Every licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each licensee shall file with the commissioner on or before the fifteenth day of March of each year a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year in the form prescribed by the commissioner, which shall show the annual volume and outstanding amounts of secondary mortgage loans, the classification of the secondary mortgage loans by size and by security, and the gross income from, and expenses properly chargeable to, such secondary mortgage loans.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every licensee pertaining to secondary mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each licensee is complying with the provisions hereof and for the purpose of verifying each licensee's annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually an analysis of the information furnished in accordance with the provisions of subsection (b) of this section, but the individual reports shall not be public records and shall not be open to public inspection.
CHAPTER 31A. BANKS AND BANKING.

Article

2. Division of Banking.
3. Board of Banking and Financial Institutions.
4. Banking Institutions and Services Generally.
8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal or out-of-state agency in lieu of commissioner's examination.

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

1 (a) Subject to the powers vested in the board by article three of this chapter, the commissioner shall have supervision and jurisdiction over state banks, regulated consumer lenders, second mortgage lenders and brokers, credit unions, and all other persons now or hereafter made subject to his supervision or jurisdiction. All powers, duties, rights and privileges vested in the department are hereby vested in the commissioner. He shall be the chief executive officer of the department of banking and shall be responsible for the department’s organization, services and personnel, and for the orderly and efficient administration, enforcement and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the department or the commissioner.

(b) The commissioner shall:

1 (1) Maintain the office for the department at the state capitol, and there keep a complete record of all the department’s transactions, of the financial conditions of all financial institutions and such records of the activities of other persons as the commissioner may deem important.
Notwithstanding any other provision of the code of West Virginia, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained therein shall be confidential for the use of the commissioner and authorized personnel of the department of banking. No person shall divulge any information contained in any such records except as hereafter authorized in response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information therefrom for good cause, upon imposing terms and conditions as are deemed necessary to protect the confidential nature of the records, the financial integrity of the financial institution or the person to which the records relate, and the legitimate privacy interests of any individual named in such records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner shall have and may exercise reasonable discretion as to the time, manner and extent the other records in his office and the information contained therein shall be available for public examination;

(2) Require all financial institutions to comply with all the provisions of this chapter and other applicable laws, or any rule and regulation promulgated or order issued thereunder; and

(3) Investigate all alleged violations of this chapter and all other laws which he is required to enforce and of any rule and regulation promulgated or order issued thereunder.

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner is authorized and empowered:

(1) To provide for the organization of the department and the procedures and practices thereof and implement the same by the promulgation of rules and regulations and
forms as appropriate, which rules and regulations shall be promulgated in accordance with article three, chapter twenty-nine-a of this code;

(2) To employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the department, including, but not limited to, examiners, assistant examiners, conservators and receivers, to establish the amount and condition of bonds for such thereof as he deems appropriate and to pay the premiums thereon, and if he so elects, to have all such personnel subject to and under the classified service of the state personnel department;

(3) To cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, to inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his opinion may warrant;

(5) To call for and require all such data, reports and information from financial institutions under his jurisdiction, at such times and in such form, content and detail, deemed necessary by him in the faithful discharge of his duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, to supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision thereof, to require financial institutions to:

(A) Maintain their accounts consistent with such regulations as he may prescribe and in accordance with generally accepted accounting practices;
(B) Observe methods and standards which he may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against such other risks as he may deem and determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take such other action as may in his judgment be required of the institution in order to maintain its stability, integrity and security as required by law and all rules and regulations promulgated by him; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or persons and to consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act thereupon in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, to issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings, any such subpoenas or subpoenas duces tecum to be
issued, served and enforced in the manner provided in
section one, article five, chapter twenty-nine-a of this code.
Any person appearing and testifying at such a hearing
may be accompanied by an attorney employed by him;

(9) To issue declaratory rulings in accordance with the
provisions of section one, article four, chapter twenty-nine-a of this code;

(10) To study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state, and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and to compile and keep current data thereon to aid and guide him in the administration of the duties of his office;

(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) To implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules and regulations do not conflict with any rules and regulations promulgated by the state's attorney general;

(13) To foster and encourage a working relationship between the department of banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(14) To provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by
financial institutions, and such other forms and printed materials as may be found by him to be helpful to financial institutions, their shareholders, depositors and patrons, and to make reasonable charges therefor;

(15) To delegate the powers and duties of his office, other than the powers and duties in this subsection herein-after excepted, to qualified department personnel, who shall act under the direction and supervision of the commissioner and for whose acts he shall be responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other department personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner shall likewise be responsible:

(A) To order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule and regulation promulgated or order issued thereunder;

(B) To order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor thereof;

(C) To revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(D) To accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which conduct could be subject to an order under the provisions of this chapter. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving such assurance fails to comply with its terms, the assurance is prima facie evidence that prior to such assurance the person engaged in conduct described in such assurance;

(16) To seek and obtain from courts, civil penalties against any person who violates this chapter, the rules
issued pursuant thereto, or any orders lawfully entered by
the commissioner or board of banking and financial insti-
tutions in an amount not less than fifty dollars nor more
than five thousand dollars for each violation;

(17) To receive from state banking institutions appli-
cations to change the locations of their principal offices
and to approve or disapprove such applications; and

(18) To take such other action as he may deem neces-
sary to enforce and administer the provisions of this chap-
ter (except the provisions of article three) and all other
laws which he is empowered to administer and enforce,
and to apply to any court of competent jurisdiction for
appropriate orders, writs, processes and remedies.

§31A-2-6. Commissioner’s examinations of financial institu-
tion; reports; records; communications from
commissioner to institution; examination by
federal or out-of-state agency in lieu of commis-
sioner’s examination.

The commissioner of banking shall make, at least once
every eighteen months, a thorough examination of all the
books, accounts, records and papers of every depository
financial institution. He or she shall carefully examine all
of the assets of each such institution, including its notes,
drafts, checks, mortgages, securities deposited to assure the
payment of debts unto it, and all papers, documents and
records showing, or in any manner relating to, its business
affairs, and shall ascertain the full amount and the nature
in detail of all of its assets and liabilities. The commissi-
er may also, at his or her discretion, make or cause to be
made, an annual or periodic examination of the books,
accounts, records and papers of other financial institutions
under his or her supervision for the purposes of determin-
ing compliance with applicable consumer and credit
lending laws, and verifying information provided in any
license application or annual report submitted to the
commissioner. The commissioner may also make such
examination of any subsidiaries or affiliates of a financial
institution as he or she may deem necessary to ascertain
the financial condition of the financial institution, the
relations between the financial institution and its subsidiar-
ies and affiliates and the effect of the relations upon the
affairs of such financial institution. A full report of every
examination shall be made and filed and preserved in the
doctrine of the commissioner and a copy thereof forthwith
mailed to the institution examined. Every institution shall
retain all of its records of final entry for the period of time
as required in section thirty-five, article four of this
chapter for banking institutions. Unless otherwise covered
by assessments or a specific provision of this code, the cost
of examinations made pursuant to this section shall be
borne by the financial institution at a rate of fifty dollars
per each examiner hour expended.

Every official communication from the commissioner
to any institution, or to any officer thereof, relating to an
examination or an investigation of the affairs of the
institution conducted by the commissioner or containing
suggestions or recommendations as to the manner of
conducting the business of the institution, shall be read by
the board of directors at the next meeting after the receipt
thereof, and the president, or other executive officer, of
the institution shall forthwith notify the commissioner in
writing of the presentation and reading of the communica-
tion and of any action taken thereon by the institution.

The commissioner of banking, in his or her discretion,
may: (a) Accept a copy of a reasonably current examina-
tion of any banking institution made by the federal
deposit insurance corporation or the federal reserve
system in lieu of an examination of the banking institution
required or authorized to be made by the laws of this state,
and the commissioner may furnish to the federal deposit
insurance corporation or the federal reserve system or to
any official or examiner thereof, any copy or copies of
the commissioner’s examinations of and reports on the
banking institutions; (b) accept a copy of a reasonably
current examination of any out-of-state bank or any West
Virginia state bank’s out-of-state activities made by
another state’s banking regulatory authority in lieu of an
examination of the banking institution required or
authorized to be made by the laws of this state, and the
commissioner may furnish to such other state’s banking
regulatory authority or to any official or examiner
thereof, any copy or copies of the commissioner’s
examinations of and reports on such banking institutions;
but nothing herein shall be construed to limit the duty and
responsibility of banking institutions to comply with all
provisions of law relating to examinations and reports, nor
to limit the powers and authority of the commissioner of
banking with reference to examinations and reports under existing laws. The provision or exchange of examination reports and other records of financial condition and individuals pursuant to cooperative, coordinating or information-sharing agreements with other bank supervisory agencies and persons as permitted by this chapter under an agreement of confidentiality shall not constitute a violation of section four of this article.

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the "Commissioner's Assessment and Examination Fund" which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the division of banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the division of banking, the amount of the excess shall be transferred to the general revenue fund of the state. The Legislature may appropriate money to start the special revenue account.

(b) The commissioner of banking shall charge and collect from each state banking institution or other financial institution or bank holding company and pay into a special revenue account in the state treasury for the division of banking assessments as follows:

(1) For each state banking institution, a semiannual assessment payable on the first day of January and the first day of July, each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of the preceding
thirtieth day of June and the thirty-first day of December, respectively, as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>Over Million</th>
<th>But Not Over Million</th>
<th>This Amount</th>
<th>Of Excess Plus</th>
<th>Over Million</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>$2</td>
<td>0</td>
<td>0</td>
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<tr>
<td>2</td>
<td>20</td>
<td>3,290</td>
<td>0.000205628</td>
<td>2</td>
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<tr>
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<td>6,991</td>
<td>0.000164502</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>100</td>
<td>200</td>
<td>20,151</td>
<td>0.000106926</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>200</td>
<td>1,000</td>
<td>30,844</td>
<td>0.000090476</td>
<td>200</td>
<td></td>
</tr>
<tr>
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<td>0.000074026</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>2,000</td>
<td>6,000</td>
<td>177,251</td>
<td>0.000055988</td>
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</tr>
<tr>
<td>6,000</td>
<td>20,000</td>
<td>440,454</td>
<td>0.000052670</td>
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<td></td>
</tr>
<tr>
<td>20,000</td>
<td>40,000</td>
<td>1,224,292</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(2) For each regulated consumer lender an annual assessment payable on the first day of July, each year, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest of the regulated consumer lender shown on the report of condition of the regulated consumer lender as of the preceding thirty-first day of December, respectively, as follows:

<table>
<thead>
<tr>
<th>Total Outstanding Balances</th>
<th>Over $</th>
<th>But Not Over $</th>
<th>This Amount</th>
<th>Of Excess Plus</th>
<th>Over $</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>0</td>
<td>1,000,000</td>
<td>800</td>
<td>-</td>
<td>$0</td>
</tr>
<tr>
<td>1,000,000</td>
<td>5,000,000</td>
<td>800</td>
<td>0.000400</td>
<td>1,000,000</td>
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<tr>
<td>5,000,000</td>
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<td>2,400</td>
<td>0.000200</td>
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</tr>
<tr>
<td>10,000,000</td>
<td>-</td>
<td>4,200</td>
<td>0.000100</td>
<td>10,000,000</td>
<td></td>
</tr>
</tbody>
</table>

If a regulated consumer lender's records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

(3) For each credit union, an annual assessment as provided for in section eight, article one, chapter thirty-one-c of this code as follows:
Banks and Banking

For each bank holding company, an annual assessment as provided for in section eight, article eight-a of this chapter. The annual assessment shall not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(c) The commissioner shall each December and each June prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall, further, each June, prepare and send to each regulated consumer lender and each state credit union a statement of the amount of the assessment due. The commissioner shall, annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

Assessments shall be prescribed annually, not later than the fifteenth day of June, by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the division of banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act, under chapter twenty-nine-a of this code.

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution...
and pay into the special revenue account for the division of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner.

(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state, or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

(f) The commissioner of banking may maintain an action for the recovery of all assessments, costs and expenses in any court of competent jurisdiction.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

(a) Subject to the provisions of subsections (e), (f), (g) and (h) of this section and to the provisions of subsection (j), section twelve, article eight of this chapter, notice and hearing shall be provided in advance of the entry of any order by the board.

(1) Such notice shall be given to the financial institution or person with respect to whom the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board, but shall not be held less than ten or more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good cause shown.
(2) At any such hearing a party may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(b) After any such hearing and consideration of all of the testimony and evidence, the board shall make and enter an order deciding the matters with respect to which such hearing was conducted, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

(c) In the case of an application for the board's approval to incorporate and organize a banking institution in this state, as provided in subdivision (3), subsection (b), section two of this article, the board shall, upon receipt of any such application, provide notice to all banking institutions, which in the manner hereinafter provided, have requested notice of any such action. The request by any such banking institution to receive such notice shall be in writing and shall request the board to notify it of the receipt by the board of any application to incorporate and organize a banking institution in this state. A banking institution may, within ten days after receipt of such notice, file a petition to intervene and shall, if it so files such petition, thereupon become a party to any hearing relating thereto before the board.

(d) The board shall have the power and authority to issue subpoenas and subpoenas duces tecum, administer oaths and examine any person under oath in connection with any subject relating to duties imposed upon or powers vested in the board.

(e) Whenever the board shall find that extraordinary circumstances exist which require immediate action, it may forthwith without notice or hearing enter an order taking any action permitted by subdivisions (1), (2), (4) and (5), subsection (b), section two of this article. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby and upon
demand such persons shall be entitled to a hearing thereon
at the earliest practicable time.

(f) Whenever the board shall find that the financial
condition of a state banking institution or a national
banking association constitutes an imminent peril to its
depositors, savings account holders, other customers or
creditors, it may forthwith without notice or hearing enter
an order taking any action permitted by subdivisions (7)
and (8), subsection (b), section two of this article. Immedi-
ately upon entry of such order, certified copies thereof
shall be served upon all persons affected thereby and
upon demand such persons shall be entitled to a hearing
thereon at the earliest practicable time.

(g) Whenever the board shall find that the financial
condition of a state banking institution or national bank-
ing association constitutes an imminent peril to its deposi-
tors, savings account holders, other customers or creditors,
it may forthwith without compliance with the provisions of
section six or seven, article four of this chapter and
without notice or hearing enter an order approving or
disapproving an application to incorporate a state banking
institution which is being formed to purchase the business
and assets or assume the liabilities of, or both, or merge or
consolidate with, such state banking institution or national
banking institution the financial condition of which
constitutes an imminent peril to its depositors, savings
account holders, other customers or creditors. Immediate-
ly upon the entry of such order, certified copies thereof
shall be served upon all persons affected thereby and
upon demand such persons shall be entitled to a hearing
thereon at the earliest practicable time.

(h) Whenever the board shall find that the financial
condition of a state banking institution, national associa-
tion or bank holding company constitutes an imminent
peril to its depositors, savings account holders, other
customers or creditors, it may forthwith without compli-
ance with the provisions of section five or six, article eight-
a of this chapter and without notice of hearing enter an
order approving or disapproving an application by an
existing bank holding company or by an organizing bank
holding company to acquire in whole or in part, directly or indirectly, such state banking institution, national association or bank holding company. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby at the earliest practicable time.

(i) Definitions:

(1) The term "imminent peril" means that, because the banking institution or bank holding company is insolvent or about to be insolvent, or there is a probability that the banking institution will not be able to pay its debts when they become due.

(2) A banking institution or bank holding company is "about to be insolvent" when it would be unable to meet the demands of its depositors or is clearly unable, without impairment of capital, by sale of assets or lawful borrowings or otherwise, to realize sufficient liquid assets to pay such debts for which payment is likely, in the immediate future, to be due and demanded in the ordinary course of business.

(3) A banking institution or bank holding company is "insolvent" when it is unable to pay its debts to its depositors and other creditors in the ordinary and usual course of business.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-9. Fidelity bonds and insurance.
§31A-4-14. Trust powers of banking institutions.
§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated subsidiary banks of a bank holding company.
§31A-4-15. Certificate showing unimpaired capital to be filed before exercising trust powers; penalties; notice of failure to comply.
§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.
§31A-4-30a. Alternative maximum interest rate on loans by banks chartered under state law.

§31A-4-9. Fidelity bonds and insurance.

(a) The directors of a state bank shall direct and require good and sufficient fidelity bonds on all active
officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the bank.

(b) The directors shall also direct and require suitable insurance protection to the bank against burglary, robbery, theft and other similar insurable hazards to which the bank may be exposed in the operations of its business on the premises or elsewhere.

(c) The directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors.

(d) A state bank which is a subsidiary of a bank holding company as defined in section one, article eight-a of this chapter may fulfill the requirements of subsections (a) and (b) of this section if such fidelity bonds and insurance protection are obtained on its behalf by the bank holding company: Provided, That the evidence of the existence of such bonds and insurance protection for the state bank must be maintained at the main office of the state bank and the directors of the state bank shall be responsible for reviewing the adequacy of such bonds and insurance protection annually and for recording such review in the minutes of the board.

§31A-4-14. Trust powers of banking institutions.

(a) Every state banking institution which files the reports required in section fifteen of this article and which is not otherwise prohibited by the commissioner or federal bank regulators from doing so, shall have and exercise the following powers:
(1) All the powers, rights and privileges of any state banking institution;

(2) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;

(3) To act as registrar, transfer agent or dividend or coupon paying agent for any corporation;

(4) To make, hold and dispose of investments and establish common trust funds, and account therefor, pursuant to the provisions of chapter forty-four of this code;

(5) To purchase and sell and take charge of and receive the rents, issues and profits of any real estate for other persons or corporations;

(6) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including, without limitation, notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of such personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which such items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or instruments creating the trust, or, in the absence of any specification of terms, at such time
and upon such terms as the trustee shall deem reasonable; and

(7) To do and perform any act or thing requisite or necessary in, or incidental to, the exercise of the general powers herein set forth.

(b) All national banks having their main office in this state which have been, or hereafter may be, authorized under the laws of the United States to act as trustee and in other fiduciary capacities in the state of West Virginia shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

(c) Banks having their main office in another state which lawfully have a branch in this state pursuant to the provisions of federal law or articles eight-d or eight-e of this chapter which have been, or hereafter may be, authorized under the laws of the United States or the laws of the state in which such bank is chartered to act as trustee and in other fiduciary capacities in the state in which their main office is located shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated subsidiary banks of a bank holding company.

(a) Notwithstanding any other provision of this code, and unless the will, deed or other instrument creating a trust or fiduciary account or relationship specifically provides otherwise, any affiliate subsidiary which is empowered with and authorized to exercise trust powers, or otherwise performs fiduciary services for a fee, may, without any order or other action on the part of any court or otherwise, transfer to any other affiliate subsidiary exercising or authorized to exercise trust powers any or all rights, franchises and interests in its fiduciary accounts or relationships, including, but not limited to, any or all appointments, designations and nominations and any other rights, franchises and interests, as trustee, executor, administrator, guardian, committee, escrow agent, transfer
and paying agent of stocks and bonds and every other fiduciary capacity; and the transferee or receiving affiliate subsidiary shall hold and enjoy all rights of property, franchises and interests in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by the transferor affiliate subsidiary. As to transfers to an affiliate subsidiary pursuant to this section, the receiving affiliate subsidiary shall take, receive, accept, hold, administer and discharge any grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise, in favor of, or in the name of, the transferor affiliate subsidiary, whether made, executed or entered before or after such transfer and whether to vest or become effective before or after such transfer, as fully and to the same effect as if the receiving affiliate subsidiary had been named in such deed, deed of trust, will, agreement, order or other instrument instead of such transferor affiliate subsidiary. All acts taken or performed in its own name or in the name of or on behalf of the transferor affiliate subsidiary by any receiving affiliate subsidiary as trustee, agent, executor, administrator, guardian, depositary, registrar, transfer agent or other fiduciary with respect to fiduciary accounts or relationships transferred pursuant to this section are as good, valid and effective as if made by the transferor affiliate subsidiary.

(b) For purposes of this section, the term “affiliate subsidiary” means any two or more subsidiaries (as the term “subsidiary” is defined in section one, article eight-a of this chapter) which are “banks” or “banking institutions” (as those terms are defined in section two, article one of this chapter) and which have a common bank holding company as their parent company. For purposes of this section, the term “bank holding company” shall have the meaning set forth in section one, article eight-a of this chapter.

(c) At least thirty days before any transfer authorized by this section, the transferor affiliate subsidiary shall send a statement of intent to transfer together with the name and address of the transferee or receiving affiliated
subsidiary by regular United States mail to the most recent
known address of all persons who appear in the records of
the transferor affiliate subsidiary as having a vested
present interest in the trust, fiduciary account or relation-
ship to be transferred.

(d) This section shall be applicable to both domestic
and foreign bank holding company affiliate subsidiaries.

§31A-4-15. Certificate showing unimpaired capital to be filed
before exercising trust powers; penalties; notice
of failure to comply.

No banking institution shall exercise any of the trust
powers mentioned in this article until it shall have filed
with the commissioner of banking an annual report of
trust assets each calendar year as filed with federal regula-
tors. If any such banking institution shall exercise, or
attempt to exercise, any such powers or rights without
having complied with the requirements of this section as to
the filing of such report, it shall be guilty of a misdemea-
or, and, upon conviction thereof, shall be fined not more
than five hundred dollars; and in every such case, whether
or not there shall have been a prosecution or conviction of
the company so offending, the commissioner of banking,
being satisfied of the facts, may publish a notice of the
fact that it has failed to comply with the requirements of
this section and is therefore not entitled to exercise the
trust powers and rights mentioned in the preceding
section. In the event a notice is published as aforesaid, it
shall be published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county in which such institution is
located.

§31A-4-30. Charges and interest allowed in certain cases;
negotiability of installment notes.

In addition to the interest rate provided in article six,
chapter forty-seven of this code and elsewhere by law, a
banking institution may charge interest together with other
finance charges at a rate of eighteen percent per annum or
less calculated according to the actuarial method, or one
and one-half percent per month, computed on unpaid balances. Additional charges in connection with consumer loans are limited as provided in section one hundred nine, article three, chapter forty-six-a of this code. Loans may be made on a precomputed basis: Provided, That upon prepayment in full of a precomputed loan, the bank shall rebate the unearned portion of such finance charges as specified in section five-d, article six, chapter forty-seven of this code. Any note evidencing any such installment loan may provide that the entire unpaid balance thereof at the option of the holder shall become due and payable upon default in the payment of any stipulated installment without impairing the negotiability of such note if otherwise negotiable.

§31A-4-30a. Alternative maximum interest rate on loans by banks chartered under state law.

(a) The Legislature hereby finds and declares that:

(1) Under federal banking laws, national banking associations are permitted to charge interest on loans at a rate not exceeding one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the federal reserve district where the national banking association is located;

(2) Banks chartered under the laws of West Virginia should be able to charge interest on a comparable basis, and hence avoid being placed at a competitive disadvantage in relation to national banking associations having their principal offices in the state;

(3) It is in the best interest of the citizens of this state to preserve the state banking system and to that end, and in order to foster equitable competition as to interest rates, to provide a means by which banks chartered under the laws of West Virginia, as an alternative to the interest rates authorized by any other provisions of this code, may charge interest at a rate comparable to the rate permitted to national banking associations; therefore,

(4) As an alternative to the interest rate authorized by any other provisions of this code, any bank now or
hereafter chartered under the laws of West Virginia may, after the effective date of this section, on any loan of money, contract in writing for the payment of interest at a rate, including points expressed as a percentage of the loan divided by the number of years of the loan contract, not to exceed one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the federal reserve district where the state bank is located.

(b) For the purpose of subsection (a) of this section, the term “points” is defined as the amount of money, or other consideration, received by any person or by such banks, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

(c) A commitment to make a loan pursuant to this section which provides for consummation within some future time may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum rate of interest at the time the loan contract is entered into is less than a commitment rate of interest: Provided, That the commitment rate of interest does not exceed the maximum interest rate in effect on the date the commitment was issued: Provided, however, That the commitment when agreed to by the borrower constitutes a legally binding obligation on the part of such person or such bank to make such a loan within a specified time period in the future at a rate of interest not exceeding the maximum rate of interest effective as of the date of commitment, and the commitment does not include any condition for increase of the interest rate at the time of loan consummation even though the maximum rate of interest is then higher.

(d) Nothing contained in this section shall prohibit the parties to any loan transaction from contracting for a rate of interest authorized by any other provision of this code.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.
§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

§31A-8-12a. Banking from mobile units prohibited; prohibition not to include messenger services; limitation of messenger services.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

(a) No banking institution shall engage in business in this state at any place other than at its principal office in this state, at a branch bank in this state, at a customer bank communication terminal permitted by section twelve-b of this article or at any loan origination office permitted by section twelve-c of this article:

(1) Acceptance of a deposit or allowing a withdrawal at the banking offices of any subsidiary affiliate, as defined in section one, article eight-a of this chapter, for credit or debit to the customer's account at any other subsidiary of the same bank holding company is permissible and does not constitute branch banking. In addition, the conduct of activity at branch offices as an agent for any bank subsidiary of the same bank holding company shall be permitted to the same extent allowed by federal law for national banks pursuant to 12 U.S.C. §1828, and does not constitute branch banking; nor shall such activity constitute a violation of section forty-two, article four of this chapter: Provided, That no banking institution may utilize that agency relationship to evade state consumer protection laws, including usury laws, or any other applicable laws of this state, or to conduct any activity that is not financially-related, as that term is defined by section two, article eight-c of this chapter;

(2) A banking institution located in a county where there is also a higher educational institution as defined in
section two, article one, chapter eighteen-b of this code, may establish a temporary business office on the campus of any such educational institution located in such county for the limited purposes of opening accounts and accepting deposits for a period not in excess of four business days per semester, trimester or quarter: Provided, That prior to opening any temporary office, a banking institution must first obtain written permission from the institution of higher education. The term "business days", for the purpose of this subsection, means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code;

(3) Any banking institution which on the first day of January, one thousand nine hundred eighty-four, was authorized to operate an off-premises walk-in or drive-in facility, pursuant to the law then in effect, may, as of the seventh day of June, one thousand nine hundred eighty-four, operate such facility as a branch bank and it shall not be necessary, for the continued operation of such branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

(b) Except for a bank holding company, it shall be unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of each of two or more banks, or to control in any manner the election of a majority of the directors of two or more banks.

(c) A banking institution may establish branch banks either by:

(1) The construction, lease or acquisition of branch bank facilities within any county of this state; or

(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.
(d) Notwithstanding any other provision of this chapter to the contrary, subject to and in furtherance of the board's authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subsection (g) of this section, the board may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The main office or a branch of a West Virginia state banking institution may not be relocated without the approval by order of the commissioner.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide the same banking services and exercise the same powers at each such branch bank as may be provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application to establish a branch bank, provide notice of such application to all banking institutions. A banking institution may, within ten days after receipt of such notice, file a petition to intervene and shall, if it so files such petition, thereupon become a party to any hearing relating thereto before the board.

(h) The commissioner shall prescribe the form of the application for a branch bank and shall collect an examination and investigation fee of one thousand dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and two thousand five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of five hundred dollars. The board shall complete the examination and investigation within ninety days from the date on which such application and fee are received, unless the board requests
in writing additional information and disclosures concern­
ing the proposed branch bank from the applicant banking
institution, in which event such ninety-day period shall be
extended for an additional period of thirty days plus the
number of days between the date of such request and the
date such additional information and disclosures are
received.

(i) Upon completion of the examination and investiga-
tion with respect to such application, the board shall, if a
hearing be required pursuant to subsection (j) of this
section, forthwith give notice and hold a hearing pursuant
to the following provisions:

(1) Notice of such hearing shall be given to the
banking institution with respect to which the hearing is to
be conducted in accordance with the provisions of section
two, article seven, chapter twenty-nine-a of this code, and
such hearing and the administrative procedures in connec-
tion therewith shall be governed by all of the provisions of
article five, chapter twenty-nine-a of this code, and shall be
held at a time and place set by the board but shall not be
less than ten nor more than thirty days after such notice is
given;

(2) At any such hearing a party may represent himself
or be represented by an attorney at law admitted to
practice before any circuit court of this state;

(3) After such hearing and consideration of all the
testimony and evidence, the board shall make and enter an
order approving or disapproving the application, which
order shall be accompanied by findings of fact and
conclusions of law as specified in section three, article five,
chapter twenty-nine-a of this code, and a copy of such
order and accompanying findings and conclusions shall
be served upon all parties to such hearing, and their
attorneys of record, if any.

(j) No state banking institution may establish a branch
bank until the board, following an examination, investiga-
tion, notice and hearing, enters an order approving an
application for that branch bank: Provided, That no such
hearing shall be required with respect to any application to
establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

(1) Public convenience and advantage will be promoted by the establishment of the proposed branch bank;

(2) Local conditions assure reasonable promise of successful operation of the proposed branch bank and of those banks and branches thereof already established in the community;

(3) Suitable physical facilities will be provided for the branch bank;

(4) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish by regulation;

(5) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state; and

(6) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that proposed branch bank are clearly outweighed in the public interest by the probable effect of the establishment of the proposed branch bank in meeting the convenience and needs of the community to be served by that proposed branch bank. If the branch results from the merger or acquisition of banking institutions, the findings of fact required in subdivisions (1) through (3) of this subsection may be based on the performance and suitability of the previous banking offices.

(k) Any party who is adversely affected by the order of the board shall be entitled to judicial review thereof in
the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the supreme court of appeals in the manner provided in article six, chapter twenty-nine-a of this code.

(l) Pursuant to the resolution of its board of directors and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days prior public notice given in such form and manner as the commissioner prescribes.

(m) Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen of this article.

§31A-8-12a. Banking from mobile units prohibited; prohibition not to include messenger services; limitation of messenger services.

It is illegal for any banking institution or other depository institution to conduct its business in a facility that is a mobile unit not permanently attached to the real estate upon which it is located, except that such mobile units may be used as temporary banking quarters pending construction of a permanent bank building on the same or adjacent property thereto if a charter for said bank has previously been approved. This section shall not be construed or interpreted to prohibit a financial institution from providing messenger services to its customers by which items are received by mail, armored car service or other courier or delivery service for subsequent deposit: Provided, That all such messenger services are confined to the territorial boundaries of the county in which an office of such financial institution is located or within fifty miles of an office of such financial institution.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.
(a) Any banking institution as defined in section two, article one of this chapter, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon ten days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals. Any banking institution which installs and operates a customer bank communication terminal:

(1) Shall make such customer bank communication terminal available for use by other banking institutions; and

(2) May make such customer bank communication terminal available for use by other federally insured financial institutions, all in accordance with regulations promulgated by the commissioner. Such customer bank communication terminals shall not be considered to be branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; nor shall the operation of such customer bank communication terminals to communicate with and permit financial transactions to be carried out through a nonexclusive access interchange system be considered to make any banking institution which is part of such a nonexclusive access interchange system to have illegal branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities.

(b) Notwithstanding the provisions of subdivision (1), subsection (a) of this section, a customer bank communication terminal located on the premises of the principal office or branch bank of a banking institution or on the premises of an authorized off-premises facility need not be made available for use by any other banking institution or its customers.

(c) For purposes of this section, "customer bank communication terminal" means any electronic device or machine owned, leased, or operated by a bank, together with all associated equipment, structures and systems, including, without limitation, point of sale terminals,
through or by means of which a customer and a banking institution may engage in any banking transactions, whether transmitted to the banking institution instantaneously or otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer’s benefit. Personal computers, telephones and associated equipment which enable a bank customer to conduct banking transactions at their home or office through links to their bank’s computer or telephone network, do not constitute a “customer bank communication terminal” under this section. All transactions initiated through a customer bank communication terminal shall be subject to verification by the banking institution.

(d) No person, other than: (1) A banking institution authorized to engage in the banking business in this state; or (2) a credit union authorized to conduct business in this state, may operate any automatic teller machine ("ATM") or automatic loan machine ("ALM") located in this state: Provided, That ATM terminals of out-of-state state banks not having branches in this state shall be allowed to operate to the same extent as a West Virginia bank if a national bank from that state not having branches in West Virginia could do so through a federal preemption of state law.

(e) For the purposes of this section, “point of sale terminal” means a customer bank communication terminal used for the primary purpose of either transferring funds to or from one or more deposit accounts in a banking institution or segregating funds in one or more deposit accounts in a banking institution for future transfer, or both, in order to execute transactions between a person and his customers incident to sales, including, without limitation, devices and machines which may be used to implement and facilitate check guaranty and check authorization programs.
(f) Nothing in this section prevents point of sale terminals and associated equipment from being owned, leased or operated by nonbanking entities: Provided, That such persons may not engage in the business of banking by using point of sale devices. The use of a point of sale terminal to enable a customer or other person to withdraw and obtain cash of more than fifty dollars in excess of the sales transaction purchase amount will be presumed to constitute engaging in the business of banking.

(g) Except for customer bank communication terminals located on the premises of the principal office or a branch bank of the banking institution or on the premises of an authorized off-premises walk-in or drive-in banking facility, a customer bank communication terminal shall be unattended or attended by persons not employed by any banking institution utilizing the terminal: Provided, That:

1. Employees of the banking institution may be present at such terminal not located on the premises of an authorized off-premises facility solely for the purposes of installing, maintaining, repairing and servicing same; and

2. A banking institution may provide an employee to instruct and assist customers in the operation thereof: Provided, That such employee shall not engage in any other banking activity.

(h) The commissioner shall prescribe by regulation the procedures and standards regarding the installation and operation of customer bank communication terminals, including, without limitation, the procedure for the sharing thereof.

CHAPTER 31C. CREDIT UNIONS.

ARTICLE 1. SUPERVISION AND REGULATION.

§31C-1-5. Examinations.

(a) The commissioner shall examine, or cause to be examined, each credit union at least once every eighteen months. A credit union and any of its officers and agents shall be required to give the commissioner, or the commissioner’s representatives, full access to all books, papers,
securities, records and other sources of information under their control.

(b) A report of such examination shall be forwarded to the credit union's board of directors within thirty days after completion. Said report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within thirty days after the receipt of such report, the directors and committee members shall meet to consider matters contained in the report. Every official communication from the commissioner to any such institution, or to any officer thereof, relating to an examination or an investigation of the affairs of such institution conducted by the commissioner or containing suggestions or recommendations as to the manner of conducting the business of the institution, shall be read to the board of directors at the next meeting after the receipt thereof, and the president, or other executive officer, of the institution shall within fourteen days of such meeting notify the commissioner in writing of the presentation and reading of the communication and of any action taken thereon by the institution.

(c) In lieu of making an examination of a credit union, the commissioner may accept an examination or audit report of the condition of the credit union made by the national credit union administration.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

Article
4. Regulated Consumer Lenders.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

(1) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account:
(a) A bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a
loan finance charge not exceeding the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code, or that allowed under section two, article seven, chapter thirty-one-c of this code; (b) a regulated consumer lender may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by section one hundred seven, article four, chapter forty-six-a of this code or by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code; (c) a credit union, as defined in section one, article one, chapter thirty-one-c of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section two, article seven, chapter thirty-one-c of this code, or by the provisions of section five, article six, chapter forty-seven of this code; and (d) any other lender may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code.

(2) This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of add-on, discount or otherwise, so long as the rate of loan finance charge does not exceed that permitted by this section.

(3) If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven of this article.

(4) Notwithstanding subsection (1) of this section, the lender may contract for and receive a minimum loan finance charge of not more than five dollars when the amount loaned does not exceed seventy-five dollars, or
seven dollars and fifty cents when the amount loaned exceeds seventy-five dollars.

(5) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.

(6) Notwithstanding subsection (5) of this section, a resident lender who is the assignee of a consumer credit sales contract from a credit grantor in another state, and said contract was executed in such other state to finance a retail purchase made by the consumer when the consumer was in that other state, may collect, receive or enforce the sales finance charge and other charges including late fees provided in said contract under the laws of the state where executed. Such charge shall not be deemed to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-104. Records; annual reports.

§46A-4-107. Loan finance charge for regulated consumer lenders.

§46A-4-111. Substantial benefit upon refinancing of a loan at higher rate.

§46A-4-104. Records; annual reports.

(1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the commissioner to determine whether the licensee is complying with the provisions of this article. The record-keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where regulated consumer loans are made, if the commissioner is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the
case of a revolving loan account such two-year period is
measured from the date of each entry.

(2) On or before the fifteenth day of February each
year, every licensee shall file with the commissioner a
composite annual report in the form prescribed by the
commissioner relating to all regulated consumer loans
made by him and showing in detail the actual financial
condition and the amount of the assets and liabilities of
such financial institution. The commissioner shall consult
with comparable officials in other states for the purpose of
making the kinds of information required in annual
reports uniform among the states. Information contained
in annual reports shall be confidential and may be pub-
lished only in composite form.

§46A-4-107. Loan finance charge for regulated consumer
lenders.

(1) With respect to a regulated consumer loan, includ-
ing a revolving loan account, a regulated consumer lender
may contract for and receive a loan finance charge not
exceeding that permitted by this section.

(2) On a loan of two thousand dollars or less, which is
unsecured by real property, the loan finance charge,
calculated according to the actuarial method, may not
exceed thirty-one percent per year on the unpaid balance
of the principal amount.

(3) On a loan of greater than two thousand dollars or
which is secured by real property, the loan finance charge,
calculated according to the actuarial method, may not
exceed twenty-seven percent per year on the unpaid
balance of the principal amount: Provided, That the loan
finance charge on any loan greater than ten thousand
dollars may not exceed eighteen percent per year on the
unpaid balance of the principal amount. Loans made by
regulated consumer lenders shall be subject to the restric-
tions and supervision set forth in this article irrespective of
their rate of finance charges.

(4) Where the loan is nonrevolving and is greater than
two thousand dollars, the permitted finance charge may
include a charge of not more than a total of two percent of
the amount financed for any origination fee, points or
investigation fee. Provided, That where any loan, revolving
or nonrevolving, is secured by real estate, the permitted
finance charge may include a charge of not more than a
total of five percent of the amount financed for any
origination fee, points or investigation fee. In any loan
secured by real estate, such charges may not be imposed
again by the same or affiliated lender in any refinancing
of that loan made within twenty-four months thereof,
unless these earlier charges have been rebated by payment
or credit to the consumer under the actuarial method, or
the total of the earlier and proposed charges does not
exceed five percent of the amount financed. Charges
permitted under this subsection shall be included in the
calculation of the loan finance charge. The financing of
such charges shall be permissible and shall not constitute
charging interest on interest. In a revolving home equity
loan, the amount of the credit line extended shall, for
purposes of this subsection, constitute the amount fi-
nanced. Other than herein provided, no points, origination
fee, investigation fee or other similar prepaid finance
charges attributable to the lender or its affiliates may be
levied. Except as provided for by section one hundred
nine, article three of this chapter, no additional charges
may be made; nor may any charge permitted by this
section be assessed unless the loan is made. To the extent
that this section overrides the preemption on limiting
points and other such charges on first lien residential
mortgages contained in Section 501 of the United States
Depository Institutions Deregulation and Monetary
Control Act of 1980, the state law limitations contained in
this section shall apply. If the loan is precomputed:

(a) The loan finance charge may be calculated on the
assumption that all scheduled payments will be made when
due; and

(b) The effect of prepayment, refinancing or consoli-
dation is governed by the provisions on rebate upon
prepayment, refinancing or consolidation contained in
section one hundred eleven, article three of this chapter.
(5) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) With respect to a revolving loan account:

(a) A charge may be made by a regulated consumer lender in each monthly billing cycle which is one twelfth of the maximum annual rates permitted by this section computed on an amount not exceeding the greatest of:

(i) The average daily balance of the debt; or

(ii) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle. For the purpose of this subdivision a billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum loan finance charge which may be made by a regulated consumer lender is that percentage which bears the same relation to an applicable monthly percentage as the number of days in the billing cycle bears to thirty.

(c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision if the
lender has made an annual charge for the same period as
permitted by the provisions on additional charges.

(7) As an alternative to the loan finance charges
allowed by subsections (2) and (4) of this section, a
regulated consumer lender may on a loan of one thousand
two hundred dollars or less contract for and receive
interest at a rate of up to thirty-one percent per year on
the unpaid balance of the principal amount, together with
a nonrefundable loan processing fee of not more than two
percent of the amount financed: Provided, That no other
finance charges are imposed on the loan. The processing
fee permitted under this subsection shall be included in
the calculation of the loan finance charge and the financ-
ing of the fee shall be permissible and shall not constitute
charging interest on interest.

(8) Notwithstanding any contrary provision in this
section, a licensed regulated consumer lender who is the
assignee of a nonrevolving consumer loan unsecured by
real property located in this state, which loan contract was
applied for by the consumer when he or she was in
another state, and which was executed and had its proceeds
distributed in that other state, may collect, receive and
enforce the loan finance charge and other charges,
including late fees, provided in said contract under the
laws of the state where executed: Provided, That the
consumer was not induced by the assignee or its in-state
affiliates to apply and obtain the loan from an out-of-state
source affiliated with the assignee in an effort to evade the
consumer protections afforded by this chapter. Such
charges shall not be deemed to be usurious or in violation
of the provisions of this chapter or any other provisions of
this code.

§46A-4-111. Substantial benefit upon refinancing of a loan at
higher rate.

(1) Any nonrevolving consumer loan or consumer
credit sale that is refinanced and consolidated with a new
loan under this article after the first day of September, one
thousand nine hundred ninety-six, at a higher finance rate
than allowed merchants by section one hundred one,
article three of this chapter must either provide the
consumer with a substantial benefit or provide the disclosures set forth in this section. A substantial benefit accrues to the consumer if the transaction:

(a) Provides the consumer at least five hundred dollars in new funds for the consumer's own use, excluding any charges connected with the loan; or

(b) Provides the consumer with new funds in an amount equal to the original amount of the loan or credit.

(2) If no substantial benefit is provided, the lender must comply with the following requirements, except where such an agreement would violate section one hundred eight of this article:

(a) The lender must in a fixed rate transaction give the following disclosures in writing to the borrower prior to the execution of the new agreement:

"If you do agree to consolidate your existing obligation, you will be paying an annual percentage rate of ____% on the existing balance of $$____, instead of the rate of ____% which you are now paying.

I acknowledge receipt of this information ________ (initials of borrower)."

(b) The lender must allow the borrower the choice of repaying his or her existing loan/credit balance at the originally agreed upon rate and obtaining any additional extension of credit as a separate agreement, notwithstanding any law other than section one hundred eight of this article which may limit the borrower's ability to have multiple loan agreements with the same lender;

(c) The lender, where it holds the prior agreement, must refund or credit to the borrower's account any unearned finance charge and any returned insurance premiums upon cancellation of the insurance sold in connection with the prior agreement;

(d) The lender shall, where applicable, provide the borrower prior to the loan's execution, conspicuous written notice of the provisions of subdivisions (a), (b) and (c) of this subsection:
(e) The commissioner may provide and require a modified disclosure form for similar transactions involving adjustable or variable rates, and where applicable, prior to the loan’s execution, the borrower must be given conspicuous written notice of the provisions of subdivisions (b) and (c) of this subsection, together with the disclosure form as may be required by this section; and

(f) Nothing in this section shall prohibit the receipt of goods or services by the borrower at the time the consolidated loan agreement is made, nor shall this section prohibit or pertain to any loan where the refinancing results in the consumer paying the same or a lower finance charge rate.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 24. THE REVERSE MORTGAGE ENABLING ACT.

§47-24-8. Regulatory authority and exemptions.

(a) All reverse mortgage loans subject to this article shall be under the jurisdiction and supervision of the commissioner of banking, and subject to the regulatory authority and penalties set forth in chapter thirty-one-a of this code.

(b) The commissioner of banking shall have the authority to promulgate rules in order to affect compliance with the provisions of this article.

(c) Persons making reverse mortgage loans through a program authorized by and under the supervision of a federal governmental agency or through a federally sponsored mortgage enterprise are exempt from the provisions of this article, and may make reverse mortgages notwithstanding any provisions to the contrary in this code: Provided, That such loans are sold to those agencies or enterprises within forty-five days of loan closing and that the commissioner of banking certifies that the program provides consumers with protections against abusive practices. Loans under this subsection may, like other reverse mortgage loans, also be made or acquired without regard to relevant interpretations of law to the same extent as provided in section five of this article.
AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty-three of said code by adding thereto a new article, designated article eleven-a, all relating to providing West Virginia state-chartered banks authority and parity with national banks in the marketing and sale of insurance and annuities and providing for the protection of consumers and the regulation of the business of insurance when combined with the business of lending and the business of financial institutions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter thirty-three of said code be amended by adding thereto a new article, designated article eleven-a, all to read as follows:

Chapter 31A. Banks and Banking.
33. Insurance.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERICALLY.

§31A-4-13. Powers of state banking institutions generally.

1 (a) Any state-chartered banking institution shall have
2 and exercise all of the powers necessary for, or incidental
3 to, the business of banking, and without limiting or
4 restricting such general powers, it shall have the right to
buy or discount promissory notes and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell, exchange, bank notes, bullion or coin, loan money on personal or other security, rent safe-deposit boxes and receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description and provide customer services incidental to the business of banking, including, but not limited to, the issuance and servicing of and lending money by means of credit cards as letters of credit or otherwise. Any state-chartered banking institution may accept, for payment at a future date, not to exceed one year, drafts drawn upon it by its customers. Any state-chartered banking institution may issue letters of credit, with a specified expiration date or for a definite term, authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time. Any such banking institution may organize, acquire, own, operate, dispose of, and otherwise manage wholly owned subsidiary corporations for purposes incident to the banking powers and services authorized by this chapter.

(b) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall in no case be carried on its books at a value greater than the actual cost: Provided, That such property shall be necessary for the convenient transaction of its business, including any buildings, office space or other facilities to rent as a source of income: Provided, however, That such investment hereafter made shall not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured.

(c) Any state-chartered banking institution may acquire, own, hold, use and dispose of real estate, which shall be carried on its books at the lower of fair value or cost as defined in rules promulgated by the commissioner of banking, subject to the following limitations:

(1) Such as shall be mortgaged to it in good faith as security for debts in its favor;
(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings; and

(3) Such as it shall purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall purchase at private sale, to secure and effectuate the payment of debts due to it.

(d) The value at which any real estate is held shall not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs, or other charges which do not materially enhance the value of the property.

(e) Any real estate acquired by any such banking institution under subdivisions (2) and (3) of subsection (c) of this section shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses: Provided, That in every case such property shall be disposed of within ten years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

(f) The sale of annuities by state-chartered banking institutions shall be subject to the following:

Any state-chartered banking institution having its main or a branch office in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, through its employees or agents, may, from that place or office, directly or through a controlled subsidiary, act as agent for any fire, life, casualty, liability or other insurance company authorized by the authorities of the state to do business in this state, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered all permissible fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent: Provided, That no such bank shall in any case assume or guarantee the payment on insurance
policies issued through its agency by its principal: Provided, however, That the bank shall not guarantee the truth of any statement made by an insured in filing his, her or its application for insurance. For purposes of this section, a "controlled subsidiary" is one in which the state-chartered banking institution owns at least eighty percent of all classes of stock. This provision is intended to give state-chartered banking institutions parity with national banks operating in this state with regard to the marketing and sale of insurance notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter, and shall be construed consistently with interpretations of 12 U.S.C. §92, the regulations promulgated thereunder, and any successor legislation or regulations.

(g) Any state-chartered banking institution may, through its employees or agents, market and sell, as agent, annuities, either at its main office or at any of its branches. The marketing and sale of annuities may be made by the bank, through its employees or agents, directly, or through a controlled subsidiary, as defined in subsection (f) above. This provision is intended to give state-chartered banks parity with national banks operating in this state with regard to the sale of annuities, notwithstanding the prohibitions and limitations contained in article eight-c or elsewhere in this chapter.

(h) Unless waived in writing by the commissioner, a state-chartered bank may not invest or otherwise expend in excess of ten percent of its capital and surplus calculated at the end of the previous calendar year on the activities permitted by subsections (f) and (g) on an aggregate basis together with any of its approved financially related products and services. For purposes of this section, approved financially related products and services means those products and services offered by a state-chartered bank pursuant to an approved application submitted under article eight-c of this chapter.

(i) The commissioner shall promulgate rules in accordance with chapter twenty-nine-a of this code relating to the sale of insurance or annuities, including, but
not limited to, rules requiring notice of the intention to engage in such activities and relating to the policies and procedures state-chartered banking institutions should adopt in connection with such activities.

(j) Any state-chartered banking institution and its employees or agents engaged in the sale of insurance or annuities permitted hereby must also comply with all applicable requirements for the sale of such products imposed by the West Virginia commissioner of insurance and by any state or federal securities regulator.

(k) No state-chartered banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

CHAPTER 33. INSURANCE.

ARTICLE 11A. INSURANCE SALES CONSUMER PROTECTION ACT.

§33-11A-5. Licensure requirement for insurance sales.
§33-11A-6. Insurance sales separate from loan transaction.
§33-11A-8. Tying of products prohibited.
§33-11A-12. Prohibition of discrimination against agents or brokers.
§33-11A-13. Confidentiality of insurance information obtained by financial institutions.
§33-11A-15. Insurance records to be kept separate.

This article may be cited as the "Insurance Sales Consumer Protection Act".


The purpose of this article is to regulate the business of insurance in West Virginia when engaged in by financial institutions and to protect the interests of consumers.


For the purposes of this article:

(a) "Affiliate" means a person that directly or indirectly or through one or more intermediaries, controls or is controlled by another or is under common control with another.

(b) "Commissioner" means the insurance commissioner of West Virginia.

(c) "Financial institution":

(1) Means any bank, savings bank, savings and loan association, trust company, credit union or any other depository institution, which: (i) Accepts federally insured deposits, including, but not limited to, those as defined by the Federal Deposit Insurance Act, as amended, 12 U.S.C. §1813(c)(1); and (ii) makes loans to residents of this state;

(2) Means any employee or agent of a financial institution; and

(3) Means any nondepository affiliate or subsidiary of a financial institution but only in the instances when the nondepository affiliate or subsidiary is soliciting the sale or purchase of insurance recommended or sponsored by, on the premises of, or in connection with a product offering of, the financial institution.

(4) Does not include a credit card bank, as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. §1841(c)(2)(F), an industrial loan company as defined in 12 U.S.C. §1841(c)(2)(H), a specialized savings
association serving certain military personnel as defined in
12 U.S.C. §1467a(m)(3)(F), a bank whose ownership is
grandfathered under the Competitive Equality Banking
Act of 1987 as codified at 12 U.S.C. §1843(f)(1), or an
insurance company.

(d) "Insurance" means all products defined or
regulated as insurance by the state of West Virginia,
except:

(1) Credit life, health and accident, accident, loss of
income, or property insurance as described in subsection b
of section one hundred nine, article three, chapter forty-
six-a of the code of West Virginia;

(2) Insurance placed by a financial institution in
connection with collateral pledged as security for a loan
when the debtor breaches the contractual obligation to
provide that insurance; and

(3) Private mortgage insurance.

(e) "Insurance company" means a company that
possesses a certificate under this chapter to transact
insurance business in West Virginia.

(f) "Insurance information" means copies of insur-
ance policies, or the information contained thereon,
binders, rates and expiration dates contained within the
information supplied in connection with the loan, which
are not otherwise available to the financial institution’s
affiliated broker or agent.

(g) "Person" means any natural person, partnership,
corporation, association, business trust, or other form of
business enterprise, as the case demands.


The commissioner shall promulgate rules in
accordance with chapter twenty-nine-a of this code to
effectuate the provisions of this article.

§33-11A-5. Licensure requirement for insurance sales.
Solicitation for the purchase or sale of any insurance product by any person, including an employee or agent of a financial institution, shall be conducted only by individuals who have complied with all applicable state insurance licensing and appointment laws and regulations and who have been issued an agent or broker's license pursuant to chapter thirty-three of this code.

§33-11A-6. Insurance sales separate from loan transaction.

(a) Solicitation for the purchase or sale of insurance by a financial institution shall be conducted only by individuals whose responsibilities do not include loan transactions or other transactions involving the extension of credit: Provided, That for a financial institution location having three or less individuals with lending authority, solicitation for the sale of insurance may be conducted by an individual with responsibilities for loan transactions or other transactions involving the extension of credit, as long as the individual primarily responsible for making the specific loan or extension of credit is not the same individual engaged in the solicitation of the purchase or sale of insurance for that same transaction.

(b) In the event that in any small office, the same individual is the licensed agent or broker and the sole individual with lending authority, the commissioner may grant a waiver of the requirements of this section upon a written request. Such request shall include documentation that, due to the small office staff, compliance is not possible, and include identification of other steps which will be taken to minimize the customer confusion prohibited by this article.


A person who is not licensed to sell insurance may refer a customer who seeks to purchase, or seeks an opinion or advice on, any insurance product to a person, or provide the phone number of a person, who sells or provides opinions or advice on such product, only if the person making the referral receives no fee or only a nominal fee for such referral and such fee is not based on the customer's application for or purchase of insurance.
§33-11A-8. Tying of products prohibited.

(a) No person shall require or imply that the purchase of an insurance product from a financial institution by a customer or prospective customer of the institution is required as a condition of the lending of money or extension of credit.

(b) No financial institution may offer an insurance product in combination with its other products, unless all the products are available separately from the financial institution.


(a) A financial institution soliciting the purchase of or selling insurance, and any person soliciting the purchase of or selling insurance on the premises of, in connection with a product offering of, or using a name identifiable with, a financial institution, shall prominently disclose to customers, in writing, in clear and concise language, including in any advertisement or promotional material, and orally during any customer contact, that insurance offered, recommended, sponsored, or sold:

(1) Is not a deposit;

(2) Is not insured by the federal deposit insurance corporation or, where applicable, the National Credit Union Share Insurance Fund;

(3) Is not guaranteed by any insured depository institution; and

(4) Where appropriate, involves investment risk, including potential loss of principal.

(b) Any financial institution engaged in the making of loans or other extensions of credit and the sale of insurance shall prominently disclose to customers in writing, in clear and concise language, that the insurance product may be purchased from an agent or broker of the customer’s choice, and the customer’s choice of another insurance provider will not affect the customer’s credit relationship with the person. For purposes of this...
subsection, loans and extensions of credit shall not include financing in connection with the insurance product offered or sold.

(c) Any person required under subsections (a) or (b) of this section to make disclosures to a customer shall obtain a written acknowledgment of receipt by the customer of such disclosures, including the date of receipt and the customer’s name, address, and account number, prior to or at the time of any application for insurance sold by the person. Such acknowledgment shall be in a separate document.

(d) The commissioner may grant a waiver of the requirements of this section to any person required to give the disclosures required by this section solely because that person has a name identifiable with a financial institution upon a written request by such person demonstrating that his, her or its customers would not reasonably benefit from, or might in fact be confused by, these required disclosures.


(a) No individual who is an employee or agent of a financial institution, or of a subsidiary or affiliate thereof, may, directly or indirectly, make an insurance-related referral to or solicit the purchase of any insurance from a customer knowing that such customer has applied for a loan or extension of credit from that financial institution before such time as the customer has received a written commitment with respect to such loan or extension of credit, or, in the event that no written commitment has or will be issued in connection with the loan or extension of credit, before such time as the customer receives notification of approval of the loan or extension of credit by the financial institution and the financial institution creates a written record of the loan or extension of credit approval.

(b) This provision shall not prohibit any individual subject to subsection (a) above from:

(a) If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

(b) A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer.

(c) No title insurance shall be issued until the title insurance company has obtained a title opinion of an attorney licensed to practice law in West Virginia, which attorney is not an employee, agent, or owner of the insured bank or its affiliates. Said attorney shall have conducted or cause to have conducted under the attorney's direct supervision a reasonable examination of the title. In no event shall the authority of a state-chartered bank to sell title insurance exceed the authority of a nationally chartered bank to do so.

§33-11A-12. Prohibition of discrimination against agents or brokers.

(a) No financial institution may, in connection with a loan or extension of credit that requires a borrower to obtain insurance, reject an insurance policy because such policy has been issued or underwritten by any person who is not affiliated with such financial institution.

(b) No financial institution may impose any requirement on any insurance agent or broker who is not affiliated with the financial institution that is not imposed on any insurance agent or broker who is affiliated with such financial institution.
(c) No financial institution may, unless otherwise authorized by any applicable federal or state law, require any debtor, insurer, broker, or agent to pay a separate charge in connection with the handling of insurance that is required under a contract, if such insurance is sold by an agent or broker not affiliated with the financial institution.

(d) No financial institution may offer, as a package of products any products which are not insurance products in connection with insurance products, on a discounted basis, when compared with the pricing of each of the products when offered separately: Provided, That this prohibition does not apply to:

(1) Annuity products;

(2) The packaging of noninsurance products on a discounted basis; or

(3) The packaging of insurance products on a discounted basis to the extent permitted by the anti-rebating statute contained in section four, article eleven of this chapter.

(e) All of the prohibitions contained in this section shall be subject to other applicable laws, rules and regulations relating to the pricing of insurance products and the products of financial institutions.

§33-11A-13. Confidentiality of insurance information obtained by financial institutions.

(a) When a financial institution requires a borrower to provide insurance information in connection with the making of a loan or extension of credit, neither such financial institution nor an insurance agent or broker affiliated with such financial institution may later use the information so obtained to solicit or offer insurance to such borrower, unless the consent required in subsection (b) below is first obtained.

(b) A borrower may consent to the financial institution’s disclosure of insurance information to an
agent or broker affiliated with the financial institution, but any such consent must be in writing and be given at a time subsequent, which shall be no less than two days, to the time of the application for, approval of and making of the loan or extension of credit.

(c) Consent under subsection (b) of this section shall be obtained in a separate document, distinct from any other transaction, and shall not be required as a condition for performance of other services for the customer.


The place of solicitation or sale of insurance by any financial institution or on the premises of any financial institution shall be clearly and conspicuously signed so as to be readily distinguishable by the public as separate and distinct from the financial institution’s lending and deposit-taking activities. In the event that a person which would otherwise be subject to the requirements set forth in this provision does not have the physical space to so comply, the commissioner may grant a waiver of the requirements of this section upon a written request by such person demonstrating that, due to its small physical facilities, compliance is not possible, and including identification of other steps which will be taken to minimize customer confusion.

§33-11A-15. Insurance records to be kept separate.

(a) Books and records relating to the insurance transactions of any person licensed to sell insurance, including all files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to other business transactions of such person, and shall be made available to the commissioner for inspection upon reasonable notice.

(b) Unless applicable provisions of chapter thirty-three of this code or rules promulgated thereunder expressly require that an original of any insurance record be maintained, any insurance records may be stored in
any photographic, photostatic, microphotographic or similar miniature photographic process or by nonerasable optical image disks such as compact disks or by other similar retention technology and such copies, in positive or negative form, may be substituted for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof, shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent, and for the same purposes as the original thereof, and the original may be destroyed or otherwise disposed of; but every such person shall retain either the originals or such copies or reproductions for as long as required under applicable records retention requirements.

(c) All circumstances surrounding the making or issuance of such documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

(d) Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.


If any provision of this article is for any reason held to be invalid, the remainder of the article shall not be affected thereby.
AN ACT to amend and reenact sections three-a and twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing the executive director of the development office to designate a representative to the industrial revenue bond allocation review committee; and permitting uncommitted bonds as of the fifteenth day of November of each year or forfeited bonds to go to applicants in any industrial classification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-3a. Creation of industrial revenue bond allocation review committee; appointment, term, etc., of private members; voting; expenses; duties.

§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.

§13-2C-3a. Creation of industrial revenue bond allocation review committee; appointment, term, etc., of private members; voting; expenses; duties.

(a) There is hereby created the West Virginia industrial revenue bond allocation review committee consisting of five members, as follows: The secretary of tax and revenue, who shall serve as chair of the committee, and the
executive director of the development office or his or her
designee, and three members chosen from the general
public as private members.

(b) The three private members shall be appointed by
the governor, with the advice and consent of the Senate:
Provided, That one private member shall be appointed
from each congressional district of the state, in such a
manner as to provide a broad geographical distribution of
members of the committee: Provided, however, That at
least one private member appointed pursuant to this subdi-
vision shall have significant experience in economic devel-
opment. No more than two private members shall be from
the same political party.

(c) Appointment of the three members shall be for
staggered terms of three years. Any member whose term
has expired shall serve until a successor has been duly
appointed and qualified. Any member shall be eligible
for reappointment. In case of any vacancy in the office of
a private member, such vacancy shall be filled by appoint-
ment by the governor for the unexpired term. The gover-
nor may remove any private member in case of incompe-
tency, neglect of duty, gross immorality or malfeasance in
office; and he may declare the office vacant and may
appoint a person for such vacancy as provided in other
cases of vacancy.

(d) Members shall not be entitled to compensation for
services performed as members, but shall be entitled to
reimbursement for all reasonable and necessary expenses
actually incurred in the performance of their duties.

(e) A majority of the members of the committee shall
constitute a quorum for the purpose of conducting busi-
ness. The affirmative vote of at least the majority of the
members present is necessary for any action taken by vote
of the committee. No vacancy in the membership of the
committee shall impair the right of a quorum to exercise
all the rights and perform all the duties of the committee.

(f) The committee shall review and evaluate all appli-
cations for reservation of funds submitted to the develop-
ment office by a governmental body pursuant to the pro-
visions of subsections (d) and (e), section twenty-one of this article, and shall make reservations of the state allocation (as defined in subdivision (2), subsection (b) of said section) pursuant to subdivision (3), subsection (b) and subsection (c) of said section.

§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.

(a) Private activity bonds (as defined in Section 141(a) of the United States Internal Revenue Code of 1986, other than those described in Section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code, or under article eighteen, chapter thirty-one of this code, during any calendar year shall not exceed the ceiling established by Section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding: (i) That, in an attempt to promote economic revitalization of distressed urban and rural areas, certain special tax incentives will be provided for empowerment zones and enterprise communities to be designated from qualifying areas nominated by state and local governments, all as set forth by Section 1391 et seq. of the United States Internal Revenue Code; (ii) that qualified businesses operating in enterprise communities and empowerment zones will be eligible to finance property and provide other forms of financial assistance as provided for in Section 1394 of the United States Internal Revenue Code; (iii) that it is in the best interest of this state and the citizens thereof to facilitate the acquisition, construction and equipping of projects within designated empowerment zones and enterprise communities by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for such projects. It is hereby further determined and declared as a matter of legislative finding: (iv) that the production of bituminous coal in this state has resulted in coal waste, which coal waste is stored in areas generally referred to as gob piles; (v) that such gob piles are unsightly and
have the potential to pollute the environment in this state; (vi) that the utilization of the materials in such gob piles to produce alternative forms of energy needs to be encouraged; (vii) that Section 142(a)(6) of the United States Internal Revenue Code of 1986, permits the financing of solid waste disposal facilities through the issuance of such private activity bonds; and (viii) that it is in the best interest of this state and the citizens thereof to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for such projects.

(b) On or before the first day of each calendar year, the executive director of the development office shall determine the state ceiling for such year based on the criteria of the United States Internal Revenue Code, which annual ceiling shall be allocated among the several issuers of bonds under this article or under article eighteen, chapter thirty-one of this code, as follows:

(1) Fifty million dollars shall be allocated to the West Virginia housing development fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects;

(2) The amount remaining after the allocation to the West Virginia housing development fund described in subdivision (1) of this subsection shall be retained by the West Virginia development office and shall be referred to in this section as the "state allocation";

(3) For calendar year one thousand nine hundred ninety-five, twenty-five and one-half percent of the state allocation and for all subsequent calendar years, thirty-five percent of the state allocation shall be set aside by the development office to be made available for lessees, purchasers or owners of proposed projects, hereafter in this section referred to as "nonexempt projects", which do not qualify as exempt facilities as defined by United States Internal Revenue Code. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of
general economic benefit and any rule or regulation that
the council for community and economic development
may promulgate pursuant to section three, article two,
chapter five-b of this code: Provided, That all requests for
reservations of funds from projects described in this sub-
section shall be submitted to the development office on or
before the first day of November of each calendar year:
Provided, however, That on the fifteenth day of Novem-
ber of each calendar year, the uncommitted portion of this
part of the state allocation, shall revert to and become part
of the state allocation portion described in subsection (g)
of this section; and

(4) For calendar year one thousand nine hundred
ninety-five, four and one-half percent of the state alloca-
tion and for all subsequent calendar years, ten percent of
the state allocation shall be made available for lessees,
purchasers or owners of proposed commercial or industri-
al projects which qualify as exempt facilities under Section
1394 of the United States Internal Revenue Code. All
reservations of private activity bonds for the projects shall
be approved and awarded by the committee based upon
an evaluation of general economic benefit and any rule or
regulation that the council for community and economic
development may promulgate pursuant to section three,
article two, chapter five-b of this code: Provided, That all
requests for reservations of funds from projects described
in this subsection shall be submitted to the development
office on or before the first day of November of each
calendar year: Provided, however, That on the fifteenth
day of November of each calendar year, the uncommitted
portion of this part of the state allocation shall revert to
and become part of the state allocation portion described
in subsection (g) of this section.

(c) For calendar year one thousand nine hundred
ninety-five, the remaining seventy percent and for all
subsequent calendar years, the remaining fifty-five percent
of the state allocation shall be made available for lessees,
purchasers or owners of proposed commercial or industri-
al projects which qualify as exempt facilities as defined by
Section 142(a) of the United States Internal Revenue
Code. All reservations of private activity bonds for ex-
empt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule or regulation that the council for community and economic development may promulgate pursuant to section three, article two, chapter five-b of this code: Provided, That no reservation shall be in an amount in excess of fifty percent of this portion of the state allocation: Provided, however, That all requests for reservations of funds from projects described in this subsection shall be submitted to the development office on or before the first day of November of each calendar year: Provided further, That on the fifteenth day of November of each calendar year, the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(d) No reservation shall be made for any project until the governmental body seeking the same shall submit a notice of reservation of funds as provided in subsection (e) of this section. The governmental body must first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum amount of bonds to be issued. Each governmental body seeking a reservation of funds following the adoption of such inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the development office. Such notice shall include information as may be required by the development office pursuant to any rule or regulation of the council for community and economic development. Notwithstanding the foregoing, when a governmental body proposes to issue bonds for the purpose of: (i) Constructing, acquiring or equipping a project described in subdivision (3) or (4), subsection (b) of this section; or (ii) constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent such project qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, the project may be awarded a reservation of funds from the state allocation available for three years subsequent to the year in which the notice of reservation of
funds is submitted, at the discretion of the executive director of the development office: Provided, That no discretionary reservation may be made for any single project described in this subsection in an amount in excess of thirty-five percent of the state allocation available for the year subsequent to the year in which the request is made. A discretionary reservation of the state allocation for a project described in this subsection shall not be granted by the executive director of the development office unless the project for which the request is made has received a certification from the federal energy regulatory commission as a qualifying facility or a cogeneration project.

(e) Currently with or following the submission of its notice of inducement, the governmental body at any time deemed expedient by it may submit its notice of reservation of funds which shall include the following information:

1. The date of the notice of reservation of funds;
2. The identity of the governmental body issuing the bonds;
3. The date of inducement and the prospective date of issuance;
4. The name of the entity for which the bonds are to be issued;
5. The amount of the bond issue or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;
6. The type of issue; and
7. A description of the project for which the bonds are to be issued.

(f) The development office shall accept the notice of reservation of funds no earlier than the first calendar workday of the year for which a reservation of funds is sought: Provided, That a notice of reservation of funds with respect to a project described in subdivision (4), subsection (b) of this section or an energy producing project that is eligible for a reservation of funds for a year subse-
quent to the year in which the notice of reservation of funds is submitted may contain an application for funds from a subsequent year's state allocation. Upon receipt of the notice of reservation of funds, the development office shall immediately note upon the face of the notice the date and time of reception.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the thirty-first day of December following such date of reservation if sooner and a statement of bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the same has not been received by the development office within that time, then the reservation shall expire and be deemed to have been forfeited and the funds so reserved shall be released and revert to the portion of the state allocation from which the funds were originally reserved and shall then be made available for other qualified issues in accordance with this section and the Internal Revenue Code: Provided, That as to any reservation for a nonexempt project or any reservation for a project described in subdivision (4), subsection (b) of this section that is forfeited on or after the first day of November in any calendar year, such reservation shall revert to the state allocation for allocation by the industrial revenue bond allocation review committee: Provided, however, That as to any notice of reservation of funds received by the development office during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to Section 146(f)(5) of the Internal Revenue Code, the notice of reservation of funds and the reservation to which the same relates shall not expire or be subject to forfeiture: Provided further, That any unused state ceiling as of the thirty-first day of December in any year not otherwise subject to a carry forward pursuant to Section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia housing development fund, which shall be deemed to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage...
bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds upon loss of a reservation pursuant to this section shall be treated in the same manner as a new notice of reservation of funds in accordance with subsections (d) and (e) of this section.

(h) Once a reservation of funds has been made for a project described in subdivision (4), subsection (b) of this section or for an energy producing project which relies, in whole or in part, upon coal waste as fuel and otherwise qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, notwithstanding the language of subsection (g) of this section, the reservation shall remain fully available with respect to such project until the first day of October in the year from which the reservation was made at which time, if the bond issue has not been finally closed, the reservation shall expire and be deemed forfeited and the funds so reserved shall be released as provided in subsection (g) of this section.

CHAPTER 49

(Com. Sub. for H. B. 2508—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-six, all relating to the sale of state road general obligation bonds; providing for the deposit of bond proceeds in the state road fund; setting forth the definitions to be used in the article; authorizing the issuance of bonds by the governor upon resolution by the Legislature;
exempting interest on bonds from taxation; setting forth the amount of bonds which may be sold in each fiscal year; creating the safe road bond debt service fund and dedicating the fund for the payment of interest on bonds; setting forth the source of funds for the payment of debt service; providing for the investment of the remainder of the safe road bond debt service fund; setting forth the covenants between the state and the bondholders; setting forth impermissible conflicts of interest and providing criminal penalties for violation of the conflict of interest provisions; providing that state road bonds are lawful investments for specified entities; providing for the sale of refunding bonds and the manner of making interest payments thereon; providing for transfer of funds upon dissolution of division of highways; providing for the selection of the financial advisor for the issuance of bonds; providing for the selection of bond counsel; providing for the selection of underwriters for the issuance of bonds; authorizing the payment of expenses from the safe road bond debt service fund; and providing for the dedication of the gasoline and special fuel excise tax to pay debt service.

Be it enacted by the Legislature of West Virginia:

That section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article twenty-six, all to read as follows:

Article
3. State Road Fund.
26. State Road Bonds.

ARTICLE 3. STATE ROAD FUND.

§17-3-1. What constitutes fund; payments into fund; use of money in fund.

There shall be a state road fund, which shall consist of the proceeds of all state license taxes imposed upon automobiles or other motor or steam driven vehicles; the registration fees imposed upon all owners, chauffeurs, operators and dealers in automobiles or other motor driven vehicles; all sums of money which may be donated
to such fund; all proceeds derived from the sale of state
bonds issued pursuant to any resolution or act of the
Legislature carrying into effect the “Better Roads
Amendment” to the constitution of this state, adopted in
the month of November, one thousand nine hundred
sixty-four, except that the proceeds from the sale of these
bonds shall be kept in a separate and distinct account in
the state road fund; all proceeds from the sale of state
bonds issued pursuant to any resolution or act of the
Legislature carrying into effect the “Safe Roads
Amendment of 1996” to the constitution of this state, adopted in
the month of November, one thousand nine
hundred ninety-six, except that the proceeds from the sale
of these bonds shall be kept in a separate and distinct
account in the state road fund; all moneys and funds
appropriated to it by the Legislature; and all moneys
allotted or appropriated by the federal government to this
state for road construction and maintenance pursuant to
any act of the Congress of the United States; the proceeds
of all taxes imposed upon and collected from any person,
firm or corporation and of all taxes or charges imposed
upon and collected from any county, district or
municipality for the benefit of the fund; the proceeds of
all judgments, decrees or awards recovered and collected
from any person, firm or corporation for damages done
to, or sustained by, any of the state roads or parts thereof;
all moneys recovered or received by reason of the
violation of any contract respecting the building,
construction or maintenance of any state road; all
penalties and forfeitures imposed, recovered or received
by reason thereof; and any and all other moneys and
funds appropriated to, imposed and collected for the
benefit of such fund, or collected by virtue of any statute
and payable to such fund: Provided, That notwithstanding
any provisions of this code to the contrary, fifty cents of
every license fee paid pursuant to the provisions of
subdivision (2), subsection (a), section eight, article two,
chapter seventeen-b of this code shall be paid to the
special fund established pursuant to the provisions of
subsection (a), section twelve, article two, chapter three of
this code.
When any money is collected from any of the sources aforesaid, it shall be paid into the state treasury by the officer whose duty it is to collect and account for the same, and credited to the state road fund, and shall be used only for the purposes named in this chapter, which are: (a) To pay the principal and interest due on all state bonds issued for the benefit of said fund, and set aside and appropriated for that purpose; (b) to pay the expenses of the administration of the road department; and (c) to pay the cost of maintenance, construction, reconstruction and improvement of all state roads.

ARTICLE 26. STATE ROAD BONDS.

§17-26-1. Definitions.
§17-26-2. State road general obligation bonds; amount; when may issue.
§17-26-3. Creation of debt service fund; disbursements to pay debt service on state road general obligation bonds.
§17-26-4. Safe road bond debt service fund; sources used to pay bonds and interest; investment of remainder.
§17-26-5. Covenants of state.
§17-26-6. Sale by governor; minimum price; certification of annual debt service amount.
§17-26-7. Conflicts of interest.
§17-26-8. State road bonds lawful investments.
§17-26-10. Termination or dissolution.
§17-26-11. Treasurer to determine financial advisor.
§17-26-12. Governor to determine bond counsel.
§17-26-13. Approval and payment of all necessary expenses.
§17-26-14. Dedication of tax.

§17-26-1. Definitions.

1 For purposes of this article:
2 (a) “Commissioner” means the West Virginia commissioner of highways continued pursuant to section one, article two-a of this chapter;
3 (b) “Amendment” means the amendment to the constitution of this state entitled “Safe Roads Amendment of 1996” as approved by referendum in the month of November, one thousand nine hundred ninety-six;
(c) "State road bond" means any bond or bonds issued by the state pursuant to section two of this article;

(d) "Division" means the West Virginia division of highways established under section one, article two-a, of this chapter, or any successor to all or any substantial part of its powers and duties; and

(e) "Secretary" means the secretary of the West Virginia department of transportation.

§17-26-2. State road general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the "Safe Roads Amendment of 1996" of the par value not to exceed in the aggregate five hundred fifty million dollars, are hereby authorized to be issued and sold for matching available federal funds for highway construction and for general highway construction or improvements in each of the fifty-five counties in this state, as provided for by the constitution and the provisions of this article. During the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, the amount of one hundred ten million dollars in bonds may be sold. That same amount is authorized to be sold in each of the next four following fiscal years: Provided, That any amount not sold in a fiscal year may be carried forward and sold in the next fiscal year.

These bonds may be issued by the governor upon resolution passed by the Legislature authorizing the same. The bonds shall bear the date and mature at the time, bear interest at the rate, be in amounts, be in denominations, be in the registered form, carry registration privileges, be due and payable at the time and place and in amounts, and subject to terms of redemption as the resolution may allow.

Both the principal and interest of the bonds shall be payable in the lawful money of the United States of America and the bonds and the interest thereon shall be exempt from taxation by the state of West Virginia, or by any county, district or municipality thereof, which fact
shall appear on the face of the bonds as part of the contract with the holder of the bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the state treasurer, under the great seal of the state or a facsimile of the great seal, and countersigned by the manual or facsimile signature of the auditor of the state.

§17-26-3. Creation of debt service fund; disbursements to pay debt service on state road general obligation bonds.

There is hereby created a special account in the state treasury, which shall be designated and known as the “Safe Road Bond Debt Service Fund”, into which shall be deposited any and all amounts appropriated by the Legislature from the state road fund or funds from any source whatsoever which is made liable by law for the purpose of paying the interest on the bonds or paying off and retiring bonds issued pursuant to this article.

§17-26-4. Safe road bond debt service fund; sources used to pay bonds and interest; investment of remainder.

All funds deposited to the credit of the safe road bond debt service fund shall be kept by the treasurer of the state in a separate account and all money belonging to the fund shall be deposited in the treasury to the credit of the fund.

The fund shall be applied by the treasurer of the state for payments on the principal and interest on bonds sold pursuant to this article as it becomes due and payable. The remainder of the fund, if any, shall be invested by the state board of investments in the manner authorized under article six, chapter twelve of this code.

§17-26-5. Covenants of state.

The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That the bonds shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of the bonds; (3)
that an annual state tax shall be collected in an amount sufficient to pay, as it may accrue, the interest on the bonds and the principal thereof; and (4) that the tax shall be levied in any year only to the extent that the moneys transferred to the safe road bond debt service fund as provided in sections three and four, of this article which are irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of any bond becoming due and payable in such year are insufficient therefor.

§17-26-6. Sale by governor; minimum price; certification of annual debt service amount.

The governor shall sell the bonds herein authorized at a time or times as provided by a resolution enacted by the Legislature. The governor, in his or her discretion, may, by executive message, request that a resolution be proposed for the issuance of bonds pursuant to this article. The governor shall determine the manner by which bonds will be sold. On or before the first day of June in each fiscal year the commissioner shall certify to the treasurer and secretary of the department of tax and revenue the principal and interest requirement for the following fiscal year on any bonds issued pursuant to this article.

§17-26-7. Conflicts of interest.

No part of the proceeds from the sale of bonds under this article may inure to the benefit of or be distributable to the officers, employees of the state except to pay reasonable compensation for services rendered to the state. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in jail not more than one year, or both fined and imprisoned.

§17-26-8. State road bonds lawful investments.

All state road bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for
life and domestic not for life insurance companies.


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

§17-26-10. Termination or dissolution.

Upon the termination or dissolution of the West Virginia division of highways, all rights and properties of the West Virginia division of highways with respect to the safe road bond debt service fund shall pass to and be vested in the state, subject to the rights of bondholders, lienholders and other creditors.

§17-26-11. Treasurer to determine financial advisor.

The treasurer, in his or her discretion, may select a competent person or firm to serve as financial advisor for the issuance and sale of general obligation bonds issued pursuant to this article.

§17-26-12. Governor to determine bond counsel.

The governor shall select a competent person or firm to serve as bond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of general obligation bonds issued pursuant to this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the governor, the secretary or the commissioner regarding any bond issuance pursuant to this article and all other matters relating to the bond issue. The governor may also, in his or her discretion, select a person or firm to serve as underwriter for any issuance pursuant to this article.
§17-26-13. Approval and payment of all necessary expenses.

All necessary expenses, including legal expenses, incurred in the issuance of any general obligation bonds pursuant to this article shall be paid out of the safe road bond debt service fund. The amount of any expenses incurred shall be certified to the commissioner of highways.

§17-26-14. Dedication of tax.

(a) There shall be dedicated an annual amount from the collections of the tax imposed pursuant to section three, article fourteen, chapter eleven of this code, sufficient to pay the principal and interest of any state road bonds issued pursuant to this article.

(b) Beginning in the month of July, in the fiscal year in which bonds are first issued, and monthly thereafter, there shall be deposited into the safe road bond debt service fund an amount equal to one tenth of the projected annual principal, interest requirements, as certified by the commissioner, on all bonds issued pursuant to this article, of the tax collected pursuant to article fourteen, chapter eleven of this code.

CHAPTER 50

(S. B. 368—By Senators Craigo, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and twenty, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the West Virginia capital company act; reducing for one fiscal year the total tax credits to all companies, which the West Virginia economic development authority may
authorize; allowing officers, employees or directors of a financial institution owning part of any capital company to serve on the capital company's board; and prohibiting capital company board members from a financial institution owning a part of the capital company from voting on an issue relating to that institution.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

§5E-1-20. Limitation on financial institutions.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to rule of the authority.

(b) The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-seven, the total credits authorized for all companies may not exceed a total of five and one-half million dollars. The authority shall, for the first one hundred eighty days of the fiscal year, accept applications only from companies who certify in their application that the investment of its entire capital base will be in one or more small business investment corporations organized under the small business investment act: Provided, however, That the capital base of any such qualified company shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies in the order that said companies are qualified.

(c) Any investor, including an individual, partnership or corporation who makes a capital investment in a qualified West Virginia capital company, is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be
taken against the same taxes and in the same order as set forth in subsections (c) through (i), inclusive, section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership or by a corporation electing to be treated as a Subchapter S corporation may be divided pursuant to election of partners or shareholders.

(d) The tax credit allowed under this section is to be credited against the taxpayer's tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full, or until forfeited: Provided, That: (i) Tax credits may not be carried forward beyond fifteen years; and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted under this article. The categories by dollar amount of credit received shall be as follows:

(1) More than $1.00, but not more than $50,000;

(2) More than $50,000, but not more than $100,000;

(3) More than $100,000, but not more than $250,000;

(4) More than $250,000, but not more than $500,000;

(5) More than $500,000, but not more than $1,000,000;

(6) More than $1,000,000.
§5E-1-20. Limitation on financial institutions.

1. Not more than forty-nine percent of the total capital base of any capital company may be owned by banks, savings and loan associations, savings banks or other financial institutions, or any affiliate thereof, as investors.
2. No officer, employee or director of any such financial institution may vote as a member of the board of any capital company formed under the provisions of this article if the matter being voted upon affects the financial institution for which the board member serves as an officer, employee or director.

CHAPTER 51

(Com. Sub. For S. B. 365—Senators Chafin, Sprouse, Kimble, Bailey, Snyder and Wiedebusch)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article one-b, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, seventeen, nineteen, twenty-six and thirty-one, article one-a of said chapter; to amend and reenact sections two, three, five, six, seven, nine, eleven and twelve, article one-b of said chapter; and to further amend said article by adding thereto a new section, designated section sixteen, all relating to establishing guidelines for child support award amounts; redefining the terms “adjusted gross income”, “attributed income”, “automatic data processing and retrieval system”, “extraordinary medical expenses”, “gross income”, “shared physical custody” and “unreimbursed health care expenses”; providing for the calculation of child support orders; establishing monthly basic child support obligations through use of a table; providing for a federal child care tax credit; setting forth a worksheet for the computation of child support orders in sole custody cases; pro-
providing for the calculation of child support obligations in cases where there is shared physical custody and setting forth a worksheet for the computation of child support orders in cases of shared physical custody; allowing an adjustment when an obligor’s social security benefits are sent directly to the child; providing for modification of a child support order if there is a substantial change of circumstances; providing for an allocation of the right to claim dependent children for income tax purposes; and authorizing a circuit court to provide for the investment of child support for future educational and other needs of the child.

Be it enacted by the Legislature of West Virginia:

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

Article
1A. Definitions.
1B. Guidelines for Child Support Awards.

ARTICLE 1A. DEFINITIONS.

§48A-1A-3. Attributed income.
§48A-1A-4. Automatic data processing and retrieval system.
§48A-1A-17. Extraordinary medical expenses.


(a) “Adjusted gross income” means gross income less the payment of previously ordered child support, spousal support or separate maintenance.

(b) A further deduction from gross income for addi-
tional dependents may be allowed by the court or master if the parent has legal dependents other than those for whom support is being determined. An adjustment may be used in the establishment of a child support order or in a review of a child support order. However, in cases where a modification is sought, the adjustment should not be used to the extent that it results in a support amount lower than the previously existing order for the children who are the subject of the modification. The court or master may elect to use the following adjustment because it allots equitable shares of support to all of the support obligor’s legal dependents. Using the income of the support obligor only, determine the basic child support obligation (from the table of basic child support obligations in section three, article one-b of this chapter) for the number of additional legal dependents living with the support obligor. Multiply this figure by 0.75 and subtract this amount from the support obligor's gross income.

(c) As used in this section, the term “legal dependents” means:

(1) Minor natural or adopted children who live with the parent; and

(2) Natural or adopted adult children who are totally incapacitated because of physical or emotional disabilities and for whom the parent owes a duty of support.

§48A-1A-3. Attributed income.

(a) “Attributed income” means income not actually earned by a parent, but which may be attributed to the parent because he or she is unemployed, is not working full time, or is working below full earning capacity, or has nonperforming or under-performing assets. Income may be attributed to a parent if the court or master evaluates the parent’s earning capacity in the local economy (giving consideration to relevant evidence that pertains to the parent’s work history, qualifications, education and physical or mental condition) and determines that the parent is unemployed, is not working full time, or is working below full earning capacity. Income may also be attributed to a parent if the court or master finds that the obligor has
nonperforming or under-performing assets.

(b) If an obligor: (1) Voluntarily leaves employment or voluntarily alters his or her pattern of employment so as to be unemployed, underemployed or employed below full earning capacity; (2) is able to work and is available for full-time work for which he or she is fitted by prior training or experience; and (3) is not seeking employment in the manner that a reasonably prudent person in his or her circumstances would do, then an alternative method for the court or master to determine gross income is to attribute to the person an earning capacity based on his or her previous income. If the obligor's work history, qualifications, education or physical or mental condition cannot be determined, or if there is an inadequate record of the obligor's previous income, the court or master may, as a minimum, base attributed income on full-time employment (at forty hours per week) at the federal minimum wage in effect at the time the support obligation is established.

(c) Income shall not be attributed to an obligor who is unemployed or underemployed or is otherwise working below full earning capacity if any of the following conditions exist:

(1) The parent is providing care required by the children to whom the parties owe a joint legal responsibility for support, and such children are of preschool age or are handicapped or otherwise in a situation requiring particular care by the parent;

(2) The parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education: *Provided, That if the parent is involved in an educational program, the court or master shall ascertain that the person is making substantial progress toward completion of the program;*

(3) The parent is, for valid medical reasons, earning an income in an amount less that previously earned; or
(4) The court or master makes a written finding that other circumstances exist which would make the attribution of income inequitable: Provided, That in such case, the court or master may decrease the amount of attributed income to an extent required to remove such inequity.

(d) The court or master may attribute income to a parent's nonperforming or under-performing assets, other than the parent's primary residence. Assets may be considered to be nonperforming or under-performing to the extent that they do not produce income at a rate equivalent to the current six-month certificate of deposit rate, or such other rate that the court or master determines is reasonable.

§48A-1A-4. Automatic data processing and retrieval system.

"Automatic data processing and retrieval system" means a computerized data processing system designed to do the following:

(1) To control, account for and monitor all of the factors in the support enforcement collection and paternity determination process, including, but not limited to:

(A) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction;

(B) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;

(C) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

(D) Delinquency and enforcement activities;

(2) To control, account for and monitor the collection
and distribution of support payments (both interstate and intrastate) the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;

(3) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;

(4) To provide access to the records of the department of health and human resources in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;

(5) To provide for security against unauthorized access to, or use of, the data in such system;

(6) To facilitate the development and improvement of the income withholding and other procedures designed to improve the effectiveness of support enforcement through the monitoring of support payments, the maintenance of accurate records regarding the payment of support and the prompt provision of notice to appropriate officials with respect to any arrearage in support payments which may occur; and

(7) To provide management information on all cases from initial referral or application through collection and enforcement.

§48A-1A-17. Extraordinary medical expenses.

"Extraordinary medical expenses" means uninsured medical expenses in excess of two hundred fifty dollars per year per child which are recurring and can reasonably be predicted by the court or master at the time of establishment or modification of a child support order. Such expenses shall include, but not be limited to, insurance copayments and deductibles, reasonable costs for necessary orthodontia, dental treatment, asthma treatments, physical therapy, vision therapy and eye care, and any uninsured chronic health problem. Nonrecurring or subsequently occurring uninsured medical expenses in excess
of two hundred fifty dollars per year per child shall be separately divided between the parties in proportion to their adjusted gross incomes.


(a) "Gross income" means all earned and unearned income. The word "income" means gross income unless the word is otherwise qualified or unless a different meaning clearly appears from the context. When determining whether an income source should be included in the child support calculation, the court or master should consider the income source if it would have been available to pay child-rearing expenses had the family remained intact or, in cases involving a nonmarital birth, if a household had been formed.

(b) "Gross income" includes, but is not limited to, the following:

(1) Earnings in the form of salaries, wages, commissions, fees, bonuses, profit sharing, tips and other income;

(2) Any payment from a pension plan, an insurance contract, an annuity, social security benefits, unemployment compensation, supplemental employment benefits, workers' compensation benefits and state lottery winnings and prizes;

(3) Interest, dividends or royalties;

(4) Expense reimbursements or in kind payments such as business expense accounts, business credit accounts, and tangible property such as automobiles and meals, to the extent that they provide the parent with property or services he or she would otherwise have to provide;

(5) Attributed income of the parent, calculated in accordance with the provisions of section three, article one-a of this chapter;

(6) Compensation paid for personal services as overtime pay: Provided, That overtime compensation may be excluded from gross income if the parent with the overtime income demonstrates to the court or master that the overtime work is voluntarily performed and that he or she
did not have a previous pattern of working overtime hours prior to separation or birth of a nonmarital child;

(7) Income from self-employment or the operation of a business, minus ordinary and necessary expenses which are not reimbursable, and which are lawfully deductible in computing taxable income under applicable income tax laws, and minus FICA and medicare contributions made in excess of the amount that would be paid on an equal amount of income if the parent was not self-employed: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from such employment during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such income, whichever period is shorter;

(8) Income from seasonal employment or other sporadic sources: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from seasonal employment or other sporadic sources received during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such compensation, whichever period is shorter; and

(9) Alimony and separate maintenance receipts.

(c) Depending on the circumstances of the particular case, the court or master may also include severance pay, capital gains and net gambling, gifts or prizes as gross income.

(d) “Gross Income” does not include:

(1) Income received by other household members such as a new spouse;

(2) Child support received for the children of another relationship;

(3) Means-tested assistance such as aid to families with dependent children, supplemental security income and food stamps; and

(4) A child’s income unless the court or master deter-

"Shared physical custody" means an arrangement under which each parent keeps a child or children overnight for more than thirty-five percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.


"Unreimbursed health care expenses" means the child's portion of health insurance premiums and extraordinary medical expenses.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-2. Calculation of child support order.


§48A-1B-5. Federal child care tax credit.

§48A-1B-6. Computation of child support order in sole custody cases.

§48A-1B-7. Shared physical custody adjustment.

§48A-1B-9. Adjustment for obligor's social security benefits sent directly to the child.


§48A-1B-12. Tax exemption for child due support.

§48A-1B-16. Investment of child support.

§48A-1B-2. Calculation of child support order.

(a) Both parents' adjusted gross income, as defined in section two, article one-a of this chapter, is used to determine the amount of child support. Unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court or master less any extraordinary credits agreed to by the parents or ordered by the court or master are added to the basic child support obligation to determine the total child support obligation. The child support order is determined by dividing the total child support obligation between the parents in proportion to their income.

(a) The basic child support obligation is determined from the following table of monthly basic child support obligations:

**MONTHLY BASIC CHILD SUPPORT OBLIGATIONS**

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<tr>
<td>$15,000</td>
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</tbody>
</table>

(b) This subsection provides for incomes below table. If combined adjusted gross income is below five hundred fifty dollars per month, which is the lowest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall be set at fifty dollars per month or a discretionary amount determined by the court or master based on the resources and living
expenses of the parents and the number of children due support.

(c) This subsection provides for incomes above table. If combined adjusted gross income is above fifteen thousand dollars per month, which is the highest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall not be less than it would be based on a combined adjusted gross income of fifteen thousand dollars. The court or master may also compute the basic child support obligation for combined adjusted gross incomes above fifteen thousand dollars by the following:

(1) One child — $1,457 + 0.088 \times \text{combined adjusted gross income above fifteen thousand dollars per month};

(2) Two children — $2,108 + 0.129 \times \text{combined adjusted gross income above fifteen thousand dollars per month};

(3) Three children — $2,483 + 0.153 \times \text{combined adjusted gross income above fifteen thousand dollars per month};

(4) Four children — $2,744 + 0.169 \times \text{combined adjusted gross income above fifteen thousand dollars per month};

(5) Five children — $2,974 + 0.183 \times \text{combined adjusted gross income above fifteen thousand dollars per month}; and

(6) Six children — $3,182 + 0.196 \times \text{combined adjusted gross income above fifteen thousand dollars per month}.

§48A-1B-5. Federal child care tax credit.

(a) The amount of the federal tax credit for child care expenses that can be realized by the custodial parent shall be approximated by deducting twenty-five percent from work-related child care costs, except that no such deduc-
tion shall be made for custodial parents with monthly
gross incomes below the following amounts:

(1) One child — $1,150;
(2) Two children — $1,550;
(3) Three children — $1,750;
(4) Four children — $1,950;
(5) Five children — $2,150; and
(6) Six or more children — $2,350.

(b) Work-related child care costs net of any adjust-
ment for the child care tax credit shall be added to the
basic child support obligation and shall be divided be-
tween the parents in proportion to their adjusted gross
income.

§48A-1B-6. Computation of child support order in sole custo-
dy cases.

(a) For sole custody cases, the total child support obli-
gation consists of the basic child support obligation plus
the child's share of any unreimbursed health care expens-
es, work-related child care expenses and any other ex-
traordinary expenses agreed to by the parents or ordered
by the court or master less any extraordinary credits
agreed to by the parents or ordered by the court or mas-
ster.

(b) In a sole custody case, the total basic child support
obligation is divided between the parents in proportion to
their income. From this amount is subtracted the obli-
gor's direct expenditures of any items which were added
to the basic child support obligation to arrive at the total
child support obligation.

(c) Child support for sole custody cases shall be calcu-
lated using the following worksheet:
WORKSHEET A: SOLE PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF ___________________ COUNTY, WEST VIRGINIA CASE NO._____

Mother: __________________ SS No.: ___________ Custodial parent?  □ Yes  □ No

Father: __________________ SS No.: ___________ Custodial parent?  □ Yes  □ No

<table>
<thead>
<tr>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
</tr>
</thead>
<tbody>
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<td></td>
</tr>
</tbody>
</table>

PART I. CHILD SUPPORT ORDER

<table>
<thead>
<tr>
<th></th>
<th>Mother</th>
<th>Father</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MONTHLY GROSS INCOME</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>a. Minus preexisting child support payment</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>b. Minus maintenance paid</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>2. MONTHLY ADJUSTED GROSS INCOME</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)</td>
<td>%</td>
<td>%</td>
<td>100%</td>
</tr>
<tr>
<td>4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. ADJUSTMENTS (Expenses paid directly by each parent)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>c. Extraordinary Expenses (Agreed to by parents or by order of the court or master.)</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court or master.)</td>
<td></td>
<td></td>
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</table>
### Child Support

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>e. Total Adjustments</strong> (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>8. NONCUSTODIAL PARENT ADJUSTMENT (Enter noncustodial parent's line 5e.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)</td>
<td>$</td>
<td>$</td>
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</table>

**PART II. ABILITY TO PAY CALCULATION**

(Complete if the noncustodial parent's adjusted monthly gross income is below $1,400.)

<table>
<thead>
<tr>
<th>10. Spendable Income (0.85 x line 2 for noncustodial parent only.)</th>
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</thead>
<tbody>
<tr>
<td>11. Self Support Reserve</td>
<td>$500</td>
<td>$500</td>
</tr>
<tr>
<td>12. Income Available for Support (Line 10 - line 11. If less than $50, then $50)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Adjusted Child Support Order (Lessor of Line 9 and Line 12.)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.

PREPARED BY: | Date:
(d) In cases where the noncustodial parent’s adjusted gross income is below one thousand four hundred dollars per month, an additional calculation in Worksheet A, Part II shall be made. This additional calculation sets the child support order at whichever is lower: (i) Child support at the amount determined in Part I; or (ii) the difference between eighty-five percent of the noncustodial parent’s adjusted gross income and five hundred dollars, or fifty dollars, whichever is more.

§48A-1B-7. Shared physical custody adjustment.

(a) Child support for cases with shared physical custody shall be calculated using Worksheet B. The following method should be used only for shared physical custody as defined in section twenty-six, article one-a of this chapter: That is, cases where each parent has the child for more than one hundred twenty-seven days per year (thirty-five percent).

(b) The basic child support obligation shall be multiplied by 1.5 to arrive at a shared custody basic child support obligation. The shared custody basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent’s portion of the shared custody child support obligation by the percentage of time the child spends with the other parent. The respective basic child support obligations are then offset, with the parent owing more basic child support paying the difference between the two amounts. The transfer for the basic obligation for the parent owing less basic child support shall be set at zero dollars.

(c) Adjustments for each parent’s additional direct expenses on the child are made by apportioning the sum of the parent’s direct expenditures on the child’s share of any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court or master less any extraordinary credits agreed to by the parents or ordered by the court or master to each parent according to their income share. In turn each parent’s net share of additional direct expenses is determined by subtracting the parent’s actual direct expenses on the child’s share of any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or by the court or master less any
extraordinary credits agreed to by the parents or ordered
by the court or master from their share. The parent with a
positive net share of additional direct expenses owes the
other parent the amount of his or her net share of addi-
tional direct expenses. The parent with zero or a negative
net share of additional direct expenses owes zero dollars
for additional direct expenses.

(d) The final amount of the child support order is
determined by summing what each parent owes for the
basic support obligation and additional direct expenses as
defined in subsections (b) and (c) of this section. The
respective sums are then offset, with the parent owing
more paying the other parent the difference between the
two amounts.

(e) Child support for shared physical custody cases
shall be calculated using the following worksheet:

**WORKSHEET B: SHARED PHYSICAL CUSTODY**

<table>
<thead>
<tr>
<th>IN THE CIRCUIT COURT OF __________________________, COUNTY, WEST VIRGINIA</th>
<th>CASE NO. __________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother: ____________________ SS No.: __________</td>
<td>Custodial parent? □ Yes □ No</td>
</tr>
<tr>
<td>Father: ____________________ SS No.: __________</td>
<td>Custodial parent? □ Yes □ No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
<th>Children</th>
<th>SSN</th>
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</table>

**PART I. BASIC OBLIGATION**

| 1. MONTHLY GROSS INCOME | $ | $ |
| a. Minus preexisting child support payment | - | - |
| b. Minus maintenance paid | - | - |

| 2. MONTHLY ADJUSTED GROSS INCOME | $ | $ | $ |

| 3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income) | % | % | 100% |

| 4. BASIC OBLIGATION (Use line 2 Combined to find amount from Child Support Schedule) | $ |

**PART II. SHARED CUSTODY ADJUSTMENT**
### Part III. Adjustments for Additional Expenses

#### 12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)

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#### 12b. Extraordinary Medical Expenses (Uninsured only) and Children’s Portion of Health Insurance Premium Costs.

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#### 12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court or master.)

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#### 12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court or master.)

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#### 12e. Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent’s totals together for Combined amount.)

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#### 13. Each Parent’s Share of Additional Expenses (Line 3 x line 12e Combined.)

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#### 14. Each parent’s Net Share of Additional direct expenses (Each parent’s line 13-line 12e. If negative number, enter $0)

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#### 15. Amount Transferred for Additional Expenses (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter $0 for other parent.

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### Part IV. Recommended Child Support Order

#### 16. Total Amount Transferred (Line 11 + line 15)

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§48A-1B-9. Adjustment for obligor’s social security benefits sent directly to the child.

1. If a proportion of the obligor’s social security benefit is paid directly to the custodian of his or her dependents who are the subject of the child support order, the following adjustment shall be made. The total amount of the social security benefit which includes the amounts paid to the obligor and the obligee shall be counted as gross income to the obligor. In turn, the child support order will be calculated as described in section six of this article. To arrive at the final child support amount, however, the amount of the social security benefits sent directly to the child’s household will be subtracted from the child support order. If the child support order amount results in a negative amount it shall be set at zero.


1. The provisions of a child support order may be modified if there is a substantial change of circumstances. If application of the guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered to be a substantial change.

§48A-1B-12. Tax exemption for child due support.

1. Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the custodial parent except in cases of shared custody. In shared custody cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax
§48A-1B-16. Investment of child support.

A circuit judge has the discretion, in appropriate cases, to direct that a portion of child support be placed in trust and invested for future educational or other needs of the child. The family law master may recommend and the circuit judge may order such investment when all of the child's day-to-day needs are being met such that, with due consideration of the age of the child, the child is living as well as his or her parents. A trustee named by the court shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. A trustee shall be governed by the provisions of the uniform prudent investor act as set forth in article six-c, chapter forty-four of this code. The court may prescribe the powers of the trustee and provide for the management and control of the trust. Upon petition of a party or the child's guardian or next friend and upon a showing of good cause, the court may order the release of funds in the trust from time to time.
AN ACT to amend and reenact sections two, three and four, article five-k, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to early intervention services for children with developmental delays; modifying definitions; increasing responsibilities of the department of health and human resources to include personnel development; and authorizing additions to the interagency coordinating council.

Be it enacted by the Legislature of West Virginia:

That sections two, three and four, article five-k, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.


§16-5K-3. Responsibilities of the department of health and human resources.

§16-5K-4. Interagency coordinating council.


1 Unless the context clearly otherwise indicates, as used in this article:

2 (a) "Cabinet" means the governor’s cabinet on children and families.

3 (b) "Council" means the governor’s early intervention interagency coordinating council.

4 (c) "Department" means the department of health and human resources.

5 (d) "Early intervention services" means developmental services which:

6 (1) Are designed to meet the developmental needs of developmentally delayed infants and toddlers and the needs of the family related to enhancing the child’s development;

7 (2) Are selected in collaboration with the parents;
(3) Are provided under public supervision in conformity with an individualized family service plan, and at no cost to families;

(4) Meet the state's early intervention standards, as established by the department of health and human resources with the assistance of the governor's early intervention interagency coordinating council;

(5) Include assistive technology, audiology, audiology case management, family training, counseling and home visits, health services necessary to enable a child to benefit from other early intervention services, medical services only for diagnostic or evaluation purposes, nursing services, nutrition services, occupational therapy, physical therapy, psychological services, social work services, special instruction, speech-language pathology, vision and transportation; and

(6) Are provided by licensed or otherwise qualified personnel, including audiologists, family therapists, nurses, nutritionists, occupational therapists, orientation and mobility specialists, physical therapists, physicians, psychologists, social workers, special educators, speech-language pathologists and paraprofessionals appropriately trained and supervised.

(e) "Infants and toddlers with developmental delay" means children from birth to thirty-six months of age who need early intervention services for any of the following reasons:

(1) They are experiencing developmental delays, as measured by appropriate methods and procedures, in one or more of the following areas: Cognitive, physical, including visual and hearing, communicative, adaptive, social, language and speech, or psycho-social development or self-help skills; or

(2) They have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or
They are at risk of having substantial developmental delays if early intervention services are not provided.

§16-5K-3. Responsibilities of the department of health and human resources.

(a) The department of health and human resources is the administering agency for the development of a statewide, comprehensive, coordinated, interagency system of early intervention services.

(b) Consistent with the provisions of Public Law 99-457, as enacted by the Congress of the United States, the department has the following responsibilities:

1. To carry out the general administration, supervision and monitoring of early intervention programs and activities;
2. To resolve complaints regarding the requirements of Public Law 99-457;
3. To identify and coordinate all available resources within the state from federal, state, local and private sources;
4. To enter into formal interagency agreements with other state agencies involved in early intervention;
5. To resolve intraagency and interagency disputes and to ensure that early intervention services are provided in a timely manner pending the resolution of such disputes; and
6. To coordinate and implement a comprehensive system of personnel development, including the certification and credentialing of qualified personnel pursuant to federal regulations or requirements;

(c) The department may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to carry out the purposes of this article.
(d) The department of health and human resources and the department of education shall enter into a formal interagency agreement regarding early intervention services. The agreement shall define the financial responsibility of each agency, describe the transition of services to children and their families between service systems, and establish procedures for resolving disputes.

§16-5K-4. Interagency coordinating council.

(a) The governor's early intervention interagency coordinating council is hereby established. The council is composed of at least fifteen members appointed by the governor with additional ex officio members representing specific agencies serving infants and toddlers with developmental delays.

(b) The membership of the council shall consist of the following:

(1) At least three parents of children, ages birth through six years of age, who have developmental delays;

(2) At least three persons, representative of the public or private service providers;

(3) At least one member of the House of Delegates recommended by the speaker of the House of Delegates and one member of the Senate recommended by the Senate president;

(4) At least one person from higher education involved in training individuals to provide services under this article; and

(5) A representative of each of the agencies involved in the provision of or payment for early intervention services to infants and toddlers with developmental delays and their families.

(c) The council shall meet at least quarterly and in such place as it considers necessary.

(d) The council is responsible for the following functions:
(1) To advise and assist the department of health and human resources in the development and implementation of early intervention policies;

(2) To assist the department in achieving the full participation of all relevant state agencies and programs;

(3) To collaborate with the governor’s cabinet on children and families in the coordination of early intervention services with other programs and services for children and families;

(4) To assist the department in the effective implementation of a statewide system of early intervention services;

(5) To assist the department in the resolution of disputes;

(6) To advise and assist the department in the preparation of grant applications; and

(7) To prepare and submit an annual report to the governor, the Legislature and the United States secretary of education on the status of early intervention programs within the state.

CHAPTER 53

(H. B. 2680—By Delegates Givens, Staton, Kominar, Mahan, Underwood, Riggs and Smirl)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]
new section, designated section thirteen-e; to amend and reenact sections six and six-a, article five-a of said chapter; to amend and reenact sections two and four, article five-b of said chapter; to amend and reenact article five-c of said chapter; to further amend said chapter by adding thereto a new article, designated article five-e; to amend and reenact section eight, article six of said chapter; to amend article seven of said chapter by adding thereto three new sections, designated sections thirty, thirty-one and thirty-two; and to further amend said chapter by adding thereto a new article, designated article ten, all relating to reforming and reorganizing the system of child welfare throughout the state; setting forth purposes and defining certain terms; transferring certain functions to the division of juvenile services within the department of military affairs and public safety; providing for disposition in juvenile proceedings; establishing a comprehensive plan for juveniles; requiring juvenile facility rules; authorizing assignment of personnel by division of juvenile services; providing for state plan predispositional detention of juveniles; stating purpose and intent of juvenile offender rehabilitation act; setting forth the responsibilities of the department of health and human resources and the division of juvenile services with regard to juveniles; providing for the creation of oversight committees; prescribing the powers and duties of committees; providing for the appointment of members, time and place of meetings, assistance of other agencies, and reimbursement for expenses; creating the division of juvenile services within the department of military affairs and public safety; prescribing duties and responsibilities of the division of juvenile services; transferring fiscal responsibility for the Kanawha home for children to the division of juvenile services; providing for a study to establish a facility for housing juveniles who have been transferred to adult criminal jurisdiction; requiring legislative rules for specialized training for juvenile corrections officers and detention center employees; establishing a procedure for summary review of certain facilities or services, in lieu of certificate of need review; establishing a special account in the state treasury known as the child assessment and in-state placement fund, providing for a juvenile justice database; creating a child placement alternatives corporation; giving management and control of
corporation to board of directors; prescribing the powers of the corporation; providing for a structured risk assessment and classification for children placed in out-of-state facilities; and requiring statistical and analytical reports.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Purposes; Definitions.
2. State Responsibilities for the Protection and Care of Children.
5A. West Virginia Juvenile Offender Rehabilitation Act.
5B. Committee on Juvenile Law.
5C. Division of Juvenile Services.
6. Procedure in Cases of Child Neglect or Abuse.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.
(a) The purpose of this chapter is to provide a system of child welfare for the children of this state that has goals to:

1. Assure each child care and guidance;
2. Serve the mental and physical welfare of the child;
3. Preserve and strengthen the child's family ties;
4. Recognize the fundamental rights of children and parents;
5. Adopt procedures and establish programs that are family-focused rather than focused on specific family members, except where the best interests of the child or the safety of the community are at risk;
6. Involve the child and his or her family or caregiver in the planning and delivery of programs and services;
7. Provide services that are community-based, in the least restrictive settings that are consonant with the needs and potentials of the child and his or her family;
8. Provide for early identification of the problems of children and their families, and respond appropriately with measures and services to prevent abuse and neglect or delinquency;
9. Provide a system for the rehabilitation or detention of juvenile delinquents; and
10. Protect the welfare of the general public.

In pursuit of these goals it is the intention of the Legislature to provide for removing the child from the custody of parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and, when the child has to be removed from his or her family, to secure for the child custody, care and discipline consistent with the child's best interests and other goals herein set out.

(b) The child welfare service of the state shall be administered by the state department of health and human
resources and the division of juvenile services of the
department of military affairs and public safety.

The state department of health and human resources is
designated as the agency to cooperate with the United
States department of health and human services and
United States department of justice in extending and
improving child welfare services, to comply with
regulations thereof, and to receive and expend federal
funds for these services. The division of juvenile services
of the department of military affairs and public safety is
designated as the agency to cooperate with the United
States department of health and human services and
United States department of justice in operating,
maintaining and improving juvenile correction facilities
and centers for the predispositional detention of children,
to comply with regulations thereof, and to receive and
expend federal funds for these services.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION
AND CARE OF CHILDREN.


The division of juvenile services of the department of
military affairs and public safety is hereby authorized and
empowered to operate and maintain centers for juveniles
needing detention pending disposition by a court having
juvenile jurisdiction or temporary care following such
court action.

The state department of health and human resources is
hereby authorized and empowered to provide care,
support and protective services for children who are
handicapped by dependency, neglect, single parent status,
mental or physical disability, or who for other reasons are
in need of public service. Such department is also hereby
authorized and empowered in its discretion to accept
children for care from their parent or parents, guardian,
custodian or relatives and to accept the custody of
children committed to its care by courts. The department
of human services or any county office of such
department is also hereby authorized and empowered in
its discretion to accept temporary custody of children for
Within ninety days of the date of the signatures to a voluntary placement agreement, after receipt of physical custody, the state department of health and human resources shall file with the court a petition for review of the placement, stating the child’s situation and the circumstance that gives rise to the voluntary placement. If the department intends to extend the voluntary placement agreement, the department shall file with the court a copy of the child’s case plan. The court shall appoint an attorney for the child, who shall also receive a copy of the case plan. The court shall schedule a hearing and shall give notice of the time and place and right to be present at such hearing to: The child’s attorney; the child, if twelve years of age or older; the child’s parents or guardians; the child’s foster parents; and any other such persons as the court may in its discretion direct. The child’s presence at such hearing may be waived by the child’s attorney at the request of the child or if the child would suffer emotional harm. At the conclusion of the proceedings, but no later than ninety days after the date of the signatures to the voluntary placement agreement, the court shall enter an order determining whether or not continuation of the voluntary placement is in the best interests of the child; specifying under what conditions the child’s placement shall continue; and specifying whether or not the department has made reasonable efforts to reunify the family and/or provide a plan for the permanent placement of the child.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13e. Comprehensive plan for juveniles.
§49-5-16a. Rules governing juvenile facilities.


(a) In aid of disposition, the juvenile probation officer assigned to the court shall, upon request of the court, make an investigation of the environment of the child and the alternative dispositions possible. The court, upon its

*Clerk’s Note: This section was also amended by H.B. 2873 (Chapter 54), which passed subsequent to this act.
own motion, or upon request of counsel, may order a psychological examination of the child. The report of such examination and other investigative and social reports shall not be made available to the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the child no later than seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct the dispositional proceeding, giving all parties an opportunity to be heard. In disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the child and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the child and the child’s parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the child is in need of extra-parental supervision: (A) Place the child under the supervision of a probation officer of the court or of the court of the county where the child has his or her usual place of abode or other person while leaving the child in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the child’s activities under terms which are reasonable and within the child’s ability to perform, including participation in the litter control program established pursuant to section twenty-five, article seven, chapter twenty of this code, or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the child, that a child is not willing to reside in the custody of his parent or custodian, or that a parent or custodian cannot provide the necessary supervision and care of the child, the court may place the child in temporary foster care or temporarily commit the child to the department of health and human resources or a child welfare agency. The court order shall
44 state that continuation in the home is contrary to the best
45 interest of the child and why; and whether or not the state
46 department made a reasonable effort to prevent the
47 placement or that the emergency situation made such
48 efforts unreasonable or impossible. Whenever the court
49 transfers custody of a youth to the department of human
50 services, an appropriate order of financial support by the
51 parents or guardians shall be entered in accordance with
52 section five, article seven of this chapter and guidelines
53 promulgated by the supreme court of appeals;

54 (5) Upon a finding that the best interests of the child
55 or the welfare of the public require it, and upon an
56 adjudication of delinquency pursuant to subdivision (1),
57 section four, article one of this chapter, the court may
58 commit the child to an industrial home, correctional
59 institution for children, or other appropriate facility for
60 the treatment, instruction and rehabilitation of juveniles:
61 Provided, That the court maintains discretion to consider
62 alternative sentencing arrangements. Commitments shall
63 not exceed the maximum term for which an adult could
64 have been sentenced for the same offense. The order shall
65 state that continuation in the home is contrary to the best
66 interests of the child and why; and whether or not the state
67 department made a reasonable effort to prevent the
68 placement or that the emergency situation made such
69 efforts unreasonable or impossible;

70 (6) Upon an adjudication of delinquency pursuant to
71 subdivision (3) or (4), section four, article one of this
72 chapter, and upon a finding that the child is so totally
73 unmanageable, ungovernable and antisocial that the child
74 is amenable to no treatment or restraint short of
75 incarceration, commit the child to a rehabilitative facility
76 devoted exclusively to the custody and rehabilitation of
77 children adjudicated delinquent pursuant to said
78 subdivision. Commitments shall not exceed the maximum
79 period of one year with discretion as to discharge to rest
80 with the director of the institution, who may release the
81 child and return him or her to the court for further
82 disposition. The order shall state that continuation in the
83 home is contrary to the best interests of the child and why;
84 and whether or not the state department made a reasonable
effort to prevent the placement or that the emergency
situation made such efforts unreasonable or impossible; or

(7) After a hearing conducted under the procedures
set out in subsections (c) and (d), section four, article five,
chapter twenty-seven of this code, commit the child to a
mental health facility in accordance with the child’s
treatment plan; the director may release a child and return
him to the court for further disposition. The order shall
state that continuation in the home is contrary to the best
interests of the child and why; and whether or not the state
department made a reasonable effort to prevent the
placement or that the emergency situation made such
efforts unreasonable or impossible.

(c) The disposition of the child shall not be affected
by the fact that the child demanded a trial by jury or made
a plea of denial. Any dispositional order is subject to
appeal to the supreme court of appeals.

(d) Following disposition, it shall be inquired of the
respondent whether or not appeal is desired and the
response transcribed; a negative response shall not be
construed as a waiver. The evidence shall be transcribed
as soon as practicable and made available to the child or
his or her counsel, if the same is requested for purposes of
further proceedings. A judge may grant a stay of
execution pending further proceedings.

(e) Notwithstanding any other provision of this code
to the contrary, if a child charged with delinquency under
this chapter is transferred to adult jurisdiction and there
tried and convicted, the court may make its disposition in
accordance with this section in lieu of sentencing such
person as an adult.

§49-5-13e. Comprehensive plan for juveniles.

The division of juvenile services within the department
of military affairs and public safety shall develop a
comprehensive plan to establish a unified state system for
social and rehabilitative programming and treatment of
juveniles in predispositional detention centers and in
juvenile correction facilities and a comprehensive plan for
regional juvenile detention facilities and programs. These
plans are to be submitted to the West Virginia Legislature
no later than the first day of January, one thousand nine
hundred ninety-eight.

The comprehensive plan for regional detention
programs and facilities shall be based on a needs
assessment of juvenile detention services and may locate
all newly constructed detention facilities on or near a
regional jail facility, with common facilities and
administration as permitted by federal law.

§49-5-16a. Rules governing juvenile facilities.

The director of the division of juvenile services within
the department of military affairs and public safety shall
prescribe written rules subject to the provisions of chapter
twenty-nine-a of this code, outlining policies and
procedures governing the operation of those correctional,
detention, predispositional detention centers and other
facilities wherein juveniles may be housed. Said policies
and procedures shall include, but shall not be limited to,
standards of cleanliness, temperature and lighting;
availability of medical and dental care; provision of food,
furnishings, clothing and toilet articles; supervision;
procedures for enforcing rules of conduct consistent with
due process of law, and visitation privileges. On and after
the first day of January, one thousand nine hundred
seventy-nine, a child in custody or detention shall have, at
a minimum, the following rights, and the policies
prescribed shall ensure that:

(1) A child shall not be punished by physical force,
deprivation of nutritious meals, deprivation of family visits
or solitary confinement;

(2) A child shall have the opportunity to participate in
physical exercise each day;

(3) Except for sleeping hours a child in a state facility
shall not be locked alone in a room unless such child is
out of control;
(4) A child shall be provided his own clothing or individualized clothing which is clean, supplied by the facility, and daily access to showers;

(5) A child shall have constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the child’s presence, without being read, to inspect for contraband;

(6) A child may make and receive regular local phone calls without charge and long distance calls to his family without charge at least once a week, and receive visitors daily and on a regular basis;

(7) A child shall have immediate access to medical care as needed;

(8) A child in a juvenile detention facility or state institution shall be provided access to education including teaching, educational materials and books;

(9) A child shall have reasonable access to an attorney upon request; and

(10) A child shall be afforded a grievance procedure, including an appeal mechanism.

Upon admission to a jail, detention facility or institution, a child shall be furnished with a copy of the rights provided him by virtue of this section and as further prescribed by rules promulgated pursuant to this section.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-6. Assistance of division of juvenile services of the department of military affairs and public safety.

§49-5A-6a. State plan for predispositional detention centers for juveniles.

§49-5A-6. Assistance of division of juvenile services of the department of military affairs and public safety.

The division of juvenile services of the department of military affairs and public safety is authorized to assign the necessary personnel and provide adequate space for the support and operation of any facility operated by the
division of juvenile services of the department of military
affairs and public safety providing for the detention of
children as provided in this article, subject to and not
inconsistent with the appropriation and availability of
funds.

§49-5A-6a. State plan for predispositional detention centers
for juveniles.

(a) The division of juvenile services of the department
of military affairs and public safety shall develop a
comprehensive plan to maintain and improve a unified
state system of regional predispositional detention centers
for juveniles. The plan shall consider recommendations
from the division of corrections, the governor’s committee
on crime, delinquency and correction, the state board of
education, detention center personnel, juvenile probation
officers and judicial and law-enforcement officials from
throughout the state.

The principal purpose of the plan shall be, through
statements of policy and program goals, to provide for the
effective and efficient use of regional juvenile detention
facilities.

(b) The plan shall identify operational problems of
secure detention centers, including, but not limited to,
overcrowding, security and violence within centers,
difficulties in moving juveniles through the centers within
required time periods, health needs, educational needs,
transportation problems, staff turnover and morale and
other perceived problem areas. The plan shall further
provide recommendations directed to alleviate the
problems.

(c) The plan shall include, but not be limited to,
statements of policies and goals in the following areas:

(1) Licensing of secure detention centers;
(2) Criteria for placing juveniles in detention;
(3) Alternatives to secure detention;
(4) Allocation of fiscal resources to the costs of secure detention facilities;

(5) Information and referral services; and

(6) Educational regulations developed and approved by the West Virginia board of education.

(d) The Legislature shall designate a committee or task force thereof, to act in a continuing capacity as an oversight committee, and shall assist the director of the division of juvenile services within the department of military affairs and public safety in the periodic review and update of the state plan for the predispositional detention centers for juveniles.

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-5B-2. Purpose and intent.

It is the purpose and intent of the Legislature to provide for the creation of all reasonable means and methods that can be established by a humane and enlightened state, solicitous of the welfare of its children, for the prevention of delinquency and for the care and rehabilitation of delinquent children. It is further the intent of the Legislature that this state, through the department of health and human resources and the division of juvenile services of the department of military affairs and public safety, establish, maintain, and continuously refine and develop, a balanced and comprehensive state program for children who are potentially delinquent or are delinquent.

*§49-5B-2. Purpose and intent.

*Clerk’s Note: This section was also amended by H.B. 2873 (Chapter 54), which passed subsequent to this act.
**§49-5B-4. Responsibilities of the department of health and human resources and division of juvenile services of the department of military affairs and public safety.**

(a) The department of health and human resources and the division of juvenile services of the department of military affairs and public safety are empowered to establish, and shall establish, subject to the limits of funds available or otherwise appropriated therefor, programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the juvenile justice system. The development, maintenance and expansion of programs and services may include, but not be limited to, the following:

1. Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, day treatment and any other designated community-based diagnostic, treatment or rehabilitative service;

2. Community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his home;

3. Youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for delinquents and other youth to help prevent delinquency;

*Clerk's Note: This section was also amended by H.B. 2873 (Chapter 54), which passed subsequent to this act.*
(4) Projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting rights of youth impacted by the juvenile justice system;

(5) Educational programs or supportive services designed to keep delinquents, and to encourage other youth to remain, in elementary and secondary schools or in alternative learning situations;

(6) Expanded use of professional and paraprofessional personnel and volunteers to work effectively with youth;

(7) Youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(8) A statewide program designed to reduce the number of commitments of juveniles to any form of juvenile facility as a percentage of the state juvenile population, to increase the use of nonsecure community-based facilities as a percentage of total commitments to juvenile facilities and to discourage the use of secure incarceration and detention.

(b) The department of health and human resources shall establish, within the funds available, an individualized program of rehabilitation for each accused juvenile offender referred to the department after being allowed an improvement period by the juvenile court, and for each adjudicated juvenile offender who, after adjudication, is referred to the department for investigation or treatment or whose custody is vested in the department. Such individualized program of rehabilitation shall take into account the programs and services to be provided by other public or private agencies or personnel which are available in the community to deal with the circumstances of the particular child. Such individualized program of rehabilitation shall be furnished to the juvenile court and shall be available to counsel for the child; it may be modified from time to time at the direction of the department or by order of the juvenile court. The department may develop an individualized program of
rehabilitation for any child referred for noncustodial counseling under section five, article three of this chapter, for any child receiving counsel and advice under section three-a, article five of this chapter, or for any other child upon the request of a public or private agency.

(c) The department of health and human resources and the division of juvenile services of the department of military affairs and public safety are authorized to enter into cooperative arrangements and agreements with private agencies or with agencies of the state and its political subdivisions to effectuate the purpose of this article.

ARTICLE 5C. COMMITTEES ON JUVENILE LAW.

§49-SC-1. Creation of committees.

The Legislature shall create such committees and forums as may be necessary to oversee matters related to juvenile law, placement, housing, detention and correctional facilities. The Legislature shall delegate or contract such responsibilities and duties to other governmental bodies as needed.


The powers and duties of the committees shall include, but not be limited to, the following:

(a) Studying the status and effectiveness of the laws relating to juvenile proceedings, the juvenile referee system, and the West Virginia juvenile offender rehabilitation act, and making recommendations as to any changes needed in the system and the ways and means to effect such changes;

(b) Making further and more specific recommendations within the scope of the study as to the
detention of juvenile offenders, considering both short and long-term detention;

(c) Considering existing juvenile detention facilities and making recommendations, with particular attention to financing, as to the need for updating present facilities and/or creating new facilities and the location of each;

(d) Filing a report to each regular session of the Legislature which will include drafts of legislation necessary to effectuate any recommendations;

(e) Maintaining reference materials concerning juvenile offenders including, without limitation, information as to laws and systems in other states;

(f) Visiting, inspecting, and interviewing residents of juvenile institutions, detention facilities, and places wherein West Virginia juveniles may be held involuntarily and making public reports of such reviews;

(g) Overseeing the maintenance and improvement of the system of predispositional detention of juveniles.

§49-5C-3. Appointment of members.

The committees may include qualified members of the general public as well as members of the Senate and the House of Delegates. An effort shall be made to include representatives of more than one political party on each committee.

§49-5C-4. Time and place of meetings.

The committees shall hold meetings at such times and places as they may designate.

§49-5C-5. Assistance of other agencies.

The committees may request information from any state officer or agency in order to assist in carrying out the terms of this article, and such officer or agency is authorized and directed to promptly furnish any data requested.

§49-5C-6. Expenses; reimbursement.
The members of the committees and their assistants shall be reimbursed for all expenses actually and necessarily incurred in the performance of their duties hereunder by the joint committee on government and finance from the joint expenses fund.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-1. Policy.

§49-5E-2. Division created; transfer of functions; employment of comprehensive strategy.

§49-5E-3. Transfer of functions; duties and powers; employment of comprehensive strategy.

§49-5E-4. Transfer of fiscal responsibility of Kanawha home for children.

§49-5E-5. Adult transfer facility; rules for specialized training for juvenile corrections officers and detention center employees.

§49-5E-1. Policy.

1 It is the policy of the state to provide a continuum of care for its children who have been charged with an offense which would be a crime if committed by an adult and taken into custody. It is further the policy of the state to ensure the safe and efficient custody of a detained child through the entire juvenile justice process, and that this can best be accomplished by the state by and through a single division within the department of military affairs and public safety.

§49-5E-2. Division created; transfer of functions; employment of comprehensive strategy.

1 There is hereby created the division of juvenile services within the department of military affairs and public safety. The director shall be appointed by the governor with the advice and consent of the Senate, and shall be responsible for the control and supervision of each of its offices. The director may appoint deputy directors and assign them duties as may be necessary for the efficient management and operation of the division.

The division of juvenile services shall consist of two subdivisions:

(1) The office of juvenile detention, which shall assume responsibility for operating and maintaining
centers for the predispositional detention of juveniles, including juveniles who have been transferred to adult criminal jurisdiction under section ten, article five of this chapter and juveniles who are awaiting transfer to a juvenile corrections facility; and

(2) The office of juvenile corrections, which shall assume responsibility for operating and maintaining juvenile corrections facilities.

§49-SE-3. Transfer of functions; duties and powers; employment of comprehensive strategy.

The division of juvenile services shall assume the following duties performed by the department of health and human resources as to juveniles in detention facilities or juvenile corrections facilities:

(1) Cooperating with the United States department of justice in operating, maintaining and improving juvenile correction facilities and predispositional detention centers, complying with regulations thereof, and receiving and expending federal funds for the services, as set forth in section one, article one of this chapter;

(2) Providing care for children needing detention pending disposition by a court having juvenile jurisdiction or temporary care following such court action, as set forth in section sixteen, article two of this chapter;

(3) Assigning the necessary personnel and providing adequate space for the support and operation of any facility providing for the detention of children committed to the care of the division of juvenile services, as set forth in section six, article five-a of this chapter;

(4) Proposing rules which outline policies and procedures governing the operation of correctional, detention and other facilities in its division wherein juveniles may be housed, as set forth in section sixteen-a, article five of this chapter;

(5) Assigning the necessary personnel and providing adequate space for the support and operation of its
facilities, as set forth in section six, article five-a of this chapter;

(6) Developing a comprehensive plan to maintain and improve a unified state system of predispositional detention centers for juveniles, as set forth in section six-a, article five-a of this chapter;

(7) Working in cooperation with the department of health and human resources in establishing, maintaining, and continuously refining and developing a balanced and comprehensive state program for children who are delinquent, as set forth in section two, article six-b of this chapter;

(8) In cooperation with the department of health and human resources, establishing programs and services, within available funds, designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the juvenile justice system, as set forth in section four, article five-b of this chapter.

Working in collaboration with the department of health and human resources, the division of juvenile services shall employ a comprehensive strategy for the social and rehabilitative programming and treatment of juveniles consistent with the principles adopted by the office of juvenile justice and delinquency prevention of the office of justice programs of the United States department of justice.

§49-5E-4. Transfer of fiscal responsibility of Kanawha home for children.

(a) "Kanawha home for children" means the county home for the detention of juvenile delinquents or children charged with delinquency as established by the county commission of Kanawha County pursuant to the provisions of a local bill, House Bill No. 141, enacted by the Legislature on the fourteenth day of February, one thousand nine hundred fifty-five, as set forth in the Acts
(b) After the effective date of this section, the division of juvenile services shall assume all fiscal responsibility for operating, maintaining, administering and managing the Kanawha home for children.

§49-5E-5. Adult transfer facility; rules for specialized training for juvenile corrections officers and detention center employees.

(a) On or before the first day of December, one thousand nine hundred ninety-seven, the division of juvenile services shall conduct a study of the appropriateness and cost of renovating the Ohio County jail or other facilities to house juveniles who have been transferred to adult criminal jurisdiction and/or who are awaiting post-sentencing transfer to a correctional facility.

(b) The division of juvenile services shall propose legislative rules to be promulgated by the Legislature according to the provisions of chapter twenty-nine-a of this code, to require juvenile corrections officers and detention center employees to complete specialized training and certification. The training programs shall meet the standards of those offered or endorsed by the office of juvenile justice and delinquency prevention of the office of justice programs of the United States department of justice.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-8. Foster care review; annual reports to the court.

(a) If, twelve months after receipt (by the state department or its authorized agent) of physical custody of a child either by a court ordered placement or by a voluntary agreement, the state department has not placed a child in permanent foster care or an adoptive home or placed the child with a natural parent, the state department shall file with the court a petition for review of the case. The department shall also file with the court a report detailing the efforts that have been made to place the child
in a permanent home and copies of the child's case plan including the permanency plan as defined in section five, article six of this chapter. Copies of the report shall be sent to the child's attorney and be made available to the child's parent(s) or guardian. "Permanent foster care" shall mean a written arrangement with an adult or adults following a six-month trial period whereby the state department places the care, custody and control of a child until the child's emancipation with such adult or adults. The court shall schedule a hearing in chambers, giving notice and the right to be present to: The child's attorney; the child, if twelve years of age or older; the child's parents; the child's guardians; the child's foster parents; and such other persons as the court may in its discretion direct. The child's presence may be waived by the child's attorney at the request of the child or if the child would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine whether and under what conditions the child's commitment to the department shall continue, and to determine what efforts are necessary to provide the child with a permanent home. At the conclusion of the hearing the court shall in accordance with the best interests of the child enter an appropriate order of disposition. The court order shall state: (1) Whether or not the department made reasonable effort to prevent out-of-home placement or that the specific situation made such effort unreasonable; (2) the permanency plan for the child; and (3) services required to meet the child's needs. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in temporary foster care, or, when a child is returned to his or her natural parents subject to conditions imposed by the court, for so long as the conditions are effective.

(b) The state department shall file a supplementary petition for review with the court within twelve months and every twelve months thereafter for every child that remains in the physical or legal custody of the state department until the child is placed in an adoptive home or permanent foster care or returned to his or her parents.
(c) The state department shall annually report to the court the current status of the placements of children in permanent care and custody of the state department who have not been adopted.

(d) The state department shall file a report with the court in any case where any child in the temporary or permanent custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and their counsel. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a stable foster or temporary home: Provided, That no report shall be provided to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(e) The state department shall notify, in writing, the court, the child, if over the age of twelve, the child's attorney, the parents and the parents' attorney forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if this is an emergency move, except where such notification would endanger the child or the foster family. This notice shall not be required in any case where the child is in imminent danger in the child's current placement. The location of the child need not be disclosed, but the purpose of the move should be. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider.

No notice shall be provided pursuant to this provision to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(f) Nothing in this article precludes any party from petitioning the court for review of the child's case at any time. The court shall grant such petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

ARTICLE 7. GENERAL PROVISIONS.
§49-7-30. Certificate of need not required.
§49-7-31. Special account.
§49-7-32. Juvenile justice database.

§49-7-30. Certificate of need not required.

(a) A certificate of need, as provided for in article two-
d, chapter sixteen of this code, is not required by an entity
proposing behavioral health care facilities or behavioral
health care services for children who are placed out of
their home, or who are at imminent risk of being placed
out of their home, if a summary review is performed in
accordance with the provisions of this section.

(b) A summary review of proposed health care
facilities or health care services for children who are
placed out of their home, or who are at imminent risk of
being placed out of their home, is initiated when the
proposal is recommended to the health care cost review
authority by the secretary of the department of health and
human resources, and the secretary has made the
following findings:

(1) That the proposed facility or service is consistent
with the state health plan;

(2) That the proposed facility or service is consistent
with the department's programmatic and fiscal plan for
behavioral health services for children with mental health
and addiction disorders;

(3) That the proposed facility or service contributes to
providing services that are child and family driven, with
priority given to keeping children in their own homes;

(4) That the proposed facility or service will contribute
to reducing the number of child placements in out-of-state
facilities by making placements available in in-state
facilities;

(5) That the proposed facility or service contributes to
reducing the number of child placements in in-state or
out-of-state facilities by returning children to their
families, placing them in foster care programs, or making
available school-based and out-patient services; and
(6) If applicable, that the proposed services will be community-based, locally accessible, and provided in an appropriate setting consistent with the unique needs and potential of each child and his or her family.

(c) The secretary’s findings required by subsection (b) of this section shall be filed with the secretary’s recommendation and appropriate documentation. If the secretary’s findings are supported by the accompanying documentation, the proposal shall not require a certificate of need.

(d) Any entity that does not qualify for summary review shall be subject to certificate of need review.

§49-7-31. Special account.

(a) There is hereby established a special account in the department of health and human resources in the state treasury to be known as the “Child Assessment and In-state Placement Fund.” Any funds provided for the purposes of this article by line-item appropriation of the Legislature in any fiscal year shall be deposited in the special account and used to carry out the purposes of this article. Balances remaining in the special account at the end of the fiscal year shall not expire or revert to the general revenue: Provided, That balances remaining in the account may be redesignated for other purposes by appropriation of the Legislature. The secretary of the department of health and human resources may order the transfer of moneys in the special account to other accounts within the department of health and human resources, to the limited extent that children who are the subject of this article are financially and medically eligible for other programs or services of the division of health and human resources, including programs funded, in whole or in part, by federal funds.

(b) Any moneys saved by the department of health and human resources by virtue of returning children from out-of-state placements after implementing the structured risk assessment and classification system provided for in section four, article nine of this chapter shall be deposited in the child assessment and in-state placement fund and
used solely for the purpose of developing and implementing programs that will reduce the numbers of children in long-term placements outside of their homes.

§49-7-32. Juvenile justice database.

The criminal justice and highway safety division of the department of military affairs and public safety is responsible for collecting, compiling and disseminating information in the juvenile justice database heretofore maintained by the facilities review panel of the juvenile justice committee. Accordingly, and notwithstanding any other provision of this code to the contrary, the division shall be granted access to confidential juvenile records for the limited purpose of continuing maintenance of the juvenile justice database: Provided, That the divisions shall keep such records confidential and not publish any information that would identify any individual juvenile.

ARTICLE 10. CHILD PLACEMENT ALTERNATIVES.

§49-10-1. Creation of child placement alternatives corporation; composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.


§49-10-3. Corporate powers.

§49-10-4. Out-of-state placements; needs assessment; screenings; referral for assessment, placement and services; limitations.

§49-10-5. Statistical and analytical reports.

§49-10-1. Creation of child placement alternatives corporation; composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

(a) There is created as a governmental instrumentality of the state of West Virginia, a public body corporate to be known as the West Virginia child placement alternatives corporation.

(b) The child placement alternatives corporation is created and established to serve a public corporate purpose and to act for the public benefit and as a governmental instrumentality of the state of West Virginia,
to act on behalf of the state and its people in serving the needs of children who are placed out of their homes or who are at risk of out-of-home placement, as well as serving families, providers and policymakers.

(c) The child placement alternatives corporation shall be governed by a board of directors, consisting of nine members, three of whom shall be the secretary of the department of health and human resources, the director of the division of juvenile services within the department of military affairs and public safety, and the chairman of the department of behavioral medicine and psychiatry of the Robert C. Byrd health sciences center at West Virginia university, or their designated representatives as public directors, and six citizen members chosen from the general public residing in the state, no more than two of whom shall be from each congressional district, and not more than three of whom shall be from any political party.

(d) Upon organization of the child placement alternatives corporation, the governor shall appoint, by and with the advice and consent of the Senate, the six private directors to take office and to exercise all powers thereof immediately, with three appointed for terms of two years, and with three appointed for terms of four years, respectively, as the governor shall designate; at the expiration of the initial terms and for all succeeding terms, the governor shall appoint a successor to the office of private director for a term of four years in each case.

(e) In cases of any vacancy in the office of a private director, such vacancy shall be filled by appointment by the governor for the unexpired term.

(f) The governor may remove any private director whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his or her office vacant and may appoint a person for such vacancy as provided in other cases of vacancy.

(g) The chairman of the board of directors shall be designated by the governor from among the directors.
(h) Five members of the board of directors shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board of directors.

(i) No action shall be taken by the board of directors except upon the affirmative vote of a majority of the directors present and voting.

(j) The directors, including the chairman, vice chairman and the treasurer of the board of directors, and the secretary of the board of directors, shall receive no compensation for their services but shall be entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.


(a) The management and control of the child placement alternatives corporation shall be vested solely in the board of directors in accordance with the provisions of this article.

(b) The chairman shall be the chief executive officer of the corporation, and, in his absence, the vice chairman shall act as chief executive officer.

(c) The board of directors may appoint a chief administrative officer and may fix his title, duties and compensation.

(d) The board of directors of the corporation shall annually elect from its membership a treasurer, and shall annually elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the corporation.

(e) The treasurer of the corporation shall be custodian of all funds of the child placement alternatives corporation, and shall be bonded in such amount as the other members of the board of directors may designate.

§49-10-3. Corporate powers.
The child placement alternatives corporation is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, but not limited to, the following:

(1) To act as an information broker or gatekeeper serving children, families, providers and policymakers, functioning as the single entity responsible for recommending appropriate placements for children out of their homes and alternatives to such placements;

(2) To provide one or more diagnostic and evaluation centers to accept referrals and conduct evaluations, including psychiatric, psychological, educational, pediatric and adaptive functioning, as a complement to existing community-based programs and services;

(3) To identify the services and availability of services, as gatekeeper, for level assignment and placement;

(4) To assist the juvenile justice system, mental health providers and social service agencies in the identification of facilities and services appropriate to the needs of individual children, providing access to placement information through one telephone call and a twenty-four hour response time;

(5) To accept appropriations, gifts, grants, bequests and devises and to utilize or dispose of the same to carry out its corporate purposes;

(6) To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purposes;

(7) To collect reasonable fees and charges in connection with providing services as prescribed by this article, and in connection with providing professional, consultative and project assistance services;

(8) To sue and be sued;
(9) To have a seal and alter the same at will;

(10) To make, and from time to time, amend and repeal bylaws and rules not inconsistent with the provisions of this article;

(11) To appoint such officers, employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(12) To acquire, hold and dispose of real and personal property for its corporate purposes;

(13) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association or organization; and

(14) To make and publish such rules as are necessary to effectuate its corporate purposes.

§49-10-4. Out-of-state placements; needs assessment; screenings; referral for assessment, placement and services; limitations.

(a) On or before first day of October, one thousand nine hundred ninety-seven, the corporation shall develop and implement a structured risk assessment and classification system for West Virginia children currently placed in out-of-state facilities. The risk assessment system shall be designed to identify:

(1) Those children who require long-term placement in a facility with special features not available within this state;

(2) Those children who require long-term placement in a facility that is or may become available within this state;

(3) Those children who require short-term care in a facility of not more than three months followed by movement to a less restrictive setting;
(4) Those children who could be placed directly in a community-based setting with appropriate support and services.

(b) The corporation shall cause an initial screening, based on the risk assessment and classification system, to preliminarily identify those children who require long-term placement in a facility with special features not available within this state and those children for whom appropriate in-state placements may be found. After the initial screening, the corporation may conduct further screenings under this subsection at intervals established by the corporation.

(c) The corporation shall develop and implement a plan for: (1) Reviewing and assessing the needs of those children for whom appropriate in-state placements may be found; and (2) developing and implementing specific in-state alternatives for placement of each child, including recommended support services. Based on the initial screening, any or all of the children for whom appropriate in-state placements may be found may be provided with further review and assessment, appropriate in-state placement, and services under. The corporation shall consider:

(1) Services through community-based programs to assist in the prevention of the need for more costly residential care;

(2) The resources and programming available through family resource networks and multidisciplinary teams;

(3) The recommendations of legislative and executive committees, commissions and task forces established to study issues affecting juvenile placement;

(4) The comprehensive strategy and assessment and classification models endorsed by the office of juvenile justice and delinquency prevention of the United States department of justice; and
(5) Individual concerns to be addressed by service and care providers.

(d) The corporation may issue requests for proposals to implement the provisions of this section, and may solicit alternate proposals to meet a defined need. The corporation may further accept bids from any person, firm, agency or corporation, and may enter into contracts or agreements with public or private agencies, licensed health care providers, or other qualified persons for the following functions or combinations of the following functions, according to standards established by the corporation:

(1) Conducting needs assessments for children currently in out-of-state facilities for whom appropriate in-state alternatives may be found and, if the corporation determines that evaluation of family resources and needs is necessary, the child’s family;

(2) Recommending a service plan that best meets the individual needs of the child and may include support services for his or her family;

(3) Obtaining appropriate care, treatment or placement and appropriate community-based service.

§49-10-5. Statistical and analytical reports.

Beginning with the last quarter of the calendar year one thousand nine hundred ninety-seven, the corporation, in cooperation with the secretary of health and human resources, shall prepare a quarterly statistical and analytical report regarding the numbers of children returned to the state since the inception of the program and during the quarter, and the effectiveness of the program established in this article. Copies of the quarterly statistical and analytical reports shall be furnished to the governor and to the joint committee on government and finance.
AN ACT to repeal section five, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section three, article five-b of said chapter; to amend and reenact sections two and four, article one of said chapter; to amend and reenact sections three, eight, nine, eleven, thirteen and sixteen, article five of said chapter; to further amend said article by adding thereto two new sections, designated sections eight-a and eleven-a; and to amend and reenact sections two, four, five, six and seven, article five-b of said chapter, all relating to decriminalizing status offenses and providing that no juvenile shall be confined in a facility for adult offenders.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Purposes; Definitions.
5B. West Virginia Juvenile Offender Rehabilitation Act.

ARTICLE 1. PURPOSES; DEFINITIONS.
§49-1-2. "Juvenile" or "Child" defined.

§49-1-4. Other definitions.

§49-1-2. "Juvenile" or "Child" defined.

As used in this chapter, "juvenile" or "child" means any person under eighteen years of age. Once a juvenile or child is transferred to a court with criminal jurisdiction pursuant to section ten, article five of this chapter, he or she nevertheless remains a juvenile or child for the purposes of the applicability of the provisions of this chapter with the exception of sections one through seventeen of article five of this chapter, unless otherwise stated therein.

§49-1-4. Other definitions.

As used in this chapter:

1. "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities;

2. "Community based," when referring to a facility, program, or service, means located near the juvenile's home or family and involving community participation in planning, operation, and evaluation, and which may include, but is not limited to, medical, educational, vocational, social and psychological guidance, training, special education, counseling, alcoholism and any treatment, and other rehabilitation services;

3. "Court" means the circuit court of the county with jurisdiction of the case or the judge thereof in vacation unless otherwise specifically provided;

4. "Custodian" means a person who has or shares actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceedings;
(5) "Department" or "state department" means the state department of health and human resources;

(6) "Division of juvenile services" means the division within the department of military affairs and public safety pursuant to article five-e of this chapter;

(7) "Guardian" means a person who has care and custody of a child as a result of any contract, agreement or legal proceeding;

(8) "Juvenile delinquent" means a juvenile who has been adjudicated as one who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult;

(9) "Nonsecure facility" means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in such facility and which provides its residents access to the surrounding community with supervision;

(10) "Referee" means a juvenile referee appointed pursuant to section one, article five-a of this chapter, except that in any county which does not have a juvenile referee the judge or judges of the circuit court may designate one or more magistrates of the county to perform the functions and duties which may be performed by a referee under this chapter;

(11) "Secretary" means the secretary of health and human resources;

(12) "Secure facility" means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility;

(13) "Staff-secure facility" means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility and which limits its residents' access to the surrounding community, but is not
characterized by construction fixtures designed to physically restrict the movements and activities of residents;

(14) "Status offender" means a juvenile who has been adjudicated as one:

(A) Who habitually and continually refuses to respond to the lawful supervision by his or her parents, guardian or legal custodian such that the child's behavior substantially endangers the health, safety, or welfare of the juvenile or any other person;

(B) Who has left the care of his or her parents, guardian or custodian without the consent of such person or without good cause;

(C) Who is habitually absent from school without good cause; or

(D) Who violates any West Virginia municipal, county, or state law regarding use of alcoholic beverages by minors;

(15) "Valid court order" means a court order given to a juvenile who was brought before the court and made subject to such order, and who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the constitutions of the United States and the state of West Virginia.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-3. Noncustodial counseling of a child.
§49-5-8. Taking a juvenile into custody.
§49-5-8a. Detention hearing; counsel.
§49-5-9. Preliminary hearing; counsel; improvement period.
§49-5-11. Adjudication.
§49-5-11a. Status Offenders: Intervention and services by state department; enforcement; detention; out-of-home placement; state department custody; least restrictive alternative.
§49-5-16. Prohibition on committing juveniles to adult facilities.

§49-5-3. Noncustodial counseling of a child.
The court at any time, or the department or other official upon a request from a parent, guardian, or custodian, may, without institution of proceedings under this article, refer a juvenile alleged to be delinquent or a status offender to a counselor at the department or a community mental health center, or other professional counselor in the community. In the event the juvenile refuses to respond to such reference the department may serve a notice by first-class mail or personal service of process upon the juvenile, setting forth the facts and stating that the department will seek a noncustodial order from the court directing the juvenile to submit to counseling. The notice shall set forth the time and place for the hearing on the matter. The court or referee after hearing may direct the juvenile to participate in a noncustodial period of counseling not to exceed six months. Upon recommendation of the department, and with the consent of the juvenile’s parent, custodian, or guardian, the court or referee may also allow the participation of such parent, custodian, or guardian in said counseling. No information obtained as the result of such counseling shall be admissible in a subsequent proceeding under this article.

§49-5-8. Taking a juvenile into custody.

(a) In proceedings instituted by the filing of a juvenile petition the circuit court may enter an order directing that a juvenile be taken into custody only if one of the following conditions exist: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health, safety and welfare of the juvenile demand such custody; (3) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; or (4) the juvenile is an alleged delinquent and has a record of willful failure to appear at juvenile proceedings, and custody is necessary to assure his or her presence before the court. A detention hearing pursuant to section eight-a of this article shall be held without delay by the judge, juvenile referee or magistrate authorized to conduct such hearing, and in no event shall the delay exceed the next day, and such juvenile shall be released on recognizance to his or her parent, guardian or custodian.
unless findings are made as specified in subsection (a) of section eight-a of this article.

(b) Absent a warrant or court order, a juvenile may be taken into custody by a law-enforcement official only if one of the following conditions exist: (1) Grounds exist for the arrest of an adult in identical circumstances; (2) emergency conditions exist which in the judgment of the officer pose imminent danger to the health, safety and welfare of the juvenile; (3) the official has reasonable grounds to believe that the juvenile has left the care of his or her parents, guardian or custodian without the consent of such person, and the health, safety and welfare of the juvenile is endangered; (4) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; or (5) the official has reasonable grounds to believe the juvenile to have been driving a motor vehicle with any amount of alcohol in his or her blood.

(c) Upon taking a juvenile into custody, with or without a warrant or court order, the official shall:

(1) Immediately notify the juvenile's parent, guardian, custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless the circumstances warrant otherwise: Provided, That an alleged status offender shall not be detained in a secure facility in any case and in a staff-secure facility only if:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered: Provided, That each day the juvenile is detained, a written record must be made of all attempts to locate such responsible adult and, after the initial detention, a lawyer shall be appointed to represent the juvenile by the end of the next calendar day;

(3) Refer the matter to the prosecuting attorney, department or probation officer for proceedings under this article; and
(4) If a juvenile is being held in custody absent a warrant or court order, cause a warrant or order, as the case may be, to be immediately issued authorizing the detention of such juvenile.

An alleged status offender detained pursuant to paragraphs (A) and (B) of subdivision (2) herein shall be placed in the custody of the department.

(d) If an alleged status offender is taken into custody pursuant to this section, the department shall be immediately notified. Such child shall be placed in the custody of the department and shall not be confined in a secure facility.

(e) In the event that a child is delivered into the custody of a sheriff or director of a detention facility, such sheriff or director shall immediately notify the court or referee. Said sheriff or director shall immediately provide to every child who is delivered into his or her custody a written statement explaining the child's right to a prompt detention hearing, his or her right to counsel including appointed counsel if he cannot afford counsel and his or her privilege against self-incrimination. In all cases when a child is delivered into custody, the child shall be released to his or her parent, guardian or custodian by the end of the next day, after being delivered into such custody, unless the child has been placed in detention pursuant to section eight-a of this article.

(f) A child in custody must immediately be taken before a referee or judge of the circuit court and in no event shall a delay exceed the next day: Provided, That if there be no judge or referee then available in the county, then such child shall be taken immediately before any magistrate in the county for the sole purpose of holding a detention hearing.

§49-5-8a. Detention hearing; counsel.

(a) The judge, referee or magistrate shall inform the juvenile of his or her right to remain silent, that any statement may be used against him or her and of his or her right to counsel, and no interrogation shall be made
without the presence of a parent or counsel. If the juvenile or his or her parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as practicable. The referee, judge or magistrate shall hear testimony concerning the circumstances for taking the juvenile into custody and the possible need for detention in accordance with section two, article five-a of this chapter. The sole mandatory issue at the detention hearing shall be whether the juvenile shall be detained pending further court proceedings. The court shall, if advisable, and if the health, safety and welfare of the juvenile will not be endangered thereby, release the juvenile on recognizance to his or her parents, custodians or an appropriate agency; however, if warranted, the court may require bail, except that bail may be denied in any case where bail could be denied if the accused were an adult.

(b) The judge of the circuit court or referee may, in conjunction with the detention hearing, conduct a preliminary hearing pursuant to section nine, article five of this chapter: Provided, That all parties are prepared to proceed and the juvenile has counsel during such hearing.

§49-5-9. Preliminary hearing; counsel; improvement period.

(a) Following the filing of a juvenile petition, unless a preliminary hearing has previously been held in conjunction with a detention hearing with respect to the same charge contained in the petition, the circuit court or referee shall hold a preliminary hearing. In the event that the juvenile is in custody, such hearing shall be held within ten days of the time the juvenile is taken into custody unless good cause be shown for a continuance. If no preliminary hearing is held within ten days of the time the juvenile is taken into custody, the juvenile shall be released on recognizance unless the hearing has been continued for good cause. If the judge is in another county in the circuit, the hearing may be conducted in such other county. The preliminary hearing may be waived by the juvenile, upon advice of his counsel. At the hearing, the court or referee shall:
(1) If the juvenile is not represented by counsel, inform the juvenile and his parents, guardian or custodian or any other person standing in loco parentis to him of the juvenile’s right to be represented at all stages of proceedings under this article and the right to have counsel appointed.

(2) Appoint counsel by order entered of record, if counsel has not already been retained, appointed or knowingly waived.

(3) Determine after hearing if there is probable cause to believe that the juvenile is a status offender or a juvenile delinquent. If probable cause is not found, the juvenile, if in detention, shall be released and the proceedings dismissed. If probable cause is found, the case shall proceed to adjudication. At the hearing or as soon thereafter as is practicable, the date for the adjudicatory hearing shall be set to give the juvenile, the juvenile’s parents and attorney at least ten days’ notice, unless notice is waived by all parties.

(4) In lieu of placing the juvenile in a detention facility when bond is not provided, the court may place the juvenile in the temporary custody of the department pursuant to section sixteen, article two of this chapter or may place the juvenile, if the juvenile is an alleged delinquent, in the custody of a probation officer.

If the juvenile is detained in custody, the detention shall not continue longer than thirty days without commencement of the adjudicatory hearing unless good cause for a continuance be shown by either party or, if a jury trial be demanded, no longer than the next regular term of said court.

(5) Inform the juvenile of the right to demand a jury trial.

(b) The juvenile may move to be allowed an improvement period for a period not to exceed one year. If the court is satisfied that the best interest of the juvenile is likely to be served by an improvement period, the court
may delay the adjudicatory hearing and allow a noncustodial improvement period upon terms calculated to serve the rehabilitative needs of the juvenile. At the conclusion of the improvement period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise, the court shall proceed to the adjudicatory stage. A motion for an improvement period shall not be construed as an admission or be used as evidence.

§49-5-11. Adjudication.

At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he wishes to admit or deny the allegations in the petition. The juvenile may elect to stand mute, in which event the court shall enter a general denial of all allegations in the petition.

(a) If the respondent juvenile admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds (1) the respondent fully understands all his rights under this article, (2) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication and (3) the respondent in his admission has not set forth facts which constitute a defense to the allegations.

(b) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

(c) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition pursuant to section thirteen of this article.

(d) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing proof, the court shall refer the juvenile to the department of health and human resources for services, pursuant to section eleven-a of this article.

(e) If the allegations in a petition are not sustained by proof as provided in subsections (c) and (d) of this
section, the petition shall be dismissed and the juvenile shall be discharged if he or she is in custody.

(f) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

§49-5-11a. Status Offenders: Intervention and services by state department; enforcement; detention; out-of-home placement; state department custody; least restrictive alternative.

(a) Services for status offenders provided by the department shall be consistent with the provisions of article five-b of this chapter and shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians, or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the juveniles and the family.

(b) If necessary, the department may petition the circuit court:

(1) For a valid court order, as defined in section four, article one of this chapter, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

(2) For a valid court order to place a juvenile out-of-home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department.

(c) The court shall not be limited to the relief sought in the department's petition and shall make every effort to place juveniles in community based facilities which are the least restrictive alternatives appropriate to the needs of the juvenile and the community.

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the court shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order a psychological examination of the juvenile. The report of such examination and other investigative and social reports shall not be made available to the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct the dispositional proceeding, giving all parties an opportunity to be heard. In disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the juvenile and the welfare of the public:

1. Dismiss the petition;
2. Refer the juvenile and the juvenile's parent or custodian to a community agency for needed assistance and dismiss the petition;
3. Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established

*Clerk's Note: This section was also amended by H.B. 2680 (Chapter 53), which passed prior to this act.
pursuant to section twenty-five, article seven, chapter
twenty of this code, or other appropriate programs of
community service;

(4) Upon a finding that a parent or custodian is not
willing or able to take custody of the juvenile, that a
juvenile is not willing to reside in the custody of his parent
or custodian, or that a parent or custodian cannot provide
the necessary supervision and care of the juvenile, the
court may place the juvenile in temporary foster care or
temporarily commit the juvenile to the department, the
division of juvenile services or a child welfare agency.
The court order shall state that continuation in the home is
counter to the best interest of the juvenile and why; and
whether or not the department made a reasonable effort to
prevent the placement or that the emergency situation
made such efforts unreasonable or impossible. Whenever
the court transfers custody of a youth to the division of
human services, an appropriate order of financial support
by the parents or guardians shall be entered in accordance
with section five, article seven of this chapter and
guidelines promulgated by the supreme court of appeals;

(5) Upon a finding that the best interests of the
juvenile or the welfare of the public require it, and upon
an adjudication of delinquency pursuant to subdivision
(1), section four, article one of this chapter, the court may
commit the juvenile to an industrial home, correctional
institution for juveniles, or other appropriate facility for
the treatment, instruction and rehabilitation of juveniles:
Provided, That the court maintains discretion to consider
alternative sentencing arrangements. Commitments shall
not exceed the maximum term for which an adult could
have been sentenced for the same offense. The order shall
state that continuation in the home is contrary to the best
interests of the juvenile and why; and whether or not the
state department made a reasonable effort to prevent the
placement or that the emergency situation made such
efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures
set out in subsections (c) and (d), section four, article five,
chapter twenty-seven of this code, commit the juvenile to a
mental health facility in accordance with the juvenile's treatment plan; the director may release a juvenile and return him to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible.

(c) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the supreme court of appeals.

(d) Following disposition, it shall be inquired of the respondent whether or not appeal is desired and the response transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(e) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing such person as an adult.

§49-5-16. Prohibition on committing juveniles to adult facilities.

(a) No juvenile, including one who has been transferred to criminal jurisdiction of the court, shall be detained or confined in any institution in which he or she has contact with or comes within sight or sound of any adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the security staff (including management) or direct-care staff of a jail or locked facility for adults.

(b) No child who has been convicted of an offense under the adult jurisdiction of the circuit court shall be
held in custody in a penitentiary of this state: Provided,
That such child may be transferred from a secure juvenile
facility to a penitentiary after he shall attain the age of
eighteen years if, in the judgment of the court which
committed such child, such transfer is appropriate:
Provided, however, That any other provision of this code
to the contrary notwithstanding, prior to such transfer the
child shall be returned to the sentencing court for the
purpose of reconsideration and modification of the
imposed sentence, which shall be based upon a review of
all records and relevant information relating to the child's
rehabilitation since his conviction under the adult
jurisdiction of the court.

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-5B-2. Purpose and intent.
§49-5B-4. Responsibilities of the department of health and human resources.
§49-5B-5. Rehabilitative facilities for status offenders.
§49-5B-6. Enforcement of legal custody.
§49-5B-7. Reporting requirements; cataloguing of services.

*§49-5B-2. Purpose and intent.

It is the purpose and intent of the Legislature to
provide for the creation of all reasonable means and
methods that can be established by a humane and
enlightened state, solicitous of the welfare of its children,
for the prevention of delinquency and for the care and
rehabilitation of juvenile delinquents and status offenders.
It is further the intent of the Legislature that this state,
through the department of health and human resources,
establish, maintain, and continuously refine and develop, a
balanced and comprehensive state program for juveniles
who are potentially delinquent or are status offenders or
juvenile delinquents in the care or custody of the
department.

*Clerk's Note: This section was also amended by H.B. 2680 (Chapter
53), which passed prior to this act.
§49-5B-4. Responsibilities of the department of health and human resources.

(a) The department of health and human resources and the division of juvenile services of the department of military affairs and public safety are empowered to establish, and shall establish, subject to the limits of funds available or otherwise appropriated therefor, programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the juvenile justice system. The development, maintenance and expansion of programs and services may include, but not be limited to, the following:

(1) Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, day treatment and any other designated community-based diagnostic, treatment or rehabilitative service;

(2) Community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his home;

(3) Youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for status offenders, juvenile delinquents and other youth to help prevent delinquency;

(4) Projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting rights of youth impacted by the juvenile justice system;

*Clerk’s Note: This section was also amended by H.B. 2680 (Chapter 53), which passed prior to this act.
(5) Educational programs or supportive services designed to encourage status offenders, juvenile delinquents, and other youth to remain in elementary and secondary schools or in alternative learning situations;

(6) Expanded use of professional and para-professional personnel and volunteers to work effectively with youth;

(7) Youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(8) A statewide program designed to reduce the number of commitments of juveniles to any form of juvenile facility as a percentage of the state juvenile population, to increase the use of nonsecure community-based facilities as a percentage of total commitments to juvenile facilities and to discourage the use of secure incarceration and detention.

(b) The department of health and human resources shall establish, within the funds available, an individualized program of rehabilitation for each status offender referred to the department and to each alleged juvenile delinquent referred to the department after being allowed an improvement period by the juvenile court, and for each adjudicated juvenile delinquent who, after adjudication, is referred to the department for investigation or treatment or whose custody is vested in the department. Such individualized program of rehabilitation shall take into account the programs and services to be provided by other public or private agencies or personnel which are available in the community to deal with the circumstances of the particular juvenile. For alleged juvenile delinquents and status offenders, such individualized program of rehabilitation shall be furnished to the juvenile court and shall be available to counsel for the juvenile; it may be modified from time to time at the direction of the department or by order of the juvenile court. The department may develop an individualized program of rehabilitation for any juvenile referred for noncustodial counseling under section five, article three of this chapter, for any juvenile receiving counsel and advice under
section three-a, article five of this chapter, or for any other juvenile upon the request of a public or private agency.

(c) The department of health and human resources and the division of juvenile services of the department of military affairs and public safety are authorized to enter into cooperative arrangements and agreements with private agencies or with agencies of the state and its political subdivisions to effectuate the purpose of this article.

§49-5B-5. Rehabilitative facilities for status offenders.

(a) The department of health and human resources shall, within the limits of state and federal funds appropriated therefor, establish and maintain one or more rehabilitative facilities to be used exclusively for the lawful custody of status offenders. Each such facility shall be a nonsecure facility having as its purpose the rehabilitation of status offenders. Such facility shall have a bed capacity for not more than twenty juveniles, and shall minimize the institutional atmosphere and prepare the juvenile for reintegration into the community.

(b) Within the funds available, rehabilitative programs and services shall be provided by or through each such facility and may include, but not be limited to, medical, educational, vocational, social and psychological guidance, training, counseling, alcoholism treatment, drug treatment and other rehabilitative services. The department of health and human resources shall provide to each status offender committed to the facility a program of treatment and services consistent with the individualized program of rehabilitation developed for such juvenile. In the case of any other juvenile residing at the facility, the department shall provide such programs and services as may be proper in the circumstances including, but not limited to, any such programs or services directed to be provided by the court.

(c) The board of education of the county in which the facility is located shall provide instruction for juveniles residing at the facility. Residents who can be permitted to do so shall attend local schools, and instruction shall otherwise take place at the facility.
(d) Facilities established pursuant to this section shall be structured as community-based facilities.

§49-5B-6. Enforcement of legal custody.

The department of health and human resources shall have authority to require any juvenile committed to its legal custody to remain at and to return to the residence to which the juvenile is assigned by the department or by the juvenile court. In aid of such authority, and upon request of a designated employee of the department, any police officer, sheriff, deputy sheriff, or juvenile court probation officer is authorized to take any such juvenile into custody and return such juvenile to his or her place of residence or into the custody of a designated employee of the department.

§49-5B-7. Reporting requirements; cataloguing of services.

(a) The department of health and human resources shall from time to time, but not less often than annually, review its programs and services and submit a report to the governor, the Legislature and the supreme court of appeals, analyzing and evaluating the effectiveness of the programs and services being carried out by the department. Such report shall include, but not be limited to, an analysis and evaluation of programs and services continued, established and discontinued during the period covered by the report, and shall further describe programs and services which should be implemented to further the purposes of this article. Such report shall also include, but not be limited to, relevant information concerning the number of juveniles comprising the population of any rehabilitative facility during the period covered by the report, the length of residence, the nature of the problems of each juvenile, the juvenile's response to programs and services and such other information as will enable a user of the report to ascertain the effectiveness of the facility as a rehabilitative facility.

(b) The department of health and human resources shall prepare a descriptive catalogue of its juvenile programs and services available in local communities throughout this state and shall distribute copies of the
same to every juvenile court in the state and, at the
direction of the juvenile court, such catalogue shall be
distributed to attorneys practicing before such court.
Such catalogue shall also be made available to members of
the general public upon request. The catalogue shall
contain sufficient information as to particular programs
and services so as to enable a user of the catalogue to
make inquiries and referrals. The catalogue shall be
constructed so as to meaningfully identify and describe
programs and services. The requirements of this section
are not satisfied by a simple listing of specific agencies or
the individuals in charge of programs at a given time. The
catalogue shall be updated and republished or
supplemented from time to time as may be required to
maintain its usefulness as a resource manual.

CHAPTER 55

(Com. Sub. for H. B. 2535—By Delegates Seacrist, Beane,
Evans, Clements and Compton)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state
and its agencies to be moral obligations of the state and
directing the auditor to issue warrants for the payment
thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant
general; alcohol beverage control administration;
atorney general; board of barbers and cosmetologists;
board of directors of the state college system; board of
examiners for licensed practical nurses; board of trustees
of the university system of West Virginia; bureau of
employment programs; department of administration;
department of agriculture; department of tax and
revenue; development office; division of corrections;
division of environmental protection; division of health; division of highways; division of human services; division of motor vehicles; division of personnel; division of rehabilitation services; division of tourism and parks; division of veterans affairs; education and state employees grievance board; insurance commission; library commission; municipal bond commission; office of health projects; office of water resources; public service commission; real estate commission; regional jail and correctional facility authority; state fire commission; state rail authority; state treasurer; supreme court of appeals; West Virginia state police; and West Virginia court of claims; to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Adjutant General:

<table>
<thead>
<tr>
<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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<tbody>
<tr>
<td>(1) Bell Atlantic-West Virginia, Inc.</td>
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<tr>
<td>(2) Paul A. Vosburgh, III</td>
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(b) Claims against the Alcohol Beverage Control Administration:

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<th>(TO BE PAID FROM SPECIAL REVENUE FUND)</th>
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<tbody>
<tr>
<td>(1) Attorney General</td>
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<tr>
<td>(2) Bell Atlantic-West Virginia, Inc.</td>
</tr>
</tbody>
</table>

(c) Claim against the Attorney General:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) American Investigations, Inc. . . . . . . . . . . . . . . . . . . . $ 69.20

(d) Claim against the Board of Barbers and Cosmetologists:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) National Interstate Council of Boards of Cosmetology . . . . . . . $ 687.50

(e) Claim against the Board of Directors of the State College System:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Dennis W. Rowsey, Jr. . . . . . . . . . . . . . . . . . . . . . . . . . . $ 792.93

(f) Claim against the Board of Examiners for Licensed Practical Nurses:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Archives Security, Inc. . . . . . . . . . . . . . . . . . . . . . . . . . . $ 9.55

(g) Claim against the Board of Trustees of the University System of WV:

(h) Claim against the Bureau of Employment Programs:

(TO BE PAID FROM SPECIAL REVENUE FUND — EMPLOYMENT SERVICE DIVISION)

(1) Bell Atlantic-West Virginia, Inc. . . . . . . . . . . . . $ 37,796.40

(TO BE PAID FROM WORKERS' COMPENSATION FUND)

(2) Bell Atlantic-West Virginia, Inc. . . . . . . . . . . . . $ 51,502.59

(i) Claim against the Department of Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Colonial Ford-Lincoln-Mercury, Inc. $ 1,852.10
(j) **Claims against the Department of Agriculture:**

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. .... $ 2,435.52

(2) Division of Highways ............... $ 1,808.05

(k) **Claim against the Department of Tax and Revenue:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. .... $ 30,622.29

(l) **Claim against the Development Office:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. .... $ 5,186.47

(m) **Claims against the Division of Corrections:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Alltel Corporation/Citizens Telecom . $ 2,313.37

(2) Charles D. Anderson ............... $ 545.74

(3) Appalachian Community Health Center, Inc. ........ $ 168.00

(4) Authorized Factory Service, Inc. .... $ 363.70

(5) Cabell County Commission ............ $ 14,661.26

(6) Anthony Catania, Jr., D.P.M. ....... $ 70.00

(7) Domingo T. Chua, M.D. ............. $ 70.00

(8) Nelson Cunningham ................. $ 70.00

(9) Doddridge County Commission ...... $ 1,155.00

(10) General Anesthesia Services, Inc. .. $ 864.00

(11) Grafton City Hospital .............. $ 10,164.03

(12) Harrison County Commission ....... $ 3,900.00

(13) Kenneth Heard .................... $ 420.85

(14) Jan-Care Ambulance Service, Inc. .. $ 2,804.00
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<td>(16) Charles A. Lefebure, M.D.</td>
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<td>(19) Monongalia General Hospital</td>
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<td>(20) Mountaineer Gas Company</td>
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<td>(21) Abraham Nazem, M.D., Inc.</td>
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<td>(22) Scott G. Phelps</td>
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<td>(23) Regional Jail and Correctional Facility Authority</td>
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<td>(24) Service America Corporation</td>
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<td>93</td>
<td>(27) Henry C. Wilkes</td>
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<td>94</td>
<td>(28) Donald Wilson, Jr.</td>
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(n) *Claims against the Division of Environmental Protection:*

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<td>(1) Division of Highways</td>
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(o) *Claims against the Division of Health:*

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<td>107</td>
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<td>(p) Claims against the Division of Highways</td>
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<td>(1) Hobart Adkins</td>
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<td>(14) Melinda Lou Fish</td>
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CLAIMS

(20) George and Martha Horses ............... $ 100.00
(21) Mark Joseph ...................................... $ 500.00
(22) Chris Kennedy ................................. $ 145.28
(23) Cheryl Kesner ................................ $ 500.00
(24) James W. King ................................ $ 350.00
(25) Garey and Deborah L. Mahoney ........... $ 73.62
(26) Eleanor Martino ............................... $ 250.00
(27) Charlotte Kay McClung ....................... $ 141.25
(28) Joseph M. and Aspasia Melcher ........... $ 642.57
(29) Rebecca J. Miller ............................. $ 191.47
(30) Randall L. and Debra S. Morgan ........... $ 223.73
(31) George R. Muth ................................ $ 1,667.42
(32) Earrick Norman .............................. $ 280.41
(33) Frank Pendry ................................ $ 52.00
(34) Carl W. Pettit ................................ $ 1,355.50
(35) Lisa J. Pratt ................................ $ 486.70
(36) Karen Racer ................................ $ 532.74
(37) Lloyd A. Reeves .............................. $ 77.33
(38) W. Stephen Riggs ............................ $ 2,113.51
(39) Judith R. and James R. Rogers ........... $ 156.99
(40) Jean A. Sartoris ............................. $ 30.14
(41) Cecil Scott ................................ $ 229.28
(42) Todd E. and Jerri M. Shafer ............... $ 1,293.30
(43) Debra S. Shrieves ........................... $ 77.52
(44) Robert D. Shuman ......................... $ 442.45
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<td>Elmer R. Warnick</td>
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<td>Harry B. Young, Jr.</td>
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*(q) Claims against Division of Human Services:*

*(TO BE PAID FROM GENERAL REVENUE FUND)*

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<td>Carpenter &amp; Ford Funeral Home</td>
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<td>Davis Funeral Home, Bartlett Chapel</td>
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<td>Dorsey Funeral Home, Inc.</td>
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<td>Schaeffer Funeral Home, Inc.</td>
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<td>Weaver Mortuary, Inc.</td>
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*(r) Claims against Division of Motor Vehicles:*

*(TO BE PAID FROM STATE ROAD FUND)*

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<td>186</td>
<td>Mental Health Council  ........................................ $  150.00</td>
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<td>187</td>
<td>(2) Dale D. Radcliff  ........................................... $  3,500.00</td>
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<td>206</td>
<td>(1) Thomas F. and Lottie J. Pyles  ........  $  525.00</td>
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<td>(1) Pitney Bowes  ................................................ $  62.25</td>
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<td>(x) Claim against the Insurance Commission:</td>
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<td>(1) Bell Atlantic-West Virginia, Inc. . . . . $ 3,803.58</td>
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<td><em>(y) Claim against the Library Commission:</em></td>
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<td><em>(z) Claim against the Municipal Bond Commission:</em></td>
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<td>(1) Bell Atlantic-West Virginia, Inc . . . . $ 85.07</td>
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<td><em>(aa) Claim against the Office of Health Projects:</em></td>
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<td><em>(cc) Claims against the Public Service Commission:</em></td>
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<td>(3) CCH Incorporated . . . . . . . . . . . . . $ 121.00</td>
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<td>(4) Goodyear Tire and Rubber Company . . . . . . . . . . . . . $ 187.20</td>
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<td><em>(dd) Claim against the Real Estate Commission:</em></td>
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<td>236</td>
<td><em>(ee) Claims against the Regional Jail and Correctional Facility Authority:</em></td>
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(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. . . . . $ 3,804.36

(2) Zachariah J. Chittum . . . . . . . . . . . . $ 458.30

(ff) **Claim against the State Fire Commission:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Appalachian Tire Products, Inc. . . . . $ 294.92

(gg) **Claim against the State Rail Authority:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Amtrak Railroad Contractors
    of Maryland, Inc. . . . . . . . . . . . . . . $ 50,000.00

(hh) **Claim against the State Treasurer:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) West Virginia Parkways Authority . . . $ 25.00

(ii) **Claims against the Supreme Court of Appeals:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) David M. Buzzard . . . . . . . . . . . . . . $ 191.58

(2) James M. Casey . . . . . . . . . . . . . . $ 1,523.50

(3) Roy L. Johnson . . . . . . . . . . . . . . $ 288.75

(4) Shirley Adkins . . . . . . . . . . . . . . $ 514.07

(5) William D. Anderson . . . . . . . . . . . . . . $ 100.00

(6) Ernest F. Backus . . . . . . . . . . . . . . $ 1,743.75

(7) Tamela D. Bailey . . . . . . . . . . . . . . $ 1,538.07

(8) Marjorie L. Baker . . . . . . . . . . . . . . $ 514.07

(9) Linda L. Bixby . . . . . . . . . . . . . . . $ 514.07

(10) Beverly C. Booth . . . . . . . . . . . . . . $ 514.07

(11) Teresa Bruno . . . . . . . . . . . . . . . $ 522.33

(12) David M. Buzzard . . . . . . . . . . . . . . $ 1,506.05
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<td>John L. Daniels</td>
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<td>J.V. DeMarco, Jr.</td>
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<td>303</td>
<td>Jerry P. Turner</td>
<td>$595.22</td>
</tr>
<tr>
<td>304</td>
<td>Bill Webb</td>
<td>$1,506.05</td>
</tr>
<tr>
<td>305</td>
<td>Tamera Webster</td>
<td>$522.33</td>
</tr>
<tr>
<td>306</td>
<td>Connie White</td>
<td>$1,538.07</td>
</tr>
<tr>
<td>307</td>
<td>Mary F. Wiedebusch</td>
<td>$1,104.44</td>
</tr>
<tr>
<td>308</td>
<td>Doris Zagula</td>
<td>$522.33</td>
</tr>
</tbody>
</table>

(jj) Claim against the West Virginia State Police:

(1) Bell Atlantic-West Virginia, Inc. $37,643.51

(kk) Claim against the West Virginia Court of Claims:

(1) Paul Lallande, O.D., P.C. $106.00

(ll) Claim against the State of West Virginia:

(1) Kermit Lee Godbey and
The Poca Valley Bank $5,790.22

(2) Kermit Lee Godbey $248.50
The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided for in this bill, the court of claims shall receive a release from claimants releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for the claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 56

(Com. Sub. for S. B. 284—By Senators Love, Helmick, Sharpe, Sprouse and McKenzie)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment of the claims.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment of the claims.

The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants who were innocent victims of crime within this state and who are entitled to compensation; and in respect to each of the named claimants the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each claimant in the amount specified below, and directs the auditor to issue warrants for the payment of the claims out of any fund appropriated and available for the purpose.
Claims for crime victims compensation awards:

(TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

(1) William C. Chapman .................. $ 1,000.00
(2) Jerry N. Gibson, as guardian of C. D. G. .................. $ 5,000.00
(3) Jerry N. Gibson, as guardian of J. Y. G. .................. $ 5,000.00
(4) Betty J. Sargent, as the adoptive parent of R. W. S. .................. $ 23,500.00
(5) Betty J. Sargent, as the adoptive parent of D. M. S. .................. $ 23,500.00
(6) Alan D. Taylor .................. $ 15,000.00
TOTAL .................. $ 73,000.00

The Legislature finds that the above moral obligations and the appropriations made in satisfaction of the moral obligations are the full compensation for all of the named claimants.

CHAPTER 57

(S. B. 311—By Senators Love, Helmick, Sharpe, Sprouse and McKenzie)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of education; division of corrections; and education and state employees grievance board to be
moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael A. Cochran</td>
<td>$900.00</td>
</tr>
<tr>
<td>Rebecca A. Griffith</td>
<td>$150.00</td>
</tr>
<tr>
<td>Gloria M. Johnson</td>
<td>$470.00</td>
</tr>
<tr>
<td>Linda Spencer</td>
<td>$714.00</td>
</tr>
<tr>
<td>Mildred Faye Tallman</td>
<td>$170.00</td>
</tr>
<tr>
<td>Sandra C. Wilmoth</td>
<td>$950.00</td>
</tr>
</tbody>
</table>

(b) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)
(1) Anthony Creek Rescue Squad ........ $ 923.00
(2) Bell Atlantic-West Virginia, Inc. .... $ 17,555.52
(3) Jolene Berry, D.O. .................. $ 190.00
(4) Ravin Bhirud, M.D. .................. $ 2,714.00
(5) C & C Pharmacy, Inc. .............. $ 368.93
(6) Charleston Area Medical Center ...... $ 43,101.99
(7) Clarksburg Anesthesia Associates .... $ 918.00
(8) Clarksburg Cardiology Consultants .. $ 235.00
(9) Correctional Medical Services ....... $ 43,476.33
(10) Davis Memorial Hospital .......... $ 3,664.34
(11) Division of Highways .............. $ 13,102.18
(12) Manuel A. Gomez .................... $ 155.00
(13) Grafton City Hospital ............. $ 15,707.19
(14) Greenbrier Cardiovascular Associates $ 975.00
(15) Jan-Care Ambulance Service, Inc. $ 486.00
(16) Montgomery General Hospital ...... $ 86,136.14
(17) Joseph A. Noronha, M.D. .......... $ 300.00
(18) Prison Health Services, Inc. ...... $ 268,747.98
(19) R. Sampath, M.D., Inc. .......... $ 4,268.00
(20) V.K. Raju, M.D. ................... $ 115.00
(21) Sistersville General Hospital ...... $ 180.40
(22) Wexford Health Sources, Inc. ...... $ 169,062.44

(c) Claim against the Education and State Employees Grievance Board:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Archives Security, Inc. .............. $ 4.62
CHAPTER 58

(H. B. 2237—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker and Capito)

[Passed April 1, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to repeal section eight, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of language placing the forest management review commission under sunset review.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of section placing the forest management review commission under sunset review.

Section eight, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 59

(H. B. 2162—By Delegates Martin, Douglas, Collins, Varner, Thompson, Everson and Stalnaker)

[Passed April 1, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article two-b and section eight, article two-d, both of chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of archaic language relating to economic development programs that have completed their duties or are otherwise defunct and inactive; repealing provisions creating the enterprise zone authority; repealing provisions creating the governor's work force development council.
Be it enacted by the Legislature of West Virginia:

That article two-b and section eight, article two-d, both of chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of article creating the enterprise zone authority.

1 Article two-b, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

§2. Repeal of section creating the governor's work force development council.

1 Section eight, article two-d, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 60

(H. B. 2160—By Delegates Martin, Douglas, Varner, Collins, Thompson, Everson and Stalnaker)

[Passed April 1, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-seven, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of archaic language relating to the appraisal control and review commission and related subcommittees.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of section creating the appraisal control and review commission and related subcommittees.

1 Section twenty-seven, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
AN ACT to repeal article one-a; sections six, seven, eight, nine and ten, article five-a; section six, article twenty-nine-b; and article twenty-nine-c, all of chapter sixteen of the code of West Virginia, one thousand nine hundred and thirty-one, as amended, relating to repeal of archaic language relating to health-related boards, councils, committees and programs which have terminated, been superseded or are otherwise defunct and inactive; repealing provisions creating the health care planning commission and related legislative oversight committee; repealing provisions creating the patient qualification and review board and the controlled substances therapeutic research program; repealing provisions creating the health care cost review advisory council; and repealing article relating to the indigent care act and the legislative task force on uncompensated health care and medicaid expenditures.

Be it enacted by the Legislature of West Virginia:

That article one-a; sections six, seven, eight, nine and ten, article five-a; section six, article twenty-nine-b; and article twenty-nine-c, all of chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed.

§1. Repeal of article creating a health care planning commission and related legislative oversight committee.

Article one-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

§2. Repeal of sections creating the patient qualification and review board and the controlled substances therapeutic research program.
Sections six, seven, eight, nine and ten, article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.

§3. Repeal of section creating the health care cost review advisory council.

1. Section six, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

§4. Repeal of article relating to the indigent care act and the legislative task force on uncompensated health care and medicaid expenditures.

1. Article twenty-nine-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 62

(S. B. 93—Originating in the Committee on Government Organization)

[Passed March 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section nineteen, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the termination of the provisions of the racetrack video lottery act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§1. Repeal of section relating to termination of the provisions of the racetrack video lottery act.

1. Section nineteen, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
A BILL to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-e, relating to prohibiting conservation officers from performing duties for consideration from individuals; criminal penalties; allowing the chief conservation officer to contract with entities to provide extraordinary law-enforcement services; payment from special account to officers; contract provisions; indemnification of state; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

PART 1. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1e. Conservation officers performing duties for private persons; penalty; providing extraordinary law enforcement or security services by contract.

1 (a) Any conservation officer who hires himself or herself to any person, firm or corporation to guard private property, or who demands or receives from any person, firm or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his or her duties under the regulations of the chief conservation officer and the provisions of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, or confined in the county or regional jail for not more than four months, or both fined and confined.
(b) Notwithstanding any other provision of this section to the contrary, the chief conservation officer may contract with the public, military or private entities to provide extraordinary law enforcement or security services by the division of natural resources when it is determined by the chief conservation officer to be in the public interest. The chief conservation officer may assign personnel, equipment or facilities, and the division shall be reimbursed for the wages, overtime wages, benefits and costs of providing the contract services as negotiated between the parties. The compensation paid to conservation officers by virtue of contracts provided in this section shall be paid from a special account and are excluded from any formulation used to calculate an employee’s benefits. All requests for obtaining extraordinary law enforcement or security services shall be made to the chief conservation officer in writing and shall explain the funding source and the authority for making the request. No officer of the division is required to accept any assignment made pursuant to this subsection. Every officer assigned to duty hereunder shall be paid according to the hours and overtime hours actually worked notwithstanding that officer’s status as exempt personnel under the "Federal Labor Standards Act" or applicable state statutes. Every contract entered into under this subsection shall contain the provision that in the event of public disaster or emergency where the reassignment to official duty of the officer is required, neither the division nor any of its officers or other personnel are liable for any damages incurred as the result of the reassignment. Further, any entity contracting with the division of natural resources under this section shall also agree as part of that contract to hold harmless and indemnify the state, division of natural resources and its personnel from any liability arising out of employment under that contract.

The director is authorized to propose legislative rules, subject to approval by the Legislature, in accordance with chapter twenty-nine-a of this code relating to the implementation of contracts entered into pursuant to this subsection: Provided, That the rules expressly prohibit private employment of officers in circumstances involving labor disputes.
AN ACT to amend article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one hundred eight; and to amend and reenact section one hundred twenty-seven, article two of said chapter, all relating to revisions to the West Virginia consumer credit protection act; providing methods for electronic records retention for persons subject to the act other than banks and credit unions; providing for the admissibility in evidence of such reproduced or copied records; and eliminating certain disclosure requirements for debt collectors under the act.

Be it enacted by the Legislature of West Virginia:

That article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one hundred eight; and that section one hundred twenty-seven, article two of said chapter be amended and reenacted, all to read as follows:

Article
1. Short Title, Definitions and General Provisions.
2. Consumer Credit Protection.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


1 (a) All persons, other than banks and credit unions, who are subject to the provisions of this chapter and who are required to create or maintain records or other documents in the course of their business, may copy or reproduce those records or documents (other than notes, bonds, mortgages and other securities and investments) by any
existing and generally accepted method of reproduction or retention technology which conforms to the requirements of section thirty-five, article four, chapter thirty-one-a of this code and may substitute copies or reproductions of the records or documents either in positive or negative form for the originals. A copy or reproduction in the form of a positive print is deemed to be an original counterpart of and has the same force as the original and is admissible in evidence in all courts and administrative agencies in this state for all purposes. The copies or reproductions authorized by this subsection shall be maintained pursuant to the records retention requirements applicable to the original records or documents. The original records or documents, once copied or reproduced, may be destroyed or otherwise eliminated.

(b) When copies of documents are offered in evidence, all circumstances surrounding the making or issuance of the documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions represented by the copies, may be shown to affect the weight of the documents as evidence, but not the admissibility.

(c) Any device used to copy or reproduce documents and records shall be one which correctly and accurately reproduces the original document or record in all details and any disk or film used for this purpose shall be of durable material.

(d) Banks and credit unions may reproduce and maintain records and documents in conformity with this section as long as the reproduction and maintenance methods used do not conflict with any other provisions of this code applicable to banks or credit unions or with any rule of the commissioner of banking.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-127. Fraudulent, deceptive or misleading representations.

No debt collector shall use any fraudulent, deceptive
or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the debt collector’s business, company or organization;

(b) Any false representation that the debt collector has in his possession information or something of value for the consumer that is made to solicit or discover information about the consumer;

(c) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(d) Any false representation or implication of the character, extent or amount of a claim against a consumer, or of its status in any legal proceeding;

(e) Any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent or official of this state or any agency of the federal, state or local government;

(f) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;

(g) Any representation that an existing obligation of the consumer may be increased by the addition of attorney’s fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(h) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.
CHAPTER 65

(S. B. 334—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Oliverio, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed April 11, 1997; in effect July 1, 1997. Approved by the Governor.]
amount or of a lesser sum the court considers appropriate.

(b) Notwithstanding any other provision of this section to the contrary, public defender services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article.

(c) Notwithstanding any other provision of this section to the contrary, a panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the completion of the case where: (1) More than six months have expired since the commencement of the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by public defender services during the case. The amounts of any fees or expenses paid to the panel attorney on an interim basis, when combined with any amounts paid to the panel attorney at the conclusion of the case, shall not exceed the limitations on fees and expenses imposed by this section.

(d) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended for services performed and expenses incurred subsequent to the effective date of this article:

(1) For attorney's work performed out of court, compensation shall be at the rate of forty-five dollars per hour. For paralegal's work performed out of court for the attorney, compensation shall be at the rate of the paralegal's regular compensation on an hourly basis or, if salaried, at the hourly rate of compensation which would produce the paralegal's current salary, but in no event shall the compensation exceed twenty dollars per hour. Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses, preparation of pleadings and prehearing or pretrial research.
(2) For attorney's work performed in court, compensation shall be at the rate of sixty-five dollars per hour. No compensation for paralegal's work performed in court shall be allowed. In-court work includes, but is not limited to, all time spent awaiting hearing or trial if the presence of the attorney is required.

(3) The maximum amount of compensation for out-of-court and in-court work under this subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, the amount as the court may approve; for all other eligible proceedings, three thousand dollars unless the court, for good cause shown, approves payment of a larger sum.

(e) Actual and necessary expenses incurred in providing legal representation for proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed in an amount as the court may approve. For all other eligible proceedings, actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed to a maximum of fifteen hundred dollars unless the court, for good cause shown, approves reimbursement of a larger sum.

Expense vouchers shall specifically set forth the nature, amount and purpose of expenses incurred and shall provide receipts, invoices or other documentation required by the executive director and the state auditor:

(1) (A) Reimbursement of expenses for production of transcripts of proceedings reported by a court reporter is limited to the cost per original page set forth in section four, article seven, chapter fifty-one of this code. Reimbursement of the cost of copies of such transcripts is limited to the cost per copy page as provided for under
said section. It is the duty of the executive director of public defender services to maintain computer records of all transcripts, including originals and copies, for which payment has been made.

(B) (i) There shall be no reimbursement of expenses for or production of a transcript of a preliminary hearing before a magistrate or juvenile referee, or of a magistrate court jury trial, which has been reported by a court reporter at the request of the attorney, where the preliminary hearing or jury trial has also been recorded electronically in accordance with the provisions of section eight, article five, chapter fifty of this code or court rule.

(ii) Reimbursement of the expense of an appearance fee for a court reporter who reports a proceeding other than one described in subparagraph (i) of this paragraph, or who reports a proceeding which is not reported by an official court reporter acting in his or her official capacity for the court, is limited to twenty-five dollars. Where a transcript of a proceeding is produced, there shall be no reimbursement for the expense of any appearance fee. Where a transcript is requested by the attorney after an appearance fee has been paid, reimbursement of the expense incurred to obtain the transcript is limited to the cost of producing the transcript, within the prescribed limitations of paragraph (A) of this subdivision, less the amount of the paid appearance fee.

(iii) Reimbursement of travel expenses incurred for travel by a court reporter is subject to the limitations provided by subdivision (2) of this subsection.

(iv) Except for the appearance fees provided in this paragraph, there shall be no reimbursement for hourly court reporters' fees or fees for other time expended by the court reporter, either at the proceeding or traveling to or from the proceeding.

(C) Reimbursement of the cost of transcription of tapes electronically recorded during preliminary hearings
or magistrate court jury trials is limited to the rates established by the supreme court of appeals for the reimbursement of transcriptions of electronically recorded hearings and trial.

(2) Reimbursement for any travel expense incurred in an eligible proceeding is limited to the rates for the reimbursement of travel expenses established by rules promulgated by the governor pursuant to the provisions of section eleven, article eight, chapter twelve of this code and administered by the secretary of the department of administration pursuant to the provisions of section forty-eight, article three, chapter five-a of this code.

(3) Reimbursement for investigative services is limited to a rate of thirty dollars per hour for work performed by an investigator.

(f) For purposes of compensation under this section, an appeal from a final order of the circuit court, or proceeding seeking an extraordinary remedy, made to the supreme court of appeals, shall be considered a separate case.

(g) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client for which services were rendered is one of several charges involving multiple warrants or indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as to enable the court to avoid a duplication of compensation for services rendered. The executive director shall refuse to requisition payment for any voucher which is not in conformity with the recordkeeping, compensation or other provisions of this article and in such circumstance shall return the voucher to the court or to the service provider for further review or correction.
AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the rate of payment for court transcripts as of the first day of July, one thousand nine hundred ninety-seven; allowing for transcripts to be provided on disc or for multiple pages to be copied on condensed pages; and to certification and filing of transcripts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

The reporter shall furnish, upon request, to any party to a case, a typewritten transcript of the testimony or other proceedings, which shall be upon paper measuring eight and one-half inches in width and eleven inches in length, with margins of one-half inch on the right side and bottom, one inch at the top and one and one-half inches on the left, with the page filled as completely as practicable, with at least twenty-four complete lines on each page, with no more than double spacing used between lines, with no more than five spaces used for indentation from the left margin, with no larger than ten point pica type being used, and shall certify the same as being correct and shall be paid therefore, by the party requesting the transcript, at the rate of two dollars and eighty-five cents for each page so transcribed and stamped “original”; and for each copy
of the transcript stamped "copy", ordered at any time, he
or she shall be paid one dollar for each page so furnished:
Provided, That if any "original" transcript does not
conform with the specifications set forth in this section, the
party requesting the transcript may not be obligated to
pay for the transcript: Provided, however, That the copy
of the transcript may be provided either on disc or with
multiple transcript pages condensed on each page if the
court reporter can produce such a disc or copy and if the
party requesting the copy specifically asks for a disc or a
condensed page transcript: Provided further, That the
reporter shall be paid at the same rate for each page as the
copy rate for the original for a disc or for a condensed
page transcript.

A transcript of the testimony or proceedings, when
certified by the official reporter and by the judge of the
court, shall be authentic for all purposes, and shall be used
by the parties to the cause in any further proceeding
therein wherein the use of the same may be required. An
original transcript shall, upon completion and certification,
be filed with the circuit clerk. The original transcript may
be used, without further authentication, in making up the
record on appeal, as provided in sections thirty-six and
thirty-seven, article six, chapter fifty-six of this code. A
certified copy of the original transcript so filed shall be
delivered to the requesting party. In all cases of appeal
the reporter shall also make a copy of the transcript, which
copy shall be filed in the office of the clerk of the court in
which the trial or proceedings were had, to be used, if
necessary, in making up the record on appeal, and, if so
used, the clerk may not be entitled to any fee for that part
of the record. If, upon appeal or writ of error, the judg-
ment, decree or order entered in the cause be reversed, the
cost of the transcript shall be taxed as other costs; and if
the transcript be requested or required for the purpose of
demurring to the evidence, the cost thereof shall be taxed
in favor of the party prevailing on the demurrer.

It shall also be the duty of the reporter in any criminal
case, upon the request of the court or the judge thereof,
and for his or her use, to furnish a transcript of his or her
notes of the testimony and proceedings without extra
charge.
AN ACT to amend article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to furnishing transcripts to indigent respondents in juvenile delinquency and child abuse and neglect civil proceedings; and providing for the payment of the cost of preparing the transcripts from appropriations to the supreme court of appeals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-8. Transcripts to be furnished indigent persons in juvenile delinquency and child abuse and neglect proceedings upon timely request; payment therefor.

In any proceeding held pursuant to article five or six, chapter forty-nine of this code in which an indigent respondent or his or her counsel has filed a written request, in the manner prescribed by the supreme court of appeals, evidencing an intent to appeal a decision of a circuit court in the proceeding, the court, upon presentation of a written request, presented within thirty days after the entry of the order sought to be appealed, shall authorize and direct the court reporter to furnish a transcript of the testimony of the proceeding or the part or parts thereof that have specifically been requested.

The court, after being sufficiently satisfied of the reasonableness of a voucher or claim submitted for payment of the cost of preparing the transcript, shall certify the cost to the state auditor, who shall, in a timely manner, pay the court reporter’s fee from appropriations to the supreme court of appeals.
CHAPTER 68
(S. B. 293—By Senators Wooton, Ball, Bowman, Dittmar, Ross, Snyder and Kimble)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to precluding a court reporter from having a contractual relationship with a party litigant other than governmental entities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DEPOSITIONS AND PERPETUATION OF TESTIMONY.

§57-4-1. Taking and certification of depositions — generally.

1 In any pending case the deposition of a witness, whether a party to the suit or not, may, without commission, be taken in or out of this state by a justice, or notary public, or by a commissioner in chancery, or before any officer authorized to take depositions in the county or state where they may be taken. However, a deposition may not be taken by any person who is a relative or employee or attorney of any of the parties, or is a relative or employee of the attorney, or a relative or employee or attorney of one who has a financial interest in the outcome of the case, or who is otherwise financially interested in the action. Any deposition taken by an interested party, as described above, shall be considered void. For purposes of this article, an employee includes a person who has a contractual relationship with a party litigant to provide reporting or other court services and also includes a person employed part or full time under contract or otherwise by a person who has a contractual relationship...
with a party litigant to provide reporting or other court
services. A party litigant does not include federal, state or
local governments and the subdivisions thereof.
Depositions may be taken in shorthand, or stenographic
characters or notes, and shall be written out in full and
transcribed into the English language by the stenographer
taking the same, and certified by the officer before whom
the depositions are taken; and if certified by such officer
under his hand and if further certified by him that such
stenographic characters and notes were correctly taken
and accurately transcribed by him, or under his direction
and supervision, and that the witnesses were duly sworn,
such depositions may be received and read in evidence
without proof of the signature to such certificate and
without the signature of the witness to such depositions.
And in case the stenographer taking such depositions is
not the officer before whom the same are being taken,
then such stenographer, before proceeding to take any of
said depositions, shall be sworn to take correctly and
accurately transcribe the same, and the certificate of the
officer before whom the depositions are taken shall state
that the stenographer was so sworn.

CHAPTER 69
(Com. Sub. for H. B. 2205—By Delegates Yeager and Staton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article
twenty, chapter nineteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
criminal penalties and restitution for intentionally causing
injury or death to a law-enforcement or fire prevention or
investigation animal or an animal used by the department of
military affairs and public safety.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS AND CATS.

§19-20-24. Causing death or injury to animals used by law-enforcement officials or by fire prevention or investigation officials; criminal penalties.

Any person who, without justification, and with the unlawful intent to inflict serious physical injury or death, causes the death of any trained dog or horse used by law-enforcement officials, the department of military affairs and public safety or by fire prevention or investigation officials in the performance of their official duties is guilty of a felony and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars and imprisoned in the penitentiary for a definite term of not more than three years.

Any person who, without justification, willfully and unlawfully causes physical injury to any trained dog or horse used by law-enforcement officials, the department of military affairs and public safety or by fire prevention or investigation officials in the performance of their official duties is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars, or confined in the county jail not more than six months, or both.

Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency, the department of military affairs and public safety or to the state fire marshal or other fire prevention or investigation department or agency owning the animal for any veterinary bills and replacement costs of any disabled or killed animal.
CHAPTER 70

(Com. Sub. for H. B. 2436—By Delegates Proudfoot, Fragale, Caputo, Flanigan, Stemple, Damron and Leggett)

[Passed April 1, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the possession of illegally obtained wildlife; forfeiture to state; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-4. Possession of wildlife.

Except as otherwise provided by law, no person shall have in his or her possession any wildlife, or parts thereof, during closed seasons. It is unlawful to possess any wildlife, or parts thereof, which have been illegally taken, killed or obtained. Any wildlife illegally taken, killed or possessed shall be forfeited to the state and shall be counted toward the daily, seasonal, bag, creel and possession limit of the person in possession of, or responsible for, the illegal taking or killing of any wildlife.

Wildlife lawfully taken outside of this state shall be subject to the same laws and rules as that taken within this state.

Migratory wild birds shall be possessed only in accordance with the “Migratory Bird Treaty Act” and regulations thereunder.

The restrictions in this section do not apply to the director or duly authorized agents, who may, in any manner, take or maintain in captivity, at any time, any wildlife for the purpose of carrying out the provisions of this chapter.
CHAPTER 71

(Com. Sub. for H. B. 2847—By Delegates Stemple, Martin, Kominar, Tucker and Boggs)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-b, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing a second offense of battery upon a police officer from a misdemeanor to a felony; and increasing penalties for convictions of battery upon a police officer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, county or state correctional officers; penalties.

(a) Malicious assault. — If any person maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a police officer, county correctional officer or state correctional officer acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a police officer, conservation officer, humane officer, emergency medical technician, firefighter, county correctional officer or state correctional officer acting in his or her official capacity, then the offender shall be guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary not less than three nor more than fifteen years.
(b) **Unlawful assault.** — If any person unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a police officer, conservation officer, county correctional officer acting in his or her official capacity or state correctional officer bodily injury with intent to maim, disfigure, disable or kill said officer and the person committing the unlawful assault knows or has reason to know that the victim is a police officer, conservation officer, county correctional officer or state correctional officer acting in his or her official capacity, then the offender is guilty of a felony and, upon conviction, shall be confined to the penitentiary for a period of not less than two years nor more than five years.

(c) **Battery.** — If any person unlawfully and intentionally makes physical contact of an insulting or provoking nature with a police officer, conservation officer, county correctional officer or state correctional officer acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a police officer, conservation officer, county correctional officer or state correctional officer acting in such capacity, said person is guilty of a misdemeanor and, upon conviction thereof, shall be confined to the county or regional jail not less than one month nor more than twelve months or fined the sum of five hundred dollars or both fined and imprisoned. If any person commits a second such offense, then such person is guilty of a felony and, upon conviction thereof, shall be confined in the state correctional facility not less than one year nor more than three years or fined the sum of one thousand dollars or both fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction, shall be confined in the state correctional facility not less than two years nor more than five years or fined not more than two thousand dollars or both fined and imprisoned.

(d) **Assault.** — If any person unlawfully attempts to commit a violent injury to the person of a police officer, conservation officer, county correctional officer or state correctional officer, or unlawfully commits an act which places a police officer, conservation officer, county correctional officer or state correctional officer acting in his
or her official capacity in reasonable apprehension of
immediately receiving a violent injury, he shall be guilty
of a misdemeanor and, upon conviction, shall be confined
in the county or regional jail for not less than twenty-four
hours nor more than six months, or fined not more than
two hundred dollars, or both such fine and imprisonment.

(e) Police officer defined. — As used in this section, a
police officer means any officer employed by the division
of public safety, any county law-enforcement agency, any
officer employed by the state to perform law-enforcement
duties or any police officer employed by any city or
municipality who is responsible for the prevention or
detection of crime and the enforcement of the penal,
traffic or highway laws of this state.

CHAPTER 72

(Com. Sub. for H. B. 2084—By Delegates Riggs and Warner)

[Passed April 8, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article six, chapter nine of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended; and to amend article two, chapter sixty-one
of said code by adding thereto a new section, designated
section twenty-nine, relating to abuse of incapacitated adults;
definitions; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article two, chapter sixty-one of said code be amended by adding thereto a new section, designated section twenty-nine, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29. Abuse or neglect of incapacitated adult.

(a) The following words when used in this section
have the meaning ascribed, unless the context clearly
indicates otherwise:

(1) "Abuse" means the infliction or threat to inflict
physical pain or injury on an incapacitated adult;

(2) "Care giver" means an adult who has or shares
actual physical possession or care of an incapacitated
adult on a full-time or temporary basis, regardless of
whether such person has been designated as a guardian of
such adult by any contract, agreement or legal pro-
ceeding. Care giver includes health care providers, family
members, and any person who otherwise voluntarily
accepts a supervisory role towards an incapacitated adult;

(3) "Neglect" means (i) the failure to provide the
necessities of life to an incapacitated adult or (ii) the
unlawful expenditure or willful dissipation of the funds or
other assets owned or paid to or for the benefit of an
incapacitated adult; and

(4) "Incapacitated adult" means any person who by
reason of physical, mental or other infirmity is unable to
physically carry on the daily activities of life necessary to
sustaining life and reasonable health.

(b) Any care giver who neglects an incapacitated
adult, or who knowingly permits another person to neglect
said adult, is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not less than five
hundred dollars nor more than fifteen hundred dollars, or
imprisoned in the county jail for not less than ninety days
nor more than one year, or both fined and imprisoned.

(c) Any care giver who intentionally abuses or
neglects an incapacitated adult is guilty of a felony and,
upon conviction thereof, shall, in the discretion of the
court, be confined in the penitentiary for not less than two
nor more than ten years or be confined in the county jail
for not more than twelve months and fined not more than
fifteen hundred dollars.

(d) Nothing in this article shall be construed to mean
an adult is abused or neglected for the sole reason that his
or her independent decision is to rely upon treatment by
spiritual means in accordance with the tenets and practices
of a recognized church or religious denomination or
organization in lieu of medical treatment.
CHAPTER 73

(Com. Sub. for H. B. 2473—By Delegates Staton, Damron, Kuhn, Trump, Campbell and Laird)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five and six, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections seven and eight, all relating to the crime of arson generally, modifying penalties; changing fines; modifying elements for arson crimes; providing definitions; creating felony offenses for injuries to persons injured during the commission of an arson crime and providing penalties therefor; and establishing reimbursement for the expenses of arson suppression.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five and six, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections seven and eight, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-1. Burning, etc., of a dwelling or outbuilding; first degree arson; penalty; definitions.

§61-3-2. Burning, etc., of other buildings or structures; second degree arson; penalty.

§61-3-3. Burning personal property of another of the value of five hundred dollars or more; third degree arson; penalty.

§61-3-4. Attempt to commit arson; fourth degree arson; penalty.

§61-3-5. Burning, or attempting to burn, insured property; penalty.

§61-3-6. Willfully, unlawfully and maliciously setting fire on lands; penalty.

§61-3-7. Causing injuries during an arson-related crime; penalties.

§61-3-1. Burning, etc., of a dwelling or outbuilding; first degree arson; penalty; definitions.

(a) Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any dwelling, whether occupied, unoccupied or vacant, or any outbuilding, whether the property of himself or herself or of another, shall be guilty of arson in the first degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than two nor more than twenty years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of two years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(b) As used in subsection (a) of this section:

(1) “Dwelling” means any building or structure intended for habitation or lodging, in whole or in part, regularly or occasionally, and shall include, but not be limited to, any house, apartment, hotel, dormitory, hospital, nursing home, jail, prison, mobile home, house trailer, modular home, factory-built home or self-propelled motor home;

(2) “Outbuilding” means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.

§61-3-2. Burning, etc., of other buildings or structures; second degree arson; penalty.

Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building or structure of any class or character, whether the property of himself or herself or of another, not included or prescribed in the preceding section, shall be guilty of arson in the second degree and,
upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than ten years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

§61-3-3. Burning personal property of another of the value of five hundred dollars or more; third degree arson; penalty.

Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any personal property of any class or character, of the value of not less than five hundred dollars, and the property of another person, shall be guilty of arson in the third degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than three years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.

§61-3-4. Attempt to commit arson; fourth degree arson; penalty.

(a) Any person who willfully and maliciously attempts to set fire to, or burn, or attempts to cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice or solicit any person to burn, any of the buildings, structures or personal property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than two years, or fined not to exceed two thousand five hundred dollars, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.
(b) The placing or distributing of any inflammable, explosive or combustible material or substance, or any device in any building, structure or personal property mentioned in the foregoing sections, in an arrangement or preparation with intent to eventually, willfully and maliciously, set fire to or burn, or to cause to be burned, or to aid, counsel, procure, persuade, incite, entice or solicit the setting fire to or burning of any building, structure or personal property mentioned in the foregoing sections shall, for the purposes of this section, constitute an attempt to burn that building, structure or personal property.

§61-3-5. Burning, or attempting to burn, insured property; penalty.

Any person who willfully and with intent to injure or defraud an insurer sets fire to or burns, or attempts so to do, or causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building, structure or personal property, of any class or character, whether the property of himself or herself or of another, which shall at the time be insured or which is believed by the person committing an act prohibited by this section to be insured by any person against loss or damage by fire, shall be guilty of a felony and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than five years or fined not to exceed ten thousand dollars, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

§61-3-6. Willfully, unlawfully and maliciously setting fire on lands; penalty.

If any person willfully, unlawfully and maliciously sets fire to any woods, fence, grass, straw or other thing capable of spreading fire on lands, he or she shall be guilty of a felony and, upon conviction, shall be sentenced to the penitentiary for a definite term of imprisonment.
which is not less than one year nor more than five years or
fined not to exceed five thousand dollars, or both. He or
she shall, moreover, be liable to any person injured
thereby, or in consequence thereof, for double the amount
of damages sustained by such person. A person
imprisoned pursuant to this section is not eligible for
parole prior to having served a minimum of one year of
his or her sentence or the minimum period required by
the provisions of section thirteen, article twelve, chapter
sixty-two of this code, whichever is greater.

§61-3-7. Causing injuries during an arson-related crime;
penalties.

(a) Any person who violates the provisions of sections
one, two, three, four, five or six of this article, which
violation causes bodily injury, but does not result in death,
to any person shall be guilty of a felony and, upon
conviction thereof, shall be sentenced to the penitentiary
for a definite term of imprisonment which is not less than
two nor more than ten years, or fined not more than five
thousand dollars, or both. A person imprisoned pursuant
to this section is not eligible for parole prior to having
served a minimum of two years of his or her sentence or
the minimum period required by the provisions of section
thirteen, article twelve, chapter sixty-two of this code,
whichever is greater.

(b) Any person who violates the provisions of sections
one, two, three, four, five or six of this article, which
violation causes serious bodily injury which maims,
disfigures, or disables any person, but does not result in
death, shall be guilty of a felony and, upon conviction
thereof, shall be sentenced to the penitentiary for a
definite term of imprisonment which is not less than three
nor more than fifteen years, or fined not more than ten
thousand dollars, or both. A person imprisoned pursuant
to this section is not eligible for parole prior to having
served a minimum of three years of his or her sentence or
the minimum period required by the provisions of section
thirteen, article twelve, chapter sixty-two of this code,
whichever is greater.

Any person convicted of any felony enumerated in sections one, two, three, four, five or six of this article may be ordered to reimburse any fire department or company for the costs expended to control, extinguish and suppress the arson fire, and all reasonable costs associated therewith, including, but not limited to, costs for the personal services rendered by any employees of any fire department or company, and operating costs of equipment and supplies used to control, extinguish or suppress the fire.

CHAPTER 74

(Com. Sub. for H. B. 2221—By Delegates Faircloth, Trump, Staton, Amores, Hunt and Douglas)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obstructing and fleeing from an officer; removing the penalty for counseling, advising or inviting another to obstruct an officer; establishing various offenses relating to fleeing from an officer in a vehicle and providing penalties therefor; and defining terms for purposes of this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; fleeing from officer in a vehicle; penalties; definitions.
(a) Any person who by threats, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct, any law-enforcement officer acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, and may, in the discretion of the court, be confined in the county or regional jail not more than one year.

(b) Any person who intentionally flees or attempts to flee by any means other than the use of a vehicle from any law-enforcement officer acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, and may, in the discretion of the court, be confined in the county or regional jail not more than one year.

(c) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, and shall be confined in the county or regional jail not more than one year.

(d) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of any person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than three thousand dollars, and shall be confined in the county or regional jail for not less than six months nor more than one year.

(e) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop,
and who causes bodily injury to any person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in the state correctional facility not less than one nor more than five years.

(f) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to any person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be punished by a definite term of imprisonment in the state correctional facility which is not less than three nor more than fifteen years. A person imprisoned pursuant to the provisions of this subsection is not eligible for parole prior to having served a minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two, whichever is greater.

(g) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs at the time, is guilty of a felony and, upon conviction thereof, shall be imprisoned in the state correctional facility not less than one nor more than five years.

(h) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in section one, article one, chapter seventeen-a of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(i) For purposes of this section, the terms "flee," "fleeing," and "flight" shall not include any person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.
CHAPTER 75

(Com. Sub. for S. B. 134—By Senators Oliverio, Prezioso, Sharpe, White, McKenzie, Buckalew, Hunter, Minear, Bowman, Anderson, Helmick, Kimble, Ross, Snyder, Schoonover, Ball, Sprouse, Dugan, Chafin, Jackson, Wooton, Walker, Dittmar, Bailey and Tomblin, Mr. President)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to child neglect; and creating a criminal offense for any parent, guardian or custodian whose neglect causes the death of a child.

Be it enacted by the Legislature of West Virginia:

That article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-4a. Child neglect resulting in death; criminal penalties.

1 (a) If any parent, guardian or custodian shall neglect a child under his or her care, custody or control and by such neglect cause the death of said child, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars or committed to the custody of the division of corrections for not less than three nor more than fifteen years, or both such fine and imprisonment.

10 (b) No child who in lieu of medical treatment was under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing with a reasonable proven record of success shall,
for that reason alone, be considered to have been neglected within the provisions of this section. A method of religious healing shall be presumed to be a recognized method of religious healing if fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as "medical expenses" pursuant to regulations or rules promulgated by the United States internal revenue service.

(c) A child whose parent, guardian or legal custodian has inhibited or interfered with the provision of medical treatment in accordance with a court order may be considered to have been neglected for the purposes of this section.

CHAPTER 76

(Com. Sub. for H. B. 2756—By Delegates Laird, Mahan and Staton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section ten; and to amend and reenact section two, article twelve, chapter sixty-two of said code, all relating to modifying registration requirements for persons convicted of acts causing the person to be registered under provisions of the sex offender registration act; adding definitions and reporting requirements associated with the sex offender registration act; and including these requirements for offenders released on probation.

Be it enacted by the Legislature of West Virginia:

That section two, article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten; and that section two, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter
  61. Crimes and Their Punishment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.

§61-8F-2. Registration.
§61-8F-10. Address Verification.

§61-8F-2. Registration.

(a) Any person who has been convicted of a violation of the provisions of article eight-b, eight-c or eight-d of this chapter, or of section fourteen, article two, or of section thirteen, article eight of this chapter, or of a similar provision in another jurisdiction shall be required to be registered as set forth in this article. Any person who has been convicted of an attempt to commit any of the offenses set forth in this section shall also be required to register as set forth in this article.

(b) On the date that any person convicted of the crimes listed herein is released, is granted probation, is granted a suspended sentence, is released on parole or probation, or is ordered to be placed on home detention, the commissioner of corrections, regional jail supervisor or city or sheriff operating a jail which releases such person and any parole or probation officer who releases such person or supervises such person following the release shall obtain all information required by this subsection prior to the release of the person and shall send written notice of the release of the person to the state police within three days of receiving the information. The notice shall include:

(1) The full name of the person;
(2) The address where the person shall reside;
(3) The person's social security number;
(4) A recent photograph of the person;
(5) A brief description of the crime for which the person was convicted;
(6) Fingerprints; and
(7) For any person determined to be a sexually violent predator, the notice shall also include:
   (i) Identifying factors, including physical characteristics;
   (ii) History of the offense; and
   (iii) Documentation of any treatment received for the mental abnormality or personality disorder.

(c) At the time the person is convicted of the crimes set forth in subsection (a) of this section, the person shall sign in open court, a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands such provisions. Such statement, when signed and witnessed shall constitute prima facie evidence that the person had knowledge of the requirements of this article.

(d) When a person required to register under this article is released following incarceration, the commissioner of corrections, the regional jail supervisor or the city or sheriff or any other person supervising the operation of the place of confinement shall, within three days, inform the state police of such release and provide such further information as is required by this article.

(e) The state police shall maintain a central registry of all persons who register under this article and shall release
information only as provided in this article.

(f) For the purposes of this article, sexually violent offenses shall be defined as any criminal offenses set forth in article eight-b of this chapter which include forcible compulsion, bodily injury or the use of deadly weapons.

(g) A person is defined as a sexually violent predator when the person is convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder, a symptom of which includes a likelihood of engaging in predatory sexually violent behavior.

(h) A person is defined as having a mental abnormality if the person has a disorder that makes the person likely to engage in predatory sexually violent offenses.

(i) The term "predatory act" as defined in this article means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(j) Determining if the offender is a sexually violent predator shall be the responsibility of the person or persons conducting the offender’s psychiatric study and diagnosis required for probation eligibility as set forth in section two, article twelve of chapter sixty-two of this code.

§61-8F-10. Address Verification.

The state police shall verify addresses of those persons registered as sexually violent predators every ninety days and all other registered persons once a year.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor, shall be eligible for probation, notwithstanding the provisions of sections eigh-
(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment or brandishing of a firearm shall be ineligible for probation. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm.

(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(A) Shall apply to all applicable offenses occurring on or after the first day of August of that year;

(B) Shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(C) Shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case.
tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

(D) Shall not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this section shall apply and be construed without reference to such amendment; and

Insofar as such amendments relate to mandatory sentences without probation, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(d) For the purpose of this section, the term “firearm” shall mean any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder or any other similar means.

(e) In the case of any person who has been found guilty of, or pleaded guilty to, a felony or misdemeanor under the provisions of section twelve or twenty-four, article eight of chapter sixty-one, or under the provisions of article eight-c or eight-b, both of chapter sixty-one, all of this code, such person shall only be eligible for probation after undergoing a physical, mental and psychiatric study and diagnosis which shall include an on-going treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: Provided, That nothing disclosed by the person during such study or diagnosis shall be made available to any law enforcement agency, or other party without that person’s consent, or admissible in any court of this state, unless such information disclosed shall indicate the intention or plans of the probationer to do harm to any person, animal, institution, or property, in
which case such information may be released only to such persons as might be necessary for protection of the said person, animal, institution or property.

(f) Any person who has been convicted of a violation of the provisions of article eight-b, eight-c or eight-d, chapter sixty-one of this code, or of section fourteen, article two, or of section thirteen, article eight, all of chapter sixty-one of this code, or of a similar provision in another jurisdiction shall be required to be registered upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender, send written notice to the state police of the release of the offender. The notice shall include:

1. The full name of the person;
2. The address where the person shall reside;
3. The person’s social security number;
4. A recent photograph of the person;
5. A brief description of the crime for which the person was convicted;
6. Fingerprints; and
7. For any person determined to be a sexually violent predator as defined in section two, article eight-f, chapter sixty-one of this code, the notice shall also include:
   i. Identifying factors, including physical characteristics;
   ii. History of the offense; and
   iii. Documentation of any treatment received for the mental abnormality or personality disorder.
CHAPTER 77

(S. B. 292—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve, thirteen and eighteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the parole board; providing that no more than two board members may be from the same congressional district; providing that no person convicted of first degree murder shall be eligible for parole until he or she has served fifteen years; providing that review of an inmate who was initially refused parole must be by at least three members of the board; providing that the parole board may designate, within a three-year period, when inmates serving life sentences may be reconsidered for parole; providing that parole provisions of this article apply only to felons; providing that at least three board members shall interview an inmate for parole and that an inmate shall be released upon a concurrence of a majority of the interviewing board members; adding certain offenses to those which disqualify a parole violator from being discharged from parole; and cleaning up archaic language.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen and eighteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

There shall be a state board of parole, known as the "West Virginia parole board". The board shall consist of five members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than three of the board members may at any one time belong to the same political party. The board shall be appointed by the governor, by and with the advice and consent of the Senate. Appointments following the effective date of this section shall be made in such a manner that each congressional district is represented and so that no more than two members of the board reside in any one congressional district. Each member of the board shall have a degree in criminal justice or like experience and academic training and shall be otherwise competent to perform the duties of his or her office. The members shall be appointed for overlapping terms of six years. Any member qualified under this section is eligible for reappointment. The members of the board shall devote their full time and attention to their board duties. Any single member of the board is empowered to hold any hearing provided for in this article, where a transcript of the hearing, including exhibits and documentary evidence, and the recommendation of the member holding the hearing is submitted to the board for decision.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the inmate will be subserved thereby, and subject to the limitations hereinafter provided, shall release any such inmate on parole for such terms and upon such conditions as are provided by this article. Any inmate of a state correctional center, to be eligible for parole:

(1) (A) Shall have served the minimum term of his or her indeterminate sentence, or shall have served one fourth of his or her definite term sentence, as the case may be, except that in no case shall any person who committed, or attempted to commit a felony with the use, presentment or
brandishing of a firearm, be eligible for parole prior to
serving a minimum of three years of his or her sentence or
the maximum sentence imposed by the court, whichever is
less: Provided, That any person who committed, or at-
tempted to commit, any violation of section twelve, article
two, chapter sixty-one of this code, with the use, present-
ment or brandishing of a firearm, shall not be eligible for
parole prior to serving a minimum of five years of his or
her sentence or one third of his or her definite term sen-
tence, whichever shall be the greater. Nothing in this sec-
tion shall apply to an accessory before the fact or a prin­
cipal in the second degree who has been convicted as if he
or she were a principal in the first degree if, in the com­
mision of or in the attempted commission of the felony,
only the principal in the first degree used, presented or
brandished a firearm. No person is ineligible for parole
under the provisions of this subdivision because of the
commission or attempted commission of a felony with the
use, presentment or brandishing of a firearm unless such
fact is clearly stated and included in the indictment or
presentment by which such person was charged and was
either: (i) Found by the court at the time of trial upon a
plea of guilty or nolo contendere; or (ii) found by the
jury, upon submitting to such jury a special interrogatory
for such purpose if the matter was tried before a jury; or
(iii) found by the court, if the matter was tried by the court
without a jury.

For the purpose of this section, the term "firearm" shall
mean any instrument which will, or is designed to, or may
readily be converted to, expel a projectile by the action of
an explosive, gunpowder or any other similar means.

(B) The amendments to this subsection adopted in the
year one thousand nine hundred eighty-one:

(i) Shall apply to all applicable offenses occurring on
or after the first day of August of that year;

(ii) Shall apply with respect to the contents of any
indictment or presentment returned on or after the first
day of August of that year irrespective of when the off-
fense occurred;
(iii) Shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

(iv) Shall not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this section shall apply and be construed without reference to such amendment.

Insofar as such amendments relate to mandatory sentences restricting the eligibility for parole, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(2) Shall not be under punishment or in solitary confinement for any infraction of prison rules;

(3) Shall have maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his or her release on parole;

(4) Shall have submitted to the board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment, said parole release plan having been approved by the commissioner of corrections or his or her authorized representative; and

(5) Shall have satisfied the board that if released on parole he or she will not constitute a danger to the community.

Except in the case of one serving a life sentence, no person who has been previously twice convicted of a felo-
ny may be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. No person sentenced for life may be paroled until he or she has served ten years, and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he or she has served fifteen years: Provided, That no person convicted of first degree murder for an offense committed on or after the tenth day of June, one thousand nine hundred ninety-four, shall be eligible for parole until he or she has served fifteen years. In the case of a person sentenced to any state correctional center, it shall be the duty of the board, as soon as such person becomes eligible, to consider the advisability of his or her release on parole. If, upon such consideration, parole be denied, the board shall at least once a year reconsider and review the case of every inmate so eligible, which reconsideration and review shall be by at least three members of the board: Provided, however, That the board may reconsider and review parole eligibility any time within three years following the denial of parole of a person serving a life sentence. The board shall, at the time of denial, notify the person of the month and year they may apply for reconsideration and review. If parole be denied, the inmate shall be promptly notified.

(b) Any person serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a state correctional center may make written application for parole. The terms and conditions for parole consideration established by this article shall be applied to such inmates.

(c) The board shall, with the approval of the governor, adopt rules and regulations governing the procedure in the granting of parole. No provision of this article and none of the rules and regulations adopted hereunder are intended or shall be construed to contravene, limit or otherwise interfere with or affect the authority of the governor to grant pardons and reprieves, commute sentences, remit fines or otherwise exercise his or her constitutional powers of executive clemency.

The department of corrections shall be charged with
the duty of supervising all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out of state parolee supervision.

(d) When considering an inmate of a state correctional center for release on parole, the parole board shall have before it an authentic copy of or report on the inmate’s current criminal record as provided through the West Virginia state police, the United States department of justice or other reliable criminal information sources and written reports of the warden or superintendent of the state correctional center to which such inmate is sentenced:

(1) On the inmate’s conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered therefor;

(2) On improvement or other changes noted in the inmate’s mental and moral condition while in custody, including a statement expressive of the inmate’s current attitude toward society in general, toward the judge who sentenced him or her, toward the prosecuting attorney who prosecuted him or her, toward the policeman or other officer who arrested the inmate and toward the crime for which he or she is under sentence and his or her previous criminal record;

(3) On the inmate’s industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves prison;

(4) On physical, mental and psychiatric examinations of the inmate conducted, insofar as practicable, within the two months next preceding parole consideration by the board.

The board may waive the requirement of any such
report when not available or not applicable as to any in-
mate considered for parole but, in every such case, shall
enter in the record thereof its reason for such waiver:
Provided, That in the case of an inmate who is incarcerat-
ed because such inmate has been found guilty of, or has
pleaded guilty to a felony under the provisions of section
twelve, article eight, chapter sixty-one of this code or un-
der the provisions of article eight-b or eight-c, chapter
sixty-one of this code, the board may not waive the report
required by this subsection and the report shall include a
study and diagnosis which shall include an on-going treat-
ment plan requiring active participation in sexual abuse
counseling at an approved mental health facility or
through some other approved program: Provided, howev-
er, That nothing disclosed by the person during such
study or diagnosis shall be made available to any
law-enforcement agency, or other party without that per-
son's consent, or admissible in any court of this state, un-
less such information disclosed shall indicate the intention
or plans of the parolee to do harm to any person, animal,
institution, or to property. Progress reports of outpatient
treatment shall be made at least every six months to the
parole officer supervising such person. In addition, in
such cases, the parole board shall inform the prosecuting
attorney of the county in which the person was convicted
of the parole hearing and shall request that the prosecut-
ing attorney inform the parole board of the circumstances
surrounding a conviction or plea of guilty, plea bargain-
ing and other background information that might be use-
ful in its deliberations.

Before releasing any inmate on parole, the board of
parole shall arrange for the inmate to appear in person
before at least three members of the board and the board
may examine and interrogate him or her on any matters
pertaining to his or her parole, including reports before
the board made pursuant to the provisions hereof. The
board shall reach its own written conclusions as to the
desirability of releasing such inmate on parole and the
majority of the board members considering the release
shall concur in the decision. The warden or superinten-
dent shall furnish all necessary assistance and cooperate to
209 the fullest extent with the parole board. All information,
210 records and reports received by the board shall be kept on
211 permanent file.

The board and its designated agents shall at all times
212 have access to inmates imprisoned in any state correctional
213 center or in any city, county or regional jail in this state,
215 and shall have the power to obtain any information or aid
216 necessary to the performance of its duties from other
217 departments and agencies of the state or from any political
218 subdivision thereof.

The board shall, if so requested by the governor, in-
219 vestigate and consider all applications for pardon, reprieve
220 or commutation and shall make recommendation thereon
222 to the governor.

Prior to making such recommendation and prior to
224 releasing any inmate on parole, the board shall notify the
225 sentencing judge and prosecuting attorney at least ten
226 days before such recommendation or parole. Any person
227 released on parole shall participate as a condition of pa-
228 role in the litter control program of the county to the
229 extent directed by the board, unless the board specifically
230 finds that this alternative service would be inappropriate.


The period of parole shall be the maximum of any
1 sentence, less deductions for good conduct and work as
2 provided by law, for which the paroled inmate, at the time
3 of release, was subject to imprisonment under his or her
4 definite or indeterminate sentence, as the case may be:
5 Provided, That any time after a parolee has been on pa-
6 role for a period of one year from the date of his or her
7 release, the board may, when in its judgment the ends of
8 parole have been attained and the best interests of the state
9 and the parolee will be served thereby, release the parolee
10 from further supervision and discharge him or her from
11 parole: Provided, however, That no inmate sentenced to
12 serve a life term of imprisonment and released on parole
13 shall be discharged from supervision and parole in a peri-
14 od less than five years from the date of his or her release
15 on parole.
No parolee who has violated the terms of his or her release on parole by confession to, or being convicted of, in any state of the United States, the District of Columbia, or the territorial possessions of the United States, the crime of treason, murder, aggravated robbery, first degree sexual assault, second degree sexual assault, a sexual offense against a minor, incest or offenses with the same essential elements if known by other terms in other jurisdictions shall be discharged from parole. A parolee serving a sentence in any correctional facility of another state or the United States may, unless incarcerated for one of the above enumerated crimes, be discharged from parole while so serving his or her sentence in said correctional facility, or be continued on parole or returned to West Virginia as a parole violator, in the discretion of the parole board.

CHAPTER 78

(Com. Sub. for H. B. 2148—By Mr. Speaker, Mr. Kiss, and Delegates Michael and Martin)

[Passed March 27, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to compensation awards to victims of crimes; including restitution as a collateral source of income; increasing the amount awarded for death expenses; including acts of terrorism in definition of criminally injurious conduct; allowing compensation fund moneys to be deposited in the state consolidated investment account; and increasing the maximum award amounts for economic loss and death of the victim.

Be it enacted by the Legislature of West Virginia:
That sections three, four and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.


As used in this article, the term:

(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim: Provided, That the term victim does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person other than a collateral source who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim; and

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him, from any of the following sources:
(1) The offender, including any restitution received
from the offender pursuant to an order by a court of law
sentencing the offender or placing him on probation
following a conviction in a criminal case arising from the
criminally injurious act for which a claim for
compensation is made;

(2) The government of the United States or any of its
agencies, a state or any of its political subdivisions, or an
instrumentality of two or more states;

(3) Social security, medicare and medicaid;

(4) State-required, temporary, nonoccupational
disability insurance; other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the
victim or claimant for loss that was sustained because of
the criminally injurious conduct;

(8) A contract providing prepaid hospital and other
health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of
insurance payable to the claimant on account of the death
of the victim which exceeds twenty-five thousand dollars.

(c) "Criminally injurious conduct" means conduct
that occurs or is attempted in this state or in any state not
having a victim compensation program which by its nature
poses a substantial threat of personal injury or death, and
is punishable by fine or imprisonment or death, or would
be so punishable but for the fact that the person engaging
in the conduct lacked capacity to commit the crime under
the laws of this state. Criminally injurious conduct also
includes an act of terrorism, as defined in 18 U.S.C. §
2331, committed outside of the United States against a
resident of this state. Criminally injurious conduct does
not include conduct arising out of the ownership,
maintenance or use of a motor vehicle, except when the
person engaging in the conduct intended to cause
personal injury or death, or except when the person
engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

(d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of determining whether an individual received over half of his or her support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself or herself supplied. The term "support" includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term "dependent" includes a child of the victim born after his or her death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

(f) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

Allowable expense includes a total charge not in excess of four thousand dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.
(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her, or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.

(i) "Dependent’s economic loss" means loss after a victim’s death of contributions or things of economic value to his or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death.

(j) "Dependent’s replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim’s death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death and not subtracted in calculating dependent’s economic loss.

(k) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct, or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.
(l) "Contributory misconduct" means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortious and that, without regard to the conduct’s proximity in time or space to the criminally injurious conduct has causal relationship to the criminally injurious conduct that is the basis of the claim and shall also include the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance when the intoxication has a causal connection or relationship to the injury sustained. The voluntary intoxication of a victim is not a defense against the estate of a deceased victim.


(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any magistrate court or circuit court, shall pay the sum of ten dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any municipal court, shall pay the sum of eight dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c of this code, shall pay a fee in the amount of twenty percent of any fine imposed under said section. This shall be in addition to any other court costs required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court wherein the additional costs are imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund.
to be known as the "Crime Victims Compensation Fund", which is hereby created. All moneys heretofore collected and received under the prior enactment or reenactments of this article and deposited or to be deposited in the "Crime Victims Reparation Fund" are hereby transferred to the crime victims compensation fund, and the treasurer shall deposit the moneys in the state treasury. All moneys collected and received under this article and paid into the state treasury and credited to the crime victims compensation fund in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for the specific purposes of this article, and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(c) Moneys in the crime victims compensation fund shall be available for the payment of the costs of administration of this article in accordance with the budget of the court approved therefor: Provided, That the services of the office of the attorney general, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.

(d) Any moneys in the crime victims compensation fund may be deposited in the West Virginia consolidated investment fund with the West Virginia state board of investments as established in article one of chapter twelve of this code, with the interest income a proper credit to the crimes victims compensation fund.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The judge or commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a
law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(c) The judge or commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation, or reconsider a claim already approved.

(e) A judge or commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county or regional jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant’s economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be
reopened and an award shall be approved in an amount
equal to the amount of expected recoupment that it is
determined the claimant will not receive from the
collateral source, subject to the limitation set forth in
subsection (g) of this section.

(g) Except in the case of death, compensation payable
to a victim and to all other claimants sustaining economic
loss because of injury to that victim may not exceed
twenty-five thousand dollars in the aggregate. Compen-
sation payable to all claimants because of the death of the
victim may not exceed thirty-five thousand dollars in the
aggregate.

(h) If an award of compensation of five thousand
dollars or more is made to a minor, a guardian shall be
appointed pursuant to the provisions of article ten, chapter
forty-four of this code to manage the minor’s estate.

CHAPTER 79

(S. B. 367—By Senators Anderson, Bailey, Chaflin, Helmick, Jackson, Love,
Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three,
article two, chapter five-b of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
further amend said article by adding thereto a new section,
designated section four-a, all relating generally to the West
Virginia development office; allowing the chair of tourism to
appoint a designee to serve on the council for community
and economic development; removing obsolete language
regarding initial appointments to the council; providing for
confidentiality of materials received by the development
office or other public body whose primary responsibility is
economic development; removing obsolete language
regarding the development of a reorganization plan for the
development office and the report to the governor and the Legislature on the reorganization; providing for the amount of matching grants available to participating economic development corporations and authorities under the certified development community program; allowing the development office to enter into contractual agreements with eligible regional councils to provide funding for obtaining federal matching grants and for other purposes; specifying the amount of the state allocation; and requiring the development office to develop eligibility criteria.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four-a, all to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-1. West Virginia development office; confidentiality.

§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

§5B-2-3. Powers and duties of council for community and economic development.

§5B-2-4a. State allocation to regional councils.

§5B-2-1. West Virginia development office; confidentiality.

1 The governor's office of community and industrial development is hereby continued but is hereafter designated and shall be known as the West Virginia development office. All references in this code to the office of community and industrial development or the governor's office of community and industrial development shall be construed as references to the West Virginia development office.

9 Any documentary material, data or other writing made or received by the West Virginia development office or other public body, whose primary responsibility is economic development, for the purpose of furnishing assistance to a new or existing business shall be exempt
from the provisions of article one, chapter twenty-nine-b of this code: Provided, That any agreement entered into or signed by the development office or public body which obligates public funds shall be subject to inspection and copying pursuant to the provisions of said article as of the date the agreement is entered into, signed or otherwise made public.

§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

(a) The council for community and economic development, within the West Virginia development office, is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council consists of:

(1) Nine members to be appointed by the governor, with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism or agriculture: Provided, That one member appointed pursuant to this subsection shall be a member of a regional planning and development council. Of the nine members representing community or regional interests, three members shall be from each congressional district of the state and shall be appointed in such a manner as to provide a broad geographical distribution of members of the council;

(2) Two at-large members to be appointed by the governor with the advice and consent of the Senate;

(3) One member to be appointed by the governor from a list of two persons recommended by the speaker of the House of Delegates;

(4) One member to be appointed by the governor from a list of two persons recommended by the president of the Senate;
(5) The president of the West Virginia economic development council; and

(6) The chair, or his or her designee, of the tourism commission created pursuant to the provisions of section eight of this article.

(b) The governor shall appoint the appointed members of the council for four-year terms. Any member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member is eligible for reappointment. In cases of any vacancy in the office of a member, the vacancy shall be filled by the governor in the same manner as the original appointment.

(c) Members of the council are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. A majority of the members constitute a quorum for the purpose of conducting business. The council shall elect its chair for a term to run concurrent with the term of office of the member elected as chair. The chair is eligible for successive terms in that position.

(d) The council shall employ an executive director of the West Virginia development office, who is qualified for the position by reason of his or her extensive education and experience in the field of professional economic development. The executive director shall serve at the will and pleasure of the council. The salary of the director shall be fixed by the council. The director shall have overall management responsibility and administrative control and supervision within the West Virginia development office. It is the intention of the Legislature that the director provide professional and technical expertise in the field of professional economic and tourism development in order to support the policy making functions of the council, but that the director not be a public officer, agent, servant or contractor within the meaning of section thirty-eight, article VI of the constitution of the state and not be a statutory officer
within the meaning of section one, article two, chapter
five-f of this code. Subject to the provisions of the
contract provided for in section four of this article, the
director may hire and fire economic development
representatives employed pursuant to the provisions of
section five of this article.

§5B-2-3. Powers and duties of council for community and
economic development.

(a) The council for community and economic
development shall enhance economic growth and
development through the development of a
comprehensive economic development strategy for West
Virginia. "Comprehensive economic development
strategy" means a plan that outlines strategies and activities
designed to continue, diversify or expand the economic
base of the state as a whole; create jobs; develop a highly
skilled work force; facilitate business access to capital,
including venture capital; advertise and market the
resources offered by the state with respect to the needs of
business and industry; facilitate cooperation among local,
regional and private economic development enterprises;
 improve infrastructure on a state, regional and community
level; improve the business climate generally; and leverage
funding from sources other than the state, including
federal and private sources.

(b) The council shall develop a certified development
community program and provide funding assistance to the
participating economic development corporations or
authorities through a matching grant program. The
council shall establish criteria for awarding matching
grants to the corporations or authorities within the limits
of funds appropriated by the Legislature for the program.
The matching grants to corporations or authorities eligible
under the criteria shall be in the amount of thirty thousand
dollars for each fiscal year, if sufficient funds are
appropriated by the Legislature. The West Virginia
development office shall recognize existing county,
regional or multi-county corporations or authorities where
appropriate.
In developing its plan, the West Virginia development office shall consider resources and technical support available through other agencies, both public and private, including, but not limited to, the state college and university systems; the West Virginia housing development fund; the West Virginia economic development authority; the West Virginia parkways, economic development and tourism authority; the West Virginia round table; the West Virginia chamber of commerce; regional planning and development councils; regional partnership for progress councils; and state appropriations.

(c) The council shall promulgate rules to carry out the purposes and programs of the West Virginia development office to include generally the programs available, and the procedure and eligibility of applications relating to assistance under the programs. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the secretary of state.

§5B-2-4a. State allocation to regional councils.

The West Virginia development office may enter into contractual agreements with the regional councils formed under the provisions of section five, article twenty-five, chapter eight of this code to provide funding to the regional councils to be used to obtain federal matching grants and for other purposes determined to be appropriate by the development office. The maximum state allocation to each eligible regional council shall be forty thousand dollars: Provided, That the amount of the allocation shall be determined by dividing the number of eligible regional councils into the total amount of funds made available for allocation by the Legislature. The West Virginia development office shall develop criteria to determine a regional council’s eligibility for the state allocation.
CHAPTER 80

(Com. Sub. for S. B. 70—By Senators Tomblin, Mr. President, Craigo, Plymale, Jackson, Prezioso, Snyder, Ross, Sprouse, Ball, Hunter, Schoonover, Kimble, Dittmar, Anderson, Oliverio and Sharpe)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article thirty, chapter eighteen of said code; and to amend and reenact section four, article ten, chapter thirty-eight of said code, all relating to the creation of a prepaid higher education tuition program; repealing provisions which will no longer apply to the tuition trust; providing an additional modification reducing federal adjusted gross income; the West Virginia prepaid tuition trust act; providing a title, legislative findings and definitions; board of trustees composition, proceedings, powers and oversight by the legislative oversight commission on education accountability; creating the West Virginia prepaid tuition trust fund; providing a state income tax deduction for purchasers; requiring reports, accounts and annual audits; liberal construction; expiration of article; and to exempt from bankruptcy proceedings payments made to the prepaid tuition trust fund.

Be it enacted by the Legislature of West Virginia:

That section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article thirty, chapter eighteen of said code be amended and reenacted; and that section four, article ten, chapter thirty-eight of said code be amended and reenacted, all to read as follows:
Chapter
11. Taxation.
18. Education.
38. Liens.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12a. Additional modification reducing federal adjusted gross income.

In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any payment made under a prepaid tuition contract as provided under section seven, article thirty, chapter eighteen of this code, is also an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer’s federal adjusted gross income for the taxable year in which the payment is made.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.

§18-30-1. Title.
§18-30-2. Legislative findings and purpose.
§18-30-3. Definitions.
§18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.
§18-30-5. Powers of the board.
§18-30-6. West Virginia prepaid tuition trust created.
§18-30-8. Report and account; annual audit.
§18-30-9. Expiration of article.

§18-30-1. Title.

This article shall be known and may be cited as the “West Virginia Prepaid Tuition Trust Act”.

§18-30-2. Legislative findings and purpose.
The Legislature hereby finds and determines that the advancement and improvement of higher education in the state of West Virginia is a proper governmental function and purpose of the state. The Legislature also finds that the creation of a prepaid tuition trust fund, to assist qualified students and their families in financing a portion of the costs of attending an accredited higher education institution or program in the state of West Virginia will increase the number of qualified students who will seek to attend such accredited higher education institutions and programs, which will be of benefit to students, families and to such accredited higher education institutions and programs, and will therefore advance and improve higher education in the state of West Virginia. It is, therefore, the legislative intent of this article to establish a higher education prepaid tuition trust fund to assist qualified students to pay in advance the tuition costs of attending accredited higher education institutions and programs and thereby to encourage such qualified students to attend accredited higher education institutions and programs in the state of West Virginia. The Legislature finds and declares that prepaid tuition trust fund contracts neither contain nor obligate any general revenue funds.

§18-30-3. Definitions.

For the purpose of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise:

(a) "Accredited higher education institution or program" means any accredited higher education institution or accredited higher education program offered through an accredited provider.

(b) "Beneficiary" means any intended or unintended beneficiary of the prepaid tuition contract between the purchaser and the board, including any beneficiary designated by the purchaser, his agent or his estate in the event that the intended beneficiary is unable or unwilling to benefit under the terms of the trust fund.
(c) "Board" means the board of trustees of the prepaid higher education tuition trust fund as provided in section four of this article.

(d) "Outside tuition fee" means the amount of tuition or fees, or both, payable to an accredited higher education institution or program outside the state or independent state institutions or programs upon the election by a beneficiary to attend such institutions or programs. This fee shall generally be the amount of the average public tuition costs or fees, or both, of state institutions of higher learning as determined by the board of trustees on an annual basis.

(e) "Prepaid tuition contract" means a contract entered into by the board of the trust fund and a purchaser pursuant to this article.

(f) "Purchaser" means an individual, corporation or other entity who makes or is obligated to make payments in accordance with a prepaid tuition contract entered into pursuant to this chapter.

(g) "Trust fund" means the prepaid higher education tuition trust fund.

(h) "Tuition" means the quarter, semester or term charges imposed by an accredited higher education institution or program and all mandatory fees required as a condition of enrollment by all students.

§18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.

(a) The board of the prepaid college expense trust fund shall consist of nine members and shall include the secretary of education and the arts and the state treasurer, who shall serve as ex officio voting members of the board, and seven other members with knowledge, skill and experience in an academic, business or financial field. The seven appointed members shall be residents of the state. One member shall be a representative of the university of West Virginia board of trustees selected by the board of trustees from its members as defined in section one, article two, chapter eighteen-b of this code.
and one member shall be a representative of the board of
directors of the state college system selected by the board
of directors from its members as defined in section one,
article three, chapter eighteen-b of this code. The
governor shall appoint three members from nominations
as follows: One member shall be a private citizen not
employed by, or an officer of, the state or any political
subdivision of the state appointed from one or more
nominees of the speaker of the House of Delegates; one
member shall be a private citizen not employed by, or an
officer of, the state or any political subdivision of the state
appointed from one or more nominees of the president of
the Senate; and one member shall represent the interests of
private institutions of higher education located in this state
who shall be appointed from one or more nominees of the
West Virginia association of private colleges. The
governor also shall appoint two members who are
representatives of the public. The public members and the
member representing the interests of private institutions of
higher education shall be appointed by the governor with
the advice and consent of the Senate.

(b) Appointed members shall serve a term of five
years and may be reappointed at the expiration of their
terms. In the event of a vacancy among appointed
members, the governor shall appoint a person representing
the same interests to fill the unexpired term. Of the initial
appointments, the governor shall appoint one member to a
one-year term, one member to a two-year term, one
member to a three-year term, one member to a four-year
term and one member to a five-year term. Thereafter, all
terms shall be for five years.

(c) Members of the board of trustees shall serve
without compensation, but for the first twelve months after
the effective date of this section members shall be
reimbursed by the state treasurer’s office for expenses,
including travel expenses, actually incurred by a member
in the official conduct of the business of the board at the
same rate as is paid the employees of the state. Thereafter,
the state treasurer may charge back to the trust fund as
administrative expenses all expenses, including travel
expenses, actually incurred and paid to board members for the conduct of their official duties.

(d) The state treasurer shall be the trustee chairman and presiding officer of the board, and may appoint such other employees as the board considers advisable or necessary. A majority of the members of the board constitute a quorum for the transaction of the business of the trust fund.

§18-30-5. Powers of the board.

In addition to the powers granted by any other provision of this article, the board shall have the powers necessary or convenient to carry out the purposes and provisions of this article, the purposes and objectives of the trust and the powers delegated by any other law of the state or any executive order of the state including, but not limited to, the following express powers:

(a) To adopt and amend bylaws;

(b) To propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article: Provided, That the board may not promulgate emergency rules;

(c) To invest any funds of the trust fund, at the board’s discretion, with the West Virginia state board of investments in accordance with applying the provisions of article six, chapter twelve of this code. Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(d) To execute contracts and other necessary instruments;
(e) To enter into prepaid tuition contracts;

(f) To impose reasonable limits on the number of prepaid tuition contract purchasers participating in the trust fund at any given period of time;

(g) To impose reasonable requirements for residency for qualified beneficiaries at the time of purchase of the prepaid tuition contract. However, nothing in this subdivision shall be construed to establish residency requirements for matriculation at state institutions of higher education;

(h) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the trust fund;

(i) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aids from any source or to participate in any other way in any federal, state or local governmental programs in carrying out the purposes of this article;

(j) To define the terms and conditions under which payments may be withdrawn from the trust fund and impose reasonable charges for such withdrawal: Provided, That payments made by employers on behalf of beneficiaries selected by their employees are deemed fully vested in the employees from time of receipt of such payments by the board;

(k) To devise and offer to purchasers other educational programs, such as the purchase of books and other educational supplies;

(l) To impose reasonable time limits on the use of the tuition benefits provided by the program;

(m) To provide for the receipt of contributions to the trust fund in lump sums or installment payments; and

(n) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.
§18-30-6. West Virginia prepaid tuition trust created.

(a) There is hereby created within the accounts held by the state treasurer the prepaid tuition trust fund account to be administered by the board until and unless the Legislature shall determine otherwise, and titled the “Prepaid Tuition Trust Fund”.

(b) The location of the trust fund shall be the state treasurer’s office, and the facilities of the state treasurer shall be used and employed in the administration of the trust fund including, but without limitation thereto, the keeping of records, the management of bank accounts and other investments, the transfer of funds and the safekeeping of securities evidencing investments.

(c) Payments received by the board from purchasers on behalf of beneficiaries or from any other source, public or private, shall be placed in the trust fund.

(d) The corpus, assets and income of the trust fund do not constitute public funds of the state.

(e) The trust fund, through the trustee chairman, is authorized to receive any gift or transfer of property, real or personal of any nature, from any source as may be approved by the board, or any terms and conditions as may be imposed by the board: Provided, That all property received by the trust shall be converted into cash within ninety days of receipt.

(f) The board shall cause an actuarial study to be periodically performed to ensure that sufficient funds are being deposited to the fund to meet the obligations of the trust fund. Specifically, the board shall annually evaluate or cause to be evaluated, the actuarial soundness of the trust fund. If the board finds that additional contributions are needed in order to preserve the actuarial soundness of the fund, it may adjust the terms of pre-existing and subsequent prepaid tuition contracts to ensure such soundness: Provided, That any necessary adjustment to pre-existing contracts may only be assessed on future payments and not retroactively upon previous payments made by the purchaser or donors to the trust fund. There
shall be no obligation of state general revenue funds to the
trust fund for any purpose whatsoever.

(g) In order to fulfill the charitable and public
purposes of this article, neither the income nor the
property of the trust fund shall be subject to taxation by
the state or any of its political subdivisions.

(h) The board is hereby empowered to propose rules
to provide for the withdrawal and disbursement of contract
funds on an actuarially sound basis. The board may
propose rules to provide a tuition guarantee for
beneficiaries attending state institutions of higher
education: Provided, That this rule may not be
promulgated as an emergency rule subject to oversight by
the legislative oversight commission on education
accountability as provided by section eleven, article three-
a, chapter twenty-nine-a of this code.

(i) There is hereby created a separate account within
the state treasurer's office to be known as the "Prepaid
Tuition Trust Fund Administrative Account" for the
purposes of implementing and maintaining the trust fund
accounts pursuant to this article. The board may charge
against the fees collected and interest earned from the trust
fund accounts, amounts as are reasonable and customary
for the state treasurer to fund the administrative costs of
maintaining the trust fund accounts. The charges shall be
subject to review by the legislative oversight commission
on education accountability. Expenditures from the fund
are not authorized from collections, but may only be
made upon appropriation by the Legislature.


As provided in section twelve-a, article twenty-one,
chapter eleven of this code, a purchaser of a prepaid
tuition contract, under the provisions of this article, is
eligible for a tax deduction.

§18-30-8. Report and account; annual audit.

(a) In addition to any other requirements of this
article, the board shall:
(1) Provide annually summary information on the financial condition of the trust fund to all purchasers of prepaid tuition contracts;

(2) Prepare, or cause to be prepared, an annual accounting and actuarial report of the trust fund and transmit a copy of same to the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability; and

(3) Make all necessary and appropriate arrangements with accredited higher education institutions and programs in order to fulfill its obligations under the prepaid tuition contracts which arrangements shall include the satisfaction by the trust fund of current applicable tuition and fee charges on behalf of a beneficiary to the accredited higher education institution or program.

(b) All accounts of the board, including the trust fund accounts, are subject to an annual external audit, by a nationally recognized accounting firm in conjunction with the annual federal audit.

§18-30-9. Expiration of article.

This article shall become void upon the first day of January, two thousand two, if the trust has not entered into a prepaid tuition contract with a purchaser before that date.

CHAPTER 38. LIENS.

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

Pursuant to the provisions of 11 U.S.C. 522(b)(1), this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified under the provisions of 11 U.S.C. 522(d).

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:
(a) The debtor's interest, not to exceed fifteen thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor.

(b) The debtor's interest, not to exceed two thousand four hundred dollars in value, in one motor vehicle.

(c) The debtor's interest, not to exceed four hundred dollars in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor: Provided, That the total amount of personal property exempted under this subsection shall not exceed eight thousand dollars.

(d) The debtor's interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

(e) The debtor's interest, not to exceed in value eight hundred dollars plus any unused amount of the exemption provided under subsection (a) of this section in any property.

(f) The debtor's interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

(g) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(h) The debtor's interest, not to exceed in value eight thousand dollars less any amount of property of the estate transferred in the manner specified in 11 U.S.C. 542(d), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(j) The debtor's right to receive:

(1) A social security benefit, unemployment compensation or a local public assistance benefit;

(2) A veterans' benefit;

(3) A disability, illness or unemployment benefit;

(4) Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(5) A payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

(A) Such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(B) Such payment is on account of age or length of service; and

(C) Such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code of 1954.

(k) The debtor's right to receive, or property that is traceable to:

(1) An award under a crime victim's reparation law;

(2) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
(4) A payment, not to exceed fifteen thousand dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;

(5) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(6) Payments made to the prepaid tuition trust fund on behalf of any beneficiary.

This section shall not be construed to affect the applicability of any provision of the federal bankruptcy law other than 11 U.S.C. 552(d).

CHAPTER 81

(Com. Sub. for H. B. 2204—By Delegates Williams, Michael, Mezzatesta, Dempsey, Ennis, Manuel and Osborne)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to repeal section six, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article five of said chapter by adding thereto a new section, designated section eighteen-d; to amend and reenact sections three, four, seven and eleven, article eight of said chapter; to amend sections six-a, six-b and fifteen, article nine-a of said chapter; and to amend article four, chapter eighteen-a of said code by adding thereto a new section, designated section eight-i, all relating to study on programs for children under the age of five; requiring preparation of attendance reports upon request of county superintendent; eliminating the board of educations’ power of removal of the attendance director; providing that attendance director shall ascertain reasons for absences of
students of sixteen years of age as well as those under sixteen years of age; authorizing service of summons; requiring attendance director to serve as liaison for homeless children and youth; prohibiting the inducement of a student to be absent from school of any age; reducing the appropriation determined by the actuarial evaluation for the teachers' retirement fund by the amount resulting from an increase in local share; allowance for increased enrollment; and seniority rights for professional educators and school service personnel in cases of intercounty transfer arrangements.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

Article
5. County Board of Education.
8. Compulsory School Attendance.
9A. Public School Support.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18d. Study on programs for children under the age of five.

1 The state department of education and the department
2 of health and human resources, in consultation with the
3 governor's cabinet on children and families, shall conduct
a comprehensive study on programs for children under the age of five. Such study shall consider issues including, but not limited to, curriculum, acquiring federal dollars, welfare reform, relation to day care centers, relation to kindergarten programs, involvement of the private sector, involvement of the public sector and cost effectiveness.

The state department of education and the department of health and human resources shall submit a report to the legislative oversight commission on education accountability by the first day of December, one thousand nine hundred ninety-seven.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§ 18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

§ 18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

§ 18-8-7. Aiding or abetting violations of compulsory attendance; penalty.

§ 18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

§ 18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

(a) The county board of education of every county, not later than the first day of August of each year, shall employ the equivalent of a full-time county director of school attendance if such county has a net enrollment of more than four thousand pupils, at least a half-time director of school attendance if such county has a net enrollment equal to or less than four thousand pupils and such assistant attendance directors as deemed necessary.

All persons to be employed as attendance directors shall have the written recommendation of the county superintendent.

(b) The county board of education may establish special and professional qualifications for attendance directors and assistants as are deemed expedient and proper and are consistent with regulations of the state board of education relating thereto.
(c) The attendance director or assistant director shall be paid a monthly salary as fixed by the county board. The attendance director or assistant director shall prepare attendance reports, and such other reports as the county superintendent may request.

(d) The county board of education shall reimburse the attendance directors or assistant directors for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

The county attendance director and the assistants shall diligently promote regular school attendance. They shall ascertain reasons for inexcusable absences from school of pupils of compulsory school age and students who remain enrolled beyond the sixteenth birthday as defined under this article and shall take such steps as are, in their discretion, best calculated to correct attitudes of parents and pupils which results in absences from school even though not clearly in violation of law.

In the case of five consecutive or ten total unexcused absences of a child during a school year, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required and that within ten days of receipt of the notice the parent, guardian or custodian, accompanied by the child, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the child; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to
serve the summons or to arrest persons charged with offenses against the state. More than one summons or warrant may be issued on the same complaint. The summons or warrant shall be executed within ten days of its issuance.

The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such child, stating age of the child. The county attendance director or assistant shall, in the performance of his or her duties, have authority to take without warrant any child absent from school in violation of the provisions of this article and to place such child in the school in which such child is or should be enrolled.

The county attendance director shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director shall be responsible under direction of the county superintendent for the efficient administration of school attendance in the county.

In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors shall also perform the following duties:
(a) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(b) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(c) Cooperate with existing state and federal agencies charged with enforcement of child labor laws;

(d) Prepare a report for submission by the county superintendent to the state superintendent of schools on school attendance, at such times and in such detail as may be required; also, file with the county superintendent and county board of education at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(e) Promote attendance in the county by the compilation of data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(f) Participate in school teachers' conferences with parents and students;

(g) Assist in such other ways as the county superintendent may direct for improving school attendance;

(h) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal.

(i) The attendance director shall serve as the liaison for homeless children and youth.

§18-8-7. Aiding or abetting violations of compulsory attendance; penalty.

Any person who induces or attempts to induce any child or student unlawfully to absent himself or herself from school, or who harbors or employs any child or student of compulsory school age or any student over
sixteen years of age who is enrolled in a school while the
school to which he or she belongs and which he or she is
required to attend is in session, or who employs such child
or student within the term of such school on any day such
school is in session without the written permission of the
county superintendent of schools, or for a longer period
than such work permit may specify shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not less than twenty-five nor more than fifty dollars and
may be confined in jail not less than ten nor more than
thirty days.

§18-8-11. School attendance as condition of licensing for
privilege of operation of motor vehicle.

(a) In accordance with the provisions of sections three
and five, article two, chapter seventeen-b of this code, the
division of motor vehicles shall deny a license or
instruction permit for the operation of a motor vehicle to
any person under the age of eighteen who does not at the
time of application present a diploma or other certificate
of graduation issued to the person from a secondary high
school of this state or any other state or documentation
that the person: (1) Is enrolled and making satisfactory
progress in a course leading to a general educational
development certificate (GED) from a state approved
institution or organization, or has obtained such
certificate; (2) is enrolled in a secondary school of this
state or any other state; (3) is excused from such
requirement due to circumstances beyond his or her
control; or (4) is enrolled in an institution of higher
education as a full-time student in this state or any other
state.

(b) The attendance director or chief administrator
shall provide documentation of enrollment status on a
form approved by the department of education to any
student fifteen years of age but less than eighteen years of
age or older upon request who is properly enrolled in a
school under the jurisdiction of the official for
presentation to the division of motor vehicles on
application for or reinstatement of an instruction permit or
license to operate a motor vehicle. Whenever a student fifteen years of age but less than eighteen years of age withdraws from school, except as provided in subsection (d) of this section, the attendance director or chief administrator shall notify the division of motor vehicles of the withdrawal not later than five days from the withdrawal date. Within five days of receipt of the notice, the division of motor vehicles shall send notice to the licensee that the license will be suspended under the provisions of section three, article two, chapter seventeen-b of this code on the thirtieth day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the division of motor vehicles before such time.

(c) For the purposes of this section, withdrawal shall be defined as more than ten consecutive or fifteen days total unexcused absences during a school year. For the purposes of this section, suspension or expulsion from school or imprisonment in a jail or a penitentiary is not a circumstance beyond the control of such person.

(d) Whenever the withdrawal from school of such student, or such student’s failure to enroll in a course leading to or to obtain a GED or high school diploma, is beyond the control of such student, or is for the purpose of transfer to another school as confirmed in writing by the student’s parent or guardian, no such notice shall be sent to the division of motor vehicles to suspend the student’s motor vehicle operator’s license, and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the division of motor vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether such withdrawal is due to circumstances beyond the control of such person.
ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

(a) The total teachers retirement fund allowance shall be the sum of the basic foundation allowance for professional educators and the basic foundation allowance for service personnel, as provided in sections four and five of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties pursuant to sections five-a and five-b of said article to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by fifteen percent.

(b) The teachers retirement fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the employers accumulation fund of the state teachers retirement system pursuant to section eighteen, article seven-a of this chapter, and shall be in lieu of the contribution required of employers pursuant to subsection (b) of said section as to all personnel included in the allowance for state aid in accordance with sections four and five of this article.

(c) In addition to the teachers retirement fund allowance provided for in subsection (a) of this section, there shall be an allowance for the reduction of any unfunded liability of the teachers retirement fund in accordance with the following provisions of this subsection. On or before the thirty-first day of December of each year, the actuary or actuarial firm employed in accordance with the provisions of section four, article ten, chapter five of this code shall submit a report to the president of the Senate and the speaker of the House of Delegates which sets forth an actuarial valuation of the teachers retirement fund as of the preceding thirtieth day of June. Each annual report shall recommend the
actuary’s best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over a forty-year period beginning on the first day of July, one thousand nine hundred ninety-four, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year from any source: Provided, That the appropriation and allocation to the teachers’ retirement fund made pursuant to the provisions of section six-b of this article shall be included in the determination of the requisite funding amount. In any year in which the actuary determines that the teachers retirement fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary’s best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.

§18-9A-6b. Allocation of growth of local share.

Beginning with the first day of July, one thousand nine hundred ninety-five, and thereafter, an appropriation and allocation due to the increase in local share not to exceed seven million dollars above that computed for the previous year, which increase may be attributable to any increase in the tax rate as enacted by the Legislature in accordance with the provisions of subsection (b), section six-f, article eight, chapter eleven of this code, shall be allocated to the state teachers retirement system, which appropriation and allocation shall be used to reduce the amounts required by section six-a of this article or any other retirement contributions as may be required to the state teachers retirement system set forth in article seven-a of this chapter and which shall be accumulated in the employers accumulation fund created in section eighteen of said article seven-a.


To provide for the support of increased net enrollments in the counties in a school year over the net enrollments used in the computation of total state aid for
that year, there shall be appropriated for that purpose
from the general revenue fund an amount equal to the
average total state aid per net pupil multiplied by the total
of all of the increases in the net enrollments of the
counties made by comparing the most recent reports of
net enrollment for the second school month to the
immediately previous year’s reports for the same school
month.

Upon determination of the several increases in the
respective counties’ net enrollments, as of the close of the
second school month, each county showing such increase
shall be allocated an amount equal to that county’s
average per net pupil total state aid multiplied by the
increase in that county’s net enrollment determined as
provided heretofore. Such allocations shall be distributed
not later than the thirty-first day of December of each
year to the counties having increases in net enrollment as
heretofore provided. If the amount appropriated for this
purpose shall not be sufficient to provide payment in full
for the total of these several allocations, each county
allocation shall be reduced to an amount which is
proportionate to the appropriation compared to the total
of the several allocations, and the allocations as thus
adjusted shall be distributed to the counties as provided in
this section: Provided, That the governor shall request a
supplemental appropriation at the next legislative session
for the reduced amount.

No provision of this section shall be construed to in
any way affect the allocation of moneys for educational
purposes to a county under other provisions of law.

Except for those students who are enrolled in special
education programs, students who have not attained the
age of five prior to the first day of September shall not be
included for any purpose of this section.

Nothing in this section shall be construed to require
any specific level of funding by the Legislature.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.
§18A-4-8i. Seniority rights for professional educators and school service personnel in cases of intercounty transfer arrangements.

Notwithstanding any other provisions of this code to the contrary, if students are required to attend school in a county other than the county of their residence as a result of an intercounty transfer arrangement, then the following terms, rules and procedures shall apply:

(a) For the purposes of this section, the following terms have the following meanings:

(1) “Intercounty transfer arrangement” means those cases in which students are required to attend school in a county other than the county of their residence;

(2) “Receiving county” means the county, other than the county of residence, where students are required to attend school; and

(3) “Sending county” means the county of residence of students involved in intercounty transfer arrangements.

(b) The state board shall determine the number of professional educator and school service personnel positions to be created in facilities receiving students or in any facility affected by an intercounty transfer arrangement. The state board shall prepare a certified list of positions and shall provide the list to both the sending and receiving counties involved in the intercounty transfer arrangement.

(c) The state board shall prepare a certified list containing the names and seniority of the professional educators and service personnel in the sending county whose employment has been terminated as a result of an intercounty transfer arrangement. Those eligible to appear on the certified list shall be limited to the following classifications of employees:

(1) Those persons whose positions were eliminated as a direct result of an intercounty transfer arrangement and:

(i) Who choose not to exercise their right to displace
that year, there shall be appropriated for that purpose from the general revenue fund an amount equal to the average total state aid per net pupil multiplied by the total of all of the increases in the net enrollments of the counties made by comparing the most recent reports of net enrollment for the second school month to the immediately previous year’s reports for the same school month.

Upon determination of the several increases in the respective counties’ net enrollments, as of the close of the second school month, each county showing such increase shall be allocated an amount equal to that county’s average per net pupil total state aid multiplied by the increase in that county’s net enrollment determined as provided heretofore. Such allocations shall be distributed not later than the thirty-first day of December of each year to the counties having increases in net enrollment as heretofore provided. If the amount appropriated for this purpose shall not be sufficient to provide payment in full for the total of these several allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the several allocations, and the allocations as thus adjusted shall be distributed to the counties as provided in this section: Provided, That the governor shall request a supplemental appropriation at the next legislative session for the reduced amount.

No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

Except for those students who are enrolled in special education programs, students who have not attained the age of five prior to the first day of September shall not be included for any purpose of this section.

Nothing in this section shall be construed to require any specific level of funding by the Legislature.

CHAPTER 18A. SCHOOL PERSONNEL.

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(a) For the purposes of this section, the following terms have the following meanings:

(1) "Intercounty transfer arrangement" means those cases in which students are required to attend school in a county other than the county of their residence;

(2) "Receiving county" means the county, other than the county of residence, where students are required to attend school; and

(3) "Sending county" means the county of residence of students involved in intercounty transfer arrangements.

(b) The state board shall determine the number of professional educator and school service personnel positions to be created in facilities receiving students or in any facility affected by an intercounty transfer arrangement. The state board shall prepare a certified list of positions and shall provide the list to both the sending and receiving counties involved in the intercounty transfer arrangement.

(c) The state board shall prepare a certified list containing the names and seniority of the professional educators and service personnel in the sending county whose employment has been terminated as a result of an intercounty transfer arrangement. Those eligible to appear on the certified list shall be limited to the following classifications of employees:

(1) Those persons whose positions were eliminated as a direct result of an intercounty transfer arrangement and:

(i) Who choose not to exercise their right to displace
another employee with lesser seniority; or (ii) whose seniority is insufficient to allow them to displace other employees; and

(2) Those persons, as determined by the state board, who would have retained a position with the sending county if the intercounty transfer arrangement had not occurred.

(d) The receiving county may not fill any position on the list of positions created pursuant to the provisions of subsection (b) of this section until the receiving county has received the list of employees created pursuant to the provisions of subsection (c) of this section. When the receiving county has been provided copies of both the certified list of positions and the certified list of employees, the receiving county shall begin filling the vacancies by selecting employees from the certified list. In filling these positions, the receiving county shall comply with all provisions of law relevant to the filling of professional educator or service personnel vacancies.

(e) For the remainder of the school year immediately following the effective date of an intercounty transfer arrangement, but in no case less than six months, the receiving county may fill positions on the certified list of positions only by selecting employees from the certified list of employees.

(f) For the purposes of this section only, professional educators and service personnel whose names appear on the certified list of employees created pursuant to the provisions of subsection (c) of this section and who are hired by the county board of the receiving county shall accrue seniority in both the sending and the receiving counties during the time in which they continue to be employed by the county board of the receiving county.

(g) The state board shall promulgate legislative rules to implement the provisions of this section pursuant to the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall be filed with the office of the secretary of state no later than the first day of October, one thousand nine hundred ninety-seven.
chapter 82
(Com. Sub. for S. B. 532—By Senators Craigo, Jackson and Wooton)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; and empowering the authority to administer all federal funds provided for the construction and major improvement of school facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

(a) It is the intent of the Legislature to empower the school building authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds
for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys paid into the school major improvement fund pursuant to section six of this article, may be allocated and may be expended by the authority for projects that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this section moneys for school major improvement projects proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively: Provided, That the authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year school major improvement plan, to be updated annually, pursuant to section sixteen of this article: Provided, however, That the authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is no more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.
(d) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be allocated and expended on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article.

(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education, which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have such terms and conditions as are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor: Provided, That in the event a county board, which has received a
loan from the authority for a one-time payment at the
beginning of the lease term, does not renew the subject
lease annually until performance of the investment
contract in its entirety is completed, the county board is in
default and the principal of the loan, together with all
unpaid interest accrued to the date of the default, shall at
the option of the authority, in consultation with the state
board, become due and payable immediately or subject to
renegotiation among the state board, the authority and the
county board: Provided, however, That if a county board
renews the lease annually through the performance of the
investment contract in its entirety, the county board shall
exercise its option to purchase the leased premises:
Provided further, That the failure of the county board to
make a scheduled payment pursuant to the investment
contract constitutes an event of default under the loan
agreement: And provided further, That upon a default by
a county board, the principal of the loan, together with all
unpaid interest accrued to the date of the default, shall at
the option of the authority, in consultation with the state
board, become due and payable immediately or subject to
renegotiation among the state board, the authority and the
county board: And provided further, That if the loan
becomes due and payable immediately, the authority, in
consultation with the state board, shall use all means
available under the loan agreement and law to collect the
outstanding principal balance of the loan, together with all
unpaid interest accrued to the date of payment of the
outstanding principal balance; and
(3) The loan agreement shall provide for the state
board and the authority to forgive all principal and
interest of the loan upon the county board purchasing the
leased premises pursuant to the investment contract and
performance of the investment contract in its entirety.
(f) To encourage county boards to proceed promptly
with facilities planning and to prepare for the expenditure
of any state moneys derived from the sources described in
this subsection, any county board failing to expend
money within three years of the allocation to the county
board shall forfeit the allocation and thereafter is
ineligible for further allocations pursuant to this
subsection until the county board is ready to expend
funds in accordance with an approved facilities plan:

Provided, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the school construction fund of the authority for future allocation and distribution.

(g) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the school major improvement fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article: Provided, That the moneys may not be distributed to any county board that does not have an approved school major improvement plan or to any county board that is not prepared to commence expenditures of the funds during the fiscal year in which the moneys are distributed: Provided, however, That any moneys allocated to a county board and not distributed to that county board shall be deposited in an account to the credit of that county board, the principal amount to remain to the credit of and available to the county board for a period of two years. Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the school major improvement fund in that fiscal year.

(h) No local matching funds may be required under the provisions of this section. However, the responsibilities of the county boards of education to maintain school facilities are negated by the provisions of this article. To be eligible to receive an allocation of school major improvement funds from the authority, a county board must have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: Provided, That the state board of education shall
promulgate rules relating to county boards' maintenance
budgets, including items which shall be included in the
budgets.

(i) Any county board may use moneys provided by
the authority under this article in conjunction with local
funds derived from bonding, special levy or other sources.
Distribution to a county board, or to the state board or the
administrative council of an area vocational educational
center pursuant to subsection (b) of this section, may be in
a lump sum or in accordance with a schedule of payments
adopted by the authority pursuant to guidelines adopted
by the authority.

(j) Funds in the school construction fund shall first be
transferred and expended as follows:

Any funds deposited in the school construction fund
shall be expended first in accordance with an
appropriation by the Legislature. To the extent that funds
are available in the school construction fund in excess of
that amount appropriated in any fiscal year, the excess
funds may be expended in accordance with the provisions
of this article. Any projects which the authority identified
and announced for funding on or before the first day of
August, one thousand nine hundred ninety-five, or
identified and announced for funding on or before the
thirty-first day of December, one thousand nine hundred
ninety-five, shall be funded by the authority in an amount
which is not less than the amount specified when the
project was identified and announced.

(k) It is the intent of the Legislature to encourage
county boards to explore and consider arrangements with
other counties that may facilitate the highest and best use
of all available funds, which may result in improved
transportation arrangements for students, or which
otherwise may create efficiencies for county boards and
the students. In order to address the intent of the
Legislature contained in this subsection, the authority shall
grant preference to those projects which involve multi-
county arrangements as the authority shall determine
reasonable and proper.
CHAPTER 83
(H. B. 2510—By Delegates Manuel and Doyle)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections eight and nine, article three, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to carry-over of funds for staff development councils.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-8. County professional staff development councils.

§18A-3-9. County service personnel staff development councils.

§18A-3-8. County professional staff development councils.

The Legislature finds the professional expertise and insight of the classroom teacher to be an invaluable ingredient in the development and delivery of staff development programs which meet the needs of classroom teachers.

Therefore, a professional staff development council comprised of proportional representation from the major school levels and from vocational, special education and other specialties in proportion to their employment numbers in the county shall be established in each school district in the state in accordance with rules adopted by the state board of education. Nominations of instructional personnel to serve on the county staff development council may be submitted by the faculty senates of the district to the county superintendent who shall prepare and distribute ballots and tabulate the votes of the counties instructional personnel voting on the persons nominated. Each county staff development council shall consist of between nine and fifteen members at the discretion of the
county superintendent based on the size of the county. The councils have final authority to propose staff development programs for their peers based upon rules established by statute and the council on professional education.

The county superintendent or a designee has an advisory, nonvoting role on the council. The county board shall make available an amount equal to one tenth of one percent of the amounts provided in accordance with section four, article nine-a, chapter eighteen of this code and credit the funds to an account to be used by the council to fulfill its objectives. The local board has final approval of all proposed disbursements.

Any funds credited to the council during a fiscal year, but not used by the council, shall be carried over in the council account for use in the next fiscal year. These funds are separate and apart from, and in addition to, those funds to be credited to the council pursuant to this section. At the end of each fiscal year, the council shall report to each faculty senate chairperson the amount of funds carried over into the next fiscal year.

The professional staff development project of the center for professional development shall assist in the development and delivery of staff development programs by the county staff development councils and shall coordinate staff development efforts statewide.

§18A-3-9. County service personnel staff development councils.

The Legislature finds the professional expertise and insight of service personnel to be an invaluable ingredient in the development and delivery of staff development programs which meet the needs of service personnel.

Therefore, a service personnel staff development council comprised of representation from the various categories of service personnel employment shall be established in each school district in the state in accordance with rules adopted by the state board of education. Nominations of service personnel to serve on the county service personnel staff development council may be submitted by the six groups, as defined in subsection (e), section one, article one of this chapter, of the district to the county superintendent who shall prepare and distribute ballots and tabulate the votes of the counties service personnel voting on
the persons nominated. Each county staff service personnel development council shall consist of two employees from each category of employment. The councils have final authority to propose staff development programs for their peers based upon rules established by statute and the council on service personnel education. The county superintendent or a designee has an advisory, nonvoting role on the council. The county board shall make available an amount equal to one tenth of one percent of the amounts provided in accordance with section five, article nine-a, chapter eighteen of this code and credit the funds to an account to be used by the council to fulfill its objectives. The local board has the final approval of all proposed disbursements. Any funds credited to the council during a fiscal year, but not used by the council, shall be carried over in the council account for use in the next fiscal year. Any carried-over funds shall be separate and apart from, and in addition to, the funds to be credited to the council pursuant to this section.

CHAPTER 84

[Com. Sub. for S. B. 427—By Senators Tomblin, Mr. President, and Buckalew]
[By Request of the Executive]

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]
for center executive director and making executive director
at will and pleasure of the secretary; requiring the center to
assist in the delivery of programs and activities to meet local
needs; providing for required fees and creating a special
fund in the state treasury; focusing mission of professional
development project of center on identifying, coordinating,
arranging and otherwise assisting in the delivery of profes­
sional development for teachers, principals and administra­
tors based on laws, policies and regulations adopted for pub­
lic schools of West Virginia; authorizing center to permit
classroom aides, other school personnel and higher educa­
tion faculty to participate in appropriate professional devel­
opment; requiring center to advise teacher education pro­
grams of changes in law and policy that affect professional
educator job performance; and requiring center to assist in
delivery of programs and activities to meet expressed needs
of school districts.

Be it enacted by the Legislature of West Virginia:

That section six, article three-a, chapter eighteen-a of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed; and that sections one and two of said
article be amended and reenacted, all to read as follows:

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for professional development continued; intent; advisory
council.

§18A-3A-2. Professional development project.

§18A-3A-1. Center for professional development continued;
intent; advisory council.

(a) Teaching is a profession that directly correlates to
the social and economic well-being of a society and its
citizens. Superior teaching is essential to a well educated
and productive populace. Strong academic leadership
provided by principals and administrators skilled in mod­
erm management principles is also essential. The intent of
this article is to recognize the value of professional in­
volve ment by experienced educators, principals and ad­
ministrators in building and maintaining a superior force
of professional educators and to establish avenues for
applying such involvement.
In furtherance of this intent, the center for professional development is continued and reestablished. The general mission of the center is to study matters relating to the quality of teaching and management in the schools of West Virginia and to promote the implementation of programs and practices to assure the highest quality in teaching and management. The center shall also perform such duties as are assigned to it by law.

Nothing in this article shall be construed to require any specific level of funding by the Legislature.

(b) The center board existing before the effective date of this section is abolished. The center board, after the effective date of this section, shall consist of a board of eleven persons as members as follows: The secretary of education and the arts, ex officio, who shall be the board chair, and the state superintendent of schools, ex officio, both of whom shall be entitled to vote; three members of the state board of education, elected by the state board; three experienced educators, of whom two shall be working classroom teachers and one of whom shall be a school or county administrator, appointed by the governor by and with the advice and consent of the Senate; and three citizens of the state who are knowledgeable in matters relevant to the issues addressed by the center, including, but not limited to, professional development and management principles, appointed by the governor by and with the advice and consent of the Senate. Not more than two appointees shall be residents within the same congressional district. The secretary of education and the arts shall convene the first meeting of the center board.

The election and appointment of members shall be made as soon as possible after the effective date of this section. Of the initial members from the state board of education, one shall be elected for a term of one year and two shall be elected for terms of two years. All successive elections shall be for two-year terms. The state board of education shall elect another member to fill the unexpired term of any person so elected who subsequently vacates state board membership. Of the initial appointed members, three shall be appointed for one-year terms and three shall be appointed for two-year terms. All successive appointments shall be for two-year terms. The governor
shall appoint a new member to fill the unexpired term of any vacancy in the appointed membership.

The center for professional development board shall meet at least quarterly and the appointed members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available for such purposes upon submission of an itemized statement therefor.

The secretary of education and the arts, with the advice of the center board, from appropriations to the center for professional development, may employ and fix the compensation of an executive director with knowledge and experience in professional development and management principles and such other persons as may be necessary to carry out the mission and duties of the center. When practical, personnel employed by state higher education agencies and state, regional and county public education agencies shall be made available to the center to assist in the operation of projects of limited duration.

The center shall assist in the delivery of programs and activities pursuant to this article to meet the local professional development needs of teachers, principals and administrators and may contract with existing agencies or agencies created after the effective date of this section or others to provide training programs in the most efficient manner. Existing programs currently based in agencies of the state shall be continued in the agency of their origin unless the center establishes a compelling need to transfer or cancel the existing program. The center shall recommend to the governor the transfer of funds to the providing agency, if needed, to provide programs approved by the center.

Pursuant to the provisions of article ten, chapter four of this code, the center for professional development board shall continue to exist until the first day of July, two thousand one.

(c) On or before the first day of January, one thousand nine hundred ninety-eight, the center for professional development shall develop and communicate to the state board of education a curriculum for the principals acade-
my. The curriculum shall be based upon the minimum qualities, proficiencies and skills necessary for principals and recommended by the state board, pursuant to the terms of section two-c, article three of this chapter.

(d) In accordance with section two-c, article three of this chapter, the center shall be responsible for paying reasonable and necessary expenses for persons attending the principals academy: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

(e) Persons attending the professional development offerings of the center and such other courses as shall be offered by the center for professional development, except the principals academy, shall be assessed fees which shall be less than the full cost of attendance. There is hereby created in the state treasury a special revenue account known as the "center for professional development fund". All moneys collected by the center shall be deposited in the fund for expenditure by the center board for the purposes specified in this section. Moneys remaining in the fund at the end of the fiscal year are subject to reapportionment by the Legislature.

§18A-3A-2. Professional development project.

Through this project the center shall:

(1) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help professional educators acquire the knowledge, skills, attitudes, practices and other such pertinent complements deemed essential for an individual to demonstrate appropriate performance as a professional personnel in the public schools of West Virginia. The basis for such performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto. The center may also permit and encourage school personnel such as classroom aides, higher education teacher education faculty and higher education faculty in programs such as articulated tech prep associate degree and other programs to participate in appropriate professional development programs and activities with public school professional educators;

(2) Identify, coordinate, arrange and otherwise assist in
the delivery of professional development programs and activities that help principals and administrators acquire knowledge, skills, attitudes and practices in academic leadership and management principles for principals and administrators and such other pertinent complements deemed essential for principals and administrators to demonstrate appropriate performance in the public schools of West Virginia. The basis for such performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto;

(3) Serve in a coordinating capacity to assure that the knowledge, skills, attitude and other pertinent complements of appropriate professional performance which evolve over time in the public school environment are appropriately reflected in the programs approved for the education of professional personnel, including, but not limited to, advising the teacher education programs of major statutory and policy changes in the public schools which affect the job performance requirements of professional educators, including principals and administrators;

(4) Provide for the routine updating of professional skills of professional educators, including principals and administrators, through in-service and other programs. Such routine updating may be provided by the center through statewide or regional institutes which may require a registration fee; and

(5) Provide consultation and assistance to county staff development councils established under the provisions of section eight, article three of this chapter in planning, designing, coordinating, arranging for and delivering professional development programs to meet the needs of the professional educators of their district. From legislative appropriations to the center for professional development, exclusive of such amounts required for the expenses of the principals academy, the center shall, unless otherwise directed by the Legislature, provide assistance in the delivery of programs and activities to meet the expressed needs of the school districts for professional development to help teachers, principals and administrators demonstrate appropriate performance based on the laws, policies and regulations adopted for the public schools of West Virginia.
AN ACT to repeal section four, article two, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and eight-b, article one of said chapter; and to amend and reenact sections two, three and four, article six of said chapter, all relating to restructuring the Marshall university graduate school and the West Virginia graduate college into the Marshall university graduate college; providing definitions; repealing the establishment of the West Virginia graduate college; providing for the adoption and review of policies, procedures, programs, standards and the appointment of a head of the graduate college; providing legislative intent with respect to impact on fund allocations and strategic plans; and providing for election of members to advisory councils of students, faculty and classified staff and to governing body from advisory councils of faculty, students and classified staff by the graduate college and by the regional campuses of West Virginia university.

Be it enacted by the Legislature of West Virginia:

That section four, article two, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two and eight-b, article one of said chapter be amended and reenacted; and that sections two, three and four, article six of said chapter be amended and reenacted, all to read as follows:

Article
1. Governance.
6. Advisory Councils of Faculty.

ARTICLE 1. GOVERNANCE.
§18B-1-2. Definitions.
§18B-1-8b. Marshall university graduate college.

§18B-1-2. Definitions.

1 The following words when used in this chapter and chapter eighteen-c of this code shall have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

2 (a) “Governing board” or “board” means the university of West Virginia board of trustees or the board of directors of the state college system, whichever is applicable within the context of the institution or institutions referred to in this chapter or in other provisions of law;

3 (b) “Governing boards” or “boards” means both the board of trustees and the board of directors;

4 (c) “Freestanding community colleges” means southern West Virginia community and technical college and West Virginia northern community and technical college, which shall not be operated as branches or off-campus locations of any other state institution of higher education;

5 (d) “Community college” or “community colleges” means community and technical college or colleges as those terms are defined in this section;

6 (e) “Community and technical college”, in the singular or plural, means the freestanding community and technical colleges, community and technical education programs of regional campuses of West Virginia university and divisions of state institutions of higher education which have a defined community and technical college district and offer community and technical college education in accordance with the provisions of section three-a, article three of this chapter;

7 (f) “Community and technical college education” means the programs, faculty, administration and funding associated with the mission of community and technical colleges as provided in section three-a, article three of this chapter, and also shall include post-secondary vocational
education programs in the state as those terms are defined in this section. Community and technical college education shall be delivered through a system which includes eleven community and technical college districts assigned to state institutions of higher education under the jurisdiction of the board of directors and the board of trustees, respectively;

(g) "Directors" or "board of directors" means the board of directors of the state college system created pursuant to article three of this chapter or the members thereof;

(h) "Higher educational institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) "Post-secondary vocational education programs" means any college-level course or program beyond the high school level provided through an institution of higher education which results in or may result in the awarding of a two-year associate degree, under the jurisdiction of the board of directors;

(j) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(k) "Senior administrator" means the person hired by the governing boards in accordance with section one, article four of this chapter, with powers and duties as may be provided for in section two of said article;

(l) "State college" means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college or West Virginia state college;

(m) "State college system" means the state colleges and community and technical colleges, and also shall include post-secondary vocational education programs in the state as those terms are defined in this section;
(n) "State college system community and technical colleges" means the freestanding community and technical colleges and community and technical colleges operated on the campuses of state colleges under the jurisdiction of the board of directors of the state college system and all of their associated branches, centers and off-campus locations;

(o) "State institution of higher education" means any university, college or community and technical college in the state university system or the state college system as those terms are defined in this section;

(p) "Trustees" and "board of trustees" means the university of West Virginia board of trustees created pursuant to article two of this chapter or the members thereof;

(q) "University", "university of West Virginia" and "state university system" means the multi-campus, integrated university of the state, consisting of West Virginia university, including West Virginia university at Parkersburg, Potomac state college of West Virginia university, West Virginia university institute of technology and the West Virginia university school of medicine; Marshall university, including the Marshall university school of medicine, and the Marshall university community and technical college, the Marshall university graduate college; and the West Virginia school of osteopathic medicine;

(r) "University system community and technical colleges" means Marshall university community and technical college, community and technical education programs at West Virginia university at Parkersburg, community and technical education programs at Potomac state college of West Virginia university and West Virginia university institute of technology community and technical college under the jurisdiction of the university of West Virginia board of trustees and all their associated branches, centers and off-campus locations;

(s) "Regional campus" means West Virginia university at Parkersburg, Potomac state college of West Virginia university, and West Virginia university institute of tech-
nology. The chief executive officer of a regional campus shall be known as "campus president", shall serve at the will and pleasure of the president of West Virginia university, and shall report to the president of West Virginia university or his or her designee in the method specified by West Virginia university. The board of advisors for West Virginia university established pursuant to section one, article six of this chapter shall serve as the advisory board for West Virginia university and its regional campuses. The advisory boards previously appointed for each regional campus shall be known as "boards of visitors" and shall provide guidance to the regional campus presidents. Each regional campus shall adopt separate strategic plans required by section one-c of this article; and

(t) The advisory board previously appointed for the West Virginia graduate college shall be known as the "board of visitors" and shall provide guidance to the Marshall university graduate college.

§18B-1-8b. Marshall university graduate college.

(a) Notwithstanding any other provisions of this code to the contrary, the West Virginia graduate college shall cease to be an individual higher education institution, as defined by subsection (h), section two, article one of this chapter and shall be merged and consolidated with Marshall university, effective the first day of July, one thousand nine hundred ninety-seven.

(b) The graduate programs of Marshall university shall be operated under the same procedures, policies, rules and practices utilized by Marshall university and the board of trustees in operating Marshall university: Provided, That the board of trustees shall assure that the president of Marshall university adopts policies, procedures and standards for its graduate programs that facilitate the multiple missions of the graduate college in serving traditional and nontraditional students and providing graduate instruction throughout the state. Nothing herein shall be interpreted to abrogate the power or responsibility of the board of trustees to approve and review graduate programs offered within the university system, nor to limit the statewide
mission of West Virginia university or any other institution.

(c) The president of Marshall university shall appoint the head of the graduate college, who shall report directly to the president of Marshall university.

(d) Nothing contained herein shall be interpreted to authorize the provision or expansion of any four-year programs offered by Marshall university to any sites formerly offering graduate school courses by the West Virginia graduate college.

(e) It is the intent of the Legislature that the program review and approval process for campus offerings for graduate education by the graduate college of Marshall university be separate and distinct from the process for the approval of undergraduate education program offerings.

(f) It is the Legislature's intent that, through the fiscal year two thousand--two thousand one, the proportionate share of the funds which would have been generated by the board of trustees resource allocation policy for the West Virginia graduate college shall be allocated to the Marshall university graduate college. It is further the intent of the Legislature that the merger and consolidation of West Virginia graduate college and Marshall university shall not result in any financial gain or loss to the board of trustees or any institution within the university system in the appropriation decisions by the Legislature.

(g) It is the intent of the Legislature that Marshall university and the Marshall university graduate college each receive any increase in state appropriated funds for the fiscal year beginning the first day of July, one thousand nine hundred ninety-seven, set out in section one-c, article one of this chapter, and further, that they shall not be denied any increases because of the need for changes in their strategic plans necessitated by the merger and consolidation of the two institutions: Provided, That Marshall university shall prepare a revised strategic plan and submit it to the board of trustees for approval by the first
day of November, one thousand nine hundred ninety-seven.

(h) Each valid agreement, obligation or claim entered into or incurred by the board of trustees on behalf of the West Virginia graduate college is hereby undertaken by the board of trustees on behalf of Marshall university.

ARTICLE 6. ADVISORY COUNCILS OF FACULTY.

§18B-6-2. Advisory councils of faculty.

§18B-6-3. Advisory councils of students.

§18B-6-4. Advisory councils of classified employees.

§18B-6-2. Advisory councils of faculty.

Effective the first day of July, one thousand nine hundred eighty-nine, each governing board shall be assisted by an advisory council of faculty.

During the month of April of each even-numbered year, each president or other administrative head of a state institution of higher education, including Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the councils and in accordance with procedures established by the councils, shall convene a meeting or otherwise institute a balloting process to elect one faculty to serve on the appropriate governing board’s advisory council of faculty, which shall consist of one faculty, so elected, from each institution under the appropriate governing board. Terms of the members of each council shall be for two years and shall begin on the first day of July of each even-numbered year and members of each advisory council shall be eligible to succeed themselves.

The advisory councils of faculty shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting each council shall elect a chairman, who shall be by virtue of the office a voting member of the appropriate governing board: Provided, That the chair shall serve no more than two
consecutive terms. No member may vote by proxy at the
election. In the event of a tie in the last vote taken for
such election, a member authorized by the council shall
select the chairman by lot from the names of those per-
sons tied. Immediately following the election of a chair-
man, each council shall elect, in the manner prescribed by
this section for the election of a chairman, a member of
that council to preside over meetings of the council in the
chairman’s absence. Should the chairman vacate the
position, the council shall meet and elect a new chairman
to fill the unexpired term within thirty days following the
vacancy.

Each advisory council of faculty, through its chairman
and in any other appropriate manner, shall consult and
advise its governing board in matters of higher education
in which the faculty members may have an interest.

Members of each advisory council shall serve without
compensation, but shall be entitled to reimbursement for
actual and necessary expenses incurred in the perform-
ance of their official duties from funds allocated to the
state institution of higher education served.

Each governing board shall furnish secretarial services
to its advisory council of faculty, and each advisory coun-
cil shall cause to be prepared minutes of its meetings,
which minutes shall be available, upon request, to any
faculty member of a state institution of higher education
represented on the council. The minutes shall be forward-
ed to the advisory council of faculty serving the other
governing board.

§18B-6-3. Advisory councils of students.

Effective the first day of July, one thousand nine hun-
dred eighty-nine, each governing board shall be assisted
by an advisory council of students.

The student government organization at each state
institution of higher education shall elect a student, who
may be the elected head or president of the organization,
to serve on the appropriate governing board’s advisory
council of students, which are hereby created, consisting
of the elected representatives of each institution under the appropriate governing board: Provided, That the student government organization at each institution in the university system, including Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, the Robert C. Byrd health sciences Charleston division of West Virginia university and Marshall university graduate college shall elect one student per three thousand students enrolled at each institution with a minimum of one representative from each institution. The student government of each institution shall determine how its representatives shall be elected. Terms of the members of the council shall be for one year and shall begin on the first day of May of each year, and members of the advisory councils shall be eligible to succeed themselves.

Each institution shall have only one vote in all matters. The advisory councils of students shall meet at least once each quarter, and shall meet during each month of June, at which meeting each council shall elect a chairman, who prior to the elections must be entitled to vote in the state of West Virginia. By virtue of the office, the chairman shall be a voting member of the appropriate governing board. No member may vote by proxy at the election. In the event of a tie in the last vote taken for the election, a member authorized by the council shall select the chairman by lot from the names of those persons tied. Immediately following the election of a chairman, each council shall elect, in the manner prescribed by this section for the election of a chairman, a member of that council to preside over meetings of the council in the chairman’s absence. Should the chairman vacate the position, the council shall meet and elect a new chairman to fill the unexpired term within thirty days following the vacancy.

Each advisory council of students, through its chairman and in any other appropriate manner, shall consult and advise its governing board in matters of higher education in which the students may have an interest.

Members of each advisory council shall serve without compensation, but shall be entitled to reimbursement for
actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

Each governing board shall furnish secretarial services to its advisory council of students, and each advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any student of a state institution of higher education represented on the council. The minutes shall be forwarded to the advisory council of students serving the other governing board.

§18B-6-4. Advisory councils of classified employees.

Effective the first day of July, one thousand nine hundred eighty-nine, each governing board shall be assisted by an advisory council of classified employees.

During the month of April of each even-numbered year, each president or other administrative head of a state institution of higher education, including Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, the Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the councils and in accordance with procedures established by the councils, shall convene a meeting or otherwise institute a balloting process to elect one classified employee to serve on the appropriate governing board’s advisory council of classified employees, which shall consist of one classified employee, so elected, from each institution under the appropriate governing board. Terms of the members of the councils shall be for two years and shall begin on the first day of July of each even-numbered year, and members of the advisory councils shall be eligible to succeed themselves. For the purpose of this section the term “institution of higher education” includes the facilities and staff supervised by the senior administrator employed by the governing boards, which is a part of the state college system, and the West Virginia network for telecomputing, which is a part of the state university system.
Each advisory council of classified employees shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting each council shall elect a chairman, who shall be by virtue of the office a voting member of the appropriate governing board: Provided, That the chair shall serve no more than two consecutive terms: Provided, however, That the board of directors' advisory council for classified employees' chairman shall not be a member of the staff supervised by the central administrative official. No member may vote by proxy at the election. In the event of a tie in the last vote taken for the election, a member authorized by the council shall select the chairman by lot from the names of those persons tied. Immediately following the election of a chairman, each council shall elect, in the manner prescribed by this section for the election of a chairman, a member of the council to preside over meetings of the council in the chairman's absence. Should the chairman vacate the position, the council shall meet and elect a new chairman to fill the unexpired term within thirty days following the vacancy.

Each advisory council of classified employees, through its chairman and in any other appropriate manner, shall consult and advise its governing board in matters of higher education in which the classified employees may have an interest.

Members of each advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

Each governing board shall furnish secretarial services to its advisory council of classified employees, and each advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any classified employee of a state institution of higher education represented on the council. The minutes shall be forwarded to the advisory council of classified employees serving the other governing board.
CHAPTER 86
(Com. Sub. for H. B. 2049—By Delegate Mezzatesta)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article eleven of said chapter, all relating to higher education; eliminating the single vice chancellor for instructional technology and having these duties performed by the chancellor of the university of West Virginia board of trustees and the chancellor of the board of directors of the state college system.

Be it enacted by the Legislature of West Virginia:

That section one, article four, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article eleven of said chapter be amended and reenacted, all to read as follows:

Article
4. General Administration.
11. Miscellaneous Institutes and Centers.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

(a) At its annual meeting in June of each year, each governing board shall elect from its members appointed by the governor a president and other officers as it may consider necessary or desirable: Provided, That the initial annual meeting shall be held during July, one thousand nine hundred eighty-nine. The president and other officers shall be elected for a one-year term commencing on the first day of July following the annual meeting and ending on the thirtieth day of June of the following year. The president of the board shall serve no more than two consecutive terms.
(b) Each governing board shall employ a chancellor who shall serve at the will and pleasure of the employing board and shall assist the governing board in the performance of its duties and responsibilities. No chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor. Each chancellor is responsible for carrying out the directives of the governing board by which he or she is employed and shall work with the board in developing policy options. For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents and other administrative heads of the institutions under their jurisdiction and their staffs. The respective chancellors shall jointly agree to and shall hire one senior administrator who shall serve at their will and pleasure in accordance with section two of this article.

(c) The vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine.

(d) Suitable offices for the senior administrator and other staff shall be provided in Charleston.

(e) The chancellor of the university of West Virginia board of trustees and the chancellor of the board of directors of the state college system shall establish a plan and funding recommendations for development and implementation of a multifaceted instructional technology strategy that includes, but is not limited to, a goal that every full-time freshman student beginning in the fall semester, one thousand nine hundred ninety-six, and thereafter, and as many other students and faculty as possible will own or lease a computer, and alternatively that computers be available for part-time students through on-site labs; the integration of computer usage into all course work; the involvement of faculty in the development and use of technology-based instruction and instructional courseware for community and technical colleges, colleges and universities; and the expansion of distance learning and technology networks throughout the higher education systems to enhance teaching and learning, promote access to quality educational offerings
with minimum duplication of effort, increase the delivery of instruction to nontraditional students, provide services to business and industry, and increase the management capabilities of the higher education system. The chancellors shall submit the plan to the Legislature on or before the first day of July, one thousand nine hundred ninety-seven.

The chancellor of the university of West Virginia board of trustees and the chancellor of the board of directors of the state college system shall supervise the administration, oversight, coordination and implementation of the plan, or portions of the plan, subject to the availability of funds and the direction of the governing boards. In addition, the chancellors shall review all technology related matters within the department of education and the arts and suggest appropriate integration and compatibility of the technology systems within the department and the institutions governed by the board.

(f) The governing boards shall jointly employ a vice chancellor for community and technical education pursuant to the provisions of section three-a, article three of this chapter.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-5. Institute for instructional technology.

The governing boards are hereby authorized to create an institute for instructional technology which shall be located within the higher education central office. The governing boards are hereby authorized to enter into research agreements pursuant to article twelve of this chapter with respect to the institute for instructional technology. The chancellor of the university of West Virginia board of trustees and the chancellor of the board of directors of the state college system shall perform functions, tasks and duties as may be prescribed by law and shall share resources with the higher education central office, the state institutions of higher education and other agencies to the extent practical to avoid unnecessary duplication of staff and other administrative efforts.
AN ACT to amend article ten, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-b, relating to fee waivers for students in health science and technology academy programs.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-b, to read as follows:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-4b. Additional fee waivers for health sciences and technology academy programs.

(a) In addition to the number of fee waivers permitted in sections five and six of this article for undergraduate, graduate and professional schools, each state institution of higher education may waive all fees or any part thereof for students who are residents of West Virginia and who successfully complete the health sciences and technology academy affiliated programs, as defined in chapter eighteen-b, article one, section two of the code of West Virginia.

(b) For purposes of section four-b, article ten, chapter eighteen-b of this code, “Health Sciences and Technology Academy Programs” means programs for health sciences to assist junior high and high school students, in conjunction with their parents and teachers, to enhance their knowledge and abilities in subject matters which would further a career in the field of health sciences.
AN ACT to amend and reenact sections one, two, three, four and five, article four, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the Underwood-Smith teacher scholarship program; requiring particular efforts in scholarship selection to reflect present and projected teacher needs; requiring the higher education governing boards to promulgate rules for the program in consultation with the state superintendent; providing for designation of a selection panel by the governor; clarifying that the program includes middle school teaching; providing eligibility for paraprofessionals; requiring the senior administrator to make an effort to attract certain underrepresented classes of students; revising the terms of the scholarship agreement with respect to loan forgiveness for teaching in the public schools and providing additional alternatives; allowing for extension of the obligation period for extenuating circumstances; and providing for institution financial aid officers in consultation with scholarship recipients to determine assistance package when amounts from different sources exceed cost of attendance.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article four, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted all to read as follows:

ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.

§18C-4-1. Scholarship fund created; purposes; funding.
§18C-4-2. Selection criteria and procedures.
§18C-4-3. Scholarship agreement.
§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.
§18C-4-5. Amount and duration of scholarship; relation to other assistance.
§18C-4-1. Scholarship fund created; purposes; funding.

(a) It is the purpose of this article to improve the quality of education in the public schools of West Virginia by encouraging and enabling West Virginia resident individuals who have demonstrated outstanding academic abilities to pursue teaching careers at the preschool, elementary, middle or secondary levels in the public schools of this state. In addition, of those individuals who have demonstrated outstanding academic abilities to pursue teaching careers, for scholarships initially awarded for the fall semester, one thousand nine hundred ninety-eight, and thereafter, particular efforts will be made in the scholarship selection criteria and procedures to reflect the state's present and projected teacher needs, including needs statewide and in different geographic areas and for teachers with education and training in specific disciplines.

(b) The higher education governing boards shall, in consultation with the state superintendent of schools, promulgate reasonable legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, for the administration of the Underwood-Smith teacher scholarship program by the senior administrator in furtherance of the purposes of this article, including, but not limited to, scholarship selection criteria and procedures, renewal, compliance, noncompliance and repayment, deferral and excusal. In accordance with such rules, the senior administrator shall establish appropriate guidelines for program operation.

(c) There is hereby created in the state treasury a special revolving fund to be known as the “Underwood-Smith Teacher Scholarship Fund” to be administered by the senior administrator solely for granting scholarships to prospective teachers in accordance with this article. Any moneys which may be appropriated by the Legislature, or received by the senior administrator from other sources, for the purposes of this article shall be deposited in the fund. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Any moneys repaid to the senior administrator by reason of
default of a scholarship agreement under this article shall also be deposited in the fund. Fund balances shall be invested with the state's consolidated investment fund, and any and all interest earnings on these investments shall be used solely for the purposes for which moneys invested were appropriated or otherwise received.

(d) The senior administrator may accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article and shall make a reasonable effort to encourage external support for the scholarship program.

(e) For the purpose of encouraging support for the scholarship program from private sources, the senior administrator may set aside no more than half of the funds appropriated by the Legislature for Underwood-Smith teacher scholarships to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.

§18C-4-2. Selection criteria and procedures.

(a) The governor shall designate an existing scholarship selection agency or panel to select the recipients of Underwood-Smith teacher scholarships who meet the eligibility criteria set forth in subsection (b) of this section. If no such agency or panel exists, the governor shall appoint a scholarship selection panel for this purpose which shall consist of seven persons representative of public school administrators, teachers, including preschool teachers, and parents.

(b) Eligibility for an Underwood-Smith teacher scholarship award shall be limited to West Virginia resident students who:

(1) Have graduated or are graduating from high school, and rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the American college test;

(2) Have a cumulative grade point average of at least three and twenty-five one hundredths on a possible scale
of four after successfully completing two years of course work at an approved institution of higher education;

(3) Are public school aides or paraprofessionals as defined in section eight, article four, chapter eighteen-a of this code, and who have a cumulative grade point average of at least three and twenty-five one hundredths on a possible scale of four after successfully completing two years of course work at an approved institution of higher education; or

(4) Are graduate students at the master's degree level who have graduated or are graduating in the top ten percent of their college graduating class.

(c) In accordance with the rules of the governing boards, the senior administrator shall develop criteria and procedures for the selection of scholarship recipients that reflect the purposes of this article and the areas in which particular efforts will be made in the selection of scholars as set forth in section one of this article and which also may include, but not be limited to, the grade point average of the applicant, involvement in extracurricular activities, financial need, current academic standing and an expression of interest in teaching as expressed in an essay written by the applicant. Such criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others. It is the intent of the Legislature that academic abilities be the primary criteria for selecting scholarship recipients.

(d) In developing the selection criteria and procedures to be used by the panel, the senior administrator shall solicit the views of public and private education agencies and institutions and other interested parties. These views:

(1) Shall be solicited by means of written and published selection criteria and procedures in final form for implementation; and (2) may be solicited by means of public hearings on the present and projected teacher needs of the state or such other methods as the senior administrator may determine to be appropriate to gather such information.
(e) The senior administrator shall make application forms for Underwood-Smith teacher scholarships available to public and private high schools in the state and in other locations convenient to applicants, parents and others, and shall make an effort to attract students from low-income backgrounds, ethnic or racial minority students, students with disabilities, and women or minority students who show interest in pursuing teaching careers in mathematics and science and who are underrepresented in those fields.

§18C-4-3. Scholarship agreement.

(a) Each recipient of an Underwood-Smith teacher scholarship shall enter into an agreement with the senior administrator under which the recipient shall:

(1) Provide the board with evidence of compliance with subsection (a), section four of this article;

(2) Within a ten-year period after completing the teacher education for which the scholarship was awarded:

(A) Teach full-time under contract with a county board of education in a public education program in the state for a period of not less than two years for each year for which a scholarship was received, or teach full-time under contract with a county board of education in this state in a teacher shortage area as determined by the state board of education, in an exceptional children program in this state, in a school having less than average academic results, or in a school in an economically disadvantaged area of this state for not less than one year for each year for which a scholarship was received; or

(B) Within such ten-year period while seeking and unable to secure a full-time teaching position under contract with a county board of education which satisfies the conditions of paragraph (A) of this subdivision: (i) Teach full-time in a private school, parochial or other school approved under exemptions (A) or (K) for the instruction of students of compulsory school age pursuant to section one, article eight, chapter eighteen of this code, or in a higher educational institution in this state or post-
secondary vocational education program in this state as defined in section two, article one, chapter eighteen-b of this code, for a period of not less than two years for each year for which a scholarship was received; or (ii) perform alternative service or employment in this state pursuant to guidelines adopted in accordance with the rules of the governing boards in federal, state, county or local supported programs with an educational component, including mental or physical health care, or with bona fide tax exempt charitable organizations dedicated to the above, for a period of not less than two years for each year for which a scholarship was received.

Any teaching time accrued as a substitute teacher for a county board of education under paragraphs (A) or (B) of this subdivision shall be credited pro rata in accordance with rules of the governing boards; or

(3) Repay all or part of an Underwood-Smith teacher scholarship received under this article plus interest and, if applicable, reasonable collection fees, in accordance with subsection (b), section four of this article, except as provided in subsections (c) and (d) of said section four.

(b) Scholarship agreements shall fully disclose the terms and conditions under which assistance under this article is provided and under which repayment may be required, including:

(1) A description of the conditions and procedures to be established under section four of this article; and

(2) A description of the appeals procedure required to be established under section four of this article.

(c) Individuals who were awarded an Underwood-Smith teacher scholarship prior to the effective date of this section may apply the provisions of paragraphs (A) or (B), subdivision (2), subsection (a) of this section to teaching or other service performed by them after the first day of July, one thousand nine hundred ninety-seven.

§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.
(a) The recipient of an Underwood-Smith teacher scholarship is eligible for scholarship renewal only during such periods that the recipient is:

1. Enrolled as a full-time student in an accredited institution of higher education in this state;
2. Pursuing a course of study leading to teacher certification at the preschool, elementary, middle or secondary level in this state;
3. Maintaining satisfactory progress as determined by the institution of higher education the recipient is attending; and
4. Complying with such other standards as the boards may establish by rule.

(b) Recipients found to be in noncompliance with the agreement entered into under section three of this article shall be required to repay the amount of the scholarship awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in the program guidelines. Such guidelines shall also provide for proration of the amount to be repaid by a recipient who teaches for part of the period required under subsection (a), section three of this article and for appeal procedures under which a recipient may appeal any determination of noncompliance.

(c) A recipient shall not be considered in violation of the agreement entered into under section three of this article during any period in which the recipient is:

1. Pursuing a full-time course of study at an accredited institution of higher education;
2. Serving, not in excess of four years, as a member of the armed services of the United States;
3. Seeking and unable to find full-time employment in accordance with paragraph (A), subdivision (2), subsection (a), section three of this article and is fulfilling any of the alternatives specified in paragraph (B) of said subdivision; or
4. Satisfying the provisions of additional repayment exemptions that may be prescribed by the boards by rule.
(d) A recipient shall be excused from repayment of a teacher scholarship received under this article if the recipient dies or becomes permanently and totally disabled as established by sworn affidavit of a qualified physician.

(e) The rules adopted by the governing boards may provide guidelines under which the senior administrator may, if extenuating circumstances exist, extend the period for fulfilling the obligation to fifteen years.

§18C-4-5. Amount and duration of scholarship; relation to other assistance.

(a) Subject to subsection (b) of this section, each recipient of an Underwood-Smith teacher scholarship is eligible to receive assistance of up to five thousand dollars for each academic year of higher education in preparation for becoming a preschool, elementary, middle or secondary teacher in the public schools of this state. No individual may receive scholarship assistance for more than four academic years for the completion of a bachelor’s degree and two academic years for completion of a master’s degree.

(b) No individual shall receive a scholarship award under this article which exceeds the cost of attendance at the institution the individual is attending. The cost of attendance shall be based upon the actual cost of tuition and fees, and reasonable allowances for books, educational supplies, room and board and other expenses necessitated by individual circumstances, in accordance with the program guidelines. For the purposes of establishing an award amount, the senior administrator shall take into account the amount of financial aid assistance the recipient has or will receive from all other sources. If the amount of the Underwood-Smith teacher scholarship assistance award and the amount of assistance awards which the recipient has received from all other sources exceed the cost of attendance, the institution’s financial aid officer, in consultation with the scholar, will determine what aid is to be reduced and shall do so in a manner to the best advantage of the scholar.
CHAPTER 89

(H. B. 2236—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker and Capito)

[Passed April 1, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three-a, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to striking language calling for sunset review of the legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.


(a) There is hereby created a joint commission of the Legislature known as the legislative oversight commission on education accountability to review all legislative rules of the board and such other rules as the commission deems appropriate. The commission shall be composed of six members of the Senate appointed by the president of the Senate and six members of the House of Delegates appointed by the speaker of the House of Delegates. No more than five of the six members appointed by the president of the Senate and the speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the president of the Senate and the speaker of the House of Delegates shall be ex officio nonvoting members of the commission and shall designate the cochairmen. At least one of the Senate members and one of the House members shall be members of the committee on education of the Senate and House, respectively, and at least one of the Senate members and at least one of the House members shall be a
member of the committee on finance of the Senate and House, respectively. The members shall serve until their successors shall have been appointed as heretofore provided. Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the legislative oversight commission on education accountability, but if no such appropriation be made, such expenses shall be paid from the appropriation under "Account No. 103 for Joint Expenses", but no expense of any kind whatever payable under said account for joint expenses shall be incurred unless first approved by the joint committee on government and finance. The commission shall meet at any time both during sessions of the Legislature and in the interim.

(b) The commission may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

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CHAPTER 90

(H. B. 2686—By Delegates Fleischauer, Buchanan and Beach)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section eleven, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the clerks of the circuit courts to affix their signatures on absentee ballots by facsimile.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-11. Preparation, number and handling of absent voters’ ballots.

Absent voters’ ballots shall be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided for in any specific election law in which case the lesser number of days applies, the clerks of the circuit courts of the several counties shall estimate and determine the number of absent voters’ ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, shall be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters’ ballots that are to be printed under their directions as hereinbefore provided, and those ballots shall be delivered to the clerk of the circuit court of the county not less than forty-two days before the day of the election at which they are to be used. Before any ballot is mailed or delivered, the clerk of the circuit court shall affix his or her official seal and he or she and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back thereof. The clerks of the circuit courts are authorized to have their signatures affixed by a facsimile printed on the back of absentee ballots, by a facsimile signature stamp, or by signing their original signatures. An absent voter’s ballot not containing the seal and signatures is invalid and is subject to challenge by any election commissioner or poll clerk.

The clerk of the circuit court shall be primarily responsible for the preparation, mailing, receiving, delivering and otherwise handling of all absent voters’ ballots. He or she shall keep a record, as may be
prescribed by the secretary of state, of all ballots so
delivered for the purpose of absentee voting, as well as all
ballots, if any, marked before him or her, and shall deliver
to the commissioner of election to whom the ballots for
the precinct are delivered and at the time of the delivery of
those ballots a certificate stating the number of ballots
delivered or mailed to absent voters, and those marked
before him or her, if any, and the names of the voters to
whom those ballots have been delivered or mailed, or by
whom they have been marked, if marked before him or
her.

CHAPTER 91
(Com. Sub. for S. B. 278—By Senators Love, Bailey and Wooton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]
that said article be further amended by adding thereto two new sections, designated sections six-b and eleven, all to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.
§24-6-2. Definitions.
§24-6-4. Creation of emergency telephone systems.
§24-6-6b. Wireless enhanced 911 fee.
§24-6-8. Limitation of liability.
§24-6-11. Confidentiality of proprietary information.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Commercial mobile radio service provider" or
4 "CMRS provider", means cellular licensees, broadband
5 personal communications services (PCS) licensees and
6 specialized mobile radio (SMR) providers, as those terms
7 are defined by the federal Communication Commission,
8 which offer real-time, two-way switched voice service that
9 is interconnected with the public switched network, and
10 includes resellers of any commercial mobile radio service.

11 (2) "County answering point" means a facility to
12 which enhanced emergency telephone system calls for a
13 county are initially routed for response, and where county
14 personnel respond to specific requests for emergency
15 service by directly dispatching the appropriate emergency
16 service provider, relaying a message to the appropriate
17 provider or transferring the call to the appropriate provid-
18 er.

19 (3) "Emergency services organization" means the
20 organization established under article five, chapter fifteen
21 of this code.

22 (4) "Emergency service provider" means any
23 emergency services organization or public safety unit.

24 (5) "Emergency telephone system" means a tele-
25 phone system which through normal telephone service
26 facilities automatically connects a person dialing the
27 primary emergency telephone number to an established
public agency answering point, but does not include an enhanced emergency telephone system.

(6) "Enhanced emergency telephone system" means a telephone system which automatically connects the person dialing the primary emergency number to the county answering point and in which the telephone network system automatically provides to personnel receiving the call, immediately on answering the call, information on the location and the telephone number from which the call is being made, and upon direction from the personnel receiving the call routes or dispatches the call by telephone, radio or any other appropriate means of communication to emergency service providers that serve the location from which the call is made.

(7) "Public agency" means the state, and any municipality, county, public district or public authority which provides or has authority to provide fire fighting, police, ambulance, medical, rescue or other emergency services.

(8) "Public safety unit" means a functional division of a public agency which provides fire fighting, police, medical, rescue or other emergency services.

(9) "Telephone company" means any public utility and any CMRS provider, which is engaged in the provision of telephone service whether primarily by means of wire or wireless facilities.

(10) "Comprehensive plan" means a plan pertaining to the installing, modifying or replacing of telephone switching equipment; a telephone utility's response in a timely manner to requests for emergency telephone service by a public agency; a telephone utility's responsibility to report to the public service commission; charges and tariffs for the services and facilities provided by a telephone utility; and access to an emergency telephone system by emergency service organizations.

(11) "Technical and operational standards" means those standards of telephone equipment and processes necessary for the implementation of the comprehensive plan as defined in subdivision (10) of this subsection.
§24-6-4. Creation of emergency telephone systems.

(a) Upon the adoption by the public service commission of a comprehensive plan, the public agency may establish, consistent with the comprehensive plan, an emergency telephone system within its jurisdiction. Nothing contained in this section shall be construed to prohibit or discourage in any way the establishment of multijurisdiction or regional systems, and any emergency telephone system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency. To the extent feasible, emergency telephone systems shall be centralized.

(b) Every emergency telephone system shall provide access to emergency services organizations, police, fire fighting and emergency medical and ambulance services and may provide access to other emergency services. The system may also provide access to private ambulance services. The emergency telephone system shall provide the necessary mechanical equipment at the established public agency answering point to allow deaf persons access to the system. In those areas in which a public safety unit of the state provides emergency services, the system shall provide access to the public safety unit.

(c) The primary emergency telephone number to the extent possible shall be uniform throughout the state.

(d) Insofar as it is consistent with applicable federal law and federal communications commission regulations and orders, a telephone company in the normal course of replacing or making major modifications to its switching equipment shall include the capability of providing for the emergency telephone system and shall bear all costs related to including that capability. All charges for other services and facilities provided by the telephone company, including the provision of distribution facilities and station equipment, shall be paid for by the public agency or public safety unit in accordance with the applicable tariff rates then in effect for those services and facilities. Other costs pursuant to the emergency telephone system shall be
allocated as determined by the applicable comprehensive plan of the public service commission.

(e) All coin-operated telephones within the state shall be of a design that will permit a caller to initiate, without first having to insert a coin (dial tone first or post-pay systems), local calls to the long distance and directory assistance operators, calls to the emergency telephone number answering point, if one has been established in his or her local calling area, and to other numbers for services as the telephone company may from time to time make available to the public.

§24-6-6b. Wireless enhanced 911 fee.

(a) Beginning on the first day of January, one thousand nine hundred ninety-eight, all CMRS providers, as defined in section two of this article, shall, on a monthly basis, collect from each of their in-state two-way service subscribers a wireless enhanced 911 fee. No later than the first day of August, one thousand nine hundred ninety-eight, the public service commission, shall, after the receipt of comments and the consideration of evidence presented at a hearing, issue an order which directs the CMRS providers regarding all relevant details of wireless enhanced 911 fee collection, including the determination of who is considered an in-state two-way service subscriber and which shall specify how the CMRS providers shall deal with fee collection shortfalls caused by uncollectible accounts. The public service commission shall solicit the views of the wireless telecommunications utilities prior to issuing the order.

(b) The wireless enhanced 911 fee is seventy-five cents per month for each valid retail commercial mobile radio service subscription, as that term is defined by the public service commission in its order issued under subsection (a) of this section.

(c) Beginning in the year one thousand nine hundred ninety-seven, and every two years thereafter, the public service commission shall conduct an audit of the wireless enhanced 911 fee and shall recalculate the fee so that it is the weighted average rounded to the nearest penny, as of
the first day of March of the respecification year, of all of
the enhanced 911 fees imposed by the counties which
have adopted an enhanced 911 ordinance: Provided, That
the wireless enhanced 911 fee may never be increased by
more than twenty-five percent of its value at the beginning
of the respecification year.

(d) The CMRS providers shall, after retaining a three
percent billing fee, send the wireless enhanced 911 fee
moneys collected, on a monthly basis, to the public service
commission. The public service commission shall, on a
quarterly and approximately evenly staggered basis,
disburse the fee revenue in the following manner:

(1) Each county that does not have a 911 ordinance in
effect as of the effective date of this section or has enacted
a 911 ordinance within the five years prior to the effective
date of this section shall receive one percent of the fee
revenues received by the public service commission and
from the remainder of the revenues, each county shall
receive a pro rata portion of the fee revenues received by
the public service commission based on that county’s
percentage of the total number of local exchange tele-
phone access lines and line equivalents in service in the
state. The public service commission shall recalculate the
county disbursement percentages on a yearly basis, with
the changes effective on the first day of July, and using
data as of the preceding first day of March. The public
utilities which normally provide local exchange telecom-
munications service by means of lines, wires, cables,
optical fibers or by other means extended to subscriber
premises shall supply the data to the public service
commission on a county specific basis no later than the
first day of June of each year;

(2) Counties which have an enhanced 911 ordinance
in effect shall receive their share of the wireless enhanced
911 fee revenue for use in the same manner as the en-
hanced 911 fee revenues received by those counties
pursuant to their enhanced 911 ordinances;

(3) The public service commission shall deposit the
wireless enhanced 911 fee revenue for each county which
does not have an enhanced 911 ordinance in effect into an
escrow account which it has established for that county. Any county with an escrow account may, immediately upon adopting an enhanced 911 ordinance, receive the moneys which have accumulated in the escrow account for use as specified in subdivision (2), subsection (d) of this section: Provided, That a county that adopts a 911 ordinance after the effective date of this section or has adopted a 911 ordinance within five years of the effective date of this section shall continue to receive one percent of the 911 fee revenue for a period of five years following the adoption of the ordinance and thereafter shall receive that county's portion of the fee revenue being disbursed to counties on a pro rata basis: Provided, however, That every five years from the year one thousand nine hundred ninety-seven, all fee revenue residing in escrow accounts shall be disbursed on the pro rata basis specified in subdivision (1), subsection (d) of this section, except that data for counties without enhanced 911 ordinances in effect shall be omitted from the calculation and all escrow accounts shall begin again with a zero balance.

(e) CMRS providers have the same rights and responsibilities as other telephone service suppliers in dealing with the failure by a subscriber of a CMRS provider to timely pay the wireless enhanced 911 fee.

(f) Notwithstanding the provisions of section one-a of this article, for the purposes of this section, the term "county" means one of the counties provided for in section one, article one, chapter one of this code.

(g) From any funds distributed to a county pursuant to this section, a total of three percent quarter shall be set aside in a special fund to be used exclusively for the purchase of equipment that will provide information regarding the x and y coordinates of persons who call an emergency telephone system through a commercial mobile radio service: Provided, That upon purchase of the necessary equipment, the special fund shall be dissolved and any surplus shall be used for general operation of the emergency telephone system as may otherwise be provided by law.

§24-6-8. Limitation of liability.
A public agency or a telephone company participating in an emergency telephone system or a county which has established an enhanced emergency telephone system, and any officer, agent or employee of the public agency, telephone company or county is not liable for damages in a civil action for injuries, death or loss to persons or property arising from any act or omission, except willful or wanton misconduct, in connection with developing, adopting or approving any final plan or any agreement made pursuant to this article, or otherwise bringing into operation or participating in the operation of an emergency telephone system or an enhanced emergency telephone system pursuant to this article.

§24-6-11. Confidentiality of proprietary information.

In recognition of the fact that information pertaining to numbers of customers and revenues collected by the CMRS providers is obtained and maintained in a competitive environment and that information pertaining to the providers’ subscribers could be used to the disadvantage of the participating CMRS provider, the Legislature declares that any such information provided by the public service commission and any county or enhanced 911 program, is not subject to disclosure under the provisions of chapter twenty-nine-b of this code.

CHAPTER 92

(S. B. 47—By Senators Dittmar, Craigo and Hunter)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]
said chapter, all relating to factory-built homes, including house trailers, mobile homes and manufactured homes; redefining terms; requiring certificate of title, annual registration and license plates and providing exemptions therefrom; requiring certificate of title for factory-built homes; exempting mobile homes or manufactured homes from the requirements of annual registration, license plates and fees; allowing house trailers to be registered and licensed; providing for the crime of failing to provide a certificate of title and providing criminal penalties therefor; revising the tax on the privilege of certificate of title; requiring certificate of titles to show lienholders; extending the expiration date of liens on mobile homes and manufactured homes; and revising certain terms.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and four, article three of said chapter be amended and reenacted; that sections one and fifteen, article four-a of said chapter be amended and reenacted; and that section one, article six of said chapter be amended and reenacted, all to read as follows:

Article

1. Words and Phrases Defined.

3. Original and Renewal of Registration: Issuance of Certificates of Title.

4A. Liens and Encumbrances on Vehicles to Be Shown on Certificate of Title; Notice to Creditors and Purchasers.

6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.

ARTICLE 1. WORDS AND PHRASES DEFINED.

*§17A-1-1. Definitions.

1. Except as otherwise provided in this chapter the following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this article:

*Clerk's Note: This section was also amended by S.B. 74 (Chapter 138), which passed prior to this act.
(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motorcycle" means every motor vehicle, including motor-driven cycles and mopeds as defined in sections five and five-a, article one, chapter seventeen-c of this code, having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor.

(d) "School bus" means every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) "Bus" means every motor vehicle designed to carry more than seven passengers and used to transport persons; and every motor vehicle, other than a taxicab, designed and used to transport persons for compensation.

(f) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(g) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

(h) "Road tractor" means every motor vehicle designed, used or maintained for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.
42  (i) "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

45  (j) "Trailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle but excluding recreational vehicles.

50  (k) "Semitrailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

55  (l) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

63  (m) "Specially constructed vehicles" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

69  (n) "Reconstructed vehicle" means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition or substitution of essential parts, new or used.

73  (o) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.
(p) "Foreign vehicle" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(q) "Implement of husbandry" means every vehicle which is designed for or adapted to agricultural purposes and used by the owner thereof primarily in the conduct of his agricultural operations, including, but not limited to, trucks used for spraying trees and plants: Provided, That the vehicle may not be let for hire at any time.

(r) "Special mobile equipment" means every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including, without limitation, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, graders, rollers, well-drillers, wood-sawing equipment, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, rock-drilling equipment and earth-moving equipment. The foregoing enumeration shall be deemed partial and may not operate to exclude other such vehicles which are within the general terms of this subdivision.

(s) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

(t) "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(u) "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(v) "Commissioner" means the commissioner of motor vehicles of this state.
Department” means the department of motor vehicles of this state acting directly or through its duly authorized officers and agents.

(x) “Person” means every natural person, firm, copartnership, association or corporation.

(y) “Owner” means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(z) “Nonresident” means every person who is not a resident of this state.

(aa) “Dealer” or “dealers” is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, factory-built home dealer, recreational vehicle dealer, trailer dealer or motorcycle dealer, as defined in section one, article six of this chapter, or all of the dealers or a combination thereof, and in some instances a new motor vehicle dealer or dealers in another state.

(bb) “Registered dealer” or “registered dealers” is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of the dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(cc) “Licensed dealer” or “licensed dealers” is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of the dealers or a combination thereof, licensed under the provisions of article six of this chapter.
(dd) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer.

(ee) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at a place of business in this state which is actually occupied either continuously or at regular periods by the manufacturer where his books and records are kept and a large share of his business is transacted.

(ff) "Street" or "highway" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(gg) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not the motor is the principal source of propulsion, but may not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

(hh) "Motorboat trailer" means every vehicle designed for or ordinarily used for the transportation of a motorboat.

(ii) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use and designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

(jj) "Travel trailer" means every vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use of such size or weight as not to require special highway movement permits when towed by a motor vehicle and of gross trailer area less than four hundred square feet.
"Fold down camping trailer" means every vehicle consisting of a portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping or travel use.

"Motor home" means every vehicle, designed to provide temporary living quarters, built into an integral part of or permanently attached to a self-propelled motor vehicle, chassis or van including: (1) Type A motor home built on an incomplete truck chassis with the truck cab constructed by the second stage manufacturer; (2) Type B motor home consisting of a van-type vehicle which has been altered to provide temporary living quarters; and (3) Type C motor home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

"Snowmobile" means a self-propelled vehicle intended for travel primarily on snow and driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

"Recreational vehicle" means a motorboat, motorboat trailer, all-terrain vehicle, travel trailer, fold down camping trailer, motor home or snowmobile.

"Mobile equipment" means every self-propelled vehicle not designed or used primarily for the transportation of persons or property over the highway but which may infrequently or incidentally travel over the highways among job sites, equipment storage sites or repair sites, including farm equipment, implements of husbandry, well-drillers, cranes and wood-sawing equipment.

"Factory-built home" includes mobile homes, house trailers and manufactured homes.

"Manufactured home" has the same meaning as the term is defined in section two, article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401 et seq.), effective on the
fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.

(rr) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American national standards institute (ANSI) — A119.1 standards for mobile homes.

(ss) "House trailers" means all trailers designed and used for human occupancy on a continual nonrecreational basis, but may not include fold down camping and travel trailers, mobile homes or manufactured homes.

(tt) "Parking Enforcement Vehicle" means a motor vehicle which does not fit into any other classification of vehicle in this chapter, has three or four wheels and is designed for use in an incorporated municipality by a city, county, state or other governmental entity primarily for parking enforcement or other governmental purposes with an operator area with sides permanently enclosed with rigid construction and a top which may be convertible, sealed beam headlights, turn signals, brake lights, horn, at least one rear view mirror on each side and such other equipment that will enable it to pass a standard motorcycle vehicle inspection.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.
*§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

(a) Every motor vehicle, trailer, semitrailer, pole trailer and recreational vehicle when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter except:

1 (1) Any vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders or nonresidents or under a temporary registration permit issued by the department as hereinafter authorized;

2 (2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner thereof and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the commissioner of the division of highways from one point of the owner's land to another part thereof, irrespective of whether or not the tracts adjoin: Provided, That the distance between the points may not exceed twenty-five miles, or for the purpose of taking it or other fixtures thereto attached, to and from a repair shop for repairs. The foregoing exemption from registration and license requirements shall also apply to any vehicle hereinbefore described or to any farm trailer owned by the owner or lessee of the farm on which the trailer is used, when the trailer is used by the owner thereof for the purpose of moving farm produce and livestock from the farm along a public highway for a distance not to exceed twenty-five miles to a storage house or packing plant, when the use is a seasonal operation:

*Clerk's Note: This section was also amended by S.B. 74 (Chapter 138), which passed prior to this act.*
(A) The exemptions contained in this section shall also apply to farm machinery and tractors: Provided, That the machinery and tractors may use the highways in going from one tract of land to another tract of land regardless of whether the land be owned by the same or different persons.

(B) Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates and fees therefor may not be permitted to use the highways between sunset and sunrise.

(C) Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates shall be permitted to use the highways as herein provided whether the exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle for which registration is required.

(D) Any vehicle used as an implement of husbandry exempt hereunder must have the words "farm use" affixed to both sides of the implement in ten inch letters. Any vehicle which would be subject to registration as a Class A or B vehicle if not exempted by this section shall display a farm use exemption certificate on the lower driver's side of the windshield:

(i) The farm use exemption certificate shall be provided by the commissioner and shall be issued annually by the assessor of the applicant's county of residence. The assessor shall issue a farm use exemption certificate upon his or her determination pursuant to an examination of the property books or documentation provided by the applicant that the vehicle has been properly assessed as Class I personal property. The assessor shall charge a fee of two dollars for each certificate, one dollar of the fee shall be retained by the assessor and one dollar shall be remitted by the assessor to the commissioner of the division of motor vehicles to be deposited in a special revolving fund to be used in the administration of this section.

(ii) A farm use exemption certificate in no way exempts the applicant from maintaining the security as
required by chapter seventeen-d of this code on any
vehicle being operated on the roads or highways of this
state.

(iii) No person charged with operating a vehicle
without a farm use exemption certificate, if required under
this section, shall be convicted if he or she produces in
court, or in the office of the arresting officer, a valid farm
use exemption certificate for the vehicle in question within
five days;

(3) Any vehicle which is propelled exclusively by
electric power obtained from overhead trolley wires
though not operated upon rails;

(4) Any vehicle of a type subject to registration owned
by the government of the United States;

(5) Any wrecked or disabled vehicle which is being
towed by a licensed wrecker or dealer on the public
highways of this state;

(6) The following recreational vehicles shall be
exempt from the requirements of annual registration,
license plates and fees, unless otherwise specified by law,
but shall be subject to the certificate of title provisions of
this chapter regardless of highway use: Motorboats,
all-terrain vehicles and snowmobiles; and

(7) Any special mobile equipment as defined in
subsection (r), section one, article one of this chapter.

(b) The provisions of this article relating to
recreational vehicles shall become effective on the first
day of July, one thousand nine hundred eighty-nine.

(c) Notwithstanding the provisions of subsections (a)
and (b) of this section:

(1) Mobile homes or manufactured homes are exempt
from the requirements of annual registration, license plates
and fees;

(2) House trailers may be registered and licensed; and
FACTORY-BUILT HOMES

(3) Factory-built homes are subject to the certificate of title provisions of this chapter.

*§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, may not be issued or furnished by the division of motor vehicles or any other officer charged with the duty, unless the applicant therefor already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle. The application shall be upon a blank form to be furnished by the division of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the division of motor vehicles may require. The application shall be signed and sworn to by the applicant.

(b) A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of the motor vehicle at the time of the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or consideration to the purchaser thereof is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value thereof for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section has been paid by the purchaser shall be deducted from the total actual price or

*Clerk's Note: This section was also amended by S.B. 74 (Chapter 138), which passed prior to this act.
consideration paid for the vehicle, whether the vehicle be new or secondhand. If the vehicle is acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value thereof for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to any applicant unless the applicant has paid to the division of motor vehicles the tax imposed by this section which is five percent of the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever except gifts between husband and wife or between parents and children: Provided, That the husband or wife, or the parents or children previously have paid the tax on the vehicles transferred to the state of West Virginia.

(3) The division of motor vehicles may issue a certificate of registration and title to an applicant if the applicant provides sufficient proof to the division of motor vehicles that the applicant has paid the taxes and fees required by this section to a motor vehicle dealership that has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: Provided, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the division of motor vehicles.

(4) The division of motor vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or
equity interests possessing fifty percent or more of the
total combined voting power of all classes of the stock of a
corporation or equity interests of a partnership or limited
liability company entitled to vote or ownership, directly or
indirectly, of stock or equity interests possessing fifty
percent or more of the value of the corporation,

(5) The tax imposed by this section does not apply to
vehicles to be registered as Class H vehicles or Class M
vehicles, as defined in section one, article ten of this
chapter, which are used or to be used in interstate
commerce. Nor does the tax imposed by this section
apply to the titling of Class B, Class K or Class E vehicles
registered at a gross weight of fifty-five thousand pounds
or more, or to the titling of Class C or Class L semitrailers,
full trailers, pole trailers and converter gear: Provided,
That if an owner of a vehicle has previously titled the
vehicle at a declared gross weight of fifty-five thousand
pounds or more and the title was issued without the
payment of the tax imposed by this section, then before
the owner may obtain registration for the vehicle at a gross
weight less than fifty-five thousand pounds, the owner
shall surrender to the commissioner the exempted
registration, the exempted certificate of title, and pay the
tax imposed by this section based upon the current market
value of the vehicle: Provided, however, That
notwithstanding the provisions of section nine, article
fifteen, chapter eleven of this code, the exemption from
tax under this section for Class B, Class K or Class E
vehicles in excess of fifty-five thousand pounds and Class
C or Class L semitrailers, full trailers, pole trailers and
converter gear may not subject the sale or purchase of the
vehicles to the consumers sales tax.

(6) The tax imposed by this section does not apply to
titling of vehicles leased by residents of West Virginia. A
tax is hereby imposed upon the monthly payments for the
lease of any motor vehicle leased by a resident of West
Virginia, which tax is equal to five percent of the amount
of the monthly payment, applied to each payment, and
continuing for the entire term of the initial lease period.
The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of the state of West Virginia as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the state road fund and expended by the commissioner of highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of five dollars for each original certificate of title or duplicate certificate of title so issued: Provided, That this state or any political subdivision thereof, or any volunteer fire department, or duly chartered rescue squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long as the vehicle is owned or held by the original holder of the certificate, and need not be renewed annually, or any other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid, to the division of motor vehicles, on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section may not be required to pay the tax a second time for the same motor vehicle, but is required to pay a charge of five dollars for the certificate of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from the person to another person and transferred back to the person.

(c) Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational
vehicles and other vehicles not subject to the certificate of
title tax prior to the enactment of this chapter are subject
to the privilege tax imposed by this section: Provided,
That the certification of title of any recreational vehicle
owned by the applicant on the thirtieth day of June, one
thousand nine hundred eighty-nine, is not subject to the
tax imposed by this section: Provided, however, That
mobile homes, manufactured homes, modular homes and
similar nonmotive propelled vehicles, except recreational
vehicles and house trailers, susceptible of being moved
upon the highways but primarily designed for habitation
and occupancy, rather than for transporting persons or
property, or any vehicle operated on a nonprofit basis and
used exclusively for the transportation of mentally
retarded or physically handicapped children when the
application for certificate of registration for the vehicle is
accompanied by an affidavit stating that the vehicle will be
operated on a nonprofit basis and used exclusively for the
transportation of mentally retarded and physically
handicapped children, are not subject to the tax imposed
by this section, but are taxable under the provisions of
articles fifteen and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under
any provision of this section, who knowingly swears
falsely, or any person who counsels, advises, aids or abets
another in the commission of false swearing is on the first
offense guilty of a misdemeanor and, upon conviction
thereof, shall be fined not more than five hundred dollars
or be imprisoned in the county or regional jail for a
period not to exceed six months or, in the discretion of the
court, both fined and imprisoned. For a second or any
subsequent conviction within five years, that person is
guilty of a felony and, upon conviction thereof, shall be
fined not more than five thousand dollars or be
imprisoned in the penitentiary for not less than one year
nor more than five years or, in the discretion of the court,
fined and imprisoned.

(e) Notwithstanding any other provisions of this
section, any person in the military stationed outside West
Virginia, or his or her dependents who possess a motor
vehicle with valid registration, are exempt from the
provisions of this article for a period of nine months from
the date that that person returns to this state or the date his
or her dependent returns to this state, whichever is later.

(f) After the first day of July, one thousand nine
hundred ninety-seven, no person may transfer, purchase
or sell a factory-built home without a certificate of title
issued by the commissioner in accordance with the
provisions of this article:

(1) Any person who fails to provide a certificate of
title upon the transfer, purchase or sale of a factory-built
home is guilty of a misdemeanor and, upon conviction
thereof, shall for the first offense be fined not less than
one hundred dollars nor more than one thousand dollars,
or be imprisoned in the county or regional jail for not
more than one year or, both fined and imprisoned. For
each subsequent offense, the fine may be increased to not
more than two thousand dollars, with imprisonment in the
county or regional jail not more than one year or, both
fined and imprisoned.

(2) Failure of the seller to transfer a certificate of title
upon sale or transfer of the factory-built home gives rise
to a cause of action, upon prosecution thereof, and allows
for the recovery of damages, costs and reasonable attorney
fees.

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-1. Certificate to show liens or encumbrances.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

§17A-4A-1. Certificate to show liens or encumbrances.

The department upon receiving an application for a
certificate of title to a vehicle, trailer, semitrailer, pole
trailer, factory-built home or recreational vehicle for
which a certificate of title is required under article three of
this chapter, all of which are hereinafter in this article
referred to as vehicles, showing liens or encumbrances
upon the vehicle, shall, upon issuing to the owner thereof a
certificate of title therefor, show upon the face of the
certificate of title all liens or encumbrances disclosed by
the application. All liens or encumbrances shall be shown
in the order of their priority being according to the
information contained in the application. When an
application shows liens and encumbrances, the
information as evidence of the lien in connection
therewith as the department may deem necessary shall also
be furnished. The information shall include the name and
address of the lienholder, the nature and kind of the lien,
the date thereof and the amount thereby secured.
However, only the name and address of the lienholder will
be endorsed on the title certificate. Upon issuing the
certificate, the department shall thereupon send or deliver
it to the holder of the first lien.

§17A-4A-15. Expiration of lien or encumbrance; refiling.

The filing of any lien or encumbrance and its
recordation upon the face of a certificate of title to any
vehicle as provided in this article shall be valid for a
period of ten years only from the date of filing, unless the
lien or encumbrance is refilled in the manner provided in
this article for filing and recordation in the first instance,
in which event the lien or encumbrance shall be valid for
successive additional periods of two years from the date of
each refiling: Provided, That in the case of a mobile
home or manufactured home, the filing of any lien or
encumbrance and its recordation upon the face of a
certificate of title to the mobile home or manufactured
home shall be valid for a period of thirty-three years from
the date of filing.

When the last lien or encumbrance shown on a
certificate of title becomes invalid by the passage of time
as provided in this section, the commissioner of motor
vehicles shall not be required to maintain a lien index as to
the certificate of title.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-1. Definitions.
(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "New motor vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling five or more new motor vehicles or new and used motor vehicles in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(2) "Used motor vehicle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling five or more used motor vehicles in any fiscal year of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

(3) "House trailer dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new and/or used house trailers, or new or used or both house trailers and trailers or new or used, or both manufactured homes and mobile homes.

(4) "Trailer dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used trailers.

(5) "Motorcycle dealer" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling new or used motorcycles.

(6) "Used parts dealer" means every person (other than agents and employees, if any, while acting within the...
scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of selling any used appliance, accessory, member, portion or other part of any vehicle.

(7) "Wrecker/dismantler/rebuilder" means every person (other than agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or held out to the public to be engaged in, the business in this state of dealing in wrecked or damaged motor vehicles or motor vehicle parts for the purpose of selling the parts thereof or scrap therefrom or who is in the business of rebuilding salvage motor vehicles for the purpose of resale to the public.

(8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor vehicles, of a type required to be registered under the provisions of this chapter.

(9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required to be registered under the provisions of this chapter which have been sold and operated, or which have been registered or titled, in this or any other state or jurisdiction.

(10) "House trailers" means all trailers designed and used for human occupancy on a continual nonrecreational basis, but may not include fold down camping and travel trailers, mobile homes or manufactured homes.

(11) "Trailers" means all types of trailers other than house trailers, and shall include, but not be limited to, pole trailers and semitrailers but excluding recreational vehicles.

(12) "Sales instrument" means any document resulting from the sale of a vehicle, which shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel mortgage, chattel trust deed, security agreement or similar document.

(13) "Sell", "sale" or "selling" shall, in addition to the ordinary definitions of the terms, include offering for sale, soliciting sales of, negotiating for the sale of,
displaying for sale or advertising for sale, any vehicle, whether at retail, wholesale or at auction. "Selling" shall, in addition to the ordinary definition of that term, also include buying and exchanging.

(14) "Applicant" means any person making application for an original or renewal license certificate under the provisions of this article.

(15) "Licensee" means any person holding any license certificate issued under the provisions of this article.

(16) "Predecessor" means the former owner or owners or operator or operators of any new motor vehicle dealer business or used motor vehicle dealer business.

(17) "Established place of business" means, in the case of a new motor vehicle dealer, a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him or her, as the case may be, which is or is to be used exclusively for the purpose of selling new motor vehicles or new and used motor vehicles, which shall have space under roof for the display of at least one new motor vehicle and facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by the dealer with respect to motor vehicles sold by him or her, which shall be easily accessible to the public, which shall conform to all applicable laws of this state and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest the location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and to make the business available to inspection by the commissioner at all reasonable times:

Provided, That each established place of business shall
have a display area which may be outside or inside or a
combination thereof of at least twelve hundred square feet
which is to be used exclusively for the display of vehicles
which are offered for sale by the dealer, office space of at
least one hundred forty-four square feet and a telephone
listed in the name of the dealership. Each established
place of business shall be open to the public a minimum
of twenty hours per week at least forty weeks per calendar
year with at least ten of those hours being between the
hours of nine-thirty a.m. and eight-thirty p.m., Monday
through Saturday: Provided, however, That the require-
ment of exclusive use shall be met even though: (A)
Some new and any used motor vehicles sold or to be sold
by the dealer or sold or are to be sold at a different
location or locations not meeting the definition of an
established place of business of a new motor vehicle
dealer, if each location is or is to be served by other
facilities and space of the dealer for the servicing and
repair of at least one motor vehicle, adequate and suitable
as aforesaid, and each location used for the sale of some
new and any used motor vehicles otherwise meets the
definition of an established place of business of a used
motor vehicle dealer; (B) house trailers, trailers or
motorcycles are sold or are to be sold thereat, if, subject to
the provisions of section five of this article, a separate
license certificate is obtained for each type of vehicle
business, which license certificate remains unexpired,
unsuspended and unrevoked; (C) farm machinery is sold
thereat; and (D) accessory, gasoline and oil, or storage
departments are maintained thereat, if the departments are
operated for the purpose of furthering and assisting in the
licensed business or businesses.

(18) "Farm machinery" means all machines and tools
used in the production, harvesting or care of farm
products.

(19) "Established place of business" shall, in the case
of a used motor vehicle dealer, mean a permanent
location, not a temporary stand or other temporary
quarters, owned or leased by the licensee or applicant and
actually occupied or to be occupied by him or her, as the
case may be, which is or is to be used exclusively for the
purpose of selling used motor vehicles, which shall have
facilities and space therewith for the servicing and repair
of at least one motor vehicle, which servicing and repair
facilities and space shall be adequate and suitable to carry
out servicing and to make repairs necessary to keep and
carry out all representations, warranties and agreements
made or to be made by the dealer with respect to used
motor vehicles sold by him or her, which shall be easily
accessible to the public, shall conform to all applicable
laws of this state, and the ordinances of the municipality in
which it is located, if any, which shall display thereon at
least one permanent sign, clearly visible from the principal
public street or highway nearest the location and clearly
stating the business which is or shall be conducted thereat,
and which shall have adequate facilities to keep, maintain
and preserve records, papers and documents necessary to
carry on the business and to make the business available to
inspection by the commissioner at all reasonable times:
Provided, That each established place of business shall
have a display area which may be outside or inside or a
combination thereof of at least twelve hundred square feet
which is to be used exclusively for the display of vehicles
which are offered for sale by the dealer, office space of at
least one hundred forty-four square feet and a telephone
listed in the name of the dealership. Each established
place of business shall be open to the public a minimum
of twenty hours per week at least forty weeks per calendar
year with at least ten of those hours being between the
hours of nine-thirty a.m. and eight-thirty p.m., Monday
through Saturday: Provided, however, That if a used
motor vehicle dealer has entered into a written agreement
or agreements with a person or persons owning or
operating a servicing and repair facility or facilities
adequate and suitable as aforesaid, the effect of which
agreement or agreements is to provide the servicing and
repair services and space in like manner as if the servicing
and repair facilities and space were located in or on the
dealer's place of business, then, so long as the agreement
or agreements are in effect, it shall not be necessary for
the dealer to maintain the servicing and repair facilities
and space at the place of business in order for the place of
business to be an established place of business as herein
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200 defined: *Provided further,* That the requirement of 201 exclusive use shall be met even though: (A) House 202 trailers, trailers or motorcycles are sold or are to be sold 203 thereat, if, subject to the provisions of section five of this 204 article, a separate license certificate is obtained for each 205 type of vehicle business, which license certificate remains 206 unexpired, unsuspended and unrevoked; (B) farm 207 machinery is sold thereat; and (C) accessory, gasoline and 208 oil, or storage departments are maintained thereat, if the 209 departments are operated for the purpose of furthering 210 and assisting in the licensed business or businesses.

211 (20) “Established place of business” shall, in the case 212 of a house trailer dealer, trailer dealer, recreational vehicle 213 dealer, motorcycle dealer, used parts dealer and wrecker or 214 dismantler, mean a permanent location, not a temporary 215 stand or other temporary quarters, owned or leased by the 216 licensee or applicant and actually occupied or to be 217 occupied by the licensee, as the case may be, which shall 218 be easily accessible to the public, which shall conform to 219 all applicable laws of this state and the ordinances of the 220 municipality in which it is located, if any, which shall 221 display thereon at least one permanent sign, clearly visible 222 from the principal public street or highway nearest the 223 location and clearly stating the business which is or shall 224 be conducted thereat, and which shall have adequate 225 facilities to keep, maintain and preserve records, papers 226 and documents necessary to carry on the business and to 227 make the business available to inspection by the 228 commissioner at all reasonable times.

229 (21) “Manufacturer” means every person engaged in 230 the business of reconstructing, assembling or reassembling 231 vehicles with a special type body required by the 232 purchaser if the vehicle is subject to the title and 233 registration provisions of this code.

234 (22) “Transporter” means every person engaged in 235 the business of transporting vehicles to or from a 236 manufacturing, assembling or distributing plant to dealers 237 or sales agents of a manufacturer, or purchasers.

238 (23) “Recreational vehicle dealer” means every 239 person (other than agents and employees, if any, while
acting within the scope of their authority or employment),
engaged in, or held out to the public to be engaged in, the
business in this state of selling new or used recreational
vehicles, or both.

(24) "Motorboat" means any vessel propelled by an
electrical, steam, gas, diesel or other fuel propelled or
driven motor, whether or not the motor is the principal
source of propulsion, but may not include a vessel which
has a valid marine document issued by the bureau of
customs of the United States government or any federal
agency successor thereto.

(25) "Motorboat trailer" means every vehicle
designed for or ordinarily used for the transportation of a
motorboat.

(26) "All-terrain vehicle" (ATV) means any motor
vehicle designed for off-highway use and designed for
operator use only with no passengers, having a seat or
saddle designed to be straddled by the operator, and
handlebars for steering control.

(27) "Travel trailer" means every vehicle, mounted
on wheels, designed to provide temporary living quarters
for recreational, camping or travel use of such size or
weight as not to require special highway movement
permits when towed by a motor vehicle and of gross trailer
area less than four hundred square feet.

(28) "Fold down camping trailer" means every
vehicle consisting of a portable unit mounted on wheels
and constructed with collapsible partial sidewalls which
fold for towing by another vehicle and unfold at the camp
site to provide temporary living quarters for recreational,
camping or travel use.

(29) "Motor home" means every vehicle, designed to
provide temporary living quarters, built into an integral
part of or permanently attached to a self-propelled motor
vehicle, chassis or van including: (1) Type A motor home
built on an incomplete truck chassis with the truck cab
constructed by the second stage manufacturer; (2) Type B
motor home consisting of a van-type vehicle which has
been altered to provide temporary living quarters; and (3) Type C motor home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

(30) "Snowmobile" means a self-propelled vehicle intended for travel primarily on snow and driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(31) "Recreational vehicle" means a motorboat, motorboat trailer, all-terrain vehicle, travel trailer, fold down camping trailer, motor home or snowmobile.

(32) "Major component" means any one of the following subassemblies of a motor vehicle: (A) Front clip assembly consisting of fenders, grille, hood, bumper and related parts; (B) engine; (C) transmission; (D) rear clip assembly consisting of quarter panels and floor panel assembly; or (E) two or more doors.

(33) "Factory-built home" includes mobile homes, house trailers and manufactured homes.

(34) "Manufactured home" has the same meaning as the term is defined in section two, article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.

(35) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the federal manufactured housing construction and safety standards institute (ANSI) — A119.1 standards for mobile homes.

(b) Under no circumstances whatever may the terms "new motor vehicle dealer", "used motor vehicle dealer", 

“house trailer dealer”, “trailer dealer”, “recreational vehicle dealer”, “motorcycle dealer”, “used parts dealer” or “wrecker/dismantler/rebuilder” be construed or applied under this article in such a way as to include a banking institution, insurance company, finance company, or other lending or financial institution, or other person, the state or any agency or political subdivision thereof, or any municipality, who or which owns or comes in possession or ownership of, or acquires contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and sells the vehicle or vehicles or any part thereof for purposes other than engaging in and holding out to the public to be engaged in the business of selling vehicles or any part thereof.

(c) It is recognized that throughout this code the term “trailer” or “trailers” is used to include, among other types of trailers, house trailers. It is also recognized that throughout this code the term “trailer” or “trailers” is seldom used to include semitrailers or pole trailers. However, for the purposes of this article only, the term “trailers” has the meaning ascribed to it in subsection (a) of this section.

CHAPTER 93

(S. B. 380—By Senators Chafin, Buckalew, Snyder, Bailey, Kimble, Deem, Sprouse, Scott, Dugan, Boley, White, Dittmar and Minear)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and twenty, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to appointing family law masters to serve for geographical regions; providing that conclusions of law of family law masters are subject to de novo review; providing that findings of facts are not subject to de novo review; and providing that
the circuit court is not held to a "clearly erroneous" standard in reviewing findings of fact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

(a) The family law masters holding office on the effective date of this section by virtue of appointments made under the prior enactments of this article shall continue their service for a term of office ending on the thirtieth day of June, one thousand nine hundred ninety-eight. Before the first day of July, one thousand nine hundred ninety-eight, the governor shall appoint family law masters in such numbers and to serve for geographical regions of the state as provided for under the provisions of section four of this article, with terms commencing on the first day of July, one thousand nine hundred ninety-eight, and on a like date in every fourth year thereafter, and ending on the thirtieth day of June, two thousand two, and on a like date in every fourth year thereafter. Upon the expiration of his or her term, a family law master may continue to perform the duties of the office until the governor makes the appointment, or for sixty days after the date of the expiration of the master's term, whichever is earlier. If a vacancy occurs in the office of family law master, the governor shall, within thirty days after such vacancy occurs, fill the vacancy by appointment for the unexpired term. Provided, That if the remaining portion of the unexpired term to be filled is less than one year, the governor may, in his or her discretion, simultaneously appoint an individual to the unexpired term and to the next succeeding full four-year term.

(b) An individual may be reappointed to succeeding terms as a family law master to serve in the same or a different region of the state.
(c) Removal of a master during the term for which he or she is appointed shall be as follows:

(1) Upon a recommendation by the judicial hearing board created pursuant to the rules of procedure for the handling of complaints against justices, judges, magistrates and family law masters, if the supreme court of appeals shall find that a family law master has violated the judicial code of ethics or that the master, because of advancing years and attendant physical or mental incapacity, should not continue to serve, the supreme court of appeals may, in lieu of or in addition to any disposition authorized by such rules, remove the family law master from office; and

(2) The supreme court of appeals may remove a master when conduct of the family law master evidences incompetence, unsatisfactory performance, misconduct, neglect of duty or physical or mental disability.

§48A-4-20. Circuit court review of master's recommended order.

(a) The circuit court shall proceed to a review of the recommended order of the master when:

(1) No petition has been filed within the time allowed, or the parties have expressly waived the right to file a petition;

(2) A petition and an answer in opposition have been filed, or the time for filing an answer in opposition has expired, or the parties have expressly waived the right to file an answer in opposition, as the case may be.

(b) To the extent necessary for decision and when presented, the circuit court shall decide all relevant questions of law, interpret constitutional and statutory provisions and determine the appropriateness of the terms of the recommended order of the master.

(c) The circuit court shall examine the recommended order of the master, along with the findings and conclusions of the master, and may enter the recommended order, may recommit the case, with instructions, for further hearing before the master or may, in its discretion, enter an order upon different terms, as the ends of justice may require. Conclusions of law of the family law master shall be subject to de novo review by the
circuit court. Nothing in this subsection shall be construed
to authorize a de novo review of the facts; however, the
circuit court shall not be held to the clearly erroneous
standard in reviewing findings of fact. The circuit court
shall not follow the recommendation, findings and
conclusions of a master found to be:

(1) Arbitrary, capricious, an abuse of discretion or
otherwise not in conformance with the law;

(2) Contrary to constitutional right, power, privilege or
immunity;

(3) In excess of statutory jurisdiction, authority or
limitations or short of statutory right;

(4) Without observance of procedure required by law;

(5) Unsupported by substantial evidence; or

(6) Unwarranted by the facts.

(d) In making its determinations under this section,
the circuit court shall review the whole record or those
parts of it cited by a party. If the circuit court finds that a
master's recommended order is deficient as to matters
which might be affected by evidence not considered or
inadequately developed in the master's recommended
order, the court may recommit the recommended order to
the master, with instructions indicating the court's opinion,
or the circuit court may proceed to take such evidence
without recommitting the matter.

(e) The order of the circuit court entered pursuant to
the provisions of subsection (d) of this section shall be
entered not later than ten days after the time for filing
pleadings or briefs has expired or after the filing of a
notice or notices waiving the right to file such pleading or
brief.

(f) If a case is recommitted by the circuit court, the
master shall retry the matter within twenty days.

(g) At the time a case is recommitted, the circuit court
shall enter appropriate temporary orders awarding
custody, visitation, child support, spousal support or such
other temporary relief as the circumstances of the parties
may require.
CHAPTER 94

(S. B. 358—By Senators Tomblin, Mr. President, Wooton, Jackson, Ball and Bailey)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the annual salary of the secretary-clerk of family law masters, effective the first day of July, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-3. Compensation and expenses of family law masters and their staffs.

1. (a) Prior to the first day of July, one thousand nine hundred ninety-four, a family law master shall receive as full compensation for his or her services an annual salary of thirty-five thousand dollars.

2. (b) After the first day of July, one thousand nine hundred ninety-four, a full-time family law master shall receive as full compensation for his or her services an annual salary of fifty thousand dollars and a part-time family law master shall receive as full compensation for his or her services an annual salary of thirty-seven thousand five hundred dollars.
(c) The secretary-clerk of the family law master shall be appointed by the family law master and serve at his or her will and pleasure and shall receive an annual salary of seventeen thousand five hundred dollars: Provided, That beginning the first day of July, one thousand nine hundred ninety-seven, the secretary-clerk of the family law master appointed by the family law master shall receive an annual salary of twenty-two thousand three hundred eight dollars: Provided, however, That subsequent to the first day of July, one thousand nine hundred ninety-three, the secretary-clerk may receive such percentage or proportional salary increases as may be provided for by general law for other public employees and shall receive the annual incremental salary increase as provided for in article five, chapter five of this code.

(d) A temporary or special family law master shall be compensated by the supreme court of appeals at an hourly rate not to exceed the hourly rate paid to panel attorneys for performing work in court pursuant to the provisions of section thirteen-a, article twenty-one, chapter twenty-nine of this code.

(e) Disbursement of salaries for family law masters and members of their staffs shall be made by or pursuant to the order of the director of the administrative office of the supreme court of appeals.

(f) Family law masters, members of their staffs and temporary family law masters shall be allowed their actual and necessary expenses incurred in the performance of their duties. Such expenses and compensation shall be determined and paid by the director of the administrative office of the supreme court of appeals under such guidelines as he or she may prescribe as approved by the supreme court of appeals.
AN ACT to repeal section thirteen, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine-g and eighteen, article six of said chapter; to repeal sections two and two-a, article eight, chapter twenty-seven of said code; to repeal article six-b, chapter forty-four of said code; to amend and reenact section six, article two, chapter five-f of said code; to amend and reenact section one, article seven, chapter six of said code; to amend and reenact section one, article five, chapter seven of said code; to amend and reenact section fifteen, article thirteen, chapter eight of said code; to amend and reenact sections one, two, four, five, seven, eight, nine, ten, eleven, twelve and thirteen, article one, chapter twelve of said code; to amend and reenact sections two, three, four and five, article two of said chapter; to amend and reenact sections one, one-a, one-b, four, ten-a and thirteen-b, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections ten-c and ten-d; to amend and reenact sections two, three, four, five, eight and nine, article four of said chapter; to further amend said article by adding thereto two new sections, designated sections three-a and eight-a; to amend and reenact sections two, four, five and six, article five of said chapter; to further amend said article by adding thereto a new section, designated section seven; to amend and reenact sections one, one-a, two, three, four, five, eight, nine-c, nine-e, twelve, thirteen, fifteen, sixteen and nineteen, article six of said chapter; that said article be further amended by adding thereto four new sections, designated sections six, nine, nine-a and eleven; to amend and reenact sections two, three, five and six, article six-a of said chapter; to further amend said chapter by adding thereto a new article, designated article six-b; to amend and reenact section three, article three, chapter
thirteen of said code; to amend and reenact section two-a, article three, chapter fifty of said code; to amend and reenact section seven-a, article one, chapter fifty-seven of said code; and to amend and reenact section twelve, article one, chapter fifty-nine of said code, all relating generally to the financial and investment procedures in this state; repealing provisions relating to unreconciled items on bank accounts; repealing provisions relating to budgeting for state hospitals and local mental health programs; repealing the West Virginia trust fund act; providing for the consolidation and organization of certain boards and commissions; authorizing state officials, officers and employees to be paid twice per month; providing for collection of moneys due a county, district, municipality, magistrate court and circuit courts; establishing duties and responsibilities of the state treasurer in relation to state depositories; changing the method for the payment and deposit of taxes and other amounts due the state or any political subdivision; establishing duties and responsibilities of the state auditor and treasurer in relation to appropriations, expenditures and deductions; clarifying the accounts of treasurer and auditor; providing that the auditor is to certify condition of revenues and funds of the state; providing method for signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; providing criminal penalties for violations of signature authority; comparison of books of auditor and treasurer; requiring the changing of the office hours of auditor and treasurer; authorizing the employment of legal counsel; changing rules relating to absence of auditor or treasurer; providing for the balancing of state accounts; establishing the state treasurer's duties and responsibilities in relation to public securities; providing that the treasurer will act as financial advisor; providing for the employment or selection of bond counsel; amending the provisions relating to the repeal of the state board of investments; creating a new public body corporate called the "West Virginia investment management board"; providing that all functions and assets of the board of investments and the West Virginia trust fund are transferred to the investment management board; terminating the board of investments and the West Virginia trust fund; providing for purposes and objects; providing legislative findings; providing definitions; providing for appoint-
ments; providing that the governor, treasurer and auditor are members of the board; providing for filling of vacancies; providing for board meetings and notices of meetings; providing for beneficiary representatives; providing for management and control of funds; providing for liability of trustees; providing for powers of the board; providing for audits and reports; establishing investment funds; providing for fees for services; providing for continuation of existing trust; authorizing investments; providing standards for investments; providing for loans for industrial development; providing for standards of care in investment management; providing for duties of the board; providing for transfers of funds to the board; providing for loans by the board; providing for debt information reporting; creating a debt capacity advisory division; allowing the use of photographic copies in evidence, for state records, and papers or documents; providing for destruction or transfer to archives of original documents; destruction of canceled checks; and paid and canceled bonds and coupons.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5F. Reorganization of the Executive Branch of State Government.

7. County Commissions and Officers.
13. Public Bonded Indebtedness.
50. Magistrate Courts.
57. Evidence and Witnesses.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-6. Reorganization of boards issuing or incurring debt.

1 (a) The Legislature finds and declares that boards and commissions empowered to issue bonds, incur indebtedness and provide financing or financial services for a public purpose may in some cases benefit the public interest or operate more efficiently through consolidation
of legal, technical and support staff or services, sharing of office space, consolidation of procedures, and cooperation to identify circumstances where one entity may provide services for another, including, but not limited to, circumstances where one board or commission may finance the programs of another. On or after the effective date of this section, the treasurer shall be authorized at the request of the presiding officer of the entity to provide financial services, provide technical staff services, provide support staff and services and provide for the sharing of office space among and between the following entities:

(1) The staff of the municipal bond commission provided for in article three, chapter thirteen of this code: Provided, That nothing in this section shall be construed to limit the independence and autonomy of the municipal bond commission;

(2) The staff of the hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code: Provided, That nothing in this section shall be construed to limit the independence and autonomy of the hospital finance authority; and

(3) The staff of the public energy authority provided for in article one, chapter five-d of this code.

(b) In furtherance of the goal of increased efficiency and cooperation, the director of the debt management division of the board of investments and the secretary of the department of administration are jointly charged with the responsibility of developing and presenting to the boards and commissions, to the board of investments, to the state treasurer, to the governor and to the Legislature recommendations for administrative and statutory change.

(c) On the effective date of this section, any funds, equipment, personnel or office facilities associated with those responsibilities that are transferred from the board of investments or any other agency, to the treasurer’s office shall be transferred within thirty days of the transfer of those responsibilities.
CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-1. State officials, officers and employees to be paid twice per month; effective date.

1 All full-time and part-time salaried and hourly officials, officers and employees of the state and the board of trustees of the university system of West Virginia and the board of directors of the state college system shall be paid twice per month, and under the same procedures and in the same manner as the state auditor currently pays agencies on such basis: Provided, That on and after the first day of July, one thousand nine hundred ninety-nine, or any date thereafter, as determined by the auditor, all officials, officers or employees, except elected officials and employees whose compensation is fixed by statute, shall be paid one pay cycle in arrears. Any employee whose employment with the state begins on or after the first day of July, one thousand nine hundred ninety-nine, as determined by the auditor, shall not receive his or her first pay until the end of the second regular payroll cycle after beginning employment. The auditor shall propose a legislative rule in accordance with article three, chapter twenty-nine-a of this code to determine the manner to implement the payment of employees in arrears. Nothing contained in this section is intended to increase or diminish the salary or wages of any official, officer or employee.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-1. Sheriff ex officio county treasurer.

1 The sheriff shall be ex officio county treasurer and as such treasurer shall receive, collect and disburse all moneys due such county or any district thereof, and shall also receive, collect and disburse to the treasurer of the county board of education all school money for the county, unless the sheriff is designated by the board of education as its treasurer, as provided in section six, article
The sheriff shall keep his office at the courthouse for the county, in a suitable room or rooms provided for that purpose by the county court (county commission), in which all money and property in his possession shall be kept, unless deposited by him in a county depository, in which case an accurate daily deposit account thereof shall be kept in his office. He shall keep in his office a fair and accurate account of all receipts and disbursements by him, showing the time when, from whom, to whom and on what account received and paid, and he shall so arrange his books that the amount received and paid on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate and distinct accounts, and he shall also keep separate and distinct accounts for the funds of each fiscal year.

When any money is paid to the sheriff, except for taxes, the sheriff shall give to the person paying the same duplicate receipts thereof, stating briefly the fund or account for which paid; one of which receipts such person shall forthwith deposit with the clerk of the county court (county commission), who shall, in a well-bound book to be kept by him in his office for the purpose, charge the sheriff therewith and preserve such receipt in his office.

The sheriff and his sureties on his official bond shall be held liable for all public moneys coming into his hands as ex officio treasurer from every source whether or not the same shall be deposited in a bank: Provided, That nothing in this article prohibits the payment of funds due the county treasurer by credit or check card. Allowing for the collection of funds by credit or check card shall be at the discretion of the county commission.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.


Unless otherwise provided, it shall be the duty of the treasurer of the municipality or other individual who may be designated by general law, by charter provisions or by
the governing body, to collect and promptly pay into the
municipal treasury all taxes, fines, special assessments or
other moneys due the municipality. All such taxes, fines,
special assessments (except assessments for permanent or
semipermanent public improvements) and other moneys
due the municipality are hereby declared to be debts
owing to the municipality, for which the debtor shall be
personally liable, and the treasurer, or other individual so
designated, may enforce this liability by appropriate civil
action in any court of competent jurisdiction, and is
hereby vested with the same rights to distrain for the same
as is vested in the sheriff for the collection of taxes. Such
treasurer or other individual shall give a bond, conditioned
according to law, in such penalty and with such security as
the governing body may require: Provided, That nothing
in this article shall prohibit the payment of taxes, fines,
special assessments or other moneys due the municipality
by credit or check card. Allowing for the collection of
these funds by credit or check card shall be at the discre-
tion of the municipality.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

1. State Depositories.
2. Payment and Deposit of Taxes and Other Amounts Due the State or
Any Political Subdivision.
3. Appropriations, Expenditures and Deductions.
5. Public Securities.
6. West Virginia Investment Management Board.
6B. Debt Capacity Advisory Division.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-1. Legislative findings and purpose.
§12-1-2. Depositories for demand deposits; categories of demand deposits;
competitive bidding for disbursement accounts; maintenance of
deposits by state treasurer.
§12-1-4. Bonds to be given by depositaries.
§12-1-5. Limitation on amount of deposits.
§12-1-7. Rules of the state treasurer; depositors, agreements.
§12-1-8. Conflict of interest.
§12-1-9. Transfer of funds by check or electronic funds transfer bank wire; requirements.

§12-1-10. The treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

§12-1-11. Reports by depositories to treasurer; discontinuance of depositories.

§12-1-12. When treasurer shall make funds available to the investment management board; depositories outside the state.

§12-1-13. Payment of banking services and litigation costs for prior investment losses.

§12-1-1. Legislative findings and purpose.

The Legislature finds and declares that the efficient collection, disbursement, management and investment of public moneys in the state treasury will benefit the citizens, teachers and public employees of this state by reducing the costs of government and providing sources of increased revenue without the necessity of increased taxation; and to achieve these goals, the state treasurer shall provide a stable and continuous source of professional financial management, and shall be given the authority to develop and maintain modern systems, consistent with sound financial practices, for the collection, disbursement, management and investment of such moneys in conjunction with the state treasurer.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer.

The state treasurer shall designate the state and national banks in this state which shall serve as depositories for all state funds placed in demand deposits. Any such state or national bank shall, upon request to the treasurer, be designated as a state depository for such deposits, if such bank meets the requirements set forth in this chapter.

Demand deposit accounts shall consist of receipt and disbursement. Receipt accounts shall be those accounts in which are deposited moneys belonging to or due the state
of West Virginia or any official, department, board, commission or agency thereof.

Disbursement accounts shall be those accounts from which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

Investment accounts shall be those accounts established by the West Virginia investment management board for the buying and selling of securities for investment for the state of West Virginia or any official, department, board, commission or agency thereof or to meet obligations to paying agents or for paying charges incurred for the custody, safekeeping and management of such securities pursuant to the provisions of section five, article five of this chapter, or for paying the charges of any bank or trust company acting as paying agent or copaying agent for a bond issue of the state pursuant to the provisions of section seven-a, article one, chapter fifty-seven of this code.

The state treasurer shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, concerning depositories for receipt accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.

The state treasurer shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. The treasurer shall promulgate rules and regulations, in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing the procedures and criteria for the bidding and selection. The treasurer shall, in the invitations for bids,
specify the approximate amounts of deposits, the duration
of contracts to be awarded and such other contractual
terms as it considers to be in the best interests of the state,
consistent with obtaining the most efficient service at the
lowest cost.

The amount of money needed for current operation
purposes of the state government, as determined by the
state treasurer, shall be maintained at all times in the state
treasury, in cash or in disbursement accounts with banks
designated as depositories in accordance with the provi-
sions of this section. No state officer or employee shall
make or cause to be made any deposits of state funds in
banks not so designated.

§12-1-4. Bonds to be given by depositories.

Before allowing any money to be deposited with any
eligible depository in excess of the amount insured by an
agency of the federal government, the state treasurer shall
require the depository to give a collaterally secured bond,
in the amount of not less than ten thousand dollars,
payable to the state of West Virginia, conditioned upon the
prompt payment, whenever lawfully required, of any state
money, or part thereof, that may be deposited with that
depository, or of any accrued interest on deposits. The
bond shall be a continuous bond but may be increased or
decreased in amount or replaced by a new bond with the
approval of the state treasurer. The collateral security for
the bond shall consist of bonds of the United States, of the
federal land banks, of the federal home loan banks, or
bonds of the state of West Virginia or of any county,
district or municipality of this state, or other bonds or
securities approved by the treasurer. All bonds so secured
are here designated as collaterally secured bonds. With-
drawal or substitution of any collateral pledged as security
for the performance of the conditions of such bond may
be permitted with the approval in writing of the treasurer.
All depository bonds shall be recorded by the treasurer in
a book kept in his or her office for the purpose, and a
copy of the record, certified by the treasurer, shall be
prima facie evidence of the execution and contents of the
bond in any suit or legal proceeding. All collateral
securities shall be delivered to or deposited for the account
of the treasurer of the state of West Virginia, and in the
event said securities are delivered to the treasurer, he or
she shall furnish a receipt therefor to the owner thereof.
The treasurer and his or her bondsmen shall be liable to
any person for any loss by reason of the embezzlement or
misapplication of the securities by the treasurer or any of
his or her employees, and for the loss thereof due to his or
her negligence or the negligence of his or her employees;
and the securities shall be delivered to the owner thereof
when liability under the bond which they are pledged to
secure has terminated. The treasurer may permit the
deposit under proper receipt of the securities with one or
more banking institutions within or outside the state of
West Virginia and may contract with any such institution
for safekeeping and exchange of any such collateral
securities, and may prescribe the rules and regulations for
handling and protecting the collateral securities.

§12-1-5. Limitation on amount of deposits.

The amount of state funds on deposit in any depository in excess of the amount insured by an agency of the federal government shall not exceed ninety percent of the value of collateral pledged on the collaterally secured bond given by the depository. The value of the collateral shall be determined by the treasurer.

§12-1-7. Rules of the state treasurer; depositors, agreements.

In addition to rules specially authorized in this article, the West Virginia investment management board and state treasurer are generally authorized to promulgate any rules necessary to protect the interests of the state, its depositaries and taxpayers. All rules promulgated shall be subject to the provisions of article three, chapter twenty-nine-a of this code. Any rules previously established by the board of public works, the board of investments or the state treasurer pursuant to this article shall remain in effect until amended, superseded or rescinded.

The treasurer is also authorized to enter into any depositors' agreements for the purpose of reorganizing or rehabilitating any depository in which state funds are
14 deposited, and for the purpose of transferring the assets, in
15 whole or in part, of any depository to any other lawful
16 depository when, in the judgment of the treasurer, the
17 interests of the state will be promoted thereby, and upon
18 condition that no right of the state to preferred payment
19 be waived.

§12-1-8. Conflict of interest.

1 No depository in this state may serve or be eligible for
2 designation as a state depository if any member of the
3 West Virginia investment management board, or employee
4 of the treasurer's office, or a spouse or minor child of that
5 member or employee, is an officer, director or employee
6 thereof, or owns greater than two percent of the depository
7 either in his or their own name or beneficially, or an
8 interest in such depository. A member of the board or
9 employee of the treasurer's office shall disclose the
10 circumstance, if any, in the sworn statement required
11 under the provisions of section one, article one, chapter
12 six-b of this code.

§12-1-9. Transfer of funds by check or electronic funds
transfer; requirements.

1 Subject to applicable banking regulations or state law,
2 the treasurer may transfer funds by check or electronic
3 funds transfer whenever actually needed to pay the
4 warrants drawn by the auditor upon the treasury, to
5 equalize deposits or to provide funds to purchase invest-
6 ments for the account of the state. All checks drawn for
7 transfer of funds shall have printed or stamped on the face
8 of same "for transfer of funds only", or if the transfer is
9 made by electronic funds transfer, the electronic funds
10 transfer and supporting documents shall be marked "for
11 transfer of funds only".

§12-1-10. The treasurer to keep accounts with depositories;
settlements with depositories; statements of
depository balances; reconciliation of statements
and records.

1 The treasurer shall keep in his office or her office a
2 record showing the account of each depository. Under
3 the account of each depository an entry shall be made
showing the amount and date of each deposit, the amount
and date of each withdrawal and the balance on deposit.
The treasurer shall cause the state’s account with each
depository to be settled at the end of every month of the
year and the balance in the depository to the credit of the
treasury to be carried forward to the account of the next
month.

All the statements and records shall be reconciled
monthly and the reconciled reports shall be kept in the
treasurer’s office. The reconciled records for each month
shall be kept in the treasurer’s office for a period of five
years.

§12-1-11. Reports by depositories to treasurer; discontinuance
of depositories.

Each depository of state funds shall at the end of each
quarter cause its president or cashier to report to the
treasurer the amount of state funds on deposit and the
report shall be verified by the affidavit of the officer
making it. The form and contents of the report shall be
prescribed by the treasurer. For the failure to file the
report, or for other good cause, the treasurer may discon-
tinue any depository as an eligible depository and cause
all state funds to be withdrawn from any depository or
depositories so discontinued. When a depository is
discontinued, the treasurer shall immediately notify such
depository of its discontinuance, and shall immediately
withdraw by current checks or by transfer to another
depository or depositories the full amount of the deposits
held by any depository so discontinued. After discontinu-
ance, it shall be unlawful for the treasurer to deposit any
state funds in any depository so discontinued until such
time as the depository may be reinstated to eligibility.

§12-1-12. When treasurer shall make funds available to the
investment management board; depositories
outside the state.

When the funds in the treasury exceed the amount
needed for current operational purposes, as determined by
the treasurer, the treasurer shall make all of such excess
available for investment by the investment management
board which shall invest the same for the benefit of the general revenue fund.

Whenever the funds in the treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits, the treasurer may designate depositories outside the state, disbursement accounts being bid for in the same manner as required by depositories within the state, and when such depositories outside the state have qualified by giving the bond prescribed in section four of this article, the state treasurer shall deposit funds therein in like manner as funds are deposited in depositories within the state under this article.

The treasurer or board of investments may transfer funds to banks outside the state to meet obligations to paying agents outside the state and any such transfer must meet the same bond requirements as set forth in this article.

§12-1-13. Payment of banking services and litigation costs for prior investment losses.

(a) The treasurer is authorized to pay for banking services, and services ancillary thereto, by either a compensating balance in a noninterest-bearing account maintained at the financial institution providing the services or with a state warrant as described in section one, article five of this chapter.

(b) The investment management board is authorized to pay for the investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning on the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of August, one thousand nine hundred eighty-nine. The payment may be in the form of a state warrant.

(c) If payment is made by a state warrant, the investment management board at the request of the treasurer is authorized to establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking services provided to the state and to
pay for the investigation and pursuit of the prior investment loss claims. All income earned by the investment pool shall be paid into a special account of the treasurer to be known as the banking services account and shall be used solely for the purpose of paying for all banking services and services ancillary to the banking services provided to the state, for the investigation and pursuit of the prior investment loss claims, amortize the balance in the investment imbalance fund.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

§12-2-3. Deposit of moneys by state officials and employees.

§12-2-4. Duty of depositories.

§12-2-5. Deposits in correspondent banks of state depositories.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

(a) All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The treasurer shall be authorized to review the procedures and methods used by officials and employees authorized to accept moneys due the state and change such procedures and methods if he or she determines it to be in the best interest of the state: Provided, That the treasurer shall not be authorized to review or amend the procedures by which the department of tax and revenue accepts moneys due the state. The treasurer shall propose rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the procedure for deposits.

The official or employee making such deposits with the treasurer shall prepare deposit lists in the manner and
upon report forms as may be prescribed by the treasurer. Certified or receipted copies shall be immediately forwarded by the state treasurer to the state auditor and to the secretary of administration. The original of the deposit report shall become a part of the treasurer's permanent record.

(b) All moneys received by the state from appropriations made by the Congress of the United States shall be recorded in special fund accounts, in the state treasury apart from the general revenues of the state, and shall be expended in accordance with the provisions of article eleven, chapter four of this code. All moneys, other than federal funds, defined in section two, article eleven, chapter four of this code, shall be credited to the state fund and treated by the auditor and treasurer as part of the general revenue of the state except the following funds which shall be recorded in separate accounts:

1. All funds excluded by the provisions of section six, article eleven, chapter four of this code;
2. All funds derived from the sale of farm and dairy products from farms operated by any agency of the state government other than the farm management commission;
3. All endowment funds, bequests, donations, executive emergency funds, and death and disability funds;
4. All fees and funds collected at state educational institutions for student activities;
5. All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;
6. All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;
7. All insurance collected on account of losses by fire and refunds;
8. All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;
(8) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the public service commission for the investigation and supervision of applications, and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation;

(10) All moneys collected or received under any act of the Legislature providing that funds collected or received thereunder shall be used for specific purposes.

(c) All moneys, excepted as provided in subdivisions (1) through (9), inclusive, subsection (b) of this section, shall be paid into the state treasury in the same manner as collections not so excepted, and shall be recorded in separate accounts to be used and expended only for the purposes for which the same are authorized to be collected by law: Provided, That amounts collected pursuant to subdivision (10), subsection (b) of this section, which are found from time to time to exceed funds needed for the purposes set forth in general law may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The gross amount collected in all cases shall be paid into the state treasury, and commissions, costs and expenses of collection authorized by general law to be paid out of the gross collection, including bank and credit or check card fees, are hereby authorized to be paid out of the moneys collected and paid into the state treasury in the same manner as other payments are made from the state treasury.

(d) The state treasurer shall have authority to establish an imprest fund or funds in the office of any state
three, chapter twenty-nine-a of this code. The treasurer or his or her designee shall annually audit all funds and prepare a list of all such funds showing the location and amount as of fiscal year end, retaining the list as a permanent record of the treasurer until the legislative auditor has completed an audit of the imprest funds of all agencies and institutions involved.

(e) The treasurer shall be authorized to develop and implement a centralized receipts processing center. The treasurer may request the transfer of equipment and personnel from appropriate state agencies to the centralized receipts processing center in order to implement the provisions of this subsection: Provided, That the governor or appropriate constitutional officer shall have final authority to authorize the transfer of equipment or personnel to the centralized receipts processing center from the respective agency.

§12-2-3. Deposit of moneys by state officials and employees.

All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall deposit those moneys in the manner the treasurer directs and shall promptly transmit or cause to be transmitted the deposits, together with a certificate of deposit, as soon as practicable to the depository in which they desire to make the deposit, and shall retain and record the deposit lists. All officials and employees of the state authorized to accept moneys that they have determined are not funds due the state pursuant to the provisions of section two of this article, shall request the treasurer to approve the deposit of the funds into an approved depository. The request shall be made on forms and in accordance with procedures as the treasurer establishes. No funds shall be deposited until the written approval of the treasurer is obtained. The treasurer shall be the final determining authority as to whether these funds are funds due or not due the state pursuant to section two of this article. The treasurer shall on a quarterly basis provide the legislative auditor with a report of all accounts approved by him.

§12-2-4. Duty of depositories.
Immediately upon the receipt of a deposit from the state, it shall be the duty of the depository to credit the treasurer with the amount of the deposit, to date and sign the certificate of deposit by some legally constituted official of the depository and promptly transmit the certificate to the treasurer.

§12-2-5. Deposits in correspondent banks of state depositories.

When any payment of money has been made to the state for road bonds or other purposes outside of the state, the treasurer has the authority to place the same to the credit of one or more state depositories in one or more of its correspondent banks located within or without the state. The treasurer shall, upon making such a deposit in the correspondent bank, secure from it a proper certificate of deposit certifying the amount and the name of the state depository to whose credit the deposit was made by the treasurer. The treasurer shall forward a copy of the certificate to the state depository receiving the deposit through its correspondent bank, and it shall be the duty of the depository immediately to issue to the state of West Virginia a proper certificate of deposit for the amount deposited, dated the same day the deposit was made in the correspondent bank. Before making the deposit the treasurer shall secure written authority from the depository, designating the name and address of its correspondent bank or banks in which deposits are to be made and the maximum amount to be deposited in each. The depository bonds of all state depositories authorizing and receiving the deposits in their correspondent banks shall be liable for the deposits the same as if the deposits had been made with them directly, whether the bonds are so conditioned or not, and all depository bonds hereafter issued shall so provide.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.
§12-3-1a. Payment by deposit in bank account.
§12-3-1b. Voluntary direct deposits by auditor of salaries of employees to banks or other financial institutions.
§12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or electronic funds transfer.

§12-3-10a. Purchasing card program.

§12-3-10c. Transaction fees; disposition of fees.

§12-3-10d. Purchasing card fund created; expenditures.

§12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees and to pay supplemental health and life insurance premiums.

§12-3-1. Manner of payment from treasury; form of checks.

Every person claiming to receive money from the treasury of the state shall apply to the auditor for a warrant for same. The auditor shall thereupon examine the claim, and the vouchers, certificates and evidence, if any, offered in support thereof, and for so much thereof as he or she finds to be justly due from the state, if payment thereof is authorized by law, and if there is an appropriation not exhausted or expired out of which it is properly payable, the auditor shall issue his or her warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation it is to be charged. The auditor shall present to the treasurer daily reports on the number of warrants issued, the amounts of the warrants and the dates on the warrants for the purpose of effectuating the investment policy of the investment management board. On the presentation of the warrant to the treasurer, the treasurer shall ascertain whether there are sufficient funds in the treasury to pay that warrant, and if he or she finds it to be so, he or she shall in that case, but not otherwise, endorse his or her check upon the warrant, directed to some depository, which check shall be payable to the order of the person who is to receive the money therein specified; or the treasurer may issue an electronic funds transfer in payment of the warrant. If the check is not presented for payment within six months after it is drawn, it shall then be the duty of the treasurer to credit it to the depository on which it was drawn, to credit the unclaimed property fund pursuant to the provisions of article eight, chapter thirty-six of this code, and immediately notify the auditor to make corresponding entries on the auditor’s books. No state depository may pay a check unless it is presented
within six months after it is drawn and every check shall bear upon its face the words, "Void, unless presented for payment within six months." All claims required by law to be allowed by any court, and payable out of the state treasury, shall have the seal of the court allowing or authorizing the payment of the claim affixed by the clerk of the court to his or her certificate of its allowance. No claim may be audited and paid by the auditor unless the seal of the court is thereto attached as aforesaid. No tax or fee may be charged by the clerk for affixing his or her seal to the certificate, referred to in this section. The treasurer shall propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the procedure for such payments from the treasury.

§12-3-1a. Payment by deposit in bank account.

The auditor may issue his warrant on the treasurer to pay any person claiming to receive money from the treasury by deposit to the person's account in any bank or other financial institution by electronic funds transfer, if the person furnishes to the auditor written authorization of the method of payment. After the authorization has been approved by the auditor, it shall be forwarded to the treasurer for further processing. The auditor shall prescribe the form of the authorization. This section shall not be construed to require the auditor to utilize the method of payment authorized by this section; but the method is authorized only as an alternative method of payment to persons claiming to receive money from the treasury. A written authorization furnished pursuant to this section may be revoked by written notice furnished to the auditor. Upon the execution of such authorization and its receipt by the office of the auditor, the payment shall be made in the manner specified on the form and remitted by the treasurer to the designated bank or other financial institution: Provided, That after the first day of July, two thousand two, the state auditor shall cease issuing paper warrants except for income tax refunds. After that date all warrants, except for income tax refunds, shall be issued by electronic funds transfer: Provided, however, That the
auditor, in his or her discretion, may issue paper warrants on an emergency basis.

§12-3-1b. Voluntary direct deposits by auditor of salaries of employees to banks or other financial institutions.

Any officer or employee of the state of West Virginia may authorize that his net wages be deposited directly to his account in any bank or other financial institution by electronic funds transfer. The direct deposits may be authorized on a form provided by the auditor. Upon execution of such authorization and its receipt by the office of the auditor, the direct deposits shall be made in the manner specified on the form and remitted by the treasurer to the designated bank or other financial institution on or before the day or days the officer or employee is due his or her net wages. Direct deposit authorizations may be revoked at any time thirty days prior to the date on which the direct deposit is regularly made and on a form to be provided by the auditor: Provided, That on and after the first day of July, two thousand two, at the option of the auditor, all wages shall be deposited directly into the employees’ account at any bank or financial institution designated by the employee via electronic funds transfer.

§12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or electronic funds transfer.

The treasurer shall draw no check on any depository unless there is money enough in the depository to the credit of the treasury to pay the check when duly presented for payment. No depository holding money to the credit of the treasury shall pay out the same, or any part thereof, except upon a check of the treasurer endorsed on a warrant of the auditor authorizing a check or a duly authorized electronic funds transfer drawn in place of such check.

§12-3-10a. Purchasing card program.

Notwithstanding the provisions of section ten of this article, payment of claims may be made through the use
of the state purchasing card program authorized by the provisions of this section. The auditor, in cooperation with the secretary of the department of administration, may establish a state purchasing card program for the purpose of authorizing all spending units of state government to use a purchasing card as an alternative payment method when making small purchases. The purchasing card program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient. The program shall permit spending units to use a purchase charge card to purchase goods and services. The amount of any one purchase made with the purchase charge card shall not exceed the amount contained in the jointly proposed rules of the auditor and the purchasing division of the department of administration proposed in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument. Purchases of goods and services must be received either in advance of or simultaneously with the use of a state purchasing card for payment for those goods or services. The auditor, by legislative rule, may eliminate the requirement for vendor invoices and provide a procedure for consolidating multiple vendor payments into one monthly payment to a charge card vendor. Selection of a charge card vendor to provide state purchase cards shall be accomplished by competitive bid. The purchasing division of the department of administration shall contract with the successful bidder for provision of state purchase charge cards. Purchase charge cards issued under the program shall be used for official state purchases only. The auditor and the director of the purchasing division of the department of administration shall jointly propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the implementation of the purchase card program.

§12-3-10c. Transaction fees; disposition of fees.
(a) In order to promote and enhance the use of the state purchasing card program established by the provisions of section ten-a of this article and in order to maintain and develop the fiscal operations and accounting systems of the state, the auditor and the treasurer may assess joint transaction fees for all financial documents that will be processed on the central accounting system. Such transaction fees shall be prescribed by legislative rule proposed in accordance with article three, chapter twenty-nine-a of this code and may include the following:

(1) A penalty fee to be assessed against spending units of state government who submit claims for payment of goods and services when those claims are authorized to be paid by use of a state purchasing card and the spending unit has failed to utilize the state purchasing card; and

(2) A transaction fee to be assessed against spending units of state government for every transaction received, electronically or otherwise, by the auditor from the centralized accounting system.

(b) All fees collected under this section shall be deposited into the "Technology Support and Acquisition Fund" which is hereby created in the state treasury to be administered by the auditor. The auditor and treasurer shall use moneys deposited in the fund to maintain and develop the state purchasing card program, support the fiscal operations of the state, including the state centralized accounting system, and to acquire and improve the technology required to support these functions: Provided, That expenditures from the fund are authorized from collections and are to be made only in accordance with an appropriation by the Legislature and in accordance with the provision of article three of this chapter and upon fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, however, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, expenditures from the fund may be made from collections.

§12-3-10d. Purchasing card fund created; expenditures.
All money received by the state pursuant to any agreement with vendors providing purchasing charge cards shall be deposited in a special revenue revolving fund designated the "Purchasing Card Administration Fund", which is hereby created in the state treasury to be administered by the department of administration. All expenses of the purchasing division of the department of administration incurred in the implementation and operation of the purchasing card program shall be paid from the fund. Expenditures from the fund shall be made in accordance with appropriations by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code.

§12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees and to pay supplemental health and life insurance premiums.

Any officer or employee of the state of West Virginia may authorize that a voluntary deduction from his net wages be made for the payment of membership dues or fees to an employee association. Voluntary deductions may also be authorized by an officer or employee for any supplemental health and life insurance premium, subject to prior approval by the auditor. Such deductions shall be authorized on a form provided by the auditor of the state of West Virginia and shall state: (a) The identity of the employee; (b) the amount and frequency of such deductions; and (c) the identity and address of the association or insurance company to which such dues shall be paid. Upon execution of such authorization and its receipt by the office of the auditor, such deductions shall be made in the manner specified on the form and remitted to the designated association or insurance company on the tenth day of each month: Provided, That voluntary other deductions, as approved and authorized by the auditor, may be made in accordance with rules proposed by the auditor pursuant to article three, chapter twenty-nine-a of this code: Provided, however, That deductions shall be made either once or twice monthly at the option of the employee. Deduction authorizations may be revoked at
any time thirty days prior to the date on which the deduction is regularly made and on a form to be provided by the office of the state auditor: Provided further, That nothing in this section shall interfere with or remove any existing arrangement for dues deduction between an employer or any political subdivision of the state and its employees.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-2. Accounts of treasurer and auditor; auditor to certify condition of revenues and funds of the state.

§12-4-3. Accounts of appropriations.

§12-4-3a. Accounts of the auditor.

§12-4-4. Accounts of expenditures; signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; forgery; penalty.

§12-4-6. Comparison of books of auditor and treasurer; monthly balances.

§12-4-7. Annual report of auditor.

§12-4-8. Office hours of auditor and treasurer.

§12-4-8a. Employment of legal counsel.

§12-4-9. Absence of auditor or treasurer.

§12-4-2. Accounts of treasurer and auditor; auditor to certify condition of revenues and funds of the state.

The treasurer shall keep in his office separate accounts with each depository, and also a summary account for the state, and when money is paid into the treasury, it shall be charged to the proper depository and credited to a summary account. The auditor shall keep in his office separate accounts of the particular heads or sources of revenue, and a summary account with the treasurer, beside such individual accounts with officers and persons as may be necessary, and shall charge every sum of money received for the state as aforesaid to the treasurer's account, and credit it under the particular head of revenue to which it properly belongs, distinguishing especially in distinct accounts the receipts on account of the capital of the school fund and those on account of the income of said fund subject to annual distribution. The auditor shall certify annually to the commissioner of finance and administration the condition of the state revenues and the
several funds of the state. The certification shall be used by the commissioner in the preparation of a tentative state budget as required of him by article two, chapter five-a of this code.

§12-4-3. Accounts of appropriations.

The auditor and secretary of administration shall each keep an account of every appropriation made by law, and of the several sums drawn thereon, so that the accounts may show at all times the balance undrawn on each appropriation. The account so kept shall be compared every month and errors, if any, corrected.

§12-4-3a. Accounts of the auditor.

The auditor shall at all times maintain and have available for public inspection a report containing monthly balances in the treasury, which balances shall include, but not be limited to, the general revenue surplus balance; the general revenue surplus appropriation account balance; the state general revenue reappropriated account balance; the state general revenue current account balance; the total state account balance; and the total general revenue.

§12-4-4. Accounts of expenditures; signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; forgery; penalty.

When the treasurer issues his check on a depository, he or she shall credit the same to the account of the depository, and charge it to the summary account provided for in section two of this article. The auditor shall keep accounts of the particular heads of expenditures, and, when he or she issues a warrant on the treasurer, shall credit the treasurer's summary account therewith and charge the same under the particular head of expenditure to which it properly belongs, distinguishing especially the disbursements on account of the capital and the annual income of the school fund, as directed in section two of this article in relation to receipts belonging to that fund. All checks when issued by the treasurer shall bear his or her signature, personally signed by the treasurer, or by
employees as are, in writing, authorized by the treasurer to
make his or her signature thereto, or bear a facsimile of
the treasurer’s signature. All warrants when issued by the
auditor shall bear his or her signature, personally signed
by the auditor, or by employees as are, in writing, autho-
rized by the auditor to make his or her signature thereto,
or bear a facsimile of the auditor’s signature. The
signature of the treasurer, or auditor, respectively, may be
made, however, by means of such mechanical or electrical
device as the treasurer, or auditor, respectively, may select.
Any mechanical or electrical device selected shall be
safely kept in the respective offices of the treasurer or
auditor so that no one has access to the device except the
treasurer, or the auditor, and the employees authorized to
respectively sign checks or warrants as provided by this
section. If any person, other than the treasurer, or auditor,
respectively, or their respective duly and respectively
authorized employees, sign the name of the treasurer or
the auditor, respectively, by the use of any mechanical or
electrical device, or otherwise, or use the facsimile of the
signature of either of them, on any check or warrant, or
utter or attempt to employ as true such forged check or
warrant, knowing it to be forged, he or she shall be guilty
of a felony and, upon conviction thereof, shall be impris-
oned not less than two nor more than ten years.

§12-4-6. Comparison of books of auditor and treasurer;
monthly balances.

At the end of every month of the year, the summary
account of the treasurer kept on the books of the auditor’s
office shall be compared with the summary account kept
by the treasurer, and the errors, if there be any in either,
corrected. The summary account of the month shall be
adjusted and a balance shall be struck showing the amount
then in the treasury. The balance shall be carried forward
in the books of both offices to the account for the next
month.

§12-4-7. Annual report of auditor.

The annual report of the auditor shall be furnished to
the governor by the thirty-first day of December follow-
ing after the end of the fiscal year. It shall contain a
statement of the receipts and disbursements, under the proper general heads, during the preceding fiscal year, and show the balance in the treasury at the beginning and end of that year. It shall also contain an estimate of the revenue and expenditures for the current year, with similar statements and estimates respecting the school fund. It shall show the indebtedness of the state and the balances standing at the end of the year to the credit of the several unexpired appropriations, specifying in each case the date when the appropriation was made. The report shall be accompanied with an explanation of the amounts of receipts and disbursements and the balances and estimates reported. In it the auditor shall point out any defects which may occur to him or her in the revenue laws. Furthermore, the auditor shall suggest the remedies for those deficits. If the auditor is of the opinion that the future revenue is likely to prove insufficient, then the auditor shall recommend plans for increasing the revenue and suggest new subjects of taxation, or additional taxes on the old, as he may deem proper.

§12-4-8. Office hours of auditor and treasurer.

The hours for transacting business in the offices of the auditor and treasurer shall be from eight-thirty in the morning until five o'clock in the afternoon.

§12-4-8a. Employment of legal counsel.

Notwithstanding the provisions of section two, article three, chapter five of this code, the auditor and treasurer are hereby authorized to employ legal counsel: Provided, That the auditor and the treasurer, at their discretion, may use the services of the attorney general.

§12-4-9. Absence of auditor or treasurer.

When it is necessary for either the auditor or treasurer to be absent, the other shall be informed of the absence. During the absence, the duties of the officer so absent may be performed by the auditor's or treasurer's designee respectively. The absent officer and his sureties shall be liable for any malconduct or neglect of the person acting in his or her place.
Notwithstanding restrictions which may otherwise be provided by law concerning membership on any board, agency or commission, the auditor and treasurer each may designate a representative who is authorized to act for and on their behalf in any and all matters relating to those memberships.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

(a) The treasurer of this state, unless otherwise expressly provided by law, shall be custodian of all securities required by law to be deposited with the state or held in legal custody by the state, and all departments of this state, commissioners or agents of the state, who hold any such securities, shall transfer and deliver the same to the state treasurer to be kept and held by him as legal custodian thereof until released in the manner provided by law: Provided, That the state treasurer shall establish a list of which securities shall be acceptable securities and notify all state agencies of the contents of that list: Provided, however, That the provisions of this subsection shall not apply to the investment management board.

(b) The treasurer may by formal order of record fix fair and reasonable charges for the care, custody, exchange and substitution of securities deposited by insurance companies and companies issuing annuity contracts. The treasurer shall collect the charges from the companies and shall deposit the collections in the general revenue fund: Provided, That no charge shall be made against any company depositing securities of the par value of less than three hundred thousand dollars.
§12-5-4. Treasurer to keep accounts and make collections.
1 It shall be the duty of the treasurer to keep an accurate
2 account of all securities received by him or her and collect
3 and account for the interest as it becomes due and payable
4 and the principal whenever it is due.

§12-5-5. Protection and handling of securities.
1 The securities retained in the treasury shall be kept in
2 a vault. The treasurer shall use due diligence in protecting
3 the securities against loss from any cause. The treasurer
4 shall designate certain employees to take special care of
5 the securities. Only the treasurer and the designated
6 employees may have access to the securities, and at least
7 two of these persons shall be present whenever the securi-
8 ties are handled in any manner. The treasurer may
9 contract with one or more banking institutions in or
10 outside the state for the custody, safekeeping and manage-
11 ment of securities. The contract shall prescribe the rules
12 for the handling and protection of the securities.

§12-5-6. When notes deemed securities; appraisal.
1 (a) Whenever, by statute of this state, any public
2 official, board, commission or department of this state is
3 charged with the approval of securities required as collat-
4 eral for the deposit of public or other funds, or required to
5 be deposited with the state treasurer, or an investment of
6 capital or surplus or a reserve or other fund, is required to
7 be maintained consisting of designated securities deposi-
8 ted with the state treasurer, the securities shall, at the
9 discretion of that public official, board, commission or
10 department, include and mean notes executed by the
11 person or corporation required to make the deposit. The
12 securities shall be made payable to the state of West
13 Virginia upon demand, or in the event of the person or
14 corporation, for the benefit of those for whom the securi-
15 ties are deposited, when the notes are secured by duly
16 executed deeds of trust on improved, unencumbered real
17 property located in the state and owned by the person or
18 corporation executing the notes, the deeds of trust to be
19 approved by the attorney general of the state as to suffi-
20 ciency of form and manner of execution and accompa-
nied by proper abstracts of title and fire insurance policies
equal to the amounts of the notes and recorded among the
land records of the county in which the real property is
located. Whenever any note so secured by a deed of trust
on real property owned by any person or corporation is
approved by any public official, board, commission or
department of this state, the real property shall have an
appraised value of at least thirty per centum more than the
amount of the note. The value of the property shall be
determined by an appraisal of two landowners, who are
citizens of this state and generally recognized as experi-
enced real estate appraisers, appointed by the public
official, board, commission or department, charged with
the approval of the securities. The expenses of the
appraisal are to be borne by the person or corporation
required to make the deposit, and each unit of that real
property shall have an appraised value of at least fifty
thousand dollars.

For purposes of this section, “improved real proper-
ty” means all real property within the limits of an incor-
porated city or town on which permanent buildings
suitable for residential, industrial or commercial use are
located.

For purposes of this section, real property shall not be
deemed to be encumbered by reason of the existence of
instruments reserving rights-of-way, sewer rights and
rights in walls, nor by reason of building restrictions or
other restrictive covenants, nor by reason of the fact that it,
or any part thereof, is subject to lease under which rents or
profits are reserved to the owner: Provided, That the deed
of trust for such investment is a full and unrestricted first
lien upon the property.

(b) Any public official, board, commission or depart-
ment of this state charged with the approval of securities
required to be deposited in accordance with this section,
shall, at least annually and more often if deemed proper,
appoint a disinterested person or persons, not exceeding
three, to make an examination and appraisal of the
securities deposited to determine if those securities meet
the requirements of the law of this state. The cost of that
examination and appraisal and expenses shall be borne by
the person or corporation required to make the deposits as
security: Provided, That the total cost and expenses shall
not be less than ten dollars nor more than twenty-five
dollars per diem for each person conducting the examina-
tion.

§12-5-7. Treasurer as financial advisor; selection of necessary
parties; employment of bond counsel.

Unless otherwise specifically provided by law, the
treasurer may select or serve as financial advisor for all
bonds, notes, certificates of participation, certificate
transactions and all other forms of securities and indebted-
ness issued by the state through its departments, commis-
sions, boards or agencies after the first day of July, one
thousand nine hundred ninety-seven. Unless otherwise
specifically provided by law, the governor shall coordinate
the issuance of all bonds issued by the state and its
departments, commissions, boards and agencies, through
the department of administration and the governor shall
select all other necessary parties, including, but not limited
to, bond, disclosure or other counsel, underwriters, trustee,
verification agent and any other professionals necessary to
effectuate the issuance of the bonds: Provided, That this
section shall not apply to the housing development fund
created pursuant to article eighteen, chapter thirty-one of
this code; the hospital finance authority created pursuant
to article twenty-nine-a, chapter sixteen of this code; the
West Virginia economic development authority created
pursuant to article fifteen, chapter thirty-one of this code; the
West Virginia parkways, economic development and
tourism authority created pursuant to article sixteen-a,
chapter seventeen of this code; the West Virginia public
energy authority created pursuant to article one, chapter
five-d of this code; the West Virginia solid waste manage-
ment board created pursuant to article three, chapter
twenty-two-c of this code; the West Virginia water devel-
opment authority created pursuant to article one, chapter
twenty-two-c of this code; the infrastructure and jobs
development council created pursuant to article fifteen-a,
chapter thirty-one of this code; the school building
authority created pursuant to article nine-d, chapter
eighteen of this code; and the governing boards of higher education: Provided, however, That these entities shall be governed by those provisions of law specifically designating financial and other professional counsel and personnel for bond issuances. All selections of professionals shall be competitive, but the bidding shall not be required to comply with the provisions of article three, chapter five-a of this code.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-1. Purposes and objects; how article cited.
§12-6-1a. Legislative findings.
§12-6-2. Definitions.
§12-6-3. West Virginia management investment board created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.
§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.
§12-6-5. Powers of the board.
§12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.
§12-6-8. Investment funds established; management thereof.
§12-6-9. Fees for service.
§12-6-9a. Trust indenture.
§12-6-9c. Authorization of additional investments.
§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.
§12-6-12. Limitations on investments.
§12-6-13. Board as sole agency for investments; exceptions.
§12-6-15. Consolidated fund audits.
§12-6-16. Existing investments.
§12-6-19. Authorization for loans by the board.

§12-6-1. Purposes and objects; how article cited.
This article, which may be cited as the "West Virginia Investment Management Act", is enacted to modernize the procedures for the investment of funds of the state and its political subdivisions for the purpose of increasing the investment return of those funds.

§12-6-1a. Legislative findings.

(a) The Legislature hereby finds and declares that all the public employees covered by the public employees retirement system, the teachers retirement system, the West Virginia state police retirement system, the death, disability and retirement fund of the division of public safety and the judges’ retirement system should benefit from a prudent and conscientious staff of financial professionals dedicated to the administration, investment and management of those employees’ and employer’s financial contributions and that an independent board and staff should be immune to changing political climates and should provide a stable and continuous source of professional financial investment and management.

(b) The Legislature finds and declares that teachers and other public employees throughout the state are experiencing economic difficulty and that in order to reduce this economic hardship on these dedicated public employees, and to help foster sound financial practices, the West Virginia investment management board is given the authority to develop, implement and maintain an efficient and modern system for the investment and management of the state’s money. The Legislature further finds that in order to implement these sound fiscal policies, the West Virginia investment management board shall operate as an independent board with its own full-time staff of financial professionals immune to changing political climates, in order to provide a stable and continuous source of professional financial management.

(c) The Legislature hereby finds and declares further that experience has demonstrated that prudent investment provides diversification and beneficial return not only for public employees but for all citizens of the state and that in order to have access to this sound fiscal policy, public
employee and employer contributions to the consolidated pension plan are declared to be an irrevocable trust, available for no use or purpose other than for the benefit of those public employees.

(d) The Legislature hereby finds and declares further that the workers' compensation funds and coal-workers' pneumoconiosis fund are trust funds to be used exclusively for those workers, miners and their beneficiaries who have sacrificed their health in the performance of their jobs, and further finds that the assets available to pay awarded benefits should be prudently invested so that awards may be paid.

(e) The Legislature hereby finds and declares further that an independent public body corporate with appropriate governance shall be the best means of assuring prudent financial management of these funds under rapidly changing market conditions and regulations.

(f) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia investment management board, created and established by this article, is acting in all respects for the benefit of the state's public employees and ultimately the citizens of the state, and the West Virginia investment management board is empowered by this article to act as trustee for an irrevocable trust created by this article, and to manage and invest other state funds.

(g) The Legislature hereby finds and declares further that the standard of care and prudence applied to trustees, the conduct of the affairs of the irrevocable trust created by this article and the investment of other state funds is intended to be that applied to the investment of funds as described in the "uniform prudent investor act" codified as article six-c of this chapter.

(h) The Legislature further finds and declares that the West Virginia supreme court of appeals declared the "West Virginia Trust Fund Act" unconstitutional in its decision rendered on the twenty-eighth day of March, one thousand nine hundred ninety-seven, to the extent that it authorized investments in corporate stock but the court
also recognized that there were other permissible constitutional purposes of the "West Virginia Trust Fund Act", and that it is the role of the Legislature to determine those purposes consistent with the court's decision and the constitution of West Virginia.

(i) The Legislature hereby further finds and declares that it is in the best interests of the state and its citizens to create a new investment management board in order to:

(1) Be in full compliance with the provisions of the constitution of West Virginia; and (2) protect all existing legal and equitable rights of persons who have entered into contractual relationships with the West Virginia board of investments and the West Virginia trust fund.

§12-6-2. Definitions.

As used in this article unless a different meaning clearly appears from the context:

(1) "Beneficiaries" means those individuals entitled to benefits from the consolidated pension plan;

(2) "Board" means the governing body for the West Virginia investment management board, and any reference elsewhere in this code to board of investments or West Virginia trust fund means the board as defined herein;

(3) "Consolidated fund" means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

(4) "Consolidated pension plan" means the public employees retirement system established in article ten, chapter five of this code, the teachers retirement system established in article seven-a, chapter eighteen of this code, the West Virginia state police retirement system established in article two-a, chapter fifteen of this code, the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code, the judges' retirement system established in article nine, chapter fifty-one of this code, the workers' compensation fund established in article three, chapter twenty-three of this code, and the coal-workers' pneumoconiosis
plan established in article four-b, chapter twenty-three of this code;

(5) "Local government funds" means the moneys of a political subdivision, including policemen's pension and relief funds, firemen's pension and relief funds and volunteer fire departments, transferred to the board for deposit;

(6) "Participant plan" means any component system, plan or fund of the consolidated pension plan within the definition set forth in subdivision (4) of this section;

(7) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(8) "Trustee" means any member serving on the West Virginia investment management board: Provided, That in section nine-a of this article wherein the terms of the trust indenture are set forth, "trustee" means the West Virginia investment management board;

(9) "Securities" means all bonds, notes, debentures or other evidences of indebtedness, and other lawful investment instruments; and

(10) "State funds" means all moneys of the state which may be lawfully invested except the "school fund" established by section four, article XII of the state constitution.

§12-6-3. West Virginia investment management board created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.
(a) There is hereby created the West Virginia investment management board. The board is created as a public body corporate and established to provide prudent fiscal administration, investment and management for the pension funds, workers' compensation and coal-workers' pneumoconiosis funds and other state funds.

(b) The board shall be governed by a board of trustees, consisting of thirteen members:

(1) Nominations made to the West Virginia trust fund board and the West Virginia board of investments shall remain in effect and are hereby specifically reauthorized and those members shall be members of the investment management board and shall serve out the remainder of their respective terms subject to the advice and consent of the Senate: Provided, That prior appointments which have been confirmed by the Senate are hereby specifically reauthorized without further action of the Senate.

(2) Any appointment is effective immediately upon appointment by the governor with respect to voting, constituting a quorum, receiving compensation and expenses, and all other rights and privileges of the trustee position. All appointees must have experience in pension management, institutional management or financial markets, and one trustee must be an attorney experienced in finance and investment matters, and one trustee must be a certified public accountant.

(3) The governor, the state auditor and the state treasurer or their designees shall serve as members of the board. They shall serve by virtue of their office and are not entitled to compensation under the provisions of this article. The governor, the auditor and the treasurer or their designees shall be subject to all duties, responsibilities and requirements of the provisions of this article, including, but not limited to, the provisions of subsections (e) and (f), section four of this article.

(c) At the end of each trustee's term, the governor may reappoint or appoint a successor who shall serve for six-year terms. No more than six of the ten appointed trustees may belong to the same political party.
(d) In the event of a vacancy among the trustees, an appointment shall be made by the governor to fill the unexpired term.

(e) The governor may remove any trustee, other than trustees who serve by virtue of their elective office, in case of gross negligence or misfeasance and may declare that position vacant and may appoint a person for the vacancy as provided in subsection (d) of this section.

(f) Each trustee, other than those enumerated in subsection (b), subdivision (3) of this section, shall be entitled to receive, and, at the trustee’s option, the board shall pay to the trustee, compensation in the amount of five thousand dollars per year and additional compensation in the amount of five hundred dollars per meeting attended by the trustee in excess of the four quarterly meetings required by this section. In addition, all trustees shall receive reasonable and necessary expenses actually incurred in discharging trustee duties pursuant to this article.

(g) The board shall meet quarterly and may include in its bylaws procedures for the calling and holding of additional meetings. For any quarterly or additional meeting in which the board shall review or modify its securities list or its investment objectives pursuant to subsection (f), section twelve of this article, the board shall give ten days notice in writing to the designated representative of each participant plan selected pursuant to subdivision (1), subsection (i) of this section, and the meeting shall be open to the members and beneficiaries of the participant plans for that portion of the meeting in which the board undertakes the review or modification.

(h) The board shall hold an annual meeting within forty-five days after the issuance of the year-end financial report. The annual meeting may also serve as a quarterly meeting. The annual meeting shall be open to the public, and the board shall receive oral and written comments from representatives, members and beneficiaries of the participant plans and from other citizens of the state. At the annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures for the year.
Pursuant to subsection (j) of this section, the board shall meet with committees representing the participant plans to discuss the board's drafting, reviewing or modifying the written investment policy of the trust with respect to that committee's participant plan pursuant to section twelve of this article. Representatives and committees shall be designated as follows:

(1) The West Virginia consolidated public retirement board shall promulgate procedural rules by which each pension system named in paragraphs one through five, inclusive, subsection (c), section nine-a of this article, shall designate an individual representative of each said pension system, and the West Virginia workers' compensation commission shall promulgate procedural rules by which the pneumoconiosis fund and the workers' compensation fund shall designate an individual representative of each said fund.

(2) On or before the first day of June of each year, the consolidated public retirement board shall submit in writing to the board the names of the five designated representatives, and the workers' compensation commission shall so submit the names of the two representatives.

(3) Each designated representative shall provide to the board his or her current address, updated each year on or before the first day of July, to which address the board shall provide notice of meetings of the board pursuant to subsection (g) of this section.

(4) Each designated representative shall submit in writing to the board on or before the first day of July of each year, the names of no more than three persons comprising a committee representing the beneficiaries of that representative's participant plan.

At its annual meeting, the board shall meet with each of the seven committees, formed pursuant to subdivision (1), subsection (i) of this section, for the purpose of receiving input from the committees regarding the board's drafting, reviewing or modifying its written investment policy statement for investment of the consolidated pension plan funds. In developing the investment
policy statement, the trustees shall receive each commit-
fee's stated objectives and policies regarding the risk
tolerances and return expectations of each participant
plan, with attention to the factors enumerated in subsection
(g), section twelve of this article, in order to provide for
the continuing financial security of the trust and its
participant plans. The board may meet with the commit-
tees or any of them at its quarterly and additional meet-
ings for the same purpose.

(k) All meetings of the board shall be open to the
representatives of the participant plans as appointed
pursuant to subdivision (1), subsection (i) of this section.
The representatives shall be subject to any rules, bylaws,
guidelines, requirements and standards promulgated by
the board. The representatives shall observe standards of
decorum established by the board. The representatives
shall be subject to the same code of conduct applicable to
the trustees and shall be subject to all board rules and
bylaws. The representatives shall also be subject to any
requirements of confidentiality applicable to the trustees.
Each representative shall be liable for any act which he or
she undertakes which violates any rule, bylaw or statute
governing ethical standards, confidentiality or other
standard of conduct imposed upon the trustees or the
representatives. Any meeting of the board may be closed,
upon adoption of a motion by any trustee, when necessary
to preserve the attorney-client privilege, to protect the
privacy interests of individuals, to review personnel matters
or to maintain confidentiality when confidentiality is in
the best interest of the beneficiaries of the trust.

§12-6-4. Management and control of fund; officers; staff;
fiduciary or surety bonds for trustees; liability of
trustees.

(a) The management and control of the board shall be
vested solely in the trustees in accordance with the provi-
sions of this article.

(b) The governor shall be the chairman of the board
and the trustees shall elect a vice-chairman who may not
be a constitutional officer or his or her designee to serve
for a term of two years. Effective with any vacancy in the
vice-chairmanship, the board shall elect a vice-chairman to a new two-year term. The vice-chairman shall preside at all meetings in the absence of the chairman. Annually, the trustees shall elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the board.

(c) The trustees shall appoint a chief executive officer of the board and shall fix his or her duties and compensation. The chief executive officer shall have five years experience in investment management with public or private funds within the ten years next preceding the date of appointment. The chief executive officer additionally shall have academic degrees, professional designations and other investment management or investment oversight or institutional investment experience in such combination as the trustees consider necessary to carry out the responsibilities of the chief executive officer position as defined by the trustees.

(d) The trustees shall retain an internal auditor to report directly to the trustees and shall fix his or her compensation. The internal auditor shall be a certified public accountant with at least three years experience as an auditor. The internal auditor shall develop an internal audit plan, with board approval, for the testing of procedures and the security of transactions.

(e) Each trustee shall give a separate fiduciary or surety bond from a surety company qualified to do business within this state in a penalty amount of one million dollars for the faithful performance of his or her duties as a trustee of the fund. The board shall purchase a blanket bond for the faithful performance of its duties, in the amount of fifty million dollars or in an amount equivalent to one percent of the assets under management, whichever is greater. The amount of the blanket bond shall be in addition to the one million dollar individual bond required of each trustee by the provisions of this section. The board may require a fiduciary or surety bond from a surety company qualified to do business in this state for any person who has charge of, or access to, any securities, funds or other moneys held by the board,
and the amount of the fiduciary or surety bond shall be
fixed by the board. The premiums payable on all fiducia-
ry or surety bonds shall be an expense of the board.

(f) The trustees and employees of the board are not
liable personally, either jointly or severally, for any debt
or obligation created by the board: Provided, That the
trustees and employees of the board are liable for acts of
misfeasance or gross negligence.

(g) The board shall be exempt from the provisions of
sections seven and eleven, article three, chapter twelve of
this code and article three, chapter five-a of said code:
Provided, That the trustees and employees of the board
shall be subject to purchasing policies and procedures
which shall be promulgated by the board. The purchasing
policies and procedures may be promulgated as emergen-
cy rules pursuant to section fifteen, article three, chapter
twenty-nine-a of this code.

(h) Any employee of the West Virginia trust fund who
previously was an employee of another state agency may
return to the public employees retirement system pursuant
to section eighteen, article ten, chapter five of this code,
and may elect to either: (1) Transfer to the public employ-
ee retirement system his or her employee contributions,
with accrued interest, and, if vested, his or her employer
contributions, with accrued interest and retain as credited
state service all time served as an employee of the West
Virginia trust fund; or (2) retain all employee contribu-
tions with accrued interest and, if vested, his or her em-
ployer contributions with interest, and forfeit all service
credit for the time served as an employee of the West
Virginia trust fund.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or
2 appropriate to carry out and effectuate its corporate
3 purposes. The board may:

4 (1) Adopt and use a common seal and alter the same
5 at pleasure;

6 (2) Sue and be sued;
(3) Enter into contracts and execute and deliver instruments;

(4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;

(5) Promulgate and enforce bylaws and rules for the management and conduct of its affairs;

(6) Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors and consultants;

(7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits and in any other lawful investments;

(8) Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;

(9) Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of the securities to the original seller at a stated price;

(10) Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of the securities by the board at a stated price;

(11) Consolidate and manage moneys, securities and other assets of the other funds and accounts of the state and the moneys of political subdivisions which may be made available to it under the provisions of this article;

(12) Enter into agreements with political subdivisions of the state whereby moneys of the political subdivisions are invested on their behalf by the board;

(13) Charge and collect administrative fees from political subdivisions for its services;
(14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the investment securities;

(15) Contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the board;

(16) Make, and from time to time, amend and repeal bylaws, regulations and procedures not inconsistent with the provisions of this article;

(17) Hire its own employees, consultants, managers and advisors as it considers necessary and fix their compensation and prescribe their duties;

(18) Develop, implement and maintain its own banking accounts and investments;

(19) Do all things necessary to implement and operate the board and carry out the intent of this article;

(20) Require the state auditor and treasurer to transmit state funds on a daily basis for investment: Provided, That money held for meeting the daily obligations of state government need not be transferred;

(21) Upon request of the treasurer, transmit funds for deposit in the state treasury to meet the daily obligations of state government; and

(22) Notwithstanding any other provision of the code to the contrary, conduct investment transactions, including purchases, sales, redemptions and income collections which transactions shall not be treated by the auditor as recordable transactions on the state's accounting system.

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

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

(b) The board shall produce monthly financial
statements for the consolidated pension fund and the
consolidated fund and cause them to be delivered to each
member of the board and the executive secretary of the
consolidated public retirement board as established in
sections one and two, article ten-d, chapter five of this
code and to the commissioner of the bureau of employ-
ment programs as administrator of the workers' compen-
sation fund and coal-workers' pneumoconiosis fund, as
established in section one, article one, chapter twenty-three
of this code, and section one, article three of said chapter
and section seven, article four-b of said chapter.

(c) The board shall deliver in each quarter to the
council of finance and administration and the consolidat-
ed public retirement board a report detailing the invest-
ment performance of the retirement plans.

(d) The board shall cause an annual performance
audit to be made by a nationally recognized fiduciary
service. The board shall furnish copies of the audit report
to the governor, state treasurer, state auditor, president of
the Senate, speaker of the House of Delegates, council of
finance and administration and consolidated public
retirement board.

(e) The board shall provide any other information
requested in writing by the council of finance and admin-
istration.
(f) All statements and reports with respect to participant plans required in this section shall be available for inspection by the members and beneficiaries and designated representatives of the participant plans.

§12-6-8. Investment funds established; management thereof.

(a) There is hereby established a special investment fund to be managed by the board and designated as the "consolidated fund".

(b) Each board, commission, department, official or agency charged with the administration of state funds is hereby authorized to make moneys available to the board for investment.

(c) Each political subdivision of this state through its treasurer or equivalent financial officer is hereby authorized to enter into agreements with the board for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with any state agency from which it receives funds to allow the funds to be transferred to their investment account with the investment management board.

(d) Moneys held in the various funds and accounts administered by the board shall be invested as permitted in section twelve of this article and subject to the restrictions contained in that section. The treasurer shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds and accounts. The board shall report the earnings on the various funds under management to the treasurer at such times as determined by the treasurer. The board shall also establish rules for the administration of the various funds and accounts established by this section as it considers necessary for the administration of the funds and accounts, including, but not limited to: (1) The specification of minimum amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; and (2) creation of reserves for losses: Provided, That in the event any moneys made available to the board may not lawfully be combined for investment or deposited in the consolidated funds estab-
lished by this section, the board may create special accounts and may administer and invest those moneys in accordance with the restrictions specially applicable to those moneys: *Provided, however,* That the consolidated fund and the moneys of the consolidated pension plan shall not be combined or deposited to a single account or fund.

§12-6-9. Fees for service.

The board shall charge fees, as adopted at the annual meeting, for the reasonable and necessary expenses incurred by the investment management board in rendering services to the participant plans and the consolidated fund. The fees shall be subtracted from the total return of the board, and the net return shall be credited to each of the participant plans and the consolidated fund. All fees which are dedicated or identified or readily identifiable to an individual participant plan or the consolidated fund shall be charged against that plan or fund, and all other fees shall be charged as a percentage of assets under management. At its annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures.

§12-6-9a. Trust indenture.

On the effective date of this section, all assets of the irrevocable trust entered into by the governor on the first day of July, one thousand nine hundred ninety-six, with the West Virginia trust fund, inc., acting as the trustee shall constitute the corpus of an irrevocable trust with the board as its trustee: *Provided,* That the trust shall continue to be subject to the following provisions:

(a) The Legislature hereby reserves the following rights and powers:

(1) The right by supplemental agreement to amend, modify or alter the terms of this trust without consent of the trustee, or any beneficiary; and

(2) The right to request and receive additional information from the trustee at any time.
(b) The trustee shall establish a trust for the participant plans specified by this article with the earnings and losses accounted for and charged individually to each participant plan, including, but not limited to, the following:

(1) The public employees retirement system;
(2) The teachers retirement system;
(3) The West Virginia state police retirement system;
(4) The death, disability and retirement fund of the department of public safety;
(5) The judges' retirement system;
(6) The pneumoconiosis fund; and
(7) The workers' compensation fund.

(c) In the administration of the trust created by the trust indenture, the trustee has the following powers:

(1) To purchase, retain, hold, transfer and exchange, and to sell, at public or private sale, the whole or any part of the trust estate upon such terms and conditions as it considers advisable;

(2) To invest and reinvest the trust estate or any part thereof, in any kind of property, real or personal, including, but not limited to, mortgage or mortgage participations, common stocks, preferred stocks, common trust funds, bonds, notes or other securities, notwithstanding the provisions of articles five and six, chapter forty-four of this code: Provided, That notwithstanding the provisions of this act to the contrary, the board shall not become a stockholder or owner of any company or association for any purpose whatsoever unless and until the provisions of section six, article X of the constitution of West Virginia are amended to permit those investments;

(3) To carry the securities and other property held under the trust indenture either in the name of the trustee or in the name of its nominee;

(4) To vote, in person or by proxy, all securities held under the trust indenture, to join in or to dissent from and
oppose the reorganization, recapitalization, consolidation, merger, liquidation or sale of corporations or property; to exchange securities for other securities issued in connection with or resulting from any transaction; to pay any assessment or expense which the trustee considers advisable for the protection of its interest as holder of any such securities; to deposit securities in any voting trust or with any protective or like committee, or with a trustee depository; to exercise any option appurtenant to any securities for the conversion of any securities into other securities; and to exercise or sell any rights issued upon or with respect to the securities of any corporation, all upon terms the trustee considers advisable;

(5) To prosecute, defend, compromise, arbitrate or otherwise adjust or settle claims in favor of or against the trustee or other trust estate;

(6) To employ and pay from the trust estate legal and investment counsel, brokers and such other assistants and agents as the trustee considers advisable; and

(7) To develop, implement and modify an asset allocation plan for each participant plan. The asset allocation plans shall be implemented within the management and investment of the trust fund.

(d) All trust income shall be free from anticipation, alienation, assignment or pledge by, and free from attachment, execution, appropriation or control by or on behalf of, any and all creditors of any beneficiary by any proceeding at law, in equity, in bankruptcy or insolvency.

(e) The trustee may receive any other property, real or personal, tangible or intangible, of any kind whatsoever, that may be granted, conveyed, assigned, transferred, devised, bequeathed or made payable to it by the state, or by any other person or entity, for the purposes of the trust created by the trust indenture, and all such properties shall be held, managed, invested and administered by the trustee as provided in the trust indenture and in the "West Virginia Investment Management Act".
(f) The trustee shall promptly cause to be paid to the state the amounts certified by the governor as necessary for the monthly payment of benefits to the beneficiaries of the trust.

(g) The trustee shall render an annual accounting to the governor not more than one hundred twenty days following the close of the fiscal year of the trust.

(h) The trust will not be invalid by reason of any existing law or rule against perpetuities or against accumulations or against restraints upon the power of alienation, but the trust may continue for such time as necessary to accomplish the purposes for which it is established.

(i) If any provision of the trust indenture is void, invalid or unenforceable, the remaining provisions are nevertheless valid and shall be carried into effect.

§12-6-9c. Authorization of additional investments.

Notwithstanding the restrictions which may otherwise be provided by law with respect to the investment of funds, the board, all administrators, custodians or trustees of pension funds, each political subdivision of this state and each county board of education is authorized to invest funds in the securities of or any other interest in any investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. §80a, the portfolio of which is limited: (i) To obligations issued by or guaranteed as to the payment of both principal and interest by the United States of America or its agencies or instrumentalities; and (ii) to repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities: Provided, That the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian: Provided, however, That the investment company or investment trust is rated within one of the top two rating categories of any nationally recognized rating service such as Moody's or Standard & Poor's.

§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.
(a) The Legislature hereby finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that an industrial development loan program will provide for economic growth and stimulation within the state; and that loans from pools established in the consolidated fund will assist in providing the needed capital to assist industrial development. This section is enacted in view of these findings.

(b) The board may make available, on a revolving basis, up to fifteen million dollars from the consolidated fund to loan the West Virginia economic development authority for industrial development projects authorized by section seven, article fifteen, chapter thirty-one of this code: Provided, That the West Virginia economic development authority may not loan more than two million dollars for any one industrial development project. The loans shall be secured by notes, security interests or bonds issued by the West Virginia economic development authority evidencing the indebtedness of the economic development authority to the board.

The notes, security interests or bonds issued by the economic development authority shall be secured by security equal to or better than one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities or by a letter of credit guarantee issued by a bank having an unsecured legal lending limit greater than two million dollars.

(c) The interest rates and maturity dates on the loans to the West Virginia economic development authority shall be at competitive rates and maturities as determined by the board. The board shall determine the financial condition of pools within the consolidated fund and shall determine if there is sufficient liquidity within the pools to make the loans specified in this section.


Any investments made under this article shall be made in accordance with the provisions of the "Uniform Prudent Investor Act" codified as article six-c of this
chapter and shall be further subject to the following requirements:

(a) Trustees shall discharge their duties with respect to the consolidated pension plan for the exclusive purpose of providing benefits to participants and their beneficiaries;

(b) Trustees shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(c) Trustees shall defray reasonable expenses of investing and operating the funds under management; and

(d) Trustees shall discharge their duties in accordance with the documents and instruments governing the trust fund or other funds under management insofar as such documents and instruments are consistent with the provisions of this article.

§12-6-12. Limitations on investments.

(a) The board shall not become a stockholder or owner of any company or association for any purpose whatsoever unless and until the provisions of section six, article X of the constitution of West Virginia are amended to provide for those investments. If at some time, after the effective date of this section, the provisions of section six, article X of the constitution of West Virginia are amended to allow the state to become a stockholder in a corporation, the board shall limit its asset allocation and types of securities to the following:

(1) For the first twelve months following authorization of the state to become a stockholder or owner of any corporation, the board shall hold in equity investments no more than twenty percent of its total portfolio and no more than twenty percent of the assets of any individual participant plan or the consolidated fund; during the thirteenth through and including the twenty-fourth month following the authorization, the board shall hold in equity investments no more than forty percent of its total portfolio and no more than forty percent of the assets of any individual participant plan or the consolidated fund; and thereafter, the board shall hold in equity investments no
more than sixty percent of its total portfolio and no more
than sixty percent of the assets of any individual partici-

(2) The board shall hold in international securities no
more than twenty percent of the consolidated fund or the
trust fund and no more than twenty percent of the assets
of any individual participant plan or the consolidated
fund.

(3) The board may not at the time of purchase hold
more than five percent of the trust fund or consolidated
fund in the equity securities of any single company or
association: Provided, That if a company or association
has a market weighting of greater than five percent in the
Standard & Poor's 500 index of companies, the board
may hold securities of that equity equal to its market
weighting.

(b) The board shall at all times limit its asset allocation
and types of securities to the following:

(1) The board may not hold more than twenty percent
of the trust fund in commercial paper. Any commercial
paper at the time of its acquisition shall be in one of the
two highest rating categories by an agency nationally
known for rating commercial paper.

(2) At no time shall the board hold more than seventy-five percent of the trust fund or consolidated fund in
corporate debt. Any corporate debt security at the time of
its acquisition shall be rated in one of the four highest
rating categories by a nationally recognized rating
agency.

(3) No security may be purchased by the board unless
the type of security is on a list approved by the board.
The board may modify the securities list at any time, and
must give notice of that action pursuant to subsection (g),
section three of this article, and must review the list at its
annual meeting.

(c) The board, at the annual meeting provided for in
subsection (h), section three of this article, shall review,
establish and modify, if necessary, the investment objec-
atives of the individual participant plans, as incorporated in
the investment policy statements of the respective trusts so
as to provide for the financial security of the trust funds
giving consideration to the following:

(1) Preservation of capital.

(2) Diversification.

(3) Risk tolerance.

(4) Rate of return.

(5) Stability.

(6) Turnover.

(7) Liquidity.

(8) Reasonable cost of fees.

§12-6-13. Board as sole agency for investments; exceptions.

All duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment are hereby transferred to the board: Provided, That neither this section nor any other section of this article applies to the "board of the school fund" and the "school fund" established by section 4, article XII of the state constitution: Provided, however, That funds under the control of the municipal bond commission may, in the discretion of the commission, be made available to the board for investment to be invested by the commission as provided in article three, chapter thirteen of this code.

§12-6-15. Consolidated fund audits.

The board shall cause to be conducted an annual external audit of all investment transactions of the consolidated fund by a nationally recognized accounting firm: Provided, That the board shall on a monthly basis provide to each state agency and any other entity investing moneys in the consolidated fund an itemized statement of the agency's or the entity's account in the consolidated fund. The statement shall include the beginning balance,
contributions, withdrawals, income distributed, change in value and ending balance.

§12-6-16. Existing investments.

The board shall be vested with ownership of all securities or other investments lawfully held by the board of investments or the West Virginia trust fund as of the effective date of this article. All obligations and assets of the board of investments and the West Virginia trust fund, inc., shall be vested in the West Virginia investment management board as of the effective date of this article.

§12-6-19. Authorization for loans by the board.

(a) The board, upon request of the state building commission, shall transfer moneys as a loan to the state building commission in an amount not to exceed in the aggregate twenty-one million dollars for the purposes of financing or refinancing the projects specified in subsections (b) and (d), section eight, article six, chapter five of this code. The money borrowed shall bear interest during the term of the loan at a fixed rate not to exceed the interest rate on treasury notes, bills or bonds of the same term as the term of the loan the week of closing on the loan as reported by the treasury of the United States. Loans made under this subsection shall be repaid in regular monthly or semiannual payments and shall be paid in full not later than twenty-five years from the date the loans are made with terms and conditions mutually agreed upon by the state building commission and the investment management board.

(b) The board shall, upon request of the state building commission transfer moneys as a loan to the state building commission in an amount not to exceed in the aggregate eighty million dollars for the purposes of financing construction of regional jails, correctional facilities, or building extensions or improvements to regional jails and correctional facilities. Prior to the expenditure of any loan proceeds, the regional jail and correctional facility authority shall certify a list of projects to the state building commission and the joint committee on government and finance that are to be funded from loan proceeds. This
certified list cannot thereafter be altered or amended other
than by legislative enactment. Upon receipt of the
certified list of projects, the state building commission
shall transfer the loan proceeds to the regional jail and
correctional facility authority. The money borrowed shall
bear interest during the term of the loan at a fixed rate not
to exceed the interest rate on treasury notes, bills or bonds
of the same term as the term of the loan the week of
closing on the loan as reported by the treasury of the
United States.

(c) Loans made under this section for the projects
specified in subsection (b) of this section and in subsec-
tion (d), section eight, article six, chapter five of this code,
shall be repaid in annual payments of not less than twelve
million dollars per year by appropriation of the Legisla-
ture to the board. The amount transferred for loans under
subsection (a) or (b) of this section shall not exceed that
amount which the board determines is reasonable given
the cash flow needs of the consolidated fund. The board
shall make transfers for loans first for the project specified
in subsection (d), section eight, article six, chapter five of
this code, second for the projects specified in subsection
(b) of this section and third for projects specified in
subsection (b), section eight, article six, chapter five of this
code, which are in imminent danger of default in pay-
ment. The board shall take the steps necessary to increase
the liquidity of the consolidated fund over a period of the
next five years to allow for the loans provided in this
section without increasing the risk of loss in the consoli-
dated fund.


§12-6A-2. Legislative findings and declaration of public necessity.
§12-6A-3. Division of debt management created; director.
§12-6A-6. Debt information reporting.

§12-6A-2. Legislative findings and declaration of public
necessity.

(a) The Legislature hereby finds and declares that
efficient and effective state government requires the
procuring, maintaining and reporting of pertinent information relating to the debt of the state and its agencies, boards, commissions and authorities. The state treasurer shall perform the functions and duties necessary to serve as a central information source concerning the incurrence, recording and reporting of debt issued by the state, its agencies, boards, commissions and authorities.

(b) The Legislature hereby finds:

(1) The credit rating and acceptance of bonds, notes, certificates of participation and other securities and indebtedness of the state and its spending units have been unstable as a result of the instability in traditional national and international markets of goods and services produced by the citizens of the state.

(2) In order to finance essential capital projects for the benefit of the citizens of the state at the lowest possible cost, the state must maintain high levels of acceptance of the indebtedness of the state and its spending units in the financial markets.

(3) In order to attain these goals, authorization of state debt must be based on the ability of the state to meet its total debt service requirements, in light of other uses of its fiscal resources.

(c) The Legislature hereby further finds that the public policies and responsibilities of the state as set forth in this article cannot be fully attained without the creation of a state division of debt management.

§12-6A-3. Division of debt management created; director.

There is hereby created within the office of the state treasurer, the division of debt management.

The division shall be under the control of a director to be appointed by the treasurer and who shall be qualified by reason of exceptional training and experience in the field of activities of his respective division and shall serve at the will and pleasure of the treasurer.

The division of debt management shall perform the following functions and duties:

(1) Develop a long-term debt plan including criteria for the issuance of debt by the state and its spending units and the continuous evaluation of the current and projected debt of the state and its spending units.

(2) Evaluate cash flow projections relative to proposed and existing revenue bond issues.

(3) Act as liaison with the Legislature on all debt matters, including, but not limited to, new debt issues and the status of debt issued by the state and its spending units.

(4) Assist the state and its spending units regarding the issuance of debt if requested.

(5) Establish reporting requirements for the issuance of debt by the state and its spending units pursuant to the provisions of this article.

(6) Make and execute contracts and other instruments and pay the reasonable value of services or commodities rendered to the division pursuant to those contracts.

(7) Contract, cooperate or join with any one or more other governments or public agencies, or with any political subdivision of the state, or with the United States, to perform any administrative service, activity or undertaking which any such contracting party is authorized by law to perform and to charge for providing such services and expend any fees collected.

(8) Do all things necessary or convenient to effectuate the intent of this article and to carry out its powers and functions.

(9) Provide staff services to the debt capacity advisory division established in article six-b of this chapter.

§12-6A-6. Debt information reporting.

(a) Within fifteen days following the end of each calendar quarter, each state spending unit shall provide the division and the legislative auditor, in the manner provided
by this article and in such form and detail as the state
treasurer may by regulation require, a statement of the
total debt of each such state spending unit incurred during
the calendar quarter and owing at the end of such calendar
quarter, which statement shall include, but not be limited
to, the name of the state spending unit, the amounts and
types of debt incurred during the calendar quarter and
outstanding at the end of the calendar quarter, the cost and
expenses of incurring the debt, the maturity date of each
debt, the terms and conditions of the debt, the current debt
service on the debt, the current interest rate on the debt,
the source of the proceeds utilized for repayment of the
debt, the amounts of repayment during the calendar
quarter, the repayment schedule and the security for the
debt. A state spending unit having no outstanding debt
shall not be required to provide the quarterly report but
shall file an annual report, on forms established by the
division of debt management: Provided, That the state
spending unit shall immediately notify the division of debt
management of any change in the spending unit’s
outstanding debt condition.

(b) Not less than thirty days prior to a proposed
offering of debt to be issued by a state spending unit,
written notice of such proposed offering and the terms
thereof shall be given to the division by such state spend-
ing unit in the form as the division may by regulation
require. Within thirty days after closing, the terms shall be
reported to the division in the form as the division may by
regulation require.

(c) On or before the thirty-first day of January and
the thirty-first day of July of each year, the treasurer shall
prepare and issue a report of all debt of the state and its
spending units and of all proposed debt issuances of
which the treasurer has received notice and shall furnish a
copy of such report to the governor, the president of the
Senate, the speaker of the House of Delegates, the legisla-
tive auditor and upon request to any legislative committee
and any member of the Legislature. The report shall be
kept available for inspection by any citizen of the state.
The treasurer shall also prepare updated reports of all debt
of the state and its spending units which shall be available
ARTICLE 6B. DEBT CAPACITY ADVISORY DIVISION.

§12-6B-1. Purpose.

The purpose of this article is to provide a mechanism by which necessary information may be provided to the governor and the Legislature so that they may prudently manage the state’s financial resources by attempting to keep the state within an average to low range of nationally recognized debt limits. The ratio measurements which may be taken into consideration in attempting to meet these limits include, but are not limited to, outstanding net tax supported debt per capita, net tax supported debt as a percentage of personal income, net tax supported debt as a percentage of assessed valuation, and any other criteria that recognized bond rating agencies use to judge the quality of issues of state bonds.

§12-6B-2. Debt capacity advisory division created.

There is hereby created within the offices of the state treasurer a debt capacity advisory division.

§12-6B-3. Definitions.

For the purpose of this article:

(a) “Debt” means bonds, notes, certificates of participation, certificate transactions, capital leases and all other forms of securities and indebtedness.

(b) “Debt impact statement” means a signed statement from the treasurer which shall include such information and be in such form, as determined by the division, for the Legislature or the governor to make an informed decision concerning the issuance of debt by the state or its spending units.
(c) "Division" means the debt capacity advisory division established in this article.

(d) "Net tax supported debt as a percentage of assessed valuation" means the net tax supported debt, as determined by the division, divided by the most recently available estimated assessed valuation of all taxable property in the state by the West Virginia department of tax and revenue.

(e) "Net tax supported debt as a percentage of personal income" means the net tax supported debt, as determined by the division, divided by the most recently available personal income figures for the state by the West Virginia bureau of employment programs.

(f) "Net tax supported debt per capita" means the state's net tax supported debt, as determined by the division, divided by the most recently available population estimate for the state by the United States department of commerce.

(g) "Spending unit" means any of the state's agencies, boards, commissions, committees, authorities, or other of its entities with the power to issue debt and secure such debt, but not including local political subdivisions of the state.

(h) "Tax supported debt" means: (1) All obligations of the state or any spending unit to which the state's full faith and credit is pledged to pay directly or by guarantee (provided that any such guaranteed obligations shall be included only to the extent any such obligations are in default); and (2) all obligations of the state or any agency or authority thereof extending beyond one year with respect to the lease, occupancy or acquisition of property which are incurred in connection with debt financing transactions, including, but not limited to, certificates of participation, and which are payable from taxes, fees, permits, licenses and fines imposed or approved by the Legislature.

Tax supported obligations do not include: (1) Any obligations of the West Virginia housing development
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49 fund, the economic development authority, the hospital
50 finance authority, the West Virginia parkway authority, the
51 West Virginia public energy authority, the West Virginia
52 solid waste management board, and the West Virginia
53 water development authority; (2) revenue anticipation
54 notes or bonds of the state; or (3) any obligations to the
55 extent that the debt service with respect thereto is reason-
56 ably expected to be offset, as determined by the division,
57 by lease payments, user fees, federal grants or other
58 payments from some source other than the general fund.
59 Such payments shall be used expressly for the purpose of
60 paying debt service.

61 (i) "Treasurer" means the treasurer of the state of
62 West Virginia.

§12-6B-4. Powers and duties.

1 The division shall perform the following functions
2 and duties:

3 (a) Promulgate rules pursuant to article three, chapter
4 twenty-nine-a of this code, for the management and
5 conduct of its affairs;

6 (b) Annually review the size and condition of the
7 state's tax-supported debt and submit to the governor and
8 to the Legislature, on or before the first day of October of
9 each year, an estimate of the maximum amount of new
tax-supported debt that prudently may be authorized for
11 the next fiscal year, together with a report explaining the
12 basis for the estimate. The estimate shall be advisory and
13 in no way restrict the governor or the Legislature. In
14 preparing its annual review and estimate, the division shall,
15 at a minimum, consider:

16 (1) The amount of net tax supported debt that, during
17 the next fiscal year and annually for the following ten
18 fiscal years: (A) Will be outstanding; and (B) has been
19 authorized but not yet issued;

20 (2) Projected debt service requirements during the
21 next fiscal year and annually for the following ten fiscal
22 years based upon: (A) Existing outstanding debt; (B)
previously authorized but unissued debt; and (C) projected bond authorizations;

(3) Any information available from the budget section of the department of administration in connection with anticipated capital expenditures projected for the next five fiscal years;

(4) The criteria that recognized bond rating agencies use to judge the quality of state bonds;

(5) Any other factor that the division finds as relevant to: (A) The ability of the state to meet its projected debt service requirements for the next fiscal year; (B) the ability of the state to meet its projected debt service requirement for the next five fiscal years; and (C) any other factor affecting the marketability of such bond; and

(6) The effect of authorizations of new tax-supported debt on each of the considerations of this subsection.

(c) Conduct ongoing review of the amount and condition of bonds, notes and other security obligations of the state's spending units: (1) Not secured by the full faith and credit of the state or for which the Legislature is not obligated to replenish reserve funds or make necessary debt service payments; (2) for which the state has a contingent or limited liability or for which the Legislature is permitted to replenish reserve funds or make necessary debt service payments if deficiencies occur. When appropriate, the division shall recommend limits on such additional obligations to the governor and to the Legislature. Such recommendation is advisory and shall in no way restrict the governor, the Legislature or the spending unit.

(d) The treasurer may review all proposed offerings of debt, as defined in this article, submitted to the division of debt management, as provided in section six, article six-a of this chapter. The division may also request any additional information which may be needed to issue an advisory opinion to the governor, the speaker of the House of Delegates and the president of the Senate as to the impact of the proposed offering on the state's net tax-
supported debt outstanding and any other criteria which the treasurer feels may be relevant to the marketability of said offering and its impact on the state's credit rating. Such advisory opinion shall in no way restrict the governor, the Legislature or the spending unit.

(e) Do all things necessary or convenient to effectuate the intent of this article and to carry out its powers and functions.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 3. MUNICIPAL BOND COMMISSION.

§ 13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.

(a) The tax commissioner or his or her designee shall be chair of the commission.

(b) The members of the commission shall appoint a chief administrative officer and may fix his title and duties. Notwithstanding the provisions of section two-a, article seven, chapter six of this code, the commission shall have the authority to set the compensation of the chief administrative officer. The chief administrative officer shall serve as secretary to the board and treasurer of the commission. The chair may designate a board member to serve as secretary in the absence of the chief administrative officer. The chair is authorized with the approval of the commission, to employ other employees and consultants as the commission deems advisable and fix their compensation and prescribe their duties.

(c) Appointed members of the commission shall be paid fifty dollars for each day or substantial portion thereof that they are engaged in the work of the commission. Each member of the commission may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties on behalf of the commission.

(d) The commission shall hold at least three meetings in each fiscal year, one of which meetings shall be within
sixty days of the end of the fiscal year and shall be the
annual meeting. The meetings shall be held on dates and
at places prescribed by the chair. Additional meetings
may be held at the call of the chair or upon the written
request of three members at such time and place as
designated in such call or request. Three members of the
commission constitute a quorum.

(e) The chair with the consent of the commission is
authorized to provide or designate legal advisory services
to the commission.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

*§50-3-2a. Payment of fines by credit card or payment plan;
suspension of licenses for failure to pay fines or
appear or respond.

(a) A magistrate court may accept credit cards in
payment of all costs, fines, forfeitures or penalties. The
supreme court of appeals shall adopt rules regarding the
use of credit or check cards to pay fines and any charges
made by the credit card company may be paid from the
gross credit card collections. A magistrate court may
collect a portion of any costs, fines, forfeitures or penalties
at the time the amount is imposed by the court so long as
the court requires the balance to be paid in accordance
with a payment plan which specifies: (1) The number of
payments to be made; (2) the dates on which such pay-
ments and amounts shall be made; and (3) amounts due
on such dates.

(b) If any costs, fines, forfeitures, restitution or
penalties imposed or ordered by the magistrate court for
hunting or fishing violations as described in chapter
twenty of this code are not paid in full as directed by the
magistrate court, the magistrate court clerk or, upon a
judgment rendered on appeal, the circuit clerk, shall notify
the director of the division of natural resources, of such

*Clerk's Note: This section was also amended by H. B. 2259 (Chapter
128), which passed subsequent to this act.
failure to pay. If any costs, fines, forfeitures, restitution or penalties imposed by the magistrate court in a criminal case are not paid as directed by the magistrate court, the magistrate court clerk or, upon judgment rendered on appeal, the circuit clerk, shall notify the director of the division of motor vehicles of the failure to pay. Upon notice, the division of motor vehicles shall suspend the operator’s or commercial driver’s license and the director of the division of natural resources shall suspend the hunting or fishing license of the person defaulting on payment until such time that the costs, fines, forfeitures, restitution or penalties are paid.

(c) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the director of the division of motor vehicles thereof within fifteen days of the scheduled date to appear, unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon such notice, the division of motor vehicles shall suspend the operator’s or commercial driver’s license of the person failing to appear or otherwise respond in accordance with the provisions of section six, article three, chapter seventeen-b of this code.

(d) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

(e) If all costs, fines, forfeitures, restitution or penalties imposed by a magistrate court and ordered to be paid are not paid as ordered by the judgment of the magistrate court, the clerk of the magistrate court shall notify the prosecuting attorney of the county of such nonpayment and provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index the abstracts of judgment without charge or fee to the prosecuting attorney, and when so
recorded, the amount stated to be owing in the abstract shall constitute a lien against all property of the defendant.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-7a. Use of photographic copies in evidence; state records, papers or documents; destruction or transfer to archives of originals; destruction of canceled checks and paid and canceled bonds and coupons.

(a) Any public officer of the state may, with the approval of the state records administrator, cause any or all records, papers or documents kept by him to be reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records-retention technology approved by the state records administrator. These reproductions by photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the originals thereof in all details.

The reproductions by photographic, photostatic, microphotographic or by similar miniature photographic process or nonerasable optical image disks shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original. Whenever reproductions by photographic, photostatic, microphotographic or by similar miniature photographic process or nonerasable optical image disks have been made and put in conveniently accessible fireproof files, and provision has been made for preserving, examining and using the same, the respective heads of the departments, divisions, institutions and agencies of the state may, with the approval of the state records adminis-
trator, cause the records and papers so reproduced by photographic, photostatic, microphotographic or by similar miniature photographic process or nonerasable optical image disks, or any part thereof, to be destroyed; but before any records, papers or documents are authorized to be destroyed, the state records administrator shall obtain the advice and counsel of the state historian and archivist, or his designated representative, as to the desirability of placing the records, papers and documents in the archives of that department. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research or historical value, the administrator may destroy or otherwise dispose of the record, paper or document if otherwise permitted to do so after complying with the provisions of section seventeen, article eight, chapter five-a of this code.

(b) Notwithstanding any other provisions of this code to the contrary, the state treasurer may at his discretion destroy any canceled checks of the state after three years have elapsed since the date of the check, whether or not such checks have been reproduced by photographic, photostatic, microphotographic or by similar miniature photographic process or nonerasable optical image disks: Provided, That any canceled bonds or interest coupons of any bond issues of this state in the custody of the treasurer, or for which the treasurer acts as fiscal agent or paying agent, may at his discretion be destroyed by one of the two methods below:

Method I - The treasurer shall maintain a permanent record for the purpose of recording the destruction of bonds and coupons, showing the following: (1) With respect to bonds, the purpose of issuance, the date of issue, denomination, maturity date and total principal amount; and (2) with respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons, and, as to each maturity date, the denomination, quantity and total amount of coupons.

After recording the specified information, the treasurer shall have the canceled bonds and coupons destroyed
either by burning or shredding, in the presence of an
employee of the treasurer and an employee of the legisla-
tive auditor, each of whom shall certify that he saw the
canceled bonds and coupons destroyed. The certificates
shall be made a part of the permanent record. Canceled
bonds or coupons shall not be destroyed until after one
year from the date of payment.

Method II - The treasurer may contract with any bank
or trust company acting as paying agent or copaying
agent for a bond issue of the state for the destruction of
bonds and interest coupons which have been canceled by
the paying agent. The contract shall require that the
paying agent give the treasurer a certificate containing the
same information required by Method I. The certificate
shall be made a part of the treasurer's permanent records.

Each contract shall also require that the paying agent
be responsible for proper payment and disposition of all
bonds and coupons, and for any duplicate payments to
unauthorized persons and nonpayment to authorized
persons occurring as a result of destruction of bonds or
coupons under this section. In addition, the treasurer may
require the paying agent to submit an indemnity bond, in
an amount to be determined by the treasurer, to assure
performance of the duties specified in this section. Canceled bonds or coupons may not be destroyed until
one year from the date of payment.

For purposes of this section, the term "bonds" shall
include interim certificates.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-12. Payment of fines by credit card or payment plan.

A circuit court may accept credit cards in payment of
all fines, cost, forfeiture, restitution or penalties. The
supreme court of appeals shall adopt rules regarding the
use of credit or check cards to pay fines, and any charges
made by the credit card company may be paid from the
gross credit card collections.
AN ACT to amend and reenact sections sixteen and seventeen, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to probationary period for firefighters; and lengthening the probationary period from six months to one year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


§8-15-17. Form of application; age and residency requirements; exceptions.


1 The firemen's civil service commission in each municipality shall make rules providing for both competitive and medical examinations for appointments and promotions to all positions in the paid fire department in the municipality, and for other matters as are necessary to carry out the purposes of the civil service provisions of this article. Any commission shall have the power and authority to require by rules a physical fitness examination as a part of its competitive examination or as a part of its medical examination: Provided, That after the thirtieth day of June, one thousand nine hundred eighty-one, the medical requirements for appointment to all positions in the paid fire department in the municipality shall include, but not be limited to, the medical
requirements stated in section sixteen, article twenty-two of this chapter. Due notice of the contents of the rules and of any modifications thereof shall be given, by mail, in due season, to the appointing officer; and the rules and any modifications thereof shall also be printed for public distribution. All original appointments to any positions in a paid fire department subject to the civil service provisions of this article shall be for a probationary period of one year: Provided, however, That at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section twenty-five of this article. If, at the close of this probationary term, the conduct or capacity of the probationer has not been satisfactory to the appointing officer, the probationer shall be notified, in writing, that he or she will not receive absolute appointment, whereupon his or her employment shall cease; otherwise, his or her retention in the service shall be equivalent to his or her final appointment.

§8-15-17. Form of application; age and residency requirements; exceptions.

The firemen’s civil service commission in each municipality shall require individuals applying for admission to any competitive examination provided for under the civil service provisions of this article or under the rules of the commission to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

(1) His or her full name, residence and post-office address;

(2) His or her United States citizenship, age and the place and date of his or her birth;

(3) His or her state of health, and his or her physical capacity for the public service;

(4) His or her business and employments and residences for at least three previous years; and

(5) Any other information as may reasonably be required, touching upon the applicant’s qualifications and fitness for the public service.
Blank forms for the applications shall be furnished by the commission, without charge, to all individuals requesting the same. The commission may require, in connection with the application, certificates of citizens, physicians and others, having pertinent knowledge concerning the applicant, as the good of the service may require.

No application for original appointment shall be received if the individual applying is less than eighteen years of age or more than thirty-five years of age at the date of his or her application: Provided, That in the event any applicant formerly served upon the paid fire department of the municipality to which he or she makes application, for a period of more than one year, and resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant, within a period of two years next preceding the date of his or her application, and at the time of his or her application resides within the corporate limits of the municipality in which the paid fire department to which he or she seeks appointment by reinstatement is located, then the individual shall be eligible for appointment by reinstatement in the discretion of the firemen's civil service commission, even though the applicant shall be over the age of thirty-five years, and the applicant, providing his or her former term of service so justifies, may be appointed by reinstatement to the paid fire department without a competitive examination, but the applicant shall undergo a medical examination; and if the individual shall be so appointed by reinstatement to the paid fire department, he or she shall be the lowest in rank in the department next above the probationers of the department.

Any applicant for original appointment must have been a resident for one year, during some period of time prior to the date of his or her application, of the municipality in which he or she seeks to become a member of the paid fire department: Provided, That if the commission determines it necessary it may consider for original appointment applicants who are not residents of the municipality but who have been residents of the county in which the municipality or any portion of the territory thereof is located for a period of at least one year.
AN ACT to amend and reenact section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to time lost as volunteer firemen and permitting the volunteer firemen to choose whether lost time as volunteer firemen is subtracted from regular pay or accumulated annual leave at the option of the employee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

No employer may terminate an employee who is a member of a volunteer fire department and who, in the line of emergency duty as a volunteer fireman, responds to an emergency call prior to the time he is due to report for work and which emergency results in a loss of time from his employment.

Any time lost from employment as provided in this section may be charged against the employee's regular pay or against the employee's accumulated leave, if any, at the option of the employee.

At the request of an employer, any employee losing time as provided herein shall supply his employer with a statement from the chief of the volunteer fire department stating that the employee responded to an emergency call and the time thereof.
As used in this section, “emergency” shall mean going to, attending to or coming from: (1) A fire call; (2) a hazardous or toxic materials spill and cleanup; or (3) any other situation to which his or her fire department has been or later could be dispatched. The term “employer” includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to any employee.

Any employer who willfully and knowingly violates the provisions of this section shall be required to reinstate such employee to his former position and shall be required to pay such employee all lost wages and benefits for the period between termination and reinstatement. Any action to enforce the provisions of this section shall be commenced within a period of one year after the date of violation and such action shall be commenced in the circuit court of the county wherein the place of employment is located.

CHAPTER 98

(Com. Sub. for S. B. 339—By Senators Helmick, Prezioso, Roa, Schoonover, Sharpe, White, Plymale, Craigo, Anderson and Sprouse)
one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eighteen, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-18. Funeral expenses for indigent persons; filing of affidavit to certify indigency; penalties for false swearing; payment by division.

(a) The department of health and human resources shall pay for reasonable funeral service expenses for indigent persons, in an amount not to exceed seven hundred fifty dollars.

(b) For purposes of this section, the indigency of a deceased person is determined by the filing of an affidavit with the department, in a form provided by and determined in accordance with the income guidelines as set forth by the department: (1) Signed by the heir or heirs-at-law, which states that the estate of the deceased person is pecuniarily unable to pay the costs associated with a funeral; or (2) signed by the county coroner or the county health officer, the attending physician or other person signing the death certificate, or the state medical examiner, stating that the deceased person has no heirs or that heirs have not been located after a reasonable search, and that the deceased person had no estate or the estate is pecuniarily unable to pay the costs associated with a funeral.

(c) Payment shall be made by the department to the person or persons who have furnished the services and supplies for the indigent person's funeral expenses, or to the persons who have advanced payment for same, as the department may determine, pursuant to appropriations for expenditures made by the Legislature for such purpose.

(d) For purposes of this section, "reasonable funeral service expenses" means expenses for services provided by a funeral director for the disposition of human remains.

(e) Any person who knowingly swears falsely in an affidavit required by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period of not more than six months, or both.
AN ACT to amend and reenact sections eight and nine, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section fourteen; and to amend and reenact sections two and six, article two of said chapter, all relating generally to the guardianship and conservator appointment process; permitting judges to appoint coguardians and/or coconservators; altering guardianship and conservatorship appointment eligibility for sheriffs and the department of health and human resources; providing that bond is not required upon appointment of sheriffs and the department of health and human resources; requiring proof of bonding to be submitted to the appointing court; modifying appointment petition; allowing the appointing court authority to protect the alleged protected persons assets during the petition process; and providing for notice and opportunity for hearing before a person is appointed guardian or conservator.

Be it enacted by the Legislature of West Virginia:

That sections eight and nine, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section fourteen; and that sections two and six, article two of said chapter be amended and reenacted, all to read as follows:

Article
2. Procedure for Appointment.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.
§44A-1-8. Persons and entities qualified to serve as guardian or conservator.


§44A-1-14. Temporary protective order.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

(a) Any adult individual may be appointed to serve as a guardian, a conservator, or both, upon determination by the court that the individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person: Provided, That the court may, after first determining it to be in the best interest of the protected person, appoint coguardians and/or coconservators: Provided, however, That such individual is not employed by or affiliated with any public agency, entity or facility which is providing substantial services or financial assistance to the protected person.

(b) Any nonprofit corporation chartered in this state and licensed as set forth in subsection (c) of this section or a public agency that is not a provider of health care services to the protected person may be appointed to serve as a guardian, a conservator, or both: Provided, That such entity is capable of providing an active and suitable program of guardianship or conservatorship for the protected person and is not otherwise providing substantial services or financial assistance to the protected person.

(c) A nonprofit corporation chartered in this state may be appointed to serve as a guardian or conservator or as a limited or temporary guardian or conservator for a protected person if it is licensed to do so by the secretary of health and human resources. The secretary shall propose legislative rules, for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for the licensure of such nonprofit corporations and shall provide for the review of such licenses. The rules shall, at a minimum, establish standards to assure that any corporation licensed for such guardianship or conservatorship:
(1) Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

(2) Will respect and maintain the dignity and privacy of the protected person;

(3) Will protect and advocate the legal human rights of the protected person;

(4) Will assure that the protected person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;

(5) Will encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so;

(6) Does not provide educational, vocational, residential or medical services to the protected person; and

(7) Has written provisions in effect for the distribution of assets and for the appointment of temporary guardians and conservators for any protected persons it serves in the event the corporation ceases to be licensed by the department of health and human resources or otherwise becomes unable to serve as guardian.

(d) A duly licensed nonprofit corporation that has been appointed to serve as a guardian or as a conservator pursuant to the provisions of this article is entitled to compensation in accordance with the provisions of section thirteen of this article.

(e) Except as provided in section thirteen of this article, no guardian or conservator nor any officer, agent, director, servant or employee of any such guardian or conservator shall do business with or in any way profit, either directly or indirectly, from the estate or income of any protected person for whom services are being performed by such guardian or conservator.

(f) Any bank or trust company authorized to exercise trust powers or to engage in trust business in this state may
be appointed as a conservator if the court determines it is capable of providing suitable conservatorship for the protected person.

(g) The secretary of the department of health and human resources shall designate a division or agency under his or her jurisdiction which may be appointed to serve as a guardian, but such appointment may only be made if there is no other individual, nonprofit corporation, or other public agency that is equally or better qualified and willing to serve: Provided, That when any sheriff was initially appointed as guardian for the person, the department may not refuse to accept the guardianship appointment. If the department has been appointed as conservator, it may petition the circuit court to be released as conservator.

(h) The sheriff of the county in which a court has assumed jurisdiction may be appointed as a conservator but such appointment may only be made if there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve: Provided, That when the department of health and human resources was initially appointed as conservator for the person, the sheriff may not refuse to accept the conservatorship appointment. If the sheriff has been appointed as guardian, he or she may petition the circuit court to be released as guardian.

(i) Other than a bank or trust company authorized to exercise trust powers or to engage in trust business in this state, a person who has an interest as a creditor of a protected person shall not be eligible for appointment as either a guardian or conservator of the protected person.


(a) The court shall have the discretion to determine whether the posting of a bond by a guardian, once appointed, is necessary. No bond is required of any sheriff or representative of the department of health and human resources appointed as conservator or guardian.
(b) The court shall require the posting of a bond by a conservator upon appointment except where the conservator is excused from posting bond under the provisions of section eighteen, article four, chapter thirty-one-a of this code. In determining the amount or type of a conservator's bond, the court shall consider:

(1) The value of the personal estate and annual gross income and other receipts within the conservator's control;

(2) The extent to which the estate has been deposited under an arrangement requiring an order of court for its removal;

(3) Whether an order has been entered waiving the requirement that accountings be filed and presented or permitting accountings to be presented less frequently than annually;

(4) The extent to which the income and receipts are payable directly to a facility responsible for or which has assumed responsibility for the care or custody of the protected person;

(5) The extent to which the income and receipts are derived from state or federal programs that require periodic accountings;

(6) Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required; and

(7) Whether the conservator was appointed pursuant to a nomination which requested that bond be waived.

(c) Any required bond shall be with such surety and in such amount and form as the court may order, and the court may order additional bond or reduce the bond whenever the court finds that such modification is in the best interests of the protected person or of the estate. The court may allow a property bond in lieu of a cash bond. Proof of bonding must be submitted to the court within thirty days of appointment.

(d) In case of a breach of any condition placed on the bond of any guardian or conservator, an action may be
instituted by any interested person for the use and benefit of the protected person, for the estate of the protected person or for the beneficiaries of such estate.

(e) The following requirements and provisions apply to any bond which the court may require under this section:

(1) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the guardian/conservator and with each other;

(2) By executing an approved bond of a guardian or conservator, the surety consents to the jurisdiction of the court in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party respondent. Notice of any proceeding must be delivered to the surety or mailed by registered or certified mail to the address of the surety listed with the court in which the bond is filed. If the party initiating a proceeding possesses information regarding the address of a surety which would appear to be more current than the address listed with the court, notice shall also be mailed by registered or certified mail to the last address of the surety known to the party initiating the proceeding;

(3) On petition of a successor guardian or conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the preceding guardian or conservator; and

(4) The bond of the guardian or conservator is not void after any recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(f) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the guardian or conservator is barred by adjudication or limitation.

§44A-1-14. Temporary protective order.

The court may, at the request of a petitioner or upon its own motion, issue a temporary protective order prohibiting or limiting the expenditure, sale or other legal
transfer of any assets of the alleged protected person until
the appointment proceeding has been held.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-2. Who may file petition; contents.

§44A-2-2. Who may file petition; contents.

(a) A petition for the appointment of a guardian, a
conservator, or both, may be filed by the individual
alleged to be a protected person, by a person who is
responsible for or has assumed responsibility for the
individual's care or custody, by the facility providing care
to the individual, by the person that the individual has
nominated as guardian or conservator, or by any other
interested person, including, but not limited to, the
department of health and human resources.

(b) A petition for the appointment of a guardian, a
conservator, or both, shall state the petitioner's name, place
of residence, post office address, and relationship to the
alleged protected person, and shall, to the extent known as
of the date of filing, include the following:

(1) The alleged protected person's name, date of birth,
place of residence or location and post office address;

(2) The names and post office addresses of the alleged
protected person's nearest relatives, in the following order:

(i) The spouse and children, if any; or if none

(ii) The parents and brothers and sisters, if any; or if none

(iii) The nearest known relatives who would be entitled
to succeed to the person's estate by intestate succession as
set forth in article one, chapter forty-two of this code.

Once a relative or several relatives have been identified
in one of the aforementioned categories, relatives in a
lower category do not have to be listed in the petition;

(3) The name, place of residence or location and post
office address of the individual or facility that is
30 responsible for or has assumed responsibility for the
31 person's care or custody;

32 (4) The name, place of residence or location and post
33 office address of any person designated as a surrogate
34 decision-maker for the alleged protected person, or of any
35 representative or representatives designated under a
36 durable power of attorney, medical power of attorney or
37 living will, of which the alleged protected person is the
38 principal, and the petitioner shall attach a copy of any
39 such documents, if available;

40 (5) The name, post office address and phone number
41 of the attorney representing the petitioner in the petition
42 and appointment proceedings;

43 (6) Whether the person's incapacity will prevent
44 attendance at the hearing and the reasons therefor;

45 (7) The type of guardianship or conservatorship
46 requested and the reasons for the request;

47 (8) The proposed guardian or conservator's name, post
48 office address and, if the proposed guardian or
49 conservator is an individual, the individual's age,
50 occupation and relationship to the alleged protected
51 person;

52 (9) The name and post office address of a guardian
53 nominated by the alleged protected person if different
54 from the proposed guardian or conservator, and, if the
55 person nominated as a guardian or conservator is an
56 individual, the individual's age, occupation and
57 relationship to the alleged protected person;

58 (10) The name and post office address of any
59 guardian or conservator currently acting, whether in this
60 state or elsewhere;

61 (11) If the appointment of a limited guardian is
62 requested, the specific areas of protection and assistance to
63 be included in the order of appointment; and

64 (12) If the appointment of a limited conservator is
65 requested, the specific areas of management and assistance
66 to be included in the order of appointment.

(a) Upon the filing of the petition and evaluation report, the court shall promptly issue a notice fixing the date, hour and location for a hearing to take place within sixty days.

(b) The alleged protected person shall be personally served with the notice, a copy of the petition, and the evaluation report not less than fourteen days before the hearing. The person may not waive notice, and a failure to properly notify the person shall be jurisdictional.

(c) A copy of the notice, together with a copy of the petition, shall be mailed by certified mail, return receipt requested, by the petitioner, at least fourteen days before the hearing to all individuals seven years of age or older and to all entities whose names and post office addresses appear in the petition. A copy of certified mail return receipts shall be filed in the office of the circuit clerk on or before the date of hearing.

(d) The notice shall include a brief statement in large print of the purpose of the proceedings, and shall inform the alleged protected person of the right to appear at the hearing, the right to an attorney and the right to object to the proposed appointment. Additionally, the notice shall include the following statement in large print:

POSSIBLE CONSEQUENCES OF A COURT FINDING THAT YOU ARE INCAPACITATED

At the hearing you may lose many of your rights. A guardian may be appointed to make personal decisions for you. A conservator may be appointed to make decisions concerning your property and finances. The appointment may affect control of how you spend your money, how your property is managed and controlled, who makes your medical decisions, where you live, whether you are allowed to vote and other important rights.

(e) No person may be appointed a guardian or conservator without first receiving proper notice and having the opportunity for a hearing.
AN ACT to amend and reenact section two, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six and nine, article one, chapter twenty-seven of said code, all relating generally to the definition of the terms "hospital", "state hospital" and "mental health facilities" and definitions of certain terms applicable to regulation of hospitals; and clarifying that regional jail facilities and correctional centers are not hospitals or mental health facilities.

Be it enacted by the Legislature of West Virginia:

That section two, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections six and nine, article one, chapter twenty-seven of said code be amended and reenacted, all to read as follows:

Chapter
  27. Mentally Ill Persons.

   CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-f and twenty-nine-b of this chapter are incorporated in this section unless this section has different definitions.

4 As used in this article, unless otherwise indicated by the context:
(a) "Affected person" means:

1. The applicant;

2. An agency or organization representing consumers;

3. Any individual residing within the geographic area served or to be served by the applicant;

4. Any individual who regularly uses the health care facilities within that geographic area;

5. The health care facilities which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

6. The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

7. Third-party payors who reimburse health care facilities similar to those proposed for services;

8. Any agency that establishes rates for health care facilities similar to those proposed; or

9. Organizations representing health care providers.

(b) "Ambulatory health care facility" means a free-standing facility that provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. For purposes of this definition, a free-standing facility is not located on the campus of an existing health care facility. This definition does not include the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code:

Provided, That this exemption from review shall not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed:

Provided, however, That this exemption from review shall not be construed to include certain health services
otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(c) "Ambulatory surgical facility" means a free-standing facility that provides surgical treatment to patients not requiring hospitalization. For purposes of this definition, a free-standing facility is not physically attached to a health care facility. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: Provided, That this exemption from review shall not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That this exemption from review shall not be construed to include health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(d) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located; and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide the new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(e) "Bed capacity" means the number of beds licensed to a health care facility, or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility.

(f) "Campus" means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health care facility.

(g) "Capital expenditure" means:
(1) An expenditure made by or on behalf of a health care facility, which: (A) (i) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and (B) (i) Exceeds the expenditure minimum; or (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or (iii) is a substantial change to the services of such facility; or

(2) The donation of equipment or facilities to a health care facility, which if acquired directly by that facility would be subject to review; or

(3) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

(4) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the state agency to be a single capital expenditure subject to review. In making this determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility's long-range plan; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(h) “Expenditure minimum” means one million dollars and includes the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting and other services essential to the acquisition, improvement, expansion or replacement of any plant or equipment.

(i) “Health”, used as a term, includes physical and mental health.
(j) "Health care facility" means a publicly or privately owned facility, agency or entity that offers or provides health care services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part, and includes, but is not limited to, hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing hemodialysis units; intermediate care facilities; ambulatory health care facilities; ambulatory surgical facilities; home health agencies; hospice agencies; rehabilitation facilities; health maintenance organizations; and community mental health and mental retardation facilities. For purposes of this definition, "community mental health and mental retardation facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

(k) "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical, remedial or behavioral health care, treatment or confinement.

(l) "Health maintenance organization" means a public or private organization, organized under the laws of this state, which:

1. Is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act, as amended, Title 42 U.S.C. §300e-9(d); or
2. (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services and out-of-area coverage; and
3. (B) Is compensated except for copayments for the provision of the basic health care services listed in
paragraph (A) of this subdivision to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent or kind of health service actually provided; and

(C) Provides physicians' services: (i) Directly through physicians who are either employees or partners of the organization; or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(m) “Health services” means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(n) “Home health agency” means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services: Home health aide services, other therapeutic services, physical therapy, speech therapy, occupational therapy, nutritional services or medical social services to persons in their place of residence on a part-time or intermittent basis.

(o) “Hospice agency” means a private or public agency or organization licensed in West Virginia for the administration or provision of hospice care services to terminally ill persons in the persons' temporary or permanent residences by using an interdisciplinary team, including, at a minimum, persons qualified to perform nursing services; social work services; the general practice of medicine or osteopathy; and pastoral or spiritual counseling.

(p) “Hospital” means a facility licensed as such pursuant to the provisions of article five-b of this chapter, and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians and includes psychiatric and tuberculosis hospitals.
(q) "Intermediate care facility" means an institution that provides health-related services to individuals with mental or physical conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(r) "Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a new institutional health service, which contains the information required by the state agency in rules adopted pursuant to section eight of this article.

(s) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions, which is used for the provision of medical and other health services and costs in excess of seven hundred fifty thousand dollars. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven of Section 1861(s) of such act, Title 42 U.S.C. §1395x (10) and (11). In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(t) "Medically underserved population" means the population of an area designated by the state agency as having a shortage of personal health services. The state agency may consider unusual local conditions that are a barrier to accessibility or availability of health services. The designation shall be in rules adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state's medically underserved population designated by the federal
(u) "New institutional health service" means any service as described in section three of this article.

(v) "Offer", when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means to provide specified health services.

(w) "Person" means an individual, trust, estate, partnership, committee, corporation, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state:

(x) "Physician" means a doctor of medicine or osteopathy legally authorized to practice by the state.

(y) "Proposed new institutional health service" means any service as described in section three of this article.

(z) "Psychiatric hospital" means an institution that primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(aa) "Rehabilitation facility" means an inpatient facility operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services, which are provided under competent professional supervision.

(bb) "Review agency" means an agency of the state, designated by the governor as the agency for the review of state agency decisions.

(cc) "Skilled nursing facility" means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled or sick persons.
(dd) "State agency" means the health care cost review authority created, established and continued pursuant to article twenty-nine-b of this chapter.

(ee) "State health plan" means the document approved by the governor after preparation by the former statewide health coordinating council, or that document as approved by the governor after amendment by the former health care planning council or the state agency.

(ff) "Substantial change to the bed capacity" of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity, or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds as swing beds between acute care and long-term care categories: Provided, That a decrease in bed capacity in response to federal rural health initiatives shall be excluded from this definition.

(gg) "Substantial change to the health services" of a health care facility means: (1) The addition of a health service offered by or on behalf of the health care facility, which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered; or (2) the termination of a health service offered by or on behalf of the facility: Provided, That "substantial change to the health services" does not include the providing of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(hh) "To develop", when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, in relation to the offering of such a service.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.


1 “State hospital” means any hospital, center or institution, or part thereof, established, maintained and operated by the department of health, or by the department of health in conjunction with a political subdivision of the state, to provide inpatient or outpatient care and treatment for the mentally ill, mentally retarded or addicted. The terms “hospital” and “state hospital” exclude correctional and regional jail facilities.


1 “Mental health facility” means any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, mentally retarded or addicted which is operated, or licensed to operate, by the department of health and includes state hospitals as defined in section six of this article. The term also includes veterans administration hospitals, but does not include any regional jail, juvenile or adult correctional facility, or juvenile detention facility.
withdrawal of authorization; authorization for fee schedules; limitations on administration of medication and authority to promulgate emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 50. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-50-1. Short title.
§16-50-2. Definitions.
§16-50-3. Administration of medications in facilities.
§16-50-4. Exemption from licensure; statutory construction.
§16-50-5. Instruction and training.
§16-50-6. Availability of records; eligibility requirements of facility staff.
§16-50-7. Oversight of medication administration by unlicensed personnel.
§16-50-10. Limitations on medication administration.

§16-50-1. Short title.

This article may be cited as the “Medication Administration by Unlicensed Personnel Act.”

§16-50-2. Definitions.

As used in this article, unless a different meaning appears from the context, the following definitions apply:

(a) “Administration of medication” means:

(1) Assisting a person in the ingestion, application or inhalation of medications, including prescription drugs, or in the use of universal precautions or rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or authorized practitioner, or as written on the prescription label; and
(2) Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken: Provided, That for purposes of this article, "administration" does not include judgement, evaluation, assessments, injections of medication, monitoring of medication or self-administration of medications, including prescription drugs and self-injection of medication by the resident.

(b) "Authorizing agency" means the department's office of health facility licensure and certification.

(c) "Department" means the department of health and human resources.

(d) "Facility" means an ICF/MR, a personal care home, residential board and care home, behavioral health group home, private residence in which health care services are provided under the supervision of a registered nurse or an adult family care home that is licensed by or approved by the department.

(e) "Facility staff member" means an individual employed by a facility but does not include a health care professional acting within the scope of a professional license or certificate.

(f) "Health care professional" means a medical doctor or doctor of osteopathy, a podiatrist, registered nurse, practical nurse, registered nurse practitioner, physician's assistant, dentist, optometrist or respiratory care professional licensed under chapter thirty of this code.

(g) "ICF/MR" means an intermediate care facility for the mentally retarded which is certified by the department.

(h) "Medication" means a drug, as defined in section one hundred one, article one, chapter sixty-a of this code, which has been prescribed by a duly authorized health care professional to be ingested through the mouth, applied to the outer skin, eye or ear, or applied through nose drops, vaginal or rectal suppositories.
(i) "Registered professional nurse" means a person who holds a valid license pursuant to article seven, chapter thirty of this code.

(j) "Resident" means a resident of a facility.

(k) "Secretary" means the secretary of the department of health and human resources or his or her designee.

(l) "Self-administration of medication" means the act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by a physician, in opening and accessing pre-packaged drug containers, accurately identifying and taking the correct dosage of the drugs as ordered by the physician, at the correct time and under the correct circumstances.

(m) "Supervision of self-administration of medication" means a personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication, checking the self administered dosage against the label on the container and reassuring residents that they have obtained and are taking the dosage as prescribed.

§16-50-3. Administration of medications in facilities.

(a) The secretary is authorized to establish and implement a program for the administration of medications in facilities. The program shall be developed and conducted in cooperation with the appropriate agencies, advisory bodies and boards.

(b) Administration of medication pursuant to this article shall be performed only by:

(1) Registered professional nurses;

(2) Other licensed health care professionals; or

(3) Facility staff members who have been trained and retrained every two years and who are subject to the supervision of and approval by a registered professional nurse.
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13 (c) Subsequent to assessing the health status of an individual resident, a registered professional nurse, in collaboration with the resident's attending physician and the facility staff member, may recommend that the facility authorize a facility staff member to administer medication if the staff member:

19   (1) Has been trained pursuant to the requirements of this article;

21   (2) Is considered by the registered professional nurse to be competent;

23   (3) Consults with the registered professional nurse or attending physician on a regular basis; and

25   (4) Is monitored or supervised by the registered professional nurse.

27 (d) Nothing in this article may be construed to prohibit any facility staff member from administering medications or providing any other prudent emergency assistance to aid any person who is in acute physical distress or requires emergency assistance.

32 (e) Supervision of self-administration of medication by facility staff members who are not licensed health care professionals may be permitted in certain circumstances, when the substantial purpose of the setting is other than the provision of health care.

§16-50-4. Exemption from licensure; statutory construction.

1 (a) Any individual who is not otherwise authorized by law to administer medication may administer medication in a facility if he or she meets the requirements and provisions of this article. Any person who administers medication pursuant to the provisions of this article shall be exempt from the licensing requirements of chapter thirty of this code.

8 (b) All licensed health care professionals as defined in this article remain subject to the provisions of their respective licensing laws.
§16-50-5. Instruction and training.

(a) The office of health facility licensure and certification shall establish a council of nurses to represent the facilities and registered professional nurses affected by the provisions of this article. The council of nurses shall prepare a procedural manual and recommendations regarding a training course to the secretary of the department of health and human resources. The council shall meet every two years to review the training curricula, competency evaluation procedures and rules implemented by the secretary, and shall make recommendations as deemed necessary.

(b) The department shall develop and approve training curricula and competency evaluation procedures for facility staff members who administer medication pursuant to the provisions of this article. The department shall consider the recommendations of the council of nurses and shall consult with the West Virginia board of examiners for registered nurses in developing the training curricula and competency evaluation procedures.

(c) The program developed by the department shall require that any person who applies to act as a facility staff member authorized to administer medications pursuant to the provisions of this article shall:

(1) Hold a high school diploma or general education diploma;

(2) Be trained or certified in cardiopulmonary resuscitation and first aid;

(3) Participate in the initial training program developed by the department;
(4) Pass a competency evaluation developed by the department; and

(5) Subsequent to initial training and evaluation, participate in a retraining program every two years.

(d) Any facility may offer the training and competency evaluation program developed by the department to its facility staff members. The training and competency programs shall be provided by the facility through a registered professional nurse.

(e) A registered nurse who is authorized to train facility staff members to administer medications in facilities shall:

(1) Possess a current active West Virginia license in good standing to practice as a registered nurse;

(2) Have practiced as a registered professional nurse in a position or capacity requiring knowledge of medications for the immediate two years prior to being authorized to train facility staff members; and

(3) Be familiar with the nursing care needs of residents of facilities as described in this article.

§16-50-6. Availability of records; eligibility requirements of facility staff.

(a) Any facility which authorizes unlicensed staff members to administer medications pursuant to the provisions of this article shall make available to the authorizing agency a list of the individual facility staff members authorized to administer medications.

(b) A facility may permit a facility staff member to administer medications in a single specific agency only after compliance with all of the following:

(1) The staff member has successfully completed a training program and received a satisfactory competency evaluation as required by the provisions of this article;
(2) The facility determines there is no statement on
the state administered nurse aide registry indicating that
the staff member has been the subject of finding of abuse
or neglect of a long-term care facility resident or convict-
ed of the misappropriation of such a resident's property;

(3) The facility staff member has had a criminal back-
ground check or if applicable, a check of the state police
abuse registry, establishing that the individual has been
convicted of no crimes against persons or drug related
crimes;

(4) The medication to be administered is received and
maintained by the facility staff member in the original
container in which it was dispensed by a pharmacist or the
prescribing health care professional; and

(5) The facility staff member has complied with all
other applicable requirements of this article, the rules
adopted pursuant to this article and such other criteria,
including minimum competency requirements, as are
specified by the authorizing agency.

§16-50-7. Oversight of medication administration by unli-
censed personnel.

(a) Each facility in which medication is administered
by unlicensed personnel shall establish in policy an ad-
ministrative monitoring system. The specific requirements
of the administrative policy shall be established by the
department through rules proposed pursuant to section
eleven of this article.

(b) Monitoring of facility staff members authorized
pursuant to this article shall be performed by a registered
professional nurse employed or contracted by the facility.


The registered professional nurse who monitors or
supervises the facility staff members authorized to admin-
ister medication pursuant to this article may withdraw
authorization for a facility staff member if the nurse deter-
mines that the facility staff member is not performing
medication administration in accordance with the training and written instructions. The withdrawal of the authorization shall be documented and shall be relayed to the facility and the department in order to remove the facility staff member from the list of authorized individuals.


The department may set and collect fees necessary for the implementation of the provisions of this article pursuant to rules authorized by section eleven of this article.

§16-5O-10. Limitations on medication administration.

The following limitations apply to the administration of medication by facility staff members:

(a) Injections or any parenteral medications may not be administered;

(b) Irrigations or debriding agents used in the treatment of a skin condition or minor abrasions may not be administered;

(c) No verbal medication orders may be accepted, no new medication orders shall be transcribed and no drug dosages may be converted and calculated; and

(d) No medications ordered by the physician or a health care professional with legal prescriptive authority to be given “as needed” may be administered unless the order is written with specific parameters which preclude independent judgment.


The department shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code as may be necessary to implement the provisions of this article. Subsequently, the department may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.
CHAPTER 102

(Com. Sub. for S. B. 458—By Senators Tomblin, Mr. President, and Buckalew,
By Request of the Executive)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, five, eight, nine, eleven, seventeen, eighteen, nineteen, nineteen-a, twenty, twenty-three, twenty-five, twenty-six, twenty-seven and twenty-eight of said article; and to further amend said article by adding thereto a new section, designated section six, all relating to the West Virginia health care authority; including additional legislative findings and purpose; changing the agency's title; amending and adding certain definitions; amending conflicting employment prohibition for board members and former board members to comply with the governmental ethics act; deleting the review council; authorizing information gathering and coordination; creating a data advisory group and expanding the board's powers generally; changing annual reporting requirements; related programs and priorities; including utilization reporting with uniform system of accounts and financing; defining entities subject to annual reporting requirements; requiring review and reporting for alternatives to present rate-setting; legislative directives, studies, findings and recommendations; explaining discount and risk-bearing contract review and authorizing promulgation of rules; creating a quality assurance advisory group; modifying public disclosure, exemptions from state antitrust laws and penalties for violations to include health care providers; and extending termination date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-1. Legislative findings; purpose.
§16-29B-2. Short title.
§16-29B-3. Definitions.
§16-29B-5. West Virginia health care authority; composition of the board; qualifications; terms; oath; compensation and expenses of members; vacancies; appointment of chairman, and meetings of the board.
§16-29B-6. Information gathering and coordination; data advisory group.
§16-29B-8. Powers generally; budget expenses of the board.
§16-29B-9. Annual report.
§16-29B-11. Related programs.
§16-29B-17. Uniform system of financial reporting.
§16-29B-18. Annual reporting.
§16-29B-19. Rate-setting powers generally.
§16-29B-19a. Additional legislative directives; studies, findings and recommendations.
§16-29B-20. Rate determination.
§16-29B-23. Utilization review and quality assurance; quality assurance advisory group.
§16-29B-25. Public disclosure.
§16-29B-26. Exemptions from state antitrust laws.
§16-29B-27. Penalties for violations.
§16-29B-28. Termination date.

§16-29B-1. Legislative findings; purpose.

1 The Legislature hereby finds and declares that the health and welfare of the citizens of this state is being threatened by unreasonable increases in the cost of health care services, a fragmented system of health care, lack of integration and coordination of health care services, unequal access to primary and preventative care, lack of a comprehensive and coordinated health information system to gather and disseminate data to promote the availability of cost-effective, high-quality services and to permit effective health planning and analysis of utilization, clinical
outcomes and cost and risk factors. In order to alleviate these threats: (1) Information on health care costs must be gathered; (2) a system of cost control must be developed; and (3) an entity of state government must be given authority to ensure the containment of health care costs, to gather and disseminate health care information; to analyze and report on changes in the health care delivery system as a result of evolving market forces, including the implementation of managed care; and to assure that the state health plan, certificate of need program, rate regulation program and information systems serve to promote cost containment, access to care, quality of services and prevention. Therefore, the purpose of this article is to protect the health and well-being of the citizens of this state by guarding against unreasonable loss of economic resources as well as to ensure the continuation of appropriate access to cost-effective, high-quality health care services.

§16-29B-2. Short title.

This article may be cited as the "West Virginia Health Care Authority".

§16-29B-3. Definitions.

Definitions of words and terms defined in articles two-d and five-f of this chapter are incorporated in this section unless this section has different definitions.

As used in this article, unless a different meaning clearly appears from the context:

(a) "Charges" means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

(b) "Class of purchaser" means a group of potential hospital patients with common characteristics affecting the way in which their hospital care is financed. Examples of classes of purchasers are medicare beneficiaries, welfare recipients, subscribers of corporations established and operated pursuant to article twenty-four, chapter thirty-three of this code, members of health maintenance organizations and other groups as defined by the board;
(c) "Board" means the three-member board of directors of the West Virginia health care authority, an autonomous division within the state department of health and human resources;

(d) "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed, certified or authorized by law to provide professional health care service in this state to an individual during this individual's medical, remedial, or behavioral health care, treatment or confinement. For purposes of this article, "health care provider" shall not include the private office practice of one or more health care professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code.

(e) "Hospital" means a facility subject to licensure as such under the provisions of article five-b of this chapter, and any acute care facility operated by the state government which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, and does not include state mental health facilities or state long-term care facilities;

(f) "Person" means an individual, trust, estate, partnership, committee, corporation, association or other organization such as a joint stock company, a state or political subdivision or instrumentality thereof or any legal entity recognized by the state;

(g) "Purchaser" means a consumer of patient care services, a natural person who is directly or indirectly responsible for payment for such patient care services rendered by a health care provider, but does not include third-party payers;

(h) "Rates" means all value given or money payable to health care providers for health care services, including fees, charges and cost reimbursements;

(i) "Records" means accounts, books and other data related to health care costs at health care facilities subject
to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy;

(j) "Third-party payor" means any natural person, person, corporation or government entity responsible for payment for patient care services rendered by health care providers; and

(k) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care provider through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subsection family members shall mean brothers and sisters, whether by the whole or half blood, spouse, ancestors and lineal descendants.

§16-29B-5. West Virginia health care authority; composition of the board; qualifications; terms; oath; compensation and expenses of members; vacancies; appointment of chairman, and meetings of the board.

The “West Virginia Health Care Cost Review Authority”, heretofore created as an autonomous division of the department of health, is hereby continued as an autonomous division of the department of health and human resources and shall be known as the “West Virginia Health Care Authority”, hereinafter referred to as the board. Any references in this code to the West Virginia health care cost review authority shall mean the West Virginia health care authority.

(a) The board shall consist of three members, appointed by the governor, with the advice and consent of the Senate. The board members shall be citizens and residents of this state. No more than two of said board members may be members of the same political party. One board
member shall have a background in health care finance or economics, one board member shall have previous employment experience in human services, business administration or substantially related fields and one board member shall be a consumer of health services with a demonstrated interest in health care issues.

(b) Each board member shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the constitution of the state of West Virginia, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the board members to serve as chairman at the governor’s will and pleasure. The chairman shall be the chief administrative officer of the board. The governor may remove any board member only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of the provisions of this article. The governor shall appoint three board members, one for a term of two years, one for a term of four years and one for a term of six years, with all the terms beginning on the twelfth day of March, one thousand nine hundred eighty-three. All future appointments shall be for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired term only.

(c) No person while in the employ of, or holding any official relation to, any hospital or health care provider subject to the provisions of this article, or who has any pecuniary interest therein, may serve as a member of the board or as an employee thereof. Nor may any such board member be a candidate for or hold public office or be a member of any political committee while acting as such board member; nor may any board member or employee of said board receive anything of value, either directly or indirectly, from any third-party payor or health care provider. Should any of the board members become a candidate for any public office or for membership on any political committee, the governor shall remove said board member from the board and shall appoint a new board member to fill the vacancy created. No board member or former board member may accept employment with any hospital or health care provider subject to
the jurisdiction of the board in violation of the West Virginia governmental ethics act, chapter six-b of this code:

Provided, That such act shall not apply to employment accepted after termination of the board.

(d) The concurrent judgment of two of the board members when in session as the board shall be deemed the action of the board. A vacancy in the board shall not affect the right or duty of the remaining board members to function as a board.

(e) In order to adequately compensate the chairman of the board and other members of the board for additional duties newly imposed by law and not heretofore required by law, the annual salary of the chairman of the board shall be sixty-five thousand dollars and the annual salary of the other board members shall be sixty thousand dollars.

§16-29B-6. Information gathering and coordination; data advisory group.

(a) The board shall: Coordinate and oversee the health data collection of state agencies; lead state agencies' efforts to make the best use of emerging technology to effect the expedient and appropriate exchange of health care information and data, including patient records and reports; and coordinate data base development, analysis and reporting to facilitate cost management, utilization review and quality assurance efforts by state payor and regulatory agencies, insurers, consumers, providers and other interested parties. Agencies of the state collecting health data shall work together through the board to develop an integrated system for the efficient collection, responsible use and dissemination of such data and to facilitate and support the development of statewide health information systems that will allow for the electronic transmittal of all health information and claims processing activities of state agencies within the state and that will coordinate the development and use of electronic health information systems within state government. The board shall establish minimum requirements and issue reports relating to information systems of all state health programs, including simplifying and standardizing forms,
establishing information standards and reports for
capitated managed care programs to be managed by the
insurance commission, and shall develop a comprehensive
system to collect ambulatory health care data. The board
is authorized to gain access to any health-related data base
in state government for the purposes of fulfilling its du-
ties: Provided, That for any data base to which the board
gains access, the use and dissemination of information
from the data base shall be subject to the confidentiality
provisions applicable to such data base.

(b) To advise the board in its efforts under this section,
the board shall create a data advisory group and appoint
one of the board’s members as chair of the group. The
group shall be composed of representatives of consumers,
businesses, providers, payors and state agencies. The data
advisory group shall assist the board in developing priori-
ties and protocols for data collection and the development
and reform of health information systems provided under
this section.

(c) The board’s staff shall gather information on cost
containment efforts, including, but not limited to, the pro-
vision of alternative delivery systems, prospective payment
systems, alternative rate-making methods, and programs of
consumer education. The board shall pay particular atten-
tion to the economic, quality of care and health status
impact of such efforts on purchasers or classes of purchas-
ers, particularly the elderly and those on low or fixed
incomes.

(d) The board staff shall further gather information on
state-of-the-art advances in medical technology, the cost
effectiveness of such advances and their impact on ad-
vances in health care services and management practices,
and any other state-of-the-art concepts relating to health
care cost containment, health care improvement or other
issues the board finds relevant and directs staff to investi-
gate. The board staff shall prepare and keep a register of
such information and update it on an annual basis.

(e) The data advisory group members shall be reim-
bursed from the board funds for sums necessary to carry
out its responsibilities and for reasonable travel expenses to attend meetings.

§16-29B-8. Powers generally; budget expenses of the board.

(a) In addition to the powers granted to the board elsewhere in this article, the board may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines and rules in accordance with article three, chapter twenty-nine-a of this code: Provided, That subsequent amendments and modifications to any rule promulgated pursuant to this article and not exempt from the provisions of article three, chapter twenty-nine-a of this code may be implemented by emergency rule;

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of health care services subject to the provisions of this article and may subpoena witnesses, papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the state of West Virginia, except in accordance with subsection (c) of this section), and enter into agreements with respect thereto, including the undertaking of studies, plans, demonstrations or projects. Any such gifts or payments that may be received or any such agreements that may be entered into shall be used or formulated only so as to pursue legitimate, lawful purposes of the board, and shall in no respect inure to the private benefit of a board member, staff member, donor or contracting party;

(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article:
Provided, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building commissioner and subject to the approval of the Legislature;

(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board’s functions and duties; and

(6) Exercise, subject to limitations or restrictions here-in imposed, all other powers which are reasonably necessary or essential to effect the express objectives and purposes of this article.

(b) The board shall annually prepare a budget for the next fiscal year for submission to the governor and the Legislature which shall include all sums necessary to support the activities of the board and its staff.

(c) Each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the gross revenues of each hospital as reported under the authority of section eighteen of this article as the measure of the hospital’s obligation. The amount of such fee shall be determined by the board except that in no case shall the hospital’s obligation exceed one tenth of one percent of its gross revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the state treasury and kept as a special revolving fund designated “health care cost review fund”, with the moneys in such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.

(d) Each hospital’s assessment shall be treated as an allowable expense by the board.

(e) The board is empowered to withhold rate approvals, certificates of need and rural health system loans and grants if any such fees remain unpaid, unless exempted
under subsection (g), section four, article two-d of this chapter.

§16-29B-9. Annual report.

The board shall, within thirty days of the close of the fiscal year, or from time to time as requested by the Legislature, prepare and transmit to the governor and the legislative oversight commission on health and human resources accountability a report of its operations and activities for the preceding fiscal year. This report shall include summaries of all reports made by the hospitals subject to this article, together with facts, suggestions and policy recommendations the board considers necessary. The board shall, after rate review and determination in accordance with the provisions of this article, include such rate schedules in its annual report or other reports as may be requested by the Legislature.

§16-29B-11. Related programs.

In addition to carrying out its duties under this article, the board shall carry out its information disclosure functions set forth in article five-f of this chapter and its functions set forth in article two-d of this chapter, including health planning, issuing grants and loans to financially vulnerable health care entities located in underserved areas, and the review and approval or disapproval of capital expenditures for health care facilities or services. In making decisions in the certificate of need review process, the board shall be guided by the state health plan approved by the governor.

§16-29B-17. Uniform system of financial reporting.

(a) The board shall develop and specify a uniform system of reporting utilization, accounting and financial reporting, including cost allocation methods by which hospitals shall record their revenues, income, expenses, capital outlays, assets, liabilities and units of service. The development and specification process aforementioned shall be conducted in a manner determined by the board to be most efficient for that purpose notwithstanding the provisions of chapter twenty-nine-a of this code. Each
hospital shall adopt this uniform system for the purpose of reporting utilization, costs and revenues to the board effective for the fiscal year beginning on or after twelve months from the effective date of this article.

(b) The board may provide for modification in the accounting and reporting system in order to correctly reflect differences in the scope or type of services and financial structures of the various categories, sizes and types of hospitals and in a manner consistent with the purposes of this article.

(c) The board may provide technical assistance to those hospitals which request it and which evidence sufficient need for assistance in the establishment of a data collection system to the extent that funds are available to the board for this purpose.

(d) The board shall, after consultation with health care providers, purchasers, classes of purchasers and third-party payors, adopt a mandatory form for reporting to the board, at its request, medical diagnosis, treatment and other services rendered to each purchaser by health care providers subject to the provisions of this article.

(e) Following a public hearing, the board shall establish a program to minimize the administrative burden on hospitals by eliminating unnecessary duplication of financial and operational reports; and to the extent possible, notwithstanding any other law, coordinate reviews, reports and inspections performed by federal, state, local and private agencies.

§16-29B-18. Annual reporting.

(a) It shall be the duty of every health care provider which comes under the jurisdiction of this article and article five-f of this chapter to file with the board the reports required by such article five-f and the following financial statements or reports in a form and at intervals specified by the board, but at least annually:

(I) A balance sheet detailing the assets, liabilities and net worth of the hospital for its preceding fiscal year;
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(2) A statement of income and expenses for the preceding fiscal year;

(3) A statement of services rendered and services available; and

(4) Such other reports as the board may prescribe.

Where more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(b) It shall be the duty of every related organization to file with the board, within thirty days from the effective date of this section, the following financial statements or reports for each of its three prior fiscal years:

(1) A balance sheet detailing the assets, liabilities and net worth of the related organization;

(2) A statement of income and expenses;

(3) A statement of cash flows; and

(4) Such other information as the board may prescribe.

After the initial filing of the financial information required by this subsection, every related organization shall thereafter file annual financial reports with the board in a form specified by the board.

(c) The annual financial statements filed pursuant to this section shall be prepared in accordance with the system of accounting and reporting adopted under section seventeen of this article. The board may require attestations from responsible officials of the hospitals or related organizations that such reports have to the best of their knowledge been prepared truthfully and in accordance with the prescribed system of accounting and reporting.

(d) All reports filed under any provisions of this article, except personal medical information personally identifiable to a purchaser and any tax return, shall be open to public inspection and shall be available for examination at the offices of the board during regular business hours.
(e) Whenever a further investigation is deemed necessary or desirable to verify the accuracy of any information set forth in any statement, schedule or report filed by a health care provider or related organization under the provisions of this section, the board may require a full or partial audit of the records of the health care provider or related organization.

§16-29B-19. Rate-setting powers generally.

(a) The board shall have power: (1) To initiate reviews and investigations of hospital rates and establish and approve such rates; (2) to initiate reviews and investigations of hospital rates for specific services and the component factors which determine such rates; (3) to initiate reviews and investigations of hospital budgets and the specific components of such budgets; and (4) to approve or disapprove hospital rates and budgets taking into consideration the criteria set forth in section twenty of this article.

(b) In the interest of promoting the most efficient and effective use of hospital service, the board may adopt and approve alternative methods of rate determination. The board may also adopt methods of charges and payments of an experimental nature which are in the public interest and consistent with the purpose of this article.

(c) The board shall examine the need for an alternative to the current rate-setting method as a means of controlling hospital costs and submit the findings, recommendations and any proposed drafts of legislation, if necessary, in a report to the legislative oversight commission on health and human resources accountability and the governor on or before the first day of August, one thousand nine hundred ninety-eight.

§16-29B-19a. Additional legislative directives; studies, findings and recommendations.

(a) The Legislature finds and declares that changing market forces require periodic changes in the regulatory structure for health care providers and hereby directs the board to study the following:
(1) The certificate of need program, including the effect of any changes on managed care and access for uninsured and rural consumers; determining which services or capital expenditures should be exempt and why; and the status of similar programs in other states;

(2) The hospital rate-setting methodology, including the need for hospital rate-setting and the development of alternatives to the cost-based reimbursement methodology;

(3) Managed care markets, including the need for regulatory programs in managed care markets; and

(4) Barriers or obstacles, if any, presented by the certificate of need program or standards in the state health plan to health care providers' need to reduce excess capacity, restructure services and integrate the delivery of services.

(b) The board may form task forces to assist it in addressing these issues and it shall prepare a report on its findings and recommendations, which is to be filed with the governor, the president of the Senate and the speaker of the House of Delegates on or before the first day of October, one thousand nine hundred ninety-eight, identifying each problem and recommendation with specificity and the effect of each recommendation on cost, access and quality of care. The task forces, if formed, shall be composed of representatives of consumers, businesses, providers, payors and state agencies.

(c) The board shall report quarterly to the legislative oversight commission on health and human resources accountability regarding the appointment, direction and progress of the studies.

§16-29B-20. Rate determination.

(a) Upon commencement of review activities, no rates may be approved by the board nor payment be made for services provided by hospitals under the jurisdiction of the board by any purchaser or third-party payor to or on behalf of any purchaser or class of purchasers unless:
(1) The costs of the hospital's services are reasonably related to the services provided and the rates are reasonably related to the costs;

(2) The rates are equitably established among all purchasers or classes of purchasers within a hospital without discrimination unless federal or state statutes or rules and regulations conflict with this requirement. On and after the effective date of this section, a summary of every proposed contract, or amendment to any existing contract, for the payment of patient care services between a purchaser or third-party payor and a hospital shall be filed by the hospital for review by the board, which reviews shall occur no less frequently than each calendar quarter: (A) If the contract establishes a discount to the purchaser or third-party payor, it shall not take effect until approved by the board. For purposes of this article, a risk-bearing contract is reviewable as a discount contract and the amount computed as the discount percentage by the provider on the board shall be the approved amount of the discount. The difference, if any, between the actual discount percentage and amount and the approved amount, shall not be considered for rate-setting purposes; (B) the board may promulgate rules, in accordance with the provisions of section eight of this article, that establish the criteria for review of discount contracts, which shall include that: (i) No discount shall be approved by the board which constitutes an amount below the cost to the hospital; (ii) the cost of any discount contained in the contract will not be shifted to any other purchaser or third-party payor; (iii) the discount will not result in a decrease in the hospital's average number of medicare, medicaid or uncompensated care patients served during the previous three fiscal years; and (iv) the discount is based upon criteria which constitutes a quantifiable economic benefit to the hospital. The board may define by rule what constitutes "cost" in subparagraphs (i) and (ii) of this paragraph; "purchaser" in subparagraph (iii) of this paragraph; and "economic benefit" in subparagraph (iv) of this paragraph. Any rules promulgated pursuant to this subsection may be filed as emergency rules. All information submitted to the board shall be certified by the hospital's chief
executive officer and chief financial officer as to its accuracy and truthfulness;

(3) The rates of payment for medicaid are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated hospitals subject to the provisions of this article. The rates shall take into account the situation of hospitals which serve disproportionate numbers of low income patients and assure that individuals eligible for medicaid have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality;

(4) The rates are equitable in comparison to prevailing rates for similar services in similar hospitals as determined by the board; and

(5) In no event shall a hospital’s receipt of emergency disaster funds from the federal government be included in the hospital’s gross revenues for either rate-setting or assessment purposes.

(b) In the interest of promoting efficient and appropriate utilization of hospital services, the board shall review and make findings on the appropriateness of projected gross revenues for a hospital as the revenues relate to charges for services and anticipated incidence of service.

(c) When applying the criteria set forth in subsections (a) and (b) of this section, the board shall consider all relevant factors, including, but not limited to, the following: The economic factors in the hospital’s area; the hospital’s efforts to share services; the hospital’s efforts to employ less costly alternatives for delivering substantially similar services or producing substantially similar or better results in terms of the health status of those served; the efficiency of the hospital as to cost and delivery of health care; the quality of care; occupancy level; a fair return on invested capital, not otherwise compensated for; whether the hospital is operated for profit or not for profit; costs of education; and income from any investments and assets not associated with patient care, including, but not limited to, parking garages, residences, office buildings, and in-
come from related organizations and restricted funds whether or not associated with patient care.

(d) Wages, salaries and benefits paid to or on behalf of nonsupervisory employees of hospitals subject to this article are not subject to review unless the board first determines that the wages, salaries and benefits may be unreasonably or unc customarily high or low. This exemption does not apply to accounting and reporting requirements contained in this article, nor to any that may be established by the board. The term "nonsupervisory personnel", for the purposes of this section, means, but is not limited to, employees of hospitals subject to the provisions of this article who are paid on an hourly basis.

(e) Reimbursement of capital and operating costs for new services and capital projects subject to article two-d of this chapter shall not be allowed by the board if the costs were incurred subsequent to the eighth day of July, one thousand nine hundred seventy-seven, unless they were exempt from review or approved: (i) By the state health planning and development agency prior to the first day of July, one thousand nine hundred eighty-four; or (ii) thereafter, pursuant to the provisions of article two-d of this chapter.

(f) The board shall consult with relevant licensing agencies and may require them to provide written findings with regard to their statutory functions and information obtained by them in the pursuit of those functions. Any licensing agency empowered to suggest or mandate changes in buildings or operations of hospitals shall give notice to the board together with any findings.

(g) A hospital shall file a complete rate application with the board on an annual basis a minimum of seventy-five days prior to the beginning of its fiscal year. If the application is filed and determined to be complete by the board sixty days prior to the beginning of the hospital's fiscal year, and no hearing is requested on the application, the board shall set the rates in advance of the year during which they apply and shall not adjust the rates for costs actually incurred: Provided, That if the board does not establish rates by the beginning of the hospital's fiscal
year, and a hearing has not been requested, the board shall establish rates retroactively to the beginning of the hospital's fiscal year: Provided, however, That if the board does not establish rates by the beginning of the hospital's fiscal year, and a hearing has been requested, the board may establish rates retroactively to the beginning of the fiscal year. This subsection shall not apply to the procedure set forth in subsection (c), section twenty-one of this article.

(h) No hospital may charge for services at rates in excess of those established in accordance with the requirements of and procedures set forth in this article.

(i) Notwithstanding any other provision of this article, the board shall approve all requests for rate increases by hospitals which are licensed for one hundred beds or less and which are not located in a standard metropolitan statistical area where the rate of increase is equal to or less than the lowest rate of inflation as established by a recognized inflation index for either the national or regional hospital industry. The board may, by rule, impose reporting requirements to ensure that a hospital does not exceed the rate of increases permitted in this section.

(j) Notwithstanding any other provision of this article, the board shall develop an expedited review process applicable to all hospitals licensed for more than one hundred beds or that are located in a standard metropolitan statistical area for rate increase requests which may be based upon a recognized inflation index for the national or regional hospital industry.

(k) The board may require hospitals to file such additional information as it deems necessary to evaluate a market-driven system of rate setting.

§16-29B-23. Utilization review and quality assurance; quality assurance advisory group.

(a) In order to avoid unnecessary or inappropriate utilization of health care services and to ensure high quality health care, the board shall establish a utilization review and quality assurance program. The board shall coordi-
nate this program with utilization review and peer review programs presently established in state agencies, hospital services and health service corporations, hospitals or other organizations.

(b) With the assistance of the above-mentioned entities, and after public hearings, the board shall develop a plan for the review, on a sampling basis, of the necessity of admissions, length of stay and quality of care rendered at said hospitals.

(c) The board shall monitor identified problem areas and impose such sanctions and provide such incentives as necessary to ensure high quality and appropriate services and utilization in hospitals under the jurisdiction of this article.

(d) To assist the board in its efforts under this section, the board shall create a quality assurance advisory group and appoint one of the board’s members as chairman of the group. The group shall be composed of representatives of consumers, providers, payors and regulating agencies.

§16-29B-25. Public disclosure.

From time to time, the board shall engage in or carry out analyses and studies relating to health care costs, the financial status of any health care provider subject to the provisions of this article or any other appropriate related matters, and it shall be empowered to publish and disseminate any information which would be useful to members of the general public in making informed choices about health care providers.

§16-29B-26. Exemptions from state antitrust laws.

Actions of the board shall be exempt from antitrust action as provided in section five, article eighteen, chapter forty-seven of this code. Any actions of health care providers under the board’s jurisdiction, when made in compliance with orders, directives, rules or regulations issued or promulgated by the board, shall likewise be exempt. Health care providers shall be subject to the antitrust guidelines of the federal trade commission and the department of justice.
§16-29B-27. Penalties for violations.

1 In addition to civil remedies set forth, any person or health care provider violating any provision of this article or any valid order or rule lawfully established hereunder shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars. Each day of a continuing violation after conviction shall be considered a separate offense. No fines assessed may be considered part of the hospital's costs in the regulation of its rates.

*§16-29B-28. Termination date.

Pursuant to the provisions of section four, article ten, chapter four of this code, the health care authority shall continue to exist until the first day of July, one thousand nine hundred ninety-nine, to allow for a completion of an audit by the joint committee on government operations.

CHAPTER 103

(S. B. 318—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Oliverio, Ross, Snyder, White, Buckalew, Deem and Scott)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six and seven, article thirty-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the health care surrogate act; updating definitions and terms; providing for the determination of incapacity by the attending physician or the advanced practice nurse in consultation with the attending physician; providing for the selection of a health care surrogate by the attending physician or the advanced practice nurse in consultation with the

*Clerk's Note: This section was also amended by S.B. 81 (Chapter 182), which passed prior to this act.
attending physician; authorizing the surrogate to consent to
organ and tissue donation; requiring the surrogate to adhere
to written directives regarding autopsy or anatomical gift
donations; authorizing the surrogate to request and release
medical records; allowing formerly incapacitated persons to
discharge a surrogate; providing methods for challenging the
selection of a surrogate or the decision of a surrogate; as­
signing court costs regarding surrogate disputes; and requir­
ing notice of the implementation of the surrogate's decisions
unless enjoined by court order.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30B. - HEALTH CARE SURROGATE ACT.

§16-30B-2. Legislative findings and purpose.

§16-30B-3. Definitions.

§16-30B-5. Private decision-making process; authority of surrogate.

§16-30B-6. Determination of incapacity.

§16-30B-7. Selection of a surrogate.

§16-30B-2. Legislative findings and purpose.

(a) The Legislature hereby finds that:

(1) All adults have a right to make decisions relating
to their own medical treatment, including the right to con­
sent to or refuse life-prolonging intervention; and

(2) The right to make medical treatment decisions
extends to a person who is incapacitated at the moment of
decision. An incapacitated person who has not made his
or her wishes known in advance through an applicable
living will, medical power of attorney or through some
other means has the right to have health care decisions
made on his or her behalf by a person who will act in
accordance with the incapacitated person's expressed val­
ues and wishes, or, if those values and wishes are unknown,
in the incapacitated person's best interests.
(b) The purpose of this article is to set forth a process for private health care decisionmaking for incapacitated adults which reduces the need for judicial involvement and defines the circumstances under which immunity shall be available for health care providers and surrogate decisionmakers who make health care decisions. The intent of the Legislature is to establish an effective method for private health care decisionmaking for incapacitated adults, and to provide that the courts should not be the usual venue for making decisions. It is not the intent of the Legislature to legalize, condone, authorize, or approve mercy killing or assisted suicide.

§16-30B-3. Definitions.

For the purposes of this article:

(a) “Adult” means a person who is eighteen years of age or older, an emancipated minor who has been established as such pursuant to the provisions of section twenty-seven, article seven, chapter forty-nine of this code, or a mature minor.

(b) “Attending physician” means the physician selected by or assigned to the person who has primary responsibility for treatment and care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this article.

(c) “Advanced practice nurse” means a nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process pursuant to the provisions of title 19, legislative rules for West Virginia board of examiners for registered professional nurses, series 7.

(d) “Capable adult” means a person over the age of eighteen years who is physically and mentally capable of making health care decisions and who has not been deemed a protected person pursuant to the provisions of chapter forty-four-a of this code.

(e) “Close friend” means any person eighteen years of age or older who has exhibited significant care and
concern for an incapacitated person who is willing and able to become involved in the incapacitated person's health care, and has maintained regular contact with the incapacitated person as to be familiar with his or her activities, health, and religious and moral beliefs.

(f) "Death" means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible cessation of all functions of the entire brain, including the brain stem.

(g) "Guardian" means a person appointed by a court pursuant to the provisions of chapter forty-four-a of this code who is responsible for the personal affairs of a protected person, and includes a limited guardian or a temporary guardian.

(h) "Health care decision" means a decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care and organ or tissue donation.

(i) "Health care facility" means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians' office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice and other facility established to administer health care in its ordinary course of business or practice.

(j) "Health care provider" means any physician, dentist, nurse, physician's assistant, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(k) "Incapacity" means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an in-
formed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner.

(l) "Life-prolonging intervention" means any medical procedure or intervention which, when applied to a person, would serve solely to artificially prolong the dying process or to maintain the person in a persistent vegetative state. The term "life-prolonging intervention" does not include the administration of medication or the performance of any other medical procedure deemed necessary to provide comfort or to alleviate pain.

(m) "Limited guardian" means a person appointed by the court pursuant to the provisions of chapter forty-four-a of this code who has only those responsibilities for the personal affairs of a protected person as specified in the order of appointment.

(n) "Medical information" or "medical records" means and includes without restriction those medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment, records of medication ordered and given, notes, entries, X rays and other written or graphic data prepared, kept, made or maintained by any health care facility or health care provider regarding a person’s confinement, services rendered, admissions, emergency room care or inpatient or outpatient care. These records may not include ordinary business records regarding patient accounts or the administration of the facility or institution.

(o) "Parent" means a person who is another person’s natural or adoptive mother or father and whose parental rights have not been terminated by a court of law.

(p) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency or any other legal entity.

(q) "Protected person" means an adult, eighteen years of age or older, who, pursuant to the provisions of chapter forty-four-a of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to
(r) "Qualified physician" means a physician licensed to practice medicine who has personally examined the person.

(s) "Surrogate decisionmaker" or "surrogate" means an adult individual who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions and is identified by the primary care provider in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

(t) "Temporary guardian" means a person appointed by a court for a limited or temporary period pursuant to the provisions of section fourteen, article two, chapter forty-four-a of this code who has only those powers and duties specifically set forth in the order of appointment.

§16-30B-5. Private decision-making process; authority of surrogate.

(a) Any capable adult may make his or her own health care decisions without regard to guidelines contained in this article.

(b) Health care providers and health care facilities may rely upon health care decisions on behalf of an incapacitated person without resort to the courts or legal process, if the decisions are made in accordance with the provisions of this article.

(c) The surrogate shall have the authority to make any and all health care decisions on behalf of an incapacitated person and to release or authorize the release of an incapacitated person's medical records to third parties.
(d) The surrogate's authority shall commence upon a determination, made pursuant to section six of this article, of the incapacity of the adult. In the event the person no longer is incapacitated or the surrogate is unwilling or unable to serve, the surrogate's authority shall cease. However, the authority of the surrogate may recommence if the person subsequently becomes incapacitated as determined pursuant to section six of this article unless during the intervening period of capacity the person executes an advance directive which makes a surrogate unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A surrogate's authority terminates upon the death of the incapacitated person except with respect to decisions regarding autopsy and organ and tissue donation.

(e) The surrogate shall seek medical information necessary to make health care decisions for an incapacitated person. For the sole purpose of making health care decisions for the incapacitated person, the surrogate shall have the same right of access to the incapacitated person's medical information and the same right to discuss that information with the incapacitated person's health care providers that the incapacitated person would have if he or she was not incapacitated.

(f) If an incapacitated person previously expressed his or her wishes regarding autopsy or the desire to make an anatomical gift by a written directive such as a living will, medical power of attorney, donor card, drivers' license or other means, the surrogate shall follow the person's expressed wishes regarding autopsy and organ and tissue donation. In the absence of any written directives, any decision regarding anatomical gifts shall be made pursuant to the provisions of article nineteen of this chapter.

§16-30B-6. Determination of incapacity.

(a) For the purposes of this article, a person may not be presumed to be incapacitated merely by reason of advanced age or disability. With respect to a person who has a diagnosis of mental illness or mental retardation, such a diagnosis is not a presumption that the person is incapacitated. A determination that a person is incapacitated—
(b) Before implementation of a decision by a surrogate decisionmaker to withhold or withdraw life-prolonging intervention, at least one qualified physician or a licensed psychologist who has personally examined the person, in addition to the attending physician, must concur in the determination of incapacity of an adult.

(c) The determination of incapacity shall be recorded contemporaneously in the person's medical record by the attending physician, and, if required, a second health care provider, either a qualified physician or licensed psychologist. The recording shall state the basis for the determination of incapacity, including the cause, nature and expected duration of the person's incapacity, if these are known.

(d) If the person is conscious, the attending physician shall inform the person that he or she has been determined to be incapacitated and that a surrogate decisionmaker may be making decisions regarding life-prolonging intervention for the person.

§16-30B-7. Selection of a surrogate.

(a) When a person is or becomes incapacitated, the attending physician or the advanced practice nurse in consultation with the attending physician shall select, in writing, a surrogate with the assistance of other health care providers as necessary. The attending physician shall reasonably attempt to determine whether the incapacitated person has appointed a representative under a medical power of attorney in accordance with the provisions of article thirty-a of this chapter, or if the incapacitated person has a guardian in accordance with the provisions of article one, chapter forty-four-a of this code. If no representative or guardian is authorized or capable and willing to serve, the attending physician or advance practice nurse must make a reasonable inquiry as to the availability of a surrogate from the following persons:

(1) The person's spouse;
(2) The person's adult children;
(3) The person's parents;
(4) The person's adult siblings;
(5) The person's adult grandchildren;
(6) The person's close friends;
(7) Any other person or entity, including, but not limited to, public agencies, public guardians, public officials, public and private corporations and other persons or entities which the department of health and human resources may from time to time designate in rules promulgated pursuant to chapter twenty-nine-a of this code.

(b) After inquiring about the existence and availability of a medical power of attorney representative or a guardian as required by subsection (a) of this section, and determining that such persons either do not exist or are unavailable or unwilling to serve as a surrogate, the primary care provider shall select and rely upon a surrogate in the order of priority set forth in subsection (a) of this section, subject to the following conditions:

(1) Where there are multiple possible surrogate decisionmakers at the same priority level, the attending physician or the advanced practice nurse in consultation with the attending physician shall, after reasonable inquiry, choose as the surrogate the person who reasonably appears to be best qualified. The following criteria shall be considered in the determination of the person or entity best qualified to serve as the surrogate:

(A) Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the person or in accordance with the person's best interests;

(B) The proposed surrogate's regular contact with the person prior to and during the incapacitating illness;

(C) The proposed surrogate's demonstrated care and concern;

(D) The proposed surrogate's availability to visit the incapacitated person during his or her illness; and
(E) The proposed surrogate’s availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process;

(2) The attending physician or the advanced practice nurse in consultation with the attending physician may select a proposed surrogate who is ranked lower in priority if, in his or her judgment, that individual is best qualified, as described in this section, to serve as the incapacitated person’s surrogate. The attending physician or the advanced practice nurse shall document in the incapacitated person’s medical records his or her reasons for selecting a surrogate in exception to the priority order provided in subsection (a) of this section.

(c) The surrogate is authorized to make health care decisions on behalf of the incapacitated person without a court order or judicial involvement.

(d) A health care provider or health care facility may rely upon the decisions of the selected surrogate if the provider believes, after reasonable inquiry, that:

(1) A guardian or representative under a valid, applicable medical power of attorney is unavailable, incapable or is unwilling to serve;

(2) There is no other applicable advance directive;

(3) There is no reason to believe that such health care decisions are contrary to the incapacitated person’s religious beliefs; and

(4) The attending physician or advanced practice nurse has not received actual notice of opposition to any health care decisions made pursuant to the provisions of this section.

(e) If a person who is ranked as a possible surrogate pursuant to subsection (a) of this section wishes to challenge the selection of a surrogate or the health care decision of the selected surrogate, he or she may seek injunctive relief or may file a petition for review of the selection of, or decision of, the selected surrogate with the circuit court of the county in which the incapacitated person resides or the supreme court of appeals. There shall be a
93 rebuttable presumption that the selection of the surrogate was valid, and the person who is challenging the selection shall have the burden of proving the invalidity of that selection. The challenging party shall be responsible for all court costs and other costs related to the proceeding, except attorneys' fees, unless the court finds that the attending physician or advanced practice nurse acted in bad faith, in which case the person so acting shall be responsible for all costs. Each party shall be responsible for his or her own attorneys' fees.

(f) If the attending physician or advanced practice nurse is advised that a person who is ranked as a possible surrogate pursuant to the provisions of subsection (a) of this section has an objection to a health care decision to withhold or withdraw a life-prolonging intervention which has been made by the selected surrogate, the attending physician or advanced practice nurse shall document the objection in the medical records of the patient. Once notice of an objection or challenge is documented, the attending physician or advanced practice nurse shall notify the challenging party that the decision shall be implemented in seventy-two hours unless the attending physician receives a court order prohibiting or enjoining the implementation of the decision as provided in subsection (e) of this section. In the event that the incapacitated person has been determined to have undergone brain death and the selected surrogate has authorized organ or tissue donation, the decision shall be implemented in twenty-four hours unless the attending physician receives a court order prohibiting or enjoining the implementation of the decision as provided in subsection (e) of this section.

(g) If the surrogate becomes unavailable for any reason, the surrogate may be replaced by applying the provisions of this section.

(h) If a person who ranks higher in priority relative to a selected surrogate becomes available and willing to be the surrogate, the person with higher priority may be substituted for the identified surrogate unless the attending physician determines that the lower ranked person is best qualified to serve as the surrogate.
CHAPTER 104

(Com. Sub. for H. B. 2127—By Delegate Staton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suspending general notice requirements in cases involving immediate involuntary commitments; enabling the commitment of alcoholics and drug users to detoxification centers prior to their commitment to a facility for the treatment of tuberculosis; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That sections five and seven, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. TUBERCULOSIS CONTROL.

§26-5A-5. Procedure when patient is health menace to others.

§26-5A-5. Procedure when patient is health menace to others.

(a) If any practicing physician, public health officer, or chief medical officer having under observation or care any person who is suffering from tuberculosis in a communicable stage is of the opinion that the environmental conditions of that person are not suitable for proper isolation or control by any type of local quarantine as prescribed by the state division of health of the department of health and human resources or an authorized designee thereof, and that the person is unable or unwilling to conduct himself or herself and to live in such a manner as not to expose members of his or her family or household or other persons with whom he or she may be associated to danger of infection, he or she shall report the facts to the division of health or its designee...
which shall forthwith investigate or have investigated the circumstances alleged.

(b) If the division of health or its designee finds that any person's physical condition is a health menace to others, the division of health or its designee shall petition the circuit court of the county in which the person resides, or the judge thereof in vacation, alleging that the person is afflicted with communicable tuberculosis and that the person's physical condition is a health menace to others, and requesting an order of the court committing the person to one of the state institutions for the treatment of tuberculosis: Provided, That if the division of health or its designee determines that an emergency situation exists which warrants the immediate detention and commitment of a person suffering from tuberculosis, an application for immediate involuntary commitment may be filed pursuant to section seven of this article.

(c) Upon receiving the petition, the court shall fix a date for hearing thereof and notice of the petition and the time and place for hearing shall be served personally, at least seven days before the hearing, upon the person who is afflicted with tuberculosis and alleged to be dangerous to the health of others.

(d) If, upon hearing, it appears that the complaint of the division of health or its designee is well founded, that the person is afflicted with communicable tuberculosis, and that the person is a source of danger to others, the court shall commit the individual to an institution maintained for the care and treatment of persons afflicted with tuberculosis. The person shall be deemed to be committed until discharged in the manner authorized in this section: Provided, That the hearing and notice provisions of this subsection shall not apply to immediate involuntary commitments as provided in section seven of this article.

(e) The chief medical officer of the institution to which any person afflicted with tuberculosis has been committed may discharge that person when, in his or her judgment, the person may be discharged without danger to the health or life of others. The chief medical officer shall report immediately to the division of health or its
designee each discharge of a person afflicted with tuberculosis.

(f) Every person committed under the provisions of this section shall observe all the rules of the institution. Any patient so committed may, by direction of the chief medical officer of the institution, be placed apart from the others and restrained from leaving the institution so long as he or she continues to be afflicted with tuberculosis and remains a health menace.

(g) Nothing in this section may be construed to prohibit any person committed to any institution under the provisions of this section from applying to the supreme court of appeals for a review of the evidence on which the commitment was made. Nothing in this section may be construed or operate to empower or authorize the division of health, the department of health and human resources or an authorized designee thereof or the chief medical officer of the institution, or their representatives, to restrict in any manner the individual’s right to select any method of tuberculosis treatment offered by the institution.


(a) An application for immediate involuntary commitment of a person suffering from tuberculosis may be filed by the commissioner of the bureau of public health, or his or her designee, in the circuit court of the county in which the person resides. The application shall be filed under oath, and shall present information and facts which establish that the person suffering from tuberculosis in a communicable stage has been uncooperative or irresponsible with regard to quarantine or safety measures, presents a health menace to others, and is in need of immediate hospitalization until his or her communicable tuberculosis becomes noninfectious.

(b) Upon receipt of the application, the circuit court may enter an order for the individual named in the action to be detained and taken into custody for the purpose of holding a probable cause hearing. The order shall specify that the hearing be held forthwith and shall appoint counsel for the individual: Provided, That in the event
immediate detention is believed to be necessary for the
protection of the individual or others at a time when no
circuit court judge is available for immediate presentation
of the application, a magistrate may accept the application
and, upon a finding that immediate detention is necessary,
may order the individual to be temporarily committed
until the earliest reasonable time that the application can
be presented to the circuit court, which period of time
shall not exceed twenty-four hours except as provided for
in subsection (c) of this section.

(c) A probable cause hearing shall be held before a
magistrate or circuit judge of the county of which the
individual is a resident or where he or she was found. If
requested by the individual or his or her counsel, the
hearing may be postponed for a period not to exceed
forty-eight hours.

(d) The individual shall be present at the probable
cause hearing and shall have the right to present evidence,
confront all witnesses and other evidence against him or
her, and to examine testimony offered, including
testimony by the bureau of public health or its designees.

(e) At the conclusion of the hearing the magistrate or
circuit court judge shall enter an order stating whether
there is probable cause to believe that the individual is
likely to cause serious harm to himself, herself or others as
a result of his or her disease and actions. If probable
cause is found, the individual shall be immediately
committed to an institution maintained for the care and
treatment of persons afflicted with tuberculosis. The
person shall remain so committed until discharged in the
manner authorized pursuant to section five of this article:
Provided, That in the case of an alcoholic or drug user,
the judge or magistrate shall first order the individual
committed to a detoxification center for detoxification
prior to commitment to an institution maintained for the
care and treatment of persons afflicted with tuberculosis.

(f) The bureau of public health shall promulgate rules
pursuant to the provisions of article three, chapter twenty-
nine-a of this code necessary to implement the provisions
of this article, including, but not limited to, rules relating
to the transport and temporary involuntary commitment
of patients.
AN ACT to amend and reenact sections twelve-b, twelve-c and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to simulcasting of horse and dog races and pari-mutuel wagering on simulcast races; providing for broadcast of televised horse and dog races between racetracks within the state of West Virginia; providing for live racing dates; providing for a negotiated signal transmission fee as consideration for a host racing association’s televised racing services; providing for payments into racetrack employees’ pension funds, the thoroughbred development fund and purse funds; disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

(a) For the purposes of this section:

(1) “Televised racing day” means a calendar day, assigned by the commission, at a licensed racetrack on
which pari-mutuel betting is conducted on horse or dog races run at other racetracks in this state or at racetracks outside of this state which are broadcast by television at a licensed racetrack and which day or days have had the prior written approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article; and

(2) “Host racing association” means any person who, pursuant to a license or other permission granted by the host governmental entity, conducts the horse or dog race upon which wagers are placed.

(b) A licensee conducting not less than two hundred twenty live racing dates for each horse or dog race meeting may, with the prior approval of the state racing commission, contract with any legal wagering entity in this state or in any other governmental jurisdiction to receive telecasts and accept wagers on races conducted by the legal wagering entity: Provided, That at those thoroughbred racetracks the licensee, in applying for racing dates, shall apply for not less than two hundred ten live racing dates for each horse race meeting: Provided, however, That at those thoroughbred racetracks that have participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, the licensee may apply for not less than one hundred fifty-nine live racing dates during the calendar year of one thousand nine hundred ninety-seven. If, thereafter, for reasons beyond the licensee’s control, related to adverse weather conditions, unforeseen casualty occurrences or a shortage of thoroughbred horses eligible to compete for purses, the licensee concludes that this number of racing days cannot be attained, the licensee may file a request with the racing commission to reduce the authorized live racing days. Upon receipt of the request the racing commission shall within seventy-two hours of the receipt of the request notify the licensee and the representative of a majority of the owners and trainers at the requesting track and the representative of the majority of the mutuel clerks at the requesting track that such request has been received and that if no objection to the request is received within ten days of the notification the request will be
approved: Provided further, That the commission shall give consideration to whether there existed available unscheduled potential live racing dates following the adverse weather or casualty and prior to the end of the race meeting which could be used as new live racing dates in order to maintain the full live racing schedule previously approved by the racing commission. If an objection is received by the commission within the time limits, the commission shall, within thirty days of receipt of such objection, set a hearing on the question of reducing racing days, which hearing shall be conducted at a convenient place in the county in which the requesting racetrack is located. The commission shall hear from all parties concerned and, based upon testimony and documentary evidence presented at the hearing, shall determine the required number of live racing days: And provided further, That the commission shall not reduce the number of live racing days below one hundred eighty-five days for a horse race meeting unless the licensee requesting such reduction has: (i) Filed with the commission a current financial statement, which shall be subject to independent audit; and (ii) met the burden of proving that just cause exists for such requested reduction in live racing days. The telecasts may be received and wagers accepted at any location authorized by the provisions of section twelve-a of this article. The contract must receive the approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article at the receiving thoroughbred racetrack.

(c) The commission may allow the licensee to commingle its wagering pools with the wagering pools of the host racing association. If the pools are commingled, the wagering at the licensee’s racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and be electronically linked with the equipment at the sending racetrack. Subject to the approval of the commission, the types of betting, licensee commissions and distribution of winnings on pari-mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack. Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with the law or rules governing the sending racetrack and must
be distributed in a manner agreed to between the licensee and the sending racetrack. For the televised racing services it provides, the host racing association shall receive a fee to be paid by the receiving licensee racetrack which shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing association.

(d) The commission may assign televised racing days at any time. When a televised racing day is assigned, the commission shall assign either a steward or an auditor to preside over the televised races at the licensee racetrack.

(e) (1) From the licensee commissions authorized by subsection (c) of this section, the licensee shall pay one tenth of one percent of each commission into the general fund of the county, in which the racetrack is located and at which the wagering occurred and there is imposed and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds one hundred thousand dollars, the greater of either: (i) The total of the daily license tax and the pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of one thousand two hundred fifty dollars. For each televised racing day on which the total pari-mutuel pool is one hundred thousand dollars or less, the licensee shall pay a daily license tax of five hundred dollars plus an additional license tax of one hundred dollars for each ten thousand dollars, or part thereof, that the pari-mutuel pool exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars. The calculation of the total pari-mutuel pool for purposes of this subsection shall include only one half of all wagers placed at a licensed racetrack in this state on televised races conducted at another licensed racetrack within this state. Payments of the tax imposed by this section are subject to the requirements of subsection (e), section ten of this article.

(2) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivision (1) of this subsection, the licensee shall pay, for each televised racing day, one fourth of one percent of the total pari-mutuel pools for and on behalf of all employees of the licensed racing association by making a deposit into a special fund
to be established by the racing commission and to be used for payments into the pension plan for all employees of the licensed racing association.

(3) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivisions (1) and (2) of this subsection, thoroughbred licensees shall pay, one-half percent of net simulcast income and for each televised racing day on or after the first day of July, one thousand nine hundred ninety-seven, an additional five and one-half percent of net simulcast income into the West Virginia thoroughbred development fund established by the racing commission according to section thirteen-b of this article: Provided, That no licensee qualifying for the alternate tax provisions of subsection (b), section ten of this article shall be required to make the payments unless the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two. For the purposes of this section, the term “net simulcast income” means the total commission deducted each day by the licensee from the pari-mutuel pools on simulcast horse or dog races, less direct simulcast expenses, including, but not limited to, the cost of simulcast signals, telecommunication costs and decoder costs.

(f) After deducting the tax and other payments required by subsection (e) of this section, the amount required to be paid under the terms of the contract with the host racing association and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (1), subsection (b), section nine of this article. After deducting the tax and other payments required by subsection (e) of this section, dog racetracks shall pay an amount equal to two tenths of one percent of the daily simulcast pari-mutuel pool to the “West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding Development Fund”.

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(g) The provisions of the "Federal Interstate Horseracing Act of 1978", also known as Public Law 95-515, Section 3001-3007 of Title 15, U.S. Code, as amended, controls in determining the intent of this section.

§19-23-12c. Interstate simulcasts by licensed racetracks.

(a) Any licensed racing association may be authorized by the commission to transmit broadcasts of races conducted at its racetrack to legal wagering entities located outside this state, which legal wagering entities located outside this state shall not be subject to the provisions of subsection (e), section twelve-b of this article: Provided, That as consideration for the televised racing services it provides, the host racing association shall receive a signal transmission fee to be paid by the receiving legal wagering entity which shall be in an amount agreed upon by the receiving legal wagering entity and the host racing association. All broadcasts of horse races shall be in accordance with all of the provisions of the "Federal Interstate Horseracing Act of 1978", also known as Public Law 95-515, Section 3001-3007 of Title 15 of the United States Code.

(b) One percent of the total signal transmission fee provided in subsection (a) of this section shall be paid into a special fund to be established by the racing commission for and on behalf of all employees of the licensed racing association to be used for payments into the pension plan for all employees of the licensed racing association, and any thoroughbred horse racetrack which has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two. Seven and one-half percent of the signal transmission fee shall be paid into the West Virginia thoroughbred development fund established by the racing commission according to section thirteen-b of this article. After deducting (i) the amounts required to be placed into the pension plan for all employees of the licensed racing association under this section, (ii) the amounts, if any, required to be paid into the West Virginia thoroughbred development fund under this section. The racing association may deduct from the signal transmission fee
direct costs necessary to send a live audio and visual signal of horse races or dog races from any racetrack licensed under the provisions of section one of this article to any legal wagering entities outside this state for the purpose of pari-mutuel wagering, which direct costs shall include the cost of satellite equipment necessary to transmit the signal, a satellite operator and the satellite time necessary to broadcast the signal and the cost of telecommunication and facsimile services needed to communicate necessary information to all legal wagering entities for the purpose of pari-mutuel wagering. After the deductions provided for in this subsection are made, thoroughbred horseracing associations shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (1), subsection (b), section nine of this article.

§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.

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemed tickets. All such moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account — Unredeemed Pari-Mutuel Tickets”. Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of such notice. Such notice shall be published within fifteen days following the receipt of said moneys.
by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such horse or dog race meeting was held and the county in which the televised racing day wagering was conducted in this state.

(b) Any such pari-mutuel tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such pari-mutuel tickets shall become the property of the racing commission and shall be expended as provided in this subsection. The racing commission shall maintain separate accounts for each licensee and shall record therein the moneys turned over by such licensee and the amount expended at such licensee’s track for the purposes set forth in this subsection. The moneys in the “West Virginia Racing Commission Special Account — Unredeemed Pari-Mutuel Tickets” shall be expended as follows:

(1) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the owner of such horse is at the time of such horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he filed a personal income tax return in this state for the previous two years and that he owned real or personal property in this state and paid taxes in this state on said property for the previous two years, he shall be presumed to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare foaled in this state, a sum equal to ten percent of the purse won by such horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting
65 held or conducted by any licensee: Provided, That the
66 mare which foaled such winning horse was served by a
67 stallion standing and registered in this state, a sum equal to
68 ten percent of the purse won by such horse; and

69 (4) To those horse racing licensees not participating
70 in the thoroughbred development fund authorized in
71 section thirteen-b of this article the unexpended balance
72 of such licensee's account not expended as provided in
73 subdivisions (1), (2) and (3) of this subsection: Provided,
74 That all moneys distributed under this subdivision shall be
75 expended solely for capital improvements at the licensee's
76 track: Provided, however, That such capital improvements
77 must be approved, in writing, by the West Virginia racing
78 commission before funds are expended by the licensee for
79 that capital improvement; and

80 (5) When the moneys in the special account, known
81 as the "West Virginia Racing Commission Special
82 Account — Unredeemed Pari-Mutuel Tickets" will more
83 than satisfy the requirements of subdivisions (1), (2), (3)
84 and (4) of this subsection, the West Virginia racing
85 commission shall have the authority to expend the excess
86 moneys from unredeemed horse racing pari-mutuel
87 tickets as purse money in any race conditioned exclusively
88 for West Virginia bred or sired horses, and to expend the
89 excess moneys from unredeemed dog racing pari-mutuel
90 tickets in supplementing purses and establishing stake
91 races and dog racing handicaps at the dog tracks: Provided, That during the fiscal year beginning on the
92 first day of July, one thousand nine hundred ninety-six,
93 but not thereafter, and subject to availability of funds, the
94 commission shall, after the requirements of subdivisions
95 (1), (2), (3) and (4) of this subsection have been satisfied,
96 transfer three hundred thousand dollars of such excess
97 moneys into a separate account to be used for
98 promotional activities and purses for stakes races for the
99 West Virginia thoroughbred breeders classics, which shall
100 give equal consideration to all horses qualifying under the
101 West Virginia breeders program for each stake race, based
102 solely on the horses' sex, age and earnings: Provided,
103 however, That beginning with the fiscal year beginning on
104 the first day of July, one thousand nine hundred ninety-
105 seven, and subject to the availability of funds, the
commission shall, after the requirements of subdivisions (1), (2), (3) and (4) of this subsection have been satisfied:

(i) Transfer annually two hundred thousand dollars to the "West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund"; and

(ii) Transfer annually two hundred thousand dollars into a separate account to be used for stakes races for West Virginia bred greyhounds at dog racetracks.

(6) Notwithstanding any limitations on use of funds pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-seven, those funds deposited into the separate account previously dedicated solely to the West Virginia thoroughbred breeders classics shall thereafter be allocated as follows:

(A) For each fiscal year, the first eight hundred thousand dollars deposited in the separate account, together with any balance remaining in the separate account on the thirtieth day of June, one thousand nine hundred ninety-seven, shall be used by the commission for promotional activities, advertising, administrative costs and purses for the West Virginia thoroughbred breeders classics, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses' sex, age and earnings.

(B) For each fiscal year, the next two hundred thousand dollars deposited into the separate account shall be used by the commission for promotional activities and purses for open stake races for a race event to be known as the West Virginia derby to be held at a thoroughbred racetrack which does not participate in the West Virginia thoroughbred development fund.

(C) For each fiscal year, once the amounts provided in paragraphs (A) and (B) of this subdivision have been deposited into the separate account for use in connection with the West Virginia thoroughbred breeders classics and the West Virginia derby, the commission shall return to
each racetrack all additional amounts deposited which
originate during that fiscal year from each respective
racetrack pursuant to subdivision (6), subsection (c),
section ten, article twenty-two-a, chapter twenty-nine of
this code, which returned excess funds shall be used as
follows:

(i) For each dog racetrack, one half of the returned
excess funds shall be used for capital improvements at the
racetrack and one half of the returned excess funds shall
be deposited into the “West Virginia Racing Commission
Special Account - West Virginia Greyhound Breeding
Development Fund”.

(ii) At those thoroughbred racetracks that have
participated in the West Virginia thoroughbred
development fund for a period of more than four
consecutive calendar years prior to the thirty-first day of
December, one thousand nine hundred ninety-two, one-
half of the returned excess funds shall be used for capital
improvements at the licensee’s racetrack and one half of
the returned excess funds shall be equally divided between
the West Virginia thoroughbred breeders classics and the
West Virginia thoroughbred development fund.

(iii) At those thoroughbred horse racetracks which
do not participate in the West Virginia thoroughbred
development fund, one half of the returned excess funds
shall be used for capital improvements at the licensee’s
racetrack and one half of the returned excess funds shall
be used for purses for the open stakes race event known as
the West Virginia derby as provided in paragraph (B) of
this subdivision.

(iv) All expenditures which are funded under this
subdivision (6) must be approved in writing by the West
Virginia racing commission before the funds are
expended for any of the purposes authorized by this
subdivision.

The commission shall submit to the legislative
auditor a quarterly report and accounting of the income,
expenditures and unobligated balance in the special
account created by this section known as the “West
Virginia Racing Commission Special Account —
Unredeemed Pari-Mutuel Tickets”.

(c) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards or for awards under section thirteen-b of this article.

(d) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools' tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

CHAPTER 106

(H. B. 2637—By Delegates Hutchins, L. White, Givens, Ennis, Anderson and Manuel)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article five, chapter eighteen of said code; and to amend and reenact section one, article one, chapter eighteen-a of said code, all relating to insurance benefits for county board of education employees who job-share.

Be it enacted by the Legislature of West Virginia:

That section two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirteen, article five, chapter eighteen be amended and reenacted; and that section one, article one, chapter eighteen-a be amended and reenacted 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.

18. Education.

18A. School Personnel.

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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

1. "Advisory board" means the public employees insurance agency advisory board created by this article.

2. "Agency" means the public employees insurance agency created by this article.

3. "Director" means the director of the public employees insurance agency created by this article.

4. "Employee" means any person, including elected officers, who works regularly full time in the service of the state of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including elected officers, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities
or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the university of West Virginia board of trustees or the board of directors of the state college system; and any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code. On and after the first day of January, one thousand nine hundred ninety-four, and upon election by a county board of education to allow elected board members to participate in the public employees insurance program pursuant to this article, any person elected to a county board of education shall be deemed to be an "employee" during the term of office of the elected member: Provided, That the elected member shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after the first day of July, one thousand nine hundred ninety-seven, a person shall be considered an "employee" if that person meets the following criteria:

(i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;

(ii) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and

(iii) Works at least one third of the time required for a full-time employee.

(5) "Employer" means the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a county, city or town in the state; any separate corporation or
instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; and a combined city-county health department created pursuant to article two, chapter sixteen of this code. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the national guard.

(6) "Finance board" means the public employees insurance agency finance board created by this article.

(7) "Plan" means the medical indemnity plan or a managed care plan option offered by the agency.

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the university of West Virginia board of trustees or the board of directors of the state college system or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article and meet the minimum eligibility requirements for their respective state retirement system: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system shall, in the case of education employees, meet the minimum eligibility requirements of the state teachers retirement system, and in all other cases, meet the minimum eligibility requirements of the public employees retirement system.

The boards, subject to the provisions of this chapter and the rules of the state board, have authority:

(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection with the schools and school interests, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit the records and to conserve the funds, which shall be considered quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils of the school to other schools: Provided, that the closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers
in the closed school are not transferred or reassigned to other schools, they shall receive one month’s salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such rules as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto at public expense, by rules and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by the commission, or the local or county chapter of the commission: Provided, however, That in all cases the school buses owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That the county board may provide, under rules established by the state board, for the certification of professional employees as drivers of board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home: And provided further, That the use of the vehicles shall be limited to one for each school-sponsored activity: And provided further, That buses shall be used for extracurricular activities as provided in this section only when the insurance provided for by this section is in effect;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school
age subject to the conditions and restrictions of subdivisions (6) and (8) of this section;

(7) (a) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules established by the board. All costs and expenses incurred by or incidental to the transportation of the children shall be borne by the lessee;

(b) To contract with any college or university or officially recognized campus organizations to provide transportation for college or university students, faculty or staff to and from the college or university: Provided, That only college and university students, faculty and staff are being transported. The contract shall include consideration and compensation for bus operators, repairs and other costs of service, insurance and any rules concerning student behavior;

(8) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils is contracted, then the contract for the transportation shall provide that the contractor shall carry insurance against negligence in an amount specified by the board;

(9) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;

(10) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children programs, to provide a four-clock-hour program of training prior to the assignment which shall, in accordance with rules of the state board, consist of training
in areas specifically related to the education of exceptional children;

(11) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach in the high school or post high school program;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service personnel;

(14) To provide at public expense and under rules as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board of education;

(15) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That the usage is subject to the supervision of the board and is directly connected with and required by the nature and in the performance of the employee's duties and responsibilities;

(16) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees;

(17) To enter into agreements with one another to provide, on a cooperative basis, improvements to the instructional needs of each county. The cooperative agreements may be used to employ specialists in a field of academic study or support functions or services, for the academic study. The agreements are subject to approval by the state board of education;

(18) To provide information about vocational or higher education opportunities to students with handicapping conditions. The board shall provide in writing to the students and their parents or guardians
information relating to programs of vocational education and to programs available at state funded institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(19) To enter into agreements with one another, with the approval of the state board, for the transfer and receipt of any and all funds determined to be fair when students are permitted or required to attend school in a county other than the county of their residence; and

(20) To enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its professional employees: Provided, That a job sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided for in article four, chapter eighteen-a of this code: Provided, however, That, notwithstanding any provisions of this code to the contrary, a county board which enters into a job-sharing arrangement wherein two or more professional employees voluntarily share an authorized full-time position shall provide the mutually agreed upon employee coverage but shall not offer insurance coverage to more than one of the job-sharing employees, including any group plan or group plans available under the state public employees insurance act: Provided further, That all employees involved in the job-sharing agreement meet the requirements of subdivision (4), section two, article sixteen, chapter five of this code.

"Quasi-public funds" as used in this section means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of each county shall expend under rules it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.
CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1. The definitions contained in section one, article one, chapter eighteen shall be applicable to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School personnel" means all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of two categories: Professional personnel and service personnel.

(b) "Professional personnel" means persons who meet the certification and/or licensing requirements of the state, and shall include the professional educator and other professional employees.

(c) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

(1) "Classroom teacher" — The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity.

(2) "Principal" — The professional educator who as agent of the board has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major area of such responsibility shall be the general supervision of all the schools and all school activities involving pupils, teachers and other school personnel.

(3) "Supervisor" — The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and/or
other personnel in instructional and other school improvement.

(4) "Central office administrator" — The superintendent, associate superintendent, assistant superintendent and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.

(d) "Other professional employee" means that person from another profession who is properly licensed and is employed to serve the public schools and shall include a registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program.

(e) "Service personnel" means those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and as aides.

(f) "Principals academy" or "academy" means the academy created pursuant to section two-b, article three-a of this chapter.

(g) "Center for professional development" means the center created pursuant to section one, article three-a of this chapter.

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its professional employees who wish to divide between them the duties and responsibilities of one authorized full-time position.
CHAPTER 107
(S. B. 33—By Senators Ross, Anderson, Snyder, Hunter, Sharpe and Ball)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen-d and thirty-three, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the allocation of proceeds from the premium tax on fire and casualty insurance policies to volunteer and part volunteer fire departments and the teachers retirement system; altering the allocation of proceeds to municipal policemen’s or firemen’s pension and relief funds; and providing for a quarterly disbursement of such proceeds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and the teachers retirement system reserve fund and for volunteer and part volunteer fire companies and departments, there is hereby levied and imposed an additional premium tax equal to one percent of gross
direct premiums collected, less premiums returned to policyholders because of cancellation of policies, for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance does not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of the additional tax set forth in this section.

All moneys collected from this additional tax shall be received by the commissioner and paid by him into a special account in the state treasury, designated the municipal pensions and protection fund. The net proceeds of this tax after appropriation thereof by the Legislature shall be distributed in accordance with the provisions of this section.

(b) (1) Before the first day of August of each calendar year, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund has been established shall report to the state treasurer the average monthly number of members who worked at least one hundred hours per month and the average monthly number of retired members of municipal policemen's or firemen's pension systems during the preceding fiscal year.

(2) Before the first day of September of each calendar year, the state treasurer shall allocate and authorize for distribution the revenues in the municipal pensions and protection fund which were collected during the preceding calendar year for the purposes set forth in this section. Sixty-five percent of the revenues shall be allocated to municipal policemen's and firemen's pension and relief funds; twenty-five percent of the revenues shall be
allocated to volunteer and part volunteer fire companies and departments; and ten percent of such allocated revenues shall be allocated to the teachers retirement system reserve fund created by section eighteen, article seven-a, chapter eighteen of this code: Provided, That in any year the actuarial report required by section twenty, article twenty-two, chapter eight of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from the municipal pensions and protection fund to that fund. The revenues from the municipal pensions and protection fund shall then be allocated to all other pension funds which have an actuarial deficiency.

(3) The moneys, and the interest earned thereon, in the municipal pensions and protection fund allocated to volunteer and part volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the state fire marshal shall report to the state treasurer the names and addresses of all volunteer and part volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(c) (1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based upon the corresponding municipality's average monthly number of members who worked at least one hundred hours per month during the preceding fiscal year. On and after the first day of July, one thousand nine hundred ninety-seven, from the growth in any moneys collected pursuant to the tax imposed by this section there shall be allocated and authorized for distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based upon the corresponding municipalities average number of members who worked at least one
hundred hours per month and average monthly number of retired members. For the purposes of this subsection, the growth in moneys collected from the tax collected pursuant to this section shall be determined by subtracting the amount of the tax collected during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, from the tax collected during the fiscal year for which the allocation is being made. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in sections sixteen through twenty-eight, inclusive, article twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to such share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension system to the total number of members of such fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty, article twenty-two, and sections eight-a and eight-b, article fifteen, chapter eight of this code.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.
(a) For the purpose of providing additional revenue for volunteer and part volunteer fire departments, certain retired teachers and the teachers retirement reserve fund, there is hereby authorized and imposed on and after the first day of July, one thousand nine hundred ninety-two, on the policyholder of any fire and casualty insurance policy, a policy surcharge equal to one percent of gross direct premium paid by the policyholder for each such policy. For purposes of this section, casualty insurance shall not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge shall not be subject to premium taxes, agent commissions or any other assessment against premiums.

The policy surcharge shall be collected and remitted by the insurer to the commissioner on forms prescribed by the commissioner on a quarterly basis and are due on the twenty-fifth day of the month succeeding the end of the quarter in which they are collected except for the fourth quarter for which the surcharge shall be due and payable on or before the first day of March of the succeeding year. All forms required by the commissioner shall be submitted under the oath of the president and secretary of the insurer.

Any insurer failing or refusing to collect and remit to the commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to one hundred dollars for each day of delinquency, to be assessed by the commissioner. The commissioner may suspend the insurer until all surcharge payments and penalties, should any penalty be imposed, are remitted in full to the commissioner.

One half of all money from the policy surcharge shall be collected by the commissioner who shall disburse the
money received from the surcharge into a special account in the state treasury, designated the "fire protection fund". The net proceeds of this portion of the tax after appropriation by the Legislature shall be distributed in accordance with the provisions of subsection (c) of this section. The remaining fifty percent of the moneys collected shall be transferred to the teachers retirement system to be disbursed according to the provisions of sections twenty-six-j, twenty-six-k and twenty-six-l, article seven-a, chapter eighteen of this code. Any balance remaining after the disbursements authorized by this subdivision have been paid shall be paid by the teachers retirement system into the teachers retirement system reserve fund.

(b) The moneys, and the interest earned thereon, in the fire protection fund shall be allocated among and distributed quarterly to all volunteer and part volunteer fire departments by the state treasurer. Before each distribution date, the state fire marshal shall report to the state treasurer the names and addresses of all volunteer and part volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

The payments hereinabove provided shall be paid on the first day of the months of January, April, July and October of one thousand nine hundred ninety-eight and each year thereafter.

(c) Each volunteer fire company or department shall receive on an equal share basis the revenues allocated for volunteer and part volunteer fire companies and departments under subdivision (1), subsection (a) of this section.

(d) The allocation, distribution and use of revenues provided in the fire protection fund are subject to the provisions of sections eight-a and eight-b, article fifteen, chapter eight of this code.
AN ACT to amend article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to prohibiting insurers from denying life or accident and sickness insurance coverage to an individual who has been or is the victim of abuse.

Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.

(a) For purposes of this section, the following definitions shall apply:

(1) "Abuse," as used in this section, means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
(B) Placing another in reasonable apprehension of physical harm;

(C) Creating fear of physical harm by harassment, psychological abuse or threatening acts;

(D) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;

(E) Holding, confining, detaining or abducting another person against that person's will;

(F) Intentionally or recklessly damaging, destroying or taking the tangible property of another individual;

(G) Insulting, taunting or challenging another individual or engaging in a course of alarming or distressing conduct in a manner which is likely to provoke a violent or disorderly response or which is likely to cause humiliation, degradation or fear in another individual;

(H) Trespassing on or in the property of another individual, or on or in property from which the trespasser has been excluded by court order;

(I) Child abuse or neglect, as defined in section three, article one, chapter forty-nine of this code;

(J) Kidnapping, concealment or removal of a minor child from his or her custodian or from a person entitled to visitation, as set forth in sections fourteen through fourteen-e, article two, chapter sixty-one of this code.

(2) "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabited together or a person with whom the victim has a child in common.

(3) "Victim of abuse," as used in this section, means an individual who has been or is subject to abuse, including, but not limited to, an individual who seeks, has
sought or should have sought medical or psychological
treatment for abuse, protection from abuse or shelter from
abuse.

(b) For all policies issued or renewed after the
effective date of this section, no person or entity engaged
in the business of providing life or health insurance, or
both, in this state may:

(1) Deny, refuse to issue, refuse to renew, refuse to
reissue, cancel or otherwise terminate an insurance policy
or restrict coverage on any individual because that
individual is, has been or may be the victim of abuse;

(2) Add any surcharge or rating factor to a premium
of an insurance policy because an individual has been or
may be the victim of abuse;

(3) Exclude or limit coverage for losses or deny a
claim incurred because an individual has been or may be
the victim of abuse; or

(4) Require as part of the application process any
information regarding whether that individual has been or
may be the victim of abuse.

(c) Nothing in this section may be construed to
prohibit a person from declining to issue an insurance
policy insuring the life of an individual who is or has been
the victim of abuse if the perpetrator of abuse is the
applicant or would be the owner of the insurance policy.

(d) Nothing in this section may be construed to
prohibit a person from underwriting or rating a risk on the
basis of a preexisting physical or mental condition, even if
the condition had been caused by abuse: Provided, That:

(1) The person routinely underwrites or rates the
condition in the same manner with respect to an insured or
an applicant who is not a victim of abuse;

(2) The fact that an individual is, has been, or may be
the victim of abuse may not be considered a physical or
mental condition; and
(3) The underwriting or rating is not used to evade the intent of this law or any other provision of law. A person may not be held civilly or criminally liable for any cause of action which may be brought because of compliance with this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article shall not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section seven-a of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by

*Clerk’s Note: This section was also amended by S.B. 371 (Chapter 110), and H.B. 2667 (Chapter 109), which passed prior to this act.
health professions: Provided, That nothing contained in
this subsection shall be construed as authorizing any
solicitation or advertising which identifies or refers to any
individual provider or makes any qualitative judgment
concerning any provider.

(c) Any health maintenance organization authorized
under this article shall not be considered to be practicing
medicine and is exempt from the provisions of chapter
thirty of this code, relating to the practice of medicine.

(d) The provisions of sections fifteen and twenty,
article four (general provisions); section seventeen, article
six (noncomplying forms); article six-c (guaranteed loss
ratio); article seven (assets and liabilities); article eight
(investments); article nine (administration of deposits);
article twelve (agents, brokers, solicitors and excess line);
section fourteen, article fifteen (individual accident and
sickness insurance); section sixteen, article fifteen
(coverage of children); section eighteen, article fifteen
(equal treatment of state agency); section nineteen, article
fifteen (coordination of benefits with medicaid); article
fifteen-b (uniform health care administration act); section
three, article sixteen (required policy provisions); section
three-f, article sixteen (treatment of temporomandibular
disorder and craniomandibular disorder); section eleven,
article sixteen (coverage of children); section thirteen,
article sixteen (equal treatment of state agency); section
fourteen, article sixteen (coordination of benefits with
medicaid); article sixteen-a (group health insurance
conversion); article sixteen-c (small employer group
policies); article sixteen-d (marketing and rate practices
for small employers); article twenty-seven (insurance
holding company systems); article thirty-four-a (standards
and commissioner's authority for companies deemed to
be in hazardous financial condition); article thirty-five
(criminal sanctions for failure to report impairment);
article thirty-seven (managing general agents); article
thirty-nine (disclosure of material transactions); and article
forty-one (privileges and immunity) shall be applicable to
any health maintenance organization granted a certificate
of authority under this article. In circumstances where the
code provisions made applicable to health maintenance
organizations by this section refer to the "insurer", the "corporation" or words of similar import, the language shall be construed to include health maintenance organizations.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

(f) A health maintenance organization granted a certificate of authority under this article shall be exempt from paying municipal business and occupation taxes on gross income it receives from its enrollees, or from their employers or others on their behalf, for health care items or services provided directly or indirectly by the health maintenance organization. This exemption applies to all taxable years through the thirty-first day of December, one thousand nine hundred ninety-six. The commissioner and the tax department shall conduct a study of the appropriations of imposition of the municipal business and occupation tax or other tax on health maintenance organizations, and shall report to the regular session of the Legislature, one thousand nine hundred ninety-seven, on their findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate their recommendations.

CHAPTER 109

(Com. Sub. for H. B. 2667—By Mr. Speaker, Mr. Kiss, and Delegate Ashley) [By Request of the Executive]

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article sixteen-c of said chapter; to amend and reenact sections two and twenty,
article fifteen of said chapter; to further amend said article by adding thereto eight new sections, designated sections two-a, two-b, two-c, two-d, two-e, two-f, two-g and four-e; to amend article sixteen of said chapter by adding thereto seven new sections, designated sections one-a, three-j, three-k, three-l, three-m, three-n and seventeen; to amend and reenact sections three-a and fifteen of said article; to amend and reenact sections two, four, five, seven, eight, ten, eleven and twelve, article sixteen-d of said chapter; to further amend said article by adding thereto a new section, designated section fifteen; to amend and reenact section twenty-four, article twenty-three of said chapter; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to the availability and continuity of health insurance coverage for individuals, small groups and large groups in accordance with the health insurance portability and accountability act of 1996, commonly known as the Kennedy-Kassebaum bill, and related federal mandates; specifying exceptions under which an insurer may deny coverage under individual accident and sickness insurance policies; authority for the commissioner to study alternatives to guaranteed issue of individual accident and sickness insurance policies; exceptions under which an insurer may nonrenew or discontinue individual accident and sickness insurance coverage; providing for discontinuation or modification of individual accident and sickness insurance coverage; limitation of preexisting condition exclusions; establishment of individual medical savings accounts; guaranteed renewability of health insurance coverage; guaranteed issuance of health insurance coverage for eligible individuals and small groups and related premium calculation; preexisting health conditions; premium rates; credit for prior coverage; parity of physical and mental health insurance coverage for large groups; minimum hospital stays for mothers and newborns; the applicability of these provisions to entities providing accident and sickness insurance coverage; and a study of the feasibility and advisability of extending continuation coverage to groups of fewer than twenty employees.
Be it enacted by the Legislature of West Virginia:

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

Article

15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-2b. Guaranteed issue; limitation of coverage; election; denial of coverage; network plans.
§33-15-2c. Feasibility study for alternatives to guaranteed issue.
§33-15-2e. Discontinuation of particular type of coverage; uniform termination of all coverage; uniform modification of coverage.
§33-15-2g. Applicability.
§33-15-20. Individual medical savings accounts; definitions; ownership; trustees; regulations.


1 No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

   4 (a) The entire money and other considerations therefor are expressed therein; and

   6 (b) The time at which the insurance takes effect and terminates is expressed therein; and

   8 (c) It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

   16 (d) The policy is guaranteed to be renewable at the option of the insured except as provided in section two-d of this article; and

   19 (e) The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lowercase unspaced alphabet length not less than one hundred and twenty-point (the “text” shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions), the policy shall clearly indicate on the first page the conditions of renewability; and
(f) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections four and five of this article, are printed, at the insurer's option, either included with the benefit provisions to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions": Provided, That if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(g) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first part thereof; and

(h) It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner; and

(i) Effective the first day of July, one thousand nine hundred ninety-seven, the insurer offers and accepts for enrollment pursuant to section two-b of this article every eligible individual who applies for coverage within sixty-three days after termination of the individual's prior creditable coverage.


For purposes of this section and sections two-b, two-c, two-d, two-e, two-f, two-g and four-e:

(a) "Accident and sickness insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy of certificate, hospital or medical service plan contract, or health maintenance organization contract offered by an insurer, but does not include short-term limited duration insurance.
(b) "Bona fide association" means an association which has been actively in existence for at least five years; has been formed and maintained in good faith for purposes other than obtaining insurance; does not condition membership in the association on any health status-related factor relating to an individual; makes accident and sickness insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member; does not make accident and sickness insurance coverage offered through the association available other than in connection with a member of the association; and meets any additional requirements as may be set forth in this chapter or by rule.

(c) "COBRA continuation provision" means any of the following:

(1) Section 4980B of the Internal Revenue Code of 1986, other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines;

(2) Part 6 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, other than Section 609 of such act; or

(3) Title XXII of the Public Health Service Act.

(d) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

(1) A group health plan;

(2) Accident and sickness insurance coverage;

(3) Part A or Part B of Title XVIII of the Social Security Act;

(4) Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;

(5) Chapter 55 of Title 10 of the United States Code;
(6) A medical care program of the Indian Health Service or of a tribal organization;

(7) A state health benefits risk pool;

(8) A health plan offered under Chapter 89 of Title 5 of the United States Code;

(9) A public health plan (as defined in federal regulations); or

(10) A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

The term "creditable coverage" does not include those benefits set forth in section two-g of this article.

(e) "Eligible individual" means an individual:

(1) For whom, as of the date on which the individual seeks coverage, the aggregate period of creditable coverage is eighteen months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan (as defined in section 3(32) of the Employee Retirement Income Security Act of 1974), church plan (as defined in section 3(33) of the Employee Retirement Income Security Act of 1974), or accident and sickness insurance coverage offered in connection with any such plan;

(2) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act, or state plan under Title XIX of such act (or any successor program), and does not have other accident and sickness insurance coverage;

(3) With respect to whom the most recent prior creditable coverage was not terminated as a result of fraud, intentional misrepresentation of material fact under the terms of the coverage, or nonpayment of premium;

(4) Who did not turn down an offer of continuation of coverage under a COBRA continuation provision or under a similar state program if it was offered; and
(5) Who, if the individual elected such continuation coverage, has exhausted that coverage under the COBRA continuation provision or similar state program.

(f) "Group health plan" means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974) to the extent that the plan provides medical care to employees and their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement or otherwise.

(g) "Health status-related factor" means an individual's health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, and evidence of insurability (including conditions arising out of acts of domestic violence) or disability.

(h) "Higher-level coverage" means a policy form for which the actuarial value of the benefits under the coverage is at least fifteen percent greater than the actuarial value of lower-level coverage offered by the insurer in this state, and the actuarial value of the benefits under the coverage is at least one hundred percent but not greater than one hundred twenty percent of a weighted average.

(i) "Individual market" means the market for accident and sickness insurance coverage offered to individuals other than in connection with a group health plan.

(j) "Insurer" means an entity licensed by the commissioner to transact accident and sickness insurance in this state and subject to this chapter, but does not include a group health plan or short term limited duration insurance.

(k) "Lower-level coverage" means a policy form for which the actuarial value of the benefits under the coverage is at least eighty-five percent but not greater than one hundred percent of a weighted average.
(l) "Medical care" means amounts paid for, or paid for insurance covering, the diagnosis, cure, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body, including the amounts paid for transportation primarily for and essential to such care.

(m) "Network plan" means accident and sickness insurance coverage of an insurer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a definite set of providers under contract with the insurer.

(n) "Preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for coverage, whether or not any medical advice, diagnosis, care or treatment was recommended or received before such date.

(o) "Weighted average" means the average actuarial value of the benefits provided by all the accident and sickness insurance coverage issued (as elected by the insurer) either by that insurer or by all insurers in this state in the individual accident and sickness market during the previous year (not including coverage issued under this section), weighted by enrollment for the different coverage.

§33-15-2b. Guaranteed issue; limitation of coverage; election; denial of coverage; network plans.

(a) Each insurer that offers accident and sickness insurance coverage in the individual market in this state may not, with respect to an eligible individual desiring to enroll in individual accident and sickness insurance coverage:

   (1) Decline to offer coverage to, or deny enrollment of, an eligible individual; or

   (2) Impose any preexisting condition exclusion with respect to such coverage.
(b) An insurer may elect to limit the coverage offered under subsection (a) of this section so long as:

(1) The insurer offers at least two different accident and sickness insurance policy forms, both of which are designed for, made generally available to, and actively marketed to, and enroll both eligible and other individuals; and

(2) As elected by the insurer:

(A) The insurer offers the policy forms for individual accident and sickness insurance coverage with the largest, and next to the largest, premium volume of all such policy forms offered by the insurer in this state in the period involved; or

(B) The insurer offers a lower-level coverage policy form and a higher-level coverage policy form each of which includes benefits substantially similar to other individual accident and sickness insurance coverage offered by the insurer in this state and each of which is covered under a risk adjustment, risk spreading, or financial subsidization method. The actuarial value of benefits under a lower-level coverage policy form and a higher-level coverage policy form shall be calculated based on a standardized population and a set of standardized utilization and cost factors.

(c) The elections made by the insurer under subsection (b) of this section shall apply uniformly to all eligible individuals in this state for that insurer, and shall be effective for policies offered during a period of at least two years. Policy forms which have different riders or different cost-sharing arrangements shall be considered to be different policy forms.

(d) An insurer may deny accident and sickness coverage in the individual market to an eligible individual if the insurer has demonstrated to the satisfaction of the commissioner that:

(1) It does not have the financial reserves necessary to underwrite additional coverage; and
(2) Coverage is denied uniformly to all individuals in the individual market in the state without regard to any health status-related factor of the individuals and without regard to whether the individuals are eligible individuals.

(e) An insurer denying insurance coverage pursuant to the provisions of subsection (d) of this section may not offer accident and sickness coverage in the individual market for a period of one hundred eighty days after the date coverage is denied or until the insurer has demonstrated to the satisfaction of the commissioner that it has sufficient financial reserves to underwrite additional coverage, whichever is later.

(f) Insurers offering accident and sickness insurance coverage in the individual market through a network plan may:

(1) Limit the individuals who may be enrolled to those who live, reside or work within the service area for the network plan; and

(2) Deny coverage to those individuals within the service area if the insurer has demonstrated to the satisfaction of the commissioner that:

(A) It will not have the capacity to deliver services adequately to additional individual enrollees because of its obligations to existing group contract holders and enrollees and individual enrollees; and

(B) It is applying this subsection uniformly to individuals without regard to any health status-related factor of the individuals and without regard to whether the individuals are eligible individuals.

(g) An insurer denying accident and sickness insurance coverage through a network plan pursuant to the provisions of subsection (f) of this section may not offer coverage in the individual market within its service area for a period of one hundred eighty days after coverage is denied.

(h) The provisions of this section shall not be construed to require that an insurer offering accident and
sickness coverage only in connection with group health plans or through one or more bona fide associations, or both, offer such accident and sickness insurance coverage in the individual market.

(i) An insurer offering accident and sickness insurance coverage in connection with group health plans shall not be deemed to be an insurer offering individual accident and sickness insurance coverage in the individual market solely because such insurer offers a conversion policy.

(j) The requirements of section one-b of this article do not apply to policies issued pursuant to this section. However, premium rate charges for individual accident and sickness policies issued pursuant to this section shall be filed with and approved by the commissioner pursuant to the provisions of article sixteen-b of this chapter.

(k) This section applies to individual accident and sickness insurance coverage offered, sold, issued, renewed or in effect after the thirtieth day of June, one thousand nine hundred ninety-seven.

§33-15-2c. Feasibility study for alternatives to guaranteed issue.

The Legislature finds that alternatives to the provisions of this article relating to guaranteed issue of individual accident and sickness insurance policies do exist but the feasibility of these alternatives are not presently known. Therefore, the commissioner is to perform or have performed a study as to the feasibility of these alternatives and their impact upon the individual market. The results of this study shall be provided to the Legislature during its regular session in the year one thousand nine hundred ninety-eight.


(a) An insurer may nonrenew or discontinue accident and sickness insurance coverage of an individual in the individual market based only on one or more of the following:
(1) The individual has failed to pay premiums or contributions in accordance with the terms of the policy or the insurer has not received timely premium payments;

(2) The individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of coverage;

(3) The insurer is ceasing to offer coverage in accordance with the provisions of section two-e of this article;

(4) In the case of an insurer that offers coverage through a network plan, the individual no longer resides, lives or works in the service area but only if coverage is terminated uniformly without regard to any health status-related factor of covered individuals; or

(5) In the case of coverage made available in the individual market only through one or more bona fide associations, the individual’s membership in the association ceases but only if coverage is terminated uniformly without regard to any health-status related factor of covered individuals.

(b) This section applies to individual accident and sickness insurance coverage offered, sold, issued, renewed or in effect after the thirtieth day of June, one thousand nine hundred ninety-seven.

§33-15-2e. Discontinuation of particular type of coverage; uniform termination of all coverage; uniform modification of coverage.

(a) An insurer may discontinue offering a particular type of accident and sickness insurance coverage in the individual market only if:

(1) The insurer provides written notice to each individual provided this type of coverage at least ninety days prior to the date of the discontinuation of coverage;

(2) The insurer offers to each individual in the individual market provided this type of coverage the option to purchase any other type of individual accident
and sickness insurance policy currently offered by that insurer; and

(3) The insurer acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for coverage.

(b) An insurer may discontinue offering all individual accident and sickness insurance coverage in the individual market offered in this state only if:

(1) The insurer provides written notice to the insurance commissioner and to each insured of the discontinuation at least one hundred eighty days prior to the expiration of coverage; and

(2) All accident and sickness insurance policies issued or delivered for issuance in this state in the individual market are discontinued and coverage under the policies in the individual market is not renewed.

(c) In the case of discontinuation under subsection (b) of this section, the insurer may not provide for the issuance of any accident and sickness insurance coverage in the individual market and state during the five-year period beginning on the date of the discontinuation of the last accident and sickness insurance coverage not so renewed.

(d) At the time of renewal, an insurer may modify coverage under an accident and sickness policy only if the modification is consistent with the provisions of this article and article twenty-eight of this chapter and is effective on a uniform basis among all individuals with that policy form. For individuals who are eligible for medicare at the time of renewal, the insurer may modify coverage to reduce benefits by an amount no more than that paid by medicare.

(e) This section applies to individual accident and sickness insurance coverage offered, sold, issued, renewed or in effect after the thirtieth day of June, one thousand nine hundred ninety-seven.

An insurer offering accident and sickness insurance coverage pursuant to the provisions of this article shall provide certification of creditable coverage in the same manner as provided in section three-m, article sixteen of this chapter.

§33-15-2g. Applicability.

(a) The requirements of sections two-b, two-d, two-e and two-f of this article do not apply to:

1. Coverage only for accident, or disability income insurance or any combination thereof;
2. Coverage issued as a supplement to liability insurance;
3. Liability insurance, including general liability insurance and automobile liability insurance;
4. Workers' compensation or similar insurance;
5. Automobile medical payment insurance;
6. Credit-only insurance;
7. Coverage for on-site medical clinics; and
8. Other similar insurance coverage, which may be specified by rule, under which benefits for medical care are secondary or incidental to other insurance benefits.

(b) The requirements of sections two-b, two-d, two-e and two-f of this article do not apply to the following if provided under a separate policy, certificate, or contract of insurance:

1. Limited scope dental or vision benefits;
2. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
3. Coverage for only a specified disease or illness;
4. Hospital indemnity or other fixed indemnity insurance;
(5) Medicare supplement insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under group accident and sickness insurance; and

(6) Any other benefits as may be specified by rule.


(a) Nothing in this section shall be construed to require a mother to give birth in a hospital or to stay in a hospital for a fixed period of time following the birth of her child. However, an insurer offering accident and sickness insurance coverage under this article may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or her newborn child to less than forty-eight hours following a normal vaginal delivery, or to less than ninety-six hours following a cesarean section, or require a provider to obtain authorization for such length hospital stays. The mother and her newborn child may be discharged prior to the expiration of the minimum length of stay required under this section only in those cases in which the decision to discharge is made by an attending provider in consultation with the mother.

(b) Coverage for maternity and pediatric care shall be provided in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(c) Benefits provided under this section may be subject to deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital stays in connection with childbirth for a mother or newborn child if the coinsurance or other cost-sharing for any portion of the hospital stay required under subsection (a) of this section is no greater than the coinsurance or cost-sharing for any preceding portion of the stay.
(d) Nothing in this section may be construed to prevent an insurer from negotiating the level and type of reimbursement with a provider for the care provided a mother or newborn child in connection with childbirth.

(e) This section shall not apply with respect to any accident and sickness insurance coverage which does not provide benefits for hospital lengths of stay in connection with childbirth for a mother or her newborn child.

(f) This section shall apply to accident and sickness insurance coverage offered, sold, issued, renewed, or in effect in the individual market on or after the first day of January, one thousand nine hundred ninety-eight.

§33-15-20. Individual medical savings accounts; definitions; ownership; trustees; regulations.

(a) Any individual resident of this state may establish an individual medical savings account to serve as self-insurance for the payment of medical expenses: Provided, That an individual establishing an individual medical savings account may designate a percentage of the account assets that may be withdrawn by the individual if not needed for the payment of medical expenses: Provided, however, That any amount remaining in an individual medical savings account on the earlier of the date of retirement, at the age of fifty-nine and one-half years or more, of the individual who established the account, or the date of death of that individual, may be withdrawn by the individual or by his or her personal representative for a purpose other than the payment of medical expenses: Provided further, That no withdrawal pursuant to this subsection shall be subject to the additional twenty percent tax as provided in subsection (d) of this section. As used in this section, “individual medical savings account” means a trust that meets the definition of “medical savings account” set forth in paragraph (1), subsection (d), section 220 of the Internal Revenue Code of 1986, as amended, when that definition is applied without regard to sub-subparagraph (ii), subparagraph (A) of that paragraph. “Medical expenses” means expenses that fall within the definition of “qualified medical expenses” set forth in paragraph
(2), subsection (d), section 220 of the Internal Revenue Code of 1986, as amended, when that definition is applied without regard to subparagraph (C) of that paragraph.

(b) Any insurer issuing accident and sickness policies in this state in accordance with the provisions of this article may offer a benefit plan including deductibles or copayments combined with individual self-insurance through the establishment of individual medical savings accounts. A benefit plan established pursuant to this subsection shall provide that medical expenses included within deductible or copayment provisions of the accident and sickness policy for the individual or for his or her covered dependents and therefore not payable under that policy be paid by the trustee, either directly or as reimbursement to an individual who has previously paid medical expenses, from the individual medical savings account. A benefit plan may limit payment of medical expenses until the group plan annual deductible is met from the individual medical savings account to expenses which are covered services under the policy.

(c) Within one hundred eighty days of the passage of this legislation, the tax commissioner may promulgate emergency rules as to the keeping of records, the content and form of returns and statements, and the filing of copies of income tax returns and determination by trustees of individual medical savings accounts and by individuals establishing individual medical savings accounts: Provided, That for purposes of sections fifteen, fifteen-a and fifteen-b, article three, chapter twenty-nine-a of this code, a sufficient emergency to justify the promulgation of those rules shall be deemed to exist. The power granted by this subsection shall be in addition to the rule-making powers granted to the tax commissioner elsewhere in this code.

(d) If any amount distributed out of an individual medical savings account is used for any purpose other than to defray medical expenses, except as specifically provided in subsection (a) of this section or except for a distribution of account assets pursuant to order of a federal bankruptcy court, the West Virginia personal
income tax of the individual establishing the account, for the taxable year in which the distribution is made shall be increased by an amount equal to twenty percent of the distribution.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1a. Definitions.
§33-16-3a. Same — Mental health.
§33-16-3j. Hospital benefits for mothers and newborns.
§33-16-3k. Limitations on preexisting condition exclusions for health benefit plans.
§33-16-3l. Renewability and modification of health benefit plans.
§33-16-3m. Creditable coverage.
§33-16-3n. Eligibility for enrollment.
§33-16-15. Individual medical savings accounts; definitions; ownership; contributions; trustees; regulations.
§33-16-17. Commissioner to propose rules.

§33-16-1a. Definitions.

As used in this article:

(a) "Bona fide association" means an association which has been actively in existence for at least five years; has been formed and maintained in good faith for purposes other than obtaining insurance; does not condition membership in the association on any health status-related factor relating to an individual; makes accident and sickness insurance offered through the association available to all members regardless of any health status-related factor relating to members or individuals eligible for coverage through a member; does not make accident and sickness insurance coverage offered through the association available other than in connection with a member of the association; and meets any additional requirements as may be set forth in this chapter or by rule.

(b) "Commissioner" means the commissioner of insurance.

(c) "Creditable coverage" means, with respect to an individual, coverage of the individual after the thirtieth day of June, one thousand nine hundred ninety-six, under
any of the following, other than coverage consisting solely of excepted benefits:

(1) A group health plan;

(2) A health benefit plan;

(3) Medicare Part A or Part B, 42 U.S.C. §1395 et seq.; Medicaid, 42 U.S.C. §1396a et seq. (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act); Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), 10 U.S.C., Chapter 55; and a medical care program of the Indian Health Service or of a tribal organization;

(4) A health benefits risk pool sponsored by any state of the United States or by the District of Columbia; a health plan offered under 5 U.S.C., chapter 89; a public health plan as defined in regulations promulgated by the federal secretary of health and human services; or a health benefit plan as defined in the Peace Corps Act, 22 U.S.C. §2504(e).

(d) “Dependent” means an eligible employee’s spouse or any unmarried child or stepchild under the age of eighteen or unmarried, dependent child or stepchild under age twenty-three if a full-time student at an accredited school.

(e) “Eligible employee” means an employee, including an individual who either works or resides in this state, who meets all requirements for enrollment in a health benefit plan.

(f) “Excepted benefits” means:

(1) Any policy of liability insurance or contract supplemental thereto; coverage only for accident or disability income insurance or any combination thereof; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; workers’ compensation insurance; or other similar insurance under which benefits for medical care are secondary or incidental to other insurance benefits; or
income tax of the individual establishing the account, for
the taxable year in which the distribution is made shall be
increased by an amount equal to twenty percent of the
distribution.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-la. Definitions.
§33-16-3a. Same — Mental health.
§33-16-3j. Hospital benefits for mothers and newborns.
§33-16-3k. Limitations on preexisting condition exclusions for health
benefit plans.
§33-16-3l. Renewability and modification of health benefit plans.
§33-16-3m. Creditable coverage.
§33-16-3n. Eligibility for enrollment.
§33-16-15. Individual medical savings accounts; definitions; ownership;
contributions; trustees; regulations.
§33-16-17. Commissioner to propose rules.

§33-16-1a. Definitions.

1 As used in this article:

2 (a) "Bona fide association" means an association
3 which has been actively in existence for at least five years;
4 has been formed and maintained in good faith for
5 purposes other than obtaining insurance; does not
6 condition membership in the association on any health
7 status-related factor relating to an individual; makes
8 accident and sickness insurance offered through the
9 association available to all members regardless of any
10 health status-related factor relating to members or
11 individuals eligible for coverage through a member; does
12 not make accident and sickness insurance coverage
13 offered through the association available other than in
14 connection with a member of the association; and meets
15 any additional requirements as may be set forth in this
16 chapter or by rule.

17 (b) "Commissioner" means the commissioner of
18 insurance.

19 (c) "Creditable coverage" means, with respect to an
20 individual, coverage of the individual after the thirtieth
21 day of June, one thousand nine hundred ninety-six, under
any of the following, other than coverage consisting solely
of excepted benefits:

(1) A group health plan;

(2) A health benefit plan;

(3) Medicare Part A or Part B, 42 U.S.C. §1395 et
seq.; Medicaid, 42 U.S.C. §1396a et seq. (other than
coverage consisting solely of benefits under Section 1928
of the Social Security Act); Civilian Health and Medical
Program of the Uniformed Services (CHAMPUS), 10
U.S.C., Chapter 55; and a medical care program of the
Indian Health Service or of a tribal organization;

(4) A health benefits risk pool sponsored by any state
of the United States or by the District of Columbia; a
health plan offered under 5 U.S.C., chapter 89; a public
health plan as defined in regulations promulgated by the
federal secretary of health and human services; or a health
benefit plan as defined in the Peace Corps Act, 22 U.S.C.
§2504(e).

d) "Dependent" means an eligible employee's
spouse or any unmarried child or stepchild under the age
of eighteen or unmarried, dependent child or stepchild
under age twenty-three if a full-time student at an
accredited school.

e) "Eligible employee" means an employee,
including an individual who either works or resides in this
state, who meets all requirements for enrollment in a
health benefit plan.

(f) "Excepted benefits" means:

(1) Any policy of liability insurance or contract
supplemental thereto; coverage only for accident or
disability income insurance or any combination thereof;
automobile medical payment insurance; credit-only
insurance; coverage for on-site medical clinics; workers'
compensation insurance; or other similar insurance under
which benefits for medical care are secondary or
incidental to other insurance benefits; or
(2) If offered separately, a policy providing benefits for long-term care, nursing home care, home health care, community-based care or any combination thereof, dental or vision benefits, or other similar, limited benefits; or

(3) If offered as independent, noncoordinated benefits under separate policies or certificates, specified disease or illness coverage, hospital indemnity or other fixed indemnity insurance, or coverage, such as medicare supplement insurance, supplemental to a group health plan; or

(4) A policy of accident and sickness insurance covering a period of less than one year.

(g) "Group health plan" means an employee welfare benefit plan, including a church plan or a governmental plan, all as defined in section three of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1003, to the extent that the plan provides medical care.

(h) "Health benefit plan" means benefits consisting of medical care provided directly, through insurance or reimbursement, or indirectly, including items and services paid for as medical care, under any hospital or medical expense incurred policy or certificate; hospital, medical or health service corporation contract; health maintenance organization contract; or plan provided by a multiple-employer trust or a multiple-employer welfare arrangement. "Health benefit plan" does not include excepted benefits.

(i) "Health insurer" means an entity licensed by the commissioner to transact accident and sickness in this state and subject to this chapter. "Health insurer" does not include a group health plan.

(j) "Health status-related factor" means an individual's health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence) or disability.
(k) "Medical care" means amounts paid for, or paid for insurance covering, the diagnosis, cure, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body, including amounts paid for transportation primarily for and essential to such care.

(l) "Mental health benefits" means benefits with respect to mental health services, as defined under the terms of a group health plan or a health benefit plan offered in connection with the group health plan.

(m) "Network plan" means a health benefit plan under which the financing and delivery of medical care are provided, in whole or in part, through a defined set of providers under contract with the health insurer.

(n) "Preexisting condition exclusion" means, with respect to a health benefit plan, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the enrollment date for such coverage, whether or not any medical advice, diagnosis, care or treatment was recommended or received before the enrollment date.

§33-16-3a. Same — Mental health.

Any policy described in this article which shall be delivered or issued or renewed in this state shall make available as benefits to all individual subscribers and members and to all group members if so elected by the subscriber or group, for expenses arising from mental or nervous conditions as hereinafter set forth. Such benefits shall be as described in the standard nomenclature of the American psychiatric association which are at least equal to the following minimum requirements:

(a) In the case of benefits based upon confinement as an inpatient in a mental hospital under the direction and supervision of the department of mental health, or in a private mental hospital licensed by the department of mental health, the period of confinement for which benefits shall be payable shall be at least forty-five days in any calendar year.
(b) In the case of benefits based upon confinement as an inpatient in a licensed or accredited general hospital, such benefits shall be no different than for any other illness.

(c) In the case of outpatient benefits, these shall cover fifty percent of eligible expenses up to five hundred dollars over a twelve-month period; services furnished: (1) By a comprehensive health service organization; (2) by a licensed or accredited hospital; or (3) subject to the approval of the department of mental health, services furnished by a community mental health center or other mental health clinic or day care center which furnishes mental health services; or (4) consultations or diagnostic or treatment sessions, provided that such services are rendered by a psychotherapist or by a psychologist and do not exceed fifty such sessions over a twelve-month period.

(d) With respect to mental health benefits furnished before the thirtieth day of September, two thousand one, to an enrollee of a health benefit plan offered in connection with a group health plan, for a plan year beginning on or after the first day of January, one thousand nine hundred ninety-eight:

(1) Aggregate lifetime limits:

(A) If the health benefit plan does not include an aggregate lifetime limit on substantially all medical and surgical benefits, as defined under the terms of the plan but not including mental health benefits, the plan may not impose any aggregate lifetime limit on mental health benefits;

(B) If the health benefit plan limits the total amount that may be paid with respect to an individual or other coverage unit for substantially all medical and surgical benefits (in this paragraph, "applicable lifetime limit"), the plan shall either apply the applicable lifetime limit to medical and surgical benefits to which it would otherwise apply and to mental health benefits, as defined under the terms of the plan, and not distinguish in the application of the limit between medical and surgical benefits and mental
health benefits, or not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit;

(C) If a health benefit plan not previously described in this subdivision includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average aggregate lifetime limit for the applicable lifetime limit.

(2) Annual limits:

(A) If a health benefit plan does not include an annual limit on substantially all medical and surgical benefits, as defined under the terms of the plan but not including mental health benefits, the plan may not impose any annual limit on mental health benefits, as defined under the terms of the plan;

(B) If the health benefit plan limits the total amount that may be paid in a twelve-month period with respect to an individual or other coverage unit for substantially all medical and surgical benefits (in this paragraph, “applicable annual limit”), the plan shall either apply the applicable annual limit to medical and surgical benefits to which it would otherwise apply and to mental health benefits, as defined under the terms of the plan, and not distinguish in the application of the limit between medical and surgical benefits and mental health benefits, or not include any annual limit on mental health benefits that is less than the applicable annual limit;

(C) If a health benefit plan not previously described in this subdivision includes no or different annual limits on different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average annual limit for the applicable annual limit.
(3) For purposes of this subsection, mental health benefits do not include benefits with respect to treatment of substance abuse or chemical dependency. This subsection shall not apply to a health benefit plan if its application results in an increase of at least one percent in the cost under the plan.

(4) If a group health plan or a health insurer offers a participant or beneficiary two or more benefit package options, this subsection shall apply separately with respect to coverage under each option.

§33-16-3j. Hospital benefits for mothers and newborns.

(a) Nothing in this section shall be construed to require a mother to give birth in a hospital or to stay in the hospital for a fixed period of time following the birth of her child, but if a health benefit plan, for plan years beginning on or after the first day of January, one thousand nine hundred ninety-eight, provides inpatient benefits in connection with childbirth for a mother or her newborn child:

(1) The plan may not restrict benefits for any hospital stay following a normal vaginal delivery to less than forty-eight hours or following a cesarean section to less than ninety-six hours, or require a provider to obtain authorization for such length hospital stays;

(2) The plan must cover maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics or other established professional medical association; and

(3) The mother and her newborn child may be discharged prior to the expiration of the minimum length of stay required under this section only in those cases in which the decision to discharge is made by an attending provider in consultation with the mother.

(b) Benefits provided for under this section may be made subject to deductibles, coinsurance or other cost-sharing if such cost-sharing is no greater than cost-sharing...
§33-16-3k. Limitations on preexisting condition exclusions for health benefit plans.

(a) (1) For plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, a health benefit plan issued in connection with a group health plan may not impose a preexisting condition exclusion with respect to an employee or a dependent of an employee for losses incurred by the employee or dependent more than twelve months (or eighteen months for a late enrollee) after the earlier of the individual's date of enrollment in the health benefit plan or the first day of a waiting period for enrollment in the plan. Genetic information may not be treated as a condition for which a preexisting condition exclusion may be imposed absent a diagnosis of the condition related to the genetic information.

(2) A health benefit plan may impose a preexisting condition exclusion only if such condition relates to a physical or mental condition, regardless of its cause, for which medical advice, diagnosis, care or treatment was recommended or received within the six-month period ending on the enrollee's enrollment date.

(3) A health benefit plan may impose no preexisting condition exclusion relating to pregnancy or in the case of a newborn covered under creditable coverage within thirty days of birth or a child adopted before the age of eighteen and covered under creditable coverage within thirty days of adoption or placement for adoption.

(b) A health maintenance organization that does not impose a preexisting condition exclusion allowed under subsection (a) of this section with respect to any particular coverage option may:
(1) Impose an affiliation period for that coverage option if the affiliation period is applied uniformly without regard to any health status-related factors and does not exceed two months (three months for a late enrollee). For purposes of this article, "affiliation period" means a period that begins on an employee's or dependent's enrollment date, runs concurrently with any waiting period under the group health plan, must expire before coverage is effective and during which the health maintenance organization need not provide medical care and may not charge any premium to the employee or dependent; or

(2) Use other alternatives approved by the commissioner to address adverse selection.

(c) Any preexisting condition exclusion period, including any waiting period or affiliation period prior to the effective date of coverage, shall be reduced by the aggregate of the periods of creditable coverage applicable to the enrollee as of the enrollment date.

§33-16-3l. Renewability and modification of health benefit plans.

(a) A health insurer may refuse to renew a health benefit plan issued in connection with a group health plan after complying with all applicable provisions of this chapter and only for one of the following reasons:

(1) The policyholder's failure to pay premiums or the carrier's failure to receive timely premium payments;

(2) Fraud or intentional misrepresentation of material fact by the policyholder;

(3) The policyholder's failure to comply with a material plan provision relating to contribution or group participation rules;

(4) The health insurer elects to discontinue offering health benefit plans:

(A) Of a particular type, if the health insurer gives notice to each policyholder of such plan and to all covered employees or members and dependents at least
ninety days before the date such coverage is discontinued: Provided, That a health insurer electing to discontinue health benefit plans to small employers shall comply with the requirements of section seven, article sixteen-d of this chapter. The health insurer shall offer each such policyholder the option to purchase any other health benefit plan offered by the health insurer to employers. In electing to discontinue health benefit plans of a particular type and in offering coverage under the preceding sentence, the health insurer shall act uniformly without regard to policyholders' claims experience or any health status-related factor relating to any covered employee, member or dependent or new employees, members or dependents who may become eligible for coverage; or

(B) Of all types, if the health insurer gives notice to the commissioner and to each policyholder and all covered employees or members and dependents at least one hundred eighty days before the date plans are discontinued: Provided, That a health insurer electing to discontinue health benefit plans to small employers shall comply with the requirements of section seven, article sixteen-d of this chapter. The health insurer shall discontinue all, and not renew any, health benefit plans issued pursuant to this article. The health insurer may not issue any health benefit plan pursuant to this article for a five-year period beginning on the date the last discontinued health benefit plan is not renewed;

(5) For a health insurer offering coverage under a network plan, the health insurer no longer has any enrollees of the network plan who live, reside or work in the plan's service area; or

(6) For health benefit plans offered only through a bona fide association, an employer ceases to be a member of the bona fide association, if coverage is terminated uniformly without respect to any health status-related factor relating to any covered employee, association member or dependent. With respect to coverage provided to an employer, a reference to "policyholder" or "plan
§33-16-3m. Creditable coverage.

(a) (1) A health insurer shall certify an enrollee's creditable coverage at the time an enrollee:

(A) Ceases to be covered under a health benefit plan issued in connection with a group health plan, including coverage under a COBRA continuation provision. For purposes of this article, "COBRA continuation provision" means any of the following:

(i) Section 4980B of the Internal Revenue Code of 1986, other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines;

(ii) Part 6 of subtitle B of Title I of the Employee Retirement Income Security Act of 1974, other than Section 609 of such act; or

(iii) Title XXII of the Public Health Service Act;

(B) Ceases to be covered under a COBRA continuation provision; and

(C) Requests certification, but no later than twenty-four months after cessation of coverage under the health benefit plan.

(2) The health insurer shall provide the enrollee a written certification of:

(A) The period of creditable coverage under the health benefit plan, including coverage, if any, under a COBRA continuation provision; and

(B) The waiting period, if any, and affiliation period, if applicable, for any coverage under the health benefit plan.
(b) For purposes of reducing an enrollee’s preexisting condition exclusion period, creditable coverage shall not be counted if, after such period and before an employee’s or dependent’s enrollment in a health benefit plan issued in connection with a group health plan, there was a period of sixty-three days or more during all of which the individual was not covered under any creditable coverage. For purposes of this subsection, a sixty-three-day period may not include any waiting period or affiliation period prior to the effective date of an individual’s coverage.

(c) For purposes of reducing an enrollee’s preexisting condition exclusion period, a health insurer:

(1) Shall count a period of creditable coverage without regard to specific benefits covered during the period; or

(2) May elect to apply creditable coverage based upon each of several classes or categories of benefits in accordance with rules promulgated by the commissioner. A health insurer shall make such an election on a uniform basis for all enrollees and shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.

§33-16-3n. Eligibility for enrollment.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, a health insurer offering coverage in connection with a group health plan may not, for plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, establish rules for eligibility, including continued eligibility, of any employee or dependent to enroll under a health benefit plan based on a health status-related factor.

(b) For plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, a health benefit plan offered in connection with a group health plan shall provide that an employee or dependent of an employee who is eligible, but not enrolled, under terms of
15 a health benefit plan may enroll under terms of the plan if
16 the employee or dependent:

17 (1) Was covered under other creditable coverage when
18 coverage was previously offered to the employee or
19 dependent and, if required by the insurer, the employee
20 stated in writing that the existence of other creditable
21 coverage was the reason for declining enrollment under
22 the health benefit plan;

23 (2) Lost coverage under the other creditable coverage
24 because of legal separation, divorce, death, termination of
25 employment, reduction in the number of hours of
26 employment, exhaustion of COBRA continuation
27 coverage or termination of the employer’s contributions
28 towards the other creditable coverage; and

29 (3) The employee requests enrollment no more than
30 thirty days after loss of the other creditable coverage.

(c) For plan years beginning after the thirtieth day of
32 June, one thousand nine hundred ninety-seven, if a health
33 benefit plan makes coverage available to an employee’s
34 dependents, the plan shall provide that if an employee is
35 enrolled under the plan or has met any waiting period
36 requirement and is eligible for enrollment but for a failure
37 to enroll during a previous enrollment period:

38 (1) The employee or a person who becomes a
39 dependent of the employee through marriage, birth,
40 adoption or placement for adoption may be enrolled
41 under the plan, and in the case of the birth or adoption of
42 a child, the employee’s spouse who is otherwise eligible
43 for coverage may be enrolled as a dependent, during a
44 period of at least thirty days beginning on the later of the
45 date dependent coverage is made available or the date of
46 the marriage, birth, adoption or placement for adoption;
47 and

48 (2) If the employee requests enrollment of a
49 dependent during the first thirty days that dependent
50 coverage is available, the dependent’s coverage shall
51 become effective:
§33-16-15. Individual medical savings accounts; definitions; ownership; contributions; trustees; regulations.

(a) Any insurer issuing group accident and sickness policies in this state, the public employees insurance agency and any employer offering a health benefit plan pursuant to the Employee Retirement Income Security Act of 1974, as amended, may offer a benefit plan including deductibles or copayments combined with employee self-insurance through the establishment of individual medical savings accounts. An insurer offering a benefit plan consisting of deductibles or copayments combined with employee self-insurance and individual medical savings accounts shall not be deemed to be an insurer offering individual accident and sickness insurance coverage solely because the insurer offers such a benefit plan. Notwithstanding any provision of this section, an employer may not compel an employee as a condition of employment to contribute any amount to an individual medical savings account which has been established for the employee, or to accept contributions to an individual medical savings account in lieu of other compensation or benefits. An employer may not charge an employee a fee, by any name whatsoever, in return for establishing an individual medical savings account for the employee: Provided, That a reasonable fee may be charged for any necessary services rendered in the establishment of the individual medical savings account and which fee is fully disclosed to the employee or account holder: Provided, however, That any qualified person serving as trustee of an individual medical savings account established for any employee or account holder, may impose reasonable fees, charges and expenses for administration.

An employee establishing an individual medical savings account, or for whom an account is established by
an employer, may designate a percentage of the employee’s contributions, if any, to that account that may be withdrawn by the employee if not needed for the payment of medical expenses: *Provided,* That any amount remaining in an individual medical savings account on the earlier of the date of retirement, at the age of fifty-nine and one-half years or more, of the employee or the date of death of the employee, may be withdrawn by the employee or by his or her personal representative for a purpose other than the payment of medical expenses: *Provided, however,* That no withdrawal pursuant to this subsection shall be subject to the additional twenty percent tax as provided in subsection (d) of this section.

As used in this section, “individual medical savings account” means a trust that meets the definition of “medical savings account” set forth in paragraph (1), subsection (d), section 220 of the Internal Revenue Code of 1986, as amended, when that definition is applied without regard to sub-subparagraph (ii), subparagraph (A) of that paragraph. “Medical expenses” means expenses that fall within the definition of “qualified medical expenses” set forth in paragraph (2), subsection (d), Section 220 of the Internal Revenue Code of 1986, as amended, when that definition is applied without regard to subparagraph (C) of that paragraph.

(b) A benefit plan established pursuant to this section shall provide that medical expenses included within deductible or copayment provisions of the group accident and sickness policy and therefore not payable under the group policy for the employee or for his or her covered dependents be paid by the trustee, either directly or as reimbursement to an employee who has previously paid medical expenses, from the individual medical savings account. A benefit plan may limit payment of medical expenses until the group plan annual deductible is met from the medical savings account to expenses which are covered services under the group policy. Combined plans are subject to the protections afforded by article twenty-six-a of this chapter.

(c) Within one hundred eighty days of the passage of this legislation, the tax commissioner may promulgate emergency rules as to the keeping of records, the content
and form of returns and statements, and the filing of copies of income tax returns and determination by trustees of individual medical savings accounts and by employees establishing those accounts or for whom those accounts are established: Provided, That for purposes of sections fifteen, fifteen-a and fifteen-b, article three, chapter twenty-nine-a of this code, a sufficient emergency to justify the promulgation of those rules shall be deemed to exist. The power granted by this subsection shall be in addition to the rule-making power granted to the tax commissioner elsewhere in this code.

(d) If any amount distributed out of an individual medical savings account is used for any purpose other than to defray medical expenses, except as specifically provided in subsection (a) of this section or except for a distribution of account assets pursuant to order of a federal bankruptcy court, the West Virginia personal income tax of the employee establishing the account or for whom the account is established, for the taxable year in which the distribution is made shall be increased by an amount equal to twenty percent of the distribution.

§33-16-17. Commissioner to propose rules.

Pursuant to chapter twenty-nine-a of this code, the commissioner shall have the power to propose rules, subject to legislative approval, necessary to implement the provisions of this article.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-2. Definitions.
§33-16D-4. Discrimination prohibited; guaranteed issue; filing with commissioner; violations and penalties.
§33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.
§33-16D-7. Renewability of coverage; exceptions.
§33-16D-10. Suspension of requirements.
§33-16D-11. Effective date.
§33-16D-2. Definitions.

As used in this article:

(a) "Actuarial certification" means a written statement by an actuary, or other individual acceptable to the commissioner, that a small employer carrier is in compliance with the provisions of section five of this article, based upon that person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in establishing premium rates for applicable health benefit plans.

(b) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(c) "Bona fide association" has the meaning set forth in section one-a, article sixteen of this chapter.

(d) "Case characteristics" mean demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the carrier in the determination of premium rates for the small employer. Claim experience, health status and duration of coverage since issue are not case characteristics for the purposes of this article.

(e) "Class of business" means all or any distinct grouping of small employers as shown on the records of the small employer carrier, which shall be subject to the following requirements:

(1) A distinct grouping may only be established by the small employer carrier on the basis that the applicable health benefit plans:
(A) Are marketed and sold through individuals and organizations which are not participating in the marketing or sale of other distinct groupings of small employers for such small employer carrier;

(B) Have been acquired from another small employer carrier as a distinct grouping of plans;

(C) Are provided through a bona fide association; or

(D) Are in a class of business that meets the requirements for exception to the restrictions related to premium rates provided in paragraph (A), subdivision (1), subsection (a), section five of this article.

(2) A small employer carrier may establish no more than two additional groupings under subdivision (I) of this subsection on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

(3) The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

(f) "Commissioner" means the insurance commissioner of West Virginia.

(g) "Creditable coverage" has the meaning set forth in section one-a, article sixteen of this chapter.

(h) "Dependent" has the meaning set forth in section one-a, article sixteen of this chapter.

(i) "Group health plan" has the meaning set forth in section one-a, article sixteen of this chapter.

(j) "Health benefit plan" has the meaning set forth in section one-a, article sixteen of this chapter.

(k) "Health status-related factor" has the meaning set forth in section one-a, article sixteen of this chapter.
66 (l) "Index rate" means for each class of business for
67 small employers with similar case characteristics the
68 arithmetic average of the applicable base premium rate
69 and the corresponding highest premium rate.

70 (m) "Medical care" has the meaning set forth in
71 section one-a, article sixteen of this chapter.

72 (n) "Network plan" has the meaning set forth in
73 section one-a, article sixteen of this chapter.

74 (o) "New business premium rate" means, for each
75 class of business as to a rating period, the premium rate
76 charged or offered by the small employer carrier to small
77 employers with similar case characteristics for newly
78 issued health benefit plans with the same or similar
79 coverage.

80 (p) "Preexisting condition exclusion" has the
81 meaning set forth in section one-a, article sixteen of this
82 chapter.

83 (q) "Rating period" means the calendar period of at
84 least twelve months for which premium rates established
85 by a small employer carrier are assumed to be in effect, as
86 determined by the small employer carrier.

87 (r) "Small employer" means any person, firm,
88 corporation, partnership or association actively engaged in
89 business in the state of West Virginia who, during the
90 preceding calendar year, employed an average of no more
91 than fifty but not fewer than two eligible employees and
92 employs at least two employees on the first day of its
93 group health plan year. A new employer, not in existence
94 for all of the preceding calendar year, shall be considered
95 a small employer if it is reasonably expected to employ an
96 average of no more than fifty but not fewer than two
97 eligible employees on business days in the current
98 calendar year. Companies which are affiliated companies
99 or which are eligible to file a combined tax return for state
100 tax purposes shall be considered one employer.

101 (s) "Small employer carrier" or "carrier" means any
102 health insurer, as defined in section one-a, article sixteen
103 of this chapter, which offers health benefit plans covering
the employees of a small employer situate within the state of West Virginia.

§33-16D-4. Discrimination prohibited; guaranteed issue; filing with commissioner; violations and penalties.

(a) All carriers subject to this article are strictly prohibited from marketing their product to a specific group, legal occupation, locale, zip code, neighborhood, race, religion, or any discriminatory group.

(b) For plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, in which the plan has, on the first day of the plan year, at least two enrollees who are current employees, each carrier shall accept every small employer that applies for coverage under a health benefit plan, unless such health benefit plan is made available only through a bona fide association, and consistent with public law 104-191 (Public Health Service Act section 2711 (a) (1) (B)), shall accept for enrollment in the plan every employee of the small employer, including dependents, when an employee or dependent first becomes eligible to enroll under terms of the plan and under the rules of the carrier that are uniformly applicable to small employers. This subsection shall not apply to:

(1) A network plan if the carrier:

(A) Limits coverage to a small employer’s employees and dependents who reside, live or work in the carrier’s service area; or

(B) Obtains the commissioner’s approval to deny coverage in its service area due to the carrier’s lack of capacity for additional enrollees, but only if the carrier denies coverage uniformly to all small employers without regard to their claims experience or that of their employees and dependents or to any health status-related factor relating to employees and their dependents. A carrier may not offer small group coverage in the same service area for one hundred eighty days after the date coverage is denied under this paragraph; or
(2) A carrier that obtains the commissioner's approval to deny coverage due to the carrier's insufficient financial reserves for additional coverage, but only if the carrier denies coverage uniformly to all small employers, consistent with all requirements of this chapter and without regard to the claims experience of the small employers and their employees and dependents or to any health status-related factor relating to employees and their dependents. A carrier may not offer small group coverage for one hundred eighty days after the date coverage is denied under this subdivision or until the carrier has obtained the commissioner's approval of the level of its reserves for additional coverage, whichever is later.

(c) All carriers subject to this article shall file any marketing information upon request of the commissioner. The commissioner shall review said information and shall have the authority to take appropriate action to eliminate discriminatory marketing practices, including imposing fines on violators of this section of not more than ten thousand dollars. Upon a second violation of this section, the commissioner shall have the authority to revoke the violator's license to transact insurance.

§33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.

(a) Premium rates for health benefit plans subject to this article shall be subject to the following provisions:

(1) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent: Provided, That this subdivision shall not apply to a class of business if all of the following apply:

(A) The class of business is one for which the carrier does not reject, and never has rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claim experience or health status;
(B) The carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefit plan into or out of the class of business; and

(C) The class of business is currently available for purchase.

(2) For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than thirty percent of the index rate.

(3) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(A) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate;

(B) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the carrier’s rate manual for the class of business; and

(C) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier’s rate manual for the class of business.

(4) In the case of health benefit plans issued prior to the effective date of this article, a premium rate for a rating period may exceed the ranges described in subdivision (1) or (2) of this subsection for a period of five years following the effective date of this article. In that case, the percentage increase in the premium rate charged to a small employer in such a class of business for
a new rating period may not exceed the sum of the following:

(A) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate; and

(B) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier’s rate manual for the class of business.

(b) Nothing in this section is intended to affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

(c) Adjustments in rates for claim experience, health status and duration of coverage may not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

(d) A small employer carrier shall utilize industry as a case characteristic in establishing premium rates: Provided, That the highest rate factor associated with any industry classification shall not exceed the lowest rate factor associated with any industry classification by more than fifteen percent.

(e) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.
(f) A small employer carrier may not involuntarily transfer a small employer into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration since issue.

(g) To be eligible to make a rate increase request after the first day of July, one thousand nine hundred ninety-three, a carrier shall have a minimum anticipated loss ratio of seventy-three percent. In calculating its minimum anticipated loss ratio, an insurer shall include in its actual incurred claims the amount of premium taxes for the same experience period which are attributable to the policy forms or certificates affected by this section and which were paid to the state of West Virginia pursuant to the provisions of article three of this chapter.

(h) All insurance carriers subject to this article, effective the first day of July, one thousand nine hundred ninety-three, shall be prohibited from distinguishing more than four classes of business within its small group insurance coverage.

(i) If any health benefit plan is provided by a carrier through a bona fide association of small employers not in the business of selling insurance and with not fewer than two hundred cumulative employees, and if such association is rated on the basis of the number of employees and not on the basis of the individual small employers, such association or group is exempt from the provisions of this article.

§33-16D-7. Renewability of coverage; exceptions.

(a) A health benefit plan subject to this article shall be renewable to all eligible employees at the option of the small employer: Provided, That a carrier may refuse to renew a health benefit plan for plan years beginning on or before the thirtieth day of June, one thousand nine hundred ninety-seven, for any of the following reasons:

(1) Nonpayment of required premiums;
(2) Fraud or misrepresentation by the small employer or by the insured individual;

(3) Noncompliance with plan provisions;

(4) The number of individuals covered under the plan is fewer than the number or less than the percentage of eligible individuals necessary pursuant to the percentage requirements under the plan; or

(5) The small employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan.

(b) For plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, in which the plan has, on the first day of the plan year, at least two enrollees who are current employees, a health benefit plan shall be renewable to all eligible employees at the option of the small employer, and a carrier may refuse to renew a health benefit plan only for one of the following reasons:

(1) Nonpayment of required premiums;

(2) Fraud or misrepresentation of material fact by the small employer;

(3) The number of individuals covered under the plan is fewer than the number or less than the percentage of eligible individuals necessary pursuant to the percentage requirements under the plan;

(4) The carrier ceases to offer health benefit plans to small employers as provided in subsection (d) of this section;

(5) For coverage offered under a network plan, a carrier no longer has any enrollees of the network plan who live or work in the plan’s service area, and the carrier would deny coverage under the network plan to a small employer with no eligible employees or dependents in its service area; or

(6) For health benefit plans offered only through a bona fide association, the small employer ceases to be a member of the association, if plans are terminated
uniformly without respect to any health status-related factor relating to any covered employee, association member or dependent. With respect to coverage provided to a small employer only through a bona fide association, a reference to "policyholder" or "plan sponsor" is deemed to include a reference to the small employer.

(c)(1) For plan years beginning on or before the thirtieth day of June, one thousand nine hundred ninety-seven, a small employer carrier may cease to renew all plans under a class of business. Upon the small employer's election of nonrenewal, the carrier shall provide notice of such election not to renew to all affected health benefit plans and to the commissioner in each state in which an affected insured individual is known to reside at least ninety days prior to termination of coverage.

(2) A carrier which exercises its right to cease to renew all plans in a class of business pursuant to this subsection may not:

(A) Establish a new class of business for a period of five years after the nonrenewal of the plans without prior approval of the commissioner; or

(B) Transfer or otherwise provide coverage to any of the employers from the nonrenewed class of business unless the carrier offers to transfer or provide coverage to all affected employers and eligible employees without regard to case characteristics, claim experience, health status or duration of coverage.

(d) For plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, in which the plan has, on the first day of the plan year, at least two enrollees who are current employees, a carrier may elect to discontinue offering health benefit plans:

(1) Of a particular type, if the carrier gives notice to each small employer affected and to all covered employees and dependents at least ninety days before the date coverage is discontinued. The carrier shall offer each such small employer the option to purchase all other health benefit plans offered by the carrier to small
employers. In electing to discontinue health benefit plans of a particular type and in offering coverage under the preceding sentence, the carrier shall act uniformly without regard to small employers' claims experience or any health status-related factor relating to any covered employee or dependent or new employees or dependents who may become eligible for coverage; or

(2) Of all types if the carrier gives notice to the commissioner, to each small employer affected and to all covered employees or members and dependents at least one hundred eighty days before the date such plans are discontinued. The carrier shall discontinue all, and not renew any, health benefit plans in the small group market. The carrier may not issue any health benefit plan to a small employer in this state for a five-year period beginning on the date the last discontinued health benefit plan is not renewed.

(e) For plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, in which the plan has, on the first day of the plan year, at least two enrollees who are current employees, a carrier may modify a health benefit plan upon its renewal only if the modification is consistent with the provisions of this article and effective on a uniform basis among all individuals with that policy form. Except for coverage available only through an association, any modification shall be made effective on a uniform basis among all small employers with that product.


(a) Each small employer carrier shall make reasonable disclosure in solicitation and sales materials provided to small employers of the following:

(1) The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status or duration of coverage of the employees of the small employer;
(2) The provisions concerning the carrier’s right to change premium rates and the factors, including case characteristics, which affect changes in premium rates;

(3) A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans and the benefits and premiums available under all health benefit plans for which the small employer is qualified;

(4) The provisions relating to renewability of coverage;

(5) The provisions relating to any preexisting conditions limitations; and

(6) An explanation, if applicable, that the small employer is purchasing a minimum benefits plan issued pursuant to article sixteen-c of this chapter.

(b) All disclosure statements shall be presented in clear and understandable form and format and shall be separate from any policy, certificate or evidence of coverage otherwise provided. No carrier may be required under this section to disclose proprietary or trade secret information to a small employer.

§33-16D-10. Suspension of requirements.

The commissioner may suspend all or part of the requirements of this article, other than sections four, seven, eight and twelve, applicable to one or more health benefit plans for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

§33-16D-11. Effective date.

Except as otherwise provided, the provisions of this article shall apply to each health benefit plan for a small employer situate in the state of West Virginia that is delivered, issued for delivery, renewed or continued after the effective date of this article. For purposes of this
section, the date a plan is continued is the first rating period which commences after the effective date of this article.

§33-16D-12. Equality of terms; preexisting conditions; continuous coverage restrictions, eligibility for enrollment.

Health benefit plans and, to the extent permitted by the federal Employee Retirement Income Security Act (ERISA), other benefit arrangements covering small employers shall be subject to the following provisions:

(a) Preexisting conditions provisions may not exclude coverage for a period beyond twelve months following an individual’s effective date of coverage and may only relate to conditions which had, during the twelve months immediately preceding the effective date of coverage, manifested themselves in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care or treatment or for which medical advice, diagnosis, care or treatment was recommended or received, or as to a pregnancy existing on the effective day of coverage. For plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, in which the plan has, on the first day of the plan year, at least two enrollees who are current employees, a health benefit plan shall meet all requirements set forth in section three-k, article sixteen of this chapter (preexisting condition exclusions).

(b) In determining whether a preexisting condition limitation provision applies to an eligible employee or dependent, all health benefit plans shall credit the time such person was covered under a previous employer-based health benefit plan, a comparable individual health benefit plan, or a self-insured plan if the previous coverage was continuous to a date not more than thirty days prior to the effective date of the new coverage, exclusive of any applicable waiting period under such plan. For plan years beginning after the thirtieth day of June, one thousand nine hundred ninety-seven, in which the plan has, on the first day of the plan year, at least two enrollees who are current employees, a health benefit plan shall meet all
requirements set forth in section three-m, article sixteen of
this chapter (creditable coverage).

(c) Subject to subsections (a) and (b) of this section,
when a small group employer converts its health benefit
plan from one health benefit plan to another health
benefit plan or from one carrier to another carrier, all
eligible employees who at the time of conversion are
covered by the health benefit plan shall be offered health
benefits coverage under the subsequent plan, and no
employee who at the time of conversion is covered by a
health benefit plan offered by said employer may be
treated any differently relative to other covered employees
under the new health benefit plan than he or she is treated
under the current health benefit plan.

(d) For plan years beginning after the thirtieth day of
June, one thousand nine hundred ninety-seven, in which
the plan has, on the first day of the plan year, at least two
enrollees who are current employees, no carrier may
condition eligibility or continued eligibility of any
employee or dependent on a health status-related factor,
and a health benefit plan shall meet all requirements set
forth in section three-n, article sixteen of this chapter
(eligibility for enrollment).

§33-16D-15. Continuation of coverage under small plans.

The Legislature finds that the provisions of this article
do not address continuing coverage under a health benefit
plan. Therefore, the commissioner is to perform or have
performed a study to determine the feasibility and
advisability of implementing continuation of coverage
under health benefit plans issued to small employers with
fewer than twenty employees. The commissioner shall
make a report of findings, conclusions and
recommendations to the Legislature during its regular
session in the year one thousand nine hundred ninety-
eight.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-24. Filing and approval of accident and sickness
insurance certificates.
(a) No domestic, foreign or alien society licensed in this state shall issue or deliver in this state any certificate or other evidence of any contract of accident and sickness insurance unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner and approved by him or her as conforming to reasonable rules from time to time in effect and as not inconsistent with any other provisions of law applicable thereto. The commissioner shall, within a reasonable time after the filing of any form, notify the society filing the form of the approval or disapproval of the form. The commissioner may in his or her discretion approve any form which contains provisions more favorable to the members than the ones required.

(b) Pursuant to chapter twenty-nine-a of this code, the commissioner may promulgate rules necessary to implement the provisions of this section, and such rules shall conform, as far as practicable, to the provisions of article fifteen (Accident and Sickness Insurance) and article sixteen (Group Accident and Sickness Insurance) of this chapter.

(1) For any certificate or other evidence of coverage issued before the first day of July, one thousand nine hundred ninety-seven, and for any certificate or other evidence of coverage under a health benefit plan issued on or after the first day of July, one thousand nine hundred ninety-seven, other than in connection with a group health plan, where the commissioner deems inapplicable, either in part or in their entirety, the provisions of articles fifteen or sixteen of this chapter, the commissioner may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member. For purposes of this subsection, the terms “group health plan” and “health benefit plan” have the meanings set forth in section one-a, article sixteen of this chapter.

(2) For any certificate or other evidence of individual coverage issued or renewed on or after the first day of July, one thousand nine hundred ninety-seven, the society shall comply with all provisions of article fifteen of this
chapter. For any certificate or other evidence of coverage under a health benefit plan issued in connection with a group health plan on or after the first day of July, one thousand nine hundred ninety-seven, the society shall comply with all provisions of article sixteen of this chapter, and for a health benefit plan issued to a small employer, as defined in section two, article sixteen-d of this chapter, with all provisions of article sixteen-d of this chapter.

(c) Any filing made hereunder shall be deemed approved unless disapproved within sixty days from the date of such filing.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; section thirty-four, article six (fee for form and rate filing); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eleven (unfair trade practices); article twelve (agents, brokers and solicitors), except that the agent’s license fee shall be twenty-five dollars; section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, paragraph ____________________

*Clerk's Note: This section was also amended by S. B. 371 (Chapter 110), which passed prior to this act.
article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-a (long-term care insurance); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one; article twenty-seven (insurance holding company systems); article twenty-eight (individual accident and sickness insurance minimum standards); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); and article
thirty-seven (managing general agents); and article forty-one (privileges and immunity), and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, the corporation is converted into a corporation organized for a pecuniary profit or if it transacts business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

Corporations organized under this article are subject to supervision and regulation of the insurance commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated of the following articles of this chapter: Article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-c (diabetes

*Clerk's Note: This section was also amended by S. B. 371 (Chapter 110), which passed prior to this act.
insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article forty-one (privileges and immunity); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the

*Clerk's Note: This section was also amended by S. B. 371 (Chapter 110), which passed prior to this act and H. B. 2091 (Chapter 108), which passed subsequent to this act.
insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article shall not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a “reciprocal state” means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section seven-a of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

(c) Any health maintenance organization authorized under this article shall not be considered to be practicing medicine and is exempt from the provisions of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of sections fifteen and twenty, article four (general provisions); section seventeen, article six (noncomplying forms); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article nine (administration of deposits); article twelve (agents, brokers, solicitors and excess line); section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section
two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-b (uniform health care administration act); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-f, article sixteen (treatment of temporomandibular disorder and craniomandibular disorder); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-seven (insurance holding company systems); article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article forty-one (privileges and immunity) shall be applicable to any health maintenance organization granted a certificate of authority under this article. In circumstances where the code provisions made applicable to health maintenance organizations by this section refer to the “insurer”, the “corporation” or words of similar import, the language shall be construed to include health maintenance organizations.
(e) Any long-term care insurance policy delivered or
issued for delivery in this state by a health maintenance
organization shall comply with the provisions of article
fifteen-a of this chapter.

(f) A health maintenance organization granted a
certificate of authority under this article shall be exempt
from paying municipal business and occupation taxes on
gross income it receives from its enrollees, or from their
employers or others on their behalf, for health care items
or services provided directly or indirectly by the health
maintenance organization. This exemption applies to all
taxable years through the thirty-first day of December,
one thousand nine hundred ninety-six. The commissioner
and the tax department shall conduct a study of the
appropriations of imposition of the municipal business
and occupation tax or other tax on health maintenance
organizations, and shall report to the regular session of the
Legislature, one thousand nine hundred ninety-seven, on
their findings, conclusions and recommendations, together
with drafts of any legislation necessary to effectuate their
recommendations.

CHAPTER 110

(S. B. 371—By Senators Tomblin, Mr. President, Wooton, Jackson, Bailey, Craigo,
Walker, Plymale, Wiedebusch, Bowman, Dittmar, Kimble, Dugan, Chafin, Snyder,
Anderson, McKenzie, Helmick, Oliverio, Sharpe, Ross, Schoonover, Love, Ball,
Sprouse, Buckalew, Deem and Scott)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two,
chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend
and reenact section four, article twenty-four of said chapter;
to amend and reenact section six, article twenty-five of said
chapter; to amend and reenact section twenty-four, article
twenty-five-a of said chapter; and to further amend said
chapter by adding thereto a new article, designated article forty-one, all relating to adding provisions for privileges and immunity to farmers' mutual fire insurance companies; adding provisions for privileges and immunity to hospitals, medical and dental corporations; and adding provisions that govern scientific, nonprofit institutions; increasing an agent's license fee; adding provisions to be subject to the supervision and regulation of the insurance commissioner; adding provisions for privileges and immunity to health care corporations; adding provisions of exemption for any health maintenance organization considered to be practicing medicine; adding provisions for privileges and immunity to health maintenance organizations; making technical corrections; defining legislative intent; providing for definitions; and providing for privileges and immunity for persons reporting insurance fraud.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that section six, article twenty-five of said chapter be amended and reenacted; that section twenty-four, article twenty-five-a of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article forty-one, all to read as follows:

Article

22. Farmers' Mutual Fire Insurance Companies.

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.


41. Privileges and Immunity.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


Each company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter:
Article one (definitions); article two (insurance commissioner); article four (general provisions) except that section sixteen of said article shall not be applicable thereto; article seven (assets and liabilities); article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article assessments shall not be levied against any former member of a farmers' mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued; article eleven (unfair trade practices); article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars; article twenty-six (West Virginia insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty (mine subsidence insurance) except that under the provisions of section six of said article, a farmers' mutual insurance company shall have the option of offering mine subsidence coverage to all of its policy-holders but shall not be required to do so; article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-six (business transacted with producer-controlled property/casualty insurer); article thirty-seven (managing general agents); article thirty-nine (disclosure of material transactions); article forty (risk-based capital for insurers); and article forty-one (privileges and immunity); but only to the extent these provisions are not inconsistent with the provisions of this article.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution

*Clerk's Note: This section was also amended by H. B. 2667 (Chapter 109), which passed subsequent to this act.
and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; section thirty-four, article six (fee for form and rate filing); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eleven (unfair trade practices); article twelve (agents, brokers and solicitors), except that the agent's license fee shall be twenty-five dollars; section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-a (long-term care insurance); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article
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45 sixteen (equal treatment of state agency); section fourteen,
46 article sixteen (coordination of benefits with medicaid);
47 section sixteen, article sixteen (diabetes insurance); article
48 sixteen-a (group health insurance conversion); article
49 sixteen-c (small employer group policies); article sixteen-
50 d (marketing and rate practices for small employers);
51 article twenty-six-a (West Virginia life and health insur-
52 ance guaranty association act), after the first day of
53 October, one thousand nine hundred ninety-one; article
54 twenty-seven (insurance holding company systems);
55 article twenty-eight (individual accident and sickness
56 insurance minimum standards); article thirty-three (annual
57 audited financial report); article thirty-four (administrative
58 supervision); article thirty-four-a (standards and commis-
59 sioner's authority for companies deemed to be in hazard-
60 ous financial condition); article thirty-five (criminal
61 sanctions for failure to report impairment); article thirty-
62 seven (managing general agents); and article forty-one
63 (privileges and immunity); and no other provision of this
64 chapter may apply to these corporations unless specifical-
65 ly made applicable by the provisions of this article. If,
66 however, the corporation is converted into a corporation
67 organized for a pecuniary profit or if it transacts business
68 without having obtained a license as required by section
69 five of this article, it shall thereupon forfeit its right to
70 these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

*§33-25-6. Supervision and regulation by insurance commis-
1 sioner; exemption from insurance laws.

1 Corporations organized under this article are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to
4 the same extent these provisions are applicable to insurers
5 transacting similar kinds of insurance and not inconsistent
6 with the provisions of this article, shall be governed by and
7 be subject to the provisions as hereinbelow indicated of
8 the following articles of this chapter: Article four (general

*Clerk's Note: This section was also amended by H. B. 2667 (Chapter
109), which passed subsequent to this act.
provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article forty-one (privileges and immunity); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article.
ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article shall not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section seven-a of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

*Clerk's Note: This section was also amended by H. B. 2667 (Chapter 109) and H.B. 2091 (Chapter 108), which passed subsequent to this act.
(c) Any health maintenance organization authorized under this article shall not be considered to be practicing medicine and is exempt from the provisions of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of sections fifteen and twenty, article four (general provisions); section seventeen, article six (noncomplying forms); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article nine (administration of deposits); article twelve (agents, brokers, solicitors and excess line); section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-b (uniform health care administration act); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-f, article sixteen (treatment of temporomandibular disorder and craniomandibular disorder); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-seven (insurance holding company systems); article thirty-four-a (standards
and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); article thirty-nine (disclosure of material transactions); and article forty-one (privileges and immunity) shall be applicable to any health maintenance organization granted a certificate of authority under this article. In circumstances where the code provisions made applicable to health maintenance organizations by this section refer to the "insurer", the "corporation" or words of similar import, the language shall be construed to include health maintenance organizations.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

(f) A health maintenance organization granted a certificate of authority under this article shall be exempt from paying municipal business and occupation taxes on gross income it receives from its enrollees, or from their employers or others on their behalf, for health care items or services provided directly or indirectly by the health maintenance organization. This exemption applies to all taxable years through the thirty-first day of December, one thousand nine hundred ninety-six. The commissioner and the tax department shall conduct a study of the appropriations of imposition of the municipal business and occupation tax or other tax on health maintenance organizations, and shall report to the regular session of the Legislature, one thousand nine hundred ninety-seven, on their findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate their recommendations.

ARTICLE 41. PRIVILEGES AND IMMUNITY.

§33-41-1. Legislative purpose and findings.
§33-41-2. Definitions.
§33-41-3. Privileges and immunity.

§33-41-1. Legislative purpose and findings.
It is the finding of the Legislature that the business of insurance involves many transactions that have potential for fraud, abuse and other illegal activities. It is the further finding of the Legislature that insurance fraud is a crime pursuant to state and federal statutes. The Legislature further finds that state, local and federal law-enforcement and regulatory agencies may prosecute fraud in accordance with these statutes, thereby ultimately reducing the cost of insurance fraud to insurers and consumers. It is the purpose of this article to encourage the detection, investigation and prosecution of persons engaging in insurance fraud by providing certain privileges and immunity.

§33-41-2. Definitions.

The following words when used in this article shall have the meanings set forth in this section, unless the context clearly indicates otherwise:

(a) “Authorized agency” means:

(1) The division of public safety of this state, the police department of any municipality, any county sheriff’s department and any duly constituted criminal investigative department or agency of the United States or of this state;

(2) The prosecuting attorney of any county of this state or of the United States or any district thereof;

(3) The state insurance commissioner or the commissioner’s employees, agents or representatives;

(4) The national association of insurance commissioners; or

(5) A person or agency involved in the prevention and detection of fraud or that person’s or agency’s agents, employees or representatives.

(b) “Benefits” means money payments, goods, services or any other thing of value.

(c) “Claim” means an application or request for payment or benefits provided under an insurance policy.
(d) "Commissioner" means the insurance commissioner of the state of West Virginia.

(e) "Insurance fraud" includes, but is not limited to, instances where any person who, with the intent to injure, defraud or deceive any person, insurer, or agency:

(i) Presents or causes to be presented to any insurer or insurance representative any written or oral statement as part of or in support of an application for insurance or a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete or misleading information concerning any fact or thing material to the application, claim or benefit;

(ii) Submits or causes to be submitted to any authorized agency any written or oral statement as part of or in support of any application, audit, claim, report, investigation, valuation, statement, appraisal, estimation of loss, publication, certificate, actuarial report or study, filing, financial statement, tax return, rate request, petition or any other such document knowing that such statement contains any false, incomplete or misleading information concerning any fact or thing material thereto;

(iii) Solicits, offers or receives any remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from any person or insurer which would not otherwise be payable under an applicable insurance policy; and

(iv) Assists, abets, solicits or conspires with another to commit insurance fraud.

(f) "Person" means any individual, partnership, firm, association, corporation, company, insurer, organization, society, reciprocal, business trust or any other legal entity. "Person" also includes hospital service corporations, medical service corporations and dental service corporations as defined in article twenty-four of this chapter, health care corporations as defined in article twenty-five of this chapter, or a health maintenance organization organized pursuant to article twenty-five-a of this chapter.
§33-41-3. Privileges and immunity.

(a) Any person who makes a report or furnishes information, written or oral, concerning suspected, anticipated or completed insurance fraud to an insurer or authorized agency shall be entitled to those privileges and immunities heretofore existing under the common or statutory law of this state, as well as the immunity established herein.

(b) In the absence of fraud, malice or bad faith, no person or agent, employee or designee of such person shall be subject to civil liability of any nature arising out of such person's providing any information related to suspected, anticipated or completed insurance fraud to any insurer or authorized agency.

(c) Nothing herein shall be construed to limit, abrogate or modify existing statutes or case law applicable to the duties or liabilities of insurers regarding bad faith or unfair trade practices.

CHAPTER 111
(Com. Sub. for H. B. 2123—By Delegates Givens, Douglas and Staton)

[Passed March 19, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article seven of said chapter, all relating to waiver and transfer of jurisdiction of juvenile cases to the criminal jurisdiction of the court; eliminating the right to an interlocutory appeal of certain transfer orders; providing for public disclosure of certain juvenile records; requiring that certain juvenile records be sealed; and making technical revisions.

Be it enacted by the Legislature of West Virginia:
That sections ten, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article seven of said chapter be amended and reenacted, all to read as follows:

Article

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-10. Waiver and transfer of jurisdiction.
§49-5-17. Confidentiality of juvenile records.
§49-5-18. Sealing of juvenile records.

§49-5-10. Waiver and transfer of jurisdiction.

(a) Upon written motion of the prosecuting attorney filed at least eight days prior to the adjudicatory hearing and with reasonable notice to the juvenile, his or her counsel, and his or her parents, guardians or custodians, the court shall conduct a hearing to determine if juvenile jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of the court. Any motion filed in accordance with this section shall state, with particularity, the grounds for the requested transfer, including the grounds relied upon as set forth in subsection (d), (e), (f) or (g) of this section and the burden shall be upon the state to establish such grounds by clear and convincing evidence. Any hearing held under the provisions of this section shall be held within seven days of the filing of the motion for transfer unless it is continued for good cause.

(b) No inquiry relative to admission or denial of the allegations of the charge or the demand for jury trial may be made by or before the court until the court has determined whether the proceeding is to be transferred to criminal jurisdiction.

(c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a juvenile who has attained the age of fourteen years makes a demand on the record to be transferred to the criminal jurisdiction of the court. The case may then be referred to magistrate or circuit court for
further proceedings, subject to the court’s jurisdiction.

(d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The juvenile is at least fourteen years of age and has committed the crime of treason under section one, article one, chapter sixty-one of this code; the crime of murder under sections one, two and three, article two of said chapter; the crime of robbery involving the use or presenting of firearms or other deadly weapons under section twelve of said article; the crime of kidnapping under section fourteen-a of said article; the crime of first degree arson under section one, article three of said chapter; or the crime of sexual assault in the first degree under section three, article eight-b of said chapter; or

(2) The juvenile is at least fourteen years of age and has committed an offense of violence to the person which would be a felony if the juvenile were an adult: Provided, That the juvenile has been previously adjudged delinquent for the commission of an offense of violence to the person which would be a felony if the juvenile were an adult; or

(3) The juvenile is at least fourteen years of age and has committed an offense which would be a felony if the juvenile were an adult: Provided, That the juvenile has been twice previously adjudged delinquent for the commission of an offense which would be a felony if the juvenile were an adult.

(e) The court may transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (1), subsection (d) of this section, but who is younger than fourteen years of age.

(f) The court may, upon consideration of the juvenile’s mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (2) or (3), subsection (d) of
(g) The court may, upon consideration of the juvenile’s mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The juvenile, who is at least fourteen years of age, has committed an offense of violence to a person which would be a felony if the juvenile were an adult; or

(2) The juvenile, who is at least fourteen years of age, has committed an offense which would be a felony if the juvenile were an adult: Provided, That the juvenile has been previously adjudged delinquent for the commission of a crime which would be a felony if the juvenile were an adult; or

(3) The juvenile, who is at least fourteen years of age, used or presented a firearm or other deadly weapon during the commission of a felony; or

(4) The juvenile has committed a violation of the provisions of section four hundred one, article four, chapter sixty-a of this code which would be a felony if the juvenile were an adult involving the manufacture, delivery or possession with the intent to deliver a narcotic drug. For purposes of this subdivision, the term “narcotic drug” has the same definition as that set forth in section one hundred one, article one of said chapter.

(h) For purposes of this section, the term “offense of violence” means an offense which involves the use or threatened use of physical force against a person.

(i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its decision is based or shall incorporate such findings of fact and conclusions of law in its order directing transfer.

(j) A juvenile who has been transferred to criminal
jurisdiction pursuant to the provisions of subsection (e), (f) or (g) of this section, by an order of transfer entered after the first day of July, one thousand nine hundred ninety-seven, shall have the right to either directly appeal an order of transfer to the supreme court of appeals or to appeal such order of transfer following a conviction of the offense of transfer. If the juvenile exercises the right to a direct appeal from an order of transfer, the notice of intent to appeal and a request for transcript shall be filed within ten days from the date of the entry of any such order, and the petition for appeal shall be presented to the supreme court of appeals within forty-five days from the entry of such order. The provisions of article five, chapter fifty-eight of this code pertaining to the appeals of judgments in civil actions shall apply to appeals under this chapter except as herein modified. The court may, within forty-five days of the entry of the order of transfer, by appropriate order, extend and reextend the period in which to file the petition for appeal for such additional time, not to exceed a total extension of sixty days, as in the court's opinion may be necessary for preparation of the transcript: Provided, That the request for such transcript was made by the party seeking appeal within ten days of entry of such order of transfer. In the event any such notice of intent to appeal and request for transcript be timely filed, proceedings in criminal court shall be stayed upon motion of the defendant pending final action of the supreme court of appeals thereon.

§49-5-17. Confidentiality of juvenile records.

(a) Records of a juvenile proceeding conducted under this chapter are not public records and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

(b) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile's records shall automatically be disclosed to certain school officials, subject to the following terms and conditions:

(1) Only certain types of juvenile records shall be disclosed. These include and are limited to cases in which:

(A) The juvenile has been charged with an offense
which would be a felony if the juvenile were an adult; and 

(i) The offense involves violence against another person;

(ii) The offense involves possession of a dangerous or deadly weapon; or

(iii) The offense involves possession or delivery of a controlled substance as that term is defined in section one hundred one, article one, chapter sixty-a of this code; and

(B) The juvenile case has proceeded to a point where one or more of the following has occurred:

(i) A judge, magistrate or referee has determined that there is probable cause to believe that the juvenile committed the offense as charged;

(ii) A judge, magistrate or referee has placed the juvenile on probation for the offense;

(iii) A judge, magistrate or referee has placed the juvenile into an improvement period in accordance with section nine, article five, chapter forty-nine of this code; or

(iv) Some other type of disposition has been made of the case other than dismissal.

(2) The circuit court for each judicial circuit in West Virginia shall designate one person to supervise the disclosure of juvenile records to certain school officials.

(3) If the juvenile attends a West Virginia public school, the person designated by the circuit court shall automatically disclose all records of a juvenile case to the county superintendent of schools in the county in which the juvenile attends school. The person designated by the circuit court shall also automatically disclose all records of a juvenile case to the principal of the school which the juvenile attends.

(4) If the juvenile attends a private school in West Virginia, the person designated by the circuit court shall determine the identity of the highest ranking person at that school, and shall automatically disclose all records of a juvenile’s case to that person.
(5) If the juvenile does not attend school at the time the juvenile’s case is pending, the person designated by the circuit court shall not transmit the juvenile’s records to any school. However, the person designated by the circuit court shall transmit the juvenile’s records to any school in West Virginia which the juvenile subsequently attends.

(6) The person designated by the circuit court shall not automatically transmit juvenile records to a school which is not located in West Virginia. Instead, the person designated by the circuit court shall contact the out-of-state school, inform it that juvenile records exist, and make an inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person designated by the circuit court shall consult with the circuit judge who presided over the case to determine whether the juvenile records should be disclosed to the out-of-state school. The circuit judge shall have discretion in determining whether to disclose the juvenile records, and shall consider whether the other state’s law regarding disclosure provides for sufficient confidentiality of juvenile records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be disclosed in accordance with the provisions of subdivision (7) of this subsection.

(7) The person designated by the circuit court shall transmit the juvenile’s records to the appropriate school official under cover of a letter emphasizing the confidentiality of such records and directing the official to consult this section of the code. A copy of this section of the code shall be transmitted with the juvenile’s records and cover letter.

(8) Juvenile records must be treated as absolutely confidential by the school official to whom they are transmitted, and nothing contained within the juvenile’s records shall be noted on the juvenile’s permanent educational record. The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances. However, the principal of a school to whom the records are transmitted shall have the duty to disclose the contents of those records to any teacher who teaches a class in which the subject juvenile is
enrolled and to the regular driver of a school bus in which
the subject juvenile is regularly transported to or from
school. Furthermore, any school official to whom the
juvenile's records are transmitted may disclose the
contents of such records to any adult within the school
system who, in the discretion of the school official, has the
need to be aware of the contents of those records.

(9) If for any reason a juvenile ceases to attend a
school which possesses that juvenile's records, the
appropriate official at that school shall seal the records
and return them to the circuit court which sent them to
that school. If the juvenile has changed schools for any
reason, the former school shall inform the circuit court of
the name and location of the new school which the
juvenile attends or will be attending. If the new school is
located within West Virginia, the person designated by the
circuit court shall forward the juvenile's records to the
juvenile's new school in the same manner as provided in
subdivision (7) of this subsection. If the new school is not
located within West Virginia, the person designated by the
circuit court shall handle the juvenile records in
accordance with subdivision (6) of this subsection.

If the juvenile has been found not guilty of an offense
for which records were previously forwarded to the
juvenile's school on the basis of a finding of probable
cause, the circuit court shall not forward those records to
the juvenile's new school. However, this shall not affect
records related to other prior or future offenses. If the
juvenile has graduated or quit school, or will otherwise not
be attending another school, the circuit court shall retain
the juvenile's records and handle them as otherwise
provided in this article.

(10) Under no circumstances shall one school transmit
a juvenile's records to another school.

(11) Under no circumstances shall juvenile records be
automatically transmitted to a college, university or other
post-secondary school.

(12) No one shall suffer any penalty, civil or criminal,
for accidentally or negligently attributing certain juvenile
records to the wrong person. However, such person shall
have the affirmative duty to promptly correct any mistake
that he or she has made in disclosing juvenile records
when the mistake is brought to his or her attention. A
person who intentionally attributes false information to a
certain person shall be subjected to both criminal and civil
penalties, in accordance with subsection (e) of this section.

(13) If a judge, magistrate or referee has determined
that there is probable cause to believe that a juvenile has
committed an offense but there has been no final
adjudication of the charge, the records which are
transmitted by the circuit court shall be accompanied by a
notice which clearly states in bold print that there has been
no determination of delinquency and that our legal system
requires a presumption of innocence.

(c) Notwithstanding the provisions of subsection (a) of
this section, juvenile records may be disclosed, subject to
the following terms and conditions:

(1) If a juvenile case is transferred to the criminal
jurisdiction of the circuit court pursuant to the provisions
of subsection (c) or (d), section ten of this article, the
juvenile records shall be open to public inspection.

(2) If a juvenile case is transferred to the criminal
jurisdiction of the circuit court pursuant to the provisions
of subsection (e), (f) or (g), section ten of this article, the
juvenile records shall be open to public inspection only if
the juvenile fails to file a timely appeal of the transfer
order, or the supreme court of appeals refuses to hear or
denies an appeal which has been timely filed.

(3) If a juvenile is fourteen years of age or older and a
court has determined there is a probable cause to believe
the juvenile committed an offense set forth in subsection
(g), section ten of this article, but the case is not
transferred to criminal jurisdiction, the juvenile records
shall be open to public inspection pending trial only if the
juvenile is released on bond and no longer detained or
adjudicated delinquent of the offense.

(4) If a juvenile is younger than fourteen years of age
and a court has determined there is probable cause to
believe that the juvenile committed the crime of murder
under section one, two or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree under section three, article eight-b of said chapter, but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(5) Upon a written petition and pursuant to a written order, the circuit court may permit disclosure of juvenile records to:

(A) A court which has juvenile jurisdiction and has the juvenile before it in a juvenile proceeding;

(B) A court exercising criminal jurisdiction over the juvenile which requests such records for the purpose of a presentence report or disposition proceeding;

(C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

(D) The officials of a public institution to which the juvenile is committed if they require such records for transfer, parole or discharge; or

(E) A person who is conducting research. However, juvenile records may be disclosed for research purposes only upon the condition that information which would identify the subject juvenile or the juvenile’s family shall not be disclosed.

(d) Any records open to public inspection pursuant to the provisions of this section are subject to the same requirements governing the disclosure of adult criminal records.

(e) Any person who willfully violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in the county or regional jail for not more than six months, or both so fined and confined, and shall be liable for damages in the amount of three hundred dollars or actual damages, whichever is greater.

§49-5-18. Sealing of juvenile records.
(a) One year after the juvenile's eighteenth birthday, or one year after personal or juvenile jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including, but not limited to, law-enforcement files and records, shall be sealed by operation of law.

(b) The records of a juvenile proceeding in which a juvenile was transferred to criminal jurisdiction pursuant to the provisions of section ten of this article shall be sealed by operation of law if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense upon which the waiver or order of transfer was based, or if the offense upon which the waiver or order of transfer was based is subsequently dismissed.

(c) To seal juvenile records, they shall be returned to the circuit court in which the case was pending and be kept in a separate confidential file. The records shall be physically marked to show that they have been sealed and shall be securely sealed and filed in such a manner that no one can determine the identity of the juvenile.

(d) Sealed records may not be opened except upon order of the circuit court.

(e) Sealing of juvenile records has the legal effect of extinguishing the offense as if it never occurred.

(f) The records of a juvenile convicted under the criminal jurisdiction of the circuit court pursuant to subdivision (1), subsection (d), section ten of this article may not be sealed.

(g) Any person who willfully violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in the county or regional jail for not more than six months, or both so fined and confined, and shall be liable for damages in the amount of three hundred dollars or actual damages, whichever is greater.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

(a) Except as otherwise provided in this chapter, all records and information concerning a child or juvenile
which are maintained by a state department, agency, court or law-enforcement agency shall be kept confidential and shall not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records, juvenile court records and records related to child abuse or neglect proceedings shall be made available:

(1) Where otherwise authorized by this chapter;

(2) To the child, parent, or the attorney of the child or parent;

(3) With the written consent of the child or of someone authorized to act on the child’s behalf; or

(4) Pursuant to a subpoena or order of a court of record; however, a subpoena for such records may be quashed by a court for good cause.

(c) Records related to child abuse or neglect proceedings shall be made available for inspection only by the child, his or her parents or custodian, the child’s counsel and other parties to the proceeding.

(d) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to the provisions of sections seventeen and eighteen, article five of this chapter.

(e) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in the county or regional jail for not more than six months, or be both fined and confined. A person convicted of violating the provisions of this section shall also be liable for damages in the amount of three hundred dollars or actual damages, whichever is greater.
CHAPTER 112

(S. B. 535—By Senators Wooton, Ball, Bowman, Hunter, Schoonover and White)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-b, relating to estimating the number of West Virginia residents in applications and reporting of certain information for construction projects which are financed, in whole or in part, by public funds or at public expense; specifying report forms; and specifying effective and termination dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. REPORTING OF EMPLOYMENT.

§21-1B-1. Findings; policy.

The Legislature finds that the purpose of economic development efforts is to improve the lives of West Virginians, and whereas, taxpayers spend a significant amount of money on economic development projects to create jobs, and state, county and municipal governments want to maximize employment of local citizens whenever contracting for public improvements, a tracking mechanism is needed to evaluate existing economic development efforts regarding job creation to better assist the design of training programs to meet the skills employers need.

§21-1B-2. Application of article.
This article applies to:

(a) Expenditures made after the first day of January, one thousand nine hundred ninety-eight, by any public authority made, in whole or in part, from public funds for a public improvement project; and

(b) Any private capital project funded, in whole or in part, after the first day of January, one thousand nine hundred ninety-eight, by the issuance of tax incentives, tax credits, or bonds or loans or other tax funded benefits granted by the state or any of its political subdivisions any economic development board or agency to induce or encourage the undertaking of any such construction project by any private person, corporation or any other entity.

§21-1B-3. Compiling of information.

(a) Application for financial incentives from economic development authorities, or other public authorities, which will be used, in whole or in part, for the construction of public or capital improvement projects, shall include a statement estimating the number and duration of each construction job which will go to West Virginia residents.

(b) Upon completion of any such project wherein the contract for the project was awarded after the first day of January, one thousand nine hundred ninety-eight, the applicant shall complete a report consisting of the number of individuals employed to construct such project, the county and state where they reside, and the total hours worked by each employee on such project and shall submit such report to the state tax department within thirty days of the completion of the project: Provided, That filing of a bureau of labor statistics report on employment, payroll and hours - intrastate construction, form bls 790b rev Jan 93, O.M.B. form approval no. 1220-0011, meets all requirements of this section when filed in accordance with this article: Provided, however, That the filing of a single annual report setting forth in the aggregate all contracts in this state to which this article applies and which sets forth the total number of individuals employed to construct such projects and the county and state where they reside shall be sufficient to fully meet the filing requirements of this article.
§21-1B-4. Effective date; termination provisions.

1 The provisions of this article shall be effective for projects bid, contracted or entered into after the first day of January, one thousand nine hundred ninety-eight, and the provisions of this article shall expire and become void at midnight, the thirty-first day of December, two thousand one.

CHAPTER 113

(S. B. 378—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Oliverio, Ross, Schoonover, Snyder, White, Wiedebusch, Buckalew, Deem, Kimble and Scott)

[Passed April 10, 1997; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend and reenact sections one, two and four, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to encouraging private landowners to allow the public to enter private lands for recreational purposes; providing for limitation of landowner liability for injury to persons entering private property and injury to the property of persons entering such property; and providing an exception for liability for deliberate, intentional or malicious infliction of injury.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.

§19-25-2. Limiting duty of landowner generally.

§19-25-4. Application of article.

§19-25-1. Purpose.

1 The purpose of this article is to encourage owners of land to make available to the public land and water areas
§19-25-2. Limiting duty of landowner generally.

Subject to the provisions of section four of this article, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous condition, use, structure or activity on such premises to persons entering for such purposes.

Subject to the provisions of section four of this article, an owner of land who either directly or indirectly invites or permits without charge as that term is defined in section five of this article, any person to use such property for recreational or wildlife propagation purposes does not thereby: (a) Extend any assurance that the premises are safe for any purpose; or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

§19-25-4. Application of article.

Nothing herein limits in any way any liability which otherwise exists: (a) For deliberate, willful or malicious infliction of injury to persons or property; or (b) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of the land by the federal government or any agency thereof, the state or any agency thereof, or any county or municipality or agency thereof.

Nothing herein creates a duty of care or ground of liability for injury to person or property.

Nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational or wildlife propagation purposes to exercise due care in his or her use of such land and in his or her activities thereon.
CHAPTER 114

(Com. Sub. for H. B. 2317—By Delegates Douglas, Hunt, Compton, Faircloth, Linch and Riggs)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal section two, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to reenact section one, article one of said chapter; and to amend and reenact section one, article two of said chapter, all relating to the authorization of legislative rules; continuing rules previously promulgated by state agencies; and authorizing the department of administration and the auditor to promulgate a legislative rule relating to the state purchasing card program.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article one of said chapter be reenacted; and that section one, article two of said chapter be amended and reenacted, all to read as follows:

Article
2. Authorization for Department of Administration to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven of this chapter, subject only to the limitations set forth with respect to each
such rule in the section or sections of this chapter authorizing its promulgation. The Legislature declares that all rules now or hereafter authorized under articles two through eleven of this chapter are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret. Legislative rules promulgated pursuant to the provisions of articles one through eleven of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment, or until amended by emergency rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.

All proposed legislative rules for which bills of authorization have been introduced in the Legislature not specifically authorized under articles two through eleven of this chapter are disapproved by the Legislature.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of administration and the auditor.

The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section ten-a, article three, chapter twelve of this code, modified by the department of administration and the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of February, one thousand nine hundred ninety-seven, relating to the department of administration and the auditor (state purchasing card program, 148 CSR 7), is authorized.
AN ACT to amend and reenact article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the division of environmental protection and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by the division of environmental protection; authorizing the division of environmental protection to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing the division of environmental protection to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing the division of environmental protection to promulgate a legislative rule; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources pursuant to 40 CFR Part 60; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to the underground storage tank insurance trust fund; authorizing the division of environmental protection to promulgate a legislative rule relating to WV/NPDES regulations for coal mining facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to confidential information; authorizing the division of environmen-
tal protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to voluntary remediation and redevelopment; creating a legislative rule relating to the office of environmental advocate; authorizing the division of environmental protection to promulgate an emergency legislative rule amending a current legislative rule relating to the prevention and control of particulate air pollution from manufacturing process operations; and authorizing the division of environmental protection to promulgate an amendment to a legislative rule relating to yard waste composting.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULE.

§64-3-1. Division of environmental protection.

(a) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, relating to the division of environmental protection (hazardous waste management, 33 CSR 20), is authorized.

(b) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (standards of performance for new stationary sources pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

(c) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the
division of environmental protection (emission standards for hazardous air pollutants pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

(d) The legislative rule filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-six, authorized under the authority of section six, article seventeen, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of October, one thousand nine hundred ninety-six, relating to the division of environmental protection (underground storage tank insurance trust fund, 33 CSR 32), is authorized.

(e) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section three, article one, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, one thousand nine hundred ninety-six, relating to the division of environmental protection (WV/NPDES regulations for coal mining facilities, 47 CSR 30), is authorized.

(f) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section four, article three, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, one thousand nine hundred ninety-seven, relating to the division of environmental protection (surface mining and reclamation regulations, 38 CSR 2), is authorized, with the following amendments:

“On page three, subsection 2.4, by striking out the words “Coal seams commonly associated with such minerals may include, but are not limited to Waynesburg, Washington, Freeport, Sewickley, Redstone, Pittsburgh,
On page three, subsection 2.4, line eight, by striking out the words “these seams are”, and inserting in lieu thereof the words “the seam is”;

On page nine, subsection 2.43, line two, after the word “highwall”, by inserting the words “except in operations where the entire upper horizon above the lowest coal seam is proposed to be partly or entirely removed”;

On page sixteen, subsection 2.95, line seven after the “any”, by inserting the word “substantial”; On page eighteen, subsection 2.108, line two, after the word “stream.” by adding the following: Examples include wildlife ponds, settling basins and all ponds and facilities or structures used for water treatment;

On page nineteen, subsection 2.120, line three, by striking the word “or” and inserting in lieu thereof the word “and”;

On page twenty-nine, subsection 3.2.e., after the word “period” by striking the remainder of the subdivision 3.2.e.; On page forty-nine, subsection 3.14.b.7., by striking the entire paragraph; On page forty-nine, subsection 3.14.b.8., by striking the entire paragraph; On page forty-nine, by renumbering the remaining paragraphs;

On page fifty-one, subparagraph 3.14.b.14E, line one, before the word “A”, by inserting the words “If requested by the Director”;

On page fifty-one, subsection 3.14.b.15.B., by striking the entire subparagraph, and inserting in lieu thereof the following: 3.14.b.15.B. Surface water must be diverted around or over the material by properly designed and stabilized diversion channels which have been designed
using the best current technology to provide protection to
the environment or the health, welfare and safety of the
public. The channel shall be designed and constructed to
ensure stability of the remaining material, control erosion,
and minimize water infiltration into the remaining
material.;

On page seventy-two, subdivision 3.29.a, line five after
the word “IBR”, by inserting the words “or where it has
been demonstrated to the satisfaction of the Director that
limited coal removal on areas immediately adjacent to the
existing permit is the only practical alternative to recovery
of unanticipated reserves or necessary to enhance
reclamation efforts or environmental protection”;

On page eighty-six, by inserting a new subsection 3.35
to read as follows: 3.35. All grade measurements and
linear measurements in this rule shall be subject to a
tolerance of two percent (2%). All angles in this rule shall
be measured from the horizontal and shall be subject to a
tolerance of five percent (5%). Provided, however, this
allowable deviation from the approved plan does not
affect storage capacity and/or performance standards.

On page one hundred eight, subdivision 5.5.c., line
two, after the word “landowner”, by striking the
remainder of the paragraph and inserting in lieu thereof
the words “requesting the permanent structures be left for
recreational or wildlife propagation purposes or for any
beneficial uses to the landowner”;

On page one hundred twelve, subdivision 6.5.a., line
five, after the word “Sunday.” by adding the following:
Provided, however, the Director may grant approval of a
request for Sunday blasting if the operator demonstrates
to the satisfaction of the Director that the blasting is
necessary and there has been an opportunity for a public
hearing.;

On page one hundred twenty-six, paragraph 9.2.i.2,
after the word “achieved” by inserting: An alternate
maximum or minimum soil pH may be approved based
on the optimum pH for the revegetation species;
On page one hundred thirty, line one, paragraph 9.3.h.1., by striking out the paragraph in its entirety, and inserting in lieu thereof: 9.3.h.1. The minimum stocking rate of commercial tree species shall be in accordance with the approved forest management plan prepared by a registered professional forester. In no case may the rate be less than four hundred fifty (450) stems per acre of commercial tree species;

On page one hundred thirty, paragraph 9.3.h.2., by striking out the paragraph in its entirety, and by renumbering the subsequent paragraphs;

On page one hundred thirty, in renumbered paragraph 9.3.h.2., after the word “than”, by striking out the words “four hundred fifty (450)”, and inserting in lieu thereof “three hundred (300);”

On page one hundred thirty, in renumbered paragraph 9.3.h.2., after the word “acre”, by inserting the words “or the rate specified in the forest management plan, whichever is greater,”;

On page two hundred twenty-two, subdivision 14.11.e, line 6, by striking out the word “operable” and by inserting in lieu thereof “such condition that operations could be resumed within sixty (60) days”;

On page two hundred twenty-three, subdivision 14.11.f., line four, by striking out the word “operative”, and by inserting in lieu thereof the words “such condition that the operations could be resumed within sixty (60) days”;

On page two hundred twenty-three, subdivision 14.11.f., line four, after the word “is”, by inserting the words “protected from unauthorized entry”;

On page two hundred thirty-eight, subparagraph 14.15.b.6.A., line five, after the word “exceed”, by striking out the words “fifty (50) percent of the total permit acreage, or four hundred (400) acres, whichever is less, on operations which consist of at least three spreads of equipment”, and inserting in lieu thereof the words...
“five hundred (500) acres on operations which consist of multiple spreads of equipment”;

On page two hundred thirty-nine, subsection 14.15.c., line three, after the word “regraded”, by inserting the words “and stabilized”;

On page two hundred thirty-nine, subsection 14.15.c., line four, after the word “plan”, by striking out the “comma” and the remainder of the subparagraph, and inserting in lieu thereof the words: The following shall not be included in the calculation of disturbed area;

On page two hundred forty, paragraph 14.15.c.2., line seven, after the word “benches”, by inserting the words “without regard to like thickness”;

On page two hundred forty, paragraph 14.15.c.5, line two, after the word “graded”, by inserting the words “with material placed in a stable, controlled manner which will not subsequently be moved”.

(g) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section ten, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of November, one thousand nine hundred ninety-six, relating to the division of environmental protection (confidential information, 45 CSR 31), is authorized.

(h) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, one thousand nine hundred ninety-seven, relating to the division of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.
(i) The legislative rule filed in the state register on the fifth day of February, one thousand nine hundred ninety-seven, authorized under the authority of section three, article twenty-two, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of February, one thousand nine hundred ninety-seven, relating to the division of environmental protection (voluntary remediation and redevelopment, 60 CSR 3), is authorized.

(j) That title sixty, series one of the code of state rules be amended by deleting the current interpretative rule for the office of environmental advocate and inserting in lieu thereof the following legislative rule, to read as follows:

§61-10-1. General.

1.1. Scope. - This legislative rule governs and controls the appointment and qualifications of the position of Environmental Advocate within the Division of Environmental Protection.

1.2. Authority - West Virginia Code §22-2-1.

1.3. Filing Date -

1.4. Effective Date - July 1, 1997.


2.1. Appointment. - The position of Environmental Advocate will be a full-time position, will be appointed by the Director, and will serve at the will and pleasure of the Director of the Division of Environmental Protection in accordance with the West Virginia Code §22-20-1.

2.2. Salary. - The salary of the position of Environmental Advocate will be set by the Director and is subject to future adjustments at the discretion of the Director.

2.3. Qualifications. - The Director will receive or solicit applications for the position of Environmental
Advocate from persons having the following minimum qualifications:

2.3.a. A citizen and resident of the State of West Virginia.

2.3.b. A graduate from an accredited college or university with a four-year degree in a field of study directly related to the qualifications, powers, and duties of the position as set forth by the director.

2.3.c. A minimum of two years full-time or cumulative experience in work directly related to environmental protection, or other public service work or experience which demonstrates the ability to carry out the powers and duties of the position as set forth by the director.

2.3.d. A working familiarity with some of the legal requirements and programmatic functions of the Division of Environmental Protection.

2.3.e. A demonstrated ability to skillfully verbally and by writing communicate in a public forum.

2.3.f. A demonstrated ability to use word processing software for a computer and other necessary computer skills as determined by the director.

2.3.g. A valid West Virginia driver’s license.


The Environmental Advocate will carry out the duties of the position as set forth in this rule, and as prescribed by the Director in accordance with the following:

3.1. The Environmental Advocate will be guided in all actions by the policy statement and the nine purposes set forth in West Virginia Code §22-1-1 (b).

3.2. The Environmental Advocate may not in any official capacity represent any person in, or file on behalf of any person, legal or quasi-legal actions, either in support of or opposed to the Division of Environmental Protection without the expressed approval of the Director, and under supervision of the Division of Environmental Protection’s General Counsel.
3.3. The Environmental Advocate may not in any official capacity organize public campaigns in support of, or in opposition to official positions taken by the Division of Environmental Protection on environmental matters, and will not in any official capacity actively participate in any such organized campaign.”

(k) The director of the division of environmental protection is hereby authorized to propose for promulgation an emergency rule to amend a current legislative rule relating to monitoring of air quality (to prevent and control particulate air pollution from manufacturing process operation, 45 CSR 7).

(l) The legislative rule filed in the state register on the eighteenth day of March, one thousand nine hundred ninety-seven, relating to the division of environmental protection (yard waste composting, 47 CSR 38E) is authorized.

CHAPTER 116

(Com. Sub. for H. B. 2354—By Delegates Douglas, Hunt, Compton, Faircloth, Linch and Riggs)

[Passed April 11, 1997, in effect from passage. Approved by the Governor.]

AN ACT to repeal sections two and three, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article, relating to authorizing the library commission to promulgate a legislative rule relating to administrative regulations.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one of said article be amended and reenacted to read as follows:
ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-1. Library commission.

The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-six, authorized under the authority of section twenty, article one, chapter ten of this code, modified by the library commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred ninety-six, (relating to the library commission administrative regulations, 173 CSR 1), is authorized.

CHAPTER 117

(Com. Sub. for H. B. 2345—By Delegates Douglas, Hunt, Compton, Faircloth, Linch and Riggs)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections four, five, six, seven and eight, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two and three of said article, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative
rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of health to promulgate a legislative rule relating to nursing home licensure; authorizing the division of health to promulgate a legislative rule relating to child care centers; authorizing the division of health to promulgate a legislative rule relating to emergency medical services; authorizing the department of health and human resources to promulgate a legislative rule relating to clinical laboratory technician and technologist licensure and certification; authorizing the division of health to promulgate a legislative rule relating to residential board and care homes; authorizing the commissioner of human services to promulgate a legislative rule relating to certification requirements for family day care facilities; authorizing the support enforcement commission to promulgate a legislative rule relating to obtaining support from federal and state income tax refunds; and authorizing the support enforcement commission to promulgate a legislative rule relating to interstate income withholding.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, seven and eight, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two and three of said article be amended and reenacted, all to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. State board of health; division of health.

§64-5-2. Commissioner of human services.

§64-5-3. Child support enforcement commission.

§64-5-1. State board of health; division of health.

(a) The legislative rule filed in the state register on the eighth day of November, one thousand nine hundred ninety-six, authorized under the authority of section five, article five-c, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative
rule-making review committee and refiled in the state register on the twenty-seventh day of February, one thousand nine hundred ninety-seven, relating to the division of health (nursing home licensure, 64 CSR 13), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section seven, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of February, one thousand nine hundred ninety-seven, relating to the division of health (child care centers, 64 CSR 21), is authorized.

(c) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section twenty-three, article four-c, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of February, one thousand nine hundred ninety-seven, relating to the division of health (emergency medical services, 64 CSR 48), is authorized.

(d) The legislative rule filed in the state register on the twenty-seventh day of November, one thousand nine hundred ninety-five, authorized under the authority of section five, article five-c, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of February, one thousand nine hundred ninety-seven, relating to the division of health (residential board and care homes, 64 CSR 65), is authorized.

(e) The legislative rule filed in the state register on the fifth day of October, one thousand nine hundred ninety-five, under the authority of section ten, article five-j, chapter sixteen of this code, modified by the director of the department of health to meet the objections of the legislative rule-making review committee and refiled in the
The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section four, article two-b, chapter forty-nine of this code, modified by the commissioner of human services to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of February, one thousand nine hundred ninety-seven, relating to the commissioner of human services (certification requirements for family day care facilities, 78 CSR 18), is authorized.
§64-5-3. Child support enforcement commission.

(a) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section ten, article two, chapter forty-eight-a of this code, modified by the child support enforcement commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of February, one thousand nine hundred ninety-seven, relating to the child support enforcement commission (obtaining support from federal and state income tax refunds, 97 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section twenty-three, article two, chapter forty-eight-a of this code, modified by the child support enforcement commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of February, one thousand nine hundred ninety-seven, relating to the child support enforcement commission (interstate income withholding, 97 CSR 4), is authorized.

CHAPTER 118

(Com. Sub. for H. B. 2337—By Delegates Douglas, Hunt, Compton, Faircloth, Linch and Riggs)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections two, three and four, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate legislative rules with various modifications
presented to and recommended by the legislative rule-making review committee, and authorizing the fire commission to promulgate legislative rules relating to the state building code.

Be it enacted by the Legislature of West Virginia:

That sections two, three and four, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one of said article be amended and reenacted to read as follows:

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Fire commission.

The legislative rule filed in the state register on the first day of August, one thousand nine hundred ninety-six, modified by the fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of October, one thousand nine hundred ninety-six, relating to the fire commission (state building code, 87 CSR 4), is authorized.

CHAPTER 119

(Com. Sub. for S. B.157—By Senators Ross, Anderson, Macnaughtan, Boley and Buckalew)

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]
gation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; disapproving the promulgation of a legislative rule; authorizing the division of banking to promulgate a legislative rule relating to the West Virginia consumer credit and protection act and the money and interest article of chapter forty-seven; authorizing the division of banking to promulgate a legislative rule relating to the operations of state chartered financial institutions in West Virginia; authorizing the division of banking to promulgate a legislative rule relating to West Virginia regulated consumer lenders; authorizing the division of banking to promulgate a legislative rule relating to reverse mortgage loans; authorizing the insurance commissioner to promulgate a legislative rule relating to medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to life and health reinsurance agreements; disapproving the promulgation of a legislative rule by the insurance commissioner relating to individual medical savings accounts; authorizing the insurance commissioner to promulgate a legislative rule relating to the valuation of life insurance policies; authorizing the insurance commissioner to promulgate a legislative rule relating to diabetes; authorizing the insurance commissioner to promulgate a legislative rule relating to emergency medical services; authorizing the insurance commissioner to promulgate a legislative rule relating to utilization management; authorizing the insurance commissioner to promulgate a legislative rule relating to the replacement of life insurance; authorizing the tax division to promulgate a legislative rule relating to the tax credit for qualified agricultural equipment; authorizing the tax division to promulgate a legislative rule relating to personal income tax low income exclusions; and authorizing the tax division to promulgate a legislative rule relating to charitable raffles.

Be it enacted by the Legislature of West Virginia:
That section four, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two and three of said article be amended and reenacted, all to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.**

§64-7-1. Division of banking.

§64-7-2. Department of tax and revenue; tax division; and state tax commissioner.

§64-7-3. Insurance commissioner.

§64-7-1. Division of banking.

(a) The legislative rule filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-six, authorized under the authority of section four, article two, chapter thirty-one-a of this code, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, one thousand nine hundred ninety-seven, relating to the division of banking (regulations pertaining to the West Virginia consumer credit and protection act and the money and interest article of chapter forty-seven, 106 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-six, authorized under the authority of section four, article two, chapter thirty-one-a of this code, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, one thousand nine hundred ninety-six, relating to the division of banking (regulations governing the operations of state chartered financial institutions in West Virginia, 106 CSR 3), is authorized.

(c) The legislative rule filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-six, authorized under the authority of section four,
article two, chapter thirty-one-a of this code, modified by
the division of banking to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twentieth day of December, one
thousand nine hundred ninety-six, relating to the division
of banking (West Virginia regulated consumer lenders,
106 CSR 4), is authorized.

(d) The legislative rule filed in the state register on the
twenty-eighth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section eight,
article twenty-four, chapter forty-seven of this code,
modified by the division of banking to meet the objec-
tions of the legislative rule-making review committee and
refiled in the state register on the twentieth day of Decem-
ber, one thousand nine hundred ninety-six, relating to the
division of banking (reverse mortgage loans, 106 CSR 19),
is authorized.

§64-7-2. Department of tax and revenue; tax division; and
state tax commissioner.

(a) The legislative rule filed in the state register on the
twenty-third day of July, one thousand nine hundred
ninety-six, authorized under the authority of section five,
article thirteen-j, chapter eleven of this code, modified by
the tax division to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the thirty-first day of October, one thousand
nine hundred ninety-six, relating to the tax division (tax
credit for qualified agricultural equipment, 110 CSR 13J),
is authorized.

(b) The legislative rule filed in the state register on the
sixteenth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section fifty-
one, article twenty-one, chapter eleven of this code,
modified by the tax division to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the thirty-first day of October, one
thousand nine hundred ninety-six, relating to the tax
division (personal income tax low income exclusions, 110
CSR 21.1), is authorized.
21  (c) The legislative rule filed in the state register on the
22 sixteenth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section
24 twenty-one, article twenty-one, chapter forty-seven of this
25 code, modified by the tax division to meet the objections
26 of the legislative rule-making review committee and
27 refiled in the state register on the twenty-seventh day of
28 February, one thousand nine hundred ninety-seven,
29 relating to the tax division (charitable raffles, 110 CSR
30 37), is authorized.

§64-7-3. Insurance commissioner.

1  (a) The legislative rule filed in the state register on the
2 second day of July, one thousand nine hundred ninety-six,
3 authorized under the authority of section ten, article two,
4 chapter thirty-three of this code, modified by the insur-
5 ance commissioner to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the twentieth day of February, one thousand
8 nine hundred ninety-seven, relating to the insurance
9 commissioner (medicare supplement insurance, 114 CSR
10 24), is authorized.

11  (b) The legislative rule filed in the state register on the
12 twentieth day of August, one thousand nine hundred
13 ninety-six, authorized under the authority of section
14 fifteen, article four, chapter thirty-three of this code,
15 modified by the insurance commissioner to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the thirtieth day of
18 January, one thousand nine hundred ninety-seven, relating
19 to the insurance commissioner (life and health reinsurance
20 agreements, 114 CSR 48), is authorized.

21  (c) The legislative rule filed in the state register on the
22 twenty-ninth day of August, one thousand nine hundred
23 ninety-six, authorized under the authority of section
24 twenty, article fifteen, chapter thirty-three of this code,
25 modified by the insurance commissioner to meet the
26 objections of the legislative rule-making review committee
27 and refiled in the state register on the thirty-first day of
28 January, one thousand nine hundred ninety-seven, relating
29 to the insurance commissioner (individual medical savings
accounts, 114 CSR 47), is disapproved and is not authorized for promulgation.

(d) The legislative rule filed in the state register on the twentieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-seven, relating to the insurance commissioner (valuation of life insurance policies, 114 CSR 49), is authorized, with the following amendment:

"On page one, section 1.4 of the rule, by following the words 'effective date' inserting the following:

'The portions of the rule amended as a result of modifications offered by the Insurance Commissioner and filed with the Secretary of State on August 20, 1996, shall not become effective until January 1, 1998."

(e) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section one, article fifteen-c, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred ninety-seven, relating to the insurance commissioner (diabetes, 114 CSR 52), is authorized.

(f) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section twenty-three, article four-c, chapter sixteen of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-seven, relating to the insurance commissioner (emergency medical services, 114 CSR 50), is authorized.
(g) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-seven, relating to the insurance commissioner (utilization management, 114 CSR 51), is authorized.

(h) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-seven, relating to the insurance commissioner (replacement of life insurance, 114 CSR 8), is authorized.

CHAPTER 120

(Com. Sub. for S. B.195—By Senators Ross, Anderson, Macnaughtan, Boley and Buckalew)

[Passed April 8, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the
form that the rules were filed in the state register; authorizing
certain of the agencies to promulgate legislative rules as
amended by the Legislature; authorizing certain of the
agencies to promulgate legislative rules with various
modifications presented to and recommended by the
legislative rule-making review committee; authorizing the
division of motor vehicles to promulgate a legislative rule
relating to the motor vehicle inspection manual; and
authorizing the division of motor vehicles to promulgate a
legislative rule relating to compulsory motor vehicle
insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of motor vehicles.

(a) The legislative rule filed in the state register on the
fifteenth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section nine,
article two, chapter seventeen-a of this code, modified by
the division of motor vehicles to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-fourth day of October, one
two thousand nine hundred ninety-six, relating to the division
of motor vehicles (motor vehicle inspection manual, 91
CSR 12), is authorized.

(b) The legislative rule filed in the state register on the
twenty-second day of August, one thousand nine hundred
ninety-six, authorized under the authority of section nine,
article two, chapter seventeen-a of this code, modified by
the division of motor vehicles to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-eighth day of October, one
two thousand nine hundred ninety-six, relating to the division
of motor vehicles (compulsory motor vehicle insurance,
91 CSR 13), is authorized.
AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; disapproving the promulgation of a legislative rule; authorizing the commissioner of agriculture to promulgate a legislative rule relating to animal disease control; authorizing the secretary of state to promulgate a legislative rule relating to agencies designated to provide registration services; authorizing the secretary of state to promulgate a legislative rule relating to procedures for the recount of election returns; authorizing the secretary of state to promulgate a legislative rule relating to trademarks and service marks; authorizing the governor’s committee on crime, delinquency and correction to promulgate a legislative rule relating to the protocol for law-enforcement response to domestic violence; authorizing the governor’s committee on crime, delinquency and correction to promulgate a legislative rule relating to the basic training academy and annual inservice and biennial inservice training standards; authorizing
the cable television advisory board to promulgate a legislative rule relating to implementing regulations; authorizing and directing the cable television advisory board to amend and promulgate a legislative rule relating to the calculation and collection of late fees; authorizing the auditor to promulgate a legislative rule relating to standards for requisitions for payment issued by state officers on the auditor; authorizing the commission for the deaf and hard of hearing to promulgate a legislative rule relating to fees for qualified interpreters; authorizing the board of dental examiners to promulgate a legislative rule relating to rules of the board; authorizing the board of licensed practical nurses to promulgate a legislative rule relating to legal standards of nursing practice for the licensed practical nurse; authorizing the board of medicine to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the nursing home administrators licensing board to promulgate a legislative rule relating to the board; authorizing the board of pharmacy to promulgate a legislative rule relating to the registration of pharmacy technicians; authorizing the board of pharmacy to promulgate a legislative rule relating to controlled substances monitoring; authorizing the board of accountancy to promulgate a legislative rule relating to the board and rules of professional conduct; authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to a schedule of fees; authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for the examination and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the board of examiners of psychologists to promulgate a legislative rule relating to qualifications for licensure as a psychologist or school psychologist; disapproving the promulgation of a legislative rule of the board of examiners of psychologists relating to fees; authorizing the public service commission to promulgate a legislative rule relating to use of the number “911”; authorizing the real estate appraiser licensure and certification board to promulgate a legislative rule relating to the requirements for licensure and certification; authorizing the real estate appraiser licensure and certification board to promulgate a legislative rule relating to the renewal of licensure or
certification; authorizing the board of respiratory care to promulgate a legislative rule relating to procedures for the licensure application process; authorizing the board of respiratory care to promulgate a legislative rule relating to the establishment of fees; authorizing the board of respiratory care to promulgate a legislative rule relating to continuing education requirement; authorizing the economic development authority to promulgate a legislative rule relating to the general administration of the West Virginia capital company act: establishment of the application procedures to implement the act; and authorizing the family protection services board to promulgate a legislative rule relating to the operation of the board and the licensure and funding of domestic violence programs.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.
§64-9-2. Secretary of state.
§64-9-3. Governor’s committee on crime, delinquency and correction.
§64-9-4. Cable television advisory board.
§64-9-5. Auditor.
§64-9-8. Board of licensed practical nurses.
§64-9-10. Nursing home administrators licensing board.
§64-9-12. Board of accountancy.
§64-9-14. Board of examiners of psychologists.
§64-9-16. Real estate appraiser licensure and certification board.
§64-9-17. Board of respiratory care.

§64-9-1. Commissioner of agriculture.

The legislative rule filed in the state register on the twenty-third day of April, one thousand nine hundred ninety-six, authorized under the authority of section two, article nine, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, one thousand nine hundred ninety-six, relating to the commissioner of agriculture (animal disease control, 61 CSR 1), is authorized.

§64-9-2. Secretary of state.

(a) The legislative rule filed in the state register on the twenty-sixth day of August, one thousand nine hundred ninety-six, authorized under the authority of section thirteen, article two, chapter three of this code, relating to the secretary of state (agencies designated to provide voter registration services, 153 CSR 28), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-six, authorized under the authority of section six, article one-a, chapter three of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of October, one thousand nine hundred ninety-six, relating to the secretary of state (procedures for recount of election returns, 153 CSR 20), is authorized.

(c) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, authorized under the authority of section ten, article two, chapter forty-seven of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of October, one thousand nine hundred ninety-six, relating to the secretary
§64-9-3. Governor's committee on crime, delinquency and correction.

(a) The legislative rule filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-six, authorized under the authority of section nine, article two-a, chapter forty-eight of this code, modified by the governor's committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of October, one thousand nine hundred ninety-six, relating to the governor's committee on crime, delinquency and correction (protocol for law-enforcement response to domestic violence, 149 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-six, ninety-six, under the authority of section three, article twenty-nine, chapter thirty of this code, modified by the governor's committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of February, one thousand nine hundred ninety-seven, relating to the governor's committee on crime, delinquency and correction (basic training academy, annual in-service and biennial in-service training standards, 149 CSR 2), is authorized.

§64-9-4. Cable television advisory board.

(a) The legislative rule filed in the state register on the twenty-seventh day of August, one thousand nine hundred ninety-six, authorized under the authority of section twenty-six, article eighteen, chapter five of this code, modified by the cable television advisory board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of October, one thousand nine hundred ninety-six, relating to the cable television advisory board (implementing regulations, 187 CSR 2), is authorized.
(b) The Legislature hereby authorizes and directs the cable television advisory board to amend and promulgate the legislative rule promulgated and final filed in the state register on the seventh day of June, one thousand nine hundred ninety-six, under the authority of section twenty-six, article eighteen, chapter five of this code, relating to the cable television advisory board (calculation and collection of late fees, 187 CSR 6), is authorized with the following amendment:

"On page one, by striking out all of section three and inserting in lieu thereof the following:

3.1. Cable operators electing to charge late fees may charge a fixed fee of not more than two dollars on the unpaid balance after the scheduled due date."

§64-9-5. Auditor.

The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section ten, article three, chapter twelve of this code, modified by the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of December, one thousand nine hundred ninety-six, relating to the auditor (standards for requisitions for payment issued by state officers on the auditor, 155 CSR 1), is authorized.


The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, under the authority of section nine, article fourteen-a, chapter five of this code, modified by the commission for the deaf and hard of hearing to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of February, one thousand nine hundred ninety-seven, relating to the commission for the deaf and hard of hearing (fees for qualified interpreters, 192 CSR 1), is authorized.

The legislative rule filed in the state register on the twenty-first day of June, one thousand nine hundred ninety-six, under the authority of section four-a, article four, chapter thirty of this code, modified by the board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, one thousand nine hundred ninety-six, relating to the board of dental examiners (rules for the West Virginia board of dental examiners, 5 CSR 1), is authorized.

§64-9-8. Board of licensed practical nurses.

The legislative rule filed in the state register on the fifteenth day of July, one thousand nine hundred ninety-six, under the authority of section five, article seven-a, chapter thirty of this code, modified by the board of licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-six, relating to the board of licensed practical nurses (legal standards of nursing practice for the licensed practical nurse, 10 CSR 3), is authorized.


The legislative rule filed in the state register on the ninth day of September, one thousand nine hundred ninety-six, under the authority of section one thousand three hundred four, article thirteen, chapter thirty-one-b of this code, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred ninety-seven, relating to the board of medicine (formation and approval of professional limited liability companies, 11 CSR 7), is authorized.

§64-9-10. Nursing home administrators licensing board.

The legislative rule filed in the state register on the twenty-first day of May, one thousand nine hundred ninety-six, under the authority of section seven, article
twenty-five, chapter thirty of this code, modified by the
nursing home administrators licensing board to meet the
objections of the legislative rule-making review committee
and refiled in the state register on the fourteenth day of
November, one thousand nine hundred ninety-six, relating
to the nursing home administrators licensing board (rules
of the nursing home administrators licensing board, 21
CSR 1), is authorized.


(a) The legislative rule filed in the state register on the
seventh day of January, one thousand nine hundred
ninety-seven, under the authority of section nineteen,
article five, chapter thirty of this code, modified by the
board of pharmacy to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-sixth day of February, one
thousand nine hundred ninety-seven, relating to the board
of pharmacy (registration of pharmacy technicians, 15
CSR 7), is authorized.

(b) The legislative rule filed in the state register on the
eighth day of August, one thousand nine hundred
ninety-six, under the authority of section six, article nine,
chapter sixty-a of this code, modified by the board of
pharmacy to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-second day of November, one
thousand nine hundred ninety-six, relating to the board of
pharmacy (controlled substances monitoring, 15 CSR 8),
is authorized.

§64-9-12. Board of accountancy.

The legislative rule filed in the state register on the
thirtieth day of August, one thousand nine hundred
ninety-six, under the authority of section three, article
nine, chapter thirty of this code, modified by the board of
accountancy to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-seventh day of February, one
thousand nine hundred ninety-seven, relating to the board
of accountancy (board rules and rules of professional conduct, 1 CSR 1), is authorized.


(a) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, under the authority of section one, article twenty-seven, chapter thirty of this code, modified by the board of barbers and cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, one thousand nine hundred ninety-six, relating to the board of barbers and cosmetologists (schedule of fees, 3 CSR 6), is authorized.

(b) The legislative rule filed in the state register on the twenty-ninth day of August, one thousand nine hundred ninety-six, under the authority of section one, article twenty-seven, chapter thirty of this code, modified by the board of barbers and cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, one thousand nine hundred ninety-six, relating to the board of barbers and cosmetologists (procedures, criteria and curricula for examination and licensure of barbers, cosmetologists, manicurists and aestheticians, 3 CSR 1), is authorized.

§64-9-14. Board of examiners of psychologists.

(a) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section six, article twenty-one, chapter thirty of this code, modified by the board of examiners of psychologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of February, one thousand nine hundred ninety-seven, relating to the board of examiners of psychologists (qualifications for licensure as a psychologist or school psychologist, 17 CSR 3), is authorized.
(b) The legislative rule filed in the state register on the thirty-first day of August, one thousand nine hundred ninety-six, authorized under the authority of section six, article twenty-one, chapter thirty of this code, relating to the board of examiners of psychologists (fees, 17 CSR 1), is disapproved, and not authorized for promulgation.


The legislative rule filed in the state register on the twenty-sixth day of August, one thousand nine hundred ninety-six, under the authority of section ten, article six, chapter twenty-four of this code, modified by the public service commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-seven, relating to the public service commission (rules and regulations for the use of the number "911", 150 CSR 15), is authorized.

§64-9-16. Real estate appraiser licensure and certification board.

(a) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-six, under the authority of section thirty, article fourteen, chapter thirty-seven of this code, modified by the real estate appraiser licensure and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred ninety-six, relating to the real estate appraiser licensure and certification board (requirements for licensure and certification, 190 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-six, under the authority of section six, article fourteen, chapter thirty-seven of this code, modified by the real estate appraiser licensure and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred ninety-six, relating to the real estate appraiser
licensure and certification board (renewal of licensure or certification, 190 CSR 3), is authorized.

§64-9-17. Board of respiratory care.

(a) The legislative rule filed in the state register on the twenty-fifth day of July, one thousand nine hundred ninety-six, under the authority of section six, article thirty-four, chapter thirty of this code, modified by the board of respiratory care to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of October, one thousand nine hundred ninety-six, relating to the board of respiratory care (procedures for licensure application process, 30 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section six, article thirty-four, chapter thirty of this code, modified by the board of respiratory care to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of October, one thousand nine hundred ninety-six, relating to the board of respiratory care (establishment of fees, 30 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section five, article thirty-four, chapter thirty of this code, modified by the board of respiratory care to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of October, one thousand nine hundred ninety-six, relating to the board of respiratory care (continuing education requirements, 30 CSR 3), is authorized with the following amendment:

"On page two, section 4.3, line two, after the word 'subsection' by striking out '2.5' and inserting in lieu thereof '2.1'."

The legislative rule filed in the state register on the thirteenth day of February, one thousand nine hundred ninety-six, under the authority of section five, article one, chapter five-e of this code, modified by the economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of December, one thousand nine hundred ninety-six, relating to the economic development authority (general administration of the West Virginia capital company act: establishment of the application procedures to implement the act, 117 CSR 1), is authorized.


The legislative rule filed in the state register on the thirtieth day of August, one thousand nine hundred ninety-six, under the authority of section thirteen, article two-c, chapter forty-eight of this code, modified by the family protection services board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of February, one thousand nine hundred ninety-seven, relating to the family protection services board (operation of family protection services board and licensure and funding of domestic violence programs, 191 CSR 1), is authorized.

CHAPTER 122

(Com. Sub. for S. B. 192—By Senators Ross, Anderson, Macnaughtan, Boley and Buckalew)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain
of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of natural resources to promulgate a legislative rule relating to fertility control of free roaming wildlife; authorizing the division of natural resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the division of natural resources to promulgate a legislative rule relating to falconry; and authorizing the manufactured housing construction and safety standards board to promulgate a legislative rule relating to the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Division of natural resources.


§64-10-1. Division of natural resources.

(a) The legislative rule filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-six, authorized under the authority of section five-d, article two, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of September, one thousand nine hundred ninety-six, relating to the division of natural resources (fertility control of free roaming wildlife, 58 CSR 66), is authorized.

(b) The legislative rule filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-six, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of September, one thousand nine hundred ninety-six, relating to the division
of natural resources (prohibitions when hunting and
trapping, 58 CSR 47), is authorized.

(c) The legislative rule filed in the state register on the
sixteenth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section seven,
article twenty of this code, modified by the
division of natural resources to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twenty-seventh day of September, one
thousand nine hundred ninety-six, relating to the division
of natural resources (falconry, 58 CSR 65), is authorized.

§64-10-2. Manufactured housing construction and safety
standards board.

The legislative rule filed in the state register on the
fourteenth day of August, one thousand nine hundred
ninety-six, authorized under the authority of section four,
article nine, chapter twenty-one of this code, modified by
the manufactured housing construction and safety stan-
dards board to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the eleventh day of February, one thousand
nine hundred ninety-seven, relating to the manufactured
housing construction and safety standards board (manu-
factured housing construction and safety standards board,
42 CSR 19), is authorized, with the following amendments:

"On page two, section three, line fourteen, after the
word 'authorized' by striking out the period and adding
the following:

'with the amendments set forth below:

On page 20, subsection 10B.5, line two, after the word
'preparation' by inserting the words 'that cannot be
performed after the home is leveled as described in the
initial home placement evaluation form in 10B.4';

On page 20, subsection 10B.5, line two, by striking out
the word 'and' and by inserting in lieu thereof the word
'or';

On page 21, subsection 10B.6(b), line three, by
striking out the word 'the' and inserting in lieu thereof
the word 'all';
27 On page 21, subsection 10B.6(b), line three, after the word 'installation', by inserting the words 'as set forth in subsection 3.21 of this rule'.

28 On page 24, subsection 13.1, line three, after the word 'standards', by striking out the word 'or' and inserting in lieu thereof a comma;

29 On page 24, subsection 13.1, line three, after the word 'licensees', by inserting a comma, and the words 'including, but not limited to, warranty claims, matters concerning the installation of the home and all matters covered by this rule';

30 On page 24, subsection 13.2, line four, after the word 'complaints' by adding the words 'Any Licensee may file a complaint with the Board';

31 On page 24, subsection 13.4, line six, by striking the word 'may', and inserting in lieu thereof the word 'must';

32 On page 24, subsection 13.4, after the word distributor, by striking the word 'or' and inserting in lieu thereof a comma;

33 On page 24, subsection 13.4, line eight, after the word 'contractor', by adding the words 'or installer';

34 On page 24, subsection 13.6, line two, by striking out the words 'federal or state manufactured housing standard' and inserting in lieu thereof the words 'matter within the Board's jurisdiction as defined by this Rule';

35 On page 25, subsection 13.6, line one, by striking out the words 'the Board's licensee it determines responsible', and inserting in lieu thereof the words 'any and all responsible licensees';

36 On page 25, subsection 13.6, line three, after the word 'violated' by adding the words 'If no standard has been violated it shall be so noted in writing to all parties involved';

37 On page 25, subsection 13.6, line four, by striking the word 'the' and inserting in lieu thereof the word 'a';

38 And, on page 25, subsection 13.6, line five, after the word 'thirty' by striking out the word 'days' and inserting in lieu thereof the following: 'calendar days from receipt of notice'.
CHAPTER 123
(H. B. 2744—By Delegates Douglas, Hunt, Compton, Faircloth, Linch and Riggs)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections six, seven, eight, nine, ten, eleven and twelve, article eleven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four and five of said article, all relating generally to the promulgation of administrative rules by the various executive and administrative agencies; authorizing certain agencies to modify certain legislative rules for the limited purpose of updating and making technical corrections to those legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections six, seven, eight, nine, ten, eleven and twelve, article eleven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four and five of said article be amended and reenacted, all to read as follows:

ARTICLE 11. TECHNICAL CORRECTIONS TO THE CODE OF STATE RULES.

§64-11-1. West Virginia board of occupational therapy.
§64-11-2. Division of environmental protection, office of mining and reclamation and office of abandoned mine lands and reclamation.
§64-11-3. Division of environmental protection, office of air quality.
§64-11-4. Division of environmental protection, office of water resources.
§64-11-5. Division of environmental protection, office of waste management.

§64-11-1. West Virginia board of occupational therapy.

1 The legislative rule relating to the West Virginia board
2 of occupational therapy (administrative rules of the board
3 of occupational therapy, 13 CSR 1), effective the ninth
4 day of June, one thousand nine hundred ninety-three, is
5 reauthorized with the following amendments:
6 “On page 1, subsection 2.2, by striking out the words
7 “AOTCB” means the American Occupational Therapy
8 Certification Board’, and inserting in lieu thereof the words
9 “NBCOT” means the National Board for Certification in
10 Occupational Therapy.’;
11 On page 1, subsection 2.6, by inserting the word ‘is’
12 immediately following the word ‘license’; and
13 Beginning on page 2, subsection 2.18, and continuing
14 throughout the text of the rule, by striking out the initials
15 ‘AOTCB’ and inserting in lieu thereof the initials
16 ‘NBCOT’.”

§64-11-2. Division of environmental protection, office of mining and reclamation and office of abandoned mine
lands and reclamation.

1 (a) The legislative rule relating to the division of envi-
2 ronmental protection, office of mining and reclamation
3 (regulations for mining and reclamation of minerals other
4 than coal, 38 CSR 2B), effective the first day of January,
5 one thousand nine hundred eighty-three, is reauthorized
6 with the following amendments:
7 “Beginning on page 1, and continuing throughout the
8 text of the rule, by renumbering the text breakdown as
9 necessary to conform with the rule of the secretary of state
10 relating to format (standard size and format for rules and
11 procedures for publication of the state register or parts of
12 the state register, 153 CSR 6);
13 Beginning on page 1, in the title, and continuing
14 throughout the text of the rule, by striking out the word
15 ‘regulations’ and inserting in lieu thereof the word ‘rule’;
16 Beginning on page 1, in the first sentence of section 2,
17 and continuing throughout the text of the rule, by striking
18 out the words ‘these regulations’ and inserting in lieu
19 thereof the words ‘this rule’;
Beginning on page 2, subsection 2.16, and continuing throughout the text of the rule, by striking out the words 'Department of Natural Resources' and inserting in lieu thereof 'Division of Environmental Protection', and by striking out the words 'Division of Reclamation' and inserting in lieu thereof, 'Office of Mining and Reclamation';

Beginning on page 6, subdivision 5.3.a, and continuing throughout the text of the rule, by striking out the words 'Article six-D (6d), Chapter twenty (20), Code of West Virginia', and inserting in lieu thereof the words 'W. Va. Code Chapter 22, Article 4';

Beginning on page 8, subsection 6A.2., and continuing throughout the text of the rule, by striking out the words 'Division of Water Resources' and inserting in lieu thereof the words 'Office of Water Resources';

On page 1, in the title of the rule, by inserting the words 'BUREAU OF ENVIRONMENT' on the third line, and by striking out the words 'MINING AND RECLAMATION' and inserting in lieu thereof the words 'OFFICE OF MINING AND RECLAMATION' on the fifth line;

On page 1, subsection 1.2, by striking out the words 'W. Va. Code §20-1-7 and §20-6D' and inserting in lieu thereof the words 'W. Va. Code § 22-1-3 and § 22-4-1';

On page 1, in the first sentence of section 2, by striking out the words 'Article Six (6), Chapter twenty (20), Code of West Virginia' and inserting in lieu thereof the words 'W. Va. Code Chapter 22, Article 4';

On page 3, subsection 2.45, by striking out the words 'Water Resources' and inserting in lieu thereof the words 'Environmental Protection';

On page 5, subsection 4.1, by striking out the words 'Section eleven A (11a), Article six d (6d), Chapter twenty (20) of the Code of West Virginia' and inserting in lieu thereof 'W. Va. Code § 22-4-11';
On page 6, subdivision 5.5.a., by striking out the words 'Reclamation Division' and inserting in lieu thereof the words 'Office of Mining and Reclamation';

On page 9, subsection 6A.3, after the words 'State Department of Health', by inserting the words 'and Human Resources';

On page 9, subsection 6B.2, by striking the words 'section six D (6d) or six E (6e)' and inserting in lieu thereof 'section 6D or 6E';

On page 15, subparagraph 7B.1.a.2, by deleting 'section 7B.1(a)(2)' and inserting in lieu thereof 'paragraph 7B.1.a.2';

On page 17, subsection 8.6, in the first sentence, by striking out the words 'Article six (D) (6d), Chapter twenty (20), Section nine (9), Code of West Virginia', and inserting in lieu thereof, 'W. Va. Code § 22-4-9';

And,

On page 17, subdivision 9.2.c, by striking out the words 'Section sixteen (16), Article six D (6d), Chapter twenty (20), Code of West Virginia', and inserting in lieu thereof 'W. Va. Code § 22-4-16'.

(b) The legislative rule relating to the division of environmental protection, office of mining and reclamation (standards for certification of blasters - surface coal mines, 38 CSR 2C), effective the first day of May, one thousand nine hundred ninety-five, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'BUREAU OF ENVIRONMENT' on the third line, and by inserting the words 'OFFICE OF MINING AND RECLAMATION' on the fifth line;
And,

On page 3, section 4, in the second sentence, by striking out the first appearance of the words ‘subparagraph a-k, paragraph 1,’ and inserting in lieu thereof the words ‘paragraphs 5.1.a.1 through 5.1.a.11 of’, and by striking out the words ‘subparagraph a-k, paragraph 1,’ and inserting in lieu thereof the words ‘paragraphs 5.2.a.1 through 5.2.a.11 of’.

(c) The legislative rule relating to the division of environmental protection, office of mining and reclamation (abandoned mine lands reclamation rule, 38 CSR 2D), effective the twenty-sixth day of June, one thousand nine hundred ninety-five, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of rule, by striking out the title reference ‘38’ and inserting in lieu thereof the title reference ‘59’;

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series reference ‘2D’ and inserting in lieu thereof the series reference ‘1’;

Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words ‘BUREAU OF ENVIRONMENT’ on the third line, and by inserting the words ‘OFFICE OF ABANDONED MINE LANDS AND RECLAMATION’ on the fifth line;

On page 3, subparagraph 3.3.b.4.E, by striking out the words ‘paragraph (b), (2) of this section’ and inserting in lieu thereof the words ‘paragraph 3.3.b.2 of this section’;
On page 3, paragraph 4.3.b.1, by striking out the words 'paragraph a of this section' and inserting in lieu thereof the words 'subdivision 4.3.a of this section';

On page 6, subparagraph 4.5.a.7.E, by striking out the words 'subsection (b) or (c)' and inserting in lieu thereof the words 'subparagraph 4.5.a.7.B or 4.5.a.7.C';

On page 7, in the first sentence of subdivision 4.5.b., by striking out the words 'subsection (a) of this section' and inserting in lieu thereof the words 'subdivision 4.5.a of this subsection';

On page 7, in the second sentence of subdivision 4.5.b, by striking out the words 'subsection (a) of this section' and inserting in lieu thereof the words 'subdivision 4.5.a of this subsection';

On page 8, subdivision 5.3.e, by striking out the reference '2D-5' and inserting in lieu thereof the reference '5';

On page 12, paragraph 6.5.e.2, by striking out the words 'paragraph (e) of this section' and inserting in lieu thereof the words 'subdivision 6.5.e of this subsection';

On page 12, paragraph 6.5.e.4, by striking out the words 'paragraph (e) of this section' and adding in lieu thereof the words 'subdivision 6.5.e of this subsection';

On page 12, subsection 7.1, by adding the prefix 'sub' before the word 'section';

On page 12, subdivision 7.2.b, by striking out the words 'paragraph (a) of this section' and inserting in lieu thereof the words 'subdivision 7.2.a of this subsection';

On page 13, subdivision 7.2.d, by striking out the words '7.3(a)(1),(2), or (3) of this section' and inserting in lieu thereof the words 'paragraphs 7.3.a.1, 2, or 3 of this section';

And,
On page 14, subdivision 8.4.c, by striking out the words 'section 8.4(b) of this rule' and inserting in lieu thereof the words 'subdivision 8.4.b of this subsection'.

(d) The legislative rule relating to the division of environmental protection, office of mining and reclamation (groundwater protection regulations coal mining operations, 38 CSR 2F), effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'BUREAU OF ENVIRONMENT' on the third line, and by striking out the words 'MINING AND RECLAMATION' and inserting in lieu thereof the words 'OFFICE OF MINING AND RECLAMATION' on the fifth line;

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the word 'regulations' and inserting in lieu thereof the word 'rule';

Beginning on page 1, subsection 1.1., and continuing throughout the text of the rule, by striking out the words 'Chapter 22A, Article 3' and inserting in lieu thereof the words 'Chapter 22, Article 3', and by striking out the words 'Chapter 20, Article 5A' and inserting in lieu thereof the words 'Chapter 22, Article 11';

On page 1, subsection 1.1., by striking out the words 'Chapter 20-5M-1 et seq. of the West Virginia Code' and inserting in lieu thereof the words 'W. Va. Code § 22-12-1 et seq.';

On page 1, subsection 1.2., by striking out the code reference '20-5M-5' and inserting in lieu thereof the code reference '§ 22-12-5';
On page 1, subsection 2.1., by striking out the code reference ‘20-5M-1’ and inserting in lieu thereof the code reference ‘§ 22-12-1’;

On page 1, subsection 2.2, by striking out the words ‘subsection (w), Section (3), Article 3, Chapter 22A (the West Virginia Surface Coal Mining and Reclamation Act) of the Code of West Virginia, 1931’ and inserting in lieu thereof the words ‘W. Va. Code § 22-3-3(u)’;

On page 2, subsection 2.12., by striking out the code reference ‘20-5M-5(h)’ and inserting in lieu thereof ‘22-12-5(h)’;

On page 2, subsection 3.2., by striking out the code reference ‘20-5A-1’ and inserting in lieu thereof the code reference ‘22-11-1’, and by striking out the code reference ‘22A-3-1’ and inserting in lieu thereof the code reference ‘22-3-1’;

And,

On page 2, subsection 3.2, by striking out the words ‘Water Resources Board’ and inserting in lieu thereof the words ‘Environmental Quality Board’.

§64-11-3. Division of environmental protection, office of air quality.

1 (a) The legislative rule relating to the office of air quality (to prevent and control air pollution from coal refuse disposal areas, 45 CSR 1), effective the first day of January, one thousand nine hundred and sixty-five, is reauthorized with the following amendments:

“Beginning on page 1, in the title of the rule, by inserting the words ‘OFFICE OF’ immediately before the words ‘AIR QUALITY’;

On page 1, subsection 1.2, by striking out the code reference ‘§16-20-5’ and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq.’;

On page 1, subsection 2.1, by striking out the words ‘— The term’ and inserting in lieu thereof the word ‘or’;

On page 2, in the title of the rule, by inserting the words ‘OFFICE OF’ immediately before the words ‘AIR QUALITY’.

On page 2, subsection 2.12, by striking out the code reference ‘20-5M-5(h)’ and inserting in lieu thereof ‘22-12-5(h)’;

On page 2, subsection 3.2, by striking out the code reference ‘20-5A-1’ and inserting in lieu thereof the code reference ‘22-11-1’, and by striking out the code reference ‘22A-3-1’ and inserting in lieu thereof the code reference ‘22-3-1’;

And,
On page 1, subsection 2.1, and continuing throughout the text of the rule, by striking out the code reference ‘section two of chapter sixteen, article twenty of the Code of West Virginia, 1931’ and inserting in lieu thereof the code reference ‘W. Va. Code § 22-5-2’;

On page 1, subsection 2.2, by striking through the period immediately following the words ‘Coal Refuse’;

On page 1, subsection 2.3, by striking through the period immediately following the words ‘Coal Refuse Pile’;

On page 1, subsection 2.3, by striking through the period immediately following the words ‘Coal Refuse Disposal Area’;

Beginning on page 1, subsection 2.2, and continuing throughout the text of the rule, by striking out the words ‘— Any’, and inserting in lieu thereof the words ‘means any’;

On page 1, subsection 2.5, by striking out the words ‘— The’ and inserting in lieu thereof the words ‘means the’;

Beginning on page 1, subsection 2.6, second paragraph, and continuing throughout the text of the rule, by striking out the word ‘regulation’ and inserting in lieu thereof the word ‘rule’;

And,

Beginning on page 2, subsection 3.1, and continuing throughout the text of the rule, by striking out the word ‘Commission’ and inserting in lieu thereof the word ‘Director’.”

(b) The legislative rule relating to the office of air quality (to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers, 45 CSR 2), effective the first day of May, one thousand nine hundred and ninety-five, is reauthorized with the following amendments:
"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, subsection 2.6, by striking out the code reference 'sections six or eight, article one, chapter twenty-two of the West Virginia Code', and inserting in lieu thereof the code reference 'W. Va. Code § 22-1-6 or § 22-1-8';

On page 2, subdivision 2.12.a, by striking out the apostrophes enclosing the words 'design heat input (dhi)', and inserting in lieu thereof quotation marks;

On page 2, subdivision 2.12.b, by striking out the apostrophes enclosing the words 'total design heat input (tdhi)', and inserting in lieu thereof quotation marks,

On page 2, subdivision 2.12.c, by striking out the apostrophes enclosing the words 'normal maximum operating load (nmol)', and inserting in lieu thereof quotation marks;

On page 2, subsection 2.16, by striking out the word 'the' immediately preceding the words '45CSR2';

On page 4, subdivision 3.4.g, by striking out the word 'regulations', and inserting in lieu thereof the word 'rules';

On page 5, subsection 7.1, by striking out the words 'Code of West Virginia', and inserting in lieu thereof the words 'West Virginia Code';

On page 7, subsection 12.1, by striking through the word 'regulation' and inserting in lieu thereof the word 'rule'."

And,

On page 7, subsection 12.1, by striking out the words 'rule or regulation', and inserting in lieu thereof the words 'or rule'.'
85 (c) The legislative rule relating to the office of air
86 quality (to prevent and control air pollution from the
87 operation of hot mix asphalt plants, 45 CSR 3), effective
88 the twenty-seventh day of October, one thousand nine
89 hundred seventy-nine, is reauthorized with the following
90 amendments:

91 "Beginning on page 1, and continuing throughout the
92 text of the rule, by renumbering the text breakdown as
93 necessary to conform with the rule of the secretary of state
94 relating to format (standard size and format for rules and
95 procedures for publication of the state register or parts of
96 the state register, 153 CSR 6);

97 On page 1, in the title of the rule, by inserting the
98 words ‘OFFICE OF’ immediately preceding the words
99 ‘AIR QUALITY’;

100 On page 1, subsection 1.2, by striking out the code
101 reference ‘§16-20-5’, and inserting in lieu thereof the
102 code reference ‘§ 22-5-1 et seq.’;

103 On page 1, subsection 2.1, by striking out the code
104 reference ‘section two of chapter sixteen, article twenty of
105 the Code of West Virginia’, an inserting in lieu thereof the
106 words ‘W. Va. Code § 22-5-2’;

107 On page 1, subsection 2.2, by striking out the words
108 ‘“Commission” shall mean the West Virginia Air Pollu-
109 tion Control Commission.’, and inserting in lieu thereof
110 the words ‘[RESERVED]’;

111 Beginning on page 1, subsection 2.3 and continuing
112 throughout the text of the rule, by striking out the words
113 ‘shall mean’, and inserting in lieu thereof the word
114 ‘means’;

115 On page 1, subsection 2.3, by striking out the words
116 ‘Air Pollution Control Commission’, and inserting in lieu
117 thereof the words ‘Division of Environmental Protection’;

118 On page 2, subsection 2.11, by striking out the words
119 ‘shall be’, and inserting in lieu thereof the word ‘means’;

120 Beginning on page 2, subsection 2.11 and continuing
121 throughout the text of the rule, by striking out the word
‘Commission’, and inserting in lieu thereof the word ‘Director’;

On page 2, subsection 2.14, by striking out the word ‘is’;

Beginning on page 2, subsection 2.14 and continuing throughout the text of the rule, by striking out the word ‘regulation’, and inserting in lieu thereof the word ‘rule’;

On page 2, subsection 2.15, by striking out the code reference ‘section two of chapter sixteen, article twenty of the Code of West Virginia, 1931’, and inserting in lieu thereof the code reference ‘W. Va. Code § 22-5-1 et seq’;


On page 3, subsection 6.3, by striking out the reference ‘Regulation 13’, and inserting in lieu thereof the reference ‘45CSR13’;

And,

On page 3, subsection 8.1, by striking out the code reference ‘section five of chapter sixteen, article twenty, paragraph seventeen, of the code of West Virginia’, and inserting in lieu thereof the code reference ‘W. Va. Code §22-5-4’.

(d) The legislative rule relating to the office of air quality (to prevent and control the discharge of air pollutants into the open air which causes or contributes to an objectionable odor or odors, 45 CSR 4), effective the first day of October, one thousand nine hundred and sixty-seven, is reauthorized with the following amendments:

“Beginning on page 2, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);
On page 1, in the title of the rule, by inserting the words ‘OFFICE OF’ immediately prior to the words AIR QUALITY’;

On page 1, subsection 1.2, by striking out the code reference ‘§16-20-5’, and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq’;

On page 1, subsection 2.3, by striking out the words ‘Commission’ shall mean the West Virginia Air Pollution Control Commission.’, and inserting in lieu thereof the words ‘[RESERVED]’;

On page 1, subsection 2.1, and continuing throughout the text of the rule, by striking out the words ‘shall mean’ and inserting in lieu thereof the word ‘means’;

On page 1, subsection 2.6, by striking out the words ‘Air Pollution Control Commission’ and inserting in lieu thereof the word ‘Director’;

Beginning on page 1, subsection 2.7, and continuing throughout the text of the rule, by striking out the word ‘Commission’, and inserting in lieu thereof the word ‘Director’;

Beginning on page 1, subsection 2.7, and continuing throughout the text of the rule, by striking out the word ‘regulation’, and inserting in lieu thereof the word ‘rule’;

And,

On page 1, subsection 2.7, by striking out the code reference ‘chapter sixteen, article twenty, section two of the Code of West Virginia, 1931,’ and inserting in lieu thereof the code reference ‘W. Va. Code § 22-5-1 et seq’.”

(e) The legislative rule relating to the office of air quality (to prevent and control air pollution from the operation of coal preparation plants and coal handling operations, 45 CSR 5), effective the first day of May, one thousand nine hundred and ninety-five, is reauthorized with the following amendments:
"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, subsection 1.2, by striking out the code reference §§22-1-3, 22-5-4', and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq’;

On page 1, subsection 2.2, by striking out the words ‘Commission’ means the West Virginia Air Pollution Control Commission.’, and inserting in lieu thereof the words [RESERVED];

On page 2, subsection 2.20, by striking out the words ‘Department of Commerce, Labor, and Environmental Resources’, and by inserting in lieu thereof the words ‘Division of Environmental Protection’;

On page 4, subsection 6.3.c.5, by striking out the words ‘Section 6.3.c.A’, and inserting in lieu thereof the words ‘paragraph 6.3.c.1’;

On page 8, subsection 11.3, by striking out the word ‘Commission’, and inserting in lieu thereof the words ‘Air Quality Board’;

And,

On page 8, subdivision 12.1.a, by striking out the word ‘Commission’, and inserting in lieu thereof the word ‘Director’.

(f) The legislative rule relating to the office of air quality (to prevent and control air pollution from combustion of refuse, 45 CSR 6), effective the first day of May, one thousand nine hundred and ninety-five, is reauthorized with the following amendments:

“Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and
procedures for publication of the state register or parts of
the state register, 153 CSR 6);

On page 1, subsection 2.1, by striking out the code
reference 'section two, article twenty, chapter sixteen of
the Code of West Virginia', and inserting in lieu thereof
the code reference 'W. Va. Code § 22-5-2';

Beginning on page 1, subsection 2.6, and throughout
the text of the rule, by striking out the word 'regulation',
and inserting in lieu thereof the word 'rule';

And,

On page 2, subsection 2.18, by striking out the code
reference '§22-5-2', and inserting in lieu thereof the code
reference '§ 22-5-1 et seq'.

(g) The legislative rule relating to the office of air
quality (to prevent and control particulate air pollution
from manufacturing process operations, 45 CSR 7), effec-
tive the twenty-seventh day of April, one thousand nine
hundred and ninety-four, is reauthorized with the follow-
ing amendments:

"Beginning on page 1, and continuing throughout the
text of the rule, by renumbering the text breakdown as
necessary to conform with the rule of the secretary of state
relating to format (standard size and format for rules and
procedures for publication of the state register or parts of
the state register, 153 CSR 6);

On page 1, in the title of the rule, by striking out the
words 'AIR POLLUTION CONTROL COMMISSION',
and inserting in lieu thereof the words 'DIVISION OF
ENVIRONMENTAL PROTECTION' on one line and
'OFFICE OF AIR QUALITY' on the next line;

On page 1, subsection 1.2, by striking out the code
reference '§16-20-5', and inserting in lieu thereof the
code reference '§ 22-5-1 et seq';

On page 1, subsection 2.1, by striking out the code
reference '§16-20-2', and inserting in lieu thereof the
code reference '§22-5-2';
On page 1, subsection 2.2, by striking out the words "'Commission' means the West Virginia Air Pollution Control Commission.'", and inserting in lieu thereof the words '[RESERVED]';

On page 1, subsection 2.3, by striking out the words 'shall mean', and inserting in lieu thereof the word 'means';

Beginning on page 1, subsection 2.8, and continuing throughout the text of the rule, by striking out the word 'Chief', and inserting in lieu thereof the word 'Director';

On page 4, subsection 2.44, by striking out the words "'Chief of Air Quality" or "Chief' means the Chief of the Office of Air Quality or his or her designated repre­sentative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq., as amended.'", and inserting in lieu thereof the words '[RESERVED]';

On page 4, subsection 2.45, by striking out the words 'Department of Commerce, Labor, and Environmental Resources', and inserting in lieu thereof the words 'Division of Environmental Protection';

On page 5, paragraph 3.3.e.3, by striking out the references '3.3.e.A. or 3.3.e.B' and inserting in lieu thereof the references '3.3.e.1 or 3.3.e.2';

On page 6, paragraph 3.4.e.3, by striking out the references '3.4.e.A. and 3.4.e.B', and inserting in lieu thereof the references '3.4.e.1 and 3.4.e.2';

On page 11, section 7, by striking through the code reference '§16-20-1, et, seq.', and inserting in lieu thereof the code reference '§ 22-5-1, et seq.';

And,

On page 11, section 7, by striking through the words 'this agency', and inserting in lieu thereof the reference 'Title 45'."

(h) The legislative rule relating to the office of air quality (ambient air quality standards for sulfur oxides
and particulate matter, 45 CSR 8), effective the twenty-
fifth day of April, one thousand nine hundred and ninety,
is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the
text of the rule, by renumbering the text breakdown as
necessary to conform with the rule of the secretary of state
relating to format (standard size and format for rules and
procedures for publication of the state register or parts of
the state register, 153 CSR 6);

On page 1, subsection 2.3, by striking out the words
"Commission" means the West Virginia Air Pollution
Control Commission", and inserting in lieu thereof the
words '[RESERVED]';

Beginning on page 1, subsection 1.1, and continuing
throughout the text of the rule, by striking out the word
'Commission', and inserting in lieu thereof the word 'Di-
rector';

On page 1, subsection 1.2, by striking out the code
references §§16-20-5 and 16-20-1 through 13', and
inserting in lieu thereof the code reference '§ 22-5-1 et
seq';

On page 1, subsection 2.2, by striking out the code
reference 'WV Code 16-20-2', and inserting in lieu there-
of the code reference 'W. Va. Code § 22-5-2';

Beginning on page 2, section 5, and continuing
throughout the text of the rule, by striking out the word
'regulation', and inserting in lieu thereof the word 'rule';

And,

On page 2, section 5, immediately following the word
'method', by striking out the word 'rule'."

(i) The legislative rule relating to the office of air
quality (regulations pertaining to ambient air quality stan-
dards for carbon monoxide, nonmethane hydrocarbons,
and ozone, 45 CSR 9), effective the twenty-second day of
October, one thousand nine hundred and eighty, is
reauthorized with the following amendments:
“Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words ‘OFFICE OF’ immediately preceding the words ‘AIR QUALITY’;

On page 1, in the title of the rule, by striking out the word ‘REGULATIONS’, and by inserting in lieu thereof the word ‘RULES’;

On page 1, subsection 1.2, by striking out the code reference ‘§16-20-5’, and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq.’;

On page 1, subsection 3.3, by striking out the words ‘Commission’ shall mean the West Virginia Air Pollution Control Commission’, and by inserting in lieu thereof the words ‘[RESERVED]’;

Beginning on page 1, subsection 2.1, and continuing throughout the text of the rule, by striking out the word ‘Commission’, and inserting in lieu thereof the word ‘Director’;

Beginning on page 1, subsection 3.1, and continuing throughout the text of the rule, by striking out the words ‘shall mean’, and inserting in lieu thereof the word ‘means’;

On page 1, subsection 3.2, by striking out the code reference ‘section two of chapter sixteen, article twenty of the Code of West Virginia’, and inserting in lieu thereof the code reference ‘W. Va. Code § 22-5-2’;

On page 2, subsection 3.7, by striking out the word ‘regulation’, and inserting in lieu thereof the word ‘rule’;

And,

Beginning on page 2, subsection 5.1, and continuing throughout the text of the rule, by striking out the words
'West Virginia Air Pollution Control Commission', and inserting in lieu thereof the word 'Director'."

(j) The legislative rule relating to the office of air quality (to prevent and control air pollution from the emission of sulfur oxides, 45 CSR 10), effective the twenty-seventh day of April, one thousand nine hundred and ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately preceding the words 'AIR QUALITY';

On page 1, subsection 2.3, by striking out the words "'Commission" means the West Virginia Air Pollution Control Commission.'", and inserting in lieu thereof the words '[RESERVED]';

Beginning on page 1, subdivision 1.1.b, and continuing throughout the text of the rule, by striking out the word 'Commission', and inserting in lieu thereof 'Director';

On page 1, subsection 1.2, by striking out the code reference '§16-20-5', and inserting in lieu thereof the code reference '§ 22-5-1 et seq';

On page 1, subsection 2.1, by striking out the code reference '§16-20-2', and inserting in lieu thereof the code reference '§ 22-5-2';

On page 2, subsection 2.17, by striking out the words "'Chief of Air Quality' or "Chief" means the Chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of W.}
On page 2, subsection 2.18, by striking out the words ‘that Division of the West Virginia Department of Commerce, Labor, and Environmental Resources’, and inserting in lieu thereof the words ‘the Division of Environmental Protection’;

Beginning on page 4, subdivision 3.4.b, and continuing throughout the text of the rule, by striking out the word ‘Chief’, and inserting in lieu thereof the word ‘Director’;

On page 4, subdivision 3.8.a, by striking out the words ‘paragraphs (b), (c), (d), (e), and (f) following’, and inserting in lieu thereof the words ‘subdivisions 3.8.b through 3.8.f’;

And,

On page 6, subsection 5.1, by striking out the words ‘§ 16-20-1, et seq., as amended, and Series 13 of this agency’, and inserting in lieu thereof the words ‘§ 22-5-1 et seq., as amended, and 45CSR13’.

(k) The legislative rule relating to the office of air quality (prevention of air pollution emergency episodes, 45 CSR 11), effective of the twenty-fifth day of April, one thousand, nine hundred and ninety, is reauthorized with the following amendments:

“On page 1, in the title of the rule, by inserting the words ‘OFFICE OF’ immediately preceding the words ‘AIR QUALITY’;

On page 1, subsection 1.2, by striking out the code references ‘§§16-20-5 and 16-20-1-13’, and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq’;

On page 1, subsection 2.2, by striking out the words ‘“Commission” means the West Virginia Air Pollution Control Commission.’, and inserting in lieu thereof the words ‘[RESERVED]’;
On page 1, subsection 2.3, by striking out the words 'West Virginia Air Pollution Control Commission', and inserting in lieu thereof the words 'Division of Environmental Protection';

Beginning on page 1, subsection 2.6, and continuing throughout the text of the rule, by striking out the word 'regulation', and inserting in lieu thereof the word 'rule';

Beginning on page 1, subsection 3.1, and continuing throughout the text of the rule, by striking out the words 'and/or Commission';

Beginning on page 2, subdivision 3.1.a, and continuing throughout the text of the rule, by striking out the words 'West Virginia Air Pollution Control Commission', and inserting in lieu thereof the word 'Director';

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the word 'Commission', and inserting in lieu thereof the word 'Director';

On page 3, subsection 3.2, striking out the reference 'WV Code §45-11-6', and inserting in lieu thereof the words 'Section 6 of this rule';

On page 4, subsection 6.2, and continuing throughout the text of the rule, by striking out the reference 'W. Va. Code §45-11-5', and inserting in lieu thereof the words 'Section 5 of this rule';


On page 5, section 8, in the heading, by striking out the word 'Regulations', and inserting in lieu thereof the word 'Rules';

And,

On page 5, subsection 8.1, by striking out the words 'rule' immediately preceding the words 'or rule'.
The legislative rule relating to the office of air quality (ambient air quality standard for nitrogen dioxide, 45 CSR 12), effective the fifteenth day of March, one thousand nine hundred and seventy-two, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately preceding the words 'AIR QUALITY';

On page 1, subsection 1.2, by striking out the code reference '§16-20-5', and inserting in lieu thereof the code reference '§ 22-5-1 et seq';

On page 1, subsection 3.3, by striking out the words 'Commission shall mean the West Virginia Air Pollution Control Commission', and by inserting in lieu thereof the words '[RESERVED]';

On page 2, subsection 5.1, by striking out the words 'West Virginia Air Pollution Control Commission', and inserting in lieu thereof the word 'Director';

Beginning on page 1, subsection 2.1, and continuing throughout the text of the rule, by striking out the word 'Commission', and inserting in lieu thereof the word 'Director';

Beginning on page 1, subsection 3.1, and continuing throughout the text of the rule, by striking out the words 'shall mean', and inserting in lieu thereof the word 'means';

On page 1, subsection 3.2, by striking out the code reference '§16-20-2', and inserting in lieu thereof the code reference '§ 22-5-2';
And,

On page 1, subsection 3.5, by striking out the word ‘regulation’, and inserting in lieu thereof the word ‘rule’.

(m) The legislative rule relating to the office of air quality (permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, temporary permits, general permits, and procedures for evaluation, 45 CSR 13), effective the twenty-seventh day of April, one thousand nine hundred and ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately prior to the words 'AIR QUALITY';

On page 1, subsection 1.2, by striking out the code reference ‘§16-20-5’, and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq’;

On page 2, subsection 2.4, by striking out the words ‘Chief of Air Quality’ or ‘Chief’ means the Chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq.’, and by inserting in lieu thereof the words ‘[RESERVED]’;

Beginning on page 1, subdivision 2.1.a, and continuing throughout the text of the rule, by striking out the word ‘Chief’, and inserting in lieu thereof the word ‘Director’;

On page 1, subsection 2.3, by striking out the code reference ‘article twenty, chapter sixteen of the W. Va.
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550 Code', and inserting in lieu thereof the code reference 'W.
551 Va. Code § 22-5-2';
552
553 On page 2, subsection 2.7, by striking out the words
554 "Commission" means the West Virginia Air Pollution
555 Control Commission', and inserting in lieu thereof the
556 words '[RESERVED]';
557
558 On page 2, subsection 2.10, by striking out the words
559 'that division of the Department of Commerce, Labor and
560 Environmental Resources', and inserting in lieu thereof
561 the words 'the Division of Environmental Protection';
562
563 On page 3, paragraph 2.17.b.2, by striking out the
564 words 'subparagraph 2.13.b.A', and inserting in lieu
565 thereof the words 'paragraph 2.17.b.1';
566
567 On page 3, subdivision 2.17.c, by striking out the
568 words 'subparagraph 2.13.b.A', and inserting in lieu
569 thereof the words 'paragraph 2.17.b.1';
570
571 On page 10, subsection 11.2, by striking out the words
572 'Commission rules', and inserting in lieu thereof the
573 words 'rules of the Director';
574
575 Beginning on page 4, subdivision 2.21.d, and continuing
576 throughout the text of the rule, by striking out the
577 word 'Commission', and inserting in lieu thereof the word
578 'Director';
579
580 On page 5, subsection 2.28, by striking out the code
581 reference 'chapter sixteen, article twenty, section two of
582 the Code of West Virginia, 1931', and inserting in lieu
583 thereof the code reference 'W. Va. Code § 22-5-1 et
584 seq.';
585
586 And,
587
588 Beginning on page 6, subsection 4.4, and continuing
589 throughout the text of the rule, by striking out the code
589 reference '§16-20-1', and inserting in lieu thereof the
590 code reference '§ 22-5-1.'
591
592 (n) The legislative rule relating to the office of air
593 quality (permits for construction and major modification
594 of major stationary sources of air pollution for the preven-
tion of significant deterioration, 45 CSR 14), effective the first day of May, one thousand nine hundred and ninety-five, is reauthorized with the following amendment:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 3, subsection 2.11, by striking out the words "Chief of the Office of Air Quality" or "Chief" means the principal administrative officer of the Office of Air Quality or other designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1 et seq.', and inserting in lieu thereof the words '[RESERVED]' ."

(o) The legislative rule relating to the office of air quality (emission standards for hazardous air pollutants pursuant to 40 CFR part 61, 45 CSR 15), effective the first day of May, one thousand nine hundred and ninety-five, is reauthorized with the following amendment:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6)."

(p) The legislative rule relating to the office of air quality (to prevent and control particulate air pollution from materials handling, preparation, storage and sources of fugitive particulate matter, 45 CSR 17), effective the first day of May, 1979, is reauthorized with the following amendments:

"On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately preceding the words 'AIR QUALITY';"
On page 1, subsection 3.2, by striking out the words "Commission" shall mean the West Virginia Air Pollution Control Commission.'; and inserting in lieu thereof the words '[RESERVED]';

On page 1, subsection 3.3, by striking out the words 'Air Pollution Control Commission', and inserting in lieu thereof the words 'Division of Environmental Protection';

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the word 'Commission', and inserting in lieu thereof the word 'Director';

On page 3, section 12, by striking out the words 'or regulation';

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the word 'regulation', and inserting in lieu thereof the word 'rule';

On page 1, subsection 1.2, by striking out the code reference 'W.V. Code §16-20-5', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq';

On page 1, subsection 3.1, by striking out the code reference 'section two of chapter sixteen, article twenty of the Code of West Virginia', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-2';

Beginning on page 1, subsection 3.4, and continuing throughout the text of the rule, by striking out the words 'shall mean', and inserting in lieu thereof the word 'means';

On page 2, subsection 3.11, by striking out the words 'shall include, but not be', and inserting in lieu thereof the words 'includes, but is not';

On page 2, subsection 3.12, by striking out the code reference 'section two of chapter sixteen, article twenty of the Code of West Virginia', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq';

And,
On page 3, subsection 9.1, by striking out the code reference 'chapter sixteen, article twenty, section five, subsection seventeen of the Code of West Virginia', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-4'.

(q) The legislative rule relating to the office of air quality (to prevent and control particulate air pollution from direct meat-firing devices, 45 CSR 18), effective the first day of May, one thousand nine hundred and seventy-nine, is reauthorized with the following amendments:

“On page 1, in the title of the rule, by inserting the words ‘OFFICE OF’ immediately preceding the words ‘AIR QUALITY’;

On page 1, subsection 1.2, by striking out the code reference ‘§16-20-5’, and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq’;

On page 1, subsection 2.1, by striking out the code reference ‘Section Two of Chapter Sixteen, Article Twenty of the Code of West Virginia’, and inserting in lieu thereof the code reference ‘W. Va. Code § 22-5-2’;

On page 1, subsection 2.3, by striking out the words ‘“Commission” shall mean the West Virginia Air Pollution Control Commission.’, and inserting in lieu thereof the words ‘[RESERVED]’;

Beginning on page 1, subsection 2.2, and continuing throughout the text of the rule, by striking out the words ‘shall mean’, and inserting in lieu thereof the word ‘means’;

On page 1, subsection 2.4, by striking out the words ‘Air Pollution Control Commission’, and inserting in lieu thereof the words ‘Division of Environmental Protection’;

On page 1, subsection 2.8, by striking out the words ‘shall be’, and inserting in lieu thereof the word ‘means’;

Beginning on page 1, subsection 2.8, and continuing throughout the text of the rule, by striking out the word ‘Commission’, and inserting in lieu thereof the word ‘Director’;
Beginning on page 2, subsection 2.15, and continuing throughout the text of the rule, by striking out the word 'regulation', and inserting in lieu thereof the word 'rule';

On page 2, subsection 2.15, by striking out the code reference 'Chapter Sixteen, Article Twenty, Section Two of the Code of West Virginia', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq';

On page 2, subsection 5.1, by striking out the code reference 'Section Five of Chapter Sixteen, Article Twenty, Paragraph Seventeen of the Code of West Virginia', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-4';

On page 2, section 6, by striking out the code reference 'Section Two of Chapter Sixteen, Article Twenty, Paragraph 11b of the Code of West Virginia', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-11';

And,

On page 2, section 6, by striking out the word 'Regulation 13 of this agency', and inserting in lieu thereof the reference '45CSR13' .

(r) The legislative rule relating to the office of air quality (requirements for pre-construction review, determination of emission offsets for proposed new or modified stationary sources of air pollutants and emission trading for intrasource pollutants, 45 CSR 19), effective the seventh day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately preceding the words 'AIR QUALITY';
On page 2, subsection 2.9, by striking out the words "Chief of Air Quality" or "Chief" means the Chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of §22-1-1, et seq., of the West Virginia Code.', and inserting in lieu thereof the words 'RESERVED';

On page 2, subsection 2.11, by striking out the words "Commission" means the West Virginia Air Pollution Control Commission.'., and inserting in lieu thereof the words 'RESERVED';

On page 2, subsection 2.2, by striking out the words 'Commission or Chief', and inserting in lieu thereof the word 'Director';

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the word 'Commission', and inserting in lieu thereof the word 'Director';

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the word 'regulation', and inserting in lieu thereof the word 'rule';

On page 1, subsection 1.1, by striking out the code reference 'Chapter 16, Article 20, of the code of West Virginia, of 1931, as amended, (the Code)', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq., as amended';

On page 1, subsection 1.2, by striking out the code reference '§16-20-5', and inserting in lieu thereof the code reference '§ 22-5-1 et seq.';

On page 1, subsection 1.5, by striking out the words '1.5 Type. This regulation is a legislative rule as defined in West Virginia Code, Chapter 29A, Article 2';

Beginning on page 1, subdivision 2.1.a, and continuing throughout the text of the rule, by striking out the word 'Chief', and inserting in lieu thereof the word 'Director';
On page 2, subsection 2.3, by striking out the words 'the West Virginia Administrative Regulations of the Air Pollution Control Commission', and inserting in lieu thereof the words 'rules of the Director';

On page 2, subsection 2.3, by striking out the words 'the Code of West Virginia, of 1931', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq.';

On page 2, subsection 2.6, by striking out the code reference 'Section Two of the West Virginia Code 16-20, as amended', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-2';

On page 2, subsection 2.10, by striking out the code reference 'Chapter 16, Article 20, of the Code of West Virginia of 1931', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq.';

On page 2, subsection 2.10, by striking out the code reference 'Chapter 20, Article 5E of the Code of West Virginia of 1931', and inserting in lieu thereof the code reference 'W. Va. Code § 22-18-1 et seq';

On page 3, subsection 2.15, by striking out the words 'that Division of the Department of Commerce, Labor and Environmental Resources', and inserting in lieu thereof the words 'the Division of Environmental Protection';

On page 8, subsection 2.47, by striking out the code reference 'Chapter 16, Article 20, Section 2, of the Code of West Virginia, 1931', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq';

On page 9, paragraph 4.1.a.2, by striking out the code reference 'Chapter 16, Article 20, of the Code of West Virginia, 1931', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq.';

On page 9, paragraph 4.1.a.4, by striking out the words 'Subparagraph 4.1.a.C', and inserting in lieu thereof the words 'paragraph 4.1.a.3';
On page 10, subdivision 6.1.a, by striking out the words 'Subparagraphs 4.1.a.C and D', and inserting in lieu thereof the words 'paragraphs 4.1.a.3 and 4.1.a.4';

On page 10, paragraph 6.1.b.1, by striking out the words 'Subparagraphs 4.1.a.C and D', and inserting in lieu thereof the words 'paragraphs 4.1.a.3 and 4.1.a.4';

On page 12, paragraph 8.2.d.1, by striking out the words 'Subparagraph 4.1.a.D', and inserting in lieu thereof the words 'paragraph 4.1.a.4';

On page 12, paragraph 8.2.d.2, by striking out the words 'Subparagraphs 4.1.a.C and 8.2.a.A', and inserting in lieu thereof the words 'paragraphs 4.1.a.3 and 8.2.a.1';

And,

Beginning on page 13, subsection 9.3, and continuing throughout the text of the rule, by striking out the code reference ‘Chapter 16, Article 20, Section 5 (17) of the Code’, and inserting in lieu thereof the code reference ‘W. Va. Code § 22-5-4.’

(s) The legislative rule relating to the office of air quality (good engineering practice as applicable to stack heights, 45 CSR 20), effective the fourteenth day of July, one thousand nine hundred and eighty-nine, is reauthorized with the following amendments:

“Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words ‘OFFICE OF’ immediately preceding the words ‘AIR QUALITY’;

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the word ‘regulation’, and inserting in lieu thereof the word ‘rule’;
On page 1, subsection 1.2, by striking out the code reference ‘§16-20-5’, and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq’;

On page 3, subdivision 2.6.a, by striking out the words ‘APCC Regulation XIV’, and inserting in lieu thereof the words ‘45CSR14’;

On page 3, subdivision 2.6.a, by striking out the words ‘Regulation XVI’, and inserting in lieu thereof the words ‘45CSR16’;

On page 4, subsection 2.8, by striking out the words ‘West Virginia Air Pollution Control Commission’, and inserting in lieu thereof the words ‘Division of Environmental Protection’;

On page 4, subsection 2.12, by striking out the words ‘Commission’ means the West Virginia Air Pollution Control Commission’, and inserting in lieu thereof the words ‘[RESERVED]’;

Beginning on page 3, paragraph 2.6.b.1, and continuing throughout the text of the rule, by striking out the word ‘Commission’, and inserting in lieu thereof the word ‘Director’;

On page 3, subdivision 2.7.a, by striking out the words ‘APCC Regulation XV’, and inserting in lieu thereof the words ‘45CSR15’;

On page 4, subdivision 2.7.a, by striking out the words ‘APCC Regulation XVI’, and inserting in lieu thereof the words ‘45CSR16’;

On page 4, subsection 2.11, by striking out the code reference ‘§16-20-2. 1931’, and inserting in lieu thereof the code reference ‘§ 22-5-2’;

On page 4, subsection 2.14, by striking out the code reference ‘§16-20-2. 1931’, and inserting in lieu thereof the code reference ‘§ 22-5-1, et seq’;

On page 4, subdivision 3.2.b, by striking out the words ‘APCC Regulation XIV’, and inserting in lieu thereof the words ‘45CSR14’;
On page 4, subsection 4.1, by striking out the words 'Sub-section 2.4.c.', and inserting in lieu thereof the words 'subdivision 2.4.c.';

On page 4, subsection 4.1, by striking out the words 'Section 2.4.b.A and B', and inserting in lieu thereof the words 'paragraphs 2.4.b.1 and 2.4.b.2';

On page 5, section 5, in the heading of the section, by striking out the word 'Regulations', and inserting in lieu thereof the word 'Rules';

And,

On page 5, subsection 5.1, by striking out the word 'rule' immediately following the words 'provision, term, condition, method,'.

(t) The legislative rule relating to the office of air quality (air quality management fee program, 45 CSR 22), effective the sixth day of May, one thousand nine hundred and ninety-one, is reauthorized with the following amendments:

"Beginning on page 2, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately preceding the words 'AIR QUALITY';

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the word 'regulation', and inserting in lieu thereof the word 'rule';

On page 1, subsection 1.1, by striking out the words 'Air Pollution Control Commission's', and inserting in lieu thereof the word 'Director's';

On page 1, subsection 1.2, by striking out the code reference '§16-20-5', and inserting in lieu thereof the code reference '§ 22-5-1, et seq';
On page 1, subsection 2.1, by striking out the code reference ‘§16-20’, and inserting in lieu thereof the code reference ‘§ 22-5-2’;

On page 1, subsection 2.3, by striking out the words ‘“Commission” means the West Virginia Air Pollution Control Commission.’, and inserting in lieu thereof the words ‘[RESERVED]’;

On page 1, subsection 2.5, by striking out the words ‘West Virginia Air Pollution Control Commission’, and inserting in lieu thereof the words ‘Division of Environmental Protection’;

Beginning on page 2, subdivision 3.3.a, and continuing throughout the text of the rule, by striking out the words ‘West Virginia Air Pollution Control Commission’, and inserting in lieu thereof the words ‘Air Pollution Control’;

On page 3, subdivision 4.2.a, by striking out the words ‘or Commission’;

On page 3, subdivision 4.2.b, by striking out the words ‘or Commission’;

Beginning on page 1, subsection 2.4, and throughout the text of the rule, by striking out the word ‘Commission’, and inserting in lieu thereof the word ‘Director’;

On page 2, subsection 3.1, by striking out the words ‘Permits for Construction, Modification or Relocation of Stationary Sources of Air Pollution and Procedures for Registration and Evaluation’, and inserting in lieu thereof the words ‘Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation’;

And,

On page 6, subsection 4.6, by striking out the code reference ‘§16-20-8’, and inserting in lieu thereof the code reference ‘§ 22-5-6’.”
(u) The legislative rule relating to the office of air quality (to prevent and control the emissions of toxic air pollutants, 45 CSR 27), effective the thirtieth day of June, one thousand nine hundred and ninety, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately prior to the words 'AIR QUALITY';

On page 1, subsection 1.1, by striking out the word 'Regulation 27', and inserting in lieu thereof the reference '45CSR27';

On page 1, subsection 1.2, by striking out the code reference '§16-20-5', and inserting in lieu thereof the code reference '§ 22-5-1 et seq.';

On page 1, subsection 1.5, by striking out the words '1.5. Type. This regulation is a legislative rule as defined in West Virginia Code, Chapter 29A, Article 2.';

On page 1, subsection 2.1, by striking out the code reference 'Section 2, of Chapter 16, Article 20 of the Code of West Virginia, as amended', and inserting in lieu thereof the code reference 'W. Va. Code §22-5-2';

Beginning on page 1, subsection 2.3, and continuing throughout the text of the rule, by striking out the word 'regulation', and inserting in lieu thereof the word 'rule';

On page 2, subsection 2.5, by striking out the words "Commission" means the West Virginia Air Pollution Control Commission.'; and inserting in lieu thereof the words '[RESERVED]';

On page 2, subsection 2.6, by striking out the words 'West Virginia Air Pollution Control Commission', and
inserting in lieu thereof the words 'Division of Environmental Protection';

On page 2, subsection 2.6, by inserting the word 'or' between the words 'Plant' and 'facility';

Beginning on page 4, subsection 8.1, and continuing throughout the text of the rule, by striking out the word 'Commission', and inserting in lieu thereof the word 'Director';

On page 4, subsection 9.1, by striking out the code reference 'WV Code §16-20-11b, as amended' and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-11';

And,

On page 5, subsection 13.1, by striking out the words 'rule or' immediately following the words 'provision, term, condition, method,'.

(v) The legislative rule relating to the office of air quality (rule requiring the submission of emission statements for volatile organic compound emissions and oxides of nitrogen emissions, 45 CSR 29), effective the seventh day of July, one thousand nine hundred and ninety-three, is reauthorized with the following amendments:

"Beginning on page 2, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately prior to the words 'AIR QUALITY';

On page 1, subsection 1.1, by striking out the words 'Chief of Air Quality's', and inserting in lieu thereof the word 'Director's';
On page 1, subsection 1.2, by striking out the code reference ‘§16-20-5’, and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq’;

On page 1, subsection 2.7, by striking out the words ‘“Chief of Air Quality” or “Chief” means the chief of the Office of Air Quality or his or her designated representative appointed by the director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq.’, and inserting in lieu thereof the words ‘[RESERVED]’;

On page 1, subsection 2.8, by striking out the words ‘“Commission” means the West Virginia Air Pollution Control Commission.’, and inserting in lieu thereof the words ‘[RESERVED]’;

On page 2, subsection 2.12, by striking out the words ‘Department of Commerce, Labor and Environmental Resources’, and inserting in lieu thereof the words ‘Division of Environmental Protection’;

On page 4, section 6, by striking out the words ‘commission, director, or chief’, and inserting in lieu thereof the word ‘Director’;

Beginning on page 2, subsection 2.25, and continuing throughout the text of the rule, by striking out the word ‘commission’, and inserting in lieu thereof the word ‘Director’;

Beginning on page 3, subsection 2.28, and continuing throughout the text of the rule, by striking out the word ‘chief’, and inserting in lieu thereof the word ‘Director’;

On page 3, subsection 3.2, by striking out the words ‘of Air Quality’;

And,

On page 4, subsection 5.4, by striking out the code reference ‘§16-20-12’, and inserting in lieu thereof the code reference ‘§ 22-5-10’.

(w) The legislative rule relating to the office of air quality (requirements for operating permits, 45 CSR 30),
effective the twenty-seventh day of April, one thousand, nine hundred and ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words ‘OFFICE OF’ immediately preceding the words ‘AIR QUALITY’;

On page 1, subsection 1.2, by striking out the code reference ‘§16-20-5’, and inserting in lieu thereof the code reference ‘§ 22-5-1 et seq’;

On page 1, subsection 2.5, by striking out the code reference ‘article twenty, chapter sixteen, of the W. Va. Code, as amended’, and inserting in lieu thereof the code reference ‘W. Va. Code §22-5-2’;

On page 2, subsection 2.8, by striking out the words ‘Chief of Air Quality’ or ‘Chief’ means the chief of the Office of Air Quality or his or her designated representative appointed by the director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq’, and inserting in lieu thereof the words [RESERVED];

On page 2, subsection 2.10, by striking out the words ‘Commission’ means the West Virginia Air Pollution Control Commission.’, and inserting in lieu thereof the words [RESERVED];

On page 24, subdivision 6.4.a.6, by striking out the words ‘Commission rules’, and inserting in lieu thereof the words ‘rules of the Director’;

Beginning on page 2, subdivision 2.6.j, and throughout the text of the rule, by striking out the word ‘Commission’, and inserting in lieu thereof the word ‘Director’;
Beginning on page 2, subsection 2.6.1, and continuing throughout the text of the rule, by striking through the word 'Chief', and inserting in lieu thereof the word 'Director';

On page 2, subsection 2.13, by striking out the words ‘Department of Commerce, Labor, and Environmental Resources’, and inserting in lieu thereof the words ‘Division of Environmental Protection’;

On page 7, subdivision 2.34.a, by striking out the reference ‘2.25.c.C’, and inserting in lieu thereof the reference ‘2.26.c.3’;

On page 8, subsection 2.44, by striking out the word ‘trichloromethane’, and inserting in lieu thereof the word ‘trichloroethane’;

On page 8, subdivision 2.44.d by striking out the code reference ‘16-20-1’, and inserting in lieu thereof the code reference ‘22-5-1’;

On page 12, subdivision 4.1.c, by striking out the code reference ‘16-20-12’, and inserting in lieu thereof the code reference ‘22-5-10’;

On page 12, paragraph 4.3.c.2, by striking out the words ‘subparagraph 4.3.c.A and inserting in lieu thereof the words ‘paragraph 4.3.c.1’, and by striking out the code reference ‘16-20-1’, and inserting in lieu thereof the code reference ‘22-5-1’;

On page 13, paragraph 4.3.c.8, by striking out the words ‘subparagraphs 4.3.c.A through G’, and inserting in lieu thereof the reference ‘paragraphs 4.3.c.1 through 4.3.c.7’;

On page 13, subdivision 4.3.e, by striking out the code reference ‘16-20-1’, and inserting in lieu thereof the code reference ‘22-5-1’;

On page 13, subdivision 4.3.e, by striking out the code reference ‘20-5E-1’, and inserting the code reference ‘22-18-1’;
On page 13, subdivision 4.3.g, by striking out the word 'paragraph' in two places and inserting in lieu thereof the word 'subdivision', and by striking out the reference '5.1.a.C', and inserting in lieu thereof the reference 'paragraph 5.1.a.3';

On page 15, subparagraph 5.1.c.1.B, by striking out the reference '5.1.c.C', and inserting in lieu thereof the reference '5.1.c.3';

On page 15, subparagraph 5.1.c.1.B, by striking out the reference '5.1.c.A', and inserting in lieu thereof the reference '5.1.c.1';

On page 16, subparagraph 5.1.c.3.E, by striking out the code reference '16-20-12', and inserting in lieu thereof the code reference '22-5-10';

On page 21, paragraph 5.7.c.4, by striking out the words 'subpart 5.1.c.C(c)(B)', and inserting in lieu thereof the words 'part 5.1.c.3.C.2';

On page 21, paragraph 5.7.c.4, by striking out the words 'part 5.1.c.D.(b)', and inserting in lieu thereof the reference 'subparagraph 5.1.c.3.B';

On page 25, subparagraph 6.5.a.1.B, by striking out the words 'part 6.5.a.A.(a)', and inserting in lieu thereof the words 'subparagraph 6.5.a.1.A';

On page 26, subparagraph 6.5.a.4.D, by striking out the reference '6.5.a.D', and inserting in lieu thereof the reference '6.5.a.4';

On page 26, paragraph 6.5.a.5, by striking out the reference '6.5.a.D(a)', and inserting in lieu thereof the reference '6.5.a.4.A';

On page 26, paragraph 6.5.a.5, by striking out the reference '6.5.a.D.(c)', and inserting in lieu thereof the reference '6.5.a.4.C';

On page 28, paragraph 6.8.a.3, by striking out the words 'subpart of 6.8.a.C(a)', and inserting in lieu thereof the words 'part 6.8.a.3.A.3';

On page 29, part 6.8.a.4.A.5, by striking out the word 'paragraph' and inserting in lieu thereof the word 'subdivisions';


On page 30, part 6.8.a.4.B.4, by striking out the words 'subparagraph 6.8.a.C', and inserting in lieu thereof the reference 'paragraph 6.8.a.3';

On page 30, subdivision 6.8.b, by striking out the words 'subparagraph 6.8.c.A', and inserting in lieu thereof the words 'paragraph 6.8.c.1';

On page 30, paragraph 6.8.c.2, by striking out the reference 'subparagraph 6.8.a.B', and inserting in lieu thereof the words 'paragraph 6.8.a.2';

On page 31, subdivision 6.9.a, by striking out the words 'subparagraph 6.8.a.C', and inserting in lieu thereof the words 'paragraph 6.8.a.3';

Beginning on page 34, subsection 8.6, and continuing throughout the text of the rule, by striking out the code reference 'article twenty, chapter sixteen of the Code of West Virginia', and inserting in lieu thereof the code reference 'W. Va. Code § 22-5-1 et seq.';

On page 35, subsection 10.2, by striking out the words 'order of the chief or, any';

On page 35, subsection 10.2, by striking out the code reference '16-20-8', and inserting in lieu thereof the code reference '22-5-6';

And,
On page 35, subsection 12.4, by striking out the words 'this subparagraph 4.1.a.E.' and inserting in lieu thereof the words 'paragraph 4.1.a.5.'

(x) The legislative rule relating to the office of air quality (serious and minor violations of applicable rules, 45 CSR 32), effective the seventh day of July, one thousand nine hundred and ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'OFFICE OF' immediately preceding the words 'AIR QUALITY';

On page 1, subsection 1.1, by striking out the words 'West Virginia Air Pollution Control Commission', and inserting in lieu thereof the words 'Director';

On page 1, subsection 1.2, by striking out the code reference '§16-20-5', and inserting in lieu thereof the code reference '§ 22-5-1 et seq';

On page 1, subsection 2.1, by striking out the code reference '§16-20-1, et seq.', and inserting in lieu thereof the code reference '§ 22-5-1, et seq';

On page 1, subsection 2.2, by striking out the words 'chief or the commission', and inserting in lieu thereof the word 'Director';

On page 1, subsection 2.3, by striking out the words "Chief of Air Quality" or "Chief" means the chief of the office of Air Quality or his or her designated representative appointed by the director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq.', and inserting in lieu thereof the words '[RESERVED]';
On page 1, subsection 2.4, by striking out the words “Commission” means the West Virginia Air Pollution Control Commission’, and inserting in lieu thereof the words ‘[RESERVED]’;

On page 1, subsection 2.6, by striking out the words ‘that Division of the Department of Commerce, Labor, and Environmental Resources as’, and inserting in lieu thereof the words ‘the Division of Environmental Protection’;

On page 1, subsection 2.7, by striking the words ‘or regulation’;

Beginning on page 2, subdivision 3.1.a, and continuing throughout the text of the rule, by striking out the word ‘chief’, and inserting in lieu thereof the word ‘Director’;

And,

Beginning on page 2, subdivision 3.1.b, and continuing throughout the text of the rule, by striking out the word ‘commission’, and inserting in lieu thereof the word ‘Director’.

(y) The legislative rule relating to the office of air quality (provisions for determination of compliance with air quality management rules, 45 CSR 38), effective the first day of May, one thousand nine hundred ninety-five, is reauthorized with the following amendment:

“Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6).”

§64-11-4. Division of environmental protection, office of water resources.

(a) The legislative rule relating to the division of environmental protection, office of water resources (underground injection control fee schedule, 47 CSR 9), ef-
effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'BUREAU OF ENVIRONMENT' on the third line, by striking out the word 'DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES', and by striking out the words 'WATER RESOURCES - WASTE MANAGEMENT' and inserting in lieu thereof the words 'OFFICE OF WATER RESOURCES';

Beginning on page 1, and continuing throughout the text of the rule, by striking out the code reference '§20-5A-5', and inserting in lieu thereof '§ 22-11-8';

Beginning on page 1, and continuing throughout the text of the rule, by striking out the code reference '§22B-1-6', and inserting in lieu thereof '§ 22-6-6';

On page 1, subsection 1.2, by striking out the code reference '§20-5A-6a', and inserting in lieu thereof the code reference '§ 22-11-10';

On page 1, subsection 2.2, by striking out the words 'Department of Commerce, Labor and Environmental Resource' and inserting in lieu thereof the words 'Bureau of Environment';

Beginning on page 1, subsection 2.3, and continuing throughout the text of the rule, by striking out the words '46 C.S.R.9' and inserting in lieu thereof the words '47CSR13';

On page 1, subsections 2.3, 2.4, 2.5, 2.6 and 2.7, by striking out the word 'paragraphs' and inserting in lieu thereof the word 'subdivisions';
On page 3, subdivision 3.4.a., by striking out the words '46 C.S.R. 2' and inserting in lieu thereof the words '46CSR10';

Beginning on page 3, subsection 4.2 and continuing throughout the text of the rule, by striking out the code reference ‘§22B-1-1’, and inserting in lieu thereof the code reference ‘§ 22-6-1’;

On page 5, subdivisions 8.5.a. and 8.5.e., by striking out the word ‘Section’ and inserting in lieu thereof the word ‘subsection’;

On page 5, subdivision 8.5.a., by striking out the reference ‘4.5.3. and inserting in lieu thereof the words ‘subdivision 4.5.c.’;

On page 5, subdivision 8.5.b., by striking out the words ‘Subsection 8.5.1’ and insert in lieu thereof the words ‘subdivision 8.5.a’;

On page 5, subdivision 8.5.c., by striking out the words ‘Subsection 8.5.1’ and insert in lieu thereof the words ‘subdivision 8.5.a’;

And,

On page 5, subdivision 8.5.e., by striking out the reference ‘7.5.3’ and inserting in lieu thereof the words ‘subdivision 7.5.c.’;

(b) The legislative rule relating to the division of environmental protection, office of water resources (national pollutant discharge elimination system (NPDES) program, 47 CSR 10), effective the twenty-fifth day of August, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);
On page 1, in the title of the rule, by inserting the words 'BUREAU OF ENVIRONMENT' on the third line, and by striking out the words 'WATER RESOURCES - WASTE MANAGEMENT' and inserting in lieu thereof the words 'OFFICE OF WATER RESOURCES' on the fifth line;

On page 1, in the title of the rule, by striking out the word 'ELIMINATION' and inserting in lieu thereof the word 'ELIMINATION';

Beginning on page 1, subsection 1.2, and continuing throughout the rule where applicable, by striking the code reference '§20-5A' and inserting in lieu thereof '§22-11';

Beginning on page 1, subsection 1.5, and continuing throughout the text of the rule, by striking out the word 'regulations' and inserting in lieu thereof the word 'rule';

Beginning on page 1, first sentence in section 2, and continuing throughout the text of rule, by striking out the words 'Chapter 20, Article 5A, Section 2 of the Code of West Virginia' and inserting in lieu thereof the words 'W. Va. Code § 22-11-3';

On page 2, subdivision 2.12.b, by striking out the word 'worker' and inserting in lieu thereof the word 'work';

Beginning on page 5, subdivision 2.51, and continuing throughout the text of the rule, by striking out the words 'West Virginia Code, Chapter 20, Article 5A, Section 1', and inserting in lieu thereof the words 'W. Va. Code § 22-11-1';

On page 6, paragraph 3.2.D, by striking out the word 'operatings' and inserting in lieu thereof the word 'operations';

Beginning on page 7, subdivision 3.5.b, and continuing throughout the text of the rule, by striking out the words 'these rules' and inserting in lieu thereof the words 'this rule';
On page 7, subdivision 3.5.b, by striking out the word 'filing' in the third sentence, and inserting in lieu thereof the words 'permit application';

On page 7, subdivision 3.5.b, by striking out the words 'West Virginia legislative rules, State Water Resources Board Series 3, Section 7,' and inserting in lieu thereof '47CSR26';

On page 8, subdivision 4.1.a, by striking out the words 'Series 3, Section 7' and inserting in lieu thereof the words '47CSR26';

Beginning on page 9, subsection 4.3, by striking out the code reference 'Chapter 20-5A-5(b)(6) of the State Act' and inserting in lieu thereof 'W. Va. Code § 22-11-8(b)(6)';

On page 9, paragraph 4.4.b.2, by striking out the word 'operatings' in the first sentence and inserting in lieu thereof the word 'operations';

On page 11, part 4.4.b.7.B.1., by striking out the words 'chromotography/mass' and inserting in lieu thereof the words 'chromatography/mass';

On page 11, part 4.4.b.7.C.2., by striking out the word 'quantitatatives' and inserting in lieu thereof the word 'quantitative';

On page 13, subsection 4.7, by striking out the words 'Series III, Section 8' and inserting in lieu thereof the words '47CSR26';

On page 16, subsection 5.5, by striking out the words 'State Health Department Regulations' and inserting in lieu thereof the words 'State Division of Health Rules';

On page 17, subdivision 5.10.a., by striking out the word 'conduced' and inserting in lieu thereof the word 'conducted';

Beginning on page 18, paragraph 5.12.e.1, and continuing throughout the text of the rule, by striking out the words 'Division of Water Resources' and inserting in lieu thereof the words 'Office of Water Resources';
On page 18, paragraph 5.12.e.4, by striking out the words 'Series 3, Section 1 of the Board's rules' and inserting in lieu thereof the words '47CSR11-1';

On page 24, subdivision 7.2.b (previously 7.2.c), by striking 'Section 2 and 3 of Series 3 of the Legislative Rules' and inserting in lieu thereof 'the Division of Environmental Protection's legislative rule, 47CSR10, sections 3 and 4';

On page 24, subsection 7.3, by striking out the words 'Series 1' and inserting in lieu thereof the words '46CSR1';

On page 28, part 9.2.b.3.A.2, by striking out the word 'withdraw' and inserting in lieu thereof the word 'withdrawn';

On page 29, paragraph 9.2.b.13, by striking out the word 'being' on first line and inserting in lieu thereof the word 'begin';

On page 30, paragraph 9.4.a.4, by striking out the word 'required' and inserting in lieu thereof the word 'requires';

Beginning on page 30, subdivision 9.4.b., and continuing throughout the text of the rule, by striking out the words 'Section 8', and inserting in lieu thereof the words 'Section 12';

On page 32, subdivision 11.3.b, by striking out the word 'They' and inserting in lieu thereof the word 'The';

On page 33, paragraph 12.1.a.2., by striking out the word 'section' and inserting in lieu thereof the word 'action';

On page 34, subparagraph 12.1.c.1.C, by striking out the word 'Department' and inserting in lieu thereof the word 'Division';

On page 35, subsection 12.2, in the first sentence, by striking out the word 'not' and inserting in lieu thereof the word 'no';
On page 36, subdivision 12.5.a, by striking out the word 'permits' and inserting in lieu thereof the word 'permit';

On page 43, paragraph 14.1.a.1, by striking out the word 'Farrenheit' and inserting in lieu thereof the word 'Fahrenheit';

On page 44, subsection 14.5, after the word 'Chief', by striking out the word 'to' and inserting in lieu thereof the word 'for';

On page 45, subdivision 16.1.a., by striking out the words '7, 8, 10 and 12a' and inserting in lieu thereof the words '11, 12, 15, and 19';

On Page 45, subdivision 16.1.b., after the word 'Section', by striking out the number '17' and inserting in lieu thereof the number '22';

On page 45, subdivision 16.1.c., after the word 'Section', by striking out the number '19' and inserting in lieu thereof the number '24';

On page 45, subsection 17.1, by striking out the words 'Chapter 20, Article 5, Section 3(b)' and inserting in lieu thereof the words 'Chapter 22B, Article 1';

And,

On page 45, section 18, by striking out the words 'Series 3' and inserting in lieu thereof the words '47CSR11'."

(c) The legislative rule relating to the division of environmental protection, office of water resources (special rules, 47 CSR 11), effective the first day of July, one thousand nine hundred eighty-seven, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);
On page 1, in the title of the rule, by inserting the words ‘BUREAU OF ENVIRONMENT’ on the third line, and by striking out the words ‘WATER RESOURCES - WASTE MANAGEMENT’ on the fifth line and inserting in lieu thereof the words ‘OFFICE OF WATER RESOURCES’;

On page 1, subsection 1.1, by striking out the words ‘Series I and 2 of the State Water Resources Board’s Legislative Rules’ and inserting in lieu thereof the words ‘46CSR1 and 47CSR10’;

Beginning on page 1, subsection 1.2, and continuing throughout the text of the rule, by striking out the code reference ‘§20-5A’ and inserting in lieu thereof the code reference ‘§ 22-11 et seq’;

Beginning on page 1, subsection 2.2, and continuing throughout the text of the rule, by striking out the words ‘State Water Resources’ and inserting in lieu thereof the words ‘Environmental Quality’;

Beginning on page 1, subdivision 2.2.a, and continuing throughout the text of the rule, by striking out the words ‘Division of Water Resources’ and inserting in lieu thereof the words ‘Office of Water Resources’;

On page 2, subsection 2.4, by striking out the words ‘section nine, article five A, chapter twenty of the West Virginia Code shall be punishable under section nine, article five-A, chapter twenty of the West Virginia Code’ and inserting in lieu thereof the words ‘W. Va. Code § 22-11-14 shall be punishable under W. Va. Code § 22-11-24’;

On page 3, subdivision 3.3.c, by striking out the words ‘see Section 8, Series 2’ and inserting in lieu thereof the words ‘See 46CSR1, section 8’;

On page 3, section 4, by striking out the word ‘care’ and inserting in lieu thereof the word ‘car’;

On page 5, subsection 6.6, by striking out the word ‘of’ and inserting in lieu thereof the word ‘or’;

And,
On page 6, by striking out section 8 in its entirety, and inserting in lieu thereof the words '(THIS SECTION IS SUPERSEDED BY 47CSR26)', and by renumbering the following section 9 as section 8."

(d) The legislative rule relating to the division of environmental protection, office of water resources (underground injection control, 47 CSR 13), effective the twenty-fifth day of August, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'BUREAU OF ENVIRONMENT' on the third line, and by striking out the words 'WASTE MANAGEMENT' on the fifth line;

Beginning on page 1, in the Editor's Note, and continuing throughout the text of the rule, by striking out the words 'Water Resources Board' and inserting in lieu thereof the words 'Environmental Quality Board';

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the words 'these regulations' and inserting in lieu thereof the words 'this rule';

Beginning on page 1, subdivision 1.1.a., and continuing throughout the text of the rule, by striking out the word 'regulations' and inserting in lieu thereof the word 'rule';

Beginning on page 1, paragraph 1.1.e.4., and continuing throughout the text of the rule, by striking out the words used to describe the cross-references to sections, subsections, subdivisions, paragraphs, subparagraphs, parts, subparts, items or subitems, and inserting in lieu thereof the corresponding reference as necessary to conform with
the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, subsection 1.2, by striking the code reference ‘§20-5A-3(b)(2)’ and inserting in lieu thereof ‘§22-11-4(a)(16)’;

On page 1, section 2, by striking out the code reference ‘§20-5A-2’ and inserting in lieu thereof the code reference ‘§ 22-11-3’;

On page 3, subsection 2.24, by striking out the word ‘orific’ and inserting in lieu thereof the word ‘orifice’;

On page 3, subsection 2.28, by striking out the words ‘Title 47, Legislative Rules, Division of Natural Resources, Series 35’ and inserting in lieu thereof the words 33CSR20’;

On page 3, subsection 2.30, by striking out the words ‘Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-2.68’ and inserting in lieu thereof the words ‘the Hazardous Waste Management Rule, 33CSR20-2.68’;

On page 4, subsection 2.51, by striking out the code reference ‘§20-5A-1’ and inserting in lieu thereof the code reference ‘§ 22-11-1’;

On page 5, subdivision 2.58.c. , by striking out the word ‘aquifer’ and inserting in lieu thereof the word ‘aquifer’;

On page 7, subdivision 5.3.b., in the second paragraph, by striking out the word ‘multiplied’ and inserting in lieu thereof the word ‘multiplied’;

On page 7, subdivision 5.3.b., in the second paragraph, by striking out the word ‘multiplied’ and inserting in lieu thereof the word ‘multiplied’;
On page 7, subdivision 5.3.b., after the last sentence in the subdivision, by inserting the words ‘(See Table 13.5-A at end of this rule)’;

On page 8 subparagraph 5.3.b.2.D., by striking out the word ‘infintesimal’ and inserting in lieu thereof the word ‘infinitesimal’;

On page 9, subdivision 7.3.a., by striking out the words ‘Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-4.(Chapter 20-5E)’ and inserting in lieu thereof the words ‘the Hazardous Waste Management Rule, 33CSR20-4 (W. Va. Code Chapter 22, Article 18)’;

On page 9, subdivision 7.3.b., by striking out the words ‘Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-8.2.2.(Chapter 20-5E)’ and inserting in lieu thereof the words ‘the Hazardous Waste Management Rule, 33CSR20-8.2.2 (W. Va. Code Chapter 22, Article 18)’;

On page 9, subdivision 7.3.c., by striking out the words ‘Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-8.5. (Chapter 20-5E)’ and inserting in lieu thereof the words ‘the Hazardous Waste Management Rule, 33CSR20-8.5 (W. Va. Code Chapter 22, Article 18)’;

On page 9, subdivision 7.3.d., by striking out the words ‘Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-8.5.3. (Chapter 20-5E)’ and inserting in lieu thereof the words ‘the Hazardous Waste Management Rule, 33CSR20-8.5.3 (W. Va. Code Chapter 22, Article 18)’;

On page 9, subdivision 7.3.e., by striking out the words ‘Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-8.54.(Chapter 20-5E)’ and inserting in lieu thereof the words ‘the Hazardous Waste Man-
On page 9, subdivision 7.3.f., by striking out the words 'Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-8.5.6 (Chapter 20-5E)' and inserting in lieu thereof the words 'the Hazardous Waste Management Rule, 33CSR20-8.5.6 (W. Va. Code Chapter 22, Article 18)';

On page 9, subdivision 7.3.g., by striking out the words 'Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-8.5.6 (Chapter 20-5E)' and inserting in lieu thereof the words 'the Hazardous Waste Management Rule, 33CSR20-8.5.6 (W. Va. Code Chapter 22, Article 18)';

On page 9, subdivision 7.3.h., by striking out the words 'Title 47, Legislative Rules, Division of Natural Resources, Series 35, Hazardous Waste Management Regulations, Section 47-35-8.2.7 (Chapter 20-5E)' and inserting in lieu thereof the words 'the Hazardous Waste Management Rule, 33CSR20-8.2.7 (W. Va. Code Chapter 22, Article 18)';

On page 19, subparagraph 10.5.a.6.B., by striking out the word 'Qualitive' and inserting in lieu thereof the word 'Qualitative';

On page 20, subsection 11.2 and subdivisions 11.2.a. and 11.2.b., by striking out the second occurrence of subsection 11.2 and subdivisions 11.2.a. and 11.2.b., so as to the duplicated language;

On page 20, paragraph 11.4.a.1., and on page 22, paragraph 13.2.d.3, by striking out the words 'Chapter 20-5E of the West Virginia Code' and inserting in lieu thereof the words 'W. Va. Code Chapter 22, Article 18';

On page 22, subdivision 13.1.f., by striking out the words 'Section 12a of the State Act' and inserting in lieu thereof the words 'W. Va. Code § 22-11-19';
402 On page 22, subparagraph 13.10.d.5.A., by striking out the words '§20-5E-1' and inserting in lieu thereof the words '§ 22-18-1';

405 On page 32, paragraph 13.13.1.6., by striking out the word 'reoccurance' and inserting in lieu thereof the word 'reoccurrence';

408 On page 37, paragraph 13.22.e.1., by striking out the word 'occured' and inserting in lieu thereof the word 'occurred',"

411 And,

412 At the end of the rule, by inserting a table, as follows:

TABLE 13-5A

Zone of Endangering Influence

\[ r = \sqrt{\frac{2.25KHt}{S10^x}} \]

where:

\[ x = \frac{4\pi KH(h_w - h_{bo})S_p G_b}{2.3Q} \]

(e) The legislative rule relating to the division of environmental protection, office of water resources (water pollution control permit fee schedules, 47 CSR 26), effective the first day of July, one thousand nine hundred ninety-three, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by inserting the words 'BUREAU OF ENVIRONMENT' on the third line, and by striking out the words 'WATER RESOURCES - WASTE MANAGEMENT' on the fifth line and inserting in lieu thereof the words 'OFFICE OF WATER RESOURCES';
On page 1, subsection 1.1, by striking out the word ‘Section’ and inserting in lieu thereof the word ‘Office’;

Beginning on page 1, subsection 1.1, and continuing throughout the text of the rule, by striking out the code reference ‘20-5A-5’ and inserting in lieu thereof the code reference ‘22-11-8’;

On page 1, subsection 1.2, by striking the code reference ‘§20-5A-6a’ and inserting in lieu thereof ‘§22-11-10’;

Beginning on page 1, subsection 1.5, and continuing throughout the text of the rule, by striking out the words ‘these regulations’ and inserting in lieu thereof the words ‘this rule’;

On page 1, subdivision 2.2.b, by striking out the words ‘46 C.S.R. 2 §4.4.b.3’ and inserting in lieu thereof the words ‘47CSR10, paragraph 4.4.b.3.’;

On page 1, subsection 2.3, by striking out the words ‘Section of Water Resources of the Division of Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources’ and inserting in lieu thereof the words ‘Office of Water Resources of the Division of Environmental Protection of the West Virginia Bureau of Environment’;

Beginning on page 2, subsection 2.5, and continuing throughout the text of the rule, by striking out the code reference ‘20-5A’ and inserting in lieu thereof the code reference ‘22-11’;

On page 2, subsection 2.10, by striking out the words ‘46 C.S.R.2 §9.2.b’ and inserting in lieu thereof the words ‘47CSR10, subdivision 9.2.b’;

On page 2, subsection 2.11, by striking out the words ‘46 C.S.R. 2 §9.2.a’ and inserting in lieu thereof the words ‘47CSR10, subdivision 9.2.a’;

On page 3, subdivision 2.23.a and 2.23b, by striking out the words ‘47 C.S.R. 35’ in both instances and inserting in lieu thereof the words ‘33CSR20’;
On page 3, subsection 3.3, by striking out the words 'West Virginia Division of Natural Resources' and inserting in lieu thereof 'West Virginia Division of Environmental Protection, Office of Water Resources';

On page 3, subdivision 3.4.a, by striking out the words '46 C.S.R. 2 §4.3' and inserting in lieu thereof the words '47CSR10, subsection 4.3';

And,

Beginning on page 6, subsection 4.4, and continuing throughout the text of the rule, by striking out the words '47 C.S.R. 38' and inserting in lieu thereof the words '33CSR1'."

(f) The legislative rule relating to the division of environmental protection, office of water resources (dam safety rules, 47 CSR 34), effective the first day of May, one thousand nine hundred ninety-five, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 13, subparagraph 6.4.e.2.D., by striking out the words 'Building 9', and inserting in lieu thereof the words 'Cultural Center';

On page 13, subparagraph 6.4.e.2.D., by inserting the word 'East' immediately following the words 'Kanawha Boulevard';

On page 14, part 7.1.b.1.A.1., by striking out the words 'Class 3 dams must be designed with either an open channel spillway only or a combination of principal and emergency spillways. A Class 3 dam shall be capable of passing that portion of the design storm that cannot be safely stored in the impoundment. The design of a Class 3 dam must assure that ninety percent (90%) of the stored volume of the design storm will be discharged within ten
(10) days after the storm event.' and inserting in lieu thereof the words 'Class 1 dams designed with either an open channel spillway only or with an emergency spillway and a principal spillway together must be capable of discharging that portion of the design storm that cannot be safely stored in the impoundment. Class 1 dams designed with a decant or principal spillway only must be capable of storing the volume of water generated by a PMP rainfall event of six (6) hours in duration. The design of a Class 1 dam must assure that ninety percent (90%) of the stored volume of the design storm will be discharged within ten (10) days after the storm event.';

On page 14, part 7.1.b.1.A.3., by striking out the words 'Class 1 dams designed with either an open channel spillway only or with an emergency spillway and a principal spillway together must be capable of discharging that portion of the design storm that cannot be safely stored in the impoundment. Class 1 dams designed with a decant or principal spillway only must be capable of storing the volume of water generated by a PMP rainfall event of six (6) hours in duration. The design of a Class 1 dam must assure that ninety percent (90%) of the stored volume of the design storm will be discharged within ten (10) days after the storm event.' and inserting in lieu thereof the words 'Class 3 dams must be designed with either an open channel spillway only or a combination of principal and emergency spillways. A Class 3 dam shall be capable of passing that portion of the design storm that cannot be safely stored in the impoundment. The design of a Class 3 dam must assure that ninety percent (90%) of the stored volume of the design storm will be discharged within ten (10) days after the storm event.';

On page 15, part 7.1.b.1.C.1., by striking out the words 'Class 3 and Class 4 Dams - Once in twenty-five (25) years.' and inserting in lieu thereof the words 'Class 1 Dams - Once in one hundred (100) years.';

On page 15, part 7.1.b.1.C.3., by striking out the words 'Class 1 Dams - Once in one hundred (100) years.' and inserting in lieu thereof the words 'Class 3 and Class 4 Dams - Once in twenty-five (25) years.';
On page 33, subsection 13.2., by inserting the words ‘or her’ immediately following the word ‘his’;

On page 38, subsection 18.3., by striking out the words ‘W. Va. Code §22-14-17’ and inserting in lieu thereof the words ‘W. Va. Code § 22-14-7’;

And,

On page 41, subdivision 19.5.a., by inserting the words ‘Calculation -’ immediately following the citation ‘19.5.a.’.

(g) The legislative rule relating to the division of environmental protection, office of water resources (groundwater protection act fee schedule, 47 CSR 55), effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

“Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by striking out the words ‘DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES’ and inserting in lieu thereof the words ‘BUREAU OF ENVIRONMENT’, and by striking out the words ‘WATER RESOURCES - WASTE MANAGEMENT’ and inserting in lieu thereof the words ‘OFFICE OF WATER RESOURCES’;

Beginning on page 1, and continuing throughout the text of the rule, by striking out the code reference ‘§20-5M-1 et seq.’, and inserting in lieu thereof the code reference ‘§ 22-12-1 et seq.’;

Beginning on page 1, and continuing throughout the text of the rule, by striking out the code reference ‘§20-5M-9 subsection (a)’ and inserting in lieu thereof the code reference ‘§ 22-12-9(a)’;
On page 1, subsection 1.5, by striking out the word ‘Section’ and inserting in lieu thereof the word ‘subsection’;

On page 1, subsection 2.3, by striking out the words ‘Solid Waste Management Regulation 47 C.S.R. 38’ and inserting in lieu thereof the words ‘Solid Waste Management Rule 33CSR1’;

On page 1, subsection 2.4, by striking out the words ‘division of environmental protection of the department of commerce, labor and environmental resources’ and inserting in lieu thereof the words ‘Division of Environmental Protection of the Bureau of Environment’;

On page 1, subsection 2.5, by striking out the code reference ‘§20-5G-1 et seq.’, and inserting in lieu thereof the words ‘§ 22-19-1 et seq.’;

On page 1, subsection 2.8, by striking out the code reference ‘§20-5M-9(c)(1)’ and inserting in lieu thereof the code reference ‘§ 22-12-9(c)(1)’;

On page 1, subsection 2.9, by striking out the words ‘section 3.1.3’ and inserting in lieu thereof the words ‘subdivision 3.1.c’, and by striking out the word ‘regulations’ and inserting in lieu thereof the word ‘rule’, and by striking out the words ‘47 C.S.R.35’ and inserting in lieu thereof the words ‘33CSR20’;

On page 2, subsection 2.11, by striking out the words ‘Section 2.22’ and inserting in lieu thereof the words ‘subsection 2.24’, and by striking out the code reference ‘46 C.S.R. 2’ and inserting in lieu thereof the words ‘47CSR10’;

On page 2, subdivision 3.3.a., by striking out the code reference ‘§20-5F-2(k)’ and inserting in lieu thereof ‘§22-15-2(27)’;

On page 2, subdivision 3.3.a., by striking out the code reference ‘§20-5M-10’ and inserting in lieu thereof the code reference ‘§ 22-12-10’;

On page 3, paragraph 3.3.a.2., by striking out the words ‘subsection 3.4.1’ and inserting in lieu thereof the words ‘subdivision 3.4.a.’;
On page 3, subdivision 3.3.b., by striking out the words '§20-5M-8(c) et seq.' and inserting in lieu thereof the words '§22-12-8(c) et seq.';

On page 3, subsection 3.5., by striking out the words 'paragraph 3.5.3.' and inserting in lieu thereof the words 'subdivision 3.5.c.';

On page 3, subdivision 3.5.f., by striking out the words '§20-5F-5a' and inserting in lieu thereof the words '§22-15-11';

On page 3, subdivision 3.5.h., by striking out the code reference '§22A-3-1 et seq.' and inserting in lieu thereof the code reference '§22-3-1 et seq.', by striking out the code reference '§20-5A-5(b)(6)' and inserting in lieu thereof the code reference '§22-11-8(b)(6)', and by striking out the code reference '§22A-4-1 et seq' and inserting in lieu thereof the code reference '§22-4-1 et seq.';

On page 3, subdivision 3.5.i., by striking out the code reference '§20-5A-5(b) (1 through 6)' and inserting in lieu thereof the code reference '§22-11-8(b) (1 through 6)';

On page 3, subdivision 3.5.j., by striking out the code reference '§20-5A-5(b) (1 through 6)' and inserting in lieu thereof the code reference '§22-11-8(b) (1 through 6)', and by striking out the words 'paragraphs 3.5.11, 3.5.12 or 3.5.13' and inserting in lieu thereof the words 'subdivisions 3.5.k, 3.5.l, or 3.5.m';

And,

On page 4, subdivision 3.5.t., by striking out the words 'paragraphs 3.5.1 through 3.5.19' and inserting in lieu thereof the words 'subdivisions 3.5.a. through 3.5.s.';

(h) The legislative rule relating to the division of environmental protection, office of water resources (assessment of civil administrative penalties, 47 CSR 56), effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:
"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by striking out the words 'DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES' and inserting in lieu thereof the words 'BUREAU OF ENVIRONMENT', and by striking out the words 'WATER RESOURCES - WASTE MANAGEMENT' and inserting in lieu thereof the words 'OFFICE OF WATER RESOURCES';

Beginning on page 1, subsection 1.2, and continuing throughout the text of the rule, by striking out the code reference '§20-5M-10 et seq.', and inserting in lieu thereof the code reference '§ 22-12-10 et seq.';

On page 1, subsection 2.1, by striking out the code reference '§20-5M-1 et seq.' and inserting in lieu thereof the code reference '§ 22-12-1 et seq.';

On page 3, subsection 5.5, by striking out the words 'State Water Resources Board', and inserting in lieu thereof the words 'Environmental Quality Board';

And,

On page 3, subsection 6.3, by striking out the word 'Section' and inserting in lieu thereof the word 'subsection'."

(i) The legislative rule relating to the division of environmental protection, office of water resources (groundwater quality standard variances, 47 CSR 57), effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and
procedures for publication of the state register or parts of
the state register, 153 CSR 6);

On page 1, in the title of the rule, by striking out the
words ‘DIVISION OF NATURAL RESOURCES’ and
inserting in lieu thereof the words ‘BUREAU OF ENVI-
RONMENT’, by striking out the words ‘DEPARTMENT
OF COMMERCE, LABOR AND ENVIRONMENTAL
RESOURCES’ and inserting in lieu thereof the words
‘DIVISION OF ENVIRONMENTAL PROTECTION’,
and by striking out the words ‘WATER RESOURCES -
WASTE MANAGEMENT’ and inserting in lieu thereof
the words ‘OFFICE OF WATER RESOURCES’;

Beginning on page 1, subsection 1.2, and continuing
throughout the text of the rule, by striking out the code
reference ‘§20-5M-1 et seq.’, and inserting in lieu thereof
the code reference ‘§ 22-12-1 et seq.’;

On page 1, subsection 1.2, by striking out the code
reference ‘§20-5M-1 through 6’, and inserting in lieu
thereof the code reference ‘§ 22-12-1 through 6’;

On page 1, section 2.0, by striking out the code refer-
ence ‘§20-5M-3’ and inserting in lieu thereof the code
reference ‘§ 22-12-3’;

Beginning on page 1, subsection 2.7, and continuing
throughout the text of the rule, by striking out the words
‘Department of Commerce, Labor and Environmental
Resources’ and inserting in lieu thereof the words ‘Bureau
of Environment’;

On page 2, subsection 2.10, by striking out the words
‘State Water Resources Board’ and inserting in lieu there-
of the words ‘Environmental Quality Board’;

On page 2, subsection 3.1, by striking out the words
‘Article 3, Chapter 22A of the W. Va. Code or Article 5A,
Chapter 20 of the W. Va. Code’, and inserting in lieu
thereof the words ‘W. Va. Code §§ 22-3-1 et seq. or 22-
11-1 et seq.’;
On page 2, subsection 3.2, by striking out the words 'Chapter 22B of the W. Va. Code', and inserting in lieu thereof 'W. Va. Code § 22-6-1 et seq.';

On page 2, subsection 3.3, by striking out the words 'Article 4, Chapter 22A of the W. Va. Code', and inserting in lieu thereof the words 'W. Va. Code § 22-4-1 et seq.';

On page 2, subsection 4.2, by striking out the code reference '§20-5M-4(b)' and inserting in lieu thereof the code reference '§ 22-12-4(b)';

On page 3, subdivisions 5.2.a. through 5.2.g., on page 4, subdivisions 6.2.a. through 6.2.k. and subdivisions 6.3.a. through 6.3.b., and on page 5, subdivisions 6.3.c. through 6.3.d. and subdivisions 6.7.a. through 6.7.d., by striking the first letter of the beginning word in these subdivisions, and inserting the appropriate capital letter for the word;

On page 5, subsection 6.6, and continuing throughout the text of the rule, by striking out the words 'Water Resources Board' and inserting in lieu thereof the words 'Environmental Quality Board';

And,

On page 5, subdivision 6.7.a., by striking out the code reference '§20-5M-5(g)' and inserting in lieu thereof '§ 22-12-5(g)'."

(j) The legislative rule relating to the division of environmental protection, office of water resources (ground-water protection rules, 47 CSR 58), effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by striking out the words 'DEPARTMENT OF COMMERCE, LABOR AND
ENVIRONMENTAL RESOURCES' and inserting in lieu thereof the words 'BUREAU OF ENVIRONMENT', and by striking out the words 'WATER RESOURCES - WASTE MANAGEMENT' and inserting in lieu thereof the words 'OFFICE OF WATER RESOURCES';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the word 'regulations' and inserting in lieu thereof the word 'rule';

On page 1, subsection 1.1, by striking out the words 'chapter 20-5M-1 et seq. of the West Virginia Code' and inserting in lieu thereof the words 'W. Va. Code § 22-12-1 et seq.';

On page 1, subsection 1.2, by striking out the words 'West Virginia Code 20-5M-5(d)' and inserting in lieu thereof the words 'W. Va. Code § 22-12-5(d)';

On page 1, subsection 2.3, by striking out the words 'Department of Commerce, Labor and Environmental Resources' and inserting in lieu thereof the words 'Bureau of Environment', and by inserting the words 'or her' immediately following the word 'him';

On page 2, in the note immediately following subdivision 4.3.b., by striking out the words '46 C.S.R. 3', and inserting in lieu thereof the words '47CSR11';

On page 3, paragraph 4.6.c.1., by striking out the words '20-5D-1' and inserting in lieu thereof the words '22-14-1', and by striking out the words 'Articles (Chapter 20-5M and 20-5D)' and inserting in lieu thereof the words 'Chapter 22, Article 12 and Chapter 22, Article 14';

On page 6, subsection 5.1, in two occurrences, by striking out the words 'Chapter 20, Article 5M', and inserting in lieu thereof the words 'Chapter 22, Article 12';

On page 6, subsection 7.2, by striking out the words 'sections(s) 20-5M-5 (f) through (l) of the W. Va. Code', and inserting in lieu thereof the words 'W. Va. Code § 22-12-5 (f) through (l)';

And,
On page 7, subsections 12.1 and 12.2, by striking out the words 'Water Resources Board', and inserting in lieu thereof the words 'Environmental Quality Board', and by striking out the words '§20-5M-11' and inserting in lieu thereof the words '§ 22-12-11'."

(k) The legislative rule relating to the division of environmental protection, office of water resources (monitoring well rules, 47 CSR 59), effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, in the title of the rule, by striking out the words 'DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES' and inserting in lieu thereof the words 'BUREAU OF ENVIRONMENT', and by striking out the words 'WATER RESOURCES - WASTE MANAGEMENT' and inserting in lieu thereof the words 'OFFICE OF WATER RESOURCES';

On page 1, in the title, by striking out the word 'regulations' and inserting in lieu thereof the word 'rule';

On page 3, subsection 1.2, by striking out the code reference '§20-5M-5(d)', and inserting in lieu thereof the code reference '§ 22-12-5(d)';

And,

On page 3, subsection 7.5 and section 8, by striking out the code reference '§20-5M-11' and inserting in lieu thereof the code reference '§ 22-12-11'."

§64-11-5. Division of environmental protection, office of waste management.

(a) The legislative rule relating to the division of environmental protection, office of waste management (assess-
ment of civil administrative penalties, 47 CSR 4), effective the twenty-second day of April, one thousand nine hundred ninety-one, is reauthorized with the following amendments:

“Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the title number ‘47’ and inserting in lieu thereof the title number ‘33’;

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number ‘4’ and inserting in lieu thereof the series number ‘22’;

On page 1, in the title, by striking out the words ‘WA-
TER RESOURCES-WASTE MANAGEMENT’ and inserting in lieu thereof the words ‘OFFICE OF WASTE MAN-
AGEMENT’;

Beginning on page 1, subsection 1.1., and continuing throughout the text of the rule, by striking out the code reference ‘§20-5E-16’, and inserting in lieu thereof the code reference ‘§ 22-18-17’, and by striking out the code reference ‘§20-5F-6’, and inserting in lieu thereof the code reference ‘§ 22-15-15’;

On page 1, subsection 2.1., by striking out the code reference ‘§20-5E-1’, and inserting in lieu thereof the code reference § 22-18-1’, and by striking out the code reference ‘§20-5F-1’ and inserting in lieu thereof the code reference ‘§ 22-15-1’;

On page 1, subsection 2.4., by striking out the words ‘Natural Resources’ and inserting in lieu thereof the words ‘environmental protection’;
On page 1, subsection 2.4., by inserting the words ‘or her’ immediately following the word ‘his’;

Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 3, subsection 5.5., by striking out the words ‘State Water Resources Board’, and inserting in lieu thereof the words ‘environmental quality board’;

Beginning on page 3, subsection 6.2., and continuing throughout the text of the rule, by striking out the words ‘these regulations’, and inserting in lieu thereof ‘this rule’;

And,

On page 4, subsections 6.5, 7.3. and 7.5, by striking out the word ‘Section’, and inserting in lieu thereof the word ‘subsection’.

(b) The legislative rule relating to the division of environmental protection, office of waste management (groundwater protection standard, 47 CSR 12), effective the twenty-fifth day of April, one thousand nine hundred eighty-four, is reauthorized with the following amendments:

“Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the title number ‘47’, and inserting in lieu thereof the title number ‘33’;

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number ‘12’, and inserting in lieu thereof the series number ‘23’;

On page 1, in the title, by striking out the words ‘WATER RESOURCES-WASTE MANAGEMENT’, and inserting in lieu thereof the words ‘OFFICE OF WASTE MANAGEMENT’;
On page 1, subsection 1.1., by striking out the words 'these regulations', and inserting in lieu thereof the words 'this rule';

On page 1, subsection 1.1., by striking out the words 'Section 2, Series 35, Department of Natural Resources Administrative Regulations', and inserting in lieu thereof the words '33CSR20, Section 2';

And,

On page 1, subsection 1.2., by striking out the code references '20-5E and 5A' and inserting in lieu thereof the code references 'Chapter 22, Articles 18 and 11'.

(c) The legislative rule relating to the division of environmental protection, office of waste management (commercial hazardous waste management facility siting fees, 47 CSR 35A), effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the title number '47', and inserting in lieu thereof the title number '33';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '35A', and inserting in lieu thereof the series number '21';

On page 1, in the title, by striking out the words 'WATER RESOURCES-WASTE MANAGEMENT', and inserting in lieu thereof the words 'OFFICE OF WASTE MANAGEMENT';

On page 1, subsection 1.1., by striking out the code reference '§20-10-1', and inserting in lieu thereof the code reference '§ 22C-5-1';

On page 1, subsection 1.2., by striking out the code reference '§20-10-5(b)', and inserting in lieu thereof the code reference '§22C-5-6(b)';
On page 1, subsection 2.1., by striking out the code reference ‘§20-10-3’, and inserting in lieu thereof the code reference ‘§ 22C-5-4’;

Beginning on page 1, subsection 2.2., and continuing throughout the text of the rule, by striking out the rule reference ‘47 C.S.R. 35’, and inserting in lieu thereof the rule reference ‘33CSR20’;

Beginning on page 1, subsection 2.2., and continuing throughout the text of the rule, by striking out the word ‘regulations’, and inserting in lieu thereof the word ‘rule’;

On page 1, subsection 3.1., by striking out the code reference ‘§20-10-5’, and inserting in lieu thereof the code reference ‘§22C-5-6’.

And,

On page 1, subsection 3.3., by striking out the word ‘regulations’ and inserting in lieu thereof the word ‘rule’.

(d) The legislative rule relating to the division of environmental protection, office of waste management (underground storage tanks, 47 CSR 36), effective the first day of July, one thousand nine hundred ninety-six, is reauthorized with the following amendments:

“Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the title number ‘47’, and inserting in lieu thereof the title number ‘33’;

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number ‘36’, and inserting in lieu thereof the series number ‘30’;

On page 1, in the title, by striking out the words ‘WA-TER RESOURCES-WASTE MANAGEMENT’, and in-
serting in lieu thereof the words 'OFFICE OF WASTE
MANAGEMENT';

On page 5, subsection 4.6., by striking out the rule
reference '(46 C.S.R. 30)', and inserting in lieu thereof
the rule reference '(33CSR30)';

And,

On page 5, subsection 5.1., by striking out the rule
reference '(47 C.S.R. 37)', and inserting in lieu thereof
the rule reference '(33CSR31)', by striking out the rule
reference '(47 C.S.R. 36 Section 4)', and inserting in lieu
thereof the rule reference '(33CSR30 §4)', and by strik-
ing out the rule reference '(47 C.S.R. 37A Section 5)',
and inserting in lieu thereof the rule reference '(33CSR32
§5)'."

(e) The legislative rule relating to the division of envi-
ronmental protection, office of waste management (under-
ground storage tank fee assessments, 47 CSR 37), effective
the fourteenth day of June, one thousand nine hundred
ninety-three, is reauthorized with the following amend-
ments:

"Beginning on page 1, in the title, and continuing
throughout the text of the rule, by striking out the title
number '47', and inserting in lieu thereof the title number
'33';

Beginning on page 1, in the title, and continuing
throughout the text of the rule, by striking out the series
number '37', and inserting in lieu thereof the series num-
ber '31';

On page 1, in the title, by striking out the words 'WA-
TER RESOURCES-WASTE MANAGEMENT', and in-
serting in lieu thereof the words 'OFFICE OF WASTE
MANAGEMENT';

On page 1, subsection 1.1, by striking out the code
reference 'W. Va. Code §§20-5H-20 and 20-5H-21' and
inserting in lieu thereof the code reference ‘W. Va. Code §§ 22-17-20 and 22-17-21’;


Beginning on page 1, subsection 1.5., and continuing throughout the text of the rule, by striking out the words ‘these regulations’, and inserting in lieu thereof the words ‘this rule’;

Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, subsection 2.1., by striking out the code reference ‘§20-5H’, and inserting in lieu thereof the code reference ‘§ 22-17-1’;

On page 1, subsection 2.1., before the word means, by inserting the word ‘Act’ in the definition;

On page 1, subsection 2.2., before the word means, by inserting the word ‘Change-In-Service’ in the definition;

On page 1, subsection 2.3., before the word means, by inserting the word ‘Division’ in the definition;

On page 1, subsection 2.4., before the word means, by inserting the word ‘Owner’ in the definition;

On page 2, subsection 2.5., before the word means, by inserting the word ‘Person’ in the definition;

On page 2, subsection 2.6., before the word means, by inserting the word ‘Permanent Closure’ in the definition;

On page 2, subsection 2.7., before the word means, by inserting the word ‘Regulated Substance’ in the definition;
On page 2, subsection 2.8., before the word means, by inserting the word 'Underground Storage Tank or UST' in the definition;

On page 2, subdivision 2.8.a., by striking out the word 'Farms', and inserting in lieu thereof the word 'Farm';

On page 2, subdivision 2.8.j., by striking out the words 'Section 2.8.1. through 2.8.9.' and inserting in lieu thereof the words 'subdivisions 2.8.a. through 2.8.i.';

Beginning on page 3, subdivision 3.3.b., and continuing to subdivisions 3.3.c. and 5.1.a., and paragraphs 4.4.1, 5.1.b.1. and 5.1.c.1, by striking out the word 'Sections' and inserting in lieu thereof the word 'subsections';

On page 3, subdivision 4.4.c., by striking out the words '47 C.S.R. 36 § 4', and inserting in lieu thereof the words '33CSR30 §4', and by striking out the words 'W. Va. Code §20-5H-8', and inserting in lieu thereof the words 'W. Va. Code § 22-17-8';

On page 4, subsection 4.5., by striking out the code references '§§20-5H-15 and 20-5H-16', and inserting in lieu thereof the code references '§§ 22-17-15 and 22-17-16';

On page 4, subsection 5.1., by striking out the code references '§§20-5H-20 and 20-5H-21', and inserting in lieu thereof the code references '§§ 22-17-20 and 22-17-21';

And,

On page 4, paragraph 5.1.c.2., by striking out the code reference '§20-5H-20(a)', and inserting in lieu thereof the code reference '§ 22-17-20(a)'."

(f) The legislative rule relating to the division of environmental protection, office of waste management (solid waste management rule, 47 CSR 38), effective the second day of June, one thousand nine hundred ninety-six, is reauthorized with the following amendments:
"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the title number '47', and inserting in lieu thereof the title number '33';

On page 1, in the title, by striking out the words 'WATER RESOURCES - WASTE MANAGEMENT', and inserting in lieu thereof the words 'OFFICE OF WASTE MANAGEMENT';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '38', and inserting in lieu thereof the series number '1';

Beginning on page 1, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

Beginning on page 1, paragraph 1.1.a.4., and continuing throughout the text of the rule, by striking out the words used to describe the cross-references to sections, subsections, subdivisions, paragraphs, subparagraphs, parts, subparts, items or subitems, and inserting in lieu thereof the corresponding reference as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

Beginning on page 1, subsection 1.5, and continuing throughout the text of the rule, by striking out the rule reference '47CSR38', and inserting in lieu thereof the rule reference '33CSR1';

Beginning on page 1, subsection 1.5, and continuing throughout the rule, by striking out the words 'these regulations', and inserting in lieu thereof the words 'this rule';
Beginning on page 9, subsection 2.88, and continuing throughout section 2 of the rule, by correctly renumbering all misnumbered subsections and subdivisions;

On page 50, subparagraph 3.13.k.1.F, by striking out the word 'data', and inserting in lieu thereof the word 'date';

Beginning on page 72, subsection 4.1, and continuing throughout the text of the rule, by striking out the word 'sec.', and inserting in lieu thereof the word 'seq.';

Beginning on page 111, paragraph 4.11.b.2., and continuing throughout the text of the rule, by striking out the word 'chief', and inserting in lieu thereof the word 'director';

And,

Beginning on page 117, subsection 4.11.e, and continuing throughout the text of the rule, by striking out the abbreviation 'WV', and inserting in lieu thereof the abbreviation 'W. Va.'

(g) The legislative rule relating to the division of environmental protection, office of waste management (commercial solid waste landfill closure assistance program, 47 CSR 38C), effective the first day of June, one thousand nine hundred ninety-four, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the title number '47', and inserting in lieu thereof the title number '33';

On page 1, in the title, by striking out the words 'WATER RESOURCES - WASTE MANAGEMENT', and inserting in lieu thereof the words 'OFFICE OF WASTE MANAGEMENT';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '38C', and inserting in lieu thereof the series number '40';
On page 1, subsection 1.1, by striking out the code reference '§20-5N-1 et seq.', and inserting in lieu thereof the code reference '§ 22-16-1 et seq.';

On page 1, subsection 1.1, by striking out the words 'Article 5N' and inserting in lieu thereof the words 'Article 16.';

On page 1, subsection 1.2, by striking out the code reference '§20-5N-8', and inserting in lieu thereof the code reference '§ 22-16-13.';

Beginning on page 1, subsection 1.6, and continuing throughout the text of the rule, by striking out the words 'these regulations', and inserting in lieu thereof the words 'this rule', and by striking out the word 'regulation' and inserting in lieu thereof the word 'rule';

On page 1, subsection 2.2, by striking out the code references '§20-5N-3 and 10', and inserting in lieu thereof the code references '§§ 22-16-3 and 15';

On page 2, subsection 2.3, by striking out the words 'of the Department of Commerce, Labor and Environmental Protection'; On page 2, subsection 2.7, by inserting the subsection heading 'Incorporation of § 22-15-2 Definitions.';

On page 2, subsection 2.7, by striking out the code reference '§20-5F-2' and inserting in lieu thereof the code reference '§ 22-15-2';

On page 2, subsection 3.1, by inserting the subsection heading 'Application Form.';

On page 2, subsection 3.2, by inserting the subsection heading 'Application Information.';

Beginning on page 2, subsection 3.2, and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);
Beginning on page 3, paragraph 3.2.h.2., and continuing throughout the text of the rule, by striking out the words used to describe the cross-references to sections, subsections, subdivisions, paragraphs, subparagraphs, parts, subparts, items or subitems, and inserting in lieu thereof the corresponding reference as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 3, subparagraphs 3.2.e. and 3.2.f., by striking out the abbreviation ‘No.’ and by inserting the word ‘Number’;

On page 4, paragraph 3.2.h.5., by striking out the code reference ‘§20-5F-4(k)’, and inserting in lieu thereof the code reference ‘§ 22-15-5(j)’;

On page 4, subsection 3.3, by inserting the subsection heading ‘Application Review and Decision.’;

On page 4, subsection 3.4, by inserting the subsection heading ‘Application Resubmittal.’;

On page 4, subsection 3.5, by inserting the subsection heading ‘Application Deadlines.’;

On page 4, subsection 3.5, by striking out the code reference ‘§20-5F-6’, and inserting in lieu thereof the code reference ‘§ 22-16-11’;

On page 5, subsection 4.1, by inserting the subsection heading ‘Valid Landfill Facility Permit Required.’;

Beginning on page 5, subsection 4.1, and continuing throughout the text of the rule, by striking out the code reference ‘§20-5F-1’ and inserting in lieu thereof the code reference ‘§ 22-15-1’;

On page 5, subdivision 4.1.b, by striking out the code reference ‘§20-5A-1’, and inserting in lieu thereof the code reference ‘§ 22-11-1’.
On page 5, subdivision 4.2.b., by striking out the code reference '§20-5F-1', and inserting in lieu thereof the code reference '§ 22-15-1';

Beginning on page 5, subsection 4.2.b., and continuing throughout the text of the rule, by striking out the rule reference '47 CSR 38', and inserting in lieu thereof the rule reference '33CSR1';

On page 6, subdivision 4.4.a., by striking out the words 'Water Resources Board', and inserting in lieu thereof the words 'Environmental Quality Board';

On page 6, subdivision 4.5, by striking out the code reference '§20-5N-4(a)', and inserting in lieu thereof the code reference '§22-16-4';

Beginning on page 6, in paragraph 4.6.a.3., and continuing throughout the text of the rule, by striking out the word 'Chief', and inserting in lieu thereof the word 'director';

On page 7, subsection 4.7, by inserting the subsection heading 'Authority of the Director to Modify Permit.';

On page 7, subsection 4.8, by inserting the subsection heading 'Granting of Access to Facility To Director.';

On page 7, subsection 5.1, by inserting the subsection heading 'Authority of the Director to Establish Maintenance Contracts.';

On page 8, subsection 6.1, by inserting the subsection heading 'Performance of Post-Closure Activities.';

On page 8, subsection 7.1, by inserting the subsection heading 'Expenditure of Funds from the Closure Assistance Fund.';

On page 8, subsection 7.2, by inserting the subsection heading 'Assistance Contingent upon the Availability of Revenues.';

And,

On page 8, subsection 8.1, by inserting the subsection heading 'Priority for Final Assistance.'.
(h) The legislative rule relating to the division of environmental protection, office of waste management (sewage sludge management rules, 47 CSR 38D), effective the first day of May, one thousand nine hundred ninety-six, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the title number '47', and inserting in lieu thereof the title number '33';

On page 1, in the title, on the line following the words 'DIVISION OF ENVIRONMENTAL PROTECTION', by inserting the words 'OFFICE OF WASTE MANAGEMENT';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '38D', and inserting in lieu thereof the series number '2';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the word 'regulations', and inserting in lieu thereof the word 'rule';

Beginning on page 5, subdivision 3.2.a., and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

Beginning on page 6, subdivision 3.2.b., and continuing throughout the text of the rule, by striking out the words used to describe the cross-references to sections, subsections, subdivisions, paragraphs, subparagraphs, parts, subparts, items or subitems, and inserting in lieu thereof the corresponding reference as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publica-
tion of the state register or parts of the state register, 153
CSR 6);
format for rules and procedures for publication of the
state register or parts of the state register, 153 CSR 6);

Beginning on page 6, paragraph 3.1.a.2., and continu­
ing throughout the text of the rule, by striking out the
words used to describe the cross-references to sections,
subsections, subdivisions, paragraphs, subparagraphs, parts,
subparts, items or subitems, and inserting in lieu thereof
the corresponding reference as necessary to conform with
the rule of the secretary of state relating to format (stan­
dard size and format for rules and procedures for publica­
tion of the state register or parts of the state register, 153
CSR 6);

Beginning on page 3, paragraph 3.1.a.2., and continu­
ing throughout the text of the rule, by striking out the rule
reference '47 CSR 38', and inserting in lieu thereof the
rule reference '33CSR1.';

Beginning on page 3, paragraph 3.1.a.2., and continu­
ing throughout the text of the rule, by striking out the
word 'regulations', and inserting in lieu thereof the word
'rule';

On page 6, paragraph 3.4.c.3., after the semicolon, by
inserting word 'and';

And,

Beginning on page 7, subparagraph 3.4.c.4.C, and
continuing throughout the text of the rule, by striking out
the word 'Division', and inserting in lieu thereof the
words 'Division of Environmental Protection'."

(j) The legislative rule relating to the division of envi­
ronmental protection, office of waste management (office
of waste management, 47 CSR 38F), effective the first day
of June, one thousand nine hundred ninety-four, is
reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing
throughout the text of the rule, by striking out the title
number '47', and inserting in lieu thereof the title number '33';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '38F', and inserting in lieu thereof the series number '4';

On page 1, in the title, by striking out the words 'WA­
TER RESOURCES - WASTE MANAGEMENT', and inserting in lieu thereof the words 'OFFICE OF WASTE MANAGEMENT';

And,

Beginning on page 2, subdivision 3.3.a., and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6).

(k) The legislative rule relating to the division of environmental protection, office of waste management (waste tire management rule, 47 CSR 38G), effective the second day of June, one thousand nine hundred ninety-six, is reauthorized with the following amendments:

"Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the title number '47', and inserting in lieu thereof the title number '33';

On page 1, in the title, by striking out the words 'WA­
TER RESOURCES - WASTE MANAGEMENT', and inserting in lieu thereof the words 'OFFICE OF WASTE MANAGEMENT';

Beginning on page 1, in the title, and continuing throughout the text of the rule, by striking out the series number '38G', and inserting in lieu thereof the series number '5';
Beginning on page 1, subdivision 1.1.a., and continuing throughout the text of the rule, by renumbering the text breakdown as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

Beginning on page 1, subdivision 1.1.c., and continuing throughout the text of the rule, by striking out the words used to describe the cross-references to sections, subsections, subdivisions, paragraphs, subparagraphs, parts, subparts, items or subitems, and inserting in lieu thereof the corresponding reference as necessary to conform with the rule of the secretary of state relating to format (standard size and format for rules and procedures for publication of the state register or parts of the state register, 153 CSR 6);

On page 1, §33-5-2 (former §47-38G-2), and continuing throughout the text of the rule, by striking out the rule reference ‘47 CSR 38’, and inserting in lieu thereof the rule reference ‘33CSR1’;

Beginning on page 1, subsection 2.3, and continuing throughout the text of the rule, by striking out the word ‘regulations’, and inserting in lieu thereof the word ‘rule’;

Beginning on page 2, subsection 2.17, and continuing throughout the text of the rule, by striking out the abbreviation ‘WV’, and inserting in lieu thereof the abbreviation ‘W. Va.’;

Beginning on page 3, subdivision 3.1.b., and continuing throughout the text of the rule, by striking out the rule reference ‘47 CSR 38G’, and inserting in lieu thereof the words ‘this rule’;

And,

Beginning on page 3, subdivision 3.2.a., and continuing throughout the text of the rule, by striking out the word ‘chief’, and inserting in lieu thereof the word ‘director’.”